[111th Congress Public Law 21]
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Public Law 111-21
111th Congress

An Act

To improve enforcement of mortgage fraud, securities and commodities 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. <<NOTE: May 20, 2009 - [S. 386]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Fraud Enforcement and Recovery Act of 2009.>>

SECTION 1. <<NOTE: 18 USC 1 note.>> SHORT TITLE.

This Act may be cited as the ``Fraud Enforcement and Recovery Act of 2009'' or ``FERA''.

SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURITIES, COMMODITIES, 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 (as defined in section 27 of this title) 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:

``Sec. 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) Chapter analysis.--The chapter analysis for 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 by--

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(1) striking ``or'' after ``the International Banking Act of 1978),''; and

(2) 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 by--

(1) inserting after ``or promises, in'' the following: ``any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government's purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in'';

(2) striking ``the contract, subcontract'' and inserting ``such grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance''; and

(3) striking ``for such property or services''.

(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) Chapter analysis.--The item for section 1348 in the chapter analysis for chapter 63 of title 18, United States Code, is amended by inserting ``and commodities'' after ``Securities''.

(f) Money Laundering Amended To Define Proceeds of Specified Unlawful Activity.--

(1) Money laundering.--Section 1956(c) of title 18, United States Code, is amended--

(A) in paragraph (8), by striking the period and inserting ``; and''; and

(B) by inserting at the end the following:

``(9) the term `proceeds' means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.''.

(2) Monetary transactions.--Section 1957(f) of title 18, United States Code, is amended by striking paragraph (3) and inserting the following:

``(3) the terms `specified unlawful activity' and `proceeds' shall have the meaning given those terms in section 1956 of this title.''.

(g) Sense of the Congress and Report Concerning Required Approval for Merger Cases.--

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(1) Sense of congress.--It is the sense of the Congress that no prosecution of an offense under section 1956 or 1957 of title 18, United States Code, should be undertaken in combination with the prosecution of any other offense, without prior approval of the Attorney General, the Deputy Attorney General, the Assistant Attorney General in charge of the Criminal Division, a Deputy Assistant Attorney General in the Criminal Division, or the relevant United States Attorney, if the conduct to be charged as ``specified unlawful activity'' in connection with the offense under section 1956 or 1957 is so closely connected with the conduct to be charged as the other offense that there is no clear delineation between the two offenses.

(2) Report.--One year after the date of the enactment of this Act, and at the end of each of the four succeeding one-year periods, the Attorney General shall report to the House and Senate Committees on the Judiciary on efforts undertaken by the Department of Justice to ensure that the review and approval described in paragraph (1) takes place in all appropriate cases. The report shall include the following:

(A) The number of prosecutions described in paragraph (1) that were undertaken during the previous one-year period after prior approval by an official described in paragraph (1), classified by type of offense and by the approving official.

(B) The number of prosecutions described in paragraph (1) that were undertaken during the previous one-year period without such prior approval, classified by type of offense, and the reasons why such prior approval was not obtained.

(C) The number of times during the previous year in which an approval described in paragraph (1) was denied.

SEC. 3. AUTHORIZATION OF ADDITIONAL FUNDING TO COMBAT MORTGAGE FRAUD, SECURITIES AND COMMODITIES FRAUD, AND OTHER FRAUDS INVOLVING FEDERAL ECONOMIC ASSISTANCE.

(a) Authorization of Additional Appropriations for the Department of Justice.--

(1) In general.--There is authorized to be appropriated to the Attorney General, $165,000,000 for each of the fiscal years 2010 and 2011, for the purposes of investigations and prosecutions and civil and administrative proceedings involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) Allocations.--With respect to fiscal years 2010 and 2011, 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 for each fiscal year.

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(C) The criminal division of the Department of Justice: $20,000,000 for each fiscal year.

(D) The civil division of the Department of Justice: $15,000,000 for each fiscal year.

(E) The tax division of the Department of Justice: $5,000,000 for each fiscal year.

(b) Authorization of Additional Appropriations 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 involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(c) Authorization of Additional Appropriations 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 involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(d) Authorization of Additional Appropriations 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 involving Federal assistance programs and financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(e) Authorization of Additional Appropriations for the Securities and Exchange Commission.--

(1) In general.--There is authorized to be appropriated to the Securities and Exchange Commission, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations and enforcement proceedings involving financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) Inspector general.--There is authorized to be appropriated to the Securities and Exchange Commission, $1,000,000 for each of the fiscal years 2010 and 2011 for the salaries and expenses of the Office of the Inspector General of the Securities and Exchange Commission.

(f) Use of Funds.--

(1) In general.--The funds appropriated pursuant to authorization under this section shall be limited to covering the costs of each listed agency or department for investigating possible criminal, civil, or administrative violations and for criminal, civil, or administrative proceedings involving financial crimes and crimes against Federal assistance programs, including mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs.

(2) Funds for training and research.--Funds authorized to be appropriated under this section may be used and expended for programs for improving the detection, investigation, and prosecution of economic crime including financial fraud and

mortgage fraud. Funds allocated under this section may be allocated to programs which assist State and local criminal

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justice agencies to develop, establish, and maintain intelligence-focused policing strategies and related information sharing; 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; provide research support, establish partnerships, and provide other resources to aid State and local criminal justice agencies to prevent, investigate, and prosecute such criminal activities and related problems; provide information and research to the general public to facilitate the prevention of such criminal activities; and any other programs specified by the Attorney General as furthering the purposes of this Act.

(g) Additional Nature of Authorizations; Availability.--The amounts authorized under this section are in addition to amounts otherwise authorized in other Acts and shall remain available until expended.

(h) 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, the Secretary of Homeland Security, and the Commissioner of the Securities and Exchange Commission, shall submit a report to Congress identifying--

(1) the amounts expended under each of subsections (a), (b), (c), (d), and (e) and a certification of compliance with the requirements listed in subsection (f); 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. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO REFLECT THE ORIGINAL INTENT OF THE LAW.

(a) Clarification of the False Claims Act.--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 material to a false or fraudulent claim;

``(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

``(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;

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``(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 property; or

``(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly 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'--

``(A) mean that a person, with respect to information--

``(i) has actual knowledge of the information;

``(ii) acts in deliberate ignorance of the truth or falsity of the information; or

``(iii) acts in reckless disregard of the truth or falsity of the information; and

``(B) require no proof of specific intent to defraud;

``(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

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``(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and 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;

``(3) the term `obligation' means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

``(4) the term `material' means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.'';

(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)''.

(b) Intervention by the Government.--Section 3731(b) of title 31, United States Code, is amended--

(1) by redesignating subsection (c) as subsection (d);

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting the new subsection (c):

``(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint 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.''.

(c) 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

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Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election 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;

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

(C) by adding at the end the following:

``(8) <<NOTE: Definition.>> 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.''.

(d) 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, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, 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

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employee, contractor, or agent on behalf of the employee, 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, 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.''.

(e) False Claims Jurisdiction.--Section 3732 of title 31, United States Code, is amended by adding at the end the following new subsection:

``(c) Service <<NOTE: Applicability.>> on State or Local Authorities.--With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.''.

(f) Effective <<NOTE: 31 USC 3729 note.>> Date and Application.--The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to conduct on or after the date of enactment, except that--

(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1), shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) that are pending on or after that date; and

(2) section 3731(b) of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to cases pending on the date of enactment.

SEC. 5. FINANCIAL CRISIS INQUIRY COMMISSION.

(a) Establishment of Commission.--There is established in the legislative branch the Financial Crisis Inquiry Commission (in this section referred to as the ``Commission'') to examine the causes, domestic and global, of the current financial and economic crisis in the United States.

(b) Composition of the Commission.--

(1) Members.--The Commission shall be composed of 10 members, of whom--

(A) 3 members shall be appointed by the majority leader of the Senate, in consultation with relevant Committees;

(B) 3 members shall be appointed by the Speaker of the House of Representatives, in consultation with relevant Committees;

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(C) 2 members shall be appointed by the minority leader of the Senate, in consultation with relevant Committees; and

(D) 2 members shall be appointed by the minority leader of the House of Representatives, in consultation with relevant Committees.

(2) Qualifications; limitation.--

(A) In general.--It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens with national recognition and significant depth of experience in such fields as banking, regulation of markets, taxation, finance, economics, consumer protection, and housing.

(B) Limitation.--No person who is a member of Congress or an officer or employee of the Federal Government or any State or local government may serve as a member of the Commission.

(3) Chairperson; vice chairperson.--

(A) In general.--Subject to the requirements of subparagraph (B), the Chairperson of the Commission shall be selected jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives, and the Vice Chairperson shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

(B) Political party affiliation.--The Chairperson and Vice Chairperson of the Commission may not be from the same political party.

(4) Meetings, quorum; vacancies.--

(A) Meetings.--

(i) Initial meeting.--The initial meeting of the Commission shall be as soon as possible after a quorum of members have been appointed.

(ii) Subsequent meetings.--After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of its members.

(B) Quorum.--6 members of the Commission shall constitute a quorum.

(C) Vacancies.--Any vacancy on the Commission shall--

(i) not affect the powers of the Commission; and

(ii) be filled in the same manner in which the original appointment was made.

(c) Functions of the Commission.--The functions of the Commission are--

(1) to examine the causes of the current financial and

economic crisis in the United States, specifically the role of--

(A) fraud and abuse in the financial sector, including fraud and abuse towards consumers in the mortgage sector;

(B) Federal and State financial regulators, including the extent to which they enforced, or failed to enforce statutory, regulatory, or supervisory requirements;

(C) the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;

(D) monetary policy and the availability and terms of credit;

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(E) accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles;

(F) tax treatment of financial products and investments;

(G) capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;

(H) credit rating agencies in the financial system, including, reliance on credit ratings by financial institutions and Federal financial regulators, the use of credit ratings in financial regulation, and the use of credit ratings in the securitization markets;

(I) lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;

(J) affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies;

(K) the concept that certain institutions are ``too-big-to-fail'' and its impact on market expectations;

(L) corporate governance, including the impact of company conversions from partnerships to corporations;

(M) compensation structures;

(N) changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;

(O) the legal and regulatory structure of the United States housing market;

(P) derivatives and unregulated financial products and practices, including credit default swaps;

(Q) short-selling;

(R) financial institution reliance on numerical models, including risk models and credit ratings;

(S) the legal and regulatory structure governing financial institutions, including the extent to which the structure creates the opportunity for financial institutions to engage in regulatory arbitrage;

(T) the legal and regulatory structure governing investor and mortgagor protection;

(U) financial institutions and government-sponsored enterprises; and

(V) the quality of due diligence undertaken by financial institutions;

(2) to examine the causes of the collapse of each major

financial institution that failed (including institutions that were acquired to prevent their failure) or was likely to have failed if not for the receipt of exceptional Government assistance from the Secretary of the Treasury during the period beginning in August 2007 through April 2009;

(3) to submit a report under subsection (h);

(4) to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis; and

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(5) to build upon the work of other entities, and avoid unnecessary duplication, by reviewing the record of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other congressional committees, the Government Accountability Office, other legislative panels, and any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States (to the fullest extent permitted by law) with respect to the current financial and economic crisis.

(d) Powers of the Commission.--

(1) Hearings and evidence.--The Commission may, for purposes of carrying out this section--

(A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(2) Subpoenas.--

(A) Service.--Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission.

(B) Enforcement.--

(i) In general.--In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) Additional enforcement.--

Sections <<NOTE: Applicability.>> 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section.

(iii) Issuance.--A subpoena may be issued under this subsection only--

(I) by the agreement of the Chairperson and the Vice Chairperson; or

(II) by the affirmative vote of a majority of the Commission, including an affirmative vote of at least one member appointed under subparagraph (C) or (D) of subsection (b)(1), a majority being present.

(3) Contracting.--The Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(4) Information from federal agencies and other entities.--

(A) In general.--The Commission may secure directly from any department, agency, bureau, board, commission,

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office, independent establishment, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, including information of a confidential nature (which the Commission shall maintain in a secure manner). Each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information directly to the Commission upon request.

(B) Other entities.--It is the sense of the Congress that the Commission should seek testimony or information from principals and other representatives of government agencies and private entities that were significant participants in the United States and global financial and housing markets during the time period examined by the Commission.

(5) Administrative support services.--Upon the request of the Commission--

(A) the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act; and

(B) other Federal departments and agencies may provide to the Commission any administrative support services as may be determined by the head of such department or agency to be advisable and authorized by law.

(6) Donations of goods and services.--The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) Postal services.--The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(8) Powers of subcommittees, members, and agents.--Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(e) Staff of the Commission.--

(1) Director.--The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly.

(2) Staff.--The Chairperson and the Vice Chairperson may jointly appoint additional personnel, as may be necessary, to enable the Commission to carry out its functions.

(3) Applicability of certain civil service laws.--The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under paragraph (1) or (2) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(4) Detailees.--Any Federal Government employee may be detailed to the Commission without reimbursement from

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the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(5) Consultant services.--The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) Compensation and Travel Expenses.--

(1) Compensation.--Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) Travel expenses.--While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) Nonapplicability of Federal Advisory Committee Act.--The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) Report of the Commission; Appearance Before and Consultations With Congress.--

(1) Report.--On December 15, 2010, the Commission shall submit to the President and to the Congress a report containing the findings and conclusions of the Commission on the causes of the current financial and economic crisis in the United States.

(2) Institution-specific reports authorized.--At the discretion of the chairperson of the Commission, the report under paragraph (1) may include reports or specific findings on any financial institution examined by the Commission under subsection (c)(2).

(3) Appearance before the congress.--

The <<NOTE: Deadline.>> chairperson of the Commission shall, not later than 120 days after the date of submission of the final reports under paragraph (1), appear before the Committee on

Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding such reports and the findings of the Commission.

(4) Consultations with the congress.--The Commission shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and other relevant committees of the Congress, for purposes of informing the Congress on the work of the Commission.

(i) Termination of Commission.--

(1) In general.--The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (h).

(2) Administrative activities before termination.--The Commission may use the 60-day period referred to in paragraph

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(1) for the purpose of concluding the activities of the Commission, including providing testimony to committees of the Congress concerning reports of the Commission and disseminating the final report submitted under subsection (h).

(j) Authorization of Appropriation.--There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission.

Approved May 20, 2009.

LEGISLATIVE HISTORY--S. 386:

SENATE REPORTS: No. 111-10 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 155 (2009):
Apr. 22, 23, 27, 28, considered and passed Senate.
May 6, considered and passed House, amended.
May 14, Senate concurred in House amendments with an amendment.
May 19, House concurred in Senate amendment.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2009):
May 20, Presidential remarks and statement.

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