

111TH CONGRESS
1ST SESSION

S. 386

AN ACT

To improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—FRAUD ENFORCEMENT**
 2 **AND RECOVERY ACT OF 2009**

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fraud Enforcement
 5 and Recovery Act of 2009” or “FERA”.

6 **SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURI-**
 7 **TIES, AND FINANCIAL FRAUD RECOVERY AND**
 8 **ENFORCEMENT.**

9 (a) DEFINITION OF FINANCIAL INSTITUTION
 10 AMENDED TO INCLUDE MORTGAGE LENDING BUSI-
 11 NESS.—Section 20 of title 18, United States Code, is
 12 amended—

13 (1) in paragraph (8), by striking “or” after the
 14 semicolon;

15 (2) in paragraph (9), by striking the period and
 16 inserting “; or”; and

17 (3) by inserting at the end the following:

18 “(10) a mortgage lending business (as defined
 19 in section 27 of this title) or any person or entity
 20 that makes in whole or in part a federally related
 21 mortgage loan as defined in 12 U.S.C. 2602(1).”.

22 (b) MORTGAGE LENDING BUSINESS DEFINED.—

23 (1) IN GENERAL.—Chapter 1 of title 18, United
 24 States Code, is amended by inserting after section
 25 26 the following:

1 **“§ 27. Mortgage lending business defined**

2 “In this title, the term ‘mortgage lending business’
3 means an organization which finances or refinances any
4 debt secured by an interest in real estate, including private
5 mortgage companies and any subsidiaries of such organi-
6 zations, and whose activities affect interstate or foreign
7 commerce.”.

8 (2) CHAPTER ANALYSIS.—The chapter analysis
9 for chapter 1 of title 18, United States Code, is
10 amended by adding at the end the following:

“27. Mortgage lending business defined.”.

11 (c) FALSE STATEMENTS IN MORTGAGE APPLICA-
12 TIONS AMENDED TO INCLUDE FALSE STATEMENTS BY
13 MORTGAGE BROKERS AND AGENTS OF MORTGAGE LEND-
14 ING BUSINESSES.—Section 1014 of title 18, United States
15 Code, is amended by—

16 (1) striking “or” after “the International Bank-
17 ing Act of 1978),”; and

18 (2) inserting after “section 25(a) of the Federal
19 Reserve Act” the following: “or a mortgage lending
20 business whose activities affect interstate or foreign
21 commerce, or any person or entity that makes in
22 whole or in part a federally related mortgage loan as
23 defined in 12 U.S.C. 2602(1)”.

24 (d) MAJOR FRAUD AGAINST THE GOVERNMENT
25 AMENDED TO INCLUDE ECONOMIC RELIEF AND TROU-

1 BLED ASSET RELIEF PROGRAM FUNDS.—Section 1031(a)
 2 of title 18, United States Code, is amended by—

3 (1) inserting after “or promises, in” the fol-
 4 lowing: “any grant, contract, subcontract, subsidy,
 5 loan, guarantee, insurance or other form of Federal
 6 assistance, including through the Troubled Assets
 7 Relief Program, an economic stimulus, recovery or
 8 rescue plan provided by the Government, or the Gov-
 9 ernment’s purchase of any troubled asset as defined
 10 in the Emergency Economic Stabilization Act of
 11 2008, or in”;

12 (2) striking “the contract, subcontract” and in-
 13 sserting “such grant, contract, subcontract, subsidy,
 14 loan, guarantee, insurance or other form of Federal
 15 assistance,”; and

16 (3) striking “for such property or services”.

17 (e) SECURITIES FRAUD AMENDED TO INCLUDE
 18 FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-
 19 ITIES.—

20 (1) IN GENERAL.—Section 1348 of title 18,
 21 United States Code, is amended—

22 (A) in the caption, by inserting “**and**
 23 **commodities**” after “**Securities**”;

24 (B) by inserting “any commodity for fu-
 25 ture delivery, or any option on a commodity for

1 future delivery, or” after “any person in con-
2 nection with”; and

3 (C) by inserting “any commodity for fu-
4 ture delivery, or any option on a commodity for
5 future delivery, or” after “in connection with
6 the purchase or sale of”.

7 (2) CHAPTER ANALYSIS.—The item for section
8 1348 in the chapter analysis for chapter 63 of title
9 18, United States Code, is amended by inserting
10 “and commodities” after “Securities”.

11 (f) MONEY LAUNDERING AMENDED TO DEFINE
12 PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.—

13 (1) MONEY LAUNDERING.—Section 1956(c) of
14 title 18, United States Code, is amended—

15 (A) in paragraph (8), by striking the pe-
16 riod and inserting “; and”; and

17 (B) by inserting at the end the following:

18 “(9) the term ‘proceeds’ means any property
19 derived from or obtained or retained, directly or in-
20 directly, through some form of unlawful activity, in-
21 cluding the gross receipts of such activity.”.

22 (2) MONETARY TRANSACTIONS.—Section
23 1957(f) of title 18, United States Code, is amended
24 by striking paragraph (3) and inserting the fol-
25 lowing:

1 “(3) the terms ‘specified unlawful activity’ and
2 ‘proceeds’ shall have the meaning given those terms
3 in section 1956 of this title.”.

4 (g) MAKING THE INTERNATIONAL MONEY LAUN-
5 DERING STATUTE APPLY TO TAX EVASION.—Section
6 1956(a)(2)(A) of title 18, United States Code, is amended
7 by—

8 (1) inserting “(i)” before “with the intent to
9 promote”; and

10 (2) adding at the end the following:

11 “(ii) with the intent to engage in con-
12 duct constituting a violation of section
13 7201 or 7206 of the Internal Revenue
14 Code of 1986; or”.

15 **SEC. 3. ADDITIONAL FUNDING FOR INVESTIGATORS AND**
16 **PROSECUTORS FOR MORTGAGE FRAUD, SE-**
17 **CURITIES FRAUD, AND OTHER CASES IN-**
18 **VOLVING FEDERAL ECONOMIC ASSISTANCE.**

19 (a) IN GENERAL.—

20 (1) AUTHORIZATION.—There is authorized to
21 be appropriated to the Attorney General, to remain
22 available until expended, \$165,000,000 for each of
23 the fiscal years 2010 and 2011, for the purposes of
24 investigations, prosecutions, and civil proceedings in-
25 volving Federal assistance programs and financial

1 institutions, including financial institutions to which
2 this Act and amendments made by this Act apply.

3 (2) ALLOCATIONS.—With respect to fiscal years
4 2010 and 2011, the amount authorized to be appro-
5 priated under paragraph (1) shall be allocated as
6 follows:

7 (A) Federal Bureau of Investigation:
8 \$75,000,000 for fiscal year 2010 and
9 \$65,000,000 for fiscal year 2011.

10 (B) The offices of the United States Attor-
11 neys: \$50,000,000.

12 (C) The criminal division of the Depart-
13 ment of Justice: \$20,000,000.

14 (D) The civil division of the Department of
15 Justice: \$15,000,000.

16 (E) The tax division of the Department of
17 Justice: \$5,000,000.

18 (b) ADDITIONAL APPROPRIATIONS FOR THE POSTAL
19 INSPECTION SERVICE.—There is authorized to be appro-
20 priated to the Postal Inspection Service of the United
21 States Postal Service, \$30,000,000 for each of the fiscal
22 years 2010 and 2011 for investigations involving Federal
23 assistance programs and financial institutions, including
24 financial institutions to which this Act and amendments
25 made by this Act apply.

1 (c) ADDITIONAL APPROPRIATIONS FOR THE INSPEC-
2 TOR GENERAL FOR THE DEPARTMENT OF HOUSING AND
3 URBAN DEVELOPMENT.—There is authorized to be appro-
4 priated to the Inspector General of the Department of
5 Housing and Urban Development, \$30,000,000 for each
6 of the fiscal years 2010 and 2011 for investigations involv-
7 ing Federal assistance programs and financial institutions,
8 including financial institutions to which this Act and
9 amendments made by this Act apply.

10 (d) ADDITIONAL APPROPRIATIONS FOR THE UNITED
11 STATES SECRET SERVICE.—There is authorized to be ap-
12 propriated to the United States Secret Service of the De-
13 partment of Homeland Security, \$20,000,000 for each of
14 the fiscal years 2010 and 2011 for investigations involving
15 Federal assistance programs and financial institutions, in-
16 cluding financial institutions to which this Act and amend-
17 ments made by this Act apply.

18 (e) USE OF FUNDS.—The funds authorized to be ap-
19 propriated under subsections (a), (b), (c), and (d) shall
20 be limited to cover the costs of each listed agency or de-
21 partment for investigating possible criminal, civil, or ad-
22 ministrative violations and for prosecuting criminal, civil,
23 or administrative proceedings involving financial crimes
24 and crimes against Federal assistance programs, including
25 mortgage fraud, securities fraud, financial institution

1 fraud, and other frauds related to Federal assistance and
2 relief programs.

3 (f) REPORT TO CONGRESS.—Following the final ex-
4 penditure of all funds appropriated under this section that
5 were authorized by subsections (a), (b), (c), and (d) the
6 Attorney General, in consultation with the United States
7 Postal Inspection Service, the Inspector General for the
8 Department of Housing and Urban Development, and the
9 Secretary of Homeland Security, shall submit a joint re-
10 port to Congress identifying—

11 (1) the amounts expended under subsections
12 (a), (b), (c), and (d) and a certification of compli-
13 ance with the requirements listed in subsection (e);
14 and

15 (2) the amounts recovered as a result of crimi-
16 nal or civil restitution, fines, penalties, and other
17 monetary recoveries resulting from criminal, civil, or
18 administrative proceedings and settlements under-
19 taken with funds authorized by this Act.

20 (g) ADDITIONAL APPROPRIATIONS FOR THE SECURI-
21 TIES AND EXCHANGE COMMISSION.—

22 (1) IN GENERAL.—There is authorized to be
23 appropriated to the Securities and Exchange Com-
24 mission, \$20,000,000 for each of the fiscal years
25 2010 and 2011 for investigations and enforcement

1 proceedings involving financial institutions, including
2 financial institutions to which this Act and amend-
3 ments made by this Act apply.

4 (2) INSPECTOR GENERAL.—There is authorized
5 to be appropriated to the Securities and Exchange
6 Commission, \$1,000,000 for each of the fiscal years
7 2010 and 2011 for the salaries and expenses of the
8 Office of the Inspector General of the Securities and
9 Exchange Commission.

10 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO**
11 **REFLECT THE ORIGINAL INTENT OF THE**
12 **LAW.**

13 (a) CLARIFICATION OF THE FALSE CLAIMS ACT.—
14 Section 3729 of title 31, United States Code, is amend-
15 ed—

16 (1) by striking subsection (a) and inserting the
17 following:

18 “(a) LIABILITY FOR CERTAIN ACTS.—

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

21 “(A) knowingly presents, or causes to be
22 presented, a false or fraudulent claim for pay-
23 ment or approval;

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

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

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

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

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

22 “(G) knowingly makes, uses, or causes to
23 be made or used, a false record or statement
24 material to an obligation to pay or transmit
25 money or property to the Government, or know-

1 ingly conceals or knowingly and improperly
2 avoids or decreases an obligation to pay or
3 transmit money or property to the Government,
4 is liable to the United States Government for a civil
5 penalty of not less than \$5,000 and not more than
6 \$10,000, as adjusted by the Federal Civil Penalties
7 Inflation Adjustment Act of 1990 (28 U.S.C. 2461
8 note; Public Law 104–410), plus 3 times the
9 amount of damages which the Government sustains
10 because of the act of that person.

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

13 “(A) the person committing the violation
14 of this subsection furnished officials of the
15 United States responsible for investigating false
16 claims violations with all information known to
17 such person about the violation within 30 days
18 after the date on which the defendant first ob-
19 tained the information;

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

22 “(C) at the time such person furnished the
23 United States with the information about the
24 violation, no criminal prosecution, civil action,
25 or administrative action had commenced under

1 this title with respect to such violation, and the
2 person did not have actual knowledge of the ex-
3 istence of an investigation into such violation,
4 the court may assess not less than 2 times the
5 amount of damages which the Government sustains
6 because of the act of that person.

7 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
8 lating this subsection shall also be liable to the
9 United States Government for the costs of a civil ac-
10 tion brought to recover any such penalty or dam-
11 ages.”;

12 (2) by striking subsections (b) and (c) and in-
13 serting the following:

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

15 “(1) the terms ‘knowing’ and ‘knowingly’—

16 “(A) mean that a person, with respect to
17 information—

18 “(i) has actual knowledge of the infor-
19 mation;

20 “(ii) acts in deliberate ignorance of
21 the truth or falsity of the information; or

22 “(iii) acts in reckless disregard of the
23 truth or falsity of the information; and

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

1 “(2) the term ‘claim’—

2 “(A) means any request or demand, wheth-
3 er under a contract or otherwise, for money or
4 property and whether or not the United States
5 has title to the money or property, that—

6 “(i) is presented to an officer, em-
7 ployee, or agent of the United States; or

8 “(ii) is made to a contractor, grantee,
9 or other recipient, if the money or property
10 is to be spent or used on the Government’s
11 behalf or to advance a Government pro-
12 gram or interest, and if the United States
13 Government—

14 “(I) provides or has provided any
15 portion of the money or property re-
16 quested or demanded; or

17 “(II) will reimburse such con-
18 tractor, grantee, or other recipient for
19 any portion of the money or property
20 which is requested or demanded; and

21 “(B) does not include requests or demands
22 for money or property that the Government has
23 paid to an individual as compensation for Fed-
24 eral employment or as an income subsidy with

1 no restrictions on that individual's use of the
2 money or property;

3 “(3) the term ‘obligation’ means an established
4 duty, whether or not fixed, arising from an express
5 or implied contractual, grantor-grantee, or licensor-
6 licensee relationship, from a fee-based or similar re-
7 lationship, from statute or regulation, or from the
8 retention of any overpayment; and

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

12 (3) by redesignating subsections (d) and (e) as
13 subsections (c) and (d), respectively; and

14 (4) in subsection (c), as redesignated, by strik-
15 ing “subparagraphs (A) through (C) of subsection
16 (a)” and inserting “subsection (a)(2)”.

17 (b) EFFECTIVE DATE AND APPLICATION.—The
18 amendments made by this section shall take effect on the
19 date of enactment of this Act and shall apply to conduct
20 on or after the date of enactment, except that subpara-
21 graph (B) of section 3729(a)(1) of title 31, United States
22 Code, as added by subsection (a)(1), shall take effect as
23 if enacted on June 7, 2008, and apply to all claims under
24 the False Claims Act (31 U.S.C. 3729 et seq.) that are
25 pending on or after that date.

1 **SEC. 5. FINANCIAL MARKETS COMMISSION.**

2 (a) ESTABLISHMENT OF COMMISSION.—There is es-
3 tablished in the legislative branch the Financial Markets
4 Commission (in this section referred to as the “Commis-
5 sion”) to examine all causes, domestic and global, of the
6 current financial and economic crisis in the United States.

7 (b) COMPOSITION OF THE COMMISSION.—

8 (1) MEMBERS.—The Commission shall be com-
9 posed of 10 members, of whom—

10 (A) 2 members shall be appointed by the
11 majority leader of the Senate;

12 (B) 2 members shall be appointed by the
13 Speaker of the House of Representatives;

14 (C) 1 member shall be appointed by the
15 minority leader of the Senate;

16 (D) 1 member shall be appointed by the
17 minority leader of the House of Representa-
18 tives;

19 (E) 1 member shall be appointed by the
20 Chairman of the Committee on Banking, Hous-
21 ing, and Urban Affairs of the Senate;

22 (F) 1 member shall be appointed by the
23 ranking member of the Committee on Banking,
24 Housing, and Urban Affairs of the Senate;

1 (G) 1 member shall be appointed by the
2 chairman of the Committee on Financial Serv-
3 ices of the House of Representatives; and

4 (H) 1 member shall be appointed by the
5 ranking member of the Committee on Financial
6 Services of the House of Representatives.

7 (2) QUALIFICATIONS; LIMITATION.—

8 (A) IN GENERAL.—Individuals appointed
9 to the Commission shall be United States citi-
10 zens having significant experience in such fields
11 as banking, regulation of markets, taxation, fi-
12 nance, economics and housing.

13 (B) LIMITATION.—No person who is a
14 member of Congress or an officer or employee
15 of the Federal Government or any State or local
16 government may serve as a member of the
17 Commission.

18 (3) CHAIRPERSON; VICE CHAIRPERSON.—

19 (A) IN GENERAL.—Subject to the require-
20 ments of subparagraph (B), the Chairperson of
21 the Commission shall be selected jointly by the
22 Majority Leader of the Senate and the Speaker
23 of the House of Representatives, and the Vice
24 Chairperson shall be selected jointly by the Mi-

1 nurity Leader of the Senate and the Minority
2 Leader of the House of Representatives.

3 (B) POLITICAL PARTY AFFILIATION.—The
4 Chairperson and Vice Chairperson of the Com-
5 mission may not be from the same political
6 party.

7 (4) INITIAL MEETING.—If, 45 days after the
8 date of enactment of this Act, 4 or more members
9 of the Commission have been appointed, those mem-
10 bers who have been appointed may meet and, if nec-
11 essary, select a temporary Chairperson and Vice
12 Chairperson, who may begin the operations of the
13 Commission, including the hiring of staff.

14 (5) QUORUM; VACANCIES.—After the initial
15 meeting of the Commission, the Commission shall
16 meet upon the call of the Chairperson or a majority
17 of its members. Six members of the Commission
18 shall constitute a quorum. Any vacancy on the Com-
19 mission shall not affect its powers, but shall be filled
20 in the same manner in which the original appoint-
21 ment was made.

22 (c) FUNCTIONS OF THE COMMISSION.—The func-
23 tions of the Commission are—

1 (1) to examine the causes of the current finan-
2 cial and economic crisis in the United States, includ-
3 ing the role, if any, of—

4 (A) fraud and abuse in the financial sector;

5 (B) Federal and State financial regulators,
6 including the extent to which they enforced, or
7 failed to enforce statutory, regulatory, or super-
8 visory requirements;

9 (C) the global imbalance of savings, inter-
10 national capital flows, and fiscal imbalances of
11 various governments;

12 (D) monetary policy and the availability
13 and terms of credit;

14 (E) accounting practices, including, mark-
15 to-market and fair value rules, and treatment of
16 off-balance sheet vehicles;

17 (F) tax treatment of financial products
18 and investments;

19 (G) capital requirements and regulations
20 on leverage and liquidity, including the capital
21 structures of regulated and non-regulated finan-
22 cial entities;

23 (H) credit rating agencies;

1 (I) lending practices and securitization, in-
2 cluding the originate-to-distribute model for ex-
3 tending credit and transferring risk;

4 (J) affiliations between insured depository
5 institutions and securities, insurance, and other
6 types of nonbanking companies;

7 (K) market participant expectations that
8 certain institutions were “too-big-to-fail”;

9 (L) corporate governance, including the
10 impact of company conversions from partner-
11 ships to corporations;

12 (M) compensation structures;

13 (N) changes in compensation for employees
14 of financial companies, as compared to com-
15 pensation for others with similar skill sets in
16 the labor market;

17 (O) Federal housing policy;

18 (P) derivatives and unregulated financial
19 products and practices;

20 (Q) short-selling;

21 (R) financial institution reliance on numer-
22 ical models, including risk models and credit
23 ratings;

24 (S) the legal and regulatory structure gov-
25 erning financial institutions;

1 (T) the legal and regulatory structure gov-
2 erning investor protection;

3 (U) financial institutions and government-
4 sponsored enterprises;

5 (V) the reliance on credit ratings by Fed-
6 eral financial regulators, and the use of credit
7 ratings in financial regulation; and

8 (W) the quality of due diligence under-
9 taken by financial institutions;

10 (2) to examine the causes of the collapse of
11 each major financial institution that failed (includ-
12 ing institutions that were acquired to prevent their
13 failure) or was likely to have failed if not for the re-
14 ceipt of exceptional Government assistance from the
15 Department of the Treasury during the period be-
16 ginning in August 2007 through April 2009;

17 (3) to submit a report under subsection (g);

18 (4) to refer to the Attorney General of the
19 United States and any appropriate State attorney
20 general any person that the Commission finds may
21 have violated the laws of the United States in rela-
22 tion to such crisis; and

23 (5) to review and build upon the record of the
24 Committee on Banking, Housing, and Urban Affairs
25 of the Senate, the Committee on Financial Services

1 of the House of Representatives, other Congressional
2 committees, the Government Accountability Office,
3 and other legislative panels with respect to the cur-
4 rent financial and economic crisis.

5 (d) POWERS OF THE COMMISSION.—

6 (1) HEARINGS AND EVIDENCE.—The Commis-
7 sion may, for purposes of carrying out this section—

8 (A) hold hearings, sit and act at times and
9 places, take testimony, receive evidence, and ad-
10 minister oaths; and

11 (B) require, by subpoena or otherwise, the
12 attendance and testimony of witnesses and the
13 production of books, records, correspondence,
14 memoranda, papers, and documents.

15 (2) SUBPOENAS.—

16 (A) SERVICE.—Subpoenas issued under
17 paragraph (1)(B) may be served by any person
18 designated by the Commission.

19 (B) ENFORCEMENT.—

20 (i) IN GENERAL.—In the case of con-
21 tumacy or failure to obey a subpoena
22 issued under paragraph (1)(B), the United
23 States district court for the judicial district
24 in which the subpoenaed person resides, is
25 served, or may be found, or where the sub-

1 poena is returnable, may issue an order re-
2 quiring such person to appear at any des-
3 ignated place to testify or to produce docu-
4 mentary or other evidence. Any failure to
5 obey the order of the court may be pun-
6 ished by the court as a contempt of that
7 court.

8 (ii) ADDITIONAL ENFORCEMENT.—

9 Sections 102 through 104 of the Revised
10 Statutes of the United States (2 U.S.C.
11 192 through 194) shall apply in the case
12 of any failure of any witness to comply
13 with any subpoena or to testify when sum-
14 moned under the authority of this section.

15 (3) CONTRACTING.—The Commission may
16 enter into contracts to enable the Commission to dis-
17 charge its duties under this section.

18 (4) INFORMATION FROM FEDERAL AGENCIES
19 AND OTHER ENTITIES.—

20 (A) IN GENERAL.—The Commission may
21 secure directly from any department, agency, or
22 instrumentality of the United States any infor-
23 mation related to any inquiry of the Commis-
24 sion conducted under this section, including in-
25 formation of a confidential nature (which the

1 Commission shall maintain in a secure man-
2 ner). Each such department, agency, or instru-
3 mentality shall furnish such information di-
4 rectly to the Commission upon request.

5 (B) OTHER ENTITIES.—It is the sense of
6 the Congress that the Commission should seek
7 testimony or information from principals and
8 other representatives of government agencies
9 and private entities that were significant par-
10 ticipants in the United States and global finan-
11 cial and housing markets during the time pe-
12 riod examined by the Commission.

13 (5) FUNDING.—The Secretary of the Treasury
14 shall provide, out of money previously appropriated,
15 \$5,000,000 to the Commission to carry out this sec-
16 tion, to remain available until expended or until ter-
17 mination of the Commission under subsection (h).

18 (6) DONATIONS OF GOODS AND SERVICES.—
19 The Commission may accept, use, and dispose of
20 gifts or donations of services or property.

21 (7) POSTAL SERVICES.—The Commission may
22 use the United States mails in the same manner and
23 under the same conditions as departments and agen-
24 cies of the United States.

1 (8) POWERS OF SUBCOMMITTEES, MEMBERS,
2 AND AGENTS.—Any subcommittee, member, or agent
3 of the Commission may, if authorized by the Com-
4 mission, take any action which the Commission is
5 authorized to take by this section.

6 (e) STAFF OF THE COMMISSION.—

7 (1) DIRECTOR.—The Commission shall have a
8 Director who shall be appointed by the Chairperson
9 and the Vice Chairperson, acting jointly.

10 (2) STAFF.—The Chairperson and the Vice
11 Chairperson may jointly appoint additional per-
12 sonnel, as may be necessary, to enable the Commis-
13 sion to carry out its functions.

14 (3) APPLICABILITY OF CERTAIN CIVIL SERVICE
15 LAWS.—The Director and staff of the Commission
16 may be appointed without regard to the provisions
17 of title 5, United States Code, governing appoint-
18 ments in the competitive service, and may be paid
19 without regard to the provisions of chapter 51 and
20 subchapter III of chapter 53 of such title relating to
21 classification and General Schedule pay rates, except
22 that no rate of pay fixed under this paragraph may
23 exceed the equivalent of that payable for a position
24 at level V of the Executive Schedule under section
25 5316 of title 5, United States Code. Any individual

1 appointed under paragraph (1) or (2) shall be treat-
2 ed as an employee for purposes of chapters 63, 81,
3 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

4 (4) DETAILEES.—Any Federal Government em-
5 ployee may be detailed to the Commission without
6 reimbursement from the Commission, and such
7 detailee shall retain the rights, status, and privileges
8 of his or her regular employment without interrup-
9 tion.

10 (5) CONSULTANT SERVICES.—The Commission
11 is authorized to procure the services of experts and
12 consultants in accordance with section 3109 of title
13 5, United States Code, but at rates not to exceed the
14 daily rate paid a person occupying a position at level
15 IV of the Executive Schedule under section 5315 of
16 title 5, United States Code.

17 (f) COMPENSATION AND TRAVEL EXPENSES.—

18 (1) COMPENSATION.—Each member of the
19 Commission may be compensated at a rate not to
20 exceed the daily equivalent of the annual rate of
21 basic pay in effect for a position at level IV of the
22 Executive Schedule under section 5315 of title 5,
23 United States Code, for each day during which that
24 member is engaged in the actual performance of the
25 duties of the Commission.

1 (2) TRAVEL EXPENSES.—While away from
2 their homes or regular places of business in the per-
3 formance of services for the Commission, members
4 of the Commission shall be allowed travel expenses,
5 including per diem in lieu of subsistence, in the
6 same manner as persons employed intermittently in
7 the Government service are allowed expenses under
8 section 5703(b) of title 5, United States Code.

9 (g) REPORT OF THE COMMISSION; APPEARANCE BE-
10 FORE AND CONSULTATIONS WITH CONGRESS.—

11 (1) REPORT.—On December 15, 2010, the
12 Commission shall submit to the President and to
13 Congress a report containing the findings and con-
14 clusions of the Commission on the causes of the cur-
15 rent financial and economic crisis in the United
16 States.

17 (2) INSTITUTION-SPECIFIC REPORTS AUTHOR-
18 IZED.—At the discretion of the chairperson of the
19 Commission, the report under paragraph (1) may in-
20 clude reports or specific findings on any financial in-
21 stitution examined by the Commission under sub-
22 section (c)(2).

23 (3) APPEARANCE BEFORE CONGRESS.—The
24 chairperson of the Commission shall, not later than
25 120 days after the date of submission of the final

1 reports under paragraph (1), appear before the
2 Committee on Banking, Housing, and Urban Affairs
3 of the Senate and the Committee on Financial Serv-
4 ices of the House of Representatives regarding such
5 reports and the findings of the Commission.

6 (4) CONSULTATIONS WITH CONGRESS.—The
7 Commission shall consult with the Committee on
8 Banking, Housing, and Urban Affairs of the Senate
9 and the Committee on Financial Services of the
10 House of Representatives, and may consult with
11 other Committees of Congress, for purposes of in-
12 forming Congress on the work of the Commission.

13 (h) TERMINATION OF COMMISSION.—

14 (1) IN GENERAL.—The Commission, and all the
15 authorities of this section, shall terminate 60 days
16 after the date on which the final report is submitted
17 under subsection (g).

18 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
19 MINATION.—The Commission may use the 60-day
20 period referred to in paragraph (1) for the purpose
21 of concluding its activities, including providing testi-
22 mony to committees of Congress concerning its re-
23 ports and disseminating the final report submitted
24 under subsection (g).

1 **TITLE II—SELECT COMMITTEE**
2 **ON INVESTIGATION OF THE**
3 **ECONOMIC CRISIS**

4 **SEC. 201. FINDINGS.**

5 The Senate finds the following:

6 (1) The United States is currently facing an
7 unprecedented economic crisis, with massive losses
8 of jobs in the United States and an alarming con-
9 traction of economic activity in the United States.

10 (2) The United States Government has pledged,
11 committed, or loaned more than \$9,000,000,000,000
12 as of February 2009 in an attempt to mitigate and
13 resolve the economic crisis and trillions of dollars
14 more may well be necessary before the crisis is over.

15 (3) The economic crisis reaches into, and has
16 impacted, almost every aspect of the United States
17 economy and significant parts of the international
18 economy.

19 (4) Any thorough and complete study and in-
20 vestigation of this complex and far-reaching eco-
21 nomic crisis will require sustained and singular focus
22 for many months.

23 (5) A study and investigation of this size and
24 scope implicates the jurisdiction of several Standing
25 Committees of the Senate and, if it is to be done

1 correctly and timely, will require a degree of undi-
2 vided attention and resources beyond the capacity of
3 the Standing Committees of the Senate, which are
4 already over-burdened.

5 (6) Adding such a significant study and inves-
6 tigation to the duties of the existing Standing Com-
7 mittees of the Senate would make it difficult for
8 such committees to get their regular required work
9 accomplished, particularly when so much attention
10 and so many resources are appropriately devoted to
11 responding to the ongoing economic crisis.

12 (7) Dozens of important investigations have
13 been conducted with the creation of a select com-
14 mittee of the Senate for a specific purpose and a set
15 time.

16 (8) The American public has a right to get
17 straight answers on how this economic crisis devel-
18 oped and what steps should be taken to make sure
19 that nothing like it happens again.

20 **SEC. 202. SELECT COMMITTEE ON INVESTIGATION OF THE**
21 **ECONOMIC CRISIS.**

22 There is established a select committee of the Senate
23 to be known as the Select Committee on Investigation of
24 the Economic Crisis (hereafter in this title referred to as
25 the “Select Committee”).

1 **SEC. 203. PURPOSE AND DUTIES.**

2 (a) PURPOSE.—The purpose of the Select Committee
3 is to study and investigate the facts and circumstances
4 giving rise to the current economic crisis facing the United
5 States and to recommend actions to be taken to prevent
6 a future recurrence of such a crisis.

7 (b) DUTIES.—The Select Committee is authorized
8 and directed to do everything necessary or appropriate to
9 conduct the study and investigation specified in subsection
10 (a). Without restricting in any way the authority conferred
11 on the Select Committee by the preceding sentence, the
12 Senate further expressly authorizes and directs the Select
13 Committee to examine the facts and circumstances giving
14 rise to the current economic crisis facing the United
15 States, and report on such examination, regarding the fol-
16 lowing:

17 (1) The causes of the current economic crisis.

18 (2) Lessons learned from the current economic
19 crisis.

20 (3) Actions to prevent a recurrence of an eco-
21 nomic crisis such as the current economic crisis.

22 **SEC. 204. COMPOSITION OF SELECT COMMITTEE.**

23 (a) MEMBERSHIP.—

24 (1) IN GENERAL.—The Select Committee shall
25 consist of 7 members of the Senate of whom—

1 (A) 4 members shall be appointed by the
2 majority leader of the Senate; and

3 (B) 3 members shall be appointed by the
4 minority leader of the Senate.

5 (2) DATE.—The appointments of the members
6 of the Select Committee shall be made not later than
7 30 days after the date of enactment of this title.

8 (b) VACANCIES.—Any vacancy in the Select Com-
9 mittee shall not affect its powers, but shall be filled in
10 the same manner as the original appointment.

11 (c) SERVICE.—Service of a Senator as a member,
12 Chair, or Vice Chair of the Select Committee shall not
13 be taken into account for the purposes of paragraph (4)
14 of rule XXV of the Standing Rules of the Senate.

15 (d) CHAIR AND VICE CHAIR.—The Chair of the Se-
16 lect Committee shall be designated by the majority leader
17 of the Senate, and the Vice Chair of the Select Committee
18 shall be designated by the minority leader of the Senate.

19 (e) QUORUM.—

20 (1) REPORTS AND RECOMMENDATIONS.—A ma-
21 jority of the members of the Select Committee shall
22 constitute a quorum for the purpose of reporting a
23 matter or recommendation to the Senate.

1 (2) TESTIMONY.—One member of the Select
2 Committee shall constitute a quorum for the purpose
3 of taking testimony.

4 (3) OTHER BUSINESS.—A majority of the mem-
5 bers of the Select Committee, or $\frac{1}{3}$ of the members
6 of the Select Committee if at least one member of
7 the minority party is present, shall constitute a
8 quorum for the purpose of conducting any other
9 business of the Select Committee.

10 **SEC. 205. RULES AND PROCEDURES.**

11 (a) GOVERNANCE UNDER STANDING RULES OF SEN-
12 ATE.—Except as otherwise specifically provided in this
13 title, the investigation, study, and hearings conducted by
14 the Select Committee shall be governed by the Standing
15 Rules of the Senate.

16 (b) ADDITIONAL RULES AND PROCEDURES.—In ad-
17 dition to the provisions of section 208(h), the Select Com-
18 mittee may adopt additional rules or procedures if the
19 Chair and the Vice Chair of the Select Committee agree,
20 or if the Select Committee by majority vote so decides,
21 that such additional rules or procedures are necessary or
22 advisable to enable the Select Committee to conduct the
23 investigation, study, and hearings authorized by this title.
24 Any such additional rules and procedures—

1 (1) shall not be inconsistent with this title or
2 the Standing Rules of the Senate; and

3 (2) shall become effective upon publication in
4 the Congressional Record.

5 **SEC. 206. AUTHORITY OF SELECT COMMITTEE.**

6 (a) IN GENERAL.—The Select Committee may exer-
7 cise all of the powers and responsibilities of a committee
8 under rule XXVI of the Standing Rules of the Senate.

9 (b) POWERS.—The Select Committee or, at its direc-
10 tion, any subcommittee or member of the Select Com-
11 mittee, may, for the purpose of carrying out this title—

12 (1) hold hearings;

13 (2) administer oaths;

14 (3) sit and act at any time or place during the
15 sessions, recess, and adjournment periods of the
16 Senate;

17 (4) authorize and require, by issuance of sub-
18 poena or otherwise, the attendance and testimony of
19 witnesses and the preservation and production of
20 books, records, correspondence, memoranda, papers,
21 documents, tapes, and any other materials in what-
22 ever form the Select Committee considers advisable;

23 (5) take testimony, orally, by sworn statement,
24 by sworn written interrogatory, or by deposition, and
25 authorize staff members to do the same; and

1 (6) issue letters rogatory and requests, through
2 appropriate channels, for any other means of inter-
3 national assistance.

4 (c) AUTHORIZATION, ISSUANCE, AND ENFORCEMENT
5 OF SUBPOENAS.—

6 (1) AUTHORIZATION AND ISSUANCE.—Sub-
7 poenas authorized and issued under this section—

8 (A) may be done only with the joint con-
9 currence of the Chair and the Vice Chair of the
10 Select Committee;

11 (B) shall bear the signature of the Chair
12 or the designee of the Chair; and

13 (C) shall be served by any person or class
14 of persons designated by the Chair for that pur-
15 pose anywhere within or without the borders of
16 the United States to the full extent provided by
17 law.

18 (2) ENFORCEMENT.—The Select Committee
19 may make to the Senate by report or resolution any
20 recommendation, including a recommendation for
21 criminal or civil enforcement, that the Select Com-
22 mittee considers appropriate with respect to—

23 (A) the failure or refusal of any person to
24 appear at a hearing or deposition or to produce
25 or preserve documents or materials described in

1 subsection (b)(4) in obedience to a subpoena or
2 order of the Select Committee;

3 (B) the failure or refusal of any person to
4 answer questions truthfully and completely dur-
5 ing the person's appearance as a witness at a
6 hearing or deposition of the Select Committee;
7 or

8 (C) the failure or refusal of any person to
9 comply with any subpoena or order issued
10 under the authority of subsection (b).

11 (d) AVOIDANCE OF DUPLICATION.—

12 (1) IN GENERAL.—To expedite the study and
13 investigation, avoid duplication, and promote effi-
14 ciency under this title, the Select Committee shall
15 seek to—

16 (A) confer with other investigations into
17 the matters set forth in section 203(a); and

18 (B) access all information and materials
19 acquired or developed in such other investiga-
20 tions.

21 (2) ACCESS TO INFORMATION AND MATE-
22 RIALS.—The Select Committee shall have, to the
23 fullest extent permitted by law, access to any such
24 information or materials obtained by any other gov-

1 ernmental department, agency, or body investigating
2 the matters set forth in section 203(a).

3 **SEC. 207. REPORTS.**

4 (a) INITIAL REPORT.—The Select Committee shall
5 submit to the Senate a report on the study and investiga-
6 tion conducted pursuant to section 203 not later than one
7 year after the appointment of all of the members of the
8 Select Committee.

9 (b) UPDATED REPORT.—The Select Committee shall
10 submit an updated report on such investigation not later
11 than 180 days after the submittal of the report under sub-
12 section (a).

13 (c) FINAL REPORT.—The Select Committee shall
14 submit a final report on such investigation not later than
15 two years after the appointment of all of the members of
16 the Select Committee.

17 (d) ADDITIONAL REPORTS.—The Select Committee
18 may submit any additional report or reports that the Se-
19 lect Committee considers appropriate.

20 (e) FINDINGS AND RECOMMENDATIONS.—The re-
21 ports under this section shall include findings and rec-
22 ommendations of the Select Committee regarding the mat-
23 ters considered under section 203.

24 (f) DISPOSITION OF REPORTS.—All reports made by
25 the Select Committee shall be submitted to the Secretary

1 of the Senate. All reports made by the Select Committee
2 shall be referred to the committee or committees that have
3 jurisdiction over the subject matter of the report.

4 **SEC. 208. ADMINISTRATIVE PROVISIONS.**

5 (a) STAFF.—

6 (1) IN GENERAL.—The Select Committee may
7 employ in accordance with paragraph (2) a staff
8 composed of such clerical, investigatory, legal, tech-
9 nical, and other personnel as the Select Committee,
10 or the Chair and the Vice Chair of the Select Com-
11 mittee considers necessary or appropriate.

12 (2) APPOINTMENT OF STAFF.—The staff of the
13 Select Committee shall consist of such personnel as
14 the Chair and the Vice Chair shall jointly appoint.
15 Such staff may be removed jointly by the Chair and
16 the Vice Chair, and shall work under the joint gen-
17 eral supervision and direction of the Chair and the
18 Vice Chair.

19 (b) COMPENSATION.—The Chair and the Vice Chair
20 of the Select Committee shall jointly fix the compensation
21 of all personnel of the staff of the Select Committee.

22 (c) REIMBURSEMENT OF EXPENSES.—The Select
23 Committee may reimburse the members of its staff for
24 travel, subsistence, and other necessary expenses incurred

1 by such staff members in the performance of their func-
2 tions for the Select Committee.

3 (d) SERVICES OF SENATE STAFF.—The Select Com-
4 mittee may use, with the prior consent of the chair of any
5 other committee of the Senate or the chair of any sub-
6 committee of any committee of the Senate, the facilities
7 of any other committee of the Senate, or the services of
8 any members of the staff of such committee or sub-
9 committee, whenever the Select Committee or the Chair
10 of the Select Committee considers that such action is nec-
11 essary or appropriate to enable the Select Committee to
12 carry out its responsibilities, duties, or functions under
13 this title.

14 (e) DETAIL OF EMPLOYEES.—The Select Committee
15 may use on a reimbursable basis, with the prior consent
16 of the head of the department or agency of Government
17 concerned and the approval of the Committee on Rules
18 and Administration of the Senate, the services of per-
19 sonnel of such department or agency.

20 (f) TEMPORARY AND INTERMITTENT SERVICES.—
21 The Select Committee may procure the temporary or
22 intermittent services of individual consultants, or organi-
23 zations thereof.

24 (g) PAYMENT OF EXPENSES.—There shall be paid
25 out of the applicable accounts of the Senate such sums

1 as may be necessary for the expenses of the Select Com-
2 mittee. Such payments shall be made on vouchers signed
3 by the Chair of the Select Committee and approved in the
4 manner directed by the Committee on Rules and Adminis-
5 tration of the Senate. Amounts made available under this
6 subsection shall be expended in accordance with regula-
7 tions prescribed by the Committee on Rules and Adminis-
8 tration of the Senate.

9 (h) CONFLICTS OF INTEREST.—The Select Com-
10 mittee shall issue rules to prohibit or minimize any con-
11 flicts of interest involving its members, staff, detailed per-
12 sonnel, consultants, and any others providing assistance
13 to the Select Committee. Such rules shall not be incon-
14 sistent with the Code of Official Conduct of the Senate
15 or applicable Federal law.

16 **SEC. 209. EFFECTIVE DATE; TERMINATION.**

17 (a) EFFECTIVE DATE.—This title shall take effect on
18 the date of enactment of this title.

1 (b) TERMINATION.—The Select Committee shall ter-
2 minate three months after the submittal of the report re-
3 quired by section 207(c).

Passed the Senate April 28, 2009.

Attest:

Secretary.

111TH CONGRESS
1ST SESSION

S. 386

AN ACT

To improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.