

Union Calendar No. 390

99TH CONGRESS
2D SESSION

H. R. 4827

[Report No. 99-660]

To amend title 81, United States Code, with respect to the fraudulent use of public property or money.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1986

Mr. GLICKMAN (for himself, Mr. FRANK, Mr. BERMAN, Mr. BOUCHER, Mr. STAGGERS, Mr. BRYANT, Mr. IRELAND, Mr. BEDNELL, and Mr. STARR) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 28, 1986

Additional sponsors: Mr. RODINO, and Mr. Hughes

JUNE 28, 1986

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

(Strike out all after the enacting clause and insert the part printed in italic)

(For text of introduced bill, see copy of bill as introduced on May 15, 1986)

A BILL

To amend title 81, United States Code, with respect to the fraudulent use of public property or money.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the "False Claims Amendments*
6 *Act of 1986".*

7 **SEC. 2. FALSE CLAIMS.**

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

10 *(1) by striking the matter preceding paragraph (1)*
11 *and inserting the following:*

12 *"(a) LIABILITY FOR CERTAIN ACTS.—Any person*
13 *who—";*

14 *(2) in paragraph (4)—*

15 *(A) by striking "publio"; and*

16 *(B) by striking "in an armed force" and inserting*
17 *"by the United States Government";*

18 *(3) in paragraph (5)—*

19 *(A) by striking "in an armed force" and in-*
20 *serting "by the United States Government"; and*

21 *(B) by striking "or" after the semicolon;*

22 *(4) in paragraph (6)—*

23 *(A) by striking "a member of an armed*
24 *force" and inserting "an officer or employee of the*

1 *Government, or a member of the armed forces,"*
2 *and*

3 *(B) by striking the period at the end of the*
4 *paragraph and inserting "; or"; and*

5 *(5) by adding at the end of the subsection the fol-*
6 *lowing:*

7 *"(7) knowingly makes, uses, or causes to be made*
8 *or used, a false record or statement to conceal, avoid,*
9 *or decrease an obligation to pay or transmit money or*
10 *property to the Government;*

11 *is liable to the United States Government for a civil penalty*
12 *of not less than \$5,000 and not more than \$10,000, for an*
13 *amount equal to consequential damages as set forth in sub-*
14 *section (b)(1) plus 2 times the amount of damages (other than*
15 *such consequential damages) which the Government sustains*
16 *because of the act of that person, and for the costs of a civil*
17 *action brought to recover any such penalty or damages.*

18 *"(b) CALCULATION OF DAMAGES.—(1) For purposes*
19 *of this section, consequential damages include damages which*
20 *the United States would not have sustained but for—*

21 *"(A) the commission of any of the acts prohibited*
22 *by subsection (a); or*

23 *"(B) entering into or making any contract or*
24 *grant as a result, in any material part, of any false*
25 *statement, record, or claim.*

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

5 “(3) If any portion of the damages sustained by the
6 United States under paragraph (1) is considered reasonably
7 unforeseeable by the court, the court may reduce the total
8 amount of damages payable under paragraph (1).

9 “(c) *KNOWING AND KNOWINGLY DEFINED.*—For pur-
10 poses of this section, the terms ‘knowing’ and ‘knowingly’
11 mean that a person, with respect to information—

12 “(1) has actual knowledge of the information;

13 “(2) acts in deliberate ignorance of the truth or
14 falsity of the information; or

15 “(3) acts in reckless disregard of the truth or fal-
16 sity of the information.

17 “(d) *CLAIM DEFINED.*—For purposes of this section,
18 ‘claim’ includes any request or demand, whether under a con-
19 tract or otherwise, for money or property which is made to a
20 contractor, grantee, or other recipient if the United States
21 Government provides any portion of the money or property
22 which is requested or demanded, or if the Government will
23 reimburse such contractor, grantee, or other recipient for any
24 portion of the money or property which is requested or
25 demanded.”

1 **SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.**

2 *Section 3730 of title 31, United States Code, is amend-*
3 *ed to read as follows:*

4 **"§ 3730. Civil actions for false claims**

5 *"(a) The Attorney General diligently shall investigate a*
6 *violation under section 3729. If the Attorney General finds*
7 *that a person has violated or is violating section 3729, the*
8 *Attorney General may bring a civil action under this section*
9 *against the person.*

10 *"(b)(1) A person may bring a civil action for a violation*
11 *of section 3729 for the person and for the United States Gov-*
12 *ernment. The action shall be brought in the name of the Gov-*
13 *ernment. Subject to paragraph (5), an action may be dis-*
14 *missed only if the court and the Attorney General give writ-*
15 *ten consent to the dismissal and their reasons for consenting.*

16 *"(2) A copy of the complaint and written disclosure of*
17 *substantially all material evidence and information the*
18 *person possesses shall be served on the Government pursuant*
19 *to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The*
20 *complaint shall be filed in camera, shall remain under seal*
21 *for at least 60 days, and shall not be served on the defendant*
22 *until the court so orders. The Government may elect to inter-*
23 *vene and proceed with the action within 60 days after it re-*
24 *ceives both the complaint and the material evidence and*
25 *information.*

1 “(3) *The Government may, for good cause shown, move*
2 *the court for extensions of the time during which the com-*
3 *plaint remains under seal under paragraph (2). Any such*
4 *motions may be supported by affidavits or other submissions*
5 *in camera. The defendant shall not be required to respond to*
6 *any complaint filed under this section until 20 days after the*
7 *complaint is unsealed and served upon the defendant pursu-*
8 *ant to Rule 4 of the Federal Rules of Civil Procedure.*

9 “(4) *Subject to paragraph (5), before the expiration of*
10 *the 60-day period or any extensions obtained under para-*
11 *graph (3), the Government shall—*

12 “(A) *proceed with the action, in which case the*
13 *action shall be conducted by the Government; or*

14 “(B) *notify the court that it declines to take over*
15 *the action, in which case the person bringing the action*
16 *shall have the right to conduct the action.*

17 “(5)(A) *If the court finds that an action brought by a*
18 *person under this subsection—*

19 “(i) *is based on specific evidence or specific infor-*
20 *mation which the Government disclosed as a basis for*
21 *allegations made in a prior administrative, civil, or*
22 *criminal proceeding; or*

23 “(ii) *is based on specific information disclosed*
24 *during the course of a congressional investigation or*

1 *based on specific public information disseminated by*
2 *any news media,*
3 *the court shall dismiss the action, unless subparagraph (B)*
4 *applies.*

5 “(B) *The court shall not dismiss an action under sub-*
6 *paragraph (A)—*

7 “(i) *if the Government proceeds with the action*
8 *before the expiration of the 60-day period described in*
9 *paragraph (2) or any extensions obtained under para-*
10 *graph (3); or*

11 “(ii) *if the Government was aware of the evidence*
12 *or information described in subparagraph (A) or (B)*
13 *for a period of at least 6 months before the person ini-*
14 *tiated the action, and the Government did not initiate*
15 *a civil action on the matter involved within that 6-*
16 *month period, or within such additional times as the*
17 *court allows upon a showing of good cause.*

18 “(C) *The defendant must prove the facts warranting*
19 *dismissal of a case to which this paragraph applies.*

20 “(6) *When a person brings an action under this subsec-*
21 *tion, no person other than the Government may intervene or*
22 *bring a related action based on the facts underlying the pend-*
23 *ing action.*

24 “(c)(1) *If the Government proceeds with the action, it*
25 *shall have the primary responsibility for prosecuting the*

1 action. The person bringing the action shall have a right to
2 continue in the action with the same rights as provided by
3 Rule 24(a) of the Federal Rules of Civil Procedure. The
4 Government is not bound by an act of the person bringing the
5 action.

6 “(2) The Government may settle the action with the de-
7 fendant notwithstanding the objections of the person initiat-
8 ing the action if the court determines after a hearing, includ-
9 ing the opportunity for presentation of evidence, that the pro-
10 posed settlement is fair, adequate, and reasonable under all
11 the circumstances.

12 “(3) Upon a showing of the Government that certain
13 actions of discovery by the person initiating the action would
14 significantly interfere with the Government’s investigation or
15 prosecution of a criminal or civil matter arising out of the
16 same facts, the court may stay such discovery for a period of
17 not more than 60 days. Such a showing shall be conducted in
18 camera. The Court may extend the 60-day period upon a
19 further showing in camera that the Government has pursued
20 the criminal or civil investigation or proceedings with reason-
21 able diligence and any proposed discovery in the civil action
22 will interfere with the ongoing criminal or civil investigation
23 or proceedings.

24 “(4) If the Government elects not to proceed with the
25 action, the person who initiated the action shall have the right

1 to conduct the action. If the Government so requests, it shall
2 be served with copies of all pleadings filed in the action and
3 shall be supplied with copies of all deposition transcripts (at
4 the Government's expense). When a person proceeds with the
5 action, the court, without limiting the status and rights of the
6 person initiating the action, may nevertheless permit the
7 Government to intervene at a later date upon a showing of
8 good cause.

9 “(5) Notwithstanding subsection (b), the Government
10 may elect to pursue its claim through any alternate remedy
11 available to the Government, including any administrative
12 proceeding to determine a civil money penalty. If any such
13 alternate remedy is pursued in another proceeding, the person
14 initiating the action shall have the same rights in such pro-
15 ceeding as such person would have had if the action had con-
16 tinued under this section. Any finding of fact or conclusion of
17 law made in such other proceeding that has become final
18 shall be conclusive on all parties to an action under this sec-
19 tion. For purposes of the preceding sentence, a finding or
20 conclusion is final if it has been finally determined on appeal
21 to the appropriate court of the United States, if all time for
22 filing such an appeal with respect to the finding or conclusion
23 has expired, or if the finding or conclusion is not subject to
24 judicial review.

1 80 percent of the proceeds of the action or settlement and
2 shall be paid out of such proceeds. Such person shall also
3 receive an amount for reasonable expenses which the court
4 finds to have been necessarily incurred, plus reasonable at-
5 torneys' fees and costs. All such expenses, fees, and costs
6 shall be awarded against the defendant.

7 “(3) If the Government does not proceed with the action
8 and the person bringing the action conducts the action, the
9 court may award to the defendant its reasonable attorneys'
10 fees and expenses if the defendant prevails in the action and
11 the court finds that the claim of the person bringing the
12 action was clearly frivolous, vexatious, or brought solely for
13 purposes of harassment.

14 “(e) The Government is not liable for expenses which a
15 person incurs in bringing an action under this section.

16 “(f)(1) If a claim has been filed under section 6 of the
17 Contract Disputes Act of 1978 (41 U.S.C. 601 and follow-
18 ing), an action may not be brought under this section if that
19 action is based on the same matter that is the subject of the
20 claim, and a civil investigative demand may not be issued
21 under section 3733 with regard to such claim. The prohibi-
22 tion of the preceding sentence shall be in effect until such
23 time as the claim is finally resolved or, if an appeal is taken
24 under section 7 or section 10 of the Contract Disputes Act of
25 1978, there has been a final decision on the merits. The run-

1 *criminated against in the terms and conditions of employ-*
2 *ment by his or her employer in whole or in part because of*
3 *lawful acts done by the employee on behalf of the employee or*
4 *others in furtherance of an action under this section, includ-*
5 *ing investigation for, initiation of, testimony for, or assist-*
6 *ance in an action filed or to be filed under this section, shall*
7 *be entitled to all relief necessary to make the employee whole.*
8 *Such relief shall include reinstatement with the same seniori-*
9 *ty status such employee would have had but for the discrimi-*
10 *nation, 2 times the amount of back pay, interest on the back*
11 *pay, and compensation for any special damages sustained as*
12 *a result of the discrimination, including litigation costs and*
13 *reasonable attorneys' fees. An employee may bring an action*
14 *in the appropriate district court of the United States for the*
15 *relief provided in this subsection."*

16 **SEC. 5. FALSE CLAIMS PROCEDURE.**

17 *Section 3731 of title 31, United States Code, is amend-*
18 *ed by striking subsection (b) and inserting the following:*

19 *"(b) A civil action under section 3730 may not be*
20 *brought—*

21 *"(1) more than 6 years after the date on which*
22 *the violation of section 3729 is committed, or*

23 *"(2) more than 3 years after the date when facts*
24 *material to the right of action are known or reasonably*
25 *should have been known by the official of the United*

1 **“§ 3732. False claims jurisdiction**

2 “(a) **ACTIONS UNDER SECTION 3730.**—Any action
3 under section 3730 may be brought in any judicial district in
4 which the defendant, or in the case of multiple defendants,
5 any one defendant can be found, resides, transacts business,
6 or in which any act proscribed by section 3729 occurred. A
7 summons as required by the Federal Rules of Civil Proce-
8 dure shall be issued by the appropriate district court and
9 served at any place within or outside the United States.

10 “(b) **CLAIMS UNDER STATE LAW.**—The district courts
11 shall have jurisdiction over any action brought under the
12 laws of any State for the recovery of funds paid by a State or
13 local government if the action arises from the same transac-
14 tion or occurrence as an action brought under section 3730.

15 **“§ 3733. Civil investigative demands**

16 “(a) **IN GENERAL.**—

17 “(1) **ISSUANCE AND SERVICE.**—Whenever the
18 Attorney General has reason to believe that any person
19 may be in possession, custody, or control of any docu-
20 mentary material or information relevant to a false
21 claims law investigation, the Attorney General may,
22 before commencing a civil proceeding under section
23 3730 or other false claims law, issue in writing and
24 cause to be served upon such person, a civil investiga-
25 tive demand requiring such person—

1 “(A) to produce such documentary material
2 for inspection and copying,

3 “(B) to answer in writing written interroga-
4 tories with respect to such documentary material
5 or information,

6 “(C) to give oral testimony concerning such
7 documentary material or information, or

8 “(D) to furnish any combination of such ma-
9 terial, answers, or testimony.

10 The Attorney General may not delegate the authority
11 to issue civil investigative demands under this subsec-
12 tion. Whenever a civil investigative demand is an ex-
13 press demand for any product of discovery, the Attor-
14 ney General, the Deputy Attorney General, or an As-
15 sistant Attorney General shall cause to be served, in
16 any manner authorized by this section, a copy of such
17 demand upon the person from whom the discovery was
18 obtained and shall notify the person to whom such
19 demand is issued of the date on which such copy was
20 served.

21 “(2) CONTENTS AND DEADLINES.—

22 “(A) Each civil investigative demand issued
23 under paragraph (1) shall state the nature of the
24 conduct constituting the alleged violation of a
25 false claims law which is under investigation, and

1 *the applicable provision of law alleged to be vio-*
2 *lated.*

3 “(B) *If such demand is for the production of*
4 *documentary material, the demand shall—*

5 “(i) *describe each class of documentary*
6 *material to be produced with such definite-*
7 *ness and certainty as to permit such material*
8 *to be fairly identified;*

9 “(ii) *prescribe a return date for each*
10 *such class which will provide a reasonable*
11 *period of time within which the material so*
12 *demanding may be assembled and made*
13 *available for inspection and copying; and*

14 “(iii) *identify the false claims law in-*
15 *vestigator to whom such material shall be*
16 *made available.*

17 “(C) *If such demand is for answers to writ-*
18 *ten interrogatories, the demand shall—*

19 “(i) *set forth with specificity the written*
20 *interrogatories to be answered;*

21 “(ii) *prescribe dates at which time an-*
22 *swers to written interrogatories shall be sub-*
23 *mitted; and*

1 “(iii) identify the false claims law in-
2 vestigator to whom such answers shall be
3 submitted.

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

6 “(i) prescribe a date, time, and place at
7 which oral testimony shall be commenced;
8 and

9 “(ii) identify a false claims law investi-
10 gator who shall conduct the examination and
11 the custodian to whom the transcript of such
12 examination shall be submitted.

13 Any such demand which is an express demand for any
14 product of discovery shall not be returned or returnable
15 until 20 days after the date on which a copy of such
16 demand has been served upon the person from whom
17 the discovery was obtained.

18 “(b) **PROTECTED MATERIAL OR INFORMATION.**—

19 “(1) **IN GENERAL.**—A civil investigative demand
20 issued under subsection (a) may not require the pro-
21 duction of any documentary material, the submission
22 of any answers to written interrogatories, or the giving
23 of any oral testimony if such material, answers, or tes-
24 timony would be protected from disclosure under—

1 “(A) the standards applicable to subpoenas
2 or subpoenas duces tecum issued by a court of the
3 United States to aid in a grand jury investiga-
4 tion; or

5 “(B) the standards applicable to discovery
6 requests under the Federal Rules of Civil Proce-
7 dure, to the extent that the application of such
8 standards to any such demand is appropriate and
9 consistent with the provisions and purposes of this
10 section.

11 “(2) EFFECT ON OTHER ORDERS, RULES, AND
12 LAWS.—Any such demand which is an express
13 demand for any product of discovery supersedes any
14 inconsistent order, rule, or provision of law (other than
15 this section) preventing or restraining disclosure of
16 such product of discovery to any person. Disclosure of
17 any product of discovery pursuant to any such express
18 demand does not constitute a waiver of any right or
19 privilege which the person making such disclosure may
20 be entitled to invoke to resist discovery of trial prepara-
21 tion materials.

22 “(c) SERVICE; JURISDICTION.—

23 “(1) BY WHOM SERVED.—Any civil investigative
24 demand issued under subsection (a) may be served by
25 a false claims law investigator, or by a United States

1 *marshal or a deputy marshal, at any place within the*
2 *territorial jurisdiction of any court of the United*
3 *States.*

4 “(2) *SERVICE IN FOREIGN COUNTRIES.*—Any
5 *such demand or any petition filed under subsection (j)*
6 *may be served upon any person who is not found*
7 *within the territorial jurisdiction of any court of the*
8 *United States in such manner as the Federal Rules of*
9 *Civil Procedure prescribe for service in a foreign coun-*
10 *try. To the extent that the courts of the United States*
11 *can assert jurisdiction over any such person consistent*
12 *with due process, the United States District Court for*
13 *the District of Columbia shall have the same jurisdic-*
14 *tion to take any action respecting compliance with this*
15 *section by any such person that such court would have*
16 *if such person were personally within the jurisdiction*
17 *of such court.*

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

20 “(1) *LEGAL ENTITIES.*—Service of any civil in-
21 *vestigative demand issued under subsection (u) or of*
22 *any petition filed under subsection (j) may be made*
23 *upon a partnership, corporation, association, or other*
24 *legal entity by—*

1 “(A) *delivering an executed copy of such*
2 *demand or petition to any partner, executive offi-*
3 *cer, managing agent, or general agent of the part-*
4 *nership, corporation, association, or entity, or to*
5 *any agent authorized by appointment or by law to*
6 *receive service of process on behalf of such part-*
7 *nership, corporation, association, or entity;*

8 “(B) *delivering an executed copy of such*
9 *demand or petition to the principal office or place*
10 *of business of the partnership, corporation, asso-*
11 *ciation, or entity; or*

12 “(C) *depositing an executed copy of such*
13 *demand or petition in the United States mails by*
14 *registered or certified mail, with a return receipt*
15 *requested, addressed to such partnership, corpora-*
16 *tion, association, or entity at its principal office*
17 *or place of business.*

18 “(2) *NATURAL PERSONS.—Service of any such*
19 *demand or petition may be made upon any natural*
20 *person by—*

21 “(A) *delivering an executed copy of such*
22 *demand or petition to the person; or*

23 “(B) *depositing an executed copy of such*
24 *demand or petition in the United States mails by*
25 *registered or certified mail, with a return receipt*

1 *requested, addressed to the person at the person's*
2 *residence or principal office or place of business.*

3 “(e) *PROOF OF SERVICE.*—*A verified return by the*
4 *individual serving any civil investigative demand issued*
5 *under subsection (a) or any petition filed under subsection (j)*
6 *setting forth the manner of such service shall be proof of such*
7 *service. In the case of service by registered or certified mail,*
8 *such return shall be accompanied by the return post office*
9 *receipt of delivery of such demand.*

10 “(f) *DOCUMENTARY MATERIAL.*—

11 “(1) *SWORN CERTIFICATES.*—*The production of*
12 *documentary material in response to a civil investiga-*
13 *tive demand served under this section shall be made*
14 *under a sworn certificate, in such form as the demand*
15 *designates, by—*

16 “(A) *in the case of a natural person, the*
17 *person to whom the demand is directed, or*

18 “(B) *in the case of a person other than a*
19 *natural person, a person having knowledge of the*
20 *facts and circumstances relating to such produc-*
21 *tion and authorized to act on behalf of such*
22 *person.*

23 *The certificate shall state that all of the documentary*
24 *material required by the demand and in the possession,*
25 *custody, or control of the person to whom the demand*

1 *is directed has been produced and made available to*
2 *the false claims law investigator identified in the*
3 *demand.*

4 *“(2) PRODUCTION OF MATERIALS.—Any person*
5 *upon whom any civil investigative demand for the pro-*
6 *duction of documentary material has been served under*
7 *this section shall make such material available for in-*
8 *spection and copying to the false claims law investiga-*
9 *tor identified in such demand at the principal place of*
10 *business of such person, or at such other place as the*
11 *false claims law investigator and the person thereafter*
12 *may agree and prescribe in writing, or as the court*
13 *may direct under subsection (j)(1). Such material shall*
14 *be made so available on the return date specified in*
15 *such demand, or on such later date as the false claims*
16 *law investigator may prescribe in writing. Such person*
17 *may, upon written agreement between the person and*
18 *the false claims law investigator, substitute copies for*
19 *originals of all or any part of such material.*

20 *“(g) INTERROGATORIES.—Each interrogatory in a*
21 *civil investigative demand served under this section shall be*
22 *answered separately and fully in writing under oath and*
23 *shall be submitted under a sworn certificate, in such form as*
24 *the demand designates, by—*

1 “(1) in the case of a natural person, the person to
2 whom the demand is directed, or

3 “(2) in the case of a person other than a natural
4 person, the person or persons responsible for answering
5 each interrogatory.

6 *If any interrogatory is objected to, the reasons for the objec-*
7 *tion shall be stated in the certificate instead of an answer.*
8 *The certificate shall state that all information required by the*
9 *demand and in the possession, custody, control, or knowledge*
10 *of the person to whom the demand is directed has been sub-*
11 *mitted. To the extent that any information is not furnished,*
12 *the information shall be identified and reasons set forth with*
13 *particularity regarding the reasons why the information was*
14 *not furnished.*

15 “(h) ORAL EXAMINATIONS.—

16 “(1) PROCEDURES.—The examination of any
17 person pursuant to a civil investigative demand for
18 oral testimony served under this section shall be taken
19 before an officer authorized to administer oaths and af-
20 firmations by the laws of the United States or of the
21 place where the examination is held. The officer before
22 whom the testimony is to be taken shall put the witness
23 on oath or affirmation and shall, personally or by
24 someone acting under the direction of the officer and in
25 the officer's presence, record the testimony of the wit-

1 *ness. The testimony shall be taken stenographically*
2 *and shall be transcribed. When the testimony is fully*
3 *transcribed, the officer before whom the testimony is*
4 *taken shall promptly transmit a copy of the transcript*
5 *of the testimony to the custodian. This subsection shall*
6 *not preclude the taking of testimony by any means au-*
7 *thorized by, and in a manner consistent with, the Fed-*
8 *eral Rules of Civil Procedure.*

9 “(2) *PERSONS PRESENT.*—*The false claims law*
10 *investigator conducting the examination shall exclude*
11 *from the place where the examination is held all per-*
12 *sons except the person being examined, the person's*
13 *counsel, the officer before whom the testimony is to be*
14 *taken, and any other stenographer taking such*
15 *testimony.*

16 “(3) *WHERE TESTIMONY TAKEN.*—*The oral tes-*
17 *timony of any person taken pursuant to a civil investi-*
18 *gative demand served under this section shall be taken*
19 *in the judicial district of the United States within*
20 *which such person resides, is found, or transacts busi-*
21 *ness, or in such other place as may be agreed upon by*
22 *the false claims law investigator conducting the exami-*
23 *nation and such person.*

24 “(4) *TRANSCRIPT OF TESTIMONY.*—*When the*
25 *testimony is fully transcribed, the false claims law in-*

1 *investigator or the officer before whom the testimony is*
2 *taken shall afford the witness, who may be accompa-*
3 *nied by counsel, a reasonable opportunity to examine*
4 *and read the transcript, unless such examination and*
5 *reading are waived by the witness. Any changes in*
6 *form or substance which the witness desires to make*
7 *shall be entered and identified upon the transcript by*
8 *the officer or the false claims law investigator, with a*
9 *statement of the reasons given by the witness for*
10 *making such changes. The transcript shall then be*
11 *signed by the witness, unless the witness in writing*
12 *waives the signing, is ill, cannot be found, or refuses to*
13 *sign. If the transcript is not signed by the witness*
14 *within 30 days after being afforded a reasonable oppor-*
15 *tunity to examine it, the officer or the false claims law*
16 *investigator shall sign it and state on the record the*
17 *fact of the waiver, illness, absence of the witness, or the*
18 *refusal to sign, together with the reason, if any, given*
19 *therefor.*

20 *"(5) CERTIFICATION AND DELIVERY TO CUSTO-*
21 *DIAN.—The officer before whom the testimony is taken*
22 *shall certify on the transcript that the witness was*
23 *sworn by the officer and that the transcript is a true*
24 *record of the testimony given by the witness, and the*
25 *officer or false claims law investigator shall promptly*

1 *deliver the transcript, or send the transcript by regis-*
2 *tered or certified mail, to the custodian.*

8 *“(6) FURNISHING OR INSPECTION OF TRAN-*
4 *SCRIPT BY WITNESS.—Upon payment of reasonable*
5 *charges therefor, the false claims law investigator shall*
6 *furnish a copy of the transcript to the witness only,*
7 *except that the Attorney General, the Deputy Attorney*
8 *General, or an Assistant Attorney General may, for*
9 *good cause, limit such witness to inspection of the offi-*
10 *cial transcript of the witness's testimony.*

11 *“(7) CONDUCT OF ORAL TESTIMONY.—(A) Any*
12 *person compelled to appear for oral testimony under a*
13 *civil investigative demand issued under subsection (a)*
14 *may be accompanied, represented, and advised by*
15 *counsel. Counsel may advise such person, in confi-*
16 *dence, with respect to any question asked of such*
17 *person. Such person or counsel may object on the*
18 *record to any question, in whole or in part, and shall*
19 *briefly state for the record the reason for the objection.*
20 *An objection may be made, received, and entered upon*
21 *the record when it is claimed that such person is enti-*
22 *tled to refuse to answer the question on the grounds of*
23 *any constitutional or other legal right or privilege, in-*
24 *cluding the privilege against self-incrimination. Such*
25 *person may not otherwise object to or refuse to answer*

1 *any question, and may not directly or through counsel*
2 *otherwise interrupt the oral examination. If such*
3 *person refuses to answer any question, a petition may*
4 *be filed in the district court of the United States under*
5 *subsection (j)(1) for an order compelling such person to*
6 *answer such question.*

7 *“(B) If such person refuses to answer any ques-*
8 *tion on the grounds of the privilege against self-in-*
9 *crimination, the testimony of such person may be com-*
10 *pelled in accordance with the provisions of part V of*
11 *title 18.*

12 *“(8) WITNESS FEES AND ALLOWANCES.—Any*
13 *person appearing for oral testimony under a civil in-*
14 *vestigative demand issued under subsection (a) shall be*
15 *entitled to the same fees and allowances which are paid*
16 *to witnesses in the district courts of the United States.*

17 *“(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND*
18 *TRANSCRIPTS.—*

19 *“(1) DESIGNATION.—The Attorney General shall*
20 *designate a false claims law investigator to serve as*
21 *custodian of documentary material, answers to inter-*
22 *rogatories, and transcripts of oral testimony received*
23 *under this section, and shall designate such additional*
24 *false claims law investigators as the Attorney General*

1 *determines from time to time to be necessary to serve*
2 *as deputies to the custodian.*

3 “(2) *RESPONSIBILITY FOR MATERIALS; DISCLO-*
4 *SURE.—(A) The false claims law investigator who re-*
5 *ceives any documentary material, answers to interroga-*
6 *tories, or transcripts of oral testimony under this sec-*
7 *tion shall transmit them to the custodian. The custodi-*
8 *an shall take physical possession of such material, an-*
9 *swers, or transcripts and shall be responsible for the*
10 *use made of them and for the return of documentary*
11 *material under paragraph (4).*

12 “(B) *The custodian may cause the preparation of*
13 *such copies of such documentary material, answers to*
14 *interrogatories, or transcripts of oral testimony as may*
15 *be required for official use by any false claims law in-*
16 *vestigator, or other officer or employee of the Depart-*
17 *ment of Justice, who is authorized for such use under*
18 *regulations which the Attorney General shall issue.*
19 *Such material, answers, and transcripts may be used*
20 *by any such authorized false claims law investigator or*
21 *other officer or employee in connection with the taking*
22 *of oral testimony under this section.*

23 “(C) *Except as otherwise provided in this subsec-*
24 *tion, no documentary material, answers to interrogato-*
25 *ries, or transcripts of oral testimony, or copies thereof,*

1 *while in the possession of the custodian, shall be avail-*
2 *able for examination by any individual other than a*
3 *false claims law investigator or other officer or employ-*
4 *ee of the Department of Justice authorized under sub-*
5 *paragraph (B). The prohibition in the preceding sen-*
6 *tence on the availability of material, answers, or tran-*
7 *scripts shall not apply if consent is given by the person*
8 *who produced such material, answers, or transcripts,*
9 *or, in the case of any product of discovery produced*
10 *pursuant to an express demand for such material, con-*
11 *sent is given by the person from whom the discovery*
12 *was obtained. Nothing in this subparagraph is intend-*
13 *ed to prevent disclosure to the Congress, including any*
14 *committee or subcommittee of the Congress.*

15 *“(D) Notwithstanding subparagraph (C), docu-*
16 *mentary material, answers to interrogatories, or tran-*
17 *scripts of oral testimony obtained under a civil investi-*
18 *gative demand issued under this section shall be dis-*
19 *closed to an agency of the United States if—*

20 *“(i) that agency files, in a district court of*
21 *the United States in which petitions under sub-*
22 *section (j) may be filed, and serves upon the*
23 *person named in the civil investigative demand*
24 *and, in the case of an express demand for any*
25 *product of discovery, the person from whom such*

1 *discovery was obtained, a petition requesting such*
2 *disclosure;*

3 “(ii) *any person so served has an opportuni-*
4 *ty to be heard on the petition;*

5 “(iii) *the court finds that disclosure of the*
6 *information involved is relevant to an investiga-*
7 *tion by the agency which it is authorized by law*
8 *to conduct; and*

9 “(iv) *the court issues an order requiring such*
10 *disclosure.*

11 *The provisions of paragraphs (5) and (6) of subsection*
12 *(j) (relating to jurisdiction and applicability of the*
13 *Federal Rules of Civil Procedure) apply to petitions*
14 *under this subparagraph.*

15 “(E) *While in the possession of the custodian and*
16 *under such reasonable terms and conditions as the At-*
17 *torney General shall prescribe—*

18 “(i) *documentary material and answers to*
19 *interrogatories shall be available for examination*
20 *by the person who produced such material or an-*
21 *swers, or by a representative of that person au-*
22 *thorized by that person to examine such material*
23 *and answers; and*

24 “(ii) *transcripts of oral testimony shall be*
25 *available for examination by the person who pro-*

1 *duced such testimony, or by a representative of*
2 *that person authorized by that person to examine*
3 *such transcripts.*

4 “(3) *USE OF MATERIAL, ANSWERS, OR TRAN-*
5 *SCRIPTS IN OTHER PROCEEDINGS.—Whenever any*
6 *attorney of the Department of Justice has been desig-*
7 *nated to appear before any court, grand jury, or Feder-*
8 *al agency in any case or proceeding, the custodian of*
9 *any documentary material, answers to interrogatories,*
10 *or transcripts of oral testimony received under this sec-*
11 *tion may deliver to such attorney such material, an-*
12 *swers, or transcripts for official use in connection with*
13 *any such case or proceeding as such attorney deter-*
14 *mines to be required. Upon the completion of any such*
15 *case or proceeding, such attorney shall return to the*
16 *custodian any such material, answers, or transcripts so*
17 *delivered which have not passed into the control of such*
18 *court, grand jury, or agency through introduction into*
19 *the record of such case or proceeding.*

20 “(4) *CONDITIONS FOR RETURN OF MATERIAL.—*
21 *If any documentary material has been produced by*
22 *any person in the course of any false claims law inves-*
23 *tigation pursuant to a civil investigative demand under*
24 *this section, and—*

1 “(A) any case or proceeding before any court
2 or grand jury arising out of such investigation, or
3 any proceeding before any Federal agency involv-
4 ing such material, has been completed, or

5 “(B) no case or proceeding in which such
6 material may be used has been commenced within
7 a reasonable time after completion of the examina-
8 tion and analysis of all documentary material
9 and other information assembled in the course of
10 such investigation,

11 the custodian shall, upon written request of the person
12 who produced such material, return to such person any
13 such material (other than copies furnished to the false
14 claims law investigator under subsection (f)(2) or made
15 by the Department of Justice under paragraph (2)(B))
16 which has not passed into the control of any court,
17 grand jury, or agency through introduction into the
18 record of such case or proceeding.

19 “(5) APPOINTMENT OF SUCCESSOR CUSTO-
20 DIANS.—In the event of the death, disability, or sepa-
21 ration from service in the Department of Justice of the
22 custodian of any documentary material, answers to in-
23 terrogatories, or transcripts of oral testimony produced
24 pursuant to a civil investigative demand under this
25 section, or in the event of the official relief of such cus-

1 *todian from responsibility for the custody and control*
2 *of such material, answers, or transcripts, the Attorney*
3 *General shall promptly—*

4 *“(A) designate another false claims law in-*
5 *vestigator to serve as custodian of such material,*
6 *answers, or transcripts, and*

7 *“(B) transmit in writing to the person who*
8 *produced such material, answers, or testimony*
9 *notice of the identity and address of the successor*
10 *so designated.*

11 *Any person who is designated to be a successor under*
12 *this paragraph shall have, with regard to such materi-*
13 *al, answers, or transcripts, the same duties and respon-*
14 *sibilities as were imposed by this section upon that per-*
15 *son’s predecessor in office, except that the successor*
16 *shall not be held responsible for any default or derelic-*
17 *tion which occurred before that designation.*

18 *“(j) JUDICIAL PROCEEDINGS.—*

19 *“(1) PETITION FOR ENFORCEMENT.—Whenever*
20 *any person fails to comply with any civil investigative*
21 *demand issued under subsection (a), or whenever satis-*
22 *factory copying or reproduction of any material re-*
23 *quested in such demand cannot be done and such*
24 *person refuses to surrender such material, the Attorney*
25 *General may file, in the district court of the United*

1 *States for any judicial district in which such person*
2 *resides, is found, or transacts business, and serve upon*
3 *such person a petition for an order of such court for the*
4 *enforcement of the civil investigative demand.*

5 “(2) *PETITION TO MODIFY OR SET ASIDE*
6 *DEMAND.—(A) Any person who has received a civil*
7 *investigative demand issued under subsection (a) may*
8 *file, in the district court of the United States for the*
9 *judicial district within which such person resides, is*
10 *found, or transacts business, and serve upon the false*
11 *claims law investigator identified in such demand a*
12 *petition for an order of the court to modify or set aside*
13 *such demand. In the case of a petition addressed to an*
14 *express demand for any product of discovery, a petition*
15 *to modify or set aside such demand may be brought*
16 *only in the district court of the United States for the*
17 *judicial district in which the proceeding in which such*
18 *discovery was obtained is or was last pending. A y pe-*
19 *tion under this subparagraph must be filed—*

20 “(i) *within 20 days after the date of service*
21 *of the civil investigative demand, or at any time*
22 *before the return date specified in the demand,*
23 *whichever date is earlier, or*

1 “(ii) within such longer period as may be
2 prescribed in writing by any false claims law in-
3 vestigator identified in the demand.

4 “(B) The petition shall specify each ground upon
5 which the petitioner relies in seeking relief under sub-
6 paragraph (A), and may be based upon any failure of
7 the demand to comply with the provisions of this sec-
8 tion or upon any constitutional or other legal right or
9 privilege of such person. During the pendency of the
10 petition in the court, the court may stay, as it deems
11 proper, the running of the time allowed for compliance
12 with the demand, in whole or in part, except that the
13 person filing the petition shall comply with any por-
14 tions of the demand not sought to be modified or set
15 aside.

16 “(B) PETITION TO MODIFY OR SET ASIDE
17 DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the
18 case of any civil investigative demand issued under
19 subsection (a) which is an express demand for any
20 product of discovery, the person from whom such dis-
21 covery was obtained may file, in the district court of
22 the United States for the judicial district in which the
23 proceeding in which such discovery was obtained or
24 was last pending, and serve upon any false claims law
25 investigator identified in the demand and upon the re-

1 *ipient of the demand, a petition for an order of such*
2 *court to modify or set aside those portions of the*
3 *demand requiring production of any such product of*
4 *discovery. Any petition under this subparagraph must*
5 *be filed—*

6 *“(i) within 20 days after the date of service*
7 *of the civil investigative demand, or at any time*
8 *before the return date specified in the demand,*
9 *whichever date is earlier, or*

10 *“(ii) within such longer period as may be*
11 *prescribed in writing by any false claims law in-*
12 *vestigator identified in the demand.*

13 *“(B) The petition shall specify each ground upon*
14 *which the petitioner relies in seeking relief under sub-*
15 *paragraph (A), and may be based upon any failure of*
16 *the portions of the demand from which relief is sought*
17 *to comply with the provisions of this section, or upon*
18 *any constitutional or other legal right or privilege of*
19 *the petitioner. During the pendency of the petition, the*
20 *court may stay, as it deems proper, compliance with*
21 *the demand and the running of the time allowed for*
22 *compliance with the demand.*

23 *“(4) PETITION TO REQUIRE PERFORMANCE BY*
24 *CUSTODIAN OF DUTIES.—At any time during which*
25 *any custodian is in custody or control of any documen-*

1 *tary material or answers to interrogatories produced, or*
2 *transcripts of oral testimony given, by any person in*
3 *compliance with any civil investigative demand issued*
4 *under subsection (a), such person, and in the case of*
5 *an express demand for any product of discovery, the*
6 *person from whom such discovery was obtained, may*
7 *file, in the district court of the United States for the*
8 *judicial district within which the office of such custodi-*
9 *an is situated, and serve upon such custodian, a peti-*
10 *tion for an order of such court to require the perform-*
11 *ance by the custodian of any duty imposed upon the*
12 *custodian by this section.*

13 *"(5) JURISDICTION.—Whenever any petition is*
14 *filed in any district court of the United States under*
15 *this subsection, such court shall have jurisdiction to*
16 *hear and determine the matter so presented, and to*
17 *enter such order or orders as may be required to carry*
18 *out the provisions of this section. Any final order so*
19 *entered shall be subject to appeal under section 1291 of*
20 *title 28. Any disobedience of any final order entered*
21 *under this section by any court shall be punished as a*
22 *contempt of the court.*

23 *"(6) APPLICABILITY OF FEDERAL RULES OF*
24 *CIVIL PROCEDURE.—The Federal Rules of Civil Pro-*
25 *cedure shall apply to any petition under this subsec-*

1 *tion, to the extent that such rules are not inconsistent*
2 *with the provisions of this section.*

3 *“(7) DISCLOSURE EXEMPTION.—Any documen-*
4 *tary material, answers to written interrogatories, or*
5 *oral testimony provided under any civil investigative*
6 *demand issued under subsection (a) shall be exempt*
7 *from disclosure under section 552 of title 5.*

8 *“(k) DEFINITIONS.—For purposes of this section—*

9 *“(1) the term ‘false claims law’ means—*

10 *“(A) this section and sections 3729 through*
11 *3732, and*

12 *“(B) any Act of Congress enacted after the*
13 *date of the enactment of this section which prohib-*
14 *its, or makes available to the United States in*
15 *any court of the United States any civil remedy*
16 *with respect to, any false claim against, bribery*
17 *of, or corruption of any officer or employee of the*
18 *United States;*

19 *“(2) the term ‘false claims law investigation’*
20 *means any inquiry conducted by any false claims law*
21 *investigator for the purpose of ascertaining whether*
22 *any person is or has been engaged in any violation of*
23 *a false claims law;*

24 *“(3) the term ‘false claims law investigator’*
25 *means any attorney or investigator employed by the*

1 *Department of Justice who is charged with the duty of*
2 *enforcing or carrying into effect any false claims law,*
3 *or any officer or employee of the United States acting*
4 *under the direction and supervision of such attorney or*
5 *investigator in connection with a false claims law*
6 *investigation;*

7 *“(4) the term ‘person’ means any natural person,*
8 *partnership, corporation, association, or other legal*
9 *entity, including any State or political subdivision of a*
10 *State;*

11 *“(5) the term ‘documentary material’ includes the*
12 *original or any copy of any book, record, report, memo-*
13 *randum, paper, communication, tabulation, chart, or*
14 *other document, or data compilations stored in or ac-*
15 *cessible through computer or other information retrieval*
16 *systems, together with instructions and all other mate-*
17 *rials necessary to use or interpret such data compila-*
18 *tions, and any product of discovery;*

19 *“(6) the term ‘custodian’ means the custodian, or*
20 *any deputy custodian, designated by the Attorney Gen-*
21 *eral under subsection (i)(1); and*

22 *“(7) the term ‘product of discovery’ includes—*

23 *“(A) the original or duplicate of any depositions,*
24 *interrogatory, document, thing, result of the*
25 *inspection of land or other property, examination,*

1 *spect to any matter within the jurisdiction of that agency, a*
2 *statement that the person knows or has reason to know—*

3 “(1) *asserts a material fact which is false or*
4 *fraudulent; or*

5 “(2) *omits a material fact if—*

6 “(A) *as a result of such omission, such state-*
7 *ment is false or fraudulent, and*

8 “(B) *the person making, presenting, or sub-*
9 *mitting such statement has a duty to include such*
10 *material fact in the statement,*

11 *a civil penalty of not more than \$10,000 for each such state-*
12 *ment, in addition to any other remedy that may be prescribed*
13 *by law.*

14 “(b) *DETERMINATIONS OF LIABILITY.—*

15 “(1) *INVESTIGATION.—The investigating official*
16 *of an agency may investigate allegations that a person*
17 *has violated section 3729 or has made, presented, or*
18 *submitted, or has caused to be made, presented, or sub-*
19 *mitted, a false or fraudulent statement described in*
20 *subsection (a), and shall (unless the allegations are de-*
21 *termined to be without merit) report the results of such*
22 *investigation to the reviewing official of the agency.*
23 *Nothing in this subsection alters any responsibilities*
24 *under section 4(d) of the Inspector General Act of*

1 1978 of an investigating official to report expeditiously
2 any criminal violations to the Attorney General.

3 “(2) REFERRAL TO PRESIDING OFFICER.—(A)

4 If the reviewing official of an agency determines that
5 there is adequate evidence to believe that a person has
6 violated section 3729 or has made, presented, or sub-
7 mitted, or has caused to be made, presented, or submit-
8 ted, a false or fraudulent statement described in subsec-
9 tion (a), the reviewing official shall, in accordance
10 with subparagraphs (B) through (F), refer the allega-
11 tions of such violation to a presiding officer of the
12 agency for a hearing.

13 “(B) Before referring allegations of a violation to
14 a presiding officer under subparagraph (A), the review-
15 ing official of an agency shall transmit to the Attorney
16 General a written notice of the intention of such offi-
17 cial to refer such allegations and a statement of the
18 reasons for such intention. Such notice shall include—

19 “(i) a statement of the reasons of the review-
20 ing official for the referral of such allegations;

21 “(ii) a statement specifying the evidence
22 which supports such allegations;

23 “(iii) a description of the claim, record,
24 statement, or other act for which liability under
25 section 3729 or subsection (a) is alleged;

1 “(iv) an estimate of the amount of money or
2 the value of property or services requested or de-
3 manded in violation of section 3729; and

4 “(v) a statement of any exculpatory or miti-
5 gating circumstances which may relate to the
6 claim, record, statement, or other act involved in
7 the alleged violation.

8 “(C) A reviewing official may refer allegations of
9 a violation to a presiding officer if—

10 “(i) the Attorney General approves the refer-
11 ral of such allegations; or

12 “(ii) the Attorney General takes no action to
13 disapprove the referral of such allegations—

14 “(I) within 90 days after the date on
15 which the Attorney General receives the
16 notice required by subparagraph (B); or

17 “(II) within such period as may be pro-
18 vided in a memorandum of understanding
19 entered into by the agency head involved and
20 the Attorney General with respect to such
21 allegations.

22 “(D) A reviewing official may not refer allega-
23 tions to a presiding officer under this paragraph if the
24 Attorney General transmits a written statement to the
25 reviewing official which specifies that the Attorney

1 *General disapproves the referral of the allegations and*
2 *states the reasons for such disapproval.*

3 “(E) *If the Attorney General transmits to an*
4 *agency head a written finding that the continuation of*
5 *any hearing under subsection (c) may adversely affect*
6 *any pending or potential criminal or civil action relat-*
7 *ed to an alleged violation of section 3729 or of section*
8 *1001 of title 18, the hearing shall be immediately*
9 *stayed and may be resumed only upon written authori-*
10 *zation of the Attorney General.*

11 “(c) *HEARINGS.—*

12 “(1) *NOTICE OF HEARING.—A reviewing official*
13 *who refers under subsection (b) allegations of a viola-*
14 *tion by a person of section 3729, or allegations that a*
15 *person has made, presented, or submitted, or has*
16 *caused to be made, presented, or submitted, a false or*
17 *fraudulent statement described in subsection (a), shall*
18 *give notice to the person, in accordance with section*
19 *554(b) of title 5, of the hearing to be conducted with*
20 *respect to those allegations. The reviewing official shall*
21 *prosecute the case on behalf of the agency.*

22 “(2) *CONDUCT OF HEARING.—The presiding of-*
23 *ficer shall conduct a hearing on the record regarding*
24 *any allegation of a violation by a person of section*
25 *3729, or any allegation that a person has made, pre-*

1 *sented, or submitted, or has caused to be made, present-*
 2 *ed, or submitted, a false or fraudulent statement de-*
 3 *scribed in subsection (a), which is referred to the pre-*
 4 *siding officer by the reviewing official under subsection*
 5 *(b) in order to determine—*

6 *“(A) whether the person committed the viola-*
 7 *tion; and*

8 *“(B) the amount of any penalty or damages*
 9 *to be assessed against such person.*

10 *Any such determination shall be based on a preponder-*
 11 *ance of the evidence.*

12 *“(3) APPLICABILITY OF TITLE 5 PROCE-*
 13 *DURES.—The provisions of subchapter II of chapter 5*
 14 *of title 5 shall apply to each hearing conducted under*
 15 *paragraph (2).*

16 *“(4) RESOLUTION UNDER CONTRACT DISPUTES*
 17 *ACT.—*

18 *“(A) If a claim has been filed under section*
 19 *6 of the Contract Disputes Act of 1978 (41*
 20 *U.S.C. 601 and following), a hearing with re-*
 21 *spect to the same matter that is the subject of the*
 22 *claim may not be conducted under this section.*
 23 *The prohibition of the preceding sentence shall be*
 24 *in effect until such time as the claim is finally*
 25 *resolved or, if an appeal is taken under section 7*

1 or section 10 of the Contract Disputes Act of
2 1978, there has been a final decision on the
3 merits. The running of the time limitations in
4 subsection (h) shall be stayed during the period in
5 which the prohibition in the first sentence of this
6 paragraph is in effect.

7 “(B) If a hearing under this section was ini-
8 tiated before a claim was filed under section 6 of
9 the Contract Disputes Act of 1978, the hearing
10 shall not be stayed, but only if the contractor
11 knew or should have known of an investigation
12 with respect to the matter, or of the initiation of
13 the hearing, before filing a claim under section 6
14 of such Act.

15 “(d) SUBPOENA AUTHORITY.—

16 “(1) OF INVESTIGATING OFFICIALS.—For the
17 purpose of an investigation under subsection (b)(1), an
18 investigating official is authorized to require by sub-
19 poena the production of all information, documents, re-
20 ports, answers, records, accounts, papers, and other
21 data not otherwise reasonably available to the agency
22 involved.

23 “(2) OF PRESIDING OFFICERS.—For the purpose
24 of conducting a hearing under subsection (c)(2), a pre-
25 siding officer is authorized to require by subpoena the

1 *attendance and testimony of witnesses and the produc-*
2 *tion of all information, documents, reports, answers,*
3 *records, accounts, papers, and other data and documen-*
4 *tary evidence which the presiding officer considers rele-*
5 *vant and material to the hearing.*

6 *“(3) ENFORCEMENT OF SUBPOENAS.—The pro-*
7 *visions of section 555(d) of title 5 shall apply to any*
8 *subpoena issued under this subsection.*

9 *“(e) PROCEEDINGS AGAINST BENEFICIARIES OF*
10 *FEDERAL PROGRAMS.—*

11 *“(1) REQUIREMENT FOR DETERMINATION OF*
12 *VIOLATION.—An individual may be determined under*
13 *this section to have violated section 3729, or to have*
14 *made, presented, or submitted, or caused to be made,*
15 *presented, or submitted, a false or fraudulent statement*
16 *described in subsection (a), with respect to benefits re-*
17 *ceived by that individual only if that individual, at the*
18 *time of the conduct constituting the violation, had*
19 *actual knowledge that the conduct was false or*
20 *fraudulent.*

21 *“(2) AMOUNT OF MONEY IN VIOLATION.—Alle-*
22 *gations of liability under section 3729 by an individ-*
23 *ual, or of a false or fraudulent statement made, pre-*
24 *sented, or submitted, or caused to be made, presented,*
25 *or submitted, by an individual, with respect to benefits*

1 *received by that individual may not be referred to a*
2 *presiding officer under subsection (b)(2) unless the re-*
3 *viewing official determines that the dollar amount of*
4 *benefits received in violation of section 3729 or as a*
5 *result of the false or fraudulent statement exceeds*
6 *\$15,000. In 1988 and annually thereafter, the*
7 *\$15,000 limit in the preceding sentence shall be ad-*
8 *justed by the Attorney General in accordance with the*
9 *Consumer Price Index.*

10 “(3) *ATTORNEY FEES.*—*Any individual whose*
11 *conduct is the subject of a hearing under this section*
12 *with respect to benefits received by that individual,*
13 *who is financially unable to obtain adequate represen-*
14 *tation, and who is otherwise unable to obtain counsel*
15 *may petition the presiding officer for compensation of*
16 *private counsel retained by that individual. The presid-*
17 *ing officer shall award such compensation in accord-*
18 *ance with the financial eligibility standards and the*
19 *payment rates established under section 3006A of title*
20 *18 for persons financially unable to obtain adequate*
21 *representation. Such compensation shall be paid from*
22 *any funds made available to the agency involved.*

23 “(4) *DEFINITION.*—*For purposes of this subsec-*
24 *tion, the term ‘benefits’ means—*

1 “(A) benefits under the supplemental securi-
2 ty income program under title XVI of the Social
3 Security Act;

4 “(B) old age, survivors, and disability insur-
5 ance benefits under title II of the Social Security
6 Act;

7 “(C) benefits under title XVIII of the Social
8 Security Act;

9 “(D) aid to families with dependent children
10 under a State plan approved under section 402(a)
11 of the Social Security Act;

12 “(E) medical assistance under a State plan
13 approved under section 1902(a) of the Social Se-
14 curity Act;

15 “(F) benefits under title XX of the Social
16 Security Act;

17 “(G) benefits under the food stamp program
18 as defined in section 3(h) of the Food Stamp Act
19 of 1977 (7 U.S.C. 2412(h));

20 “(H) benefits under laws administered by
21 the Veteran's Administration;

22 “(I) benefits under the Black Lung Benefits
23 Act;

24 “(J) benefits under the special supplemental
25 food program for women, infants, and children

1 *under section 17 of the Child Nutrition Act of*
2 *1966;*

3 *“(K) benefits under section 336 of the Older*
4 *Americans Act;*

5 *“(L) any annuity or other benefit under the*
6 *Railroad Retirement Act of 1974;*

7 *“(M) benefits under subchapter III of chap-*
8 *ter 83 of title 5; and*

9 *“(N) benefits under any other Federal pro-*
10 *gram which has a purpose similar to those pro-*
11 *grams described in subparagraphs (A) through*
12 *(M) of providing for income, health, nutrition, or*
13 *social services needs,*

14 *which are intended for the personal use of the individ-*
15 *ual who receives the benefits or of a member of the in-*
16 *dividual’s family. The Attorney General shall, after*
17 *notice and an opportunity for the submission of public*
18 *comments, publish a list of those programs described in*
19 *subparagraph (N).*

20 *“(f) JUDICIAL REVIEW.—Any person who is deter-*
21 *mined under this section to have violated section 3729 or to*
22 *have made, presented, or submitted, or to have caused to be*
23 *made, presented, or submitted, a false or fraudulent statement*
24 *described in subsection (a) may obtain review of that determi-*
25 *nation in the United States district court for the district in*

1 *which the person resides or in which the violation occurred,*
2 *or in the United States District Court for the District of*
3 *Columbia. The provisions of chapter 7 of title 5 shall apply*
4 *to such review.*

5 “(g) *COLLECTION OF CIVIL PENALTIES.—*

6 “(1) *CIVIL ACTION FOR RECOVERY.—Any pen-*
7 *alty or damages assessed in a determination under this*
8 *section which has become final may be recovered in a*
9 *civil action brought by the Attorney General in the ap-*
10 *propriate district court of the United States. In any*
11 *such action, any matter that was raised or that could*
12 *have been raised in a hearing conducted under subsec-*
13 *tion (c) or pursuant to judicial review under subsection*
14 *(f) may not be raised as a defense, and the determina-*
15 *tion of a violation and the determination of amounts of*
16 *penalties or damages shall not be subject to review.*

17 “(2) *CONSOLIDATION OF ACTIONS.—Any action*
18 *under paragraph (1) may, without regard to venue re-*
19 *quirements, be joined and consolidated with, or assert-*
20 *ed as a counterclaim, cross-claim, or setoff by the*
21 *United States in, any other civil action which includes*
22 *as parties the United States and the person against*
23 *whom the action under paragraph (1) is brought.*

24 “(3) *COMPROMISE AUTHORITY.—The Attorney*
25 *General shall have exclusive authority to compromise*

1 *or settle any penalty or damages the determination of*
2 *which is the subject of a pending appeal under subsec-*
3 *tion (f) or a pending action to recover such penalty or*
4 *damages under this subsection.*

5 *“(4) DEPOSIT OF PENALTIES COLLECTED.—*
6 *Any amount of penalty or damages collected under this*
7 *section shall be deposited in the miscellaneous receipts*
8 *of the Treasury of the United States, except that any*
9 *such amount collected by the United States Postal*
10 *Service shall be deposited in the Postal Service Fund*
11 *established by section 2003 of title 39.*

12 *“(h) LIMITATIONS.—*

13 *“(1) ON LIABILITY.—A person shall not be sub-*
14 *ject to any penalty or damages under this section—*

15 *“(A) more than 6 years after the date on*
16 *which the acts of that person referred to in subsec-*
17 *tion (a) occur, or*

18 *“(B) more than 3 years after the date when*
19 *facts material to warrant proceedings under this*
20 *section against that person are known or reason-*
21 *ably should have been known by the official*
22 *within the agency charged with responsibility to*
23 *act in the circumstances, but in no event more*
24 *than 10 years after the date on which the acts of*
25 *that person referred to in subsection (a) occur,*

1 *whichever occurs last.*

2 “(2) *ON ACTIONS TO RECOVER PENALTIES.—A*
3 *civil action to recover a penalty or damages under sub-*
4 *section (g) may not be brought more than 3 years after*
5 *the date on which the determination of liability for*
6 *such penalty or damages becomes final.*

7 “(3) *REPORTING OF ADDITIONAL INFORMA-*
8 *TION.—If at any time during the course of proceedings*
9 *brought under this section the agency head involved re-*
10 *ceives or discovers any specific information regarding*
11 *bribery, gratuities, conflict of interest, or other corrup-*
12 *tion or similar activity in relation to a false claim,*
13 *statement, or record or other activity prohibited by sec-*
14 *tion 3729, or in relation to a statement described in*
15 *subsection (a), the agency head shall immediately*
16 *report such information to the Attorney General, and*
17 *in the case of an agency in which an Office of Inspec-*
18 *tor General is established by the Inspector General Act*
19 *of 1978 or by any other Federal law, to the Inspector*
20 *General of that agency.*

21 “(i) *REGULATIONS.—Each agency head shall issue*
22 *such regulations as are necessary to implement the provisions*
23 *of this section.*

24 “(j) *RIGHT TO SETOFF.—*

1 “(1) *IN GENERAL.*—The amount of any penalty
2 or damages the determination of which has become
3 final under this section, or for which a judgment has
4 been entered under subsection (f) or (g), or any amount
5 agreed upon in a settlement or compromise under sub-
6 section (g)(3), may be deducted from any sum then or
7 later owing by the United States to the person liable
8 for such penalty or damages, unless otherwise prohibit-
9 ed by law and except in a case in which the Federal
10 Government has agreed by contract not to exercise any
11 rights of setoff the Government has.

12 “(2) *NOTICE.*—The agency head involved shall
13 transmit written notice to the person liable for such
14 penalty or damages before commencing a deduction or
15 series of deductions under this subsection.

16 “(3) *DEPOSIT OF AMOUNTS.*—All amounts re-
17 tained under this subsection shall be remitted to the
18 Secretary of the Treasury for deposits in accordance
19 with subsection (g)(4).

20 “(4) *NOTIFICATION OF THE SECRETARY OF THE*
21 *TREASURY.*—An agency head may forward a certified
22 copy of any determination as to liability for any penal-
23 ty or damages which has become final under this sec-
24 tion, or a certified copy of any judgment which has
25 been entered under subsection (f) or (g), to the Secre-

1 *tary of the Treasury for action in accordance with this*
2 *subsection.*

3 *“(k) DEFINITIONS.—For purposes of this section—*

4 *“(1) the term ‘agency’ means an agency as de-*
5 *finied in section 551 of title 5;*

6 *“(2) the term ‘agency head’ means—*

7 *“(A) the head of an agency, or*

8 *“(B) an officer or employee of the agency*
9 *designated, in regulations promulgated by the*
10 *head of the agency, to act on behalf of the head of*
11 *the agency;*

12 *except that, in the case of a military department,*
13 *‘agency head’ means the Secretary of Defense;*

14 *“(3) the term ‘investigating official’ means—*

15 *“(A) in the case of an agency in which an*
16 *Office of Inspector General is established by the*
17 *Inspector General Act of 1978 or by any other*
18 *Federal law, the Inspector General of that*
19 *agency;*

20 *“(B) in the case of a military department,*
21 *the Inspector General of the Department of De-*
22 *fense or an officer or employee within the military*
23 *department designated by the Inspector General;*

24 *“(C) in the case of any other agency, any of-*
25 *ficer or employee of the agency designated by the*

1 *agency head to conduct investigations under sub-*
2 *section (b)(1) of this section; and*

3 *"(4) the term 'reviewing official' means any offi-*
4 *cer or employee of an agency—*

5 *"(A) who is designated by the agency head to*
6 *make determinations required by subsection*
7 *(b)(2)(A) of this section;*

8 *"(B) who, if a member of the Armed Forces*
9 *of the United States on active duty, is serving in*
10 *a pay grade of O-7 or higher or, if a civilian em-*
11 *ployee, is serving in a position for which the rate*
12 *of basic pay is not less than the minimum rate of*
13 *basic pay payable for grade GS-16 of the Gener-*
14 *ol Schedule; and*

15 *"(C) who—*

16 *"(i) is not subject to supervision by, or*
17 *required to report to, the investigating offi-*
18 *cial; and*

19 *"(ii) is not employed in the organiza-*
20 *tional unit of the agency in which the inves-*
21 *tigating official is employed; and*

22 *"(5) the term 'presiding officer' means—*

23 *"(A) an administrative law judge appointed*
24 *under section 3105 of title 5; or*

1 “(B) if such an administrative law judge is
2 not available to an agency, an official designated
3 by the agency head who performs functions com-
4 parable to and in a similar manner as adminis-
5 trative law judges appointed under section 3105
6 of title 5, and is selected, compensated, and other-
7 wise treated in a similar manner as such admin-
8 istrative law judges.”.

9 (b) *CLERICAL AMENDMENT.*—The table of contents for
10 chapter 37 of title 31, United States Code, as amended by
11 section 6(b) of this Act, is further amended by adding at the
12 end the following new item:

“3734. *Administrative remedy.*”.

13 **SEC. 8. CRIMINAL PENALTIES.**

14 Section 287 of title 18, United States Code, is amended
15 by striking “five” and inserting “ten”.

16 **SEC. 9. EFFECTIVE DATE.**

17 (a) *IN GENERAL.*—Except as provided in subsection
18 (b), this Act and the amendments made by this Act take effect
19 on the date of the enactment of this Act.

20 (b) *SECTION 7.*—(1) Except as provided in paragraph
21 (2), the amendments made by section 7 take effect 180 days
22 after the date of the enactment of this Act.

23 (2) Section 3734(i) of title 31, United States Code (as
24 added by section 7 of this Act), takes effect on the date of the
25 enactment of this Act.