

111TH 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, and Mr. KAUFMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURI-**
 2 **TIES, AND FINANCIAL FRAUD RECOVERY AND**
 3 **ENFORCEMENT.**

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

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

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

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

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

17 (b) MORTGAGE LENDING BUSINESS DEFINED.—

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

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

22 “In this title, the term ‘mortgage lending business’
 23 means an organization which finances or refinances any
 24 debt secured by an interest in real estate, including private
 25 mortgage companies and any subsidiaries of such organi-

1 zations, and whose activities affect interstate or foreign
2 commerce.”.

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

“27. Mortgage lending business defined.”.

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

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

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

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

23 (1) inserting after “or promises, in” the fol-
24 lowing: “any grant, contract, subcontract, subsidy,
25 loan, guarantee, insurance or other form of Federal

1 assistance, including through the Troubled Assets
2 Relief Program, an economic stimulus, recovery or
3 rescue plan provided by the Government, or the Gov-
4 ernment's purchase of any preferred stock in a com-
5 pany, or"; and

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

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

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

15 (A) in the caption, by inserting "and com-
16 modities" after "**Securities**";

17 (B) by inserting "any commodity for fu-
18 ture delivery, or any option on a commodity or
19 a commodity for future delivery, or" after "any
20 person in connection with" ; and

21 (C) by inserting "any commodity for fu-
22 ture delivery, or any option on a commodity or
23 a commodity for future delivery, or" after "in
24 connection with the 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
4 “and commodities” after “Securities”.

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

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

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

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

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

20 (1) inserting “(i)” before “with the intent to
21 promote”; and

22 (2) adding at the end the following:

23 “(ii) with the intent to engage in con-
24 duct constituting a violation of section

1 7201 or 7206 of the Internal Revenue
2 Code of 1986; or”.

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

7 (a) IN GENERAL.—

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

16 (2) ALLOCATIONS.—With respect to fiscal years
17 2010 and 2011, the amount authorized to be appro-
18 priated under paragraph (1) shall be allocated as
19 follows:

20 (A) Federal Bureau of Investigation:
21 \$65,000,000.

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

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

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

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

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

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

22 (d) USE OF FUNDS.—The funds authorized to be ap-
23 propriated under subsections (a), (b), and (c), shall be lim-
24 ited to cover the costs of each listed agency or department
25 for investigating possible criminal, civil, or administrative

1 violations and for prosecuting criminal, civil, or adminis-
2 trative proceedings involving financial crimes and crimes
3 against Federal assistance programs, including mortgage
4 fraud, securities fraud, financial institution fraud, and
5 other frauds related to Federal assistance and relief pro-
6 grams

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

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

17 (2) the amounts recovered as a result of crimi-
18 nal or civil restitution, fines, penalties, and other
19 monetary recoveries resulting from criminal, civil, or
20 administrative proceedings and settlements under-
21 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 (c) and (d), respectively; and

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

○