

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 04–169

GRAHAM COUNTY SOIL & WATER CONSERVATION
DISTRICT, ET AL., PETITIONERS *v.* UNITED
STATES EX REL. KAREN T. WILSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[June 20, 2005]

JUSTICE THOMAS delivered the opinion of the Court.*

This case presents the question whether the 6-year statute of limitations in the False Claims Act (FCA), see 31 U. S. C. §3731(b)(1), governs FCA civil actions for retaliation, see §3730(h). We hold that it does not and therefore conclude that the most closely analogous state limitations period applies.

I

The FCA prohibits any person from making false or fraudulent claims for payment to the United States. §3729(a). Persons who do so are liable for civil penalties of up to \$10,000 per claim and treble damages. *Ibid.* The Act sets forth two principal enforcement mechanisms for policing this proscription. First, the Attorney General may sue to remedy violations of §3729. §3730(a). Second, private individuals may bring *qui tam* actions in the Government’s name for §3729 violations. §3730(b)(1); see *Vermont Agency of Natural Resources v. United States ex rel.*

* JUSTICE SOUTER joins all but footnote 2 of this opinion.

Stevens, 529 U. S. 765, 769–772 (2000). The *qui tam* relator must give the Government notice of the action, and the Government is entitled to intervene in the suit. §3730(b)(2). The relator receives up to 30 percent of the proceeds of the action, in addition to attorney’s fees and costs. §§3730(d)(1), (2).

The 1986 amendments to the FCA created a third enforcement mechanism: a private cause of action for an individual retaliated against by his employer for assisting an FCA investigation or proceeding. §3730(h). Section 3730(h) provides in relevant part that

“[a]ny 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.”

Remedies for retaliation include reinstatement, two times the amount of backpay plus interest, special damages, litigation costs, and attorney’s fees. *Ibid.*

The 1986 amendments also revised the language of the 6-year statute of limitations applicable to FCA actions. The previous version of the statute provided that “[a] civil action under section 3730 of this title must be brought within 6 years from the date the violation is committed.” §3731(b) (1982 ed.). The 1986 amendments revised this provision to read:

“(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

Opinion of the Court

“(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” §3731.

In January 2001, respondent Karen T. Wilson brought an FCA *qui tam* and retaliation action against petitioners. Petitioners Graham County Soil and Water Conservation District and Cherokee County Soil and Water Conservation District are special-purpose local government entities; the other petitioners are various local and federal officials. Graham County District employed Wilson as a secretary. Wilson alleged that petitioners made numerous false claims for payment to the United States in connection with a federal disaster relief program, the Emergency Watershed Protection Program, App. 17–20, and in connection with agricultural programs administered by North Carolina but funded by the Federal Government, *id.*, at 17–24.

Wilson contended, in addition, that Graham County District officials retaliated against her for aiding federal officials in their investigation of these false claims. *Id.*, at 25–30. Wilson alerted federal officials to petitioners’ suspected fraudulent activities in December 1995 and cooperated with the ensuing investigation. *Id.*, at 26–27. Because of her cooperation, the complaint alleged, Graham County District officials repeatedly harassed her from 1996 to 1997, eventually inducing her to resign in March 1997. *Id.*, at 28–30.

Petitioners successfully moved to dismiss Wilson’s retaliation action as untimely. They argued that the 6-year limitations period provided in §3731(b)(1) did not apply to Wilson’s retaliation action. Absent an applicable federal

limitations period, they asked the District Court to borrow North Carolina’s 3-year statute of limitations for retaliatory-discharge actions. The District Court agreed and dismissed the retaliation claim, since Wilson filed it more than three years after her March 1997 discharge. App. to Pet. for Cert. 67a–70a. The court certified that ruling for interlocutory appeal. 224 F. Supp. 2d 1042, 1050–1051 (WDNC 2002).

On interlocutory appeal, a divided panel of the Court of Appeals for the Fourth Circuit reversed. In the majority’s view, the plain language of §3731(b)(1) supplies a limitations period for retaliation actions, making it unnecessary to borrow one from North Carolina law. The court reasoned that §3731(b)(1) governs §3730(h) retaliation actions, because it applies its 6-year limitations period to “[a] civil action under section 3730.” 367 F. 3d 245, 251 (2004) (brackets in original).

We granted certiorari to resolve a disagreement among the Courts of Appeals regarding whether §3731(b)(1)’s 6-year statute of limitations applies to §3730(h) retaliation actions or whether, instead, the most closely analogous state limitations period governs. 543 U. S. ___ (2005). Compare *Neal v. Honeywell Inc.*, 33 F. 3d 860, 865–866 (CA7 1994) (holding that FCA 6-year period applies), with *United States ex rel. Lujan v. Hughes Aircraft Co.*, 162 F. 3d 1027, 1034–1035 (CA9 1998) (holding that most closely analogous state limitations period governs).

II

To determine the applicable statute of limitations for a cause of action created by a federal statute, we first ask whether the statute expressly supplies a limitations period. If it does not, we generally “borrow” the most closely analogous state limitations period. See *North Star Steel Co. v. Thomas*, 515 U. S. 29, 33–34 (1995); *Reed v. Transportation Union*, 488 U. S. 319, 324 (1989); *Agency Holding*

Opinion of the Court

Corp. v. Malley-Duff & Associates, Inc., 483 U. S. 143, 157–165 (1987) (SCALIA, J., concurring in judgment) (tracing history of borrowing state limitations periods). In the rare case, we have even borrowed analogous federal limitations periods in the absence of an expressly applicable one, see, e.g., *id.*, at 150–157, but no party points to a reason why we should do so here, and we can think of none. The only arguably applicable express statute of limitations is the 6-year limit set forth in §3731(b)(1). The question, then, is whether §3731(b)(1) applies by its terms to retaliation actions under §3730(h); if it does not, our cases dictate that the most closely analogous state limitations period applies.

Under §3731(b)(1), “[a] civil action under section 3730 may not be brought . . . more than 6 years after the date on which the violation of section 3729 is committed.” Following the Court of Appeals’ lead and supported by the United States appearing as *amicus curiae*, Wilson argues that this language unambiguously applies to FCA retaliation actions. She points out that §3731(b)(1) applies a 6-year limitations period to “a civil action under section 3730,” and that §3730(h) actions arise under §3730; hence, they claim, the 6-year period governs §3730(h) actions. See *Neal, supra*, at 865–866 (arguing same). We think the statute is more complex than this argument supposes. Statutory language has meaning only in context, see, e.g., *Leocal v. Ashcroft*, 543 U. S. ___, ___ (2004) (slip op., at 7), and §3731(b)(1), read in its proper context, does not govern §3730(h) actions for retaliation.

Section 3731(b)(1) is ambiguous, rather than clear, about whether a §3730(h) retaliation action is “a civil action under section 3730.” Another reasonable reading is that it applies only to actions arising under §§3730(a) and (b), not to §3730(h) retaliation actions. That reading is suggested by the language in §3731(b)(1) tying the start of the time limit to “the date on which the violation of section 3729 is committed.” In other words, the time limit begins

to run on the date the defendant submitted a false claim for payment. See *supra*, at 1. This language casts doubt on whether §3731(b)(1) specifies a limitations period for retaliation actions. For even a well-pleaded retaliation complaint need not allege that the defendant submitted a false claim, leaving the limitations period without a starting point if §3731(b)(1) is applicable. A retaliation plaintiff, instead, need prove only that the defendant retaliated against him for engaging in “lawful acts done . . . in furtherance of” an FCA “action filed or to be filed,” §3730(h), language that protects an employee’s conduct even if the target of an investigation or action to be filed was innocent.¹ Applying §3731(b)(1) to FCA retaliation actions, then, sits uneasily with §3731(b)(1)’s language, which assumes that well-pleaded “action[s] under section 3730” to which it is applicable include a “violation of section 3729” certain from which to start the time running. Section 3731(b)(1), by contrast, naturally applies to well-pleaded §§3730(a) and (b) actions. They require the plaintiff to plead that the defendant submitted a false claim for payment, and therefore necessarily specify when §3731(b)(1)’s time limit begins. This textual anomaly, at a minimum, shows that

¹See *United States ex rel. Karvelas v. Melrose-Wakefield Hospital*, 360 F. 3d 220, 236 (CA1 2004) (holding that protected conduct is “conduct that reasonably could lead to a viable FCA action”); *United States ex rel. Yesudian v. Howard Univ.*, 153 F. 3d 731, 740 (CA10 1998) (same); *Childree v. UAP/GA AG CHEM, Inc.*, 92 F. 3d 1140, 1146 (CA11 1996) (holding that disclosure to employer of possible FCA violation protected conduct where litigation is a “distinct possibility” at the time of the disclosure); *Fanslow v. Chicago Mfg. Center, Inc.*, 384 F. 3d 469, 480 (CA7 2004) (protected conduct is where employee had reasonable, good-faith belief that the employer is committing fraud against the United States); *Wilkins v. St. Louis Housing Auth.*, 314 F. 3d 927, 933 (CA8 2002) (same); *Moore v. California Inst. of Tech. Jet Propulsion Lab.*, 275 F. 3d 838, 845–846 (CA9 2002) (same). We endorse none of these formulations; we note only that all of them have properly recognized that proving a violation of §3729 is not an element of a §3730(h) cause of action.

Opinion of the Court

§3731(b)(1) is ambiguous about whether “action under section 3730” means all actions under §3730, or only §§3730(a) and (b) actions.

Wilson and the United States dispute that the statute contains this anomaly, and instead urge that it clearly applies by its terms to all §3730 actions. They point out that every §3730(h) action requires the plaintiff to prove that he engaged in protected conduct related to at least a *suspected* violation of §3729, and argue that §3731(b)(1)’s limitations period simply begins to run on the date of the suspected violation. Assuming, without deciding, that §3730(h) retaliation actions have as an element a suspected violation of §3729, their interpretation indeed removes the anomaly, but only at the cost of reading into the statute the word “suspected” before the phrase “violation of section 3729.” Section 3731(b)(1) speaks of “violation[s] of section 3729”—*actual*, not *suspected*, ones. Wilson and the United States answer that this argument proves too much, because even §§3730(a) and (b) actions involve only “suspected” violations of §3729 at the pleading stage of litigation; but this response misses the point. Every §3730(a) or (b) plaintiff who states or proves a valid claim for relief must allege or prove an actual violation of §3729; retaliation plaintiffs need only allege or prove a suspected violation of §3729 (or so we are willing to assume). The point is that §3731(b)(1)’s language applies naturally to all successfully pleaded or proved retaliation actions only if one reads “suspected” into its terms, as the dissent essentially concedes. See *post*, at 4 (opinion of BREYER, J.).

Section §3731(b)(1)’s literal text, then, is ambiguous. Wilson and the Government ask us to read it as if it said “the [suspected or actual] violation of section 3729.” Petitioners ask us to read §3731(b) as if it said “civil action under section 3730[(a) or (b)].”

Two considerations convince us that the better way to resolve this ambiguity is to read the 6-year period to gov-

ern only §§3730(a) and (b) actions, and not §3730(h) retaliation actions. First, the very next subsection of the statute, §3731(c), also uses the similarly unqualified phrase “action brought under section 3730” to refer only to §§3730(a) and (b) actions. Section 3731(c) provides that “[i]n 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.” As Wilson and the United States concede, the context of this provision implies that the phrase “any action brought under section 3730” is limited to §3730(a) actions brought by the United States and §3730(b) actions in which the United States intervenes as a party, as those are the types of §3730 actions in which the United States necessarily participates. Otherwise, the United States would be “required to prove all essential elements of the cause of action,” §3731(c), in all §3730 actions, regardless of whether it participated in the action (a consequence the dissent implicitly embraces by claiming that “any action brought under section 3730” in §3731(c) means all §3730 actions, see *post*, at 2 (opinion of BREYER, J.)). This implicit limitation of the phrase “action under section 3730” shows that Congress used the term “action under section 3730” imprecisely in §3731 and, in particular, that Congress sometimes used the term to refer only to a subset of §3730 actions. It is reasonable to read the same language in §3731(b)(1) to be likewise limited.

Second, reading §3731(b)(1) to apply only to §§3730(a) and (b) actions is in keeping with the default rule that Congress generally drafts statutes of limitations to begin when the cause of action accrues. We have repeatedly recognized that Congress legislates against the “standard rule that the limitations period commences when the plaintiff has a complete and present cause of action.” *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997) (internal

Opinion of the Court

quotation marks omitted); see also *Johnson v. United States*, 544 U. S. ___, ___ (2005) (slip op., at 9) (calling it “highly doubtful” that Congress intended a time limit on pursuing a claim to expire before the claim arose); *Reiter v. Cooper*, 507 U. S. 258, 267 (1993) (declining to countenance the “odd result” that a federal cause of action and statute of limitations arise at different times “absent[t] . . . any such indication in the statute”); *TRW Inc. v. Andrews*, 534 U. S. 19, 37 (2001) (SCALIA, J., concurring in judgment) (“Absent other indication, a statute of limitations begins to run at the time the plaintiff has the right to apply to the court for relief” (internal quotation marks omitted)). Therefore, where, as the case is here, there are two plausible constructions of a statute of limitations, we should adopt the construction that starts the time limit running when the cause of action (here retaliation) accrues.²

This approach resolves the ambiguity in §3731(b)(1) in petitioners’ favor. On the one hand, reading §3731(b)(1) to exclude retaliation actions will generally start the limitations period running when the cause of action accrues. If §3731(b)(1) excludes retaliation actions, then no express time limit applies to §3730(h) actions, and we borrow the most closely analogous state time limit absent an ex-

²JUSTICE STEVENS, we believe, misapplies this interpretive rule. *Post*, p. 1 (opinion concurring in judgment). He argues that §3731(b)(1) does not govern §3730(h) actions because “it is so unlikely that a legislature would actually intend” to start the statute of limitations running before the cause of action accrues that he “would presume that the anomaly was the product of a drafting error” regardless of whether the text is ambiguous. *Dodd v. United States*, *ante*, at ___, n. 1 (STEVENS, J., dissenting). This is not the proper analysis. Section 3731(b)(1) is ambiguous because its text, literally read, admits of two plausible interpretations. *Supra*, at 5–7. We apply the rule that Congress generally drafts statutes of limitations to begin when the cause of action accrues to resolve that ambiguity, not to create it in the first instance.

pressly applicable one. See *supra*, at 4–5. The likely analogous state statutes of limitations virtually all start to run when the cause of action accrues—in retaliation actions, when the retaliatory action occurs.³

³Ala. Code §6–2–38 (West 1993) (catchall for tort actions not otherwise enumerated); §36–26A–4(a) (West 2001) (retaliation action for whistle-blowers); Alaska Stat. §09.10.070 (Lexis 2004) (catchall); Ariz. Rev. Stat. Ann. §12–541 (West 2003) (wrongful termination); Ark. Code Ann. §16–56–115 (Lexis 1987) (catchall); §21–1–604 (Lexis 2004) (retaliation action for whistle-blowers); Cal. Civ. Proc. Code Ann. §335.1 (West Supp. 2005) (personal injuries); §343 (West 1982) (catchall); Colo. Rev. Stat. §13–80–102(1)(g) (Lexis 2004) (catchall); Conn. Gen. Stat. §§52–577, 31–51m (2005) (catchall for tort actions; retaliation action for whistle-blowers); Del. Code Ann., Tit. 10, §8119 (Lexis 1999) (personal injuries); Tit. 29, §5115 (Lexis 2003) (retaliation action for whistle-blowers); D. C. Code §12–301(8) (West Supp. 2004) (catchall); Fla. Stat. §§112.3187(8)(a), 448.103 (2003) (whistle-blower actions); Ga. Code Ann. §9–3–33 (Lexis 1982) (personal injuries); Haw. Rev. Stat. §378–63(a) (Supp. 2004) (retaliation action for whistle-blowers); Idaho Code §§5–224, 6–2105(2) (Lexis 1998) (catchall; retaliation action for whistle-blowers); Ill. Comp. Stat. Ann., ch. 735, §5/13–202 (West 2003) (personal injuries); Ind. Code §34–11–2–4 (2004) (personal injuries); Iowa Code §614.1 (2003) (personal injuries); Kan. Stat. Ann. §§60–513, 75–2973(h) (Supp. 2003) (catchall; retaliation action for whistle-blowers); Ky. Rev. Stat. Ann. §413.120(7) (Lexis Supp. 2004) (catchall); §61.103(2) (Lexis 2004) (retaliation action for whistle-blowers); La. Civ. Code Ann., Art. 3492 (West 1994) (“[d]elictual actions”; starts running on day injury or damage sustained, which is when the cause of action generally accrues for retaliatory actions); Me. Rev. Stat. Ann., Tit. 14, §752 (West 1980) (catchall); Md. Cts. & Jud. Proc. Code Ann. §5–101 (Lexis 2002) (catchall for civil actions at law); Mass. Gen. Laws, ch. 260, §2A, ch. 149, §185(d) (West 2004) (catchall for tort actions for personal injuries; retaliation action for whistle-blowers); Mich. Comp. Laws Ann. §15.363(1) (West 2004) (retaliation action for whistle-blowers); Minn. Stat. §541.07 (2004) (personal injuries); Miss. Code Ann. §15–1–49 (Lexis 2003) (catchall); Mo. Rev. Stat. §516.120 (2000) (catchall); Mont. Code Ann. §39–2–911(1) (2003) (wrongful discharge); Neb. Rev. Stat. §§25–207, 25–212 (1995) (catchall); Nev. Rev. Stat. §11.190.4(e) (2003) (personal injuries); N. H. Rev. Stat. Ann. §508:4 (West 1997) (personal actions other than slander or libel); N. J. Stat. Ann. §§2A:14–1, 34:19–5 (West 2000) (catchall; retaliation action for whistle-blowers); §2A:14–2(a) (West Supp. 2005)

Opinion of the Court

The interpretation favored by Wilson and the Government, on the other hand, is in tension with this rule of construction. Under their reading, the statute of limitations for FCA retaliation actions begins to run, at best, on the date the actual or suspected FCA violation occurred.

(personal injuries); N. M. Stat. Ann. §37–1–4 (1990) (catchall); N. Y. Civ. Prac. Law Ann. §215.4 (West 2003) (“action to enforce” a statute “given wholly or partly to any person who will prosecute”); N. Y. Lab. Law Ann. §740.4(a) (West 2002) (retaliation action for whistle-blowers); N. C. Gen. Stat. §§1–52, 126–86 (Lexis 2003) (catchall; retaliation action for whistle-blowers); N. D. Cent. Code §28–01–16 (Lexis 1991) (catchall); §34–01–20.3 (Lexis 2004) (retaliation actions for whistle-blowers); Ohio Rev. Code Ann. §2305.09 (Lexis Supp. 2003) (catchall for torts); §4113.52(D) (Lexis 2001) (retaliation action for whistle-blowers); Okla. Stat. Ann., Tit. 12, §95 (West Supp. 2005) (catchall); Ore. Rev. Stat. §12.110(1) (2003) (catchall); 42 Pa. Cons. Stat. §5524(7) (2002) (catchall); Pa. Stat. Ann., Tit. 43, §1424(a) (Purdon 1991) (retaliation action for whistle-blowers); R. I. Gen. Laws §9–1–14(a) (Lexis 1997) (injuries to the person); §28–50–4 (Lexis 2003) (retaliation action for whistle-blowers); S. C. Code Ann. §15–3–530 (West 2005) (catchall); §8–27–30(B) (West Supp. 2004) (retaliation action for whistle-blowers); S. D. Codified Laws §15–2–14(3) (West 2004) (action for personal injury); Tenn. Code Ann. §28–3–104(a)(1) (Lexis 2000) (personal injuries); Tex. Civ. Prac. & Rem. Code Ann. §16.003 (West 2002) (personal injuries); Tex. Govt. Code Ann. §554.005 (West 2004) (retaliation action for whistle-blowers); Utah Code Ann. §§78–12–29(1), (2) (Lexis 2002) (liability created by statute of foreign state; liability created by statute); §67–21–4(2) (Lexis 2004) (retaliation action for whistle-blowers); Vt. Stat. Ann., Tit. 12, §511 (Lexis 2002) (catchall); Va. Code Ann. §§8.01–243(A), 8.01–248 (Lexis 2000) (personal injuries; catchall); Wash. Rev. Code §4.16.080(2) (2004) (catchall for injuries to person); W. Va. Code §55–2–12 (Lexis 2000) (catchall); §6C–1–4(a) (Lexis 2003) (retaliation action for whistle-blowers); Wis. Stat. §893.57 (2003–2004) (intentional torts); Wyo. Stat. §§1–3–105(a)(iv)(C), 9–11–103(c) (2003) (catchall; retaliation action for whistle-blowers). But see Vt. Stat. Ann., Tit. 12, §512 (Lexis 2002) (personal injury statute of limitations starts on the date of the discovery of the injury); D. C. Code §1–615.54 (West 2001) (whistle-blower action may be brought within one year of the time the employee learns of the retaliation). We stress that these are only the likely candidates for analogous state statutes of limitations; it may well not be an exhaustive or authoritative list of the possibilities.

Opinion of the Court

Because that date will precede the retaliatory conduct, their reading starts the time limit running before the retaliation action accrues. Even more oddly, their reading allows a retaliation action to be time barred before it ever accrues—for example, if the employer discovers more than six years after the suspected violation of §3729 that an employee aided in investigating that fraud, then retaliates. As we have discussed, §3731(b)(1)'s text permits a construction that avoids these counterintuitive results—that “civil action under section 3730” means only those civil actions under §3730 that have as an element a “violation of section 3729,” that is, §§3730(a) and (b) actions.

Granted, other textual evidence cuts against this reading of §3731(b)(1). In particular, Congress used the phrase “brought under subsection (a) or (b) of section 3730” in §3731(d); this, it is argued, shows that Congress could have been similarly precise in §3731(b)(1) if it wished. In the context of this statute, however, that argument proves too much, since the same could be said of §3731(c), which all agree uses the phrase “action under section 3730” in more limited, and less precise, fashion. See *supra*, at 8. We do not doubt that Congress could have drafted §3731(b)(1) with more precision than it did, but the presence of the same inexact wording in §3731(c) means that the more precise language in §3731(d) casts little doubt on our reading of the statute.

* * *

For the reasons we have discussed, the FCA's express limitations period does not apply to §3730(h) actions. The most closely analogous state statute of limitations therefore applies. Judge Wilkinson, in his dissenting opinion below, concluded that the most closely analogous state statute of limitations in this case is North Carolina's 3-year statute of limitations governing wrongful-discharge claims. See 367 F. 3d, at 261–262. The appropriate state

Opinion of the Court

statute of limitations to borrow, however, is not within the scope of the question we granted certiorari to decide, and the Court of Appeals did not pass on the point. We therefore leave that issue for remand. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

§ 3733. Civil investigative demands

- (a) In General. -
 - (1) Issuance and service. - Whenever the Attorney General 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 may, before commencing a civil proceeding under section [3730](#) or other false claims law, 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 not 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.
 - (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
 - (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. 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.

- (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 certificate 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.

- o (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.
- o (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 opportunity 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.
- o (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.
- o (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.
- o (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.
- o (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, who is authorized for such use under regulations which the Attorney General shall issue. 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. 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.
 - (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.

- o (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 proceeding 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.
 - o (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.
 - o (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. -
 - o (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.

- o (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.
- o (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

- (6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and
- (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).