

Calendar No. 28111TH CONGRESS
1ST SESSION**S. 386**

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 2009

Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. KAUFMAN, Ms. KLOBUCHAR, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 5, 2009

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

20 (b) MORTGAGE LENDING BUSINESS DEFINED.—

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

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

25 “In this title, the term ‘mortgage lending business’
26 means an organization which finances or refinances any

1 debt secured by an interest in real estate, including private
 2 mortgage companies and any subsidiaries of such organi-
 3 zations, and whose activities affect interstate or foreign
 4 commerce.”.

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

“27. Mortgage lending business defined.”.

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

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

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

21 (d) MAJOR FRAUD AGAINST THE GOVERNMENT
 22 AMENDED TO INCLUDE ECONOMIC RELIEF AND TROU-
 23 BLED ASSET RELIEF PROGRAM FUNDS.—Section 1031(a)
 24 of title 18, United States Code, is amended by—

1 (1) inserting after “or promises, in” the fol-
 2 lowing: “any grant, contract, subcontract, subsidy,
 3 loan, guarantee, insurance or other form of Federal
 4 assistance, including through the Troubled Assets
 5 Relief Program, an economic stimulus, recovery or
 6 rescue plan provided by the Government, or the Gov-
 7 ernment’s purchase of any preferred stock in a com-
 8 pany, or”; and

9 (2) striking “the contract, subcontract” and in-
 10 serting “such grant, contract, subcontract, subsidy,
 11 loan, guarantee, insurance or other form of Federal
 12 assistance,”.

13 (e) SECURITIES FRAUD AMENDED TO INCLUDE
 14 FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-
 15 ITIES.—

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

18 (A) in the caption, by inserting “and com-
 19 modities” after “**Securities**”;

20 (B) by inserting “any commodity for fu-
 21 ture delivery, or any option on a commodity or
 22 a commodity for future delivery, or” after “any
 23 person in connection with” ; and

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

1 a commodity for future delivery, or” after “in
2 connection with the purchase or sale of”.

3 (2) CHAPTER ANALYSIS.—The item for section
4 1348 in the chapter analysis for chapter 63 of title
5 18, United States Code, is amended by inserting
6 “and commodities” after “Securities”.

7 (f) MONEY LAUNDERING AMENDED TO DEFINE
8 PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.—Sec-
9 tion 1956(e) of title 18, United States Code, is amended—

10 (1) in paragraph (8), by striking the period and
11 inserting “; and”; and

12 (2) by inserting at the end the following:

13 “(9) the term ‘proceeds’ means any property
14 derived from or obtained or retained, directly or in-
15 directly, through the commission of a specified un-
16 lawful activity, including the gross receipts of such
17 specified unlawful activity.”.

18 (g) MAKING THE INTERNATIONAL MONEY LAUN-
19 DERING STATUTE APPLY TO TAX EVASION.—Section
20 1956(a)(2)(A) of title 18, United States Code, is amended
21 by—

22 (1) inserting “(i)” before “with the intent to
23 promote”; and

24 (2) adding at the end the following:

1 “(ii) with the intent to engage in con-
 2 duct constituting a violation of section
 3 7201 or 7206 of the Internal Revenue
 4 Code of 1986; or”.

5 **SEC. 3. ADDITIONAL FUNDING FOR INVESTIGATORS AND**
 6 **PROSECUTORS FOR MORTGAGE FRAUD, SE-**
 7 **CURITIES FRAUD, AND OTHER CASES IN-**
 8 **VOLVING FEDERAL ECONOMIC ASSISTANCE.**

9 (a) IN GENERAL.—

10 (1) AUTHORIZATION.—There is authorized to
 11 be appropriated to the Attorney General, to remain
 12 available until expended, \$155,000,000 for each of
 13 the fiscal years 2010 and 2011, for the purposes of
 14 investigations, prosecutions, and civil proceedings in-
 15 volving federal assistance programs and financial in-
 16 stitutions, including financial institutions to which
 17 this Act and amendments made by this Act apply.

18 (2) ALLOCATIONS.—With respect to fiscal years
 19 2010 and 2011, the amount authorized to be appro-
 20 priated under paragraph (1) shall be allocated as
 21 follows:

22 (A) Federal Bureau of Investigation:
 23 \$65,000,000.

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

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

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

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

7 (b) ~~ADDITIONAL APPROPRIATIONS FOR THE POSTAL~~
8 ~~INSPECTION SERVICE.~~—There is authorized to be appro-
9 priated to the Postal Inspection Service of the United
10 States Postal Service, \$30,000,000 for each of the fiscal
11 years 2010 and 2011 for investigations involving federal
12 assistance programs and financial institutions, including
13 financial institutions to which this Act and amendments
14 made by this Act apply.

15 (c) ~~ADDITIONAL APPROPRIATIONS FOR THE INSPEC-~~
16 ~~TOR GENERAL FOR THE HOUSING AND URBAN DEVELOP-~~
17 ~~MENT DEPARTMENT.~~—There is authorized to be appro-
18 priated to the Inspector General of the Department of
19 Housing and Urban Development, \$30,000,000 for each
20 of the fiscal years 2010 and 2011 for investigations involv-
21 ing Federal assistance programs and financial institutions,
22 including financial institutions to which this Act and
23 amendments made by this Act apply.

24 (d) ~~USE OF FUNDS.~~—The funds authorized to be ap-
25 propriated under subsections (a), (b), and (c), shall be lim-

1 ited to cover the costs of each listed agency or department
2 for investigating possible criminal, civil, or administrative
3 violations and for prosecuting criminal, civil, or adminis-
4 trative proceedings involving financial crimes and crimes
5 against Federal assistance programs, including mortgage
6 fraud, securities fraud, financial institution fraud, and
7 other frauds related to Federal assistance and relief pro-
8 grams

9 (e) REPORT TO CONGRESS.—Following the final ex-
10 penditure of all funds appropriated under this section that
11 were authorized by subsections (a), (b), and (c), the Attor-
12 ney General, in consultation with the United States Postal
13 Inspection Service and the Inspector General for the De-
14 partment of Housing and Urban Development, shall sub-
15 mit a joint report to Congress identifying—

16 (1) the amounts expended under subsections
17 (a), (b), and (c) and a certification of compliance
18 with the requirements listed in subsection (d); and

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

1 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO**
 2 **REFLECT THE ORIGINAL INTENT OF THE**
 3 **LAW.**

4 (a) CLARIFICATION OF THE FALSE CLAIMS ACT.—

5 Section 3729 of title 31, United States Code, is amend-
 6 ed—

7 (1) by striking subsection (a) and inserting the
 8 following:

9 “(a) LIABILITY FOR CERTAIN ACTS.—

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

12 “(A) knowingly presents, or causes to be
 13 presented, a false or fraudulent claim for pay-
 14 ment or approval;

15 “(B) knowingly makes, uses, or causes to
 16 be made or used, a false record or statement to
 17 get a false or fraudulent claim paid or ap-
 18 proved;

19 “(C) conspires to commit a violation of
 20 subparagraph (A), (B), (D), (E), (F), or (G) or
 21 otherwise to get a false or fraudulent claim paid
 22 or approved;

23 “(D) has possession, custody, or control of
 24 property or money used, or to be used, by the
 25 Government and knowingly delivers, or causes

1 to be delivered, less than all of that money or
2 property;

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

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

14 “(G) knowingly makes, uses, or causes to
15 be made or used, a false record or statement to
16 conceal, avoid, or decrease an obligation to pay
17 or transmit money or property to the Govern-
18 ment, or knowingly conceals, avoids, or de-
19 creases an obligation to pay or transmit money
20 or property to the Government,

21 is liable to the United States Government for a civil
22 penalty of not less than \$5,000 and not more than
23 \$10,000, as adjusted by the Federal Civil Penalties
24 Inflation Adjustment Act of 1990 (28 U.S.C. 2461
25 note; Public Law 104-410), plus 3 times the

1 amount of damages which the Government sustains
2 because of the act of that person.

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

5 “(A) the person committing the violation
6 of this subsection furnished officials of the
7 United States responsible for investigating false
8 claims violations with all information known to
9 such person about the violation within 30 days
10 after the date on which the defendant first ob-
11 tained the information;

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

14 “(C) at the time such person furnished the
15 United States with the information about the
16 violation, no criminal prosecution, civil action,
17 or administrative action had commenced under
18 this title with respect to such violation, and the
19 person did not have actual knowledge of the ex-
20 istence of an investigation into such violation,
21 the court may assess not less than 2 times the
22 amount of damages which the Government sustains
23 because of the act of that person.

24 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
25 lating this subsection shall also be liable to the

1 United States Government for the costs of a civil ac-
2 tion brought to recover any such penalty or dam-
3 ages.”;

4 (2) by striking subsections (b) and (c) and in-
5 serting the following:

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

7 “(1) the terms ‘knowing’ and ‘knowingly’ mean
8 that a person, with respect to information—

9 “(A) has actual knowledge of the informa-
10 tion;

11 “(B) acts in deliberate ignorance of the
12 truth or falsity of the information; or

13 “(C) acts in reckless disregard of the truth
14 or falsity of the information, and no proof of
15 specific intent to defraud is required;

16 “(2) the term ‘claim’—

17 “(A) means any request or demand, wheth-
18 er under a contract or otherwise, for money or
19 property and whether or not the United States
20 has title to the money or property, that—

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

23 “(ii) is made to a contractor, grantee,
24 or other recipient if the United States Gov-
25 ernment—

1 “(I) provides or has provided any
2 portion of the money or property re-
3 quested or demanded; or

4 “(II) will reimburse such con-
5 tractor, grantee, or other recipient for
6 any portion of the money or property
7 which is requested or demanded; and

8 “(B) does not include requests or demands
9 for money or property that the Government has
10 paid to an individual as compensation for Fed-
11 eral employment or as an income subsidy with
12 no restrictions on that individual’s use of the
13 money or property; and

14 “(3) the term ‘obligation’ means a fixed duty,
15 or a contingent duty arising from an express or im-
16 plied contractual, quasi-contractual, grantor-grantee,
17 licensor-licensee, fee-based, or similar relationship,
18 and the retention of any overpayment.”;

19 (3) by redesignating subsections (d) and (e) as
20 subsections (e) and (d), respectively; and

21 (4) in subsection (e), as redesignated, by strik-
22 ing “subparagraphs (A) through (C) of subsection
23 (a)” and inserting “subsection (a)(2)”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Fraud Enforcement and*
 3 *Recovery Act of 2009” or “FERA”.*

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

7 *(a) DEFINITION OF FINANCIAL INSTITUTION AMENDED*
 8 *TO INCLUDE MORTGAGE LENDING BUSINESS.—Section 20*
 9 *of title 18, United States Code, is amended—*

10 *(1) in paragraph (8), by striking “or” after the*
 11 *semicolon;*

12 *(2) in paragraph (9), by striking the period and*
 13 *inserting “; or”; and*

14 *(3) by inserting at the end the following:*

15 *“(10) a mortgage lending business (as defined in*
 16 *section 27 of this title) or any person or entity that*
 17 *makes in whole or in part a federally related mort-*
 18 *gage loan as defined in 12 U.S.C. 2602(1).”.*

19 *(b) MORTGAGE LENDING BUSINESS DEFINED.—*

20 *(1) IN GENERAL.—Chapter 1 of title 18, United*
 21 *States Code, is amended by inserting after section 26*
 22 *the following:*

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

24 *“In this title, the term ‘mortgage lending business’*
 25 *means an organization which finances or refinances any*
 26 *debt secured by an interest in real estate, including private*

1 *mortgage companies and any subsidiaries of such organiza-*
 2 *tions, and whose activities affect interstate or foreign com-*
 3 *merce.”.*

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

“27. Mortgage lending business defined.”.

7 (c) *FALSE STATEMENTS IN MORTGAGE APPLICATIONS*
 8 *AMENDED TO INCLUDE FALSE STATEMENTS BY MORTGAGE*
 9 *BROKERS AND AGENTS OF MORTGAGE LENDING BUSI-*
 10 *NESSES.—Section 1014 of title 18, United States Code, is*
 11 *amended by—*

12 (1) *striking “or” after “the International Bank-*
 13 *ing Act of 1978),”;* and

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

20 (d) *MAJOR FRAUD AGAINST THE GOVERNMENT*
 21 *AMENDED TO INCLUDE ECONOMIC RELIEF AND TROUBLED*
 22 *ASSET RELIEF PROGRAM FUNDS.—Section 1031(a) of title*
 23 *18, United States Code, is amended by—*

24 (1) *inserting after “or promises, in” the fol-*
 25 *lowing: “any grant, contract, subcontract, subsidy,*

1 *loan, guarantee, insurance or other form of Federal*
 2 *assistance, including through the Troubled Assets Re-*
 3 *lief Program, an economic stimulus, recovery or res-*
 4 *cue plan provided by the Government, or the Govern-*
 5 *ment's purchase of any preferred stock in a company,*
 6 *or”;* and

7 (2) *striking “the contract, subcontract” and in-*
 8 *serting “such grant, contract, subcontract, subsidy,*
 9 *loan, guarantee, insurance or other form of Federal*
 10 *assistance,”.*

11 (e) *SECURITIES FRAUD AMENDED TO INCLUDE*
 12 *FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-*
 13 *ITIES.—*

14 (1) *IN GENERAL.—Section 1348 of title 18,*
 15 *United States Code, is amended—*

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

18 (B) *by inserting “any commodity for future*
 19 *delivery, or any option on a commodity for fu-*
 20 *ture delivery, or” after “any person in connec-*
 21 *tion with”;* and

22 (C) *by inserting “any commodity for future*
 23 *delivery, or any option on a commodity for fu-*
 24 *ture delivery, or” after “in connection with the*
 25 *purchase or sale of”.*

1 (2) *CHAPTER ANALYSIS.*—*The item for section*
 2 *1348 in the chapter analysis for chapter 63 of title*
 3 *18, United States Code, is amended by inserting “and*
 4 *commodities” after “Securities”.*

5 (f) *MONEY LAUNDERING AMENDED TO DEFINE PRO-*
 6 *CEEDS OF SPECIFIED UNLAWFUL ACTIVITY.*—

7 (1) *MONEY LAUNDERING.*—*Section 1956(c) of*
 8 *title 18, United States Code, is amended—*

9 (A) *in paragraph (8), by striking the period*
 10 *and inserting “; and”; and*

11 (B) *by inserting at the end the following:*

12 “*(9) the term ‘proceeds’ means any property de-*
 13 *rived from or obtained or retained, directly or indi-*
 14 *rectly, through some form of unlawful activity, in-*
 15 *cluding the gross receipts of such activity.”.*

16 (2) *MONETARY TRANSACTIONS.*—*Section 1957(f)*
 17 *of title 18, United States Code, is amended by strik-*
 18 *ing paragraph (3) and inserting the following:*

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

22 (g) *MAKING THE INTERNATIONAL MONEY LAUN-*
 23 *DERING STATUTE APPLY TO TAX EVASION.*—*Section*
 24 *1956(a)(2)(A) of title 18, United States Code, is amended*
 25 *by—*

1 (1) inserting “(i)” before “with the intent to pro-
2 mote”; and

3 (2) adding at the end the following:

4 “(ii) with the intent to engage in con-
5 duct constituting a violation of section 7201
6 or 7206 of the Internal Revenue Code of
7 1986; or”.

8 **SEC. 3. ADDITIONAL FUNDING FOR INVESTIGATORS AND**
9 **PROSECUTORS FOR MORTGAGE FRAUD, SE-**
10 **CURITIES FRAUD, AND OTHER CASES INVOLV-**
11 **ING FEDERAL ECONOMIC ASSISTANCE.**

12 (a) *IN GENERAL.*—

13 (1) *AUTHORIZATION.*—*There is authorized to be*
14 *appropriated to the Attorney General, to remain*
15 *available until expended, \$165,000,000 for each of the*
16 *fiscal years 2010 and 2011, for the purposes of inves-*
17 *tigations, prosecutions, and civil proceedings involv-*
18 *ing Federal assistance programs and financial insti-*
19 *tutions, including financial institutions to which this*
20 *Act and amendments made by this Act apply.*

21 (2) *ALLOCATIONS.*—*With respect to fiscal years*
22 *2010 and 2011, the amount authorized to be appro-*
23 *priated under paragraph (1) shall be allocated as fol-*
24 *lows:*

1 (A) *Federal Bureau of Investigation:*
2 \$75,000,000 for fiscal year 2010 and \$65,000,000
3 for fiscal year 2011.

4 (B) *The offices of the United States Attor-*
5 *neys: \$50,000,000.*

6 (C) *The criminal division of the Depart-*
7 *ment of Justice: \$20,000,000.*

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

10 (E) *The tax division of the Department of*
11 *Justice: \$5,000,000.*

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

20 (c) *ADDITIONAL APPROPRIATIONS FOR THE INSPEC-*
21 *TOR GENERAL FOR THE DEPARTMENT OF HOUSING AND*
22 *URBAN DEVELOPMENT.—There is authorized to be appro-*
23 *priated to the Inspector General of the Department of Hous-*
24 *ing and Urban Development, \$30,000,000 for each of the*
25 *fiscal years 2010 and 2011 for investigations involving Fed-*

1 eral assistance programs and financial institutions, includ-
2 ing financial institutions to which this Act and amend-
3 ments made by this Act apply.

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

12 (e) *USE OF FUNDS.*—The funds authorized to be ap-
13 propriated under subsections (a), (b), (c), and (d) shall be
14 limited to cover the costs of each listed agency or depart-
15 ment for investigating possible criminal, civil, or adminis-
16 trative violations and for prosecuting criminal, civil, or ad-
17 ministrative proceedings involving financial crimes and
18 crimes against Federal assistance programs, including
19 mortgage fraud, securities fraud, financial institution
20 fraud, and other frauds related to Federal assistance and
21 relief programs

22 (f) *REPORT TO CONGRESS.*—Following the final ex-
23 penditure of all funds appropriated under this section that
24 were authorized by subsections (a), (b), (c), and (d) the At-
25 torney General, in consultation with the United States

1 *Postal Inspection Service, the Inspector General for the De-*
 2 *partment of Housing and Urban Development, and the Sec-*
 3 *retary of Homeland Security, shall submit a joint report*
 4 *to Congress identifying—*

5 (1) *the amounts expended under subsections (a),*
 6 *(b), (c), and (d) and a certification of compliance*
 7 *with the requirements listed in subsection (e); and*

8 (2) *the amounts recovered as a result of criminal*
 9 *or civil restitution, fines, penalties, and other mone-*
 10 *tary recoveries resulting from criminal, civil, or ad-*
 11 *ministrative proceedings and settlements undertaken*
 12 *with funds authorized by this Act.*

13 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO RE-**
 14 **FLECT THE ORIGINAL INTENT OF THE LAW.**

15 (a) *CLARIFICATION OF THE FALSE CLAIMS ACT.—Sec-*
 16 *tion 3729 of title 31, United States Code, is amended—*

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

19 “(a) *LIABILITY FOR CERTAIN ACTS.—*

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

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

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

4 “(C) conspires to commit a violation of sub-
5 paragraph (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 to
9 be delivered, less than all of that money or prop-
10 erty;

11 “(E) is authorized to make or deliver a doc-
12 ument certifying receipt of property used, or to
13 be used, by the Government and, intending to de-
14 fraud the Government, makes or delivers the re-
15 ceipt without completely knowing that the infor-
16 mation on the receipt is true;

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

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

1 *conceals or knowingly and improperly avoids or*
2 *decreases an obligation to pay or transmit*
3 *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 amount*
9 *of damages which the Government sustains because of*
10 *the act of that person.*

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

13 “(A) *the person committing the violation of*
14 *this subsection furnished officials of the United*
15 *States responsible for investigating false claims*
16 *violations with all information known to such*
17 *person about the violation within 30 days after*
18 *the date on which the defendant first obtained*
19 *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 amount*
 5 *of damages which the Government sustains because of*
 6 *the act of that person.*

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

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

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

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

15 “(A) *mean that a person, with respect to in-*
 16 *formation—*

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

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

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

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

25 “(2) *the term ‘claim’—*

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

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

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

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

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

20 “(B) does not include requests or demands
21 for money or property that the Government has
22 paid to an individual as compensation for Fed-
23 eral employment or as an income subsidy with
24 no restrictions on that individual’s use of the
25 money or property;

1 “(3) the term ‘obligation’ means a fixed duty, or
2 a contingent duty arising from an express or implied
3 contractual, quasi-contractual, grantor-grantee, licen-
4 sor-licensee, statutory, fee-based, or similar relation-
5 ship, and the retention of any overpayment; and

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

9 (3) by redesignating subsections (d) and (e) as
10 subsections (c) and (d), respectively; and

11 (4) in subsection (c), as redesignated, by striking
12 “subparagraphs (A) through (C) of subsection (a)”
13 and inserting “subsection (a)(2)”.

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

Calendar No. 28

111TH CONGRESS
1ST Session
S. 386

A BILL

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.

MARCH 5, 2009

Reported with an amendment