GILLIBRAND) was added as a cosponsor of S. 167, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enhance the COPS ON THE BEAT grant program, and for other purposes.

S. 254

At the request of Mrs. LINCOLN, the names of the Senator from Kansas (Mr. ROBERTS) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 254, a bill to amend title XVIII of the Social Security Act to provide for the coverage of home infusion therapy under the Medicare Program.

S. 316

At the request of Mrs. LINCOLN, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 316, a bill to amend the Internal Revenue Code of 1986 to make permanent the reduction in the rate of tax on qualified timber gain of corporations, and for other purposes.

S. 343

At the request of Mrs. LINCOLN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 343, a bill to amend title XVIII of the Social Security Act to provide for Medicare coverage services of qualified respiratory therapists performed under the general supervision of a physician.

S. 354

At the request of Mr. WEBB, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 354, a bill to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes.

S. 371

At the request of Mr. THUNE, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 371, a bill to amend chapter 44 of title 18, United States Code, to allow citizens who have concealed carry permits from the State in which they reside to carry concealed firearms in another State that grants concealed carry permits, if the individual complies with the laws of the State.

S. 381

At the request of Mr. AKAKA, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 381, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian and the recognition by the United States of the Native Hawaiian government, and for other purposes.

S. 390

At the request of Mr. CRAPO, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 390, a bill to expand the authority of the Secretary of the Air Force to convey certain relocatable military housing units to Indian tribes located in Idaho and Nevada.

S. 395

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 395, a bill to direct the Librarian of Congress and the Secretary of the Smithsonian Institution to carry out a joint project at the Library of Congress and the National Museum of African American History and Culture to collect video and audio recording of personal histories and testimonials of individuals who participated in the Civil Rights movement, and for other purposes.

S. 407

At the request of Mr. AKAKA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 407, a bill to increase, effective as of December 1, 2009, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.

S. 456

At the request of Mr. DODD, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. 456, a bill to direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

S. RES. 9

At the request of Mr. LUGAR, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. Res. 9, a resolution commemorating 90 years of U.S.-Polish diplomatic relations, during which Poland has proven to be an exceptionally strong partner to the United States in advancing freedom around the world.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SPECTER, and Mr. WHITEHOUSE):

S. 458. A bill to amend the False Claims Act; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I am here as part of what I am calling ''Accountability in Government Week.'' I plan to introduce various bills this week that will strengthen oversight of Government programs, integrity of taxpayer-funded initiatives, and bring sunshine to the executive, legislative, and judicial branches of our Government. These bills are important and will help all Americans better understand their Government in addition to making sure taxpayers' dollars are not lost to fraud, waste, and abuse.

The first bill I am introducing this week, and am introducing today, is the False Claims Clarification Act of 2009. I am glad to be joined by my original cosponsor, Mr. DURBIN, the majority whip, the Senator from Illinois, who has worked closely with me in crafting this legislation that will update the 1986 amendments to the False Claims Act I authored.

This legislation is similar to a version that was introduced in the last Congress that cleared the Judiciary Committee by unanimous voice vote. We have made some updates to the bill that was the result of sitting down with various interested parties and hearing their concerns. We made a commitment last Congress to move that bill through regular order to ensure that all interested stakeholders had a say. I believe this version of the bill not only clarifies the original intent of the 1986 amendments but also makes a number of modifications that strengthen the False Claims Act and will help the Government recover taxpayers' dollars lost to fraud and abuse for years to come.

Senator DURBIN and I are also joined by other original cosponsors, including Senator LEAHY, whom you recognize is the chairman of the Judiciary Committee, and Senator SPECTER, its ranking member, and Senator WHITEHOUSE, a member of the committee. It is a bipartisan bill that is about protecting taxpayers' dollars and strengthening the Government's hand in combating fraud.

A little history: Back in 1986, the Government was in a situation that had some parallel to today's economic situation. Government military expenditures were a significant portion of the budget, and there was ample evidence of fraud and abuse in Government contracts. Today, we are facing an economic situation where the Government is now on the hook for trillions of dollars in new Government spending in an attempt to jump-start our ailing economy. That is compounded by the fact that the Treasury Department has taken unprecedented steps to bail out financial institutions with hundreds of billions of taxpayers' dollars.

I am concerned this new Government spending has occurred too quickly and could be ripe with opportunities for fraud and abuse. I would say there are 99 other Senators who can say the same thing. But that is the reason this legislation is timely and urgently needed.

The False Claims Act, which is also known as Lincoln's Law, was originally passed by Congress in 1865 to combat war profiteering by Government contractors during the Civil War. The False Claims Act allowed individual citizen whistleblowers to go to court to collect Government money that was lost to unscrupulous contractors that were selling false or fraudulent goods to Union troops. This legal mechanism, known as qui tam—Q-U-I T-A-M, for you Latin lovers—is the key component to the False Claims Act, allowing individual citizens to act as private

''attorneys general'' to help unearth fraud and recover lost money.

However, following World War II, the False Claims Act was weakened by an act of Congress which lowered the penalties, limiting the money the Government could recover from this fraud. This remained the case from the end of World War II until 1986 with the False Claims Act. That is when I authored amendments to that act which restored the teeth and breathed new life into a law that was designed to do nothing but to protect all American taxpayers.

Now, since 1986 the Federal Government has recovered $22 billion from those who defraud the Government. By working with qui tam whistleblowers, the Justice Department has turned Lincoln's law into the single most effective tool in the Federal Government's tool box to help protect taxpayers' dollars. However, it has been a hard fought battle to get the False Claims Act to where it is today as deep-pocket Government contractors have spent hundreds of millions of dollars to litigate the False Claims Act. As a result, various court interpretations have limited the applicability and the reach of the False Claims Act, cutting off many worthy cases from ever going forward. Some of these cases have been around for quite a while, others more recent. Yet the one thing these cases have in common is they threaten to undermine both the spirit and the intent of the 1986 amendments to Lincoln's law called the False Claims Act.

The first case that created problems for the False Claims Act was the Totten case where the DC Circuit Court of Appeals held that false claims must be presented directly to the Government—in this case, employees at Amtrak, which is a Government grantee—and were not actually presented to the Federal Government. As a result, the Government was precluded from recovering money lost to fraud and abuse perpetrated against Amtrak.

More recently, the Supreme Court held in Allison Engine Co. v. U.S. that for liability to attach a defendant must not only make a false statement but must intend to get the claim paid and approved directly by the Government based upon that false statement. While this sounds straightforward, it creates a huge loophole in the False Claims Act because subcontractors who receive Federal money never actually submit a claim directly to the Government because they do it through the contractors. Instead, they pass the claim to the prime contractor who then gives it to the Government. So under the Allison Engine decision, it could be virtually impossible to prove a False Claims Act case where the subcontractor knowingly ripped off the taxpayers. In fact, a judge in my home State of Iowa dismissed a case based solely upon the Allison Engine decision, even without a motion from the defendant. This has created a significant problem for recovering taxpayers' dollars that trickle down to subcontractors, particularly in Medicare and Medicaid Programs where subcontractors are frequently utilized.

Further, this could become a bigger problem if the second tranche of TARP money—some people might refer to that as the bailout money—is used to purchase distressed assets through a third party broker as originally envisioned.

Another case that is detrimental to the False Claims Act is Rockwell International Corporation v. U.S. In that case, the Supreme Court interpreted an area of the False Claims Act known as the ''public disclosure bar,'' which prohibits a false claims case from moving forward if the case was based upon publicly disclosed information such as a Government report, unless the whistleblower filing the case was the ''original source'' of the information. Here, the Supreme Court held that a qui tam whistleblower was barred from receiving a share of any money recovered unless they were the original source of all claims ultimately settled.

This may not sound like a troublesome decision. However, the impact is that oftentimes a case is brought by a whistleblower on a certain set of facts and then expanded by the Department of Justice that ultimately settles on other grounds. As a result, this case creates a disincentive for a whistleblower to bring forth information about fraud as they may not get to share in any part of that recovery. That is the incentive under false claims: a whistleblower, not a lawyer, not in the Justice Department, to get a percentage of what is recovered as an incentive to get this information out there and get it prosecuted, particularly if the Justice Department is overloaded or maybe doesn't want to take the case.

Now, one last case I will mention is the Custer Battles case decided in 2006. In this case, a jury found that a defense contractor in Iraq had defrauded the Government of $10 million. However, the judge overturned the jury's verdict, finding that the money lost was not U.S. taxpayer money but was instead Iraqi money under the control of the U.S. Government. As a result of this case, the U.S. Government may not recover for any fraud committed against the U.S. Government if the funds are not American funds, even if the U.S. Government has been entrusted with the management of those funds, just as if money is somehow not fungible. These decisions, which are by no means an exhaustive list, are contrary to the spirit and the intent of the 1986 amendments. And who should know that? I should know it because I authored this legislation.

This bill we are introducing today—a bipartisan bill by Senator DURBIN and myself—seeks to clarify the False Claims Act so these judicial interpretations that have limited the False Claims Act are overruled. It is narrowly tailored—I wish to emphasize ''narrowly tailored''—to ensure that the intent of Congress in the 1986 amendments is upheld, if nothing else.

The False Claims Clarification Act would correct these negative interpretations in addition to making technical and clarifying amendments. First, the bill would address the Totten decision by removing the requirement that false claims be directly presented to the Government officials instead of tying the liability directly to Government money and property. It would also correct the Allison Engine decision, ensuring that subcontractors who rip off the taxpayers will be held accountable.

The bill would also address the Rockwell decision by requiring the Attorney General to file a timely motion to dismiss claims that violate the public disclosure bar. By allowing the Attorney General to present to the court information about public disclosures up front in a case, the bill would eliminate procedural uncertainties that exist now by allowing public disclosures to be addressed at any time during the proceeding.

The bill also clarifies that nontaxpayer funds under the control of the U.S. Government subject to fraud are actionable under the False Claims Act. Thus, monies directly under the control of the U.S. Government subject to fraud that are currently outside the scope of the False Claims Act would now be covered. This would correct the problems that have arisen following the decision of Custer Battles.

Additionally, the bill clarifies a split between the Federal Circuit Courts of Appeal that currently exists regarding whether a Government employee may file a False Claims Act case. It takes a dissenting opinion from the Tenth Circuit and codifies that by allowing Government employees to bring a False Claims Act case based upon information learned in the course of their employment only when the employee: One, discloses the fraud to a supervisor; two, discloses the fraud to the Inspector General of the agency; three, discloses the fraud to the Attorney General and then waits 18 months without Government action.

Further, it restricts a Government employee from bringing a False Claims Act case if they derive information for their case in an indictment or information, any ongoing criminal, civil, or administrative investigation, or if they are an auditor, investigator, or attorney who has a duty—a duty—to investigate fraud. This ensures that a Government employee can act as a relator, but only if he or she is truly bringing a claim that the Government has refused to investigate.

The bill makes some additional technical corrections that I am not going to go into. Finally, the bill includes a new section that will require the Attorney General to report to Congress on an annual basis regarding the use of the False Claims Act and any settlements made upon these sorts of lawsuits. This has two purposes. It allows

Congress, first, to see if the Justice Department is utilizing the act consistent with the spirit and intent; and, secondly, ensures that the seal provisions allowing the case to be privately sealed with the court are not being abused to the detriment of qui tam relators.

So the False Claims Act clarification bill is narrowly tailored to ensure that the legislative intent of 1986 is truly understood. It will bring a level of reason and sanity instead of the current hodgepodge of laws across various circuit courts of appeals. This bill is designed to protect the American taxpayer from fraud and is timely, given the recent actions to shore up the balance sheets of banks and private businesses across the country.

I am glad we have a bipartisan coalition ready to pick up where we left off in the last Congress. I believe we made great strides last year in working through the concerns of various stakeholders, and I encourage my colleagues to join me and Senator DURBIN in strengthening Lincoln's law so that it can stand up and work for the American taxpayers for years to come as it has for the last 22 years, bringing about $22 billion back to the Federal Treasury.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 458

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''False Claims Act Clarification Act of 2009''.

SEC. 2. FALSE CLAIMS GENERALLY.

Section 3729 of title 31, United States Code, is amended—

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

''(a) LIABILITY FOR CERTAIN ACTS.—

''(1) IN GENERAL.—Subject to paragraph (2), any person who—

''(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

''(B) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;

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

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

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

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

''(G) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

''(2) REDUCED DAMAGES.—If the court finds that—

''(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

''(B) such person fully cooperated with any Government investigation of such violation; and

''(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

''(3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.'';

(2) by striking subsections (b) and (c) and inserting the following:

''(b) DEFINITIONS.—For purposes of this section—

''(1) the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

''(A) has actual knowledge of the information;

''(B) acts in deliberate ignorance of the truth or falsity of the information; or

''(C) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required;

''(2) the term 'claim'—

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

''(i) is presented to an officer, employee, or agent of the United States; or

''(ii) is made to a contractor, grantee, or other recipient if the United States Government—

''(I) provides or has provided any portion of the money or property requested or demanded; or

''(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

''(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property; and

''(3) the term 'obligation' means a fixed duty, or a contingent duty arising from an express or implied contractual, quasi-contractual, grantor-grantee, licensor-licensee, fee-based, or similar relationship, and the retention of any overpayment.'';

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

(4) in subsection (c), as redesignated, by striking ''subparagraphs (A) through (C) of subsection (a)'' and inserting ''subsection (a)(2)''.

SEC. 3. GOVERNMENT RIGHT TO DISMISS CERTAIN ACTIONS.

Section 3730(b) of title 31, United States Code, is amended—

(1) in paragraph (2), by striking ''Rule 4(d)(4)'' and inserting ''rule 4''; and

(2) by adding at the end the following:

''(6)(A) Not later than 120 days after the date of service under paragraph (2), the Government may move to dismiss from the action a qui tam relator that is an employee of the Federal Government, or that is an immediate family member of an employee of the Federal Government, if—

''(i) the necessary and specific material allegations contained in such action were derived from a filed criminal indictment or information or an open and active criminal, civil, or administrative investigation or audit by the Government into substantially the same fraud alleged in the action;

''(ii) the duties of the employee's position specifically include uncovering and reporting the particular type of fraud that is alleged in the action, and the employee, as part of the duties of that employee's position, is participating in or has knowledge of an open and active criminal, civil, or administrative investigation or audit by the Government of the alleged fraud;

''(iii) the person bringing the action learned of the information that underlies the alleged violation of section 3729 that is the basis of the action in the course of the person's employment by the United States, and either—

''(I) in a case in which the employing agency has an inspector general, such person, before bringing the action has not—

''(aa) disclosed in writing substantially all material evidence and information that relates to the alleged violation that the person possessed to such inspector general; and

''(bb) notified in writing the person's supervisor and the Attorney General of the disclosure under division (aa); or

''(II) in a case in which the employing agency does not have an inspector general, such person, before bringing the action has not—

''(aa) disclosed in writing substantially all material evidence and information that relates to the alleged violation that the person possessed, to the Attorney General; and

''(bb) notified in writing the person's supervisor of the disclosure under division (aa); or

''(iv) the person bringing the action learned of the information that underlies the alleged violation of section 3729 that is the basis of the action in the course of the person's employment by the United States, made the required disclosures and notifications under clause (iii), and—

''(I) less than 18 months (and any period of extension as provided for under subparagraph (B)) have elapsed since the disclosures of information and notification under clause (iii) were made; or

''(II) within 18 months (and any period of extension as provided for under subparagraph (B)) after the disclosures of information and notification under clause (iii) were made, the Attorney General has filed an action based on such information.

''(B) Prior to the expiration of the 18-month period described under subparagraph (A)(iv)(II) and upon notice to the person who

has disclosed information and provided notice under subparagraph (A)(iii), the Attorney General may extend such 18-month period by 1 additional 12-month period.

''(C) For purposes of subparagraph (A), a person's supervisor is the officer or employee who—

''(i) is in a position of the next highest classification to the position of such person;

''(ii) has supervisory authority over such person; and

''(iii) such person believes is not culpable of the violation upon which the action under this subsection is brought by such person.

''(D) A motion to dismiss under this paragraph shall set forth documentation of the allegations, evidence, and information in support of the motion.

''(E) Any person against whom the Government has filed a motion to dismiss under subparagraph (A) shall be provided an opportunity to contest a motion to dismiss under this paragraph. The court may restrict access to the evidentiary materials filed in support of the motion to dismiss, as the interests of justice require. A motion to dismiss and evidentiary material filed in support or opposition of such motion shall not be—

''(i) made public without the prior written consent of the person bringing the civil action; and

''(ii) subject to discovery by the defendant.

''(F) Upon granting a motion filed under subparagraph (A), the court shall dismiss the qui tam relator from the action.

''(G) If the motion to dismiss under this paragraph is granted, the matter shall remain under seal.

''(H) Not later than 12 months after the date of the enactment of this paragraph, and every 12 months thereafter, the Department of Justice shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives relating to—

''(i) the cases in which the Department of Justice has filed a motion to dismiss under this paragraph;

''(ii) the outcome of such motions; and

''(iii) the status of false claims civil actions in which such motions were filed.

''(I) Nothing in this paragraph shall be construed to limit the authority of the Government to dismiss an action or claim, or a person who brings an action or claim, under this subsection for any reason other than the grant of a motion filed under subparagraph (A).''.

SEC. 4. BARRED ACTIONS.

(a) PROVISIONS RELATING TO ACTIONS BARRED.—Section 3730(b)(1) of title 31, United States Code, is amended by adding at the end the following: ''No claim for a violation of section 3729 may be waived or released by any action of any person who brings an action under this subsection, except insofar as such action is part of a court approved settlement of a false claim civil action brought under this section. Nothing in this paragraph shall be construed to limit the ability of the United States to decline to pursue any claim brought under this subsection, or to require court approval of a settlement by the Government with a defendant of an action brought under subsection (a), or under this subsection, unless the person bringing the action objects to the settlement under subsection (c)(2)(B).''.

(b) DISMISSAL.—Section 3730(e)(4) of title 31, United States Code, is amended to read as follows:

''(4) A court shall dismiss an action or claim or the person bringing the action or claim under subsection (b), upon a motion by the Government filed on or before service of a complaint on the defendant under subsection (b), or thereafter for good cause shown if—

''(A) on the date the action or claim was filed, substantially the same matters, involving the same wrongdoer, as alleged in the action or claim were contained in, or the subject of—

''(i) a filed criminal indictment or information, or an open and active criminal, civil, or administrative investigation or audit; or

''(ii) a news media report, or public congressional hearing, report, or investigation, if within 90 days after the issuance or completion of such news media report or congressional hearing, report, or investigation, the Department of Justice or an Office of Inspector General opened a fraud investigation or audit of the facts contained in such news media report or congressional hearing, report, or investigation as a result of learning about the public report, hearing, or investigation;

''(B) any new information provided by the person does not add substantial grounds for additional recovery beyond those encompassed within the Government's existing criminal indictment or information, or an open and active criminal, civil, or administrative investigation or audit; and

''(C) the Government's existing criminal indictment or information, or an open and active criminal, civil, or administrative investigation or audit, or the news media report, or congressional hearing, report, or investigation was not initiated or published after the Government's receipt of information about substantially the same matters voluntarily brought by the person to the Government.''.

(c) QUI TAM AWARDS.—Section 3730(d) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking the second sentence and inserting ''If the person bringing the action is not dismissed under subsection (e)(4) because the person provided new information that adds substantial grounds for additional recovery beyond those encompassed within the Government's existing indictment, information, investigation, or audit, then such person shall be entitled to receive a share only of proceeds of the action or settlement that are attributable to the new basis for recovery that is stated in the action brought by that person.''; and

(2) by striking paragraph (3) and inserting the following:

''(3)(A) Whether or not the Government proceeds with the action, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which a person would otherwise receive under paragraph (1) or (2) of this subsection (taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation), if the court finds that person—

''(i) planned and initiated the violation of section 3729 upon which the action was brought; or

''(ii) derived the knowledge of the claims in the action primarily from specific information relating to allegations or transactions (other than information provided by the person bringing the action) that the Government publicly disclosed, as that term is defined in subsection (e)(4)(A), or that the Government disclosed privately to the person bringing the action in the course of its investigation into potential violations of this subchapter.

''(B) If the person bringing the action is convicted of criminal conduct arising from the role of that person in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.''.

SEC. 5. RELIEF FROM RETALIATORY ACTIONS.

Section 3730(h) of title 31, United States Code, is amended to read as follows:

''(h) RELIEF FROM RETALIATORY ACTIONS.—

''(1) IN GENERAL.—Any employee, government contractor, or agent shall be entitled to all relief necessary to make that employee, government contractor, or agent whole, if that employee, government contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, government contractor, or agent on behalf of the employee, government contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

''(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, government contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.''.

SEC. 6. STATUTE OF LIMITATIONS.

Section 3731(b) of title 31, United States Code, is amended to read as follows:

''(b)(1) A civil action under section 3730 may not be brought more than 10 years after the date on which the violation of section 3729 or 3730 is committed.

''(2) Upon intervention, the Government may file its own complaint in intervention or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.''.

SEC. 7. CIVIL INVESTIGATIVE DEMANDS.

Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by inserting '', or a designee (for purposes of this section),'' after ''Whenever the Attorney General''; and

(II) by striking ''the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law,'' and inserting ''the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or electing under section 3730(b),''; and

(ii) in the matter following subparagraph (D)—

(I) by striking ''may not delegate'' and inserting ''may delegate''; and

(II) by adding at the end the following: ''Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.''; and

(B) in paragraph (2)(G), by striking the second sentence;

(2) in subsection(i)(2)—

(A) in subparagraph (B), by striking '', who is authorized for such use under regulations which the Attorney General shall issue''; and

(B) in subparagraph (C), by striking ''Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.''; and

(3) in subsection (l)—

(A) in paragraph (6), by striking ''and'' after the semicolon; and

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) the term 'official use' means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.''.

SEC. 8. FALSE CLAIMS SETTLEMENTS.

(a) REPORTS BY ATTORNEY GENERAL.—Not later than November 1 of each year, the Attorney General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes each settlement or compromise of any claim, suit, or other action entered into with the Department of Justice that—

(1) relates to an alleged violation of section 1031 of title 18, United States Code, or section 3729 of title 31, United States Code (including all settlements of alternative remedies); and

(2) results from a claim of damages in excess of $100,000.

(b) CONTENTS OF REPORTS.—The descriptions of each settlement or compromise required to be included in the annual report under subsection (a) shall include—

(1) the overall amount of the settlement or compromise and the portions of the settlement attributed to various statutory authorities;

(2) the amount of actual damages, or in the event no actual amount is available a good faith estimate of the damages, estimated to have been sustained and the minimum and maximum potential civil penalties incurred as a consequence of the defendants that is the subject of the settlement or compromise;

(3) the basis for the estimate of damages sustained and the potential civil penalties incurred;

(4) the amount of the settlement that represent damages and the multiplier or percentage of the actual damages applied in the actual settlement or compromise;

(5) the amount of the settlement that represents civil penalties and the percentage of the potential penalty liability captured by the settlement or compromise;

(6) the amount of the settlement that represents criminal fines and a statement of the basis for such fines;

(7) the length of time involved from the filing of the complaint until the finalization of the settlement or compromise, including—

(A) the date of the original filing of the complaint;

(B) the time the case remained under seal;

(C) the date upon which the Department of Justice determined whether or not to intervene in the case; and

(D) the date of settlement or compromise;

(8) whether any of the defendants, or any divisions, subsidiaries, affiliates, or related entities, had previously entered into 1 or more settlements or compromises relating to section 1031 of title 18, United States Code, or section 3730(b) of title 31, United States Code, and if so, the dates and monetary size of such settlements or compromises;

(9) whether the defendant or any of its divisions, subsidiaries, affiliates, or related entities—

(A) entered into a corporate integrity agreement relating to the settlement or compromise;

(B) entered into a deferred prosecution agreement relating to the settlement or compromise; and

(C) had previously entered into 1 or more corporate integrity agreements relating to section 3730(b) of title 31, United States Code, or a deferred prosecution agreement relating to section 1031 of title 18, United States Code, and if so, whether the previous corporate integrity agreements covered the conduct that is the subject of the settlement or compromise being reported on or similar conduct;

(10) in the case of settlements involving Medicaid, the amounts paid to the Federal Government and to each of the States participating in the settlement or compromise;

(11) whether civil investigative demands were issued in process of investigating the case;

(12) in qui tam actions, the percentage of the settlement amount awarded to the relator, and whether or not the relator requested a fairness hearing pertaining to the percentage received by the relator or the overall amount of the settlement;

(13) the extent to which officers of the department or agency that was the victim of the loss resolved by the settlement or compromise participated in the settlement negotiations; and

(14) the extent to which relators and their counsel participated in the settlement negotiations.

SEC. 9. SEVERABILITY.

If any provision or application of this Act is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions or applications of this Act are severable.

SEC. 10. EFFECTIVE DATE AND APPLICATION.

(a) IN GENERAL.—Except as provided under subsections (b) and (c), the amendments made by this Act shall take effect on the date of enactment of this Act and shall apply to all civil actions filed before, on, or after that date.

(b) FALSE CLAIMS.—The amendments made by section 2 shall take effect on the date of enactment of this Act and shall apply to conduct occurring after that date of enactment.

(c) STATUTE OF LIMITATION.—The amendment made to section 3731(b)(1) of title 31, United States Code, by section 6 of this Act shall take effect on the date of enactment of this Act and shall apply to civil actions filed after that date of enactment.

Mr. DURBIN. Mr. President, I am pleased to join my colleague Senator GRASSLEY in introducing the False Claims Act Clarification Act of 2009. This bipartisan legislation takes important steps to modernize and strengthen the federal False Claims Acts, FCA, and will help protect the government and taxpayers from waste, fraud and abuse related to government funds. Last Congress Senator GRASSLEY and I introduced similar legislation, which was passed by voice vote out of the Senate Judiciary Committee. I look forward to working with Senator GRASSLEY as well as our fellow cosponsors, Senator LEAHY, the Chairman of the Judiciary Committee; Senator SPECTER, the Ranking Member of the Judiciary Committee; and Senator WHITEHOUSE, to see this important legislation passed into law.

Since it was signed into law by President Lincoln in 1863, the FCA, or ''Lincoln's Law,'' has played a key role in enabling the federal government and qui tam whistleblowers to prevent unscrupulous government contractors from defrauding the nation's taxpayers. In 1986, Senator GRASSLEY and Congressman BERMAN sponsored amendments to the FCA and its qui tam provisions that revitalized the effectiveness of the FCA as a fraud-fighting tool. Since 1986, the federal government and qui tam relators have worked together to recover over $21 billion in monies that would otherwise have been lost to fraud, waste or abuse in government programs. The recovery of this enormous sum is a victory for taxpayers, and a demonstration of the success of the FCA and its qui tam model.

Senator GRASSLEY and I first introduced FCA reform legislation in September 2007 because several recent court interpretations of the 1986 FCA amendments had threatened to limit the Act's effectiveness. Our legislation was designed to correct erroneous interpretations of the FCA's presentment clause in the 2004 D.C. Circuit case U.S. ex rel. Totten v. Bombardier Corp., and the FCA's public disclosure bar in the 2007 Supreme Court case Rockwell International Corp. v. U.S. Our bill also sought to make further clarifications to the FCA's scope and application in keeping with the intent of the authors of the 1986 FCA amendments.

In the time since we first introduced this bill last Congress, the need to strengthen Lincoln's Law has become even more urgent. The economic recession has required massive expansion of federal assistance to various industries, and this has created an increased opportunity for waste, fraud and abuse by recipients of that assistance. As the federal government moves ahead with various economic recovery measures, it is important that we have effective anti-fraud provisions in place to deter and catch those who would abuse public monies and the public trust. We owe this to the American taxpayer.

Also, the False Claims Act Clarification Act of 2009 is further needed in light of the Supreme Court's June 2008 decision in Allison Engine Co. v. U.S.

ex rel. Sanders. In Allison Engine, the Supreme Court read the 1986 FCA amendments to include a barrier to liability in subcontractor fraud cases that Congress did not intend. The Allison Engine Court held that in cases involving false claims submitted by a subcontractor to a prime contractor for payment involving federal funds, the plaintiff must prove that the subcontractor intended for the false statement to be used by the prime contractor to get the government to pay its claim. Our legislation makes clear that subcontractors are liable for knowingly perpetrating fraud involving government funds, regardless of whether that fraud was perpetrated directly upon the government or indirectly through another contractor. In light of the numerous levels of subcontractors used in many government contracting arrangements, this statutory fix is necessary to ensure accountability no matter where in the contracting chain the fraud takes place.

The changes that our legislation would make to the FCA are narrowly tailored, but will have a significant impact in catching and deterring fraud. I commend Senator GRASSLEY, the Senate architect of the 1986 FCA amendments, for his devotion to ensuring the effective functioning of the FCA, and I will continue to work with him to better combat waste, fraud and abuse in government programs.

In sum, the False Claims Act Clarification Act will enhance whistleblowers' ability to shine a light on fraudulent conduct involving government funds, and to hold the perpetrators accountable through legitimate qui tam claims. The legislation we are introducing today will strengthen the legacy of Lincoln's Law, and I am pleased to serve as its lead Democratic cosponsor. I urge my colleagues to support its passage.

By Mr. KERRY:

S. 463. A bill to impose limitations on certain expenditures by participants in the Troubled Asset Relief Program; to the Committee on Banking, Housing, and Urban Affairs.

Mr. KERRY. Mr. President, today I am introducing the TARP Taxpayer Protection and Corporate Responsibility Act of 2009. Recently, it was reported that the Northern Trust Corporation threw lavish events in conjunction with the Northern Trust Open. Last year, Northern Trust Company received approximately $1.6 billion in funds from the Troubled Relief Asset Program and laid off almost 450 employees.

At a time when banks are not lending and need federal assistance, they should not be treating themselves to lavish parties with performances by Sheryl Crow. I supported the Emergency Economic Stabilization Act of 2008 because I believe that we need to help our financial institutions in order to stabilize our economy. However, I firmly believe that every institution receiving funds has a responsibility to appropriately use the federal assistance provided by taxpayers.

I am sick of hearing about financial institutions that are receiving funds and behaving inappropriately. CEOs need to exert leadership during these trying economic times. If they don't, they should repay taxpayers out of their own pocket. Now is not the time to be throwing lavish parties, giving out excessive bonuses, and spending on unnecessary renovations. It is time to focus on how best to restore the economy and for the banks, this means responsible lending.

Northern Trust is not the first TARP recipient company to spend foolishly, but I want it to be the last. For this reason I am introducing the TARP Taxpayer Protection and Corporate Responsibility Act of 2009 which would prohibit TARP recipients from sponsoring, hosting, or paying for entertainment or holiday events during the year in which they receive assistance or the following year. The legislation would give the Secretary of the Treasury the authority to issue waivers and would become effective as of March 1, 2009.

I applaud the action the Obama Administration has taken to address executive compensation and the provisions included in the American Recovery and Reinvestment Act of 2009, but I believe we must do more. The American Recovery and Reinvestment Act requires the Treasury Department to publish guidelines on the use of funds. However, I believe we need to do more than providing guidelines for the use of these funds. As we all know, money is fungible and a TARP recipient can always explain that TARP funds were not used for questionable purposes.

During these difficult economic times, we need to send a message to the American people that we are responsible stewards of public funds. We must try to help companies, but only if they operate in an appropriate and responsible manner which values the assistance of the American taxpayer. At a time when banks are not providing enough lending to small businesses and others, they should not be throwing lavish parties at taxpayer expense, and the claim that these ''parties'' came out of ''operating expenses'' rather than taxpayer funds does not pass the laugh test.

I urge my colleagues to review this important legislation.

By Mr. DODD (for himself, Mr. COCHRAN, Mr. KENNEDY, Ms. MIKULSKI, Mr. CASEY, Mrs. LINCOLN, Mr. CARDIN, Mr. ROCKEFELLER, and Mr. NELSON, of Florida):

S. 464. A bill to amend the National and Community Service Act of 1990 to improve the educational awards provided for national service, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise to introduce four bills today: The AmeriCorps: Together Improving Our Nation (ACTION) Act, the Semester of Service Act, the Summer of Service Act, and the Encore Service Act—legislation that would offer Americans the opportunity to serve their communities and work to improve their Nation.

As we have discussed time and time again, the challenges facing America are mounting—from a struggling economy, to a broken health care system, to challenges in our schools that put our children's futures at risk.

These are problems that countless Americans have lived and struggled with—that we here in this institution have debated for years, decade even. We can disagree amongst ourselves about how to solve them—and we certainly have.

But what we can all agree on is the impact citizens can make when it comes to facing some of our biggest challenges.

We know the extraordinary things ordinary citizens can accomplish for our communities when given the opportunity—the difference they can make in our schools and nursing homes, in veterans' hospitals and in helping those living on fixed incomes. With these four important pieces of legislation, we are offering citizens of all ages even more opportunities to be involved.

We already harness the enormous power of a dedicated group of individuals looking for ways to serve their communities is through the remarkably successful AmeriCorps program. Last year alone, 75,000 AmeriCorps members gave back to our communities, serving in over 4,000 schools, faith-based and community organizations, and nonprofits across the country. They also brought reinforcements—recruiting another 1.7 million community volunteers to work alongside them. Because of AmeriCorps, our communities have been strengthened, and our democracy fortified.

Unfortunately, as the hours AmeriCorps Members have contributed to our communities have increased, the Segal AmeriCorps Education Award created to help members pay for their college tuition has remained flat at $4,725. Meanwhile, the average college tuition has skyrocketed. The education award previously paid for two years of college, but currently it does not even cover the cost of single year. I am introducing the AmeriCorps: Together Improving Our Nation, ACTION, Act, in part, to update the education award to keep pace with 15 years of tuition increases.

The ACTION Act will raise the education award to $6,585 and increase the award annually to match the average tuition at a 4-year public university. That figure, $6,585 is the average cost of tuition at a four-year public university according to the College Board. The Act will also make the education award tax exempt to ensure that alumni are able to use their entire award to advance their education.

The Summer of Service bill would reach the youngest Americans interested in giving back to their communities, fostering a commitment to service that will last a lifetime. The Summer of Service Act would create a competitive grant program that would enable states and localities to offer middle school students an opportunity to participate in a structured community service program over the summer months. It would employ service-learning to teach civic participation skills, help young people see themselves as resources to their communities, expand educational opportunities and discourage ''summer academic slide.'' Providing tangible benefits to their communities, Summer of Service projects would direct grantees to work on unmet human, educational, environmental and public safety needs and encourage all youth, regardless of age, income, or disability, to engage in community service. The program would also grant participants with an educational award of up to $500 which can later be used to pay for college.

The Semester of Service Act also engages students in service-learning at the high school level. We talk so much about ways to improve academic performance in our schools. Well, when service is integrated into our students' curricula at school, young people make gains on achievement tests. Service-learning results in grade point averages going up, and feelings about high-school are that more positive.

And the benefits of service-learning go well beyond the classroom. When young people participate in service activities they feel better able to control their own lives in a positive way. They are less prone to engage in risky behavior, more likely to engage in their own education, and far more aware of the career opportunities before them.

Indeed, research shows that for every dollar we spend on a service-learning project, $4 worth of service is provided to the community involved. That means by authorizing $200 million for fiscal year 2009, as the Semester of Service Act does, our country will save more than half a billion dollars in service performed.

This legislation works by creating a competitive grant program that gives school districts, or nonprofits working in partnership with local school districts, the opportunity to have students participate in a semester of service in their junior or senior year for academic credit. These students are required to perform a minimum of 70 hours of service learning activities over 12 weeks, with at least 24 of those hours spent participating in field-based activities—outside of the classroom.

By engaging both the public and private sector, Semester of Service teaches civic participation skills and helps young people see themselves not merely as residents in their communities—but resources to them.

Perhaps, the greatest untapped resource in our communities are older Americans. No one is more ready or more poised to make a difference—in our communities and throughout our country—than the gaining Baby Boomer generation.

In the next decade alone, the number of Americans 55 years and older is expected to grow another 22 percent. But for all the well-publicized challenges that growth presents, it is time we also recognize something else:

The opportunities it offers—if we seize them.

More than half of those considered a part of the Baby Boomer generation are interested in providing meaningful service to their communities. Countless older men and women who have given so much to their country throughout their lives want to serve as they enter their later years.

They are living longer, healthier lives than any generation in history. And they recognize something elemental:

Life doesn't end at retirement. For many, it is only beginning—leading perhaps to a second career in the public or nonprofit sector.

We have so much to learn. Indeed, there can be no greater gift passed on to future generations than the lessons of the past. But the truth is, we too often fail to draw upon the experience, knowledge and ideas of previous generations.

What is missing is the opportunity.

Giving older Americans those opportunities is what the Encore Service Act is all about. It creates an Encore Service Program that provides Americans 55 years and older with opportunities to serve communities with the greatest need—to volunteer in our nation's schools, to help keep our neighborhoods clean, safe and vibrant, and so much more. In return for their service, which may include extensive training and a significant commitment of time, they can receive a stipend and education award, much like AmeriCorps does for younger generations.

Best of all, that stipend can be transferred to children or grandchildren. Imagine what that means for a grandmother or a grandfather who could literally put thousands of dollars into their newborn grandchild's college savings fund as a result of this program—funds that can only be used after the child turns 18 and can be kept for up to 20 years. Of all the new ideas in this legislation, perhaps this one is the most exciting.

This legislation also creates an Encore Fellows program that places older Americans in one-year management or leadership positions in public or private not-for-profits. These year-long fellowships not only increase the capacity of public service organizations already doing tremendous work in our communities, they also promote those who have already had full, successful careers, perhaps in the private sector, to lend their expertise and experience to the cause of community or public service.

The Encore Service Act also creates a Silver Scholars program that awards older Americans with an education scholarship of up to $1,000 in exchange for volunteering with public agencies or private nonprofits between 250 and 500 hours a year. As with the Encore Service Program, they can use these awards for themselves or transfer them to children, grandchildren or other qualified designees.

Lastly, this legislation expands the capacity and builds on the success of current Senior Programs by raising the authorization funding levels for the Foster Grandparent, Senior Corps and RSVP programs. We all know that seniors and these programs have already made a remarkable difference in our communities. That is why our legislation raises program eligibility levels from 125 to 200 percent above poverty and ensures that all programs will be open to any individual 55 years and older.

Contrary to what some suggest, I believe the American people are starved for opportunities to serve—and stand at the ready not just in times of crisis, but every day.

Americans are simply waiting to be asked to serve something greater than themselves, as they originally were by President John F. Kennedy. In introducing this legislation today, we once again remind all Americans of that call to serve.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 53—AUTHORIZING A PLAQUE COMMEMORATING THE ROLE OF ENSLAVED AFRICAN AMERICANS IN THE CONSTRUCTION OF THE CAPITOL

Mrs. LINCOLN (for herself, Mr. SCHUMER, Mr. CHAMBLISS, and Mr. BENNETT) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 53

Whereas enslaved African Americans provided labor essential to the construction of the Capitol;

Whereas enslaved African Americans performed the backbreaking work of quarrying the stone which comprised many of the floors, walls, and columns of the Capitol;

Whereas enslaved African Americans toiled in the Aquia Creek sandstone quarry in Stafford County, Virginia and in a marble quarry in Montgomery County, Maryland to produce the stone that would be used in the Capitol;

Whereas the marble columns in the Old Senate Chamber and the sandstone walls of the East Front corridor remain as the lasting legacies of the enslaved African Americans who worked the quarries;

Whereas enslaved African Americans also participated in other facets of construction of the Capitol, including carpentry, masonry, carting, rafting, roofing, plastering, glazing, painting, and sawing;

Whereas enslaved African Americans labored on the Nation's Capitol while they, themselves, were not free;

Whereas the contributions of enslaved African Americans in the construction of the Capitol have not been acknowledged nor adequately represented in the Capitol;