

FALSE CLAIMS ACT AMENDMENTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

FALSE CLAIMS ACT AMENDMENTS

FEBRUARY 5 AND 6, 1986

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CONTENTS

HEARINGS HELD

	Page
February 5, 1986.....	1
February 6, 1986.....	323

WITNESSES

Hon. Hamilton Fish, Jr., a representative in Congress from the State of New York, accompanied by Alan Coffey, Associate Counsel, Judiciary Committee.....	96
Prepared statement	101
Richard K. Willard, Assistant Attorney General, Civil Division, Department of Justice.....	115
Prepared statement	120
Hon. Dennis M. Hertel, a representative in Congress from the State of Michigan	175
Prepared statement	177
Richard P. Kusserow, Inspector General, Department of Health and Human Services, accompanied by D. McCarty Thornton, Supervisory Trial Attorney, Office of General Counsel, Department of Health and Human Services.....	180
Prepared statement	186
Christopher T. Cross, president and chief operating officer, University Research Corp., on behalf of the U.S. Chamber of Commerce; and Frank H. Menaker, Jr., vice president and general counsel, Martin Marietta, on behalf of Aerspace Industries, Association of America, Inc., accompanied by Paul Besozzi, partner, Law Firm of Hennessey, Stambler & Siebert.....	225
Statement of Christopher T. Cross.....	228
Statement of Frank H. Menaker, Jr	241
Howard W. Cox, Deputy Assistant Inspector General, Department of Defense..	273
Prepared statement	279
Hon. Charles E. Grassley, a U.S. Senator from the State of Iowa	323
Prepared statement	325
Hon. Andy Ireland, a Representative in Congress from the State of Florida.....	328
Hon. Berkley Bedell, a Representative in Congress from the State of Iowa.....	329
Prepared statement	332
John M. Gravitt, accompanied by James B. Helmer	339
Prepared statement of Mr. Gravitt.....	343
Prepared statement of Mr. Helmer	357
John Phillips, executive director, Center for Law in the Public Interest.....	392
Prepared statement	397
Marshall J. Breger, chairman, Administrative Conference of the United States, accompanied by Richard K. Berg, general counsel, and Jeffrey S. Libbers, research director.....	424
Prepared statement	427
Karen Hastie Williams, chairman, legislative liaison committee of the public contract law section of the American Bar Association, accompanied by Alan C. Brown, chairman of the section's procurement fraud committee.....	442
Prepared statement	447

ADDITIONAL MATERIAL

Letter to Hon. Dan Glickman from John R. Bolton, Assistant Attorney General, Department of Justice, dated April 10, 1986	167
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IV

	Page
Statement of Congressman Fortney H. (Pete) Stark, and the combined statement of Senators Cohen, Roth, and Levin.....	291
Letter to Paul D. Lynch from W.G. Krall of General Electric Co., dated November 21, 1983.....	380
Copies of General Electric Co. vouchers.....	383
Letter to Hon. Dan Glickman from Richard K. Willard, U.S. Department of Justice, dated February 20, 1986.....	419
Statement of National Association of Manufacturers.....	472
Statement of National Conference of Boards of Contract Appeals Members.....	478
Statement of the Associated General Contractors of America.....	492
Statement of the American Farm Bureau Federation.....	496

FALSE CLAIMS ACT AMENDMENTS

WEDNESDAY, FEBRUARY 5, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2237, Rayburn House Office Building, Hon. Dan Glickman (chairman of the subcommittee) presiding.

Present: Representatives Glickman, Berman, Staggers, and Kindness.

Staff present: William P. Shattuck, counsel; Jen Ihlo, assistant counsel; Kevin C. Richardson, associate counsel; and Florence McGrady, legal assistant.

Mr. GLICKMAN. Good morning.

The purpose of today's hearing is to consider amendments to the False Claims Act. This act is the vehicle by which the Government prosecutes civil fraud. Although fraud against the Government is not a new problem, widespread abuse has become increasingly apparent and has gained much attention by the media. It has also prompted understandable taxpayer concern, especially in the realm of defense contractors.

The False Claims Act was originally enacted in 1863 because of reports that Government contractors were bilking the U.S. Government during the Civil War. In one case in 1861, a Major McKinstry purchased about 1,000 mules for the United States at \$119 each, although the mules were, and he knew they were, unfit for service and almost useless because some were totally blind and diseased. That case led to the adoption of the False Claims Act.

We have come a long way from the use of mules in the military, but fraud perpetrated against the U.S. Government is still prevalent—and I might mention with respect to all agencies, civil as well as military, and on a much larger scale.

A 1981 GAO report pointed out that during a 2½-year review there were 77,000 cases of fraud and other illegal activities reported by 21 Federal agencies. GAO estimated the loss to the Government to be between \$150 and \$220 million. This figure is admittedly a low estimate, but does not include the cost of undetected fraud or cases involving Federal funds where State and local jurisdictions had primary investigatory responsibility.

The False Claims Act has been substantially unchanged since it was enacted in 1863. For example, the \$2,000 civil penalty has never been altered. CRS reported that the buying power of \$2,000

in 1863 is now about \$17,000. I think this points out in dollars and cents the necessity for modernizing this statute.

I think it is important that we look closely at the False Claims Act and see what changes are necessary to make the act an effective tool for combating fraud in 1986, and to insure that it will continue to be effective for the next 20 years or so.

The purpose of the statute is to impose civil liability for presenting false claims against the Government; preparing a written instrument that contained false or fictitious statements with the purpose of aiding in the payment or approval of such a claim; or conspiring to defraud the Government by obtaining payment or allowance of a false claim. The theory behind the statute is to allow the Government to recoup losses which it suffered because of fraud.

Some of the proposed amendments to the false claims statute include: one, clarifying the burden of proof; two, expanding the venue; three, increasing the amount of damages; four, authorizing the use of civil investigative demands; and five, strengthening the qui tam or citizen action provisions.

It is also important, I think, to note that the burden of proof in a criminal case is much higher than that in a civil case. Therefore, the likelihood that stiffer civil penalties will result in a more frequent use of the civil statute than the criminal statute, thereby making the civil statute the more effective remedy for fraud against the U.S. Government.

During the hearings we will not only look at the False Claims Act but explore a proposal to create an administrative remedy under which false claims can be pursued by a Federal agency without the expense of a court trial.

In the 1981 GAO report, the Comptroller General also reported that during a 2½-year GAO review, the Department of Justice took civil action in only 28 of 393 civil fraud cases which were referred to it by Federal agencies. Many times, the dollar amount of loss suffered by the Government as a result of fraud is so low that the cost of pursuing the claim in court far exceeds the amount that could be obtained through a judgment. Still, those losses should be recouped.

I believe that persons who commit fraud against the U.S. Government should not get away with it just because the cost of pursuing a case is too high. Therefore, we will look closely at the possibility of creating administrative remedies which will deal with this type of situation.

By modernizing the False Claims statute and creating an administrative remedy for fraud cases, we can not only insure that those guilty of defrauding the Government will be held accountable, but we can also recoup many losses suffered by the Government and perhaps deter those from happening in the future.

At this time, with a \$200 billion deficit, we should be actively trying to recoup losses of tax dollars which result from fraud, wherever it is perpetrated against the Federal Government.

The legislative movement in this area has been spurred by reports of fraudulent activities involving Pentagon contracts—and I might also mention HHS contracts as well—but the fact of the matter is that the legislation we are considering will impact Government contracts across the board. It is vitally important, espe-

cially at this time, as we reevaluate the whole range of Government programs, that we take strong steps to assure that people of this country can have confidence in the integrity of those programs through which their hard-earned tax dollars are spent. These hearings are intended to make sure we have the tools to do so.

[Copies of H.R. 2264, H.R. 3317, H.R. 3334, H.R. 3335, and H.R. 3753 follow:]

99TH CONGRESS
1ST SESSION

H. R. 2264

To amend title 5, United States Code, to provide civil penalties for false claims and statements made to the United States, to certain recipients of property, services, or money from the United States, or to parties to contracts with the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1985

Mr. HERTEL of Michigan introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to provide civil penalties for false claims and statements made to the United States, to certain recipients of property, services, or money from the United States, or to parties to contracts with the United States, 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 That this Act may be cited as the "Program Fraud Civil
4 Penalties Act of 1985".

5 SEC. 2. (a)(1) The Congress finds that—

6 (A) fraud in Government programs is a serious
7 and growing problem;

1 (B) present civil and criminal remedies for pro-
2 gram fraud are not sufficiently responsive to this prob-
3 lem;

4 (C) fraud in Government programs results in the
5 loss of millions of dollars annually; and

6 (D) fraud in Government programs undermines
7 the integrity of these programs by allowing ineligible
8 persons to participate and receive Federal funds to
9 which they are not entitled.

10 (2) The Congress further finds that it is desirable to
11 create an expeditious and inexpensive administrative proce-
12 dure which Federal agencies may use to impose an adminis-
13 trative penalty for false, fictitious, or fraudulent claims and
14 statements.

15 (b) The purposes of this Act are—

16 (1) to allow Federal agencies which are the vic-
17 tims of false, fictitious, and fraudulent claims and state-
18 ments to have an administrative remedy penalizing
19 persons who submit such claims and statements;

20 (2) to provide an administrative penalty procedure
21 which is comparable with administrative penalty proce-
22 dures with respect to Government contracts, personnel
23 disciplinary proceedings, and Government grants; and

24 (3) to provide reasonable due process protections
25 to all persons who are subject to the adjudication of

1 administrative penalties for false, fictitious, or fraudu-
2 lent claims or statements.

3 SEC. 3. (a) Title 5 of the United States Code is amended
4 by inserting after chapter 7 the following new chapter:

5 **“CHAPTER 8—ADMINISTRATIVE PENALTIES AND**
6 **ASSESSMENTS FOR FALSE CLAIMS AND STATE-**
7 **MENTS**

“Sec.

“801. Definitions.

“802. False claims and statements; liability.

“803. Hearing and determination by authority head; subpoena authority.

“804. Judicial review.

“805. Collection of civil penalties and assessments.

“806. Limitations.

“807. Right to setoff.

“808. Regulations.

“809. Reports.

8 **“§ 801. Definitions**

9 “(a) As used in this chapter—

10 “(1) ‘authority’ means any establishment as de-
11 fined in section 11(2) of the Inspector General Act of
12 1978 (92 Stat. 1109), any executive department, any
13 military department, and the United States Postal
14 Service;

15 “(2) ‘authority head’ means—

16 “(A) the head of an authority, or

17 “(B) an official or employee of the authority
18 designated, in regulations promulgated by the
19 head of the authority, to make findings and deter-

1 minations under this chapter on behalf of the head
2 of the authority;

3 “(3) ‘claim’ means any request or demand, wheth-
4 er under a contract or otherwise—

5 “(A) to an authority for property, services,
6 or money (including money representing grants,
7 loans, insurance, or benefits); or

8 “(B) to a recipient of property, services, or
9 money from an authority or to a party to a con-
10 tract with an authority—

11 “(i) for property or services if the
12 United States provided such property or
13 services or any portion of the funds for the
14 purchase of such property or services or will
15 reimburse such recipient or party for the pur-
16 chase of such property or services; or

17 “(ii) for the payment of money (includ-
18 ing money representing grants, loans, insur-
19 ance, or benefits) if the United States provid-
20 ed any portion of the money requested or de-
21 manded or will reimburse such recipient for
22 any portion of the money paid on such re-
23 quest or demand;

24 “(4) ‘statement’ means any written representation
25 or certification—

1 “(A) with respect to a claim; or

2 “(B) with respect to—

3 “(i) a contract with, or a bid or proposal
4 for a contract with,

5 “(ii) a grant, loan, or benefit from,

6 “(iii) an application for insurance from,

7 or

8 “(iv) an application for employment
9 with,

10 an authority, or any State, political subdivision of
11 a State, or other party acting on behalf of, or
12 based upon the credit or guarantee of, an
13 authority;

14 “(5) ‘person’ means any individual, partnership,
15 corporation, association, or private organization;

16 “(6) ‘investigating official’ means—

17 “(A) the Inspector General in an authority
18 which is authorized an Inspector General by the
19 Inspector General Act of 1978 (92 Stat. 1101) or
20 any other Federal law; or

21 “(B) in the case of an authority which is not
22 authorized an Inspector General by the Inspector
23 General Act of 1978 (91 Stat. 1101) or any other
24 Federal law, any official or employee of the au-
25 thority when designated by the head of the au-

1 thority to conduct investigations under the provi-
2 sions of section 803(a)(1) of this title; and

3 “(7) ‘reviewing official’ means any official or em-
4 ployee of an authority—

5 “(A) whose rate of basic pay is equal to or
6 greater than the minimum rate of basic pay for
7 grade GS-18 under section 5332 of this title; and

8 “(B) who is designated by the head of the
9 authority to make the determination provided in
10 section 803(a)(2) of this title.

11 “(b) For the purposes of subsection (a)(3) of this
12 section—

13 “(1) each voucher, invoice, claim form, or other
14 individual request or demand for property, services, or
15 money constitutes a separate claim whether submitted
16 separately or together with other claims;

17 “(2) each request or demand for property, serv-
18 ices, or money constitutes a claim regardless of wheth-
19 er such property, services, or money is actually deliv-
20 ered or paid; and

21 “(3) a claim shall be considered made to an au-
22 thority, recipient, or party when such claim is made to
23 an agent, fiscal intermediary, or other entity, including
24 any State or political subdivision thereof, acting for or
25 on behalf of such authority, recipient, or party.

1 “(c) For the purposes of subsection (a)(4) of this sec-
2 tion—

3 “(1) each written representation or certification
4 constitutes a separate statement whether submitted
5 separately or together with other statements; and

6 “(2) a statement shall be considered made to an
7 authority although such statement is actually made to
8 an agent, fiscal intermediary, or other entity, including
9 any State or political subdivision thereof, acting for or
10 on behalf of such authority.

11 **“§ 802. False claims and statements; liability**

12 “(a) For purposes of this chapter—

13 “(1) a claim is false when the claim—

14 “(A) includes or is supported by any false,
15 fictitious, fraudulent, or intentionally misleading
16 statement, document, record, or accounting or
17 bookkeeping entry;

18 “(B) is for payment for the provision of prop-
19 erty or services which the claimant has not pro-
20 vided, or has not provided in accordance with the
21 terms of the contract on which such claim is
22 based, or has provided in violation of any applica-
23 ble Federal or State statute or regulation; or

24 “(C) is for the payment of an amount in
25 excess of the amount which is properly due; and

1 “(2) a statement is false when a material fact—

2 “(A) is asserted in such statement and is
3 false, fictitious, fraudulent, or intentionally mis-
4 leading; or

5 “(B) is omitted from such statement and—

6 “(i) as a result of the omission, such
7 statement is substantially false, fictitious, or
8 fraudulent or, in the case of an intentional
9 omission, is intentionally misleading; or

10 “(ii) the person making such statement
11 has a duty to include such material fact in
12 the statement.

13 “(b) Any person who, on or after the effective date of
14 the Program Fraud Civil Penalties Act of 1983, knowingly
15 makes, presents, or submits, or knowingly causes to be made,
16 presented, or submitted, a false claim or statement, is liable
17 to the United States for—

18 “(1) a civil penalty of not more than \$10,000 for
19 each false claim or statement; and

20 “(2) an assessment of not more than double—

21 “(A) the full amount of money paid to and
22 the full value of property or services delivered to
23 a person as a result of the false claim or state-
24 ment of such person; or

1 “(B) the amount of damages, including the
2 amount of consequential damages and the cost of
3 investigating such false claim or statement, sus-
4 tained by the United States as a result of the
5 false claim or statement.

6 “(c) Except as provided in section 803(b)(5) or 805(f)(1)
7 of this title, the total amount of the penalty and assessment
8 determined under this section shall not be less than the
9 amount of damages sustained by the United States as a result
10 of the false claim or statement.

11 “(d)(1) The penalties and assessments provided in this
12 section shall be in addition to all criminal penalties provided
13 by law.

14 “(2) Except as provided in subsection (e) of this section,
15 the authority head may use any administrative and contrac-
16 tual remedy authorized by any other applicable provision of
17 Federal law in addition to the provisions of this chapter to
18 impose or enforce a civil penalty and assessment for false
19 claims and statements.

20 “(e) Notwithstanding any other provision of Federal
21 law, a civil penalty or assessment imposed under any other
22 provision of Federal law in any case subject to this chapter
23 may be in any amount authorized in this section.

1 **“§ 803. Hearing and determination by authority head; sub-**
2 **pena authority**

3 “(a)(1) The investigating official of an authority shall
4 investigate allegations that a person is liable under section
5 802(b) of this title and report the findings and conclusions to
6 the reviewing official of the authority.

7 “(2) If the reviewing official determines, based upon the
8 report of the investigating official or upon information from
9 any other source, that there is probable cause to believe that
10 a person is liable under section 802(b) of this title, the re-
11 viewing official shall refer the allegations contained in such
12 report to the authority head for a hearing. Before referring
13 the allegations to the authority head, the reviewing official
14 may refer the allegations to the investigating official and re-
15 quire the investigating official to obtain more information
16 with respect to the allegations.

17 “(b)(1) The authority head shall conduct a hearing on
18 the record regarding any allegation referred to him pursuant
19 to subsection (a) of this section to determine, based on the
20 preponderance of the evidence—

21 “(A) the liability of any person under section
22 802(b) of this title;

23 “(B) the amount of damages suffered by the
24 United States as a result of the false claim or state-
25 ment creating the liability of such person; and

1 “(C) the amount of any penalty and assessment to
2 be imposed on such person.

3 “(2) The person alleged to be liable under section 802(b)
4 of this title shall be entitled—

5 “(A) to written notice of the hearing specifically
6 setting forth all allegations and the date, time, and
7 place for such hearing;

8 “(B) to be present at such hearing;

9 “(C) to be represented by counsel;

10 “(D) to present evidence; and

11 “(E) to cross-examine any witnesses.

12 “(3) Each hearing under paragraph (1) of this subsection
13 shall be conducted in an impartial manner and resolve the
14 issues expeditiously and inexpensively consistent with funda-
15 mental fairness. A written decision including findings and de-
16 terminations shall be issued after the conclusion of the hear-
17 ing.

18 “(4)(A) Except as provided in subparagraph (B) of this
19 paragraph and section 804 of this title, the findings and de-
20 terminations of the authority head issued in connection with a
21 hearing conducted under paragraph (1) of this subsection are
22 final.

23 “(B) If the authority head conducting the hearing under
24 paragraph (1) of this subsection is an individual described in
25 section 801(a)(2)(B) of this title, the amount of the penalty

1 and assessment imposed on a person may be reduced by the
2 authority head described in section 801(a)(2)(A) of this title
3 to any amount not less than the amount provided in section
4 802(c) of this title.

5 “(5) The total amount of the penalty and assessment
6 determined under this section may be less than the amount
7 provided in section 802(c) of this title if the authority head
8 determines that a lower amount is in the best interest of the
9 United States and enters in the written decision and makes
10 available for public inspection the determination and the rea-
11 sons for the determination.

12 “(c) After a hearing pursuant to subsection (b) of this
13 section, the authority head shall promptly send to any person
14 determined to be liable under section 802(b) of this title writ-
15 ten notice of the findings and determinations of the authority
16 head and the right to judicial review under section 804 of this
17 title.

18 “(d) For the purposes of an investigation under subsec-
19 tion (a) of this section the investigating official is author-
20 ized—

21 “(1) to administer oaths or affirmations; and

22 “(2) to require by subpoena the attendance and tes-
23 timony of witnesses and the production of all informa-
24 tion, documents, reports, answers, records, accounts,

1 papers, and other data and documentary evidence nec-
2 essary to conduct such investigation.

3 “(e) For the purposes of conducting a hearing under
4 subsection (b) of this section, the authority head is author-
5 ized—

6 “(1) to administer oaths or affirmations; and

7 “(2) to require by subpoena the attendance and tes-
8 timony of witnesses and the production of all informa-
9 tion, documents, reports, answers, records, accounts,
10 papers, and other data and documentary evidence
11 which the authority head considers relevant and mate-
12 rial to the hearing.

13 “(f) In the case of contumacy or refusal to obey a subpe-
14 na issued pursuant to subsection (d) or (e) of this section, the
15 investigating official or authority head, as the case may be,
16 may invoke the aid of any district court of the United States
17 where such investigation or hearing is being conducted, or
18 where such subpoenaed person resides or conducts business.
19 The district courts of the United States shall have jurisdiction
20 to issue an appropriate order for the enforcement of any such
21 subpoena. Any failure to obey such order of the court is pun-
22 ishable by such court as contempt.

23 “(g) Unless a petition is filed as provided in section 804
24 of this title, the determination of liability pursuant to this

1 section shall be final and shall not be subject to judicial
2 review.

3 **“§ 804. Judicial review**

4 “(a) Any person who has been determined pursuant to
5 section 803 of this title to be liable under section 802(b) of
6 this title may obtain review of such determination in the
7 United States Court of Appeals for the circuit in which such
8 person resides or in which the claim or statement upon which
9 the determination of liability is based was made, presented,
10 or submitted, or for the District of Columbia Circuit, by filing
11 in such court, within sixty days after the date on which the
12 notice required by section 803(c) of this title is sent, a written
13 petition that such determination be modified or set aside. The
14 clerk of the court shall transmit a copy of such petition to the
15 authority head concerned and to the Attorney General. Upon
16 receipt of the copy of such petition the authority head shall
17 transmit to the Attorney General the record in the proceed-
18 ing resulting in the determination of liability. Except as oth-
19 erwise provided in this section, the courts of appeals of the
20 United States shall have jurisdiction to review the findings
21 and determinations in issue and to affirm, modify, remand for
22 further consideration, or set aside, in whole or in part, the
23 findings and determinations of the authority head, and to en-
24 force such findings and determinations to the extent that such
25 findings and determinations are affirmed or modified.

1 “(b) The findings of the authority head with respect to
2 questions of fact, if supported by substantial evidence on the
3 record considered as a whole, shall be conclusive.

4 “(c) The determination of the authority head as to the
5 amount of any penalty and assessment shall be conclusive
6 and shall not be subject to review except to determine wheth-
7 er such amount exceeds the maximum amount provided in
8 section 802 of this title.

9 “(d) Any court of appeals reviewing, under this section,
10 the findings and determinations of the authority head shall
11 not consider any objection that was not raised in the hearing
12 conducted pursuant to section 803(b) of this title, if any,
13 absent a showing of extraordinary circumstances causing the
14 failure to raise the objection. If any party shows to the satis-
15 faction of the court that additional evidence not presented at
16 such hearing is material and that there were reasonable
17 grounds for the failure to present such evidence at such hear-
18 ing, the court shall remand the matter to the authority head
19 for consideration of such additional evidence.

20 “(e) Upon a final determination by the court of appeals
21 that a person is liable under section 802(b) of this title, the
22 court shall enter a final judgment for the appropriate amount
23 in favor of the United States, and such judgment may be
24 recorded and enforced by the Attorney General to the same

1 extent and in the same manner as a judgment entered by any
2 United States district court.

3 **“§ 805. Collection of civil penalties and assessments**

4 “(a) The Attorney General, with the support of the au-
5 thority head when required, shall be responsible for judicial
6 enforcement of any civil penalty or assessment imposed pur-
7 suant to the provisions of this chapter.

8 “(b) Any penalty or assessment imposed in a determina-
9 tion which has become final pursuant to section 803(g) of this
10 chapter may be recovered in a civil action brought by the
11 Attorney General. In any such action, no matters that were
12 raised or that could have been raised in a hearing conducted
13 under section 803(b) of this title or in a review pursuant to
14 section 804 of this title may be raised as a defense, and the
15 determination of liability and the determination of amounts of
16 penalties and assessments shall not be subject to review.

17 “(c) The district courts of the United States and of any
18 territory or possession of the United States shall have juris-
19 diction of any action commenced by the United States under
20 subsection (b) of this section.

21 “(d) Any action under subsection (b) of this section may,
22 without regard to venue requirements, be joined and consoli-
23 dated with or asserted as a counterclaim, cross-claim, or
24 setoff by the United States in any other civil action which

1 includes as parties the United States and the person against
2 whom such action may be brought.

3 “(e)(1) The United States Claims Court shall have juris-
4 diction of any action under subsection (b) of this section to
5 recover any penalty and assessment if the cause of action is
6 asserted by the United States as a counterclaim in a matter
7 pending in such court. The United States may join as addi-
8 tional parties in such counterclaim all persons who may be
9 jointly and severally liable with the person against whom
10 such counterclaim is asserted.

11 “(2) No cross-claims or third-party claims not otherwise
12 within the jurisdiction of the United States Claims Court
13 shall be asserted among additional parties joined under para-
14 graph (1) of this subsection.

15 “(f)(1) Except as provided in paragraph (2) of this sub-
16 section, the authority head may compromise or settle any
17 penalty and assessment determined pursuant to section 803
18 of this title. No compromise or settlement under this subsec-
19 tion shall provide for a recovery of an amount less than the
20 amount described in section 802(c) of this title unless the
21 authority head makes the determination and takes the action
22 provided in section 803(b)(5) of this title.

23 “(2) The Attorney General shall have exclusive author-
24 ity to compromise or settle any penalty and assessment the
25 determination of which is the subject of a pending petition

1 pursuant to section 804 of this title or a pending action to
2 recover such penalty or assessment pursuant to this section.

3 “(g) Whenever a penalty and assessment is imposed and
4 collected pursuant to this chapter and part of any money paid
5 or property or services delivered as a result of the false claim
6 or statement on which such penalty and assessment is based
7 was provided by a State or political subdivision thereof which
8 has not previously been reimbursed for such money or prop-
9 erty, the United States shall reimburse such State or political
10 subdivision the lesser of—

11 “(1) an amount bearing the same ratio to the civil
12 penalty and assessment recovered as the amount paid,
13 or the cost to the State or political subdivision of prop-
14 erty or services delivered, by the State or political sub-
15 division on the basis of such false claim or statement
16 bears to the total amount paid, or total cost of property
17 or services delivered, based on such false claim or
18 statement; or

19 “(2) the total amount actually paid, or the total
20 actual cost to the State or political subdivision of prop-
21 erty or services delivered, by the State or political sub-
22 division on the basis of such false claim or statement.

23 “(h) Except as provided in subsection (g) of this section,
24 any amount of penalty and assessment collected under this

1 chapter shall be deposited as miscellaneous receipts in the
2 Treasury of the United States.

3 **“§ 806. Limitations**

4 “(a)(1) Prior to initiating a proceeding under section
5 803(b) of this title the authority head shall transmit to the
6 Attorney General written notice of the intention to initiate
7 such proceeding together with the reasons for such intention.

8 “(2) The authority head may initiate a proceeding under
9 section 803(b) of this title if—

10 “(A) the Attorney General approves the initiation
11 of such proceeding; or

12 “(B) the Attorney General takes no action to dis-
13 approve the initiation of such proceeding within ninety
14 days after the date on which the notice required by
15 paragraph (1) of this subsection is received or within
16 such longer period after such date as is provided in a
17 memorandum of understanding entered into by the au-
18 thority head and the Attorney General with respect to
19 such proceeding.

20 “(b)(1) No proceeding under section 803(b) of this title
21 shall be commenced more than six years after the date on
22 which the claim or statement alleged to be a false claim or
23 statement is made, presented, or submitted.

1 “(2) A proceeding under such section is commenced by
2 mailing by registered or certified mail the notice required in
3 section 803(b)(2)(A) of this title.

4 “(c) A civil action to recover a penalty and assessment
5 under section 805 of this title shall be commenced within
6 three years after the date on which the determination of li-
7 ability for such penalty and assessment becomes final.

8 “(d) If at any time during the course of proceedings
9 brought pursuant to this chapter the authority head receives
10 or discovers any specific information regarding bribery, gra-
11 tuities, conflict of interest, or other corruption or similar ac-
12 tivity in relation to a false claim or statement, the authority
13 head shall immediately report such information to—

14 “(1) the Inspector General of the authority, if an
15 Inspector General is authorized for the authority by
16 the Inspector General Act of 1978 (92 Stat. 1101) or
17 any other Federal law, for transmission to the Attor-
18 ney General; or

19 “(2) the Attorney General, if the authority is not
20 authorized an Inspector General by the Inspector Gen-
21 eral Act of 1978 (92 Stat. 1101) or any other Federal
22 law.

23 “(e) If the Attorney General transmits to an authority
24 head a written finding that the continuation of any proceed-
25 ing under section 803 of this title may adversely affect any

1 pending or potential criminal or civil action related to an al-
2 leged false claim or statement under consideration in such
3 proceeding, such proceeding shall be immediately stayed and
4 may be resumed only upon written authorization of the At-
5 torney General.

6 “(f) No proceeding shall be commenced under section
7 803(b) of this title with respect to any claim, statement, or
8 group of claims or statements submitted before the com-
9 mencement of such proceedings by any person or group of
10 persons acting in concert if (1) the amount of money or the
11 value of property or services requested or demanded in such
12 claim, statement, or group of claims or statements exceeds
13 \$100,000, or (2) the amount of damages, including the
14 amount of consequential damages, sustained by the United
15 States as a result of such claim, statement, or group of claims
16 or statements exceeds \$100,000.

17 **“§ 807. Right to setoff**

18 “(a)(1) The amount of any penalty and assessment
19 which has become final under section 803(g) of this title, or
20 for which a judgment has been entered under section 804(e)
21 or 805 of this title, or any amount agreed upon in a settle-
22 ment or compromise under section 805(f) of this title, may be
23 deducted from any sum, including a refund of an overpay-
24 ment of Federal taxes, then or later owing by the United
25 States to the person liable for such penalty and assessment.

1 “(2) The authority head shall transmit written notice of
2 each deduction made under this paragraph to the person
3 liable for such penalty and assessment.

4 “(3) All amounts retained pursuant to this paragraph
5 shall be remitted to the Secretary of the Treasury for deposit
6 in accordance with section 805(h) of this title.

7 “(b) An authority head may forward a certified copy of
8 any determination as to liability for any penalty and assess-
9 ment which has become final under section 803(g) of this
10 title, or a certified copy of any judgment which has been
11 entered under section 804(e) or 805 of this title to the Secre-
12 tary of the Treasury for action in accordance with subsection
13 (a) of this section.

14 “§ 808. **Regulations**

15 “(a) The head of each authority shall issue rules and
16 regulations implementing paragraphs (1), (2), and (3) of sec-
17 tion 803(b) of this title and such additional rules and regula-
18 tions as may be necessary to carry out the provisions of this
19 chapter. Such rules and regulations shall insure that investi-
20 gating officials are not responsible for making the determina-
21 tions or conducting the hearing required in section 803(b) of
22 this title or making the collections under section 805 of this
23 title.

24 “(b) The Attorney General may enter into a memoran-
25 dum of understanding with the head of any authority to pro-

1 vide expeditious procedures for approving or disapproving the
2 initiation of proceedings under section 803(b) of this title and
3 for referral of matters for action under sections 804, 805, and
4 806(e) of this title. Such memorandum of understanding may
5 provide advanced authorization to initiate proceedings under
6 section 803(b) of this title with respect to any particular type
7 or class of alleged false claims or statements if not otherwise
8 barred by section 806 of this title.

9 **“§ 809. Reports**

10 “(a) Each investigating official shall, not later than Oc-
11 tober 31 of each year, prepare an annual report summarizing
12 actions taken under this chapter during the most recent
13 twelve-month period ending September 30. Such report shall
14 include—

15 “(1) a summary of matters referred to the author-
16 ity head under section 803(a)(2) of this title during
17 such period;

18 “(2) a summary of matters transmitted to the At-
19 torney General under section 806(a)(1) of this title
20 during such period;

21 “(3) a summary of all proceedings initiated by the
22 authority head under section 803(b) of this title, and
23 the results of such proceedings, during such period; and

1 “(4) a summary of the actions taken during such
 2 period to collect any civil penalty or assessment im-
 3 posed under this chapter.

4 “(b) The annual report of an investigating official shall
 5 be furnished to the authority head not later than October 31
 6 of the year such report is prepared. Each such report shall be
 7 transmitted to the appropriate committees and subcommittees
 8 of Congress in the same manner as the October 31 reports of
 9 Inspectors General are transmitted under section 5 (b) of the
 10 Inspector General Act of 1978 (92 Stat. 1103).”.

11 (b) The table of chapters at the beginning of part I of
 12 title 5, United States Code, is amended by inserting after the
 13 item relating to chapter 7 the following new item:

 “8. **Administrative Penalties and Assessments for False Claims
 and Statements**..... 801.”.

14 SEC. 4. The regulations required by section 808 of title
 15 5, United States Code, as added by section 3(a) of this Act,
 16 shall be promulgated not later than one hundred and eighty
 17 days after the effective date of this Act.

18 SEC. 5. This Act and the amendments made by this Act
 19 shall take effect December 31, 1985.

99TH CONGRESS
1ST SESSION

H. R. 3317

To amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1985

Mr. IRELAND introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, 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 That section 3729 of title 31, United States Code, is
4 amended by—

5 (1) inserting “(a)” before “A person”;

6 (2) striking out “\$2,000” and inserting in lieu
7 thereof “\$10,000”;

8 (3) striking out “2 times the amount of damages”
9 and inserting in lieu thereof “3 times the amount of

1 damages in addition to the amount of the consequential
2 damages''; and

3 (4) adding at the end thereof the following:

4 ''(c) For purposes of this section, the terms 'knowing'
5 and 'knowingly' mean the defendant—

6 ''(1) had actual knowledge; or

7 ''(2) had constructive knowledge in that the de-
8 fendant acted in reckless disregard of the truth;

9 and no proof of intent to defraud or proof of any other ele-
10 ment of a claim for fraud at common law is required.''

11 SEC. 2. Section 3730(b) of title 31, United States Code,
12 is amended—

13 (1) in paragraph (1), by striking out the fourth
14 sentence and inserting in lieu thereof ''The action may
15 be brought in the judicial district where the defendant,
16 or in the case of multiple defendants, where any one
17 defendant is found, resides, or transacts business, or
18 where the violation allegedly occurred.'';

19 (2) in paragraph (2), by striking out ''if the Gov-
20 ernment—'' through the end of the paragraph and in-
21 sserting in lieu thereof ''if the Government by the end
22 of the 60-day period does not enter, or gives written
23 notice to the court of intent not to enter the action.'';

24 (3) in paragraph (3), by striking out ''action is
25 conducted only by the Government'' and inserting in

1 lieu thereof “person bringing the action shall have a
2 right to continue in the action as a full party on the
3 person’s own behalf”; and

4 (4) by striking out paragraph (4) and inserting in
5 lieu thereof the following:

6 “(4) If the Government does not proceed with the action
7 within the 60-day period after being notified, the court, with-
8 out limiting the status and rights of the person initiating the
9 action, may nevertheless permit the Government to intervene
10 at a later date if the Government demonstrates to the court
11 that it came into possession of new material evidence or in-
12 formation not known by the Government within the 60-day
13 period after being notified of such action.

14 “(5) Unless the Government proceeds with the action
15 within 60 days after being notified, the court shall dismiss the
16 action brought by the person if the court finds that—

17 “(A) the action is based on specific evidence or
18 specific information the Government disclosed as a
19 basis for allegations made in a prior administrative,
20 civil, or criminal proceeding; or

21 “(B) the action is based on specific information
22 disclosed during the course of a congressional investi-
23 gation or based on specific public information dissemi-
24 nated by any news media.

1 If the Government has not initiated a civil action within six
2 months after becoming aware of such evidence or informa-
3 tion, or within such additional time as the court allows upon
4 a showing of good cause, the court shall not dismiss the
5 action brought by the person. The defendant must prove the
6 facts warranting dismissal of such case.”.

7 SEC. 3. Section 3730(c) of title 31, United States Code,
8 is amended to read as follows:

9 “(c)(1) If the Government proceeds with the action
10 within 60 days after being notified, and the person bringing
11 the action has disclosed relevant evidence or information the
12 Government did not have at the time the action was brought,
13 such person shall receive at least 15 percent but no more
14 than 20 percent of the proceeds of the action or settlement of
15 the claim. Any such payment shall be paid out of such pro-
16 ceeds. If the person bringing the action substantially contrib-
17 utes to the prosecution of the action, such person shall re-
18 ceive at least 20 percent of the proceeds of the action or
19 settlement and shall be paid out of such proceeds. Such
20 person shall also receive an amount for reasonable expenses
21 the court finds to have been necessarily incurred, in addition
22 to reasonable attorneys’ fees and costs. All such expenses,
23 fees, and costs shall be awarded against the defendant.

24 “(2) If the Government does not proceed with the action
25 within 60 days after being notified, the person bringing the

1 action or settling the claim shall receive an amount the court
2 decides is reasonable for collecting the civil penalty and dam-
3 ages. The amount shall not be less than 25 percent and no
4 more than 30 percent of the proceeds of the action or settle-
5 ment and shall be paid out of such proceeds. Such person
6 shall also receive an amount for reasonable expenses the
7 court finds to have been necessarily incurred, in addition to
8 reasonable attorneys' fees and costs. All such expenses, fees,
9 and costs shall be awarded against the defendant."

10 SEC. 4. Section 3730 of title 31, United States Code, is
11 amended by adding at the end thereof the following new
12 subsections:

13 "(e) Any employee who is discharged, demoted, sus-
14 pended, threatened, harassed, or in any other manner dis-
15 criminated against in the terms or conditions of such employ-
16 ment by his employer in whole or in part because of the
17 exercise by such employee on behalf of himself or others of
18 any option afforded by this Act, including investigation for,
19 initiation of, testimony for, or assistance in an action filed or
20 to be filed under this Act, shall be entitled to all relief neces-
21 sary to make him whole. Such relief shall include reinstate-
22 ment with full seniority rights, backpay with interest, and
23 compensation for any special damages sustained as a result of
24 the discrimination, including litigation costs and reasonable
25 attorneys' fees. In addition, the employer shall be liable to

1 such employee for twice the amount of back pay and special
2 damages and, if appropriate under the circumstances, the
3 court shall award punitive damages.

4 “(f) In any action brought under this section, or under
5 section 3729, or 3731, the United States shall be required to
6 prove all essential elements of the cause of action, including
7 damages, by a preponderance of the evidence.

8 “(g) Notwithstanding any other provision of law, the
9 Federal Rules of Criminal Procedure, or the Federal Rules of
10 Evidence, a final judgment rendered in favor of the United
11 States in any criminal proceeding charging fraud or false
12 statements, whether upon a verdict after trial or upon a plea
13 of guilty or nolo contendere, shall estop the defendant from
14 denying the essential elements of the offense in any action
15 brought by the United States pursuant to this section, or sec-
16 tion 3729, or 3731.”.

17 SEC. 5. (a) Paragraphs (A), (B), and (C) of Rule 6(e)(3)
18 of the Federal Rules of Criminal Procedure are amended to
19 read as follows:

20 “(A) Disclosure, otherwise prohibited by this rule,
21 of matters occurring before the grand jury, other than
22 its deliberations and the vote of any grand juror, may
23 be made to—

1 “(i) any attorney for the government for use
2 in the performance of such attorney’s duty to en-
3 force Federal criminal or civil law; and

4 “(ii) such government personnel (including
5 personnel of a State or subdivision of a State) as
6 are deemed necessary by an attorney for the gov-
7 ernment to assist such attorney in the perform-
8 ance of his duty to enforce Federal criminal law.

9 “(B) Any person to whom matters are disclosed
10 under subparagraph (A)(ii) of this paragraph shall not
11 utilize such grand jury material for any purpose other
12 than assisting an attorney for the government in the
13 performance of such attorney’s duty to enforce Federal
14 criminal or civil law. Such an attorney for the Govern-
15 ment shall promptly provide the district court, before
16 which the grand jury whose material has been so dis-
17 closed was impaneled, with the names of the persons
18 to whom such disclosure has been made, and shall cer-
19 tify that the attorney has advised such persons of their
20 obligation of secrecy under this rule.

21 “(C) Disclosure of matters occurring before the
22 grand jury, otherwise prohibited by this rule, may also
23 be made—

1 “(i) when directed to do so by a court, upon
2 a showing of particularized need, preliminary to
3 or in connection with a judicial proceeding;

4 “(ii) when permitted by a court at the re-
5 quest of the defendant, upon a showing that
6 grounds may exist for a motion to dismiss the in-
7 dictment because of matters occurring before the
8 grand jury;

9 “(iii) when the disclosure is made by an at-
10 torney for the Government to another Federal
11 grand jury;

12 “(iv) when permitted by a court at the re-
13 quest of an attorney for the Government, upon a
14 showing that such matters may disclose a viola-
15 tion of State criminal law, to an appropriate offi-
16 cial of a State or subdivision of a State for the
17 purpose of enforcing such law; or

18 “(v) when so directed by a court upon a
19 showing of substantial need, to personnel of any
20 department or agency of the United States and
21 any committee of Congress (a) when such person-
22 nel are deemed necessary to provide assistance to
23 an attorney for the Government in the perform-
24 ance of such attorney's duty to enforce Federal
25 civil law, or (b) for use in relation to any matter

1 within the jurisdiction of such department,
2 agency, or congressional committee.”.

3 (b) The first sentence of paragraph (D) of Rule 6(e)(3) of
4 the Federal Rules of Criminal Procedure is amended to read
5 as follows:

6 “(D) A petition for disclosure pursuant to clause
7 (i) or (v) of subsection (e)(3)(C) shall be filed in the dis-
8 trict where the grand jury convened.”.

9 SEC. 6. (a) Section 286 of title 18, United States Code,
10 is amended by striking out “\$10,000” and inserting in lieu
11 thereof “\$1,000,000”.

12 (b) Section 287 of title 18, United States Code, is
13 amended by striking out “\$10,000, or imprisoned not more
14 than five years” and inserting in lieu thereof “\$1,000,000, or
15 imprisoned for not more than ten years”.

16 SEC. 7. This Act and the amendments made by this Act
17 shall become effective upon the date of enactment.

99TH CONGRESS
1ST SESSION

H. R. 3334

Entitled the "False Claims Act Amendments of 1985".

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1985

Mr. FISH (for himself, Mr. MOORHEAD, Mr. HYDE, Mr. SENSENBRENNER, Mr. DEWINE, and Mr. DANNEMEYER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

Entitled the "False Claims Act Amendments of 1985".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That this Act may be cited as the "False Claims Act Amend-
4 ments of 1985".

5 SEC. 101. Section 3729 of title 31, United States Code
6 is amended—

7 (1) by inserting "(a)" immediately before "A
8 person";

9 (2) by striking out \$2,000 and inserting in lieu
10 thereof "\$5,000" in subsection (a);

1 (3) by striking out “not a member of the armed
2 forces of the United States” in subsection (a);

3 (4) by inserting “including consequential damages
4 as defined in subsection (b)” after the phrase “an
5 amount equal to 2 times the amount of damages” in
6 subsection (a);

7 (5) by inserting after subparagraph (a)(6) the fol-
8 lowing:

9 “(7) knowingly makes, uses, or causes to be made
10 or used, a false record or statement to conceal, avoid,
11 or decrease an obligation to pay or transmit money or
12 property to the Government.”.

13 “(b)(1) Consequential damages as used in subsection (a)
14 shall include damages which the United States would not
15 have sustained but for—

16 “(i) the doing or commission of any of the acts
17 prohibited by subsection (a); or

18 “(ii) having entered into or made any contract or
19 grant as a result, in any material part, of any false
20 statement.

21 “(2) Any credits to which the defendant establishes enti-
22 tlement may be deducted from the amount payable under
23 subsection (a) only after the damages sustained by the United
24 States have been doubled as set forth in subsection (a).

1 “(3) If any portion of the damages sustained by the
2 United States under subparagraph (1) is considered reason-
3 ably unforeseeable by the court, the court may reduce by not
4 more than 25 percent the total amount of damages payable
5 under subparagraph (1).

6 “(c) For purposes of this section, the terms ‘knowing’
7 and ‘knowingly’ mean the defendant—

8 “(1) had actual knowledge; or

9 “(2) has constructive knowledge in that the de-
10 fendant had reason to know that the claims or state-
11 ment was false or fictitious;

12 and no proof of intent to defraud or proof of any other ele-
13 ment of a claim for fraud at common law is required.

14 “(d) For purposes of this section ‘claim’ includes any
15 request or demand, whether under a contract or otherwise,
16 for money or property which is made to a contractor, grant-
17 ee, or other recipient if the Government provides any portion
18 of the money or property which is requested or demanded, or
19 if the Government will reimburse such contractor, grantee, or
20 other recipient for any portion of the money or property
21 which is requested or demanded.”.

22 “(e)(1) The Attorney General or his designee may apply
23 for provisional relief to any district court having jurisdiction
24 pursuant to section 3732 whenever he has reasonable cause
25 to believe this section or section 3730, or 3731 may have

1 been violated. If the court finds there is a reasonable likeli-
2 hood that the United States will prevail after trial on the
3 merits of its claims, the court shall enjoin the defendant from
4 taking any action which the court, in the exercise of its dis-
5 cretion, finds reasonably likely to hinder or delay the United
6 States in the collection of any judgment which may be ob-
7 tained in such action.

8 “(2) In addition, the court may from time to time make
9 such other orders as it deems appropriate, including but not
10 limited to, requiring the defendant to post security for judg-
11 ment, to seek the prior approval of the court before making
12 any transfer without an adequate and full consideration,
13 paying an antecedent debt which has matured more than 30
14 days prior to payment, or otherwise engaging in any transac-
15 tion not in the usual and regular course of the defendant’s
16 business. Except as provided in this section, such application
17 and proceedings by the Attorney General shall be governed
18 by rule 65 of the Federal Rules of Civil Procedure.”.

19 SEC. 102. Section 3730 of title 31, United States Code
20 is amended—

21 (1) by striking out “\$2,000” in subsection (a) and
22 inserting in lieu thereof “\$5,000”.

23 (2) by striking out “The district courts of the
24 United States have jurisdiction of the action. Trial is in
25 the judicial district within whose jurisdictional limits

1 the person charged with a violation is found or the vio-
2 lation occurs." in subsection (b)(1).

3 SEC. 103. Section 3731 of title 31, United States Code,
4 is amended—

5 (1) by striking out the period at the end of subsec-
6 tion (b) and inserting "or within three years from the
7 date when facts material to the right of action are
8 known or reasonably should have been known by the
9 official within the Department of Justice charged with
10 responsibility to act in the circumstances, whichever
11 occurs last."

12 (2) by inserting after subsection (b), the following
13 new subsections:

14 "(c) In any action brought under this section or section
15 3729, 3730, 3732, or 3733, the United States shall be re-
16 quired to prove all essential elements of the cause of action,
17 including damages, by a preponderance of the evidence.

18 "(d) Notwithstanding any contrary provision of law, the
19 Federal Rules of Criminal Procedure, or the Federal Rules of
20 Evidence, a final judgment rendered in favor of the United
21 States in any criminal proceeding charging fraud or false
22 statements, whether upon a verdict after trial or upon a plea
23 of guilty or nolo contendere, shall estop the defendant from
24 denying the essential elements of the offense in any action

1 brought by the United States pursuant to this section or sec-
2 tion 3729, 3730, 3732, or 3733.”.

3 SEC. 104. Title 31 is amended by adding the following
4 new section:

5 **“§ 3732. False claims jurisdiction**

6 “(a) The district courts of the United States and for
7 Puerto Rico, the Virgin Islands, Guam, and any territory or
8 possession of the United States, shall have jurisdiction over
9 any action commenced by the United States under this sec-
10 tion, or under section 3729, 3730, 3731, or 3733 and venue
11 of any such action shall be proper in any district in which any
12 defendant, or in the case of multiple defendants, any one de-
13 fendant can be found, resides, transacts business, or in which
14 any act proscribed by such sections is alleged by the United
15 States to have occurred. A summons as required by the Fed-
16 eral Rules of Civil Procedure shall be issued by the district
17 court and served at any place within the United States,
18 Puerto Rico, the Virgin Islands, Guam, any territory or pos-
19 session of the United States, or in any foreign country.

20 “(b) The United States Court of Claims shall also have
21 jurisdiction of any such action if the action is asserted by way
22 of counterclaim by the United States. The United States may
23 join as additional parties in such counterclaim all persons
24 who may be jointly and severally liable with such party
25 against whom a counterclaim is asserted by reason of having

1 violated this section, or section 3729, 3730, 3731, or 3733,
2 except that no cross-claims or third-party claims shall be as-
3 serted among such additional parties unless such claims are
4 otherwise within the jurisdiction of the United States Court
5 of Claims.”.

6 SEC. 105. Title 31 is amended by adding the following
7 new section:

8 “§ 3733. Civil investigative demands

9 “(a) DEFINITIONS.—For purposes of this section, the
10 term—

11 “(1) ‘False Claims Act law’ means—

12 “(A) this section and sections 3729 through
13 3731 of this title (96 Stat. 978–979), commonly
14 known as the False Claims Act; and

15 “(B) any Act of Congress enacted after this
16 section which prohibits, or makes available to the
17 United States in any court of the United States
18 any civil remedy with respect to any false claim,
19 bribery, or corruption of any officer or employee
20 of the United States;

21 “(2) ‘False Claims Act investigation’ means any
22 inquiry conducted by any False Claims Act investiga-
23 tor for the purpose of ascertaining whether any person
24 is or has been engaged in any violation of a False
25 Claims Act law;

1 “(3) ‘False Claims Act investigator’ means any
2 attorney or investigator employed by the Department
3 of Justice who is charged with the duty of enforcing or
4 carrying into effect any False Claims Act law or any
5 officer or employee of the United States acting under
6 direction and supervision of such attorney or investiga-
7 tor in connection with a False Claims Act investiga-
8 tion;

9 “(4) ‘person’ means any natural person, partner-
10 ship, corporation, association, or other legal entity, in-
11 cluding any State or political subdivision;

12 “(5) ‘documentary material’ includes the original
13 or any copy of any book, record, report, memorandum,
14 paper, communication, tabulation, chart, or other docu-
15 ment, or data compilations stored in or accessible
16 through computer or other information retrieval sys-
17 tems, together with instructions and all other materials
18 necessary to use or interpret such data compilations,
19 and any product or discovery;

20 “(6) ‘custodian’ means the custodian, or any
21 deputy custodian, designated by the Attorney General;
22 and

23 “(7) ‘product of discovery’ includes without limita-
24 tion the original or duplicate of any deposition, inter-
25 rogatory, document, thing, result of the inspection of

1 land or other property, examination, or admission ob-
2 tained by any method of discovery in any judicial liti-
3 gation or administrative litigation of an adversarial
4 nature; any digest, analysis, selection, compilation, or
5 any derivation thereof; and any index or manner of
6 access thereto.

7 “(b) CIVIL INVESTIGATIVE DEMANDS.—

8 “(1) ISSUANCE; SERVICE; PRODUCTION OF MA-
9 TERIAL; TESTIMONY.—Whenever the Attorney Gener-
10 al, the Deputy Attorney General, or an Assistant At-
11 torney General has reason to believe that any person
12 may be in possession, custody, or control of any docu-
13 mentary material, or may have any information rele-
14 vant to a False Claims Act investigation, he may, prior
15 to the institution of a civil proceeding, issue in writing
16 and cause to be served upon such person, a civil inves-
17 tigative demand requiring such person to produce such
18 documentary material for inspection and copying, to
19 answer in writing written interrogatories, to give oral
20 testimony concerning documentary material or informa-
21 tion, or to furnish any combination of such material,
22 answers, or testimony. Whenever a civil investigative
23 demand is an express demand for any product of dis-
24 covery, the Attorney General, the Deputy Attorney
25 General or an Assistant Attorney General shall cause

1 to be served, in any manner authorized by this section,
2 a copy of such demand upon the person from whom the
3 discovery was obtained and notify the person to whom
4 such demand is issued of the date on which such copy
5 was served.

6 “(2) CONTENTS; RETURN DATE FOR DEMAND.—

7 “(A) Each such demand shall state the
8 nature of the conduct constituting the alleged vio-
9 lation of a False Claims Act law which is under
10 investigation, and the applicable provision of law.

11 “(B) If such demand is for production of doc-
12 umentary material, the demand shall—

13 “(i) describe each class of documentary
14 material to be produced with such definite-
15 ness and certainty as to permit such material
16 to be fairly identified;

17 “(ii) prescribe a return date for each
18 such class which will provide a reasonable
19 period of time within which the material so
20 demanded may be assembled and made avail-
21 able for inspection, and copying; and

22 “(iii) identify the False Claims Act in-
23 vestigator to whom such material shall be
24 made available.

1 “(C) If such demand is for answers to writ-
2 ten interrogatories, the demand shall—

3 “(i) set forth with definiteness and cer-
4 tainty the written interrogatories to be an-
5 swered;

6 “(ii) prescribe dates at which time an-
7 swers to written interrogatories shall be sub-
8 mitted; and

9 “(iii) identify the False Claims Act in-
10 vestigator to whom such answers shall be
11 submitted.

12 “(D) If such demand is for the giving of oral
13 testimony, the demand shall—

14 “(i) prescribe a date, time, and place at
15 which oral testimony shall be commenced;
16 and

17 “(ii) identify a False Claims Act investi-
18 gator who shall conduct the examination and
19 the custodian to whom the transcript of such
20 examination shall be submitted.

21 Any such demand which is an express demand for any prod-
22 uct of discovery shall not be returned or returnable until
23 twenty days after a copy of such demand has been served
24 upon the person from whom the discovery was obtained.

25 “(c) PROTECTED MATERIAL OR INFORMATION.—

1 “(1) No such demand shall require the production
2 of any documentary material, the submission of any an-
3 swers to written interrogatories, or the giving of any
4 oral testimony if such material, answers, or testimony
5 would be protected from disclosure under—

6 “(A) the standards applicable to subpoenas
7 or subpoenas duces tecum issued by a court of the
8 United States to aid in a grand jury investigation;
9 or

10 “(B) the standards applicable to discovery re-
11 quests under the Federal Rules of Civil Proce-
12 dure, to the extent that the application of such
13 standards to any such demand is appropriate and
14 consistent with the provisions and purposes of this
15 section and sections 3729 through 3731.

16 “(2) Any such demand which is an express
17 demand for any product of discovery supersedes any in-
18 consistent order, rule, or provision of law (other than
19 this section) preventing or restraining disclosure of
20 such product of discovery to any person. Disclosure of
21 any product of discovery pursuant to any such express
22 demand does not constitute a waiver of any right or
23 privilege which may be invoked to resist discovery of
24 trial preparation materials to which the person making
25 such disclosure may be entitled.

1 “(d) SERVICE: JURISDICTION.—

2 “(1) Any such demand may be served by any
3 False Claims Act investigator, or by any United States
4 Marshal or Deputy Marshal, at any place within the
5 United States.

6 “(2) Any such demand or any petition filed under
7 subsection (k) may be served upon any person who is
8 not found within the United States, in such manner as
9 the Federal Rules of Civil Procedures prescribe for
10 service in a foreign country. To the extent that the
11 courts of the United States can assert jurisdiction over
12 such person consistent with due process, the United
13 States District Court for the District of Columbia shall
14 have the same jurisdiction to take any action respect-
15 ing compliance with this section by such person that
16 such court would have if such person were personally
17 within the jurisdiction of such court.

18 “(e) SERVICE UPON LEGAL ENTITIES AND NATURAL
19 PERSONS.—

20 “(1) Service of any such demand or of any peti-
21 tion filed under subsection (k) may be made upon a
22 partnership, corporation, association, or other legal
23 entity by—

24 “(A) delivering an executed copy thereof to
25 any partner, executive officer, managing agent, or

1 general agent thereof, or to any agent thereof au-
2 thorized by appointment or by law to receive
3 service of process on behalf of such partnership,
4 corporation, association, or entity;

5 “(B) delivering an executed copy thereof to
6 the principal office or place of business of the
7 partnership, corporation, or entity to be served, or

8 “(C) depositing such copy in the United
9 States mails, by registered or certified mail,
10 return receipt requested, addressed to such part-
11 nership, corporation, association, or entity at its
12 principal office or place of business.

13 “(2) Service of any such demand or of any peti-
14 tion filed under subsection (k) may be made upon any
15 natural person by—

16 “(A) delivering an executed copy thereof to
17 the person to be served; or

18 “(B) depositing such copy in the United
19 States mails by registered or certified mail, return
20 receipt requested, addressed to such person at his
21 residence or principal office or place of business.

22 “(f) PROOF OF SERVICE.—A verified return by the indi-
23 vidual serving any such demand or petition setting forth the
24 manner of such service shall be proof of such service. In the
25 case of service by registered or certified mail, such return

1 shall be accompanied by the return post office receipt of de-
2 livery of such demand.

3 “(g) SWORN CERTIFICATES.—The production of docu-
4 mentary material in response to a demand served pursuant to
5 this section shall be made under a sworn certificate, in such
6 form as the demand designates, by the person, if a natural
7 person, to whom the demand is directed or, if not a natural
8 person, by a person having knowledge of the facts and cir-
9 cumstances relating to such production and authorized to act
10 on behalf of such person. The certificate shall state that all of
11 the documentary material required by the demand and in the
12 possession, custody, or control of the person to whom the
13 demand is directed has been produced and made available to
14 the custodian.

15 “(h) INTERROGATORIES.—Each interrogatory in a
16 demand served pursuant to this section shall be answered
17 separately and fully in writing under oath unless it is objected
18 to, in which event the reasons for the objection shall be
19 stated in lieu of any answer, and it shall be submitted under a
20 sworn certificate, in such form as the demand designates, by
21 the person, if a natural person, to whom the demand is di-
22 rected or, if not a natural person, by a person or person re-
23 sponsible for answering each interrogatory. The certificate
24 shall state that all information required by the demand and in
25 the possession, custody, control, or knowledge of the person

1 to whom the demand is directed has been submitted. To the
2 extent that any materials are not furnished, they shall be
3 identified and reasons set forth with particularity for each.

4 “(i) ORAL EXAMINATIONS.—

5 “(1) The examination of any person pursuant to a
6 demand for oral testimony served under this section
7 shall be taken before an officer authorized to adminis-
8 ter oaths and affirmations by the laws of the United
9 States or of the place where the examination is held.
10 The officer before whom the testimony is to be taken
11 shall put the witness on oath or affirmation and shall
12 personally, or by someone acting under his direction
13 and in his presence, record the testimony of the wit-
14 ness. The testimony shall be taken stenographically
15 and transcribed. When the testimony is fully tran-
16 scribed, the officer before whom the testimony is taken
17 shall promptly transmit a copy of the transcript of the
18 testimony to the custodian. This subsection shall not
19 preclude the taking of testimony by any means author-
20 ized by, and in a manner consistent with, the Federal
21 Rules of Civil Procedure.

22 “(2) The False Claims Act investigator conduct-
23 ing the examination shall exclude from the place where
24 the examination is held all other persons except the
25 person being examined, his counsel, the officer before

1 whom the testimony is to be taken, and any other ste-
2 nographer taking such testimony.

3 “(3) The oral testimony of any person taken pur-
4 suant to a demand served under this section shall be
5 taken in the judicial district of the United States within
6 which such person resides, is found, or transacts busi-
7 ness, or in such other place as may be agreed upon by
8 the False Claims Act investigator conducting the ex-
9 amination and such person.

10 “(4) When the testimony is fully transcribed, the
11 False Claims Act investigator or the officer shall afford
12 the witness, who may be accompanied by counsel, a
13 reasonable opportunity to examine the transcript and
14 the transcript shall be read to or by the witness, unless
15 such examination and reading are waived by the wit-
16 ness. Any changes in form or substance which the wit-
17 ness desires to make shall be entered and identified
18 upon the transcript by the officer or the False Claims
19 Act investigator with a statement of the reasons given
20 by the witness for making such changes. The transcript
21 shall then be signed by the witness, unless the witness
22 in writing waives the signing, is ill, cannot be found, or
23 refuses to sign. If the transcript is not signed by the
24 witness within 30 days of his being afforded a reasona-
25 ble opportunity to examine it, the officer or the False

1 Claims Act investigator shall sign it and state on the
2 record the fact of the waiver, illness, absence of the
3 witness, or the refusal to sign, together with the
4 reason, if any, given therefor. A refusal to sign or an
5 unreasonable absence shall be deemed to be an ac-
6 knowledgment of its accuracy and an affirmation of its
7 contents.

8 “(5) The officer shall certify on the transcript that
9 the witness was sworn by him and that the transcript
10 is a true record of the testimony given by the witness,
11 and the officer or False Claims Act investigator shall
12 promptly deliver it or send it by registered or certified
13 mail to the custodian.

14 “(6) Upon payment of reasonable charges there-
15 for, the False Claims Act investigator shall furnish a
16 copy of the transcript to the witness only, except that
17 the Attorney General, the Deputy Attorney General,
18 or an Assistant Attorney General may, for good cause,
19 limit such witness to inspection of the official transcript
20 of his testimony.

21 “(7)(A) Any person compelled to appear under a
22 demand for oral testimony pursuant to this section may
23 be accompanied, represented, and advised by counsel.
24 Counsel may advise such person, in confidence, with
25 respect to any question asked of such person. Such

1 person or counsel may object on the record to any
2 question, in whole or in part, and shall briefly state for
3 the record the reason for the objection. An objection
4 may be properly made, received, and entered upon the
5 record when it is claimed that such person is entitled
6 to refuse to answer the question on grounds of any
7 constitutional or other legal right or privilege, includ-
8 ing the privilege against self-incrimination. Such person
9 shall not otherwise object to or refuse to answer any
10 question, and shall not by himself or through counsel
11 otherwise interrupt the oral examination. If such
12 person refuses to answer any question, the False
13 Claims Act investigator conducting the examination
14 may petition the district court of the United States
15 pursuant to subsection (k)(1) for an order compelling
16 such person to answer such question.

17 “(B) If such person refuses to answer any ques-
18 tion on the grounds of the privilege against self-in-
19 crimination, the testimony of such person may be com-
20 pelled in accordance with the provisions of part V of
21 title 18, United States Code.

22 “(8) Any person appearing for oral examination
23 pursuant to a demand served under this section shall
24 be entitled to the same fees and mileage which are

1 paid to witnesses in the district courts of the United
2 States.

3 “(j) CUSTODIANS OF DOCUMENTS, ANSWERS AND
4 TRANSCRIPTS.—

5 “(1) DESIGNATION.—The Attorney General, or
6 his authorized designee shall designate a False Claims
7 Act investigator to serve as custodian of documentary
8 material, answers to interrogatories, and transcripts of
9 oral testimony received under this section, and such
10 additional False Claims Act investigators as he shall
11 determine from time to time to be necessary to serve
12 as deputies to such officer.

13 “(2) PRODUCTION OF MATERIALS.—Any person
14 upon whom any demand under subsection (b)(1) for the
15 production of documentary material has been served
16 shall make such material available for inspection and
17 copying to the False Claims Act investigator designat-
18 ed therein at the principal place of business of such
19 person, or at such other place as such False Claims
20 Act investigator and such person thereafter may agree
21 and prescribe in writing, or as the court may direct
22 pursuant to subsection (k)(1) on the return date speci-
23 fied in such demand, or on such later date as such cus-
24 todian may prescribe in writing. Such person may,
25 upon written agreement between such person and the

1 custodian, substitute copies for originals of all or any
2 part of such material.

3 “(3) RESPONSIBILITY FOR MATERIALS; DISCLO-
4 SURE.—

5 “(A) The False Claims Act investigator to
6 whom any documentary material, answers to in-
7 terrogatories, or transcripts of oral testimony are
8 delivered shall take physical possession thereof,
9 and shall transmit them to the custodian who
10 shall be responsible for the use made thereof and
11 for the return of documentary material pursuant
12 to this section.

13 “(B) The custodian may cause the prepara-
14 tion of such copies of such documentary material,
15 answers to interrogatories, or transcripts of oral
16 testimony as may be required for official use by
17 any authorized official or employee of the Depart-
18 ment of Justice or any authorized officer or em-
19 ployee of the United States acting under the di-
20 rection and supervision of an attorney or investi-
21 gator of the Department of Justice in connection
22 with any False Claims Act investigation, under
23 regulations promulgated by the Attorney General.
24 Notwithstanding subparagraph (C) of this subsec-
25 tion, such material, answers, and transcripts may

1 be used by any such person in connection with the
2 taking of oral testimony pursuant to this section.

3 “(C) Except as otherwise provided in this
4 section, while in the possession of the custodian,
5 no documentary material, answers to interrogato-
6 ries, or transcripts of oral testimony, or copies
7 thereof, so produced shall be available for exami-
8 nation, without the consent of the person who
9 produced such material, answers, or transcripts,
10 and, in the case of any product of discovery pro-
11 duced pursuant to an express demand for such
12 material, of the person from whom the discovery
13 was obtained, by any individual other than an au-
14 thorized official or employee of the Department of
15 Justice, or an authorized officer or employee of
16 the United States acting under the direction and
17 supervision of an attorney or investigator of the
18 Department of Justice in connection with any
19 False Claims Act investigation. Nothing in this
20 section is intended to prevent disclosure to either
21 body of the Congress or to any authorized commit-
22 tee or subcommittee thereof, or to any other
23 agency of the United States for use by such
24 agency in furtherance of its statutory responsibil-
25 ities.

1 “(D) While in the possession of the custodian
2 and under such reasonable terms and conditions
3 as the Attorney General shall prescribe—

4 “(i) documentary material and answers
5 to interrogatories shall be available for exam-
6 ination by the person who produced such
7 material or answers, or by an authorized rep-
8 resentative of such person; and

9 “(ii) transcripts of oral testimony shall
10 be available for examination by the person
11 who produced such testimony, or his counsel.

12 “(4) Whenever any attorney of the Department of
13 Justice has been designated to appear before any
14 court, grand jury, or Federal administrative or regula-
15 tory agency in any case or proceeding, the custodian of
16 any documentary material, answers to interrogatories,
17 or transcripts of oral testimony may deliver to such at-
18 torney such material, answers, or transcripts for official
19 use in connection with any such case, grand jury, or
20 proceeding as such attorney determines to be required.
21 Upon the completion of any such case, grand jury, or
22 proceeding, such attorney shall return to the custodian
23 any such material, answers, or transcripts so delivered
24 which have not passed into the control of such court,

1 grand jury, or agency through the introduction thereof
2 into the record of such case or proceeding.

3 “(5) If any documentary material has been pro-
4 duced in the course of any False Claims Act investiga-
5 tion by any person pursuant to a demand under this
6 section, and—

7 “(A) any case or proceeding before any court
8 or grand jury arising out of such investigation, or
9 any proceeding before any Federal administrative
10 or regulatory agency involving such material, has
11 been completed, or

12 “(B) no case or proceeding in which such
13 material may be used has been commenced within
14 a reasonable time after completion of the exami-
15 nation and analysis of all documentary material
16 and other information assembled in the course of
17 such investigation,

18 the custodian shall, upon written request of the person
19 who produced such material, return to such person any
20 such material (other than copies thereof furnished to
21 the custodian pursuant to paragraph (2) of this subsec-
22 tion or made by the Department of Justice pursuant to
23 paragraph (3)(B) of this subsection) which has not
24 passed into the control of any court, grand jury, or

1 agency through the introduction thereof into the record
2 of such case or proceedings.

3 “(6) APPOINTMENT OF SUCCESSOR CUSTO-
4 DIANS.—In the event of the death, disability, or sepa-
5 ration from service in the Department of Justice of the
6 custodian of any documentary material, answers to in-
7 terrogatories, or transcripts of oral testimony produced
8 under any demand issued pursuant to this section, or of
9 the official relief of such custodian from responsibility
10 for the custody and control of such material, answers
11 or transcripts, the Attorney General or his authorized
12 designee shall promptly (A) designate another False
13 Claims Act investigator to serve as custodian of such
14 material, answers, or transcripts, and (B) transmit in
15 writing to the person who produced such material, an-
16 swers, or testimony notice as to the identity and ad-
17 dress of the successor so designated. Any successor
18 designated under this subsection shall have, with
19 regard to such material, answers or transcripts, all
20 duties and responsibilities imposed by this Act upon his
21 predecessor in office with regard thereto, except that
22 he shall not be held responsible for any default or dere-
23 liction which occurred prior to his designation.

24 “(k) JUDICIAL PROCEEDINGS.—

1 “(1) PETITION FOR ENFORCEMENT; VENUE.—

2 Whenever any person fails to comply with any civil in-
3 vestigative demand served upon him under subsection
4 (b) or whenever satisfactory copying or reproduction of
5 any such material cannot be done and such person re-
6 fuses to surrender such material, the Attorney General,
7 through such officers or attorneys as he may designate,
8 may file in the district court of the United States for
9 any judicial district in which such person resides, is
10 found, or transacts business, and serve upon such
11 person a petition for an order of such court for the en-
12 forcement of this section.

13 “(2) PETITION FOR ORDER MODIFYING OR SET-
14 TING ASIDE DEMAND; TIME FOR PETITION; SUSPEN-
15 SION OF TIME ALLOWED FOR COMPLIANCE WITH
16 DEMAND; GROUNDS FOR RELIEF.—

17 “(A) Within 20 days after the service of any
18 such demand upon any person, or at any time
19 before the return date specified in the demand,
20 whichever period is shorter, or within such period
21 exceeding 20 days after service or in excess of
22 such return date as may be prescribed in writing,
23 subsequent to service, by any False Claims Act
24 investigator named in the demand, such person
25 may file, in the district court of the United States

1 for the judicial district within which such person
2 resides, is found, or transacts business, and serve
3 upon such False Claims Act investigator a peti-
4 tion for an order of such court, modifying or set-
5 ting aside such demand. In the case of a petition
6 addressed to an express demand for any product
7 of discovery, a petition to modify or set aside such
8 demand may be brought only in the district court
9 of the United States for the judicial district in
10 which the proceeding in which such discovery was
11 obtained is or was last pending.

12 (B) The time allowed for compliance with
13 the demand, in whole or in part, as deemed
14 proper and ordered by the court shall not run
15 during the pendency of such petition in the court,
16 except that such person shall comply with any
17 portions of the demand not sought to be modified
18 or set aside. Such petition shall specify each
19 ground upon which the petitioner relies in seeking
20 such relief, and may be based upon any failure of
21 such demand to comply with the provisions of this
22 section or upon any constitutional or other legal
23 right or privilege of such person.

24 (3) PETITION FOR ORDER MODIFYING OR SET-
25 TING ASIDE DEMAND FOR PRODUCTION OF DISCOV-

1 ERY; GROUNDS FOR RELIEF; STAY OF COMPLIANCE;
2 SUSPENSION OF TIME ALLOWED FOR COMPLIANCE
3 WITH DEMAND.—Within twenty days after the service
4 of any express demand for any product of discovery
5 upon, or at any time before, the return date specified
6 in the demand, whichever period is shorter, or within
7 such period exceeding twenty days after service or in
8 excess of such return date as may be prescribed in
9 writing, subsequent to service, by any False Claims
10 Act investigator named in the demand, the person from
11 whom such discovery was obtained may file, in the dis-
12 trict court of the United States for the judicial district
13 in which the proceeding in which such discovery was
14 obtained is or was last pending, and serve upon any
15 False Claims Act investigator named in the demand
16 and upon the recipient of the demand, a petition for an
17 order of such court modifying or setting aside those
18 portions of the demand requiring production of any
19 such product of discovery. Such petition shall specify
20 each ground upon which the petitioner relies in seeking
21 such relief and may be based upon any failure of such
22 portions of the demand to comply with the provisions
23 of this section, or upon any constitutional or other
24 legal right or privilege of the petitioner. During the
25 pendency of such petition, the court may stay, as it

1 deems proper, compliance with the demand and the
2 running of the time allowed for compliance with the
3 demand.

4 “(4) PETITION FOR ORDER REQUIRING PER-
5 FORMANCE BY CUSTODIAN OF DUTIES; VENUE.—At
6 any time during which any custodian is in custody or
7 control of any documentary material, answers to inter-
8 rogatories delivered, or transcripts of oral testimony
9 given by any person in compliance with any such
10 demand, such person, and in the case of an express
11 demand for any product of discovery, the person from
12 whom such discovery was obtained, may file, in the
13 district court of the United States for the judicial dis-
14 trict within which the office of such custodian is situat-
15 ed, and serve upon such custodian, a petition for an
16 order of such court requiring the performance by such
17 custodian of any duty imposed upon him by this
18 section.

19 “(5) JURISDICTION; APPEAL; CONTEMPTS.—
20 Whenever any petition is filed in any district court of
21 the United States under this section, such court shall
22 have jurisdiction to hear and determine the matter so
23 presented, and to enter such order or orders as may be
24 required to carry into effect the provisions of this sec-
25 tion. Any final order so entered shall be subject to

1 appeal pursuant to section 1291 of title 28, United
2 States Code. Any disobedience of any final order ene-
3 tered under this section by any court shall be punished
4 as a contempt thereof.

5 “(6) APPLICABILITY OF FEDERAL RULES OF
6 CIVIL PROCEDURE.—To the extent that such rules
7 may have application and are not inconsistent with the
8 provisions of this section, the Federal Rules of Civil
9 Procedure shall apply to any petition under this
10 subsection.

11 “(7) DISCLOSURE EXEMPTION.—Any documenta-
12 ry material, answers to written interrogatories, or oral
13 testimony provided pursuant to any demand issued
14 under this section and sections 3729 through 3731
15 shall be exempt from disclosure under section 552 of
16 title 5, United States Code.”

○

99TH CONGRESS
1ST SESSION

H. R. 3335

Entitled the "Program Fraud Civil Penalties Act of 1985".

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1985

Mr. FISH (for himself, Mr. MOORHEAD, Mr. HYDE, Mr. SENSENBRENNER, Mr. DEWINE, Mr. DANNEMEYER, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

Entitled the "Program Fraud Civil Penalties Act of 1985".

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "Program Fraud Civil
 4 Penalties Act of 1985".

5 SEC. 101. (a) Title 5 of the United States Code is
 6 amended by inserting after chapter 7 the following new
 7 chapter:

8 **"CHAPTER 8—ADMINISTRATIVE PENALTIES AND**
 9 **ASSESSMENTS FOR FALSE CLAIMS AND STATE-**
 10 **MENTS**

"Sec.

"801. Definitions.

"802. False claims and statements; liability.

"803. Hearing and determinations.

- "804. Subpoena authority.
- "805. Judicial review.
- "806. Collection of civil penalties and assessments.
- "807. Limitations.
- "808. Regulations.
- "809. Right to setoff.

1 **"§ 801. Definitions**

2 “(a) For purposes of this chapter—

3 “(1) ‘authority’ means—

4 “(A) an executive department;

5 “(B) a military department;

6 “(C) an establishment (as such term is de-
7 fined in section 11(2) of the Inspector General
8 Act of 1978) which is not an executive depart-
9 ment; and

10 “(D) the United States Postal Service;

11 “(2) ‘authority head’ means—

12 “(A) the head of an authority, or

13 “(B) an official or employee of the authority
14 designated, in regulations promulgated by the
15 head of the authority, to act on behalf of the head
16 of the authority;

17 “(3) ‘claim’ means any—

18 “(A) request or demand made to an authority
19 for property, services, or money (including money
20 representing grants, loans, insurance, or benefits);
21 or

1 “(B) request or demand made to a recipient
2 of property, services, or money from an authority
3 or to a party to a contract with an authority—

4 “(i) for property or services if the
5 United States—

6 “(I) provided such property or
7 services;

8 “(II) provided any portion of the
9 funds for the purchase of such property
10 or services; or

11 “(III) will reimburse such recipient
12 or party for the purchase of such prop-
13 erty or services; or

14 “(ii) for the payment of money (includ-
15 ing money representing grants, loans, insur-
16 ance, or benefits) if the United States—

17 “(I) provided any portion of the
18 money requested or demanded; or

19 “(II) will reimburse such recipient
20 for any portion of the money paid on
21 such request or demand; or

22 “(C) statement made to conceal, avoid, or
23 decrease an obligation to pay, transmit, or ac-
24 count for, money or property to the authority;

1 “(4) ‘statement’ includes any written representa-
2 tion, certification, document record, or accounting or
3 bookkeeping entry—

4 “(A) with respect to a claim; or

5 “(B) with respect to—

6 “(i) a contract with, or a bid or proposal
7 for a contract with;

8 “(ii) a grant, loan or benefit from;

9 “(iii) an application for insurance from;

10 or

11 “(iv) an application for employment
12 with, an authority, or any State, political
13 subdivision of a State, or other party acting
14 on behalf of, or based upon the credit or
15 guarantee of, an authority;

16 “(5) ‘person’ means any individual, partnership,
17 corporation, association, or private organization;

18 “(6) ‘investigating official’ means—

19 “(A) in the case of an authority in which an
20 Office of Inspector General is established by the
21 Inspector General Act of 1978 or by any other
22 Federal law, the Inspector General of that au-
23 thority;

24 “(B) in the case of an authority in which an
25 Office of Inspector General is not established by

1 the Inspector General Act of 1978 or by any
2 other Federal law, any officer or employee of the
3 authority designated by the authority head to con-
4 duct investigations under section 803(a)(1) of this
5 title; or

6 “(C) in the case of a military department,
7 the Inspector General of the Department of De-
8 fense or an element within the military depart-
9 ment designated by him;

10 “(7) ‘reviewing official’ means any officer or em-
11 ployee of an authority—

12 “(A) who is designated by the authority head
13 to make the determination required in section
14 803(a)(2) of this title; and

15 “(B) who, if a member of the armed forces
16 on active duty, is serving in grade 0-7 or above
17 or, if a civilian, is serving in a position for which
18 the rate of basic pay is not less than the minimum
19 rate of basic pay for grade GS-16 or above under
20 the General Schedule; and

21 “(8) ‘hearing examiner’ means an administrative
22 law judge or another official designated by the author-
23 ity head—

24 “(A) who, if a member of the armed forces
25 on active duty, is serving in grade 0-7 or above

1 or, if a civilian, is serving in a position for which
2 the rate of basic pay is not less than the minimum
3 rate of basic pay for grade GS-15 or above under
4 the General Schedule; and

5 “(B) who shall be personally and organiza-
6 tionally independent of the investigating official,
7 the official pleading the authority’s case, and the
8 office from where the matter under review arose.

9 “(b) For purposes of paragraph (3) of subsection (a)—

10 “(1) each voucher, invoice, claim form, or other
11 individual request or demand for property, services, or
12 money constitutes a separate claim whether made, pre-
13 sented, or submitted separately or together with other
14 claims;

15 “(2) each request or demand for property, serv-
16 ices, or money constitutes a claim regardless of wheth-
17 er such property, services, or money is actually deliv-
18 ered or paid; and

19 “(3) a claim shall be considered made, presented,
20 or submitted to an authority, recipient, or party when
21 such claim is made to an agent, fiscal intermediary, or
22 other entity, including any State or political subdivision
23 thereof, acting for or on behalf of such authority, recip-
24 ient, or party.

25 “(c) For purposes of paragraph (4) subsection (a)—

1 “(1) each written representation or certification
2 constitutes a separate statement whether made, pre-
3 sented, or submitted separately or together with other
4 statements; and

5 “(2) a statement shall be considered made, pre-
6 sented, or submitted to an authority although such
7 statement is actually made to an agent, fiscal interme-
8 diary, or other entity, including any State or political
9 subdivision thereof, acting for or on behalf of such
10 authority.

11 “(d) For purposes of sections 803 and 804, with respect
12 to a military department, ‘authority head’ means the Secre-
13 tary of Defense.

14 **“§ 802. False claims and statements; liability**

15 “(a)(1) Any person who, on or after the effective date of
16 this chapter, makes, presents, or submits, or causes to be
17 made, presented, or submitted, a claim that the person knows
18 or has reason to know—

19 “(A) is false, fictitious or fraudulent;

20 “(B) includes or is supported by any statement
21 which violates paragraph (2) of this subsection; or

22 “(C) is for payment for the provision of property
23 or services which the person has not provided as
24 claimed,

1 shall be subject to, in addition to any other penalty that may
2 be prescribed by law, a civil penalty of not more than \$5,000
3 for each such claim. Such person shall also be subject to an
4 assessment, in lieu of damages sustained by the United States
5 because of such claim, of not more than twice the amount of
6 money or the value of property or services falsely, fictitious-
7 ly, or fraudulently requested or demanded in such claim.

8 “(2) Any person who, on or after the effective date of
9 this chapter makes, presents, or submits, or causes to be
10 made, presented, or submitted, a statement that the person
11 knows or has reason to know—

12 “(A) asserts a material fact which is false, ficti-
13 tious, or fraudulent; or

14 “(B)(i) omits a material fact,

15 “(ii) as a result of such omission, such statement
16 is false, fictitious, or fraudulent, and

17 “(iii) the person making, presenting, or submitting
18 such statement has a duty to include such material fact
19 in the statement,

20 shall be subject to, in addition to any other penalty that may
21 be prescribed by law, a civil penalty of not more than \$5,000
22 for each such statement.

23 “(b)(1) Except as provided in paragraph (2) of this sub-
24 section, a determination of—

1 “(A) adequate evidence to believe that a person is
2 liable under section 803(a)(2) of this title, or

3 “(B) liability under section 803 of this title, may
4 provide the authority with grounds for commencing
5 any administrative or contractual action against such
6 person which is authorized by law and which is in ad-
7 dition to any action against such person under this
8 chapter.

9 “(2) A determination referred to in paragraph (1) of this
10 subsection may be used by the authority, but shall not require
11 such authority, to commence any administrative or contrac-
12 tual action which is authorized by law.

13 **“§ 803. Hearing and determinations**

14 “(a)(1) The investigating official of an authority may in-
15 vestigate allegations that a person is liable under section 802
16 of this title and shall report the findings and conclusions of
17 such investigation to the reviewing official of the authority.
18 Nothing in this section shall alter existing responsibilities
19 under section 4(d) of the Inspector General Act of 1978 of an
20 investigating official to immediately report any criminal vio-
21 lations to the Attorney General.

22 “(2) If the reviewing official of an authority determines,
23 based upon the report of the investigating official under para-
24 graph (1) of this subsection, that there is adequate evidence
25 to believe that a person is liable under section 802 of this

1 title, the reviewing official may, in accordance with the pro-
2 visions of subsections (b) and (c) of this section, refer the
3 allegations of such liability to a hearing examiner of such
4 authority for a hearing.

5 “(b)(1) Prior to referring allegations of liability to a
6 hearing examiner under paragraph (2) of subsection (a), the
7 reviewing official of an authority shall transmit to the Attor-
8 ney General a written notice of the intention of such official
9 to refer such allegations and a statement of the reasons for
10 such intention.

11 “(2) A reviewing official may refer allegations of liabil-
12 ity to a hearing examiner under paragraph (2) of subsection
13 (a) if—

14 “(A) the Attorney General or his designee ap-
15 proves the referral of such allegations; or

16 “(B) the Attorney General or his designee takes
17 no action to disapprove the referral of such allegations
18 within—

19 “(i) ninety days after the date on which the
20 Attorney General receives the notice required by
21 paragraph (1) of this subsection; or

22 “(ii) such period as may be provided in a
23 memorandum of understanding entered into by the
24 authority head and the Attorney General with re-
25 spect to such allegations.

1 “(3) A reviewing official shall not refer allegations to a
2 hearing examiner under paragraph (2) of subsection (a) if the
3 Attorney General or an Assistant Attorney General designat-
4 ed by the Attorney General transmits a written statement to
5 the reviewing official which specifies that the Attorney Gen-
6 eral or such Assistant Attorney General disapproves the re-
7 ferral of such allegations and states the reasons for such
8 disapproval.

9 “(4) If the Attorney General or an Assistant Attorney
10 General designated by the Attorney General transmits to an
11 authority head a written finding that the continuation of any
12 hearing under section 803 of this title may adversely affect
13 any pending or potential criminal or civil action related to an
14 alleged false, fictitious, or fraudulent claim or statement
15 under consideration in such hearing, such hearing shall be
16 immediately stayed and may be resumed only upon written
17 authorization of the Attorney General.

18 “(c) No allegations of liability under section 802 of this
19 title with respect to any claim or statement, made, presented,
20 or submitted by any person shall be referred to a hearing
21 examiner under paragraph (2) of subsection (a) if the review-
22 ing official determines that the amount of money or the value
23 of property or services falsely, fictitiously, or fraudulently re-
24 quested or demanded in such claim or statement exceeds
25 \$100,000.

1 “(d) A reviewing official shall commence a hearing
2 under subsection (e) of this section by mailing by registered
3 or certified mail, or by delivery, of a notice which complies
4 with the provisions of paragraph (2)(A) of subsection (f) to the
5 person alleged to be liable under section 802 of this title.

6 “(e) The hearing examiner shall conduct a hearing on
7 the record regarding any allegation referred to the hearing
8 examiner by the reviewing official pursuant to subsection (a)
9 of this section to determine—

10 “(1) the liability of a person under section 802 of
11 this title; and

12 “(2) the amount of any penalty and assessment to
13 be imposed on such person.

14 Any such determination shall be based on the preponderance
15 of the evidence.

16 “(f)(1) Each hearing under subsection (e) of this section
17 shall be conducted in accordance with—

18 “(A) the provisions of subchapter II of chapter 5
19 of this title (to the extent that such provisions are not
20 inconsistent with the provisions of this chapter); or

21 “(B) procedures promulgated by the authority
22 head under paragraph (2) of this subsection;

23 *Provided however,* That if the hearing examiner to whom the
24 allegations are referred is an administrative law judge, the

1 hearing shall be conducted in accordance with subchapter II
2 of chapter 5.

3 “(2) An authority head shall by regulation promulgate
4 procedures for the conduct of hearings under this chapter.
5 Such procedures shall include:

6 “(A) The provision of written notice of the hear-
7 ing to any person alleged to be liable under section
8 802 of this title, including written notice of—

9 “(i) the time, place, and nature of the
10 hearing;

11 “(ii) the legal authority and jurisdiction under
12 which the hearing is to be held;

13 “(iii) the matters of fact and law to be as-
14 serted; and

15 “(iv) a description of the procedures for the
16 conduct of hearing established under this para-
17 graph or established under subchapter II of chap-
18 ter 5 of this title, as the case may be.

19 “(B) The provision to any person alleged to be
20 liable under section 802 of this title of opportunities for
21 the submission of facts, arguments, offers of settlement,
22 or proposals of adjustment when time, the nature of
23 the hearing, and the public interest permit.

1 “(C) Procedures to ensure that the hearing exam-
2 iner shall not, except to the extent required for the dis-
3 position of ex parte matters as authorized by law—

4 “(i) consult a person or party on a fact in
5 issue, unless on notice and opportunity for all par-
6 ties to the hearing to participate; or

7 “(ii) be responsible to or subject to the super-
8 vision or direction of the investigating official or
9 the reviewing official.

10 “(D) Procedures to ensure that the investigating
11 official and the reviewing official do not participate or
12 advise in the decision required under subsection (g) of
13 this section or the review of the decision by the au-
14 thority head under subsection (h) of this section, except
15 as provided in subsection (i) of this section.

16 “(E) The provision to any person alleged to be
17 liable under section 802 of this title of opportunities to
18 present such person’s case through oral or documenta-
19 ry evidence, to submit rebuttal evidence, and to con-
20 duct such crossexamination as may be required for a
21 full and true disclosure of the facts.

22 “(F) Procedures to permit any person alleged to
23 be liable under section 802 of this title to be accompa-
24 nied, represented, and advised by counsel or such other

1 qualified representative as the authority head may
2 specify in such regulations.

3 “(G) Procedures to ensure that the hearing is con-
4 ducted in an impartial manner, including procedures
5 to—

6 “(i) permit the hearing examiner to at any
7 time disqualify himself;

8 “(ii) permit the filing, in good faith, of a
9 timely and sufficient affidavit of personal bias or
10 other disqualification of a hearing examiner or re-
11 viewing official; and

12 “(iii) provide for the determination by the au-
13 thority head of a matter filed pursuant to clause
14 (ii) of this subparagraph as a part of the record
15 and decision in the hearing.

16 “(g) The hearing examiner shall issue a written deci-
17 sion, including findings and determinations, after the conclu-
18 sion of the hearing. The hearing examiner shall promptly
19 send to each party to the hearing a copy of such decision and
20 a statement describing the right of any person determined to
21 be liable under section 802 of this title to appeal the decision
22 of the hearing examiner to the authority head under para-
23 graph (2) of subsection (h).

24 “(h)(1) Except as provided in paragraph (2) of this sub-
25 section and section 805 of this title, the decision, including

1 the findings and determinations, of the hearing examiner
2 issued under subsection (g) of this section are final.

3 “(2) Within thirty days after the hearing examiner
4 issues a decision under subsection (g) of this section, any
5 person determined in such decision to be liable under section
6 802 of this title may appeal such decision to the authority
7 head. The authority head may affirm, reduce, compromise,
8 remand, or settle any penalty and assessment determined by
9 the hearing examiner pursuant to this section. The authority
10 head shall promptly send to each party to the appeal a copy
11 of the decision of the authority head and a statement describ-
12 ing the right of any person determined to be liable under
13 section 802 of this title to judicial review under section 805
14 of this title.

15 “(i) Upon completion of the procedures required by sec-
16 tion 803(b)(2), the reviewing official shall have the exclusive
17 authority to compromise or settle any allegations of liability
18 under section 802 of this title against a person without the
19 consent of the hearing examiner at any time prior to the date
20 in which the hearing examiner issues a decision under sub-
21 section (g) of this section.

22 **“§ 804. Subpoena authority**

23 “(a) For the purposes of an investigation under section
24 803(a) of this title, an investigating official is authorized—

25 “(1) to administer oaths or affirmations; or

1 “(2) to require by subpoena the production of all
2 information, documents, reports, answers, records, ac-
3 counts, papers, and other data not otherwise reason-
4 ably available to the authority.

5 “(b) For the purposes of conducting a hearing under sec-
6 tion 803(e) of this title, a hearing examiner is authorized—

7 “(1) to administer oaths or affirmations; and

8 “(2) to require by subpoena the attendance and
9 testimony of witnesses and the production of all infor-
10 mation, documents, reports, answers, records, ac-
11 counts, papers, and other data and documentary evi-
12 dence which the hearing examiner considers relevant
13 and material to the hearing.

14 “(c) In the case of contumacy or refusal to obey a sub-
15 poena issued pursuant to subsection (a) or (b) of this section,
16 an investigating official or a hearing examiner, as the case
17 may be, may invoke the aid of any district court of the United
18 States in the district in which such investigation or hearing is
19 being conducted, or where the person receiving the subpoena
20 resides or conducts business. The district courts of the United
21 States shall have jurisdiction to issue an appropriate order for
22 the enforcement of any such subpoena. Any failure to obey
23 such order of the court is punishable by such court as
24 contempt.

1 **“§ 805. Judicial review**

2 “(a) Unless a petition is filed under this section, a deter-
3 mination of liability under section 803 of this title shall be
4 final and shall not be subject to judicial review.

5 “(b)(1) Any person for whom a determination of liability
6 under section 802 of this title has been made pursuant to
7 section 803 of this title may obtain review of such determina-
8 tion in the United States Court of Appeals for the circuit in
9 which such person resides or in which the claim or statement
10 upon which the determination of liability is based was made,
11 presented, or submitted, or in the United States Court of
12 Appeals for the District of Columbia Circuit. Such a review
13 may be obtained by filing in any such court a written petition
14 that such determination be modified or set aside. Such peti-
15 tion shall be filed—

16 “(A) only after such person has exhausted all ad-
17 ministrative remedies under this chapter; and

18 “(B) within sixty days after the date on which the
19 authority head sends such person a copy of the decision
20 of such authority head under section 803(h)(2) of this
21 title.

22 “(2) The clerk of the court shall transmit a copy of a
23 petition filed under paragraph (1) of this subsection to the
24 authority head and to the Attorney General. Upon receipt of
25 the copy of such petition, the authority head shall transmit to
26 the Attorney General the record in the proceeding resulting

1 in the determination of liability under section 802 of this title.
2 Except as otherwise provided in this section, the courts of
3 appeals of the United States shall have jurisdiction to review
4 the decision, findings, and determinations in issue and to
5 affirm, modify, remand for further consideration, or set aside,
6 in whole or in part, the decision, findings, and determinations
7 of the hearing examiner, and to enforce such decision, find-
8 ings, and determinations to the extent that such decision,
9 findings, and determinations are affirmed or modified.

10 “(c) The findings of the hearing examiner with respect
11 to questions of fact, if supported by substantial evidence on
12 the record considered as a whole, shall be conclusive.

13 “(d) Any court of appeals reviewing under this section
14 the decision, findings, and determinations of a hearing exam-
15 iner shall not consider any objection that was not raised in
16 the hearing conducted pursuant to section 803(e) of this title
17 unless a demonstration is made of extraordinary circum-
18 stances causing the failure to raise the objection. If any party
19 demonstrates to the satisfaction of the court that additional
20 evidence not presented at such hearing is material and that
21 there were reasonable grounds for the failure to present such
22 evidence at such hearing, the court may remand the matter
23 to the hearing examiner for consideration of such additional
24 evidence.

1 “(e) Upon a final determination by the court of appeals
2 that a person is liable under section 802 of this title, the
3 court shall enter a final judgment for the appropriate amount
4 in favor of the United States, and such judgment may be
5 recorded and enforced by the Attorney General to the same
6 extent and in the same manner as a judgment entered by any
7 United States district court.

8 **“§ 806. Collection of civil penalties and assessments**

9 “(a) The Attorney General shall be responsible for judi-
10 cial enforcement of any civil penalty or assessment imposed
11 pursuant to the provisions of this chapter.

12 “(b) Any penalty or assessment imposed in a determina-
13 tion which has become final pursuant to section 803 of this
14 title may be recovered in a civil action brought by the Attor-
15 ney General. In any such action, no matter that was raised
16 or that could have been raised in a hearing conducted under
17 section 803(e) of this title or pursuant to judicial review
18 under section 805 of this title may be raised as a defense, and
19 the determination of liability and the determination of
20 amounts of penalties and assessments shall not be subject to
21 review.

22 “(c) The district courts of the United States and of any
23 territory or possession of the United States shall have juris-
24 diction of any action commenced by the United States under
25 subsection (b) of this section.

1 “(d) Any action under subsection (b) of this section may,
2 without regard to venue requirements, be joined and consoli-
3 dated with or asserted as a counterclaim, cross-claim, or
4 setoff by the United States in any other civil action which
5 includes as parties the United States and the person against
6 whom such action may be brought.

7 “(e)(1) The United States Claims Court shall have juris-
8 diction of any action under subsection (b) of this section to
9 recover any penalty and assessment of the cause of action is
10 asserted by the United States as a counterclaim in a matter
11 pending in such court. The United States may join as addi-
12 tional parties in such counterclaim all persons who may be
13 jointly and severally liable with the person against whom
14 such counterclaim is asserted.

15 “(2) No cross-claims or third-party claims not otherwise
16 within the jurisdiction of the United States Claims Court
17 shall be asserted among additional parties joined under para-
18 graph (1) of this subsection.

19 “(f) The Attorney General shall have exclusive author-
20 ity to compromise or settle any penalty and assessment the
21 determination of which is the subject of a pending petition
22 pursuant to section 805 of this title or a pending action to
23 recover such penalty or assessment pursuant to this section.

24 “(g) Any amount of penalty and assessment collected
25 under this chapter shall be deposited as miscellaneous re-

1 ceipts in the Treasury of the United States, except that such
2 amounts collected by the United States Postal Service shall
3 be deposited in the postal service fund established by section
4 2003 of Title 39, United States Code.

5 **“§ 807. Limitations**

6 “(a) No claim or statement alleged to be a false, ficti-
7 tious, or fraudulent claim or statement shall be subject to
8 liability under section 802 of this title at any time after six
9 years after the date on which such claim or statement is
10 made, presented, or submitted, or within three years from the
11 date when facts material to the right of action are known or
12 reasonably should have been known by the official within the
13 authority charged with responsibility to act in the circum-
14 stances, whichever occurs last.

15 “(b) A civil action to recover a penalty and assessment
16 under section 806 of this title shall be commenced within
17 three years after the date on which the determination of li-
18 ability for such penalty and assessment becomes final.

19 “(c) If at any time during the course of proceedings
20 brought pursuant to this chapter the authority head receives
21 or discovers any specific information regarding bribery, gra-
22 tuities, conflict of interest, or other corruption or similar ac-
23 tivity in relation to a false claim or statement, the authority
24 head shall immediately report such information to the Attor-
25 ney General, and in the case of an authority in which an

1 Office of Inspector General is established by the Inspector
2 General Act of 1978 or by any other Federal law, to the
3 Inspector General of that authority.

4 **“§ 808. Regulations**

5 “(a) Each authority head shall promulgate rules and
6 regulations necessary to implement the provisions of this
7 chapter.

8 “(b) The Attorney General may enter into a memoran-
9 dum of understanding with the head of any authority to pro-
10 vide expeditious procedures for approving or disapproving the
11 referral of allegations under section 803(b) of this title and for
12 referral of matters for action under sections 805, 806, and
13 807(d) of this title. Such memorandum of understanding may
14 provide advanced authorization to refer allegations under sec-
15 tion 803(b) of this title with respect to any particular type or
16 class of alleged false claims or statements if not otherwise
17 barred by section 807 of this title.

18 **“§ 809. Right to setoff**

19 “(a)(1) The amount of any penalty and assessment
20 which has become final under section 803(h)(1) of this title,
21 or for which a judgment has been entered under section
22 805(e) or 806 of this title, or any amount agreed upon in a
23 settlement or compromise under section 805(h)(2) of this title,
24 may be deducted from any sum then or later owing by the
25 United States to the person liable for such penalty and as-

1 assessment, unless otherwise prohibited by law or except in
2 those cases where the government has contractually agreed
3 not to exercise its rights of setoff.

4 “(2) The authority head shall transmit written notice to
5 the person liable for such penalty or assessment prior to com-
6 mencing a deduction or series of deductions under this
7 paragraph.

8 “(3) All amounts retained pursuant to this paragraph
9 shall be remitted to the Secretary of the Treasury for depos-
10 its in accordance with section 806(g) of this title.

11 “(b) An authority head may forward a certified copy of
12 any determination as to liability for any penalty and assess-
13 ment which has become final under section 803(h)(1) of this
14 title, or a certified copy of any judgment which has been
15 entered under section 805(e) or 806 of this title to the Secre-
16 tary of the Treasury for action in accordance with subsection
17 (a) of this section.

18 (b) The table of chapters for part I of Title 5, United
19 States Code, is amended by inserting after the item relating
20 to chapter 7 the following new item:

“8. Administrative Penalties and Assessments for False Claims
and Statements..... 801.”.

21 SEC. 102. (a) Except as provided in subsection (b), this
22 Act and the amendments made by this Act shall take effect
23 180 days after the date of enactment of this Act.

1 (b) Section 808(a) of title 5, United States Code (as
2 added by section 101 of this Act) shall take effect on the date
3 of enactment of this Act.

○

99TH CONGRESS
1ST SESSION

H. R. 3753

To amend title 31, United States Code, to increase the liability of any person who violates section 3729 of such title (relating to false claims) to 3 times, rather than 2 times, the amount of damages the United States Government sustains as a result of such violation.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 13, 1985

Mr. SHAW introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 31, United States Code, to increase the liability of any person who violates section 3729 of such title (relating to false claims) to 3 times, rather than 2 times, the amount of damages the United States Government sustains as a result of such violation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) subchapter III of chapter 37 of title 31, United
4 States Code, is amended—

5 (1) in the first sentence of section 3729 by strik-
6 ing out “2 times” and inserting in lieu thereof “3
7 times”; and

1 (2) in subsection (a) of section 3730 by striking
2 out "2 times" and inserting in lieu thereof "3 times".

3 (b) The amendments made by this Act shall apply with
4 respect any civil actions brought under section 3730 after the
5 date of the enactment of this Act for violations occurring
6 before or after the date of the enactment of this Act.

○

Mr. GLICKMAN. Now I call on our ranking member, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman. I welcome the opening of these hearings this morning.

As a member of the Committee on Government Operations as well as the Committee on the Judiciary, I have particular interest in improving the working relationship between Government contractors and the United States.

In the pursuit of the information that will hopefully be brought out in these hearings, I trust that our witnesses will understand if I approach the subject matter by dividing the consideration of contract law from tort law and criminal law.

There seems to be confusion existing in the various approaches before us with regard to these different areas of the law. I think it will be important for this subcommittee to assure that we are recommending legislation that will preserve the right of the public to get fair value for tax dollars spent in Government procurement. At the same time, the rights of individual contractors, Government employees involved in the procurement process, and any others that might be collaterally involved must be preserved and maintained and included in whatever system of recovery or penalty that might be involved.

I don't think we can make a silk purse out of a sow's ear by saying that penalties that are criminal in their basic nature are really civil penalties, particularly under the kind of proposals that are put forward in some of the measures that are before us.

Calling an action civil or administrative in nature doesn't make it that if, in fact, the effect of it is that of a criminal proceeding. After all, due process is rather basic to our constitutional system, I think, and worth considering in this process.

The other side of the picture is that we have problems that have been brought to the public's attention very noticeably and very forcefully over a period of years now, that indicate the way in which the United States of America procures products and services can do with some improvement.

It tends, from the standpoint of the Committee on Government Operations looking at such matters, that indicate that we have got to do more by way of internal improvement of our procurement process as well. All the blame for breakdowns in the contracting process cannot be placed purely on one side of the contracting process. We all realize that.

So I think there is another side of this that has to be considered and that is how we improve our procurement process from the Government side, a question which, admittedly, is within the jurisdiction of the Committee on Government Operations, not the Committee on the Judiciary.

Mr. Chairman, I want to express my appreciation for your prompt action in scheduling these hearings and with your intention of moving forward with legislation that will help to increase the competitive climate in Government contracting, and bring about the best usage of the American taxpayers' dollars in the procurement process.

Mr. GLICKMAN. Thank you, Mr. Kindness.

Mr. BERMAN.

Mr. BERMAN. Thank you, Mr. Chairman.

I want to join my friend from Ohio in commending you for so quickly moving on this issue. The Senate, of course, starting much earlier, has moved the bill to the floor, sponsored by the chairman of the subcommittee, Senator Grassley, in this area. And with the array of activities in our subcommittee it would have been very easy to delay an area like this, and the fact that you didn't is greatly appreciated, I think by me personally and by, I think, the cause that this issue represents.

The chairman has spoken of the issue and of the existence of this law since the time of Abraham Lincoln. The basic principle, I think, is very clear. The United States, in many different areas of Government contracting, is being bilked and we need all the resources we can obtain to address the problem. For that reason, Berkley Bedell, Andy Ireland, and I introduced legislation, H.R. 3828, toward the end of last year, which strengthens the incentives for private citizens who have evidence of fraud against the United States to step forward and bring suit on behalf of the Government. That is precisely what H.R. 3828 does.

In my view, the qui tam provisions of H.R. 3828 are essential to making the False Claims Act a more effective tool against Federal contractor fraud. I am convinced that we must protect whistleblowers from being fired, harassed, suspended, or demoted. We must allow a plaintiff to maintain his or her involvement in a suit even if the U.S. attorney enters the case to insure that the case is effectively prosecuted on its merits. We must prevent suits from being dismissed simply by the Government's assertion that the Government already had the information brought forward by the plaintiff in order to ensure that the Government is indeed acting on that information. And we must provide guarantees of adequate monetary awards and attorneys' fees for plaintiffs in qui tam actions.

I hope that members of the subcommittee will be present tomorrow, and I would like to commend for their attention the testimony of a person from Los Angeles, John Phillips, who I have known a long time, who is director of the center for law in the public interest there, and is one of the witnesses scheduled to testify. His interest in this issue arose when his office began to receive contacts from would-be whistleblowers and his research into this area, which has been very extensive, has convinced him of the inadequacy of the present law.

Whether as a result of lack of resources, or worse, the Department of Justice has not done an acceptable job of prosecuting defense contractor fraud. In an era of Gramm-Rudman, as the chairman mentioned, and as we have moved toward a new-found reliance on private citizens to help right wrongs, the qui tam provisions of H.R. 3828 strike me as exactly what is needed to address the problem.

Some will choose to frame their opposition to these reforms in terms of unfounded fears that crackpots will take advantage of the qui tam provisions. The defense industry will certainly claim that H.R. 3828 provides draconian powers over small businessmen. Berkley Bedell and Andy Ireland are two prominent leaders in the Small Business Committee. They have listened to this allegation

and it carries no water with them. I suggest that that is the correct conclusion.

In conclusion in my own opening remarks, it seems to me that only those who cheat the U.S. Government have anything to fear from the kind of provisions provided in H.R. 3828, and I urge my colleagues to weigh carefully the testimony we will hear on this issue and to consider the merits of that approach.

Finally, just let me thank you again, Mr. Chairman, for so quickly scheduling these hearings on this very important issue.

Mr. GLICKMAN. Thank you, Mr. Berman.

It is a pleasure to welcome the distinguished member of the full Judiciary Committee, Mr. Fish, who I know has been very active in this issue and has introduced major legislation in this issue. Mr. Fish, we welcome you to this subcommittee.

**TESTIMONY OF HON. HAMILTON FISH, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED
BY ALAN COFFEY, ASSOCIATE COUNSEL, JUDICIARY COMMITTEE**

Mr. FISH. Thank you very much, Mr. Chairman, and members of the subcommittee. Accompanying me at the witness table is Alan Coffey, minority chief counsel to the Committee on the Judiciary.

I appreciate the opportunity to be with you and to testify regarding legislation which will greatly enhance the ability of the Federal Government to deal with fraud and waste in grant and loan programs and in procurement contracts.

I am the principal sponsor in the House of Representatives of the administration's proposals that are, in part, the focus of this hearing—the False Claims Act amendments, H.R. 3334, and the Program Fraud Civil Penalties Act, H.R. 3335.

As you stated in your opening remarks, Mr. Chairman, the False Claims Act is one of the oldest and potentially most effective remedies available to the United States to discourage and to respond to fraudulent misuse of Federal resources.

It is the principal statute upon which the Government relies to seek monetary recovery in fraud cases. Enacted in 1863, at the height of the Civil War, it permits the Federal Government to recover two times the amount of any false or fraudulent claim submitted, plus a \$2,000 civil fine.

The amendments contained in my bills would make several statutory changes so as to resolve inconsistencies and ambiguities in the case law and to strengthen the Government's ability to investigate, litigate and otherwise resolve these fraud cases.

Before detailing the principal elements of these two bills, permit me to make some general observations. First, it needs to be stressed that we are dealing here with a civil, not a criminal, statute. The False Claims Act is remedial in nature. As it is now constituted, it does not contain any criminal sanctions and these legislative proposals do not themselves contain any criminal sanctions.

I emphasize this because in the past there has been considerable confusion prompted by judicial decisions that have treated the False Claims Act as if it were a criminal statute. These decisions have hampered the Federal Government in its efforts to effectively