

(C) procedures to ensure that persons are not incorrectly identified pursuant to this section. (Added Pub. L. 104-134, title III, §31001(r)(1), Apr. 26, 1996, 110 Stat. 1321-372.)

SUBCHAPTER III—CLAIMS AGAINST THE UNITED STATES GOVERNMENT

**§ 3721. Claims of personnel of agencies and the District of Columbia government for personal property damage or loss**

(a) In this section—

(1) “agency” does not include a nonappropriated fund activity or a contractor with the United States Government.

(2) “head of an agency” means—

(A) for a military department, the Secretary of the military department;

(B) for the Department of Defense (except the military departments), the Secretary of Defense; and

(C) for another agency, the head of the agency.

(3) “settle” means consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance.

(b)(1) The head of an agency may settle and pay not more than \$40,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property incident to service. If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid under the authority of the preceding sentence may exceed \$40,000, but may not exceed \$100,000. A claim allowed under this subsection may be paid in money or the personal property replaced in kind.

(2) The Secretary of State may waive the settlement and payment limitation referred to in paragraph (1) for claims for damage or loss by United States Government personnel under the jurisdiction of a chief of mission in a foreign country if such claims arise in circumstances where there is in effect a departure from the country authorized or ordered under circumstances described in section 5522(a) of title 5, if the Secretary determines that there exists exceptional circumstances that warrant such a waiver.

(c) On paying a claim under this section, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against a foreign country for the damage or loss for which the Government made the payment.

(d) The Mayor of the District of Columbia may settle and pay a claim against the District of Columbia government made by an officer or employee of the District of Columbia government to the same extent the head of an agency may settle and pay a claim under this section.

(e) A claim may not be allowed under this section if the personal property damage or loss occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned or provided in kind by the United States Government or the District of Columbia government.

(f) A claim may be allowed under this section only if—

(1) the claim is substantiated;

(2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances; and

(3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.

(g) A claim may be allowed under this section only if it is presented in writing within 2 years after the claim accrues. However, if a claim under subsection (b) of this section accrues during war or an armed conflict in which an armed force of the United States is involved, or has accrued within 2 years before war or an armed conflict begins, and for cause shown, the claim must be presented within 2 years after the cause no longer exists or after the war or armed conflict ends, whichever is earlier. An armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President.

(h) The head of the agency—

(1) may settle and pay a claim made by the surviving spouse, child, parent, or brother or sister of a dead member, officer, or employee if the claim is otherwise payable under this section; and

(2) may settle and pay the claims by the survivors only in the following order:

(A) the spouse’s claim.

(B) a child’s claim.

(C) a parent’s claim.

(D) a brother’s or sister’s claim.

(i) Notwithstanding a contract, the representative of a claimant may not receive more than 10 percent of a payment of a claim made under this section for services related to the claim. A person violating this subsection shall be fined not more than \$1,000.

(j) The President may prescribe policies to carry out this section (except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard). Subject to those policies, the head of each agency shall prescribe regulations to carry out this section.

(k) Settlement of a claim under this section is final and conclusive.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 973; Pub. L. 97-452, §1(17), Jan. 12, 1983, 96 Stat. 2474; Pub. L. 100-565, §1, Oct. 31, 1988, 102 Stat. 2833; Pub. L. 103-236, title I, §172(a), Apr. 30, 1994, 108 Stat. 412; Pub. L. 104-106, div. A, title X, §1088(a), Feb. 10, 1996, 110 Stat. 458.)

HISTORICAL AND REVISION NOTES  
1982 ACT

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3721(a), (b).	31:240(3). 31:241(a)(1)(1st sentence words after 3d comma, 2d sentence words after last comma, last sentence). 31:241(a)(2)(words after 1st comma).	Aug. 31, 1964, Pub. L. 88-558, §§2(3), 4, 78 Stat. 767, 768. Aug. 31, 1964, Pub. L. 88-558, §3(a)(1), 78 Stat. 767; restated Sept. 15, 1965, Pub. L. 89-185, §3(b), 79 Stat. 789; Oct. 18, 1974, Pub. L. 93-455, §1(a), 88 Stat. 1381. Aug. 31, 1964, Pub. L. 88-558, §3(a)(2), (3), (b)(2)-(d), 78 Stat. 767; restated Sept. 15, 1965, Pub. L. 89-185, §3(b)-(d), 79 Stat. 789, 790.

HISTORICAL AND REVISION NOTES—CONTINUED  
1982 ACT

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	31:241(b)(1)(1st sentence words after 5th comma, 2d sentence words after last comma, last sentence).	Aug. 31, 1964, Pub. L. 88-558, §3(b)(1), 78 Stat. 767; Sept. 15, 1965, Pub. L. 89-185, §3(b), 79 Stat. 790; July 13, 1972, Pub. L. 92-352, §106(a), 86 Stat. 491; restated Oct. 18, 1974, Pub. L. 93-455, §1(b), 88 Stat. 1381.
	31:243a(d)(2d sentence related to payment).	Aug. 31, 1964, Pub. L. 88-558, 78 Stat. 767, §9; added Dec. 12, 1980, Pub. L. 96-519, §1, 94 Stat. 3031.
3721(c)(1)	31:243a(a)(words after 1st comma).	
3721(c)(2)	31:243a(e).	
3721(c)(3)	31:243a(note).	Dec. 12, 1980, Pub. L. 96-519, §2, 94 Stat. 3032.
3721(d) .....	31:241(f).	Aug. 31, 1964, Pub. L. 88-558, 78 Stat. 767, §3(f); added Oct. 12, 1968, Pub. L. 90-561, 82 Stat. 998.
3721(e) .....	31:241(c)(2).	
3721(f) .....	31:241(a)(1)(2d sentence words before last comma), (b)(1)(2d sentence words before last comma), (c)(3).	
	31:243a(d)(2d sentence less payment, last sentence).	
3721(g) .....	31:241(c)(1), (d).	
	31:243a(c).	
3721(h) ....	31:241(a)(3), (b)(2).	
	31:243a(b).	
3721(i) .....	31:243.	Aug. 31, 1964, Pub. L. 88-558, 78 Stat. 767, §8; added Sept. 15, 1965, Pub. L. 89-185, §5, 79 Stat. 791.
3721(j) .....	31:241(a)(1)(1st sentence words before 3d comma), (2)(words before 1st comma), (b)(1)(1st sentence words before 5th comma).	
	31:243a(a)(words before 1st comma), (d)(1st sentence).	
3721(k) ....	31:242.	

In the section, the words “or his designee” are omitted as unnecessary.

In subsections (b) and (c), the word “civilian” is omitted as surplus.

In subsection (b), the words “arising after August 31, 1964” and “arising after October 18, 1974” and 31:241(a)(1)(last sentence) and (b)(1)(last sentence) are omitted as executed.

In subsection (c)(1)(B), the words “mob violence, terrorist attacks, or other” are omitted as surplus. The word “members” is added for consistency.

In subsection (c)(2), the words “in which that damage or loss occurred” are omitted as surplus.

In subsection (c)(3), the text of section 2(last sentence) of the Act of December 12, 1980 (Pub. L. 96-519, 94 Stat. 3032) is omitted as obsolete.

Subsection (d) is substituted for 31:241(f) because of the restatement.

In subsection (e), the words “assigned to him or otherwise” in 31:241(c)(2) are omitted as surplus. The words “or the District of Columbia government” are added because of the restatement.

In subsection (f), the words “the head of the agency decides” are substituted for “determined to be” in 31:241(b)(1) for clarity.

In subsection (g), the text of 31:243a(c)(words after 1st comma) are omitted as executed. The words “in writing” and “of the United States” in 31:241(c)(1) are omitted as unnecessary.

In subsection (h)(1), the words “the surviving . . . of a dead member, officer, or employee” are substituted for “If a person named in this subsection is dead” and “the decedent’s surviving” in 31:241(a)(3) and (b)(2) and “if such person is deceased” and “the decedent’s surviv-

ing” in 31:243a(b) to omit surplus words. The words “that arose before, concurrently with, or after the decedent’s death” in 31:241(a)(3) and (b)(2) and 31:243a(b) are omitted as surplus. The words “child, parent, or brother or sister” are substituted for “(2) children, (3) father or mother, or both, or (4) brothers or sisters, or both” to eliminate surplus words and because of 1:1. The words “otherwise payable” are substituted for “otherwise covered” for clarity.

Subsection (h)(2) is substituted for “Claims of survivors shall be settled and paid in the order named” in 31:241(a)(3) and (b)(2) and “Claims of survivors shall be settled and paid in the order set forth in the preceding sentence” in 31:243a(b) for clarity.

In subsection (i), the words “to the contrary” are omitted as surplus. The words “representative of a claimant” are substituted for “agent or attorney” for clarity and consistency. The words “be paid or delivered to or” are omitted as surplus. The word “payment” is substituted for “amount paid in settlement” to eliminate unnecessary words. The words “individual . . . submitted and settled . . . the authority of” are omitted as surplus. The words “and the same shall be unlawful” are omitted because of the restatement. The words “shall be deemed guilty of a misdemeanor and upon conviction thereof . . . in any sum” are omitted as surplus.

In subsection (j), the words “the purposes of” in 31:241(b)(1)(1st sentence words before 5th comma) are omitted as surplus. The words “(except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard)” are substituted for the source provisions because of the restatement. The words “to carry out this section” after “regulations” are added for clarity.

In subsection (k), the words “Notwithstanding any other provision of law” are omitted as unnecessary.

1983 ACT

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3721(b) .....	31 App.:241(a)(1), (b)(1).	July 28, 1982, Pub. L. 97-226, §1(a), 96 Stat. 245.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-106 inserted after first sentence “If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid under the authority of the preceding sentence may exceed \$40,000, but may not exceed \$100,000.”

1994—Subsec. (b). Pub. L. 103-236 designated existing provisions as par. (1) and added par. (2).

1988—Subsec. (b). Pub. L. 100-565, §1(1), substituted “\$40,000” for “\$25,000”.

Subsec. (c). Pub. L. 100-565, §1(2), in amending subsec. (c) generally, redesignated former subsec. (c)(2) as (c) and substituted “section” for “subsection”, struck out par. (1) which authorized agency head to pay claim against Government for not more than \$40,000 to member of uniformed services, or officer or employee of agency, for damage to, or loss of, personal property in foreign country, incurred after December 30, 1978, incident to service, after evacuation from foreign country, and struck out par. (3) which limited amounts to be obligated or expended for claims to extent provided in advance in appropriation laws.

1983—Subsec. (b). Pub. L. 97-452 substituted “\$25,000” for “\$15,000”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1088(b) of Pub. L. 104-106 provided that: “The amendment made by subsection (a) [amending this section] shall apply to claims arising before, on, or after the date of the enactment of this Act [Feb. 10, 1996].”

EFFECTIVE DATE OF 1994 AMENDMENT

Section 172(b) of Pub. L. 103-236 provided that: “The amendments made by subsection (a) [amending this

section] shall apply with respect to claims arising on or after October 31, 1988.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 2 of Pub. L. 100-565 provided that: “The amendments made by this Act [amending this section] shall apply only to claims arising on or after the date of the enactment of this Act [Oct. 31, 1988].”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 2(g) of Pub. L. 97-452 provided that: “The amendment made by section 1(17) of this Act [amending this section] applies only to claims arising after July 27, 1982.”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### REPRESENTMENTS OF PREVIOUSLY PRESENTED CLAIMS

Section 1088(c) of Pub. L. 104-106 provided that:

“(1) A claim under subsection (b) of section 3721 of title 31, United States Code, that was settled under such section before the date of the enactment of this Act [Feb. 10, 1996] may be represented under such section, as amended by subsection (a), to the head of the agency concerned to recover the amount equal to the difference between the actual amount of the damage or loss and the amount settled and paid under the authority of such section before the date of the enactment of this Act, except that—

“(A) the claim shall be represented in writing within two years after the date of the enactment of this Act;

“(B) a determination of the actual amount of the damage or loss shall have been made by the head of the agency concerned pursuant to settlement of the claim under the authority of such section before the date of the enactment of this Act;

“(C) the claimant shall have proof of the determination referred to in subparagraph (B); and

“(D) the total of all amounts paid in settlement of the claim under the authority of such section may not exceed \$100,000.

“(2) Subsection (k) of such section shall not apply to bar representation of a claim described in paragraph (1), but shall apply to such a claim that is represented and settled under that section after the date of the enactment of this Act.”

#### § 3722. Claims of officers and employees at Government penal and correctional institutions

(a) The Attorney General may settle and pay not more than \$1,000 in any one case for a claim made by an officer or employee at a United States Government penal or correctional institution for damage to, or loss of, personal property incident to employment.

(b) A claim may not be allowed under this section if the loss occurred at quarters occupied by the claimant that were not assigned or provided in kind by the Government.

(c) A claim may be allowed only if—

(1) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant;

(2) the Attorney General decides that possession of the property was reasonable or useful under the circumstances; and

(3) it is presented in writing within one year after it accrues.

(d) A claim may be paid under this section only if the claimant accepts the amount of the settlement in complete satisfaction of the claim.

(e) Necessary amounts are authorized to be appropriated to carry out this section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 974.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3722(a) .....	31:238(1st sentence).	June 10, 1949, ch. 187, 63 Stat. 167.
3722(b) .....	31:238(2d sentence last 25 words before last semi-colon).	
3722(c) .....	31:238(2d sentence less last 25 words before last semi-colon).	
3722(d) .....	31:238(last sentence).	
3722(e) .....	31:238(note).	

In subsection (a), the words “and such other officer or officers as he may designate for such purpose” are omitted as unnecessary because of 28:509. The word “settle” is substituted for “consider, determine, adjust” for consistency. The words “the sum of” are omitted as surplus. The words “officer or employee” are substituted for “persons employed” for consistency in the revised title and with other titles of the United States Code. The words “or destruction” are omitted as surplus.

In subsection (b), the words “assigned to him . . . otherwise” are omitted as surplus.

In subsection (c)(1), the words “no part” are substituted for “not . . . in whole or in part” because of the restatement.

In subsection (c)(2), the words “the Attorney General decides that possession of” are substituted for “is determined” for clarity. The words “claimed to be damaged, lost, or destroyed” and “necessary, or proper . . . attendant” are omitted as surplus.

In subsection (c)(3), the word “accrues” is substituted for “the occurrence of the accident or incident out of which such claim arises” to eliminate unnecessary words.

In subsection (d), the words “A claim may be paid under this section” are added for clarity. The words “the amount of the settlement” are substituted for “an award hereunder” for consistency. The words “in complete satisfaction of the claim” are substituted for “shall release the United States, its agents or employees, from any further claim by such claimant arising out of the same incident” to eliminate unnecessary words.

#### § 3723. Small claims for privately owned property damage or loss

(a) The head of an agency (except a military department of the Department of Defense or the Coast Guard) may settle a claim for not more than \$1,000 for damage to, or loss of, privately owned property that—

(1) is caused by the negligence of an officer or employee of the United States Government acting within the scope of employment; and

(2) may not be settled under chapter 171 of title 28.

(b) A claim under this section may be allowed only if it is presented to the head of the agency within one year after it accrues.

(c) A claim under this section may be paid as provided in section 1304 of this title only if the

claimant accepts the amount of the settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 975.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3723(a) .....	31:215(1st sentence), 216. 31:216(note). 31:216(note). 31:216(note).	Dec. 28, 1922, ch. 17, §§1-3, 42 Stat. 1066. July 3, 1943, ch. 189, §4, 57 Stat. 373. Dec. 28, 1945, ch. 597, §4(words before 3d comma), 59 Stat. 662. Dec. 28, 1945, ch. 597, 59 Stat. 662, §5(last sentence); added Mar. 20, 1946, ch. 104, 60 Stat. 56. Aug. 2, 1946, ch. 753, §424(a)(last par. on p. 846), 60 Stat. 846.
3723(b) .....	31:215(last sentence proviso).	
3723(c) .....	31:215(last sentence less proviso), 217.	

In subsection (a), before clause (1), the text of 31:216(words before semicolon) is omitted as unnecessary because of section 102 of the revised title. The words “acting on behalf of the Government of the United States” in 31:215 are omitted as unnecessary. The word “settle” is substituted for “consider, ascertain, adjust, and determine” for consistency. The words “after April 6, 1917” are omitted as executed.

In subsection (c), the words “A claim under this section may be paid” are added for clarity. The words “as provided in section 1304 of this title” are substituted for 31:215(last sentence less proviso) because 31:215(last sentence less proviso) is superseded by section 201 of the Supplemental Appropriations Act, 1978 (Pub. L. 95-240, 92 Stat. 116). The words “of the settlement” are substituted for “determined under the provisions of sections 215 and 216 of this title” in 31:217 for consistency and to eliminate unnecessary words. The word “complete” is substituted for “full” for consistency. The word “satisfaction” is substituted for “settlement” for clarity.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 3724. Claims for damages caused by investigative or law enforcement officers of the Department of Justice**

(a) The Attorney General may settle, for not more than \$50,000 in any one case, a claim for personal injury, death, or damage to, or loss of, privately owned property, caused by an investigative or law enforcement officer as defined in section 2680(h) of title 28 who is employed by the Department of Justice acting within the scope of employment that may not be settled under chapter 171 of title 28. An officer or employee of the United States Government may not present a claim arising during the scope of employment. A claim may be allowed only if it is presented to the Attorney General within one year after it accrues.

(b) A claim may be paid under this section only if the claimant accepts the amount of the

settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 975; Pub. L. 101-203, §1(a), (b)(1), Dec. 7, 1989, 103 Stat. 1805; Pub. L. 105-362, title X, §1001(c), Nov. 10, 1998, 112 Stat. 3291.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3724(a) .....	31:224b(words before 9th comma and between 10th and 11th commas, 1st, 2d provisos). 31:224b(note).	Mar. 20, 1936, ch. 159, 49 Stat. 1184.  Aug. 2, 1946, ch. 753, §424(a)(2d par. on p. 847), (b)(related to 2d par. of (a) on p. 847), 60 Stat. 847.
3724(b) .....	31:224b(words between 9th and 10th commas and between 11th comma and 1st proviso).	
3724(c) .....	31:224b(last proviso).	

In subsection (a), the words “of the United States” are omitted as unnecessary. The word “settle” is substituted for “consider, adjust, and determine” for consistency. The words “after January 1, 1934” are omitted as executed. The words “personal injury, death” are substituted for “damages to any person” for clarity. The words “of the Department of Justice” are omitted as unnecessary. The words “that may not be settled under chapter 171 of title 28” are substituted for section 424(a)(2d par. on p. 847) and (b)(related to 2d par. of (a) on p. 847) of the Legislative Reorganization Act of 1946 (31:224b(note)) because of the restatement. The words “An officer or employee of the United States Government may not present a claim arising during the scope of employment” are substituted for 31:224b(1st proviso) to eliminate unnecessary words. The text of 31:224b(2d proviso words after semicolon) is omitted as executed.

In subsection (b), the word “settlement” is substituted for “amount as may be found due to any claimant . . . as a legal claim” for clarity and consistency. The words “by Congress” are omitted as surplus.

In subsection (c), the words “A claim may be paid under this section” are added for clarity. The words “of the settlement” are substituted for “determined to be due him under the provisions of this section” for consistency and to eliminate unnecessary words. The word “complete” is substituted for “full and final” to eliminate unnecessary words. The word “satisfaction” is substituted for “settlement” for clarity.

AMENDMENTS

1998—Subsecs. (b), (c). Pub. L. 105-362 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The Attorney General shall report annually to the Congress on all settlements made under this section. With respect to each such settlement, the Attorney General shall include a brief statement on the type of the claim, the amount claimed, and the amount of the settlement.”

1989—Pub. L. 101-203, §1(b)(1), amended section catchline generally, substituting “investigative or law enforcement officers of the Department of Justice” for “the Federal Bureau of Investigation”.

Subsec. (a). Pub. L. 101-203, §1(a)(1), substituted “\$50,000” for “\$500” and “an investigative or law enforcement officer as defined in section 2680(h) of title 28 who is employed by the Department of Justice” for “the Director or an Assistant Director, inspector, or special agent of the Federal Bureau of Investigation”.

Subsec. (b). Pub. L. 101-203, §1(a)(2), substituted “report annually to the Congress on all settlements made under this section. With respect to each such settlement, the” for “certify to Congress a settlement under this section for payment out of an appropriation that may be made to pay the settlement. The”.

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 2 of Pub. L. 101-203 provided that: “The amendments made by section 1 [amending this section] shall apply to—

“(1) any claim arising on or after the date of the enactment of this Act [Dec. 7, 1989],

“(2) any claim pending on such date, and

“(3) any claim arising before such date which has not been settled if the time for presenting the claim to the Attorney General under the last sentence of section 3724(a) of title 31, United States Code, has not expired.”

## SETTLEMENT OF CLAIMS FOR DAMAGE TO OR LOSS OF PRIVATELY OWNED PROPERTY

Pub. L. 106-185, §3(b), Apr. 25, 2000, 114 Stat. 211, provided that:

“(1) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than \$50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

“(2) LIMITATIONS.—The Attorney General may not pay a claim under paragraph (1) that—

“(A) is presented to the Attorney General more than 1 year after it accrues; or

“(B) is presented by an officer or employee of the Federal Government and arose within the scope of employment.”

**§ 3725. Claims of non-nationals for personal injury or death in a foreign country**

(a) The Secretary of State may settle, for not more than \$1,500 in any one case, a claim for personal injury or death of an individual not a national of the United States in a foreign country in which the United States exercises privileges of extraterritoriality when the injury or death is caused by an officer, employee, or agent of the United States Government (except of a military department of the Department of Defense or the Coast Guard). An officer or employee of the Government may not present a claim. A claim under this section may be allowed only if it is presented to the Secretary within one year after it accrues.

(b) The Secretary shall certify to Congress a settlement under this section for payment out of an appropriation that may be made to pay the settlement. The Secretary shall include a brief statement on the type of the claim, the amount claimed, and the amount of the settlement.

(c) A claim may be paid under this section only if the claimant accepts the amount of the settlement in complete satisfaction of the claim against the Government.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 975.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3725(a) .....	31:224a(words before 21st comma, 1st, 2d provisos). 31:224a(note).	Feb. 13, 1936, ch. 67, 49 Stat. 1138.  July 3, 1943, ch. 189, §7, 57 Stat. 374. Dec. 28, 1945, ch. 597, §1, 59 Stat. 662. Dec. 28, 1945, ch. 597, 59 Stat. 662, §5(1st sentence); added Mar. 20, 1946, ch. 104, 60 Stat. 56.

## HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3725(b) .....	31:224a(words between 21st comma and 1st proviso).	
3725(c) .....	31:224a(last proviso).	

In subsection (a), the word “settle” is substituted for “consider, adjust, and determine” for consistency. The words “United States currency” are omitted as surplus. The words “after February 13, 1936” are omitted as executed. The words “act of omission of any” are omitted as surplus. The words “(except of a military department of the Department of Defense or the Coast Guard)” are substituted for “including all officers, enlisted men, and employees of the Army, Air Force, Navy, and Marine Corps” because of 10:2734, section 7 of the Act of July 3, 1943 (ch. 189, 57 Stat. 374), and sections 1 and 5(1st sentence) of the Act of December 28, 1945 (ch. 597, 59 Stat. 662). The words “An officer or employee of the Government may not present a claim” are substituted for 31:224a(1st proviso) for consistency and to eliminate unnecessary words. The words “by the Secretary of State” are omitted as surplus.

In subsection (b), the word “settlement” is substituted for “amount as may be found to be due to any claimant . . . as a legal claim” for clarity and consistency. The words “by Congress” are omitted as surplus.

In subsection (c), the words “A claim may be paid under this section” are added for clarity. The words “of the settlement” are substituted for “determined under the provisions of this section” for consistency and to eliminate unnecessary words. The word “complete” is substituted for “full” for consistency. The word “satisfaction” is substituted for “settlement” for clarity.

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 3726. Payment for transportation**

(a)(1) Each agency that receives a bill from a carrier or freight forwarder for transporting an individual or property for the United States Government shall verify its correctness (to include transportation rates, freight classifications, or proper combinations thereof), using prepayment audit, prior to payment in accordance with the requirements of this section and regulations prescribed by the Administrator of General Services.

(2) The Administrator of General Services may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate.

(3) Expenses for prepayment audits shall be funded by the agency’s appropriations used for the transportation services.

(4) The audit authority provided to agencies by this section is subject to oversight by the Administrator.

(b) The Administrator may conduct pre- or post-payment audits of transportation bills of any Federal agency. The number and types of

bills audited shall be based on the Administrator's judgment.

(c)(1) The Administrator shall adjudicate transportation claims which cannot be resolved by the agency procuring the transportation services, or the carrier or freight-forwarder presenting the bill.

(2) A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

(A) The date of accrual of the claim.

(B) The date payment for the transportation is made.

(C) The date a refund for an overpayment for the transportation is made.

(D) The date a deduction under subsection (d) of this section is made.

(d) Not later than 3 years (excluding time of war) after the time a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed under—

(1) a lawful tariff under title 49 or on file with the Secretary of Transportation with respect to foreign air transportation (as defined in section 40102(a) of title 49), the Federal Maritime Commission, or a State transportation authority;

(2) a lawfully quoted rate subject to the jurisdiction of the Surface Transportation Board; or

(3) sections 10721, 13712, and 15504 of title 49 or an equivalent arrangement or an exemption.

(e) Expenses of transportation audit postpayment contracts and contract administration, and the expenses of all other transportation audit and audit-related functions conferred upon the Administrator of General Services, shall be financed from overpayments collected from carriers on transportation bills paid by the Government and other similar type refunds, not to exceed collections. Payment to any contractor for audit services shall not exceed 50 percent of the overpayment identified by contract audit.

(f) At least annually, and as determined by the Administrator, after making adequate provision for expense of refunds to carriers, transportation audit postpayment contracts, contract administration, and other expenses authorized in subsection (e), overpayments collected by the General Services Administration shall be transferred to miscellaneous receipts of the Treasury. A report of receipts, disbursements, and transfers (to miscellaneous receipts) pursuant to this section shall be made annually in connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress. This reporting requirement expires December 31, 1998.

(g) The Administrator may delegate any authority conferred by this section to another agency or agencies if the Administrator determines that such a delegation would be cost-effective or otherwise in the public interest.

(h) Under regulations the head of an agency prescribes that conform with standards the Secretary of the Treasury prescribes, a bill under

this section may be paid before the transportation is completed notwithstanding section 3324 of this title when a carrier or freight forwarder issues the usual document for the transportation. Payment for transportation ordered but not provided may be recovered by deduction or other means.

(i)(1) A carrier or freight forwarder may request the Administrator of General Services to review the action of the Administrator if the request is received not later than 6 months (excluding time of war) after the Administrator acts or within the time stated in subsection (c) of this section, whichever is later.

(2) This section does not prevent the Comptroller General from conducting an audit under chapter 35 of this title.

(j) The Administrator of General Services may provide transportation audit and related technical assistance services, on a reimbursable basis, to any other agency. Such reimbursements may be credited to the appropriate revolving fund or appropriation from which the expenses were incurred.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 976; Pub. L. 98-443, §9(f), Oct. 4, 1984, 98 Stat. 1707; Pub. L. 99-627, §1, Nov. 7, 1986, 100 Stat. 3508; Pub. L. 103-123, title VI, §620A, Oct. 28, 1993, 107 Stat. 1265; Pub. L. 103-272, §§4(f)(1)(N), 5(i)(2), July 5, 1994, 108 Stat. 1362, 1375; Pub. L. 103-429, §7(a)(3)(B), Oct. 31, 1994, 108 Stat. 4388; Pub. L. 104-88, title III, §306, Dec. 29, 1995, 109 Stat. 945; Pub. L. 104-316, title II, §202(o), Oct. 19, 1996, 110 Stat. 3844; Pub. L. 105-264, §3(a)(3), Oct. 19, 1998, 112 Stat. 2353.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3726(a) .....	31:244(a)(1st sentence, last sentence last proviso).	Sept. 18, 1940, ch. 722, §322(a), 54 Stat. 955; Aug. 26, 1958, Pub. L. 85-762, §2, 72 Stat. 860; Oct. 25, 1972, Pub. L. 92-550, §1(a), 86 Stat. 1163; Jan. 2, 1975, Pub. L. 93-604, §201(1), (2), 88 Stat. 1960.
3726(b) .....	31:244(a)(2d sentence, last sentence less last proviso).	
3726(c) .....	31:244(c), (d).	Sept. 18, 1940, ch. 722, 54 Stat. 898, §322(c), (d); added Oct. 25, 1972, Pub. L. 92-550, §1(b), 86 Stat. 1164; Jan. 2, 1975, Pub. L. 93-604, §201(3), 88 Stat. 1960.
3726(d)(1)	31:244(b).	Sept. 18, 1940, ch. 722, 54 Stat. 898, §322(b); added Jan. 2, 1975, Pub. L. 93-604, §201(3), 88 Stat. 1960.
3726(d)(2)	31:244(a)(3d sentence).	

In the section, the words "Administrator of General Services" are substituted for "General Services Administration, or his designee" for consistency. The word "freight" is added for clarity and consistency with 49:10101 et seq.

In subsection (a), before clause (1), the word "individual" is substituted for "persons" for consistency. The words "or on behalf of" are omitted as unnecessary. The words "for charges for transportation . . . the purview of" are omitted as surplus. In clause (1), the word "claim" is substituted for "cause of action thereon" for consistency. In clauses (2) and (3), the words "is made" are substituted for "of charges . . . involved" and "subsequent . . . of such charges" to eliminate unnecessary words.

In subsection (b), before clause (1), the words "Provided, however, That such deductions shall be made" are

omitted because of the restatement. The words “found to be” are omitted as surplus. The words “of any overcharge by any carrier or forwarder” and “The term ‘overcharges’ shall be deemed to mean . . . those applicable thereto” are omitted because of the restatement. The word “rate” is substituted for “charges for transportation services” and “rates, fares, and charges” for consistency with title 49. In clause (1), the word “authority” is substituted for “regulatory agency” for consistency. In clause (2), the words “established” and “contract . . . from regulation” are omitted as surplus.

In subsection (c), the text of 31:244(d) and the words “Government”, “or his designee”, and “of the United States” are omitted as unnecessary. The words “under this section” are substituted for “for passenger or freight transportation services to be furnished the United States by any carrier or forwarder” to eliminate unnecessary words. The word “transportation” is substituted for “services” for consistency. The words “ticket, receipt, bill of lading, or equivalent . . . involved” and “as ordered by the United States” are omitted as surplus.

In subsection (d)(1), the words “may request” are substituted for “Nothing in subsection (a) of this section hereof shall be deemed to prevent . . . from requesting” to eliminate unnecessary words. The words “of limitation” are omitted as surplus.

In subsection (d)(2), the words “Comptroller General” are substituted for “General Accounting Office” for consistency.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-264, §3(a)(3)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States Government may be paid before the Administrator of General Services conducts an audit, in accordance with regulations that the Administrator shall prescribe. A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

- “(1) accrual of the claim;
- “(2) payment for the transportation is made;
- “(3) refund for an overpayment for the transportation is made; or
- “(4) a deduction under subsection (b) of this section is made.”

Subsecs. (b) to (e). Pub. L. 105-264, §3(a)(3)(B), (C), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively. Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 105-264, §3(a)(3)(B), (D), redesignated subsec. (d) as (f), substituted “subsection (e)” for “subsection (c)”, and inserted at end “This reporting requirement expires December 31, 1998.” Former subsec. (f) redesignated (h).

Subsecs. (g), (h). Pub. L. 105-264, §3(a)(3)(B), redesignated subsecs. (e) and (f) as (g) and (h), respectively. Former subsec. (g) redesignated (i).

Subsec. (i). Pub. L. 105-264, §3(a)(3)(B), redesignated subsec. (g) as (i).

Subsec. (i)(1). Pub. L. 105-264, §3(a)(3)(E), substituted “subsection (c)” for “subsection (a)”.

Subsec. (j). Pub. L. 105-264, §3(a)(3)(F), added subsec. (j).

1996—Subsec. (f). Pub. L. 104-316, §202(o)(1), substituted “Treasury prescribes” for “Treasury and the Comptroller General prescribe jointly”.

Subsec. (g)(1). Pub. L. 104-316, §202(o)(2), substituted “Administrator of General Services” for “Comptroller General”.

1995—Subsec. (b)(1). Pub. L. 104-88, §306(1), (2), substituted “under title 49 or on file with” for “on file with the Interstate Commerce Commission,” and struck out “or” after the semicolon at end.

Subsec. (b)(2). Pub. L. 104-88, §306(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 104-88, §306(3), (5), redesignated par. (2) as (3) and substituted “sections 10721, 13712, and 15504” for “sections 10721-10724”.

1994—Subsec. (b)(1). Pub. L. 103-272, §5(i)(2), substituted “section 40102(a) of title 49” for “the Federal Aviation Act of 1958”.

Subsec. (d). Pub. L. 103-272, §4(f)(1)(N), which directed the substitution of “miscellaneous receipts” for “miscellaneous receipt”, was repealed by Pub. L. 103-429.

1993—Subsecs. (c) and (d). Pub. L. 103-123 amended subsecs. (c) and (d) generally. Prior to amendment, subsecs. (c) and (d) read as follows:

“(c) Expenses of transportation audit contracts and contract administration shall be financed from overpayments collected from carriers on transportation bills paid by the Government and other similar type refunds at not to exceed 40 percent of such collections annually. Payment to any contractor shall not exceed 50 percent of the overpayments identified by any contract audit.

“(d) At least annually, and as determined by the Administrator, after making adequate provision for expenses of refunds to carriers, transportation audit contracts, and contract administration authorized in subsection (c), the balance of the overpayments collected by the General Services Administration shall be transferred to miscellaneous receipt of the Treasury. A report of receipts, disbursements, and transfers (to miscellaneous receipts) pursuant to this section shall be made annually in connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress.”

1986—Subsec. (a). Pub. L. 99-627, §1(1), amended first sentence generally, substituting “may be paid before the Administrator of General Services conducts an audit, in accordance with regulations that the Administrator shall prescribe” for “shall be paid before the Administrator of General Services conducts an audit”.

Subsecs. (c) to (g). Pub. L. 99-627, §1(2), (3), added subsecs. (c) to (e) and redesignated former subsecs. (c) and (d) as (f) and (g), respectively.

1984—Subsec. (b)(1). Pub. L. 98-443 substituted “Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958)” for “Civil Aeronautics Board”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-264 effective 18 months after Oct. 19, 1998, see section 3(b) of Pub. L. 105-264, set out as a note under section 3322 of this title.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 7(a) of Pub. L. 103-429 provided that the amendment made by that section is effective July 5, 1994.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

#### TASK FORCE

Section 2 of Pub. L. 99-627 provided that:

“(a) Within 60 days after the date of enactment of this Act [Nov. 7, 1986], the Administrator of General Services shall establish a task force to study and investigate the feasibility, desirability, and economy of an integrated, automated system that Federal agencies may use in managing the transportation of property for the United States.

“(b) The task force established under subsection (a) shall—

“(1) be chaired by a representative of the Administrator;

“(2) include representatives of the Department of Defense and other Federal agencies significantly in-

volved in the transportation of property for the United States; and

“(3) solicit the views of private businesses with expertise in the matters being considered by the task force.

“(c) In studying and investigating the integrated, automated system, the task force shall consider including in that system such elements as automated routing, rating, documentation, payment, and auditing.

“(d) Each department, agency, and instrumentality of the Federal Government shall furnish to the task force, upon its request, such data, reports, and other information (not otherwise prohibited by law) as the task force deems necessary to carry out its functions under this section.

“(e) The head of each such department, agency, and instrumentality may provide to the task force such services and personnel as the task force requests on such basis (reimbursable or otherwise) as may be agreed upon between such department, agency, or instrumentality and the task force.

“(f) The task force shall submit a final report on the results of its study and investigation to the Congress not later than July 1, 1988.”

**§ 3727. Assignments of claims**

(a) In this section, “assignment” means—

(1) a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim; or

(2) the authorization to receive payment for any part of the claim.

(b) An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued. The assignment shall specify the warrant, must be made freely, and must be attested to by 2 witnesses. The person making the assignment shall acknowledge it before an official who may acknowledge a deed, and the official shall certify the assignment. The certificate shall state that the official completely explained the assignment when it was acknowledged. An assignment under this subsection is valid for any purpose.

(c) Subsection (b) of this section does not apply to an assignment to a financing institution of money due or to become due under a contract providing for payments totaling at least \$1,000 when—

(1) the contract does not forbid an assignment;

(2) unless the contract expressly provides otherwise, the assignment—

(A) is for the entire amount not already paid;

(B) is made to only one party, except that it may be made to a party as agent or trustee for more than one party participating in the financing; and

(C) may not be reassigned; and

(3) the assignee files a written notice of the assignment and a copy of the assignment with the contracting official or the head of the agency, the surety on a bond on the contract, and any disbursing official for the contract.

(d) During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law, a contract with the Department of Defense, the General Services Administration, the Department of Energy (when carrying out duties and powers formerly

carried out by the Atomic Energy Commission), or other agency the President designates may provide, or may be changed without consideration to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff. A payment subsequently due under the contract (even after the war or emergency is ended) shall be paid to the assignee without a reduction or setoff for liability of the assignor—

(1) to the Government independent of the contract; or

(2) because of renegotiation, fine, penalty (except an amount that may be collected or withheld under, or because the assignor does not comply with, the contract), taxes, social security contributions, or withholding or failing to withhold taxes or social security contributions, arising from, or independent of, the contract.

(e)(1) An assignee under this section does not have to make restitution of, refund, or repay the amount received because of the liability of the assignor to the Government that arises from or is independent of the contract.

(2) The Government may not collect or reclaim money paid to a person receiving an amount under an assignment or allotment of pay or allowances authorized by law when liability may exist because of the death of the person making the assignment or allotment.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 976.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3727(a) .....	31:203(1st par. words before 9th comma).	R.S. §3477; May 27, 1908, ch. 206(last par. on p. 411), 35 Stat. 411; Oct. 9, 1940, ch. 779, §1(related to §3477), 54 Stat. 1029; May 15, 1951, ch. 75, §1(related to §1 related to §3477), 65 Stat. 41.
3727(b) .....	31:203(1st par. words after 9th comma, 3d, last pars.).	
3727(c) .....	31:203(2d par.).	
3727(d) .....	31:203(5th par.).	
3727(e)(1)	31:203(4th par.).	
3727(e)(2)	31:239.	Aug. 10, 1956, ch. 1041, §45, 70A Stat. 638.

In subsection (a)(1), the words “or share thereof” and “whether absolute or conditional, and whatever may be the consideration therefor” are omitted as surplus. In clause (2), the word “authorization” is substituted for “powers of attorney, orders, or other authorities” to eliminate unnecessary words.

In subsections (b) and (c), the word “official” is substituted for “officer” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “Except as hereinafter provided” are omitted as unnecessary. The words “read and” are omitted as surplus. The words “to the person acknowledging the same” are omitted as unnecessary. The text of 31:203(1st par. last sentence) is omitted as superseded by 39:410. The words “Notwithstanding any law to the contrary governing the validity of assignments” and the text of 31:203(last par.) are omitted as unnecessary.

In subsection (c), before clause (1), the words “bank, trust company, or other . . . including any Federal lending agency” are omitted as surplus. The words “of money due or to become due under a contract providing for payments totaling at least \$1,000” are substituted for “in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for pay-



ments aggregating \$1,000 or more” to eliminate unnecessary words. The text of 31:203(2d par. proviso cl. 1) is omitted as executed. In clause (1), the words “in the case of any contract entered into after October 9, 1940” are omitted as executed. In clause (2)(A), the words “payable under such contract” are omitted as surplus. In clause (3), the words “true” and “instrument of” are omitted as surplus. The words “department or” are omitted because of the restatement. The words “if any” and “to make payment” are omitted as surplus.

In subsection (d), before clause (1), the words “During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law” are substituted for “in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner” to eliminate unnecessary words. The words “Department of Energy (when carrying out duties and powers formerly carried out by the Atomic Energy Commission)” are substituted for “Atomic Energy Commission” (which was reconstituted as the Energy Research and Development Administration by 42:5813 and 5814) because of 42:7151(a) and 7293. The words “other department or . . . of the United States . . . except any such contract under which full payment has been made” and “of any moneys due or to become due under such contract” before “shall not be subject” are omitted as surplus. The words “A payment subsequently due under the contract (even after the war or emergency is ended) shall be paid to the assignee without” are substituted for “and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency . . . hereafter” to eliminate unnecessary words. The words “of any nature” are omitted as surplus. In clause (1), the words “or any department or agency thereof” are omitted as unnecessary. In clause (2), the words “under any renegotiation statute or under any statutory renegotiation article in the contract” are omitted as surplus.

Subsection (e)(1) is substituted for 31:203(4th par.) to eliminate unnecessary words.

In subsection (e)(2), the words “person receiving an amount under an assignment or allotment” are substituted for “assignees, transferees, or allottees” for clarity and consistency. The words “or to others for them” and “with respect to such assignments, transfers, or allotments or the use of such moneys” are omitted as surplus. The words “person making the assignment or allotment” are substituted for “assignors, transferors, or allotters” for clarity and consistency.

### § 3728. Setoff against judgment

(a) The Secretary of the Treasury shall withhold paying that part of a judgment against the United States Government presented to the Secretary that is equal to a debt the plaintiff owes the Government.

(b) The Secretary shall—

(1) discharge the debt if the plaintiff agrees to the setoff and discharges a part of the judgment equal to the debt; or

(2)(A) withhold payment of an additional amount the Secretary decides will cover legal costs of bringing a civil action for the debt if the plaintiff denies the debt or does not agree to the setoff; and

(B) have a civil action brought if one has not already been brought.

(c) If the Government loses a civil action to recover a debt or recovers less than the amount

the Secretary withholds under this section, the Secretary shall pay the plaintiff the balance and interest of 6 percent for the time the money is withheld.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 977; Pub. L. 104-316, title II, §202(p), Oct. 19, 1996, 110 Stat. 3844.)

### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3728(a) . . . .	31:227(1st sentence words before semicolon).	Mar. 3, 1875, ch. 149, 18 Stat. 481; restated Mar. 3, 1933, ch. 212, §13, 47 Stat. 1516.
3728(b) . . . .	31:227(1st sentence words after semicolon, 2d, 3d sentences).	
3728(c) . . . .	31:227(last sentence).	

In the section, the words “of the United States” are omitted as unnecessary.

In subsection (a), the words “final . . . recovered . . . duly allowed by legal authority”, “for payment”, and “in any manner, whether as principal or surety” are omitted as surplus.

In subsection (b)(1), the words “due from the plaintiff to the United States” are omitted as surplus.

In subsection (b)(2)(A), the words “of such judgment”, “be sufficient to”, and “charges and” are omitted as surplus. The words “of bringing a civil action” are substituted for “in prosecuting the debt” for consistency in the revised title and with other titles of the United States Code. The words “of the United States to final judgment” and “to the United States” are omitted as surplus.

Subsection (b)(2)(B) is substituted for 31:227(3d sentence) for consistency and to eliminate unnecessary words.

In subsection (c), the words “for debt and costs”, “thereon”, and “from the plaintiff” are omitted as surplus.

### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-316, §202(p)(1), (2), substituted “Secretary of the Treasury” for “Comptroller General” before “shall withhold” and “Secretary” for “Comptroller General” after “presented to the”.

Subsecs. (b), (c). Pub. L. 104-316, §202(p)(2), substituted “Secretary” for “Comptroller General” wherever appearing.

### § 3729. False claims

(a) LIABILITY FOR CERTAIN ACTS.—

(1) IN GENERAL.—Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410<sup>1</sup>), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) REDUCED DAMAGES.—If the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms “knowing” and “knowingly”—  
(A) mean that a person, with respect to information—

- (i) has actual knowledge of the information;
- (ii) acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim”—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United

States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub. L. 99-562, §2, Oct. 27, 1986, 100 Stat. 3153; Pub. L. 103-272, §4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub. L. 111-21, §4(a), May 20, 2009, 123 Stat. 1621.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3729 .....	31:231.	R. S. § 3490.

In the section, before clause (1), the words “a member of an armed force of the United States” are substituted for “in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States” and “military or naval service” for consistency with title 10. The words “is liable” are substituted for “shall forfeit and pay” for consistency. The words “civil action” are substituted for “suit” for consistency in the revised title and with other titles of the United States Code. The words “and such forfeiture and damages shall be sued for in the same suit” are omitted as unnecessary because of rules 8 and 10 of the Federal Rules of Civil Procedure (28 App. U.S.C.). In clauses (1)–(3), the words “false or fraudulent” are substituted for “false, fictitious, or fraudulent” and “Fraudulent or fictitious” to eliminate unnecessary words and for consistency. In clause (1), the words “presents, or causes to be presented” are substituted for “shall make or cause to be made, or present or cause to be presented” for clarity

<sup>1</sup> So in original. Probably should be “101-410”.

and consistency and to eliminate unnecessary words. The words “officer or employee of the Government or a member of an armed force” are substituted for “officer in the civil, military, or naval service of the United States” for consistency in the revised title and with other titles of the Code. The words “upon or against the Government of the United States, or any department of the United States, or any department or officer thereof” are omitted as surplus. In clause (2), the word “knowingly” is substituted for “knowing the same to contain any fraudulent or fictitious statement or entry” to eliminate unnecessary words. The words “record or statement” are substituted for “bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition” for consistency in the revised title and with other titles of the Code. In clause (3), the words “conspires to” are substituted for “enters into any agreement, combination, or conspiracy” to eliminate unnecessary words. The words “of the United States, or any department or officer thereof” are omitted as surplus. In clause (4), the words “charge”, “or other”, and “to any other person having authority to receive the same” are omitted as surplus. In clause (5), the words “document certifying receipt” are substituted for “certificate, voucher, receipt, or other paper certifying the receipt” to eliminate unnecessary words. The words “arms, ammunition, provisions, clothing, or other”, “to any other person”, and “the truth of” are omitted as surplus. In clause (6), the words “arms, equipments, ammunition, clothes, military stores, or other” are omitted as surplus. The words “member of an armed force” are substituted for “soldier, officer, sailor, or other person called into or employed in the military or naval service” for consistency with title 10. The words “such soldier, sailor, officer, or other person” are omitted as surplus.

#### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d), is classified generally to Title 26, Internal Revenue Code.

#### AMENDMENTS

2009—Subsecs. (a), (b). Pub. L. 111-21, §4(a)(1), (2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to liability for certain acts and defined “knowing” and “knowingly”, respectively.

Subsec. (c). Pub. L. 111-21, §4(a)(4), substituted “subsection (a)(2)” for “subparagraphs (A) through (C) of subsection (a)”.

Pub. L. 111-21, §4(a)(2), (3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Prior to amendment, text read as follows: “For purposes of this section, ‘claim’ includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.”

Subsecs. (d), (e). Pub. L. 111-21, §4(a)(3), redesignated subsecs. (d) and (e) as (c) and (d), respectively.

1994—Subsec. (e). Pub. L. 103-272 substituted “1986” for “1954”.

1986—Subsec. (a). Pub. L. 99-562, §2(1), designated existing provisions as subsec. (a), inserted subsec. heading, and substituted “Any person who” for “A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of \$2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person” in introductory provisions.

Subsec. (a)(1). Pub. L. 99-562, §2(2), substituted “United States Government or a member of the Armed Forces of the United States” for “Government or a member of an armed force”.

Subsec. (a)(2). Pub. L. 99-562, §2(3), inserted “by the Government” after “approved”.

Subsec. (a)(4). Pub. L. 99-562, §2(4), substituted “control of property” for “control of public property” and “by the Government” for “in an armed force”.

Subsec. (a)(5). Pub. L. 99-562, §2(5), substituted “by the Government” for “in an armed force” and “true;” for “true; or”.

Subsec. (a)(6). Pub. L. 99-562, §2(6), substituted “an officer or employee of the Government, or a member of the Armed Forces,” for “a member of an armed force” and “property; or” for “property.”

Subsec. (a)(7). Pub. L. 99-562, §2(7), added par. (7).

Subsecs. (b) to (e). Pub. L. 99-562, §2(7), added subsecs. (b) to (e).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-21, §4(f), May 20, 2009, 123 Stat. 1625, provided that: “The amendments made by this section [amending this section and sections 3730 to 3733 of this title] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment, except that—

“(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) that are pending on or after that date; and

“(2) section 3731(b) [probably should be section 3731] of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to cases pending on the date of enactment.”

#### INCREASED PENALTIES FOR FALSE CLAIMS IN DEFENSE PROCUREMENT

Pub. L. 99-145, title IX, §931(b), Nov. 8, 1985, 99 Stat. 699, provided that: “Notwithstanding section 3729 of title 31, United States Code, the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of \$2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action.”

[Section 931(c) of Pub. L. 99-145 provided that section 931(b) is applicable to claims made or presented on or after Nov. 8, 1985.]

#### § 3730. Civil actions for false claims

(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after

it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action

would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government<sup>1</sup> Accounting Office report, hearing, audit, or investigation, or from the news

<sup>1</sup> So in original. Probably should be "General".

media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or

employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) RELIEF FROM RETALIATORY ACTIONS.—

(1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub. L. 99-562, §§ 3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157; Pub. L. 100-700, § 9, Nov. 19, 1988, 102 Stat. 4638; Pub. L. 101-280, § 10(a), May 4, 1990, 104 Stat. 162; Pub. L. 103-272, § 4(f)(1)(P), July 5, 1994, 108 Stat. 1362; Pub. L. 111-21, § 4(d), May 20, 2009, 123 Stat. 1624; Pub. L. 111-148, title X, § 10104(j)(2), Mar. 23, 2010, 124 Stat. 901; Pub. L. 111-203, title X, § 1079A(c), July 21, 2010, 124 Stat. 2079.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3730(a) ..... 3730(b)(1)	31:233. 31:232(A), (B)(less words between 3d and 4th commas).	R.S. § 3492. R.S. § 3491(A)–(E); restated Dec. 23, 1943, ch. 377, § 1, 57 Stat. 608; June 11, 1960, Pub. L. 86-507, § 1(28), (29), 74 Stat. 202.
3730(b)(2)	31:232(C)(1st-3d sentences, 5th sentence proviso).	
3730(b)(3)	31:232(C)(4th sentence, 5th sentence less proviso).	
3730(b)(4)	31:232(C)(last sentence), (D).	
3730(c)(1)	31:232(E)(1).	
3730(c)(2)	31:232(E)(2)(less proviso).	
3730(d) .....	31:232(B)(words between 3d and 4th commas), (E)(2)(proviso).	

In the section, the words “civil action” are substituted for “suit” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the words “Attorney General” are substituted for “several district attorneys of the United States [subsequently changed to ‘United States attorneys’ because of section 1 of the Act of June 25, 1948 (ch. 646, 62 Stat. 909)] for the respective districts, for the District of Columbia, and for the several Territories” because of 28:509. The words “by persons liable to such suit” are omitted as surplus. The words “and found within their respective districts or Territories” are omitted because of the restatement. The words “If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person” are substituted for “and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages” for clarity and consistency. The words “as the district judge may order” are omitted as surplus. The words “of the Attorney General” are substituted for “the person bringing the suit” for consistency in the section.

In subsection (b)(1), the words “Except as hereinafter provided” are omitted as unnecessary. The words “for a violation of section 3729 of this title” are added because of the restatement. The words “and carried on”, “several” and “full power and” are omitted as surplus. The words “of the action” are substituted for “to hear, try, and determine such suit” to eliminate unnecessary words. The words “Trial is in the judicial district within whose jurisdictional limits the person charged with a violation is found or the violation occurs” are substituted for “within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed” for consistency in the revised title and with other titles of the Code. The words “withdrawn or” and “judge of the” are omitted as surplus. The words “Attorney General” are substituted for “district attorney [subsequently changed to ‘United States attorneys’ because of section 1 of the Act of June 25, 1948 (ch. 646, 62 Stat. 909)], first filed in the case” because of 28:509.

In subsection (b)(2), before clause (A), the words “bill of”, “Whenever any such suit shall be brought by any person under clause (B) of this section” and “to the effective prosecution of such suit or” are omitted as sur-

plus. The words “served on the Government under rule 4 of the Federal Rules of Civil Procedure (28 App. U.S.C.)” are substituted for “notice . . . shall be given to the United States by serving upon the United States Attorney for the district in which such suit shall have been brought . . . and by sending, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia” because of 28:509 and to eliminate unnecessary words. The words “proceed with the action” are added for clarity. Clause (A) is substituted for “shall fail, or decline in writing to the court, during said period of sixty days to enter any such suit” for clarity and consistency. In clause (B), the words “a period of” and “therein” are omitted as surplus.

In subsection (b)(3), the words “within said period” are omitted as surplus. The words “proceeds with the action” are substituted for “shall enter appearance in such suit” for consistency. The words “In carrying on such suit” and “and may proceed in all respects as if it were instituting the suit” are omitted as surplus.

In subsection (b)(4), the words “Unless the Government proceeds with the action” are added because of the restatement. The words “shall dismiss an action brought by the person on discovering” are substituted for “shall have no jurisdiction to proceed with any such suit . . . or pending suit . . . whenever it shall be made to appear that” to eliminate unnecessary words. The words “or any agency, officer, or employee thereof” are omitted as unnecessary. The text of 31:232(C)(last sentence proviso) and (D) is omitted as executed.

In subsection (c), the words “herein provided”, “fair and . . . compensation to such person”, and “involved therein, which shall be collected” are omitted as surplus.

In subsection (c)(2), the words “whether heretofore or hereafter brought” are omitted as unnecessary. The words “bringing the action or settling the claim” are substituted for “who brought such suit and prosecuted it to final judgment, or to settlement” for clarity and consistency. The words “as provided in clause (B) of this section” are omitted as unnecessary. The words “the civil penalty” are substituted for “forfeiture” for clarity and consistency. The words “to his own use”, “the court may”, and “to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court” are omitted as surplus.

Subsection (d) is substituted for 31:232(B)(words between 3d and 4th commas) and (E)(2)(proviso) to eliminate unnecessary words.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), (3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 101(f) of the Ethics in Government Act of 1978, referred to in subsec. (e)(2)(B), is section 101(f) of Pub. L. 95-521, title I, Oct. 26, 1978, 92 Stat. 1824, which was set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (e)(4). Pub. L. 111-148 added par. (4) and struck out former par. (4) which read as follows:

“(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

“(B) For purposes of this paragraph, ‘original source’ means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.”

Subsec. (h)(1). Pub. L. 111-203, §1079A(c)(1), substituted “agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter” for “or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter”.

Subsec. (h)(3). Pub. L. 111-203, §1079A(c)(2), added par. (3).

2009—Subsec. (h). Pub. L. 111-21 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.”

1994—Subsec. (e)(2)(B). Pub. L. 103-272 substituted “paragraphs (1) through (8)” for “section paragraphs (1) through (8)”.

1990—Subsec. (e)(2)(B). Pub. L. 101-280 substituted “paragraphs (1) through (8) of section 101(f)” for “201(f)”.

1988—Subsec. (c)(4). Pub. L. 100-700, §9(b)(1), which directed amendment of section 3730 of title 28 by substituting “with the action” for “with action” in subsec. (c)(4), was executed to subsec. (c)(4) of this section as the probable intent of Congress.

Subsec. (d)(3). Pub. L. 100-700, §9(a)(1), (2), added par. (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 100-700, §9(b)(2), which directed amendment of section 3730 of title 28 by substituting “claim of the person bringing the action” for “claim of the person bringing the actions” in subsec. (d)(4), was executed to subsec. (d)(4) of this section as the probable intent of Congress.

Pub. L. 100-700, §9(a)(1), redesignated former par. (3) as (4).

1986—Pub. L. 99-562, §3, amended section generally, revising and expanding provisions of subssecs. (a) to (c), adding subssecs. (d) and (e), redesignating former subsec. (d) as (f), and adding subsec. (g).

Subsec. (h). Pub. L. 99-562, §4, added subsec. (h).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-21 effective May 20, 2009, and applicable to conduct on or after May 20, 2009, see section 4(f) of Pub. L. 111-21, set out as a note under section 3729 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 10(c) of Pub. L. 101-280 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 2397a of Title 10, Armed Forces] shall take effect on January 1, 1991.”

### § 3731. False claims procedure

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under

section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b),<sup>1</sup> the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 979; Pub. L. 99-562, §5, Oct. 27, 1986, 100 Stat. 3158; Pub. L. 111-21, §4(b), May 20, 2009, 123 Stat. 1623.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3731(a) .....	31:232(F).	R.S. §3491(F); added Nov. 2, 1978, Pub. L. 95-582, §1, 92 Stat. 2479.
3731(b) .....	31:235.	R.S. §3494.

In subsection (b), the words “A civil action under section 3730 of this title” are substituted for “Every such suit” for clarity.

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

<sup>1</sup> So in original. Probably should be preceded by “section”.

The Federal Rules of Evidence, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

2009—Subsecs. (c) to (e). Pub. L. 111–21, which directed amendment of section “3731(b)” of this title by adding subsec. (c) and redesignating former subsecs. (c) and (d) as (d) and (e), respectively, was executed by making the amendment to this section, to reflect the probable intent of Congress.

1986—Subsecs. (b) to (d). Pub. L. 99–562 added subsecs. (b) to (d) and struck out former subsec. (b) which read as follows: “A civil action under section 3730 of this title must be brought within 6 years from the date the violation is committed.”

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–21 effective May 20, 2009, and applicable to conduct on or after May 20, 2009, except that this section, as amended by Pub. L. 111–21, applicable to cases pending on May 20, 2009, see section 4(f) of Pub. L. 111–21, set out as a note under section 3729 of this title.

### § 3732. False claims jurisdiction

(a) **ACTIONS UNDER SECTION 3730.**—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) **CLAIMS UNDER STATE LAW.**—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) **SERVICE ON STATE OR LOCAL AUTHORITIES.**—With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(Added Pub. L. 99–562, §6(a), Oct. 21, 1986, 100 Stat. 3158; amended Pub. L. 111–21, §4(e), May 20, 2009, 123 Stat. 1625.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

2009—Subsec. (c). Pub. L. 111–21 added subsec. (c).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–21 effective May 20, 2009, and applicable to conduct on or after May 20, 2009, except that this section, as amended by Pub. L. 111–21, applicable to cases pending on May 20, 2009, see section 4(f) of Pub. L. 111–21, set out as a note under section 3729 of this title.

### § 3733. Civil investigative demands

(a) **IN GENERAL.**—

(1) **ISSUANCE AND SERVICE.**—Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act<sup>1</sup> investigation.

(2) **CONTENTS AND DEADLINES.**—

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

<sup>1</sup> So in original. Probably should be “law”.



(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) PROTECTED MATERIAL OR INFORMATION.—

(1) IN GENERAL.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court

of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) SERVICE; JURISDICTION.—

(1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

(1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) **PROOF OF SERVICE.**—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) **DOCUMENTARY MATERIAL.**—

(1) **SWORN CERTIFICATES.**—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) **PRODUCTION OF MATERIALS.**—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) **INTERROGATORIES.**—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certifi-

cate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) **ORAL EXAMINATIONS.**—

(1) **PROCEDURES.**—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) **PERSONS PRESENT.**—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) **WHERE TESTIMONY TAKEN.**—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) **TRANSCRIPT OF TESTIMONY.**—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable oppor-

tunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be

necessary to serve as deputies to the custodian.

(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceed-

ing as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) **CONDITIONS FOR RETURN OF MATERIAL.**—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) **APPOINTMENT OF SUCCESSOR CUSTODIANS.**—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) **JUDICIAL PROCEEDINGS.**—

(1) **PETITION FOR ENFORCEMENT.**—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the

United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) **PETITION TO MODIFY OR SET ASIDE DEMAND.**—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) **PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.**—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based

upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) **PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.**—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) **JURISDICTION.**—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) **APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.**—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) **DISCLOSURE EXEMPTION.**—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) **DEFINITIONS.**—For purposes of this section—

(1) the term “false claims law” means—

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term “false claims law investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or em-

ployee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term “person” means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term “documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term “custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term “product of discovery” includes—

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A); and

(8) the term “official use” means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

(Added Pub. L. 99-562, §6(a), Oct. 27, 1986, 100 Stat. 3159; amended Pub. L. 111-21, §4(c), May 20, 2009, 123 Stat. 1623.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(1)(B), (c)(2), (h)(1), and (j)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The date of enactment of this section, referred to in subsec. (l)(1)(B), is the date of enactment of Pub. L. 99-562, which was approved Oct. 27, 1986.

#### AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111-21, §4(c)(1)(A), in introductory provisions, inserted “, or a designee (for

purposes of this section),” after “Whenever the Attorney General” and substituted “the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b),” for “the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law,” and, in concluding provisions, substituted “may delegate” for “may not delegate” and inserted at end “Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.”

Subsec. (a)(2)(G). Pub. L. 111-21, §4(c)(1)(B), struck out at end “The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.”

Subsec. (i)(2)(B). Pub. L. 111-21, §4(c)(2)(A), struck out “, who is authorized for such use under regulations which the Attorney General shall issue” after “Justice”.

Subsec. (i)(2)(C). Pub. L. 111-21, §4(c)(2)(B), struck out at end “Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.”

Subsec. (l)(8). Pub. L. 111-21, §4(c)(3), added par. (8).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-21 effective May 20, 2009, and applicable to conduct on or after May 20, 2009, except that this section, as amended by Pub. L. 111-21, applicable to cases pending on May 20, 2009, see section 4(f) of Pub. L. 111-21, set out as a note under section 3729 of this title.

**CHAPTER 38—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS**

Sec.	
3801.	Definitions.
3802.	False claims and statements; liability.
3803.	Hearing and determinations.
3804.	Subpoena authority.
3805.	Judicial review.
3806.	Collection of civil penalties and assessments.
3807.	Right to administrative offset.
3808.	Limitations.
3809.	Regulations.
[3810.	Repealed.]
3811.	Effect on other law.
3812.	Prohibition against delegation.

AMENDMENTS

1995—Pub. L. 104-66, title III, §3001(c)(2), Dec. 21, 1995, 109 Stat. 734, struck out item 3810 “Reports”.

**§ 3801. Definitions**

- (a) For purposes of this chapter—
- (1) “authority” means—
    - (A) an executive department;
    - (B) a military department;
    - (C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department;
    - (D) the United States Postal Service;
    - (E) the National Science Foundation; and
    - (F) a designated Federal entity (as such term is defined under section 8G(a)(2) of the Inspector General Act of 1978);
  - (2) “authority head” means—

- (A) the head of an authority; or
- (B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;
- (3) “claim” means any request, demand, or submission—
  - (A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);
  - (B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—
    - (i) for property or services if the United States—
      - (I) provided such property or services;
      - (II) provided any portion of the funds for the purchase of such property or services; or
      - (III) will reimburse such recipient or party for the purchase of such property or services; or
    - (ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—
      - (I) provided any portion of the money requested or demanded; or
      - (II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or
  - (C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) “investigating official” means an individual who—

- (A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;
- (ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or
- (iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and
- (B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;
- (5) “knows or has reason to know”, for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—