

White Collar Crime Resource Guide: Statute of Limitations

Default Statute of Limitations

Generally, there is a 5-year statute of limitations for federal criminal matters. 18 U.S.C. § 3282.

Longer Statutes of Limitations

Although five years is the default statute of limitations, many federal crimes have a longer period.

Capital offenses, as an extreme example, have a limitation period that never expires. If a federal crime is punishable by death, the government can bring an indictment on that crime at any time after the crime has been committed. 18 U.S.C. § 3281.

Congress has specifically extended the statute of limitations for a number of white-collar crimes.

- **Fraud against financial institutions** – The statute of limitations for violations of 18 U.S.C. §§ 1341 and 1343, mail and wire fraud, are extended to 10 years if the offense affects a financial institution.
- **Other bank-related crimes** – 10 years. 18 U.S.C. § 3293 for violations of 18 U.S.C. §§ 215 (bribery in connection with a financial institution), § 656 (embezzlement by a bank officer), § 657 (embezzlement by an officer of a financial lending institution), § 1005 (fraud with respect to bank entries and reports), § 1006 (fraud with respect to lending institution entries and reports), § 1007 (fraud in dealing with the FDIC), § 1014 (fraud with respect to statements intended to influence loan and credit applications), § 1033 (crimes affecting insurance businesses that affecting interstate commerce), or § 1344 (bank fraud).
- **Immigration violations** – 10 years. 18 U.S.C. § 3291 for violations of nationality, citizenship, and passport laws.
- **Major fraud against United States** – 7 years. 18 U.S.C. § 1031 (f).
- **Securities fraud** – 6 years for violations of 18 U.S.C. § 1348, and violations of 15 U.S.C. §§ 80a-48, 80b-17, 78ff (a), 77x, or 77yyy.
- **Tax offenses.** Tax offenses have unique rules for the statute of limitations. First, tax offenses have either a 3-year or a 6-year statute of limitations, depending on the type of offense charged. 26 U.S.C. § 6531. In addition to that 3- or 6-year limitation period, the government will have an additional 9 months in which to institute formal criminal proceedings if the prosecution files a valid complaint by the end of the period. 26 U.S.C. § 6531.

Shorter Statutes of Limitation

Certain federal crimes have a shorter limitations period.

- **Copyright violations** – 3 years – For copyright violations brought under 17 U.S.C. § 507(a), the statute of limitations has been shortened to three years. Note that copyright violations under Title 18 keep the 5 year statute of limitations.
- **Criminal Contempt** – 1 year – For criminal contempt actions brought under 18 U.S.C. § 402, the statute of limitations is only one year. Note that all other criminal contempt charges under Title 18 keep the 5 year statute of limitations.

Continuing Offenses

Generally, an offense's statute of limitations begins to run when the offense is completed. However, courts have held that some offenses are "continuing" in nature. These include offenses such as possession of contraband, escape from federal custody and, most important, conspiracy.

For conspiracy, the limitations period begins to run when the last overt act is committed. *See Fiswick v. United States*, 329 U.S. 211 (1946). If the members of the conspiracy continue to conceal the conspiracy, those are overt acts and the statute of limitations will not begin until the concealment ends.

If an individual withdraws from a conspiracy, the statute of limitations will start running at the time of the withdrawal. Keep in mind that withdrawal is generally interpreted as an affirmative act to withdraw such as reporting the conspiracy to the authorities or telling co-conspirators of the withdrawal. *See United States v. Gonzalez*, 797 F.2d 915 (10th Cir. 1986).

Superseding Indictments

According to the U.S. Attorney's Manual:

If an indictment is dismissed because of legal defect or grand jury irregularity, the government may return a new indictment within six months of the date of dismissal or within the original limitation period (whichever is later). After the original limitation period has expired, a superseding indictment may narrow, but not broaden, the charges made in the original indictment. *See* 18 U.S.C. §§ 3288-3289; *United States v. Miller*, 471 U.S. 130 (1985); *United States v. Grady*, 544 F.2d 598 (2d Cir. 1976).

Tolling Agreements

It is not uncommon in white collar criminal cases for the government to request that you client sign a tolling agreement. This allows the government more time to investigate the case and allow defense counsel more time to negotiate with the government to avoid indictment.

The downside, of course, is that the defendant will lose any limitations defense at trial and extends the time of uncertainty for your client.

A tolling agreement will usually set forth the possible offenses for which your client is a subject or target, how to provide notice to the government if and when your client decides to end the agreement and various representations that signing the agreement is a knowing waiver of a limitations defense.

Suspensions of Limitations

Congress has authorized the suspension of the statute of limitations in some situations.

Wartime Suspension – 5 Years

Under the Wartime Suspension of Limitations statute, some limitation periods are suspended when the United States authorizes the use of its armed forces. *See* 18 U.S.C. § 3287. Those offenses include

1. fraud against the United States government,
2. fraud committed in connection with real or personal property belonging to the United States, and
3. fraud committed in connection with contracts with the armed forces or contracts involving armed forces termination inventory.

Foreign Evidence Suspension – 3 Years

The government can also suspend the statute of limitations for an offense in order to secure evidence held in foreign countries. *See* 18 U.S.C. § 3292.

If the government's attorneys can show by a preponderance of the evidence that it reasonably appears that evidence of an offense is in another country, the district court must make a decision on the government's request within 30 days of the application for the suspension. 18 U.S.C. § 3292 (a)(1), (2).

If the court grants the government's request, the statute of limitations is suspended from the date on which the request was made until either (1) the date that the foreign court takes action or (2) three years have elapsed, whichever suspension term is shorter. 18 U.S.C. § 3292(b).