

117TH CONGRESS
1ST SESSION

S. 2429

To amend chapter 38 of title 31, United States Code, relating to civil remedies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

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

A BILL

To amend chapter 38 of title 31, United States Code, relating to civil remedies, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Administrative False
5 Claims Act of 2021”.

6 **SEC. 2. ADMINISTRATIVE FALSE CLAIMS.**

7 (a) CHANGE IN SHORT TITLE.—

8 (1) IN GENERAL.—Subtitle B of title VI of the
9 Omnibus Budget Reconciliation Act of 1986 (Public
10 Law 99–509; 100 Stat. 1934) is amended—

1 (A) in the subtitle heading, by striking
 2 **“Program Fraud Civil Remedies”** and
 3 inserting **“Administrative False**
 4 **Claims”**; and

5 (B) in section 6101 (31 U.S.C. 3801 note),
 6 by striking “Program Fraud Civil Remedies Act
 7 of 1986” and inserting “Administrative False
 8 Claims Act”.

9 (2) REFERENCES.—Any reference to the Pro-
 10 gram Fraud Civil Remedies Act of 1986 in any pro-
 11 vision of law, regulation, map, document, record, or
 12 other paper of the United States shall be deemed a
 13 reference to the Administrative False Claims Act.

14 (b) REVERSE FALSE CLAIMS.—Chapter 38 of title
 15 31, United States Code, is amended—

16 (1) in section 3801(a)(3), by amending sub-
 17 paragraph (C) to read as follows:

18 “(C) made to an authority which has the
 19 effect of concealing or improperly avoiding or
 20 decreasing an obligation to pay or transmit
 21 property, services, or money to the authority.”;

22 and

23 (2) in section 3802(a)(3)—

1 (A) by striking “An assessment” and in-
 2 serting “(A) Except as provided in subpara-
 3 graph (B), an assessment”; and

4 (B) by adding at the end the following:

5 “(B) In the case of a claim described in section
 6 3801(a)(3)(C), an assessment shall not be made
 7 under the second sentence of paragraph (1) in an
 8 amount that is more than double the value of the
 9 property, services, or money that was wrongfully
 10 withheld from the authority.”.

11 (c) INCREASING DOLLAR AMOUNT OF CLAIMS.—Sec-
 12 tion 3803(c) of title 31, United States Code, is amended—

13 (1) in paragraph (1) by striking “\$150,000”
 14 each place that term appears and inserting
 15 “\$1,000,000”; and

16 (2) by adding at the end the following:

17 “(3) ADJUSTMENT FOR INFLATION.—The max-
 18 imum amount in paragraph (1) shall be adjusted for
 19 inflation in the same manner and to the same extent
 20 as civil monetary penalties under the Federal Civil
 21 Penalties Inflation Adjustment Act (28 U.S.C. 2461
 22 note).”.

23 (d) RECOVERY OF COSTS.—Section 3806(g)(1) of
 24 title 31, United States Code, is amended to read as fol-
 25 lows:

1 “(1)(A) Except as provided in paragraph (2)—

2 “(i) any amount collected under this chapter
3 shall be credited first to reimburse the authority or
4 other Federal entity that expended costs in support
5 of the investigation or prosecution of the action, in-
6 cluding any court or hearing costs; and

7 “(ii) amounts reimbursed under clause (i)
8 shall—

9 “(I) be deposited in—

10 “(aa) the appropriations account of
11 the authority or other Federal entity from
12 which the costs described in subparagraph
13 (A) were obligated;

14 “(bb) a similar appropriations account
15 of the authority or other Federal entity; or

16 “(cc) if the authority or other Federal
17 entity expended nonappropriated funds,
18 another appropriate account; and

19 “(II) remain available until expended.

20 “(B) Any amount remaining after reimbursements
21 described in subparagraph (A) shall be deposited as mis-
22 cellaneous receipts in the Treasury of the United States.”.

23 (e) SEMIANNUAL REPORTING.—Section 5(b) of the
24 Inspector General Act of 1978 (5 U.S.C. App.) is amend-
25 ed—

1 (1) in paragraph (4), by striking “and” at the
2 end;

3 (2) by redesignating paragraph (5) as para-
4 graph (6); and

5 (3) by inserting after paragraph (4) the fol-
6 lowing:

7 “(5) information relating to cases under chap-
8 ter 38 of title 31, United States, including—

9 “(A) the number of reports submitted by
10 investigating officials to reviewing officials
11 under section 3803(a)(1) of title 31, United
12 States Code;

13 “(B) actions taken in response to reports
14 described in subparagraph (A), which shall in-
15 clude statistical tables showing—

16 “(i) pending cases;

17 “(ii) resolved cases;

18 “(iii) the average length of time to re-
19 solve each case;

20 “(iv) the number of final agency deci-
21 sions that were appealed to a district court
22 of the United States or a higher court; and

23 “(v) if the total number of cases in a
24 report is greater than 2—

1 “(I) the number of cases that
2 were settled; and

3 “(II) the total penalty or assess-
4 ment amount recovered in each case,
5 including through a settlement or
6 compromise; and

7 “(C) instances in which the reviewing offi-
8 cial declined to proceed on a case reported by
9 an investigating official; and”.

10 (f) INCREASING EFFICIENCY OF DOJ PROC-
11 ESSING.—Title 31, United States Code, is amended—

12 (1) in section 3803(j)—

13 (A) by inserting “(1)” before “The review-
14 ing”; and

15 (B) by adding at the end the following:

16 “(2) A reviewing official shall notify the Attorney
17 General in writing not later than 30 days before entering
18 into any agreement to compromise or settle allegations of
19 liability under section 3802 of this title and before the
20 date on which the reviewing official is permitted to refer
21 allegations of liability to a presiding officer under sub-
22 section (b).”; and

23 (2) in section 3812—

1 (A) in the section heading, by striking
 2 **“Prohibition against delegation”** and
 3 inserting **“Delegation authority”**; and

4 (B) by striking “, shall not be delegated to,
 5 or carried out by,” and inserting “may be dele-
 6 gated to”.

7 (g) REVISION OF DEFINITION OF HEARING OFFI-
 8 CIALS.—

9 (1) IN GENERAL.—Chapter 38 of title 31,
 10 United States Code, is amended—

11 (A) in section 3801(a)(7)—

12 (i) in subparagraph (A), by striking
 13 “or” at the end;

14 (ii) in subparagraph (B)(vii), by add-
 15 ing “or” at the end; and

16 (iii) by adding at the end the fol-
 17 lowing:

18 “(C) a member of the board of contract
 19 appeals pursuant to section 7105 of title 41, if
 20 the authority does not employ an available pre-
 21 siding officer under subparagraph (A);” and

22 (B) in section 3803(d)(2)—

23 (i) in subparagraph (A), by striking
 24 “and” at the end;

25 (ii) in subparagraph (B)—

1 (I) by striking “the presiding”
 2 and inserting “(i) in the case of a re-
 3 ferral to a presiding officer described
 4 in subparagraph (A) or (B) of section
 5 3801(a)(7), the presiding”;

6 (II) in clause (i), as so des-
 7 ignated, by adding “or” at the end;
 8 and

9 (III) by adding at the end the
 10 following:

11 “(ii) in the case of a referral to a presiding
 12 officer described in subparagraph (C) of section
 13 3801(a)(7)—

14 “(I) the reviewing official shall submit
 15 a copy of the notice required by under
 16 paragraph (1) and of the response of the
 17 person receiving such notice requesting a
 18 hearing—

19 “(aa) to the board of contract
 20 appeals that has jurisdiction over
 21 matters arising from the agency of the
 22 reviewing official pursuant to section
 23 7105(e)(1) of title 41; or

24 “(bb) if the Chair of the board of
 25 contract appeals declines to accept the

1 referral, to any other board of con-
2 tract appeals; and

3 “(II) the reviewing official shall simul-
4 taneously mail, by registered or certified
5 mail, or shall deliver, notice to the person
6 alleged to be liable under section 3802 that
7 the referral has been made to an agency
8 board of contract appeals with an expla-
9 nation as to where the person may obtain
10 the relevant rules of procedure promul-
11 gated by the board.”; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(C) in the case of a hearing conducted by
15 a presiding officer described in subparagraph
16 (C) of section 3801(a)(7)—

17 “(i) the presiding officer shall conduct
18 the hearing according to the rules and pro-
19 cedures promulgated by the board of con-
20 tract appeals; and

21 “(ii) the hearing shall not be subject
22 to the provisions in subsection (g)(2), (h),
23 or (i).”.

24 (2) AGENCY BOARDS.—Section 7105(e) of title
25 41, United States Code, is amended—

1 (A) in paragraph (1), by adding at the end
 2 the following:

3 “(E) ADMINISTRATIVE FALSE CLAIMS
 4 ACT.—

5 “(i) IN GENERAL.—The boards de-
 6 scribed in subparagraphs (B), (C), and (D)
 7 shall have jurisdiction to hear any case re-
 8 ferred to a board of contract appeals under
 9 section 3803(d) of title 31.

10 “(ii) DECLINING REFERRAL.—If the
 11 Chair of a board described in subpara-
 12 graph (B), (C), or (D) determines that ac-
 13 cepting a case under clause (i) would pre-
 14 vent adequate consideration of other cases
 15 being handled by the board, the Chair may
 16 decline to accept the referral.”; and

17 (B) in paragraph (2), by inserting “or, in
 18 the event that a case is filed under chapter 38
 19 of title 31, any relief that would be available to
 20 a litigant under that chapter” before the period
 21 at the end.

22 (3) REGULATIONS.—Not later than 180 days
 23 after the date of enactment of this Act, each author-
 24 ity head, as defined in section 3801 of title 31,
 25 United States Code, and each board of contract ap-

1 peals of a board described in subparagraphs (B),
 2 (C), and (D) of section 7105(e) of title 41, United
 3 States Code, shall amend procedures regarding pro-
 4 ceedings as necessary to implement the amendments
 5 made by this subsection.

6 (h) REVISION OF LIMITATIONS.—Section 3808 of
 7 title 31, United States Code, is amended by striking sub-
 8 section (a) and inserting the following:

9 “(a) A notice to the person alleged to be liable with
 10 respect to a claim or statement shall be mailed or delivered
 11 in accordance with section 3803(d)(1) of this title not later
 12 than the later of—

13 “(1) 6 years after the date on which the viola-
 14 tion of section 3802 of this title is committed; or

15 “(2) 3 years after the date on which facts mate-
 16 rial to the action are known or reasonably should
 17 have been known by the authority head, but in no
 18 event more than 10 years after the date on which
 19 the violation is committed.”.

20 (i) DEFINITIONS.—Section 3801 of title 31, United
 21 States Code, is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (8), by striking “and” at
 24 the end;

1 (B) in paragraph (9), by striking the pe-
 2 riod at the end and inserting a semicolon; and

3 (C) by adding at the end the following:

4 “(10) ‘material’ has the meaning given the term
 5 in section 3729(b) of this title; and

6 “(11) ‘obligation’ has the meaning given the
 7 term in section 3729(b) of this title.”; and

8 (2) by adding at the end the following:

9 “(d) For purposes of subsection (a)(10), materiality
 10 shall be determined in the same manner as under section
 11 3729 of this title.”.

12 (j) PROMULGATION OF REGULATIONS.—Not later
 13 than 180 days after the date of enactment of this Act,
 14 each authority head, as defined in section 3801 of title
 15 31, United States Code, shall—

16 (1) promulgate regulations and procedures to
 17 carry out this Act and the amendments made by this
 18 Act; and

19 (2) review and update existing regulations and
 20 procedures of the authority to ensure compliance
 21 with this Act and the amendments made by this Act.

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