

FIGHT FRAUD ACT OF 2009

MAY 4, 2009.—Ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1748]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1748) to amend title 18, United States Code, to enhance the investigation and prosecution of mortgage fraud and financial institution fraud, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fight Fraud Act of 2009”.

SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURITIES, AND FINANCIAL FRAUD RECOVERY AND ENFORCEMENT.

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

- (1) in paragraph (8), by striking “or” after the semicolon;
- (2) in paragraph (9), by striking the period and inserting “; or”; and
- (3) by inserting at the end the following:

“(10) a mortgage lending business or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974.”.

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

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

“§ 27. Mortgage lending business defined

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

- (2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following: “27. Mortgage lending business defined.”.

(c) **FALSE STATEMENTS IN MORTGAGE APPLICATIONS AMENDED TO INCLUDE FALSE STATEMENTS BY MORTGAGE BROKERS AND AGENTS OF MORTGAGE LENDING BUSINESSES.**—Section 1014 of title 18, United States Code, is amended—

- (1) by striking “or” after “the International Banking Act of 1978,”; and
- (2) by inserting after “section 25(a) of the Federal Reserve Act” the following: “, or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974”.

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

- (1) by striking “in any procurement” and inserting “in any Federal assistance in the form of financial relief or stimulus provided by the Government, including through the Troubled Assets Relief Program, whether through grant, contract, subcontract, subsidy, loan, guarantee, insurance, purchase of preferred stock, or otherwise, or any procurement”; and
- (2) by striking “the contract, subcontract” and inserting “such grant, contract, subcontract, subsidy, loan, guarantee, insurance, purchase, or other form of financial relief or stimulus”.

(e) **SECURITIES FRAUD AMENDED TO INCLUDE FRAUD INVOLVING OPTIONS AND FUTURES IN COMMODITIES.**—

- (1) **IN GENERAL.**—Section 1348 of title 18, United States Code, is amended—
 - (A) in the caption, by inserting “**and commodities**” after “**Securities**”;
 - (B) in paragraph (1), by inserting “any commodity for future delivery, or any option on a commodity for future delivery, or” after “any person in connection with”; and
 - (C) in paragraph (2), by inserting “any commodity for future delivery, or any option on a commodity for future delivery, or” after “in connection with the purchase or sale of”.
- (2) **CLERICAL AMENDMENT.**—The item relating to section 1348 in the table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by inserting “and commodities” after “Securities”.

SEC. 3. AUTHORIZATION OF ADDITIONAL RESOURCES FOR INVESTIGATORS AND PROSECUTORS FOR MORTGAGE FRAUD, SECURITIES AND COMMODITIES FRAUD, AND OTHER CRIMES OF FRAUD.

(a) **AUTHORIZATIONS FOR THE DEPARTMENT OF JUSTICE.**—

- (1) **IN GENERAL.**—There is authorized to be appropriated to the Attorney General, \$185,000,000 for fiscal year 2010 and \$175,000,000 for fiscal year 2011, for the purposes of investigations, prosecutions, and civil enforcement actions against possible fraud (including mortgage fraud and securities and commodities fraud) relating to a financial institution, including financial institutions receiving Federal assistance under the Troubled Assets Relief Program or otherwise.

- (2) **ALLOCATIONS.**—The amounts authorized to be appropriated under paragraph (1) shall be allocated as follows:

(A) Federal Bureau of Investigation: \$75,000,000 for fiscal year 2010 and \$65,000,000 for fiscal year 2011, an appropriate percentage of which amounts shall be used to investigate mortgage fraud.

(B) The offices of the United States Attorneys: \$50,000,000.

(C) The criminal division of the Department of Justice: \$20,000,000.

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

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

(F) The Director of the Administrative Office of the United States Courts: \$20,000,000.

(b) AUTHORIZATIONS FOR THE POSTAL INSPECTION SERVICE.—There is authorized to be appropriated to the Postal Inspection Service of the United States Postal Service, \$30,000,000 for each of the fiscal years 2010 and 2011 for investigations into possible fraud described in subsection (a)(1).

(c) AUTHORIZATIONS FOR THE INSPECTOR GENERAL FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—There is authorized to be appropriated to the Inspector General of the Department of Housing and Urban Development, \$30,000,000 for each of the fiscal years 2010 and 2011 for investigations into possible fraud described in subsection (a)(1).

(d) AUTHORIZATIONS FOR THE UNITED STATES SECRET SERVICE.—There is authorized to be appropriated to the United States Secret Service of the Department of Homeland Security, \$20,000,000 for each of the fiscal years 2010 and 2011 for investigations into possible fraud described in subsection (a)(1).

(e) ADDITIONAL AUTHORIZATIONS; AVAILABILITY.—The amounts authorized under this section are in addition to amounts otherwise authorized in other Acts, and shall remain available until expended.

(f) DEFENSE SERVICES.—Funds made available under this section by the recipient described in subsection (a)(2)(F) shall be used to cover costs associated with providing defense services to defendants investigated for or charged with an offense described in subsection (a)(1).

(g) REPORT TO CONGRESS.—Following the final expenditure of all funds appropriated pursuant to authorization under this section, the Attorney General, in consultation with the United States Postal Inspection Service, the Inspector General for the Department of Housing and Urban Development, and the Secretary of Homeland Security, shall submit a report to Congress identifying—

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

(2) the amounts recovered as a result of criminal or civil restitution, fines, penalties, and other monetary recoveries resulting from criminal, civil, or administrative proceedings and settlements undertaken with funds authorized by this Act.

SEC. 4. GRANTS FOR STATE AND LOCAL LAW ENFORCEMENT.

(a) IN GENERAL.—Subject to the availability of amounts provided in advance in appropriations Acts, the Attorney General is authorized to award grants to States to establish and develop programs to increase and enhance enforcement against mortgage fraud, securities and commodities fraud, and financial institution fraud, including enforcement against the use of computers in committing such fraud.

(b) APPLICATION.—To be eligible to be considered for a grant under subsection (a), a State shall submit an application to the Attorney General at such time, in such manner, and containing such information, including as described in subsection (d), as the Attorney General may require.

(c) USE OF GRANT AMOUNTS.—A grant awarded to a State under subsection (a) shall be used by the State to establish and develop programs to—

(1) assist State and local law enforcement agencies in enforcing State and local criminal laws relating to criminal activity described in subsection (a);

(2) assist State and local law enforcement agencies in educating the public to prevent and identify such criminal activity;

(3) educate and train State and local law enforcement officers and prosecutors to conduct investigations, forensic analyses of evidence, and prosecutions relating to such criminal activity;

(4) assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analyses of evidence relating to such criminal activity;

(5) assist public defenders with providing defense services to defendants in cases in which the defendant is charged with any such criminal activity; and

(6) facilitate and promote communication between Federal, State, and local law enforcement to improve the sharing of Federal law enforcement expertise and information about the investigation, forensic analysis of evidence, and prosecution relating to such criminal activity, with State and local law enforcement

officers and prosecutors, including through the use of multi-jurisdictional task forces.

(d) ASSURANCES AND ELIGIBILITY.—To be eligible to receive a grant under subsection (a), a State shall provide assurances to the Attorney General that the State—

(1) will provide an assessment of the resource needs of the State and units of local government within that State, including criminal justice resources being devoted to the investigation and enforcement of laws related to criminal activity described in subsection (a);

(2) will develop a plan for coordinating the programs funded under this section with other federally funded technical assistance and training programs; and

(3) will submit to the Attorney General applicable reports in accordance with subsection (f).

(e) MATCHING FUNDS.—The Federal share of a grant received under this section may not exceed 75 percent of the total cost of a program or proposal funded under this section unless the Attorney General waives, wholly or in part, the requirements of this subsection.

(f) REPORTS.—For each year that a State receives a grant under subsection (a) for a program, the State shall submit to the Attorney General a report on the results, including the effectiveness, of such program during such year.

(g) DEFINITION OF STATE.—For the purposes of this section, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$100,000,000 for each of the fiscal years 2010 through 2011.

(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year, not more than 3 percent may be used for salaries and administrative expenses for the Department of Justice.

(3) MINIMUM AMOUNT.—Each State submitting an application for, and eligible to receive, a grant under this section for a fiscal year shall be allocated under this section, in each such fiscal year, not less than 0.75 percent of the total amount appropriated in such fiscal year for grants pursuant to this section, except that not less than 0.25 percent of such total amount shall be allocated to the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, collectively.

(4) GRANTS TO INDIAN TRIBES.—Subject to paragraph (3), the Attorney General may use amounts made available pursuant to authorizations under this section to make grants to Indian tribes for use in accordance with this section.

SEC. 5. AUTHORIZATION AND EXPANSION OF NATIONAL WHITE COLLAR CRIME CENTER.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part JJ, as added by section 952 of Public Law 110–315 (relating to Loan Repayment for Prosecutors and Public Defenders), as part LL, and moving such part so that such part follows part KK;

(2) in part LL, as so redesignated and moved by paragraph (1), by redesignating section 3001 as section 3021; and

(3) by adding at the end the following new part:

“PART MM—NATIONAL WHITE COLLAR CRIME CENTER GRANTS

“SEC. 3031. ESTABLISHMENT OF GRANTS PROGRAM.

“(a) AUTHORIZATION.—The Attorney General is authorized to award grants and enter into contracts with State and local criminal justice agencies and nonprofit organizations for the purpose of improving the detection, investigation, and prosecution of covered criminal activities.

“(b) COVERED CRIMINAL ACTIVITIES DEFINED.—For purposes of this part, the term ‘covered criminal activity’ means a criminal conspiracy or activity or a terrorist conspiracy or activity that spans jurisdictional boundaries, including the following:

“(1) Terrorism.

“(2) Economic crime, including financial fraud and mortgage fraud.

“(3) High-tech crime, also known as cybercrime or computer crime, including internet-based crime against children and child pornography.

“(c) CRIMINAL JUSTICE AGENCY DEFINED.—For purposes of this part, the term ‘criminal justice agency’, with respect to a State or a unit of local government within such State, includes a law enforcement agency, a State regulatory body with criminal investigative authority, and a State or local prosecution office to the extent that such agency, body, or office, respectively, is involved in the prevention, investigation, and prosecution of covered criminal activities.

“SEC. 3032. AUTHORIZED PROGRAMS.

“Grants and contracts awarded under this part may be made only for the following programs, with respect to the prevention, investigation, and prosecution of covered criminal activities:

“(1) Programs to provide a nationwide support system for State and local criminal justice agencies.

“(2) Programs to assist State and local criminal justice agencies to develop, establish, and maintain intelligence-focused policing strategies and related information sharing.

“(3) Programs to provide training and investigative support services to State and local criminal justice agencies to provide such agencies with skills and resources needed to investigate and prosecute such criminal activities and related criminal activities.

“(4) Programs to provide research support, to establish partnerships, and to provide other resources to aid State and local criminal justice agencies to prevent, investigate, and prosecute such criminal activities and related problems.

“(5) Programs to provide information and research to the general public to facilitate the prevention of such criminal activities.

“(6) Programs to establish National training and research centers regionally, including within Virginia, Texas, and Michigan, to provide training and research services for State and local criminal justice agencies.

“(7) Any other programs specified by the Attorney General as furthering the purposes of this part.

“SEC. 3033. APPLICATION.

“To be eligible to be considered for an award of a grant or contract under this part, an entity shall submit to the Attorney General an application in such form and manner, and containing such information, as required by the Attorney General.

“SEC. 3034. RULES AND REGULATIONS.

“The Attorney General shall promulgate such rules and regulations as are necessary to carry out this part, including rules and regulations for submitting and reviewing applications under section 3033.”

(b) AUTHORIZATION OF APPROPRIATION.—Section 1001(a) of such Act (42 U.S.C. 3793) is amended by adding at the end the following new paragraph:

“(27) There is authorized to be appropriated to carry out part MM—

“(A) \$25,000,000 for fiscal year 2010;

“(B) \$28,000,000 for fiscal year 2011;

“(C) \$31,000,000 for fiscal year 2012;

“(D) \$34,000,000 for fiscal year 2013;

“(E) \$37,000,000 for fiscal year 2014; and

“(F) \$40,000,000 for fiscal year 2015.”.

PURPOSE AND SUMMARY

H.R. 1748, the “Fight Fraud Act of 2009,” introduced by Chairman Conyers and Ranking Member Lamar Smith, will amend relevant criminal statutes and authorize additional funding for Federal, state, and local agencies to combat corporate fraud, mortgage fraud, securities and commodities fraud, and other financial frauds that have significantly contributed to the recent economic crisis, and other specified crimes.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

For more than a year, this Nation has been experiencing the worst economic crisis since the Great Depression.¹ Millions of Americans have lost their homes, their savings, and their jobs.² While there are many factors which contributed to this crisis, fraud has played a significant role—including fraud on the part of unscrupulous mortgage lenders and brokers, who lured consumers into buying homes that they could not afford, by aggressively marketing subprime loans with low teaser rates.³ Now, as the initial teaser rates have gone up and many homeowners have lost their jobs, many of those homes have fallen into foreclosure.⁴

This subprime mortgage fraud, in turn, contributed to the collapse of the wider financial industry. The financial services industry had skimmed billions of dollars from the rising tide of real estate values, by marketing mortgage-backed securities to investors around the world. When the real estate bubble burst, the securities became toxic. In the past year, banks and financial institutions in this country have suffered more than \$500 billion in losses that can be traced to the collapse of the mortgage industry.⁵

During this time, the number of fraud investigations and enforcement actions has dramatically increased. The number of open FBI mortgage fraud investigations, for example, has risen from 881 in fiscal year 2006 to more than 2000 currently.⁶ There has not, however, been a commensurate increase in available resources. For example, the FBI currently has more than 1,800 mortgage fraud investigations open, but only 240 agents specifically assigned to these cases.⁷ Investigators and agents at the Inspector General's Office for Housing and Urban Development (HUD), the U.S. Secret Service, and the U.S. Postal Inspector Service have also seen an increase in their financial fraud investigations, but not a corresponding increase in their budgets.⁸ States and localities likewise struggle to handle the mounting tide of fraud and other financial crimes they are investigating.

NEED FOR THE LEGISLATION

This legislation will amend and clarify current criminal fraud statutes and provide resources to more effectively address the magnitude of financial crimes associated with the current economic crisis. While general fraud statutes may reach some of the fraud that has occurred in recent years, clarifying the Federal criminal fraud

¹See Jon Hilsenrath, Serena Ng, & Damian Paletta, Worst Crisis Since '30's, With No End Yet in Sight, *Wall St. J.*, Sept. 18, 2008.

²See Peter S. Goodman & Jack Healy, 663,000 Jobs Lost in March; Total Tops 5 Million, *N.Y. Times*, Apr. 4, 2009.

³See *Fraud Factor*, *N.Y. Times*, Apr. 18, 2009.

⁴See Phillip R. Robinson, *The Worst Mortgages*, *Baltimore Sun*, Apr. 13, 2009.

⁵See Hon. Patrick Leahy, Statement of Introduction of Fraud Enforcement and Recovery Act of 2009, Feb. 5, 2009, available at <http://leahy.senate.gov/press/200902/020509b.html>.

⁶Proposals to Fight Fraud and Protect Taxpayers, Hearing Before the H. Comm. on the Judiciary, 111th Cong. (2009) (written statement of John Pistole).

⁷See Need for Increased Fraud Enforcement in the Wake of the Economic Downturn, Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 111th Cong. (2009) (testimony of John Pistole).

⁸See, e.g., *The Role of FHA in Addressing the Housing Crisis*, Hearing Before the S. Comm. on Appropriations Subcomm. on Transportation, Housing and Urban Development & Related Agencies, 111th Cong. (2009) (testimony of Kenneth Donohue, Inspector General, Dept. of Housing and Urban Development).

statutes will better ensure that they are able to reach the variety of these fraudulent schemes and deter future fraud against the newly created economic recovery programs. Additional resources are also needed for the agencies in the front lines of combating this wave of fraud and other financial crimes.

During Committee mark-up, the bill was amended to address other priorities such as additional resources for Federal public defenders, authorizing grants to States and localities to investigate and prosecute fraud, and authorizing new grants through the National White Collar Crime Center for States and localities to combat economic crimes, as well as terrorism, and cyber-crime involving child exploitation.

HEARINGS

On April 1, 2009, the full Committee on the Judiciary held 1 day of hearings on H.R. 1748, along with other legislative proposals to fight fraud. Testimony was received from Representative Elijah Cummings (D-MD); Representative Neil Abercrombie (D-OH); Representative Judy Biggert (R-IL); Mr. Jonathan Mintz, Commissioner, New York City Department of Consumer Affairs; Mr. Ira Rheingold, Executive Director, National Association of Consumer Advocates (NACA); Jeb White, President, Taxpayers Against Fraud; Barry Pollack, Chair, White Collar Crime Committee, National Association of Criminal Defense Lawyers (NACDL) and Partner, Miller & Chevalier; Ms. Rita Glavin, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice, Mr. John Pistole, Deputy Director, Federal Bureau of Investigation; and Ms. Marcia Madsen, Institute for Legal Reform, Chamber of Commerce, and partner, Mayer, Brown, and Platt.

COMMITTEE CONSIDERATION

On April 28, 2009, the Committee met in open session and ordered the bill, H.R. 1748, favorably reported with amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1748.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirement in clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Con-

gressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1748, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 29, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1748, the “Fight Fraud Act of 2009.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1748—the “Fight Fraud Act of 2009.”

SUMMARY

H.R. 1748 would broaden the coverage of current laws against financial crimes, including fraud affecting mortgages, securities, and Federal assistance and relief programs. The bill would authorize the appropriation of \$520 million over the 2010–2011 period for the Department of Justice (DOJ), the Postal Inspection Service, and other Federal agencies to investigate and prosecute violators of the bill’s provisions. The bill also would authorize the appropriation of \$395 million over the 2010–2015 period for DOJ to make grants to states and other entities to combat financial and other crimes.

CBO estimates that implementing H.R. 1748 would cost \$805 million over the 2010–2014 period, assuming appropriation of the authorized amounts. Enacting H.R. 1748 could affect direct spending and revenues; CBO has no basis for estimating the timing or magnitude of any such effects, but we estimate that there would be no net change in costs over time.

H.R. 1748 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1748 is shown in the following table. The costs of this legislation fall within budget func-

tions 370 (commerce and housing credit), 450 (community and regional development), and 750 (administration of justice).

By fiscal year, in millions of dollars—

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2010– 2014 |
|---|------|------|------|------|------|---------------|
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Funding for DOJ and Other Federal Agencies to Combat Financial Crimes | | | | | | |
| Authorization Level | 265 | 255 | 0 | 0 | 0 | 520 |
| Estimated Outlays | 228 | 252 | 34 | 5 | 1 | 520 |
| DOJ Grants | | | | | | |
| Authorization Level | 125 | 128 | 31 | 34 | 37 | 355 |
| Estimated Outlays | 28 | 66 | 70 | 61 | 60 | 285 |
| Total | | | | | | |
| Authorization Level | 390 | 383 | 31 | 34 | 37 | 875 |
| Estimated Outlays | 256 | 318 | 104 | 66 | 61 | 805 |

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted during fiscal year 2009, that the authorized amounts will be appropriated each year, and that spending will follow historical patterns for the authorized activities.

Spending Subject to Appropriation

H.R. 1748 would authorize the appropriation of \$265 million for fiscal year 2010 and \$255 million for fiscal year 2011 for DOJ and other Federal agencies to investigate and prosecute financial crimes. Of those totals, the bill would authorize \$75 million for 2010 and \$65 million for 2011 for the Federal Bureau of Investigation. In addition, for each of fiscal years 2010 and 2011, the bill would authorize:

- \$90 million for offices of the United States Attorneys and DOJ's criminal, civil, and tax divisions;
- \$30 million for the Postal Inspection Service;
- \$30 million for the Inspector General for the Department of Housing and Urban Development;
- \$20 million for the Administrative Office of the United States Courts; and
- \$20 million for the United States Secret Service.

In addition, H.R. 1748 would authorize the appropriation of \$100 million for each of fiscal years 2010 and 2011 for DOJ to make grants to states to combat financial crimes, including fraud affecting mortgages, securities, and financial institutions. The bill also would authorize an appropriation totaling \$155 million over the 2010–2014 period (and \$40 million for 2015) for DOJ to make grants to state and local governments and nonprofit organizations to combat terrorist acts, economic crimes (including financial and mortgage fraud), and cybercrimes.

Revenues and Direct Spending

H.R. 1748 could increase collections of civil and criminal fines for violations of the bill's provisions. Civil fines are recorded as reve-

nues and deposited in the U.S. Treasury. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation.

CBO has no basis for estimating the magnitude of any additional collections of civil and criminal fines. However, we estimate that any such effects would have no net costs over time.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1748 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Assuming the appropriation of authorized amounts, those governments would receive \$285 million over the 2010–2014 period to investigate and prosecute fraud and computer crimes. Any costs would be incurred voluntarily as a condition of receiving Federal assistance.

PREVIOUS CBO ESTIMATE

On March 18, 2009, CBO transmitted a cost estimate for S. 386, the Fraud Enforcement on Recovery Act of 2009, as reported by the Senate Committee on the Judiciary on March 5, 2009. That bill would broaden the coverage of current laws against financial crimes and would authorize the appropriation of \$245 million for each of fiscal years 2010 and 2011 for DOJ and other Federal agencies to investigate and prosecute violators of the bill's provisions. The CBO cost estimates reflect the differences between those bills.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Marin Randall

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1748 is intended to (1) amend title 18 U.S.C. to clarify laws designed to combat fraud, (2) authorize funding for additional resources to Federal agencies to investigate, prosecute, and otherwise enforce against fraud, and (3) authorize funding for grants to states and localities to fight fraud and other specified crimes.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1748 does not contain any congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee:

Sec. 1. Short Title. Section 1 sets forth the short title of this Act as the “Fight Fraud Act of 2009.”

Sec. 2. Amendments to Improve Mortgage, Securities, and Financial Fraud Recovery and Enforcement. This section augments and clarifies the reach of federal criminal fraud statutes to ensure that they cover the various types of financial fraud that have recently occurred with respect to financial institutions and that could potentially occur in connection with the Troubled Asset Relief Program or other federal assistance being provided to financial institutions.

Section 2(a) amends the definition in 18 U.S.C. 20 for a “financial institution” to include a “mortgage lending business,” which section 2(b) adds a new definition of, in 18 U.S.C. 27, as “an organization . . . which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries” whose activities affect interstate or foreign commerce. The new definition also includes “any person or entity that makes in whole or in part a federally-regulated mortgage loan as defined in 12 U.S.C. § 2602(1).”

These new definitions for “financial institution” and “mortgage lending business” will better ensure that private mortgage brokers and companies can be held fully accountable under Federal fraud laws for fraudulent actions against financial institutions, including mortgage lending businesses, particularly where they are dealing in federally-regulated or federally-insured mortgages. For example, the bank fraud statute, 18 U.S.C. § 1344, prohibits defrauding “a financial institution,” which will now include mortgage lending businesses in addition to traditional banks and financial institutions.

In addition, the expanded definition of “financial institution” would also apply to the following criminal provisions: 18 U.S.C. § 215 (financial institution bribery); 18 U.S.C. § 225 (continuing financial crimes enterprise); 18 U.S.C. § 1005 (false statement/entry/record for financial institution); and 18 U.S.C. § 1344 (bank/ financial institution fraud). The new definition would also provide for enhanced penalties for mail and wire fraud affecting a financial institution, including a mortgage lending business, pursuant to 18 U.S.C. §§ 1341, 1343. Expanding the term “financial institution” to include mortgage lending businesses will also strengthen penalties for mortgage frauds. It would also extend the statute of limitations in investigations of mortgage fraud to be consistent with bank fraud investigations.

This definition of “financial institution” would not apply to the Suspicious Activity Reports (SARs) that banks and other financial institutions are required to file, as “financial institution” is defined separately under the Bank Secrecy Act, 31 U.S.C. § 5312(a)(2).

Section 2(c) would amend the false statement in mortgage application statute (18 U.S.C. § 1014) to include making a materially false statement or willfully overvaluing a property in order to influence any action by a mortgage lending business. The current of-

fense applies only to Federal agencies, banks, and credit associations, and does not extend to private mortgage lending businesses, even if they are handling federally-regulated or federally-insured mortgages.

Similar to expanding the definition of “financial institution” in sections 2(a) and 2(b), this provision will better ensure that private mortgage brokers and companies are held fully accountable for fraud—including false appraisal fraud, an especially problematic type of mortgage fraud during the recent financial crisis.

Section 2(d) amends the Federal major-fraud-against-the-United-States statute (18 U.S.C. § 1031) to include and cover economic relief and TARP funds, “whether through grant, contract, sub-contract, subsidy, loan, guarantee, insurance, purchase of preferred stock, or otherwise.” This will ensure that Federal prosecutors have jurisdiction to use one of their most potent fraud statutes to protect the Government assistance provided during the recent economic crisis, including money from the TARP. These amendments, however, apply only to major frauds against the Government, where the value exceeds \$1,000,000.

Section 2(e) amends the Federal securities fraud statute (18 U.S.C. § 1348) to clarify that it includes fraud in commodities futures or options, in addition to securities fraud—this will more clearly include some of the derivatives and other financial products that were part of the financial collapse.

Sec. 3. Authorization of Additional Resources for Investigators and Prosecutors for Mortgage Fraud, Securities and Commodities Fraud, and Other Crimes of Fraud. This section authorizes \$185 million for fiscal year 2010 and \$175 million for the fiscal year 2011 to be allocated to the FBI (\$75 million in 2010; \$65 million in 2011), U.S. Attorney’s offices (\$50 million each year), and the Criminal, Civil, and Tax Divisions of the Justice Department (\$40 million each year). The section also authorizes additional appropriations for the Postal Inspection Service (\$30 million each year), the Inspector General for HUD (\$30 million each year), the U.S. Secret Service (\$20 million each year), and the Director of the Administrative Office of the United States Courts (\$20 million each year). The bill directs that these authorized funds may only be used for fighting mortgage, securities and commodities, and other crimes of fraud, and the Department must certify that funds were used for those purposes, after expended.

Sec. 4. Grants for State and Local Law Enforcement. This section authorizes the Attorney General to award grants to States and Indian Tribes to establish and develop programs to increase enforcement against mortgage fraud, securities and commodities fraud, and financial institution fraud, including enforcement against the use of computers in committing such fraud. Such programs include initiatives to assist State and local law enforcement in providing public education, officer training, and equipment to combat these crimes. The term “mortgage fraud” as used in this section is intended to include schemes to defraud homeowners through fraudulent promises to modify the terms of existing loans. This section also sets forth requirements for grant applications. Finally, the section authorizes appropriations for fiscal years 2010 and 2011 in the amount of \$100,000,000 for each year.

Sec. 5. Authorization and Expansion of National White Collar Crime Center. This section amends the Omnibus Crime Control and Safe Streets Act of 1968 to authorize the Attorney General to award grants and enter into contracts with State and local criminal justice agencies and nonprofit organizations for the purpose of improving the detection, investigation, and prosecution of covered criminal activities, including terrorism, economic crime (including financial and mortgage fraud), and high-tech crimes, also known as cyber-crime. The funds are authorized to be appropriated in the following manner: \$25,000,000 for fiscal year 2010, \$28,000,000 for fiscal year 2011, \$31,000,000 for fiscal year 2012, \$34,000,000 for fiscal year 2013, \$37,000,000 for fiscal year 2014, and \$40,000,000 for fiscal year 2015.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 1—GENERAL PROVISIONS

Sec.

1. Repealed.

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27. *Mortgage lending business defined.*

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§ 20. Financial institution defined

As used in this title, the term “financial institution” means—

(1) * * *

* * * * *

(8) an organization operating under section 25 or section 25(a) of the Federal Reserve Act; **[or]**

(9) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978)**[.]**; *or*

(10) *a mortgage lending business or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974.*

* * * * *

§27. Mortgage lending business defined

In this title, the term “mortgage lending business” means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

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§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Federal Housing Administration, the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), **[or]** an organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both. The term “State-chartered credit union” includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

* * * * *

§ 1031. Major fraud against the United States

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

(1) * * *

* * * * *

[in any procurement] *in any Federal assistance in the form of financial relief or stimulus provided by the Government, including through the Troubled Assets Relief Program, whether through grant, contract, subcontract, subsidy, loan, guarantee, insurance, purchase of preferred stock, or otherwise, or any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of [the contract, subcontract] such grant, contract, subcontract, subsidy, loan, guarantee, insurance, purchase, or other form of financial relief or stimulus, or any constituent part thereof, for such property or services is \$1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both.*

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CHAPTER 63—MAIL FRAUD

Sec.
1341. Frauds and swindles.

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1348. Securities *and commodities* fraud.

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§ 1348. Securities *and commodities* fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud any person in connection with *any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or*

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of *any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); shall be fined under this title, or imprisoned not more than 25 years, or both.*

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

* * * * *

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * *

PART J—FUNDING

AUTHORIZATION OF APPROPRIATIONS

SEC. 1001. (a)(1) * * *

* * * * *

(27) There is authorized to be appropriated to carry out part MM—

- (A) \$25,000,000 for fiscal year 2010;*
- (B) \$28,000,000 for fiscal year 2011;*
- (C) \$31,000,000 for fiscal year 2012;*
- (D) \$34,000,000 for fiscal year 2013;*
- (E) \$37,000,000 for fiscal year 2014; and*
- (F) \$40,000,000 for fiscal year 2015.*

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PART [JJ] LL—LOAN REPAYMENT FOR PROSECUTORS AND PUBLIC DEFENDERS

SEC. [3001.] 3021. GRANT AUTHORIZATION.

(a) * * *

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PART MM—NATIONAL WHITE COLLAR CRIME CENTER GRANTS

SEC. 3031. ESTABLISHMENT OF GRANTS PROGRAM.

(a) AUTHORIZATION.—The Attorney General is authorized to award grants and enter into contracts with State and local criminal justice agencies and nonprofit organizations for the purpose of improving the detection, investigation, and prosecution of covered criminal activities.

(b) COVERED CRIMINAL ACTIVITIES DEFINED.—For purposes of this part, the term “covered criminal activity” means a criminal conspiracy or activity or a terrorist conspiracy or activity that spans jurisdictional boundaries, including the following:

- (1) Terrorism.*
- (2) Economic crime, including financial fraud and mortgage fraud.*
- (3) High-tech crime, also known as cybercrime or computer crime, including internet-based crime against children and child pornography.*

(c) CRIMINAL JUSTICE AGENCY DEFINED.—For purposes of this part, the term “criminal justice agency”, with respect to a State or a unit of local government within such State, includes a law en-

forcement agency, a State regulatory body with criminal investigative authority, and a State or local prosecution office to the extent that such agency, body, or office, respectively, is involved in the prevention, investigation, and prosecution of covered criminal activities.

SEC. 3032. AUTHORIZED PROGRAMS.

Grants and contracts awarded under this part may be made only for the following programs, with respect to the prevention, investigation, and prosecution of covered criminal activities:

(1) Programs to provide a nationwide support system for State and local criminal justice agencies.

(2) Programs to assist State and local criminal justice agencies to develop, establish, and maintain intelligence-focused policing strategies and related information sharing.

(3) Programs to provide training and investigative support services to State and local criminal justice agencies to provide such agencies with skills and resources needed to investigate and prosecute such criminal activities and related criminal activities.

(4) Programs to provide research support, to establish partnerships, and to provide other resources to aid State and local criminal justice agencies to prevent, investigate, and prosecute such criminal activities and related problems.

(5) Programs to provide information and research to the general public to facilitate the prevention of such criminal activities.

(6) Programs to establish National training and research centers regionally, including within Virginia, Texas, and Michigan, to provide training and research services for State and local criminal justice agencies.

(7) Any other programs specified by the Attorney General as furthering the purposes of this part.

SEC. 3033. APPLICATION.

To be eligible to be considered for an award of a grant or contract under this part, an entity shall submit to the Attorney General an application in such form and manner, and containing such information, as required by the Attorney General.

SEC. 3034. RULES AND REGULATIONS.

The Attorney General shall promulgate such rules and regulations as are necessary to carry out this part, including rules and regulations for submitting and reviewing applications under section 3033.