

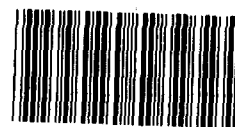
GAO

United States General Accounting Office
Report to Congressional Requesters

September 1991

PROGRAM FRAUD

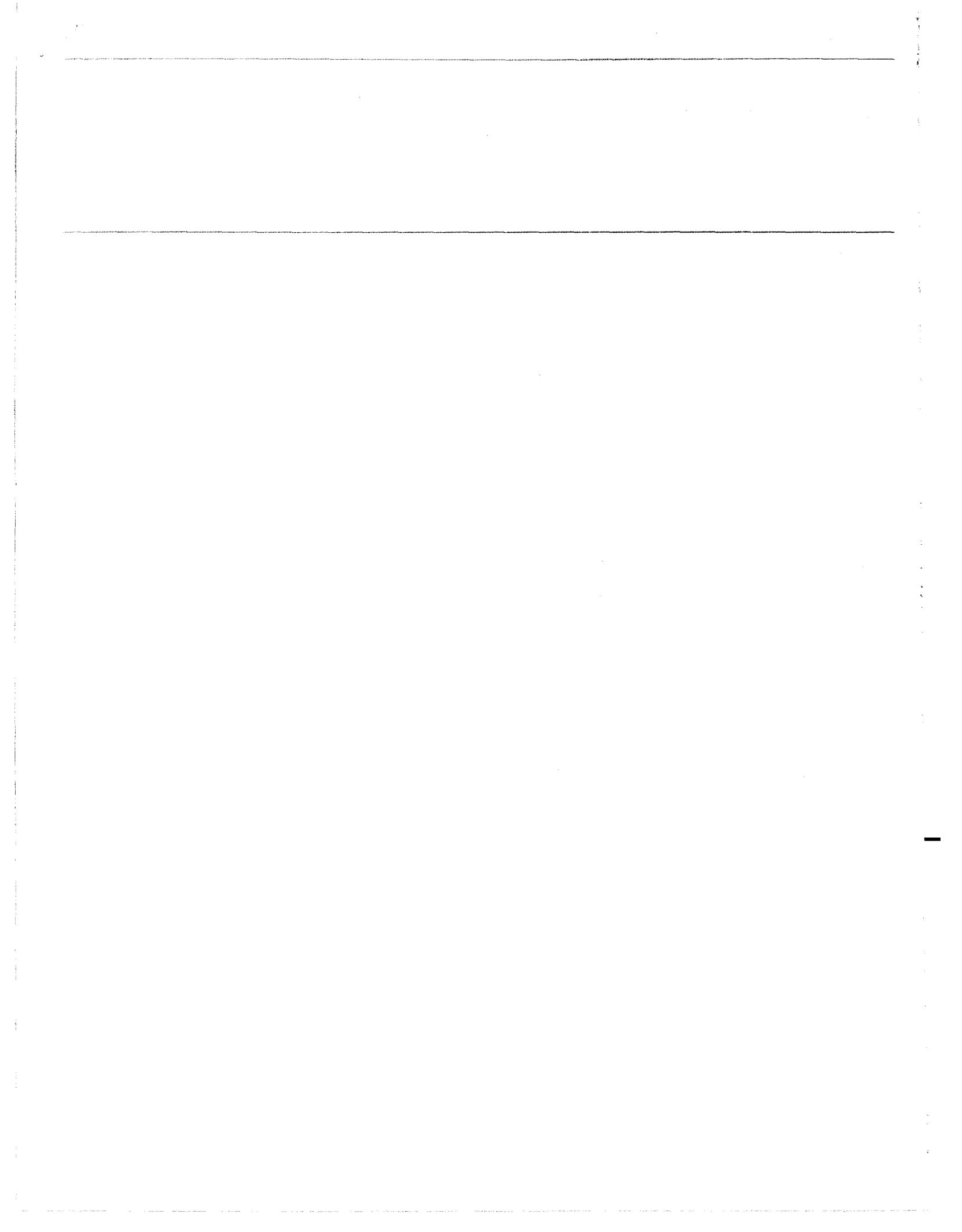
Implementation of the Program Fraud Civil Remedies Act of 1986



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**Accounting and Financial
Management Division**

B-245167

September 13, 1991

The Honorable William V. Roth, Jr.
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable William S. Cohen
Ranking Minority Member
Subcommittee on Oversight of
Government Management
Committee on Governmental Affairs
United States Senate

As you requested, we reviewed federal agencies' implementation of the Program Fraud Civil Remedies Act of 1986 (PFCRA) (31 U.S.C. 3801-3812). The statute provides agencies with an administrative remedy for small-dollar fraud cases that the Department of Justice declines to pursue under criminal and civil statutes prohibiting false claims and statements. As agreed with your respective offices, the scope of our review included the seven agencies that had submitted cases to the Department of Justice for approval; we also included the Department of Veterans Affairs at your request. This report presents information on (1) the agencies' efforts to implement PFCRA and (2) the agencies' use of the act. It also includes reasons the act has not been used more frequently according to agency officials.

Results in Brief

The eight agencies included in our review issued rules and regulations to implement PFCRA that were consistent with the act's provisions, but seven agencies issued them after the deadline specified in the act. Between October 21, 1986, when the act became effective, and September 30, 1990, seven of the eight agencies had referred a total of 41 cases to the Department of Justice for approval of administrative action under the act. Of these 41 cases, Justice had approved 39 cases and 2 were pending review as of May 31, 1991. The cases involved contractor, employee, and employee disability compensation fraud. As of May 31, 1991, 15 of the 39 approved cases had been resolved for a total of \$327,604, and \$107,819 had been collected. Of the remaining 24 approved cases, 4 were closed, and 20 were still under active consideration.

Agency officials told us that a number of reasons had limited the act's use. For example, the \$150,000 claims ceiling eliminates some fraud cases; the act does not apply to certain federal social welfare, disability, and retirement benefit programs under certain circumstances; the cost to process a PFCRA case may exceed the potential monetary recovery; and the act imposes cumbersome procedural requirements.

Background

In a 1981 report,¹ we documented thousands of cases of fraud that were not prosecuted in 21 agencies. In that report, we suggested that the Congress consider the merits of enacting legislation that would allow agencies to assess civil monetary penalties against persons who defraud the government. At that time, statutes prescribing criminal penalties for false claims and statements (18 U.S.C. 287 and 18 U.S.C. 1001) and civil penalties for false claims (31 U.S.C. 3729) were the principal tools used to penalize those acts and recover losses. However, the Department of Justice was reluctant to take action if the potential recovery was likely to be small.

PFCRA, which was passed by the Congress in October 1986, provides agencies with an administrative remedy for small-dollar fraud cases that the Department of Justice declines to pursue under other statutes. The act permits agencies to conduct administrative proceedings to determine the liability of persons alleged to have made, presented, or submitted false, fictitious, or fraudulent claims or statements. PFCRA authorizes civil penalties of up to \$5,000 for each false claim or statement, as well as an assessment of up to double the amount falsely claimed in cases where federal payment has been made. The act places a ceiling of \$150,000 on the amount of a claim or group of related claims that may be addressed under the act. Appendix I discusses the major provisions of the act in more detail.

Objectives, Scope, and Methodology

The objective of this review was to assess federal agencies' progress in implementing PFCRA. Specifically, we determined (1) whether agencies had issued implementing rules and regulations that were consistent with PFCRA, (2) the number, type, and disposition of cases pursued under the act, and (3) the amount of penalties and assessments recovered under the act. Also, we obtained agency officials' views on the reasons that the act has not been used more frequently.

¹Fraud In Government Programs: How Extensive Is It? How Can It Be Controlled? (GAO/AFMD-81-57, May 7, 1981.)

To accomplish these objectives, we conducted our review at the Departments of Defense (DOD), Health and Human Services (HHS), Housing and Urban Development (HUD), Labor (DOL), and Transportation (DOT); the General Services Administration (GSA); and the U.S. Postal Service (USPS) because they were all of the agencies that submitted cases to the Department of Justice for approval as of September 30, 1990. At your request, we also included the Department of Veterans Affairs (VA) in our review.

To ascertain whether each agency had implemented the act, we (1) obtained copies of the agencies' rules and regulations, (2) determined if the agencies had designated the specified officials, and (3) reviewed required annual reports to the Congress. To assess the implementing rules and regulations for consistency with the provisions of the act, we identified the principal features of the legislation and compared them to the corresponding provisions contained in each agency's rules and regulations.

To determine the number, type, and disposition of fraud cases pursued by each agency under the act, we reviewed investigative information prepared by the designated "investigating official"—usually the agency's inspector general—for all cases selected for processing under the act. We also reviewed cases referred by the investigating official to the "reviewing official"—usually the agency's general counsel—to ascertain (1) which cases were presented to Justice for approval and (2) the disposition of these cases. We then contacted Justice to verify and document the number of cases referred by the agencies' reviewing officials and to determine which cases had been approved by Justice. We also reviewed the reviewing officials' actions on the approved cases, which included issuing complaints to the defendants and referring cases to the "presiding officers"—administrative law judges—for hearings. We reviewed the documentation on hearings, settlements, and corresponding collection documents to determine the number of cases adjudicated and the dollar amounts of penalties and assessments levied as of May 31, 1991, for those cases submitted to Justice for approval between October 21, 1986, and September 30, 1990.

To identify possible reasons the act had not been used more frequently, we interviewed the investigating, reviewing, and presiding officials, or their representatives, at each of the eight agencies. We asked them to identify any problems they encountered in using the legislation and obtained related documentation.

We conducted our work from April 1990 through May 1991 in accordance with generally accepted government auditing standards. Our work was conducted at the Washington, D.C., headquarters of the eight agencies included in our review. We discussed our findings with responsible agency officials and incorporated their comments where appropriate.

Agencies' Efforts to Implement the Act

Although each of the eight agencies issued rules and regulations to implement PFCRA, seven agencies issued them after the statutory deadline. However, the rules and regulations issued by the agencies were consistent with the act's provisions.

PFCRA required that each agency promulgate rules and regulations to implement the act's provisions by April 20, 1987. Also, the act required that specified, senior-level officials from separate units within each agency be designated as responsible for implementing the act. Finally, the act required that each agency head prepare and transmit to the Congress an annual report summarizing actions taken under the act.

The first agency to issue rules and regulations was USPS on April 20, 1987. Because of an extensive review process, DOD was the last agency to publish rules and regulations in the Federal Register, which was done on October 6, 1988. (See table 1.) Despite their lateness, all the agencies' rules and regulations were consistent with the act's provisions.²

Table 1: Dates Agencies Published PFCRA Rules and Regulations

Agency	Final rule published
Postal Service	April 20, 1987
General Services Administration	November 25, 1987
Labor	December 22, 1987
Transportation	January 14, 1988
Health and Human Services	April 8, 1988
Veterans Affairs	May 11, 1988
Housing and Urban Development	June 24, 1988
Defense	October 6, 1988

With a few exceptions, all the agencies designated, or made arrangements to obtain, the specified, senior-level officials required under the

²In developing their rules and regulations, six of the eight agencies relied on model regulations issued by the Department of Health and Human Services Task Force at the request of the President's Council on Integrity and Efficiency. These model regulations were issued on March 6, 1987.

act. These specified officials included the authority head (generally, the Secretary), an investigating official (generally, the inspector general), a reviewing official (generally, the general counsel), and a presiding officer (an administrative law judge).³ As of September 30, 1990, three agencies (DOD, GSA, and VA) had not appointed a presiding officer.⁴ According to agency officials, the appointments had not been made because no cases had required a hearing as of September 30, 1990, and, therefore, a presiding officer had not yet been needed.

After they issued their rules and regulations, most agencies prepared and transmitted annual reports to the Congress summarizing their actions taken under the act. However, only VA submitted reports for all 4 fiscal years (1987 through 1990) during which the act has been effective. DOD and HUD did not issue annual reports to the Congress until 1990. Table 2 lists the annual reports issued by each agency during fiscal years 1987 through 1990.

Table 2: PFCRA Annual Reports Submitted to the Congress

Agency	Annual report submitted			
	1987	1988	1989	1990
Veterans Affairs	X	X	X	X
General Services Administration		X	X	X
Health and Human Services		X	X	X
Labor		X	X	X
Postal Service		X	X	X
Transportation		X	X	X
Defense				X
Housing and Urban Development				X

Agencies' Use of the Act

During the period October 21, 1986, through September 30, 1990, the eight agencies identified 213 potential PFCRA fraud cases. Of these cases, 122, or about 57 percent, were referred to the reviewing officials, but the reviewing officials referred only 41 of those cases to the Department of Justice for approval to proceed with administrative action. As of

³In some agencies, the designated officials are different from those listed parenthetically due to the organizational structure of the particular agency or the delegations of responsibility made within the agency.

⁴Agencies that do not have administrative law judges must either appoint one or obtain one through the Office of Personnel Management.

May 31, 1991, 15 of these cases had been resolved (cases settled or final decisions rendered), and \$107,819 had been collected.

Table 3 provides an agency-by-agency summary of the number of cases referred to each responsible agency official and the Department of Justice for approval as of September 30, 1990, and the dollar amounts related to these cases as of May 31, 1991.

Table 3: PFCRA Caseload During the Period October 21, 1986, Through September 30, 1990

Agency	Number of cases reviewed by investigating officials	Number of cases referred to reviewing officials	Number of cases referred to Justice for approval	Number of cases approved by Justice	Number of cases resolved	Amount awarded/settled	Amount collected
DOD	105 ^a	15	3	3	1	\$15,139	\$15,139
DOL	12	12	5	4	1	40,000	10,000
DOT	2	2	1	1	1	25,000	25,000
GSA	4	4	1	1	1	20,000	0
HHS	23	22	2	2	1	22,765	1,000
HUD	18	18	3	3	0	0	0
USPS	48	48	26	25	10	204,700	56,680 ^b
VA	1	1	0	0	0	0	0
Total	213	122	41	39	15^c	\$327,604	\$107,819

^aDOD could only provide the data as of November 8, 1990.

^bUSPS is collecting part of this amount through administrative offset.

^cReviewing officials settled 10 of the cases, and the presiding officials (administrative law judges) rendered decisions in the other 5 cases.

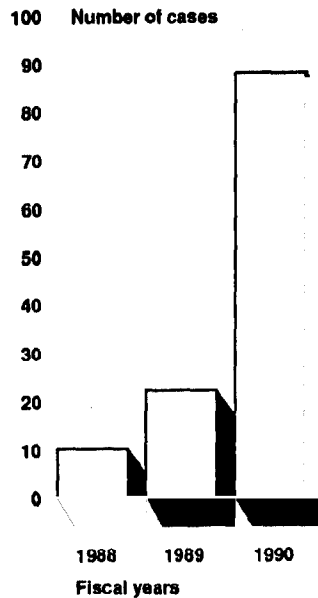
Cases Reviewed by Investigating Officials

The eight agencies' investigating officials identified 213 potential PFCRA cases. Of these cases, 122 were referred to the agencies' reviewing officials for further consideration. Ninety-one cases were not referred to the reviewing officials primarily because of insufficient evidence or defendant insolvency (68 cases) and the need for further review (23 cases).

Cases Referred to Reviewing Officials

Of the 122 cases referred to the agencies' reviewing officials, who determine whether there is adequate evidence to support a false claim or false statement case, 88—or 72 percent—were referred in fiscal year 1990. Figure 1 illustrates the number of PFCRA cases referred to the agencies' reviewing officials during fiscal years 1988 through 1990.

Figure 1: PFCRA Cases Referred to Reviewing Officials During Fiscal Years 1988-1990



Note: The dates of referral for 2 of the 122 were unknown.

The types of cases referred to reviewing officials primarily involved contractor fraud (for example, falsifying wage and hour claims), employee fraud (falsifying payroll documents and travel vouchers), employee disability compensation fraud (falsifying disability claims), benefit program fraud (falsifying eligibility status), and corporate/business fraud (falsifying statements). About 69 percent of the cases involved false claims or false statements by government contractors or federal civilian and military employees.

As of September 30, 1990, the agencies' reviewing officials had submitted 41 cases to the Department of Justice for approval to proceed with administrative action. The remaining 81 cases had not been submitted for the following reasons:

- 42 cases were still undergoing review,
- 7 cases were returned to the agencies' investigating officials for further development, and
- 32 cases were declined for referral primarily because of insufficient evidence.

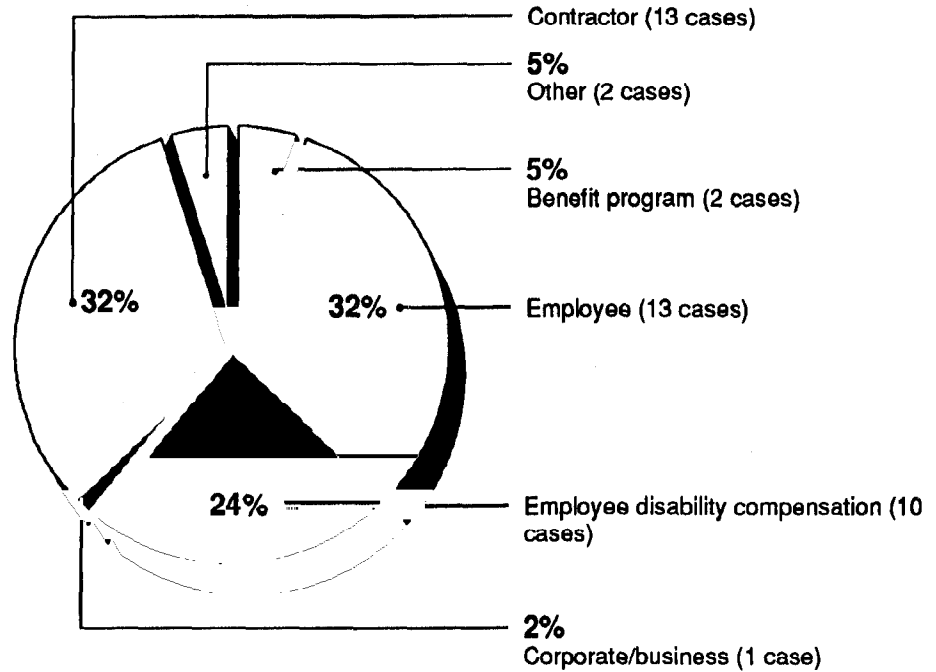
Cases Referred to the Department of Justice

The 41 cases deemed appropriate by the reviewing officials for adjudication under PFCRA were presented to the Department of Justice for approval to proceed with administrative action. After an agency completes its investigation and concludes that there is adequate evidence of a violation, PFCRA requires that the following information be presented to Justice:

- a statement of the reasons for the referral,
- a statement describing the evidence to support the case,
- a description of the alleged false claims or statements involved,
- an estimate of the amount of money or value of property or services at issue,
- a description of any mitigating evidence, and
- a statement that the reviewing official has determined that there is a reasonable prospect of collecting any penalty and assessment imposed.

As table 3 shows, every agency except VA submitted at least one case to Justice for approval. USPS submitted the most cases with 26, and DOL submitted 5 cases. Figure 2 shows the types of cases submitted to Justice for approval.

Figure 2: PFCRA Cases Referred to Justice During Fiscal Years 1988-1990



As of May 31, 1991, the Department of Justice had approved 39 of the 41 fraud cases submitted by September 30, 1990. The remaining 2 cases were still pending review. For the 39 approved cases, which involved primarily contractor fraud, employee fraud, and employee disability compensation fraud, the estimated loss to the government was \$472,600. (See table 4.)

Table 4: PFCRA Cases Approved by Justice During Fiscal Years 1988-1990

Type of fraud case	Number of cases	Estimated government loss
Contractor	13	\$180,736
Employee	12	106,340
Employee disability compensation	9	135,004
Corporate/business	3	46,515
Other	2	4,005
Total	39	\$472,600

Disposition of Cases Approved by Justice

As of May 31, 1991, 15 of the 39 cases approved by the Department of Justice had been resolved. Of these 15 cases, 10 involved employee, employee disability compensation, and contractor fraud at USPS; 3 cases involved contractor fraud at DOL, DOD, and GSA; 1 case involved employee fraud at DOT; and 1 case involved corporate/business fraud at HHS. The 15 cases resulted in monetary awards or settlements totaling \$327,604, and \$107,819 had been collected as of May 31, 1991. Arrangements had been made with the liable persons to collect the remaining \$219,785.

The largest award or settlement of the 15 cases was for \$62,000. The case involved a government contractor who submitted falsified fuel use certifications in support of claims for increases in fuel reimbursements under two government contracts. The smallest award or settlement, for \$778, involved two government employees who submitted false statements in support of a claim for continuation of pay and medical compensation for a work-related injury.

As of May 31, 1991, 20 of the remaining 24 approved cases were still under active consideration as follows:

- 10 cases were pending notification of the accused party by the agencies' reviewing officials regarding alleged liability and the right to request a hearing,
- 9 cases were pending action by the agencies' presiding officials for hearings or decisions, and
- 1 case was pending action by the accused party.

The remaining 4 cases were closed for the following reasons:

- 1 case was combined with another existing case,
- 1 case was withdrawn because the agency decided to pursue criminal action, and
- 2 cases were withdrawn because the agencies decided not to pursue further action.

Views of Agency Officials on Use of the Act

During our review, we asked the designated agency officials, or their representatives, in each of the eight agencies to identify reasons why PFCRA has not been used more frequently for small-dollar fraud cases. Agency officials referred to certain statutory elements of PFCRA that limited the universe of cases against which PFCRA can be used as a fraud remedy, such as

-
- the \$150,000 ceiling on false claim cases and
 - the act's limited applicability to certain federal social welfare, disability, and retirement programs.

In addition, agency officials referred to various procedural and other reasons for not using the act more frequently, such as

- the cost associated with developing a case may exceed the potential monetary recovery and
- the act imposes cumbersome procedural requirements.

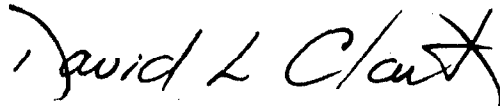
Appendix II provides a more detailed summary of the views of agency officials.

Conclusion

All of the agencies reviewed have taken steps to implement PFCRA, although some agencies did not issue rules and regulations until up to approximately 18 months after the act's statutory deadline. However, only 15 cases have been resolved under PFCRA as of May 31, 1991, and the resulting penalties and assessments have been small. Agency officials provided several reasons that use of the act has been limited.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we will not distribute it until 30 days from the date of this letter. At that time, we will send copies of the report to the Director of the Office of Management and Budget; the Secretaries of Defense, Health and Human Services, Housing and Urban Development, Labor, Transportation, and Veterans Affairs; the Attorney General of the United States; the Administrator of General Services; the Postmaster General of the United States; and interested congressional committees. We will also make copies available on request.

Please contact me at (202) 275-9489 if you or your staffs have any questions concerning the report. Major contributors to this report are listed in appendix III.



David L. Clark
Director, Legislative Reviews and
Audit Oversight

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Abbreviations

DOD	Department of Defense
DOL	Department of Labor
DOT	Department of Transportation
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
PFCRA	Program Fraud Civil Remedies Act of 1986
USPS	United States Postal Service
VA	Department of Veterans Affairs

Major Provisions of the Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986 (PFCRA) (31 U.S.C. 3801-3812) provides covered federal agencies with an administrative remedy for small-dollar fraud cases that the Department of Justice declines to pursue under criminal and civil statutes prohibiting false claims and statements. The act permits these agencies to conduct administrative proceedings to determine the liability of persons alleged to have made, presented, or submitted false, fictitious, or fraudulent claims or statements. The major provisions of PFCRA are as follows.

- PFCRA applies to executive departments, military departments, establishments (as defined by section 11(2) of the Inspector General Act of 1978) which are not executive departments, and the United States Postal Service.
- PFCRA requires the designation of four officials from separate units within an agency to carry out the provisions of the act.
- The “authority head,” usually the head of an agency, promulgates regulations, designates other officials, and considers appeals made by a person determined to be liable under the act.
- The “investigating official,” usually the inspector general, investigates allegations of liability and reports findings and conclusions to the “reviewing official.”
- The “reviewing official,” usually the general counsel, evaluates the investigator’s report to determine whether there is adequate evidence to believe that a false claim or statement has been submitted. If the evidence is adequate, the reviewing official transmits to the Attorney General a written notice that (1) the official intends to refer the allegations to a “presiding officer” and (2) there is a reasonable prospect of collecting from the potentially liable person. If the Attorney General, or a designated Assistant Attorney General, approves the referral, the reviewing official notifies the person alleged to be liable of the charges and of the person’s right to request a hearing before a “presiding officer.”
- The “presiding officer,” usually an administrative law judge, conducts the hearing, if requested, to determine whether the person is liable and, if so, the amount of any civil penalty and/or assessment to be imposed.
- PFCRA is prospective, applicable to any claim or statement made, presented, or submitted on or after October 21, 1986, the date that PFCRA became effective.
- PFCRA places a ceiling of \$150,000 on the amount of the claim or group of related claims for an amount of money, property, or services that are subject to the act.
- PFCRA authorizes civil penalties of up to \$5,000 for each false claim or false statement, as well as an assessment of up to double the amount

falsely claimed in cases where payment has been made. The act specifies that a written statement subject to the penalty is one that "contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement."

- PFCRA has limited applicability to certain federal social welfare, disability, and retirement benefit programs. Specifically, for certain specified programs, an allegation of liability with respect to any claim or statement may only be referred to a presiding officer if (1) such claim or statement was made by an individual in making application for benefits and (2) such allegation relates to the eligibility of such individual to receive benefits.
- PFCRA gives the reviewing official exclusive authority to compromise or settle any allegations of liability against a person without the consent of the presiding officer at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer and prior to the date the presiding officer issues a decision.
- PFCRA requires that penalties or assessments collected be deposited as miscellaneous receipts in the U.S. Treasury. Exceptions to this requirement are (1) USPS collections, which are deposited in the Postal Service Fund and (2) HHS collections under titles II and XVIII of the Social Security Act, which are deposited in the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.
- PFCRA also provides procedures for serving the complaint, requesting a hearing, conducting discovery, and appealing decisions.

Views of Agency Officials on the Program Fraud Civil Remedies Act of 1986

During our review, we asked the designated agency officials—the investigating officials, the reviewing officials, and the presiding officers—or their representatives, in each of the eight agencies to identify the reasons PFCRA has not been used more frequently to address small-dollar fraud cases involving false claims and false statements. Agency officials referred to certain statutory elements of PFCRA that limited the universe of cases against which PFCRA can be used as a fraud remedy. The following are the most frequently cited elements.

- PFCRA is not retroactive. Fraud occurring prior to the act's October 21, 1986, effective date cannot be addressed under the act. This limited the act's use during the first few years immediately after it became effective.
- The \$150,000 ceiling on the amount of claims eliminates some fraud cases.
- To use PFCRA in fraud cases involving false written statements, the statement must contain or be accompanied by a certification or affirmation of its truthfulness and accuracy. This certification is not required under the civil and criminal false claims and statements statutes.
- PFCRA has limited applicability to certain federal social welfare, disability, and retirement benefit programs, which eliminates a number of potential fraud cases that otherwise could be pursued under the act.
- The definition of a "person" does not include state or local governments; political subdivisions; municipal corporations; or such public entities as sanitary districts, school districts, or public hospitals, all of which are major recipients of federal funds.

Agency officials also referred to various procedural and other reasons for not using the act more frequently.

- It takes time to detect, investigate, and substantiate fraud cases, and this has contributed to the small number of cases developed thus far under PFCRA.
- PFCRA currently limits investigatory subpoenas to subpoenas for documents, reports, and other data. According to agency officials, permitting investigators to use testimonial subpoenas would allow them to develop the facts of particular cases more fully.
- Collection procedures are too cumbersome. PFCRA gives the Attorney General the sole authority to carry out collection efforts. Permitting either the agencies or the U.S. Attorneys to perform this function would lead to the more efficient collection of amounts due to the government.

- PFCRA does not provide an incentive to develop cases because, for most agencies, the act requires that monetary recoveries be deposited as miscellaneous receipts in the Department of the Treasury rather than be retained for the agency's own use. As discussed in appendix I, USPS and HHS can retain the penalties and assessments they collect.
- Under PFCRA, it takes longer to settle a case because the investigating official, usually the inspector general, does not have the authority to settle cases. Under the Civil Monetary Penalties Law, the HHS Inspector General has this authority and has settled 354 cases since fiscal year 1987.
- PFCRA's procedural requirements, such as the extensive review process required on each case, are too cumbersome. Also, there are no statutory time limits on how long these officials (investigating, reviewing, and presiding officials) can take to act on a PFCRA case.
- The Department of Justice's approval process for PFCRA cases is too time-consuming. Currently, PFCRA allows Justice 90 days to approve or disapprove a case. Agency officials suggested that Justice's approval would take less time if (1) Justice was allowed fewer days to make a decision, perhaps 60 days, (2) Justice was permitted to delegate authority to approve or disapprove a PFCRA case at a level below the Assistant Attorney General, and (3) approval of a case could be achieved by Justice's failure to act within the prescribed time limits, unless Justice notifies the agency that an extension is needed.
- PFCRA requires that there be a reasonable prospect of collecting the penalty and assessment for which a person may be liable. However, the Department of Justice has not issued guidance indicating what type of information is necessary or how much in assets must be identified in order for an agency to determine that an individual demonstrates a reasonable prospect of being able to pay.
- An agency's cost to process a PFCRA case may exceed the potential monetary recovery.
- Inspectors general place more emphasis and resources on pursuing criminal and larger-dollar fraud cases versus the smaller-dollar fraud cases.

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