

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6378

To amend the Homeland Security Act of 2002 to direct the Secretary of Homeland Security to ensure all agencies of the Department of Homeland Security that administer Federal assistance develop and maintain proper internal management controls to prevent and detect waste, fraud, and abuse, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2006

Mr. ROGERS of Alabama (for himself, Mr. MEEK of Florida, Mr. KING of New York, Mr. THOMPSON of Mississippi, Mr. PASCRELL, Mr. MCCAUL of Texas, Mr. PEARCE, Mr. SOUDER, Ms. JACKSON-LEE of Texas, Mr. JINDAL, and Ms. HARRIS) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Homeland Security Act of 2002 to direct the Secretary of Homeland Security to ensure all agencies of the Department of Homeland Security that administer Federal assistance develop and maintain proper internal management controls to prevent and detect waste, fraud, and abuse, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “September 11th Les-  
3 sons Learned in Preventing Waste, Fraud, and Abuse Im-  
4 plementation Act of 2006”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

7 (1) A number of allegations have been raised  
8 publicly regarding the waste, fraud, abuse, and lax  
9 management of Federal assistance funds provided to  
10 help New York City respond to and recover from the  
11 terrorist attacks of September 11, 2001.

12 (2) In order to review these allegations, House  
13 of Representatives Committee on Homeland Security  
14 Chairman Peter T. King of New York requested an  
15 examination by the Homeland Security Sub-  
16 committee on Management, Integration, and Over-  
17 sight.

18 (3) Under the leadership of the Homeland Se-  
19 curity Subcommittee on Management, Integration,  
20 and Oversight Chairman Mike Rogers of Alabama  
21 and Ranking Member Kendrick B. Meek of Florida,  
22 the Subcommittee conducted a six-month bipartisan  
23 review, including a retrospective examination of  
24 funding already expended on initial response and re-  
25 covery, and a prospective review of fraud controls in

1 place for the balance of funding to be used on re-  
2 building Lower Manhattan's infrastructure.

3 (4) As part of its review, the Subcommittee  
4 held a series of three hearings focusing on Response,  
5 Recovery, and Rebuilding on July 12 through 13,  
6 2006. Committee Members received testimony from  
7 senior Federal officials, Inspectors General, State  
8 and city development agencies, local investigators,  
9 private integrity monitors, Federal and local pros-  
10 ecutors, the American Red Cross, community advo-  
11 cates, and a victims' organization.

12 (5) The Subcommittee submitted a report of its  
13 findings to the Committee on Homeland Security in  
14 August 2006 for official publication.

15 (6) This Act reflects the lessons learned  
16 through the Subcommittee's examination of the ad-  
17 ministration of Federal financial assistance to New  
18 York to respond to and recover from the terrorist at-  
19 tacks of September 11, 2001.

20 (7) This Act includes disaster assistance re-  
21 forms that will significantly contribute to controlling  
22 fraud and saving taxpayers' dollars in the future.

23 **SEC. 3. WASTE, FRAUD, AND ABUSE CONTROLS.**

24 (a) IN GENERAL.—Title VII of the Homeland Secu-  
25 rity Act of 2002 (6 U.S.C. 341 et seq.) is amended—

1 (1) by inserting before section 701 the fol-  
2 lowing:

3 **“Subtitle A—General Provisions”;**  
4 **and**

5 (2) by adding at the end the following:

6 **“Subtitle B—Waste, Fraud, and**  
7 **Abuse Controls**

8 **“SEC. 721. REQUIREMENT TO ESTABLISH FRAUD CON-**  
9 **TROLS.**

10 “(a) IN GENERAL.—The Secretary shall take such  
11 actions as are necessary to ensure that—

12 “(1) all agencies of the Department admin-  
13 istering Federal assistance to respond to acts of ter-  
14 rorism, natural disasters, or other emergencies shall  
15 develop and maintain proper internal management  
16 controls to detect, prevent, and deter waste, fraud,  
17 and abuse;

18 “(2) databases used by the Department to col-  
19 lect information on eligible recipients of such Fed-  
20 eral assistance must be integrated with disbursement  
21 and payment records; and

22 “(3) such integration is designed to identify in-  
23 eligible applications.

24 “(b) AUDITS AND REVIEWS REQUIRED.—Not later  
25 than one year after the date of enactment of this section,

1 the Inspector General of the Department shall review each  
2 relevant database for Federal assistance programs admin-  
3 istered by the Department in effect on the date of the en-  
4 actment of this section to assess the implementation of  
5 the internal controls required under this section. The In-  
6 spector General of the Department shall immediately re-  
7 port to Congress each recommendation or finding under  
8 this subsection.

9 “(c) CERTIFICATION REQUIRED.—The Secretary  
10 shall certify to Congress on a biennial basis that internal  
11 controls required under this section are in place and oper-  
12 ational. The first such certification shall be made within  
13 90 days after the date of enactment of this section.

14 **“SEC. 722. ENHANCED ACCOUNTABILITY FOR FEDERAL AS-**  
15 **SISTANCE.**

16 “(a) RECIPIENTS OF FEDERAL ASSISTANCE.—Each  
17 State, local, tribal, and non-profit entity that receives Fed-  
18 eral assistance funds in response to an act of terrorism,  
19 natural disaster, or other emergency shall report to the  
20 disbursing Federal agency six months after the initial dis-  
21 bursement of resources and every six months thereafter  
22 regarding the expenditure of such funds.

23 “(b) CONTENTS.—The report shall include a descrip-  
24 tion of—

1           “(1) each project or program that received Fed-  
2           eral assistance;

3           “(2) the entity administering the program or  
4           project; and

5           “(3) the dates and amounts disbursed, allo-  
6           cated, and expended.

7   **“SEC. 723. UTILIZATION OF PRIVATE INTEGRITY MON-**  
8                                   **ITORS.**

9           “(a) IN GENERAL.—The Secretary may utilize Pri-  
10          vate Integrity Monitors to monitor and provide greater ac-  
11          countability for Department of Homeland Security con-  
12          tracts using Federal funding provided in response to a  
13          major disaster, act of terrorism, or other emergency, in-  
14          cluding contracts for debris removal and the repair or re-  
15          construction of damaged infrastructure.

16          “(b) REPORTING.—The Private Integrity Monitor  
17          shall submit periodic reports to the Secretary and the In-  
18          spector General of the Department, as determined by the  
19          Secretary.

20          “(c) PRIVATE INTEGRITY MONITOR DEFINED.—In  
21          this section the term “Private Integrity Monitor” means  
22          an independent, private sector firm with specialized legal,  
23          auditing, investigative, and loss prevention expertise nec-  
24          essary to ensure compliance with relevant laws and regula-

1 tions to detect, prevent, and deter waste, fraud, and abuse  
2 by a contractor or subcontractor.

3 **“SEC. 724. FRAUD PREVENTION TRAINING PROGRAM.**

4 “(a) TRAINING PROGRAM REQUIRED.—The Sec-  
5 retary shall develop and implement a program to provide  
6 training on the detection and prevention of waste, fraud,  
7 and abuse of Federal assistance funds and services during  
8 the response to or recovery from acts of terrorism, natural  
9 disasters, or other emergencies.

10 “(b) INDIVIDUALS ELIGIBLE FOR TRAINING.—Under  
11 the training program required under subsection (a), the  
12 Secretary shall provide training to—

13 “(1) employees and contractors of the Depart-  
14 ment;

15 “(2) employees, contractors, and volunteers of  
16 any State, local, or tribal government entity; and

17 “(3) employees, contractors, and volunteers of  
18 non-profit organizations that assist in the adminis-  
19 tration of Federal assistance funds and services pro-  
20 vided in response to acts of terrorism, natural disas-  
21 ters, or other national emergencies.

22 **“SEC. 725. CONFIRMATION OF IDENTITY AND ELIGIBILITY**  
23 **OF APPLICANTS.**

24 “(a) IN GENERAL.—Any Federal, State, local, or  
25 tribal agency that disburses Federal grants, loans, serv-

1 ices, and other assistance in response to or for the recov-  
2 ery from acts of terrorism, natural disasters, or other  
3 emergencies, shall make reasonable efforts to confirm the  
4 identity and eligibility of the applicant for such assistance  
5 without placing undue burden on the applicant.

6 “(b) INFORMATION SHARING.—Any State, local, or  
7 tribal government entity or non-profit entity that admin-  
8 isters Federal assistance funds or services to individuals  
9 affected by acts of terrorism, natural disasters, or other  
10 emergencies shall share information with the Department  
11 for purposes of making eligibility determinations, dissemi-  
12 nating benefits, connecting families, locating missing per-  
13 sons, and preventing waste, fraud, and abuse, in a manner  
14 consistent with Federal protections under section 552a of  
15 title 5, United States Code, popularly known as the Pri-  
16 vacy Act of 1974, about any recipient of such assistance,  
17 as necessary.

18 “(c) ENHANCED INFORMATION SHARING BETWEEN  
19 FEDERAL, STATE, LOCAL, TRIBAL AND NONPROFIT OR-  
20 GANIZATIONS IN THE DISBURSEMENT OF FEDERAL AS-  
21 SISTANCE FUNDS.—The Secretary shall ease the burden  
22 for individuals in need of assistance due to acts of ter-  
23 rorism, natural disasters, or other Federal emergencies  
24 and enhance accountability by initiating a single applica-  
25 tion for assistance that can be shared among agencies pro-

1 viding assistance. The single application shall include clear  
2 language on, and acknowledgment by the applicant of, the  
3 penalties for providing false statements under section  
4 1001 of title 18, United States Code, to ensure veracity  
5 of information provided. The Secretary shall maintain the  
6 information collected in a database to enable data-match-  
7 ing for eligibility determination and avoidance of duplica-  
8 tive payments.

9 **“SEC. 726. OVERSIGHT OF LOAN APPLICANT ELIGIBILITY.**

10       “(a) LENDER DOCUMENTATION OF APPLICANT ELI-  
11 GIBILITY.—The Administrator of the Small Business Ad-  
12 ministration, in carrying out any loan program of the Ad-  
13 ministration to help individuals and businesses recover  
14 from a terrorist attack, natural disaster, or other emer-  
15 gency, shall ensure that each lender participating in the  
16 program—

17               “(1) collects, verifies, and maintains informa-  
18 tion regarding the eligibility of each loan applicant;  
19 and

20               “(2) produces such information whenever the  
21 Administrator so requests.

22       “(b) OVERSIGHT REQUIRED.—The Administrator, in  
23 carrying out the loan programs referred to in subsection  
24 (a), shall conduct oversight of lenders participating in  
25 those programs to ensure that each recipient of a loan

1 under such a program is in fact eligible for that loan, as  
2 provided under law and under the regulations and guide-  
3 lines of the Administration. The oversight required by this  
4 subsection shall include audits and document reviews, and  
5 may include any other means that the Administrator con-  
6 siders appropriate.

7 **“SEC. 727. DETERMINING ‘SMALL BUSINESS’ FOR ELIGI-**  
8 **BILITY PURPOSES.**

9 “The head of any Federal agency, in carrying out any  
10 program of that agency to help individuals and businesses  
11 recover from a terrorist attack, natural disaster, or other  
12 emergency, shall, to the extent the purpose of the program  
13 is to help small businesses, ensure that the determination  
14 whether an individual or business is considered a ‘small  
15 business’ is made under the regulations and guidelines of  
16 the Small Business Administration.

17 **“SEC. 728. ASSESSMENT OF JUDICIAL NEEDS.**

18 “The Secretary shall encourage local communities to  
19 assess the financial and resource needs of the community  
20 to prosecute cases of fraud and provide necessary legal  
21 services in advance of an act of terrorism, natural disaster,  
22 or other emergency.

1 **“SEC. 729. STRENGTHENING THE CONTRACT REVIEW PROC-**  
2 **ESS.**

3 “(a) INFORMATION REGARDING CONTRACT PER-  
4 FORMANCE.—Before awarding, renewing, or extending a  
5 contract, including those awarded to a contractor that has  
6 previously provided or currently provides goods or services  
7 to the Department, the Secretary, acting through the ap-  
8 propriate contracting officer or officers of the Depart-  
9 ment, shall require the contractor to submit information  
10 regarding the contractor’s past and current performance  
11 of Federal, State, and local government and private sector  
12 contracts. The information shall include—

13 “(1) reviews of the contractor’s performance on  
14 Federal, State, local, or tribal government contracts  
15 during the 3-year period preceding the submission  
16 by the contractor of an offer for the contract con-  
17 cerned;

18 “(2) decisions by any procurement entity to ter-  
19 minate a contract with the contractor; and

20 “(3) decisions evincing a refusal during such  
21 period to exercise a renewal option with the con-  
22 tractor.

23 “(b) CONTACT OF RELEVANT OFFICIALS.—As part  
24 of any review of a contractor’s past performance con-  
25 ducted under subsection (a), the Secretary, acting through  
26 an appropriate contracting officer of the Department,

1 shall contact the relevant office that administered or  
2 oversaw any contract performed by that contractor during  
3 the 3-year period preceding the date on which the review  
4 begins.

5       “(c) CONSIDERATION OF CONTRACTOR PAST PER-  
6 FORMANCE.—In awarding a contract to a contractor, the  
7 Secretary shall require the past performance of that con-  
8 tractor, based on the review conducted under subsection  
9 (a), be a factor in the decision to award the contract con-  
10 cerned.

11 **“SEC. 730. SMALL BUSINESS DATABASE FOR FEDERAL CON-**  
12 **TRACTING RELATED TO MAJOR DISASTERS**  
13 **AND EMERGENCY ASSISTANCE ACTIVITIES.**

14       “(a) ESTABLISHMENT OF DATABASE.—The Sec-  
15 retary shall establish and maintain a database that con-  
16 tains information about small business entities for pur-  
17 poses of Federal contracting related to assistance activi-  
18 ties conducted in response to and recovery from acts of  
19 terrorism, natural disasters, and other emergencies.

20       “(b) INCLUDED INFORMATION.—The database under  
21 subsection (a) shall include the following information  
22 about each small business entity included in the database:

23               “(1) The name of the small business entity.

24               “(2) The location of the small business entity.

1           “(3) The area served by the small business enti-  
2           ty.

3           “(4) The type of good or service provided by  
4           the small business entity.

5           “(5) Whether the small business entity is—

6                   “(A) a small business entity owned and  
7                   controlled by socially and economically dis-  
8                   advantaged individuals;

9                   “(B) a small business entity owned and  
10                  controlled by women; or

11                  “(C) a small business entity owned and  
12                  controlled by service-disabled veterans.

13           “(c) SOURCE OF INFORMATION.—

14                   “(1) SUBMISSION.—The database may only  
15                   contain such information about a small business en-  
16                   tity as is submitted by the small business entity or  
17                   added by the Department.

18                   “(2) ATTESTATION.—Each small business enti-  
19                   ty submitting information to the database shall sub-  
20                   mit—

21                           “(A) an attestation that the information  
22                           submitted is true; and

23                           “(B) documentation supporting such attes-  
24                           tation.

1           “(3) VERIFICATION.—The Secretary shall verify  
2           only that the documentation submitted by each small  
3           business entity supports the information submitted  
4           by that small business entity.

5           “(d) AVAILABILITY OF DATABASE.—The Secretary  
6           shall make the database generally available on the Internet  
7           website of the Department.

8           “(e) CONSULTATION OF DATABASE.—Before award-  
9           ing a Federal contract for a disaster-related activity, a  
10          component of the Department shall consult the database  
11          established under this section.

12          “(f) DATABASE INTEGRATION.—The Secretary shall  
13          integrate the database established under this section into  
14          any other procurement-related database maintained by the  
15          Secretary.

16          “(g) DEFINITIONS.—For purposes of this section, the  
17          terms ‘small business entity’, ‘small business entity owned  
18          and controlled by socially and economically disadvantaged  
19          individuals’, ‘small business entity owned and controlled  
20          by women’, and ‘small business entity owned and con-  
21          trolled by service-disabled veterans’ shall have the mean-  
22          ings given the terms ‘small business concern’, ‘small busi-  
23          ness concern owned and controlled by socially and eco-  
24          nomically disadvantaged individuals’, ‘small business con-  
25          cern owned and controlled by women’, and ‘small business

1 concern owned and controlled by service-disabled vet-  
 2 erans’, respectively, under the Small Business Act (15  
 3 U.S.C. 631 et seq.).

4 **“SEC. 731. MAINTAINING FEDERAL PROPRIETARY RIGHTS.**

5 “The Secretary shall ensure that contracts awarded  
 6 by the Department, as appropriate, include a clause main-  
 7 taining proprietary rights to materials produced using  
 8 Federal funding, including contracts for videos and photo-  
 9 graphs related to acts of terrorism, natural disasters, or  
 10 other emergencies.”.

11 (b) CLERICAL AMENDMENT.—The table of contents  
 12 in section 1(b) of such Act is amended—

13 (1) by inserting before the item relating to sec-  
 14 tion 701 the following:

“Subtitle A—General Provisions”; and

15 (2) by adding at the end of the items relating  
 16 to title VII the following:

“Subtitle B—Waste, Fraud, and Abuse Controls

- “Sec. 721. Requirement to establish fraud controls.
- “Sec. 722. Enhanced accountability for Federal assistance.
- “Sec. 723. Utilization of Private Integrity Monitors.
- “Sec. 724. Fraud prevention training program.
- “Sec. 725. Confirmation of identity and eligibility of applicants.
- “Sec. 726. Oversight of loan applicant eligibility.
- “Sec. 727. Determining ‘small business’ for eligibility purposes.
- “Sec. 728. Assessment of judicial needs.
- “Sec. 729. Strengthening the contract review process.
- “Sec. 730. Small business database for Federal contracting related to major  
 disasters and emergency assistance activities.
- “Sec. 731. Maintaining Federal proprietary rights.”.

1 **SEC. 4. DEPUTY INSPECTOR GENERAL FOR RESPONSE AND**  
2 **RECOVERY.**

3 (a) IN GENERAL.—Subtitle B of title VIII of the  
4 Homeland Security Act of 2002 is amended by adding at  
5 the end the following:

6 **“SEC. 813 DEPUTY INSPECTOR GENERAL FOR RESPONSE**  
7 **AND RECOVERY.**

8 “(a) ESTABLISHMENT.—There is established the po-  
9 sition of Deputy Inspector General for Response and Re-  
10 covery within the Office of the Inspector General of the  
11 Department.

12 “(b) APPOINTMENT.—The Deputy Inspector General  
13 for Response and Recovery shall be appointed—

14 “(1) by the Inspector General of the Depart-  
15 ment; and

16 “(2) solely on the basis of integrity and dem-  
17 onstrated ability in auditing, financial analysis, law,  
18 management analysis, public administration, or in-  
19 vestigations.

20 “(c) REPORTING AND STATUS AS SES POSITION.—  
21 The Deputy Inspector General for Response and Recov-  
22 ery—

23 “(1) shall report to, and be under the direct au-  
24 thority and supervision of, the Inspector General;  
25 and

1           “(2) shall serve as a career member of the Sen-  
2           ior Executive Service.

3           “(d) DUTIES.—

4           “(1) AUDITS AND INVESTIGATIONS.—The Dep-  
5           uty Inspector General for Response and Recovery  
6           shall, in coordination with Inspectors General of  
7           other Federal departments, as appropriate, conduct,  
8           supervise, and coordinate audits and investigations  
9           of the treatment, handling, and expenditure of  
10          amounts appropriated or otherwise made available  
11          for response to and recovery from an act of ter-  
12          rorism, natural disaster, or other emergency by the  
13          Federal Government, and of the programs, oper-  
14          ations, and contracts carried out utilizing such  
15          funds, including—

16                   “(A) the oversight and accounting of obli-  
17                   gations and expenditures;

18                   “(B) the monitoring and review of recon-  
19                   struction activities;

20                   “(C) the monitoring and review of con-  
21                   tracts and grants;

22                   “(D) the monitoring and review of the  
23                   transfer of such funds and associated informa-  
24                   tion sharing between and among departments,

1 agencies, and entities of the United States, and  
2 private nongovernmental entities; and

3 “(E) the maintenance of records on the  
4 use of such funds to facilitate future audits and  
5 investigations.

6 “(2) AUDITS OF FEDERAL DISASTER ASSIST-  
7 ANCE FUNDS.—The Deputy Inspector General for  
8 Response and Recovery shall conduct regular audits,  
9 not less than every six months, of departmental enti-  
10 ties administering Federal disaster assistance funds  
11 and their disbursements of such funds until the en-  
12 tire amount appropriated to the agency has been dis-  
13 bursed or until the project is completed, whichever  
14 is later.

15 “(3) ESTABLISHMENT OF A FRAUD TASK  
16 FORCE.—The Deputy Inspector General for Re-  
17 sponse and Recovery shall establish, as appropriate,  
18 a Fraud Task Force to detect, prevent, and deter  
19 waste, fraud, and abuse with respect to Federal dis-  
20 aster assistance provided to respond to an act of ter-  
21 rorism, natural disaster, or other emergency. The  
22 Deputy Inspector General for Response and Recov-  
23 ery shall coordinate with the Department of Justice,  
24 and with other Federal, State, local, and tribal enti-

1 ties, as appropriate, regarding representation on the  
2 Fraud Task Force.

3 “(4) FRAUD TIP LINE.—The Inspector General  
4 of the Department shall maintain the Fraud Tip  
5 Line of the Department to facilitate the collection of  
6 allegations of waste, fraud, and abuse of Federal as-  
7 sistance funds. Immediately after an act of ter-  
8 rorism, natural disaster, or other emergency the In-  
9 spector General shall take reasonable steps to ex-  
10 pand and publicize the Fraud Tip Line.

11 “(5) AVOIDANCE OF DUPLICATION.—The In-  
12 spector General of the Department shall ensure, to  
13 the greatest extent possible, that the activities of the  
14 Deputy Inspector General for Response and Recov-  
15 ery do not duplicate audits and investigations of In-  
16 spectors General and other auditors of Federal de-  
17 partments and agencies, and State and local govern-  
18 ment entities.

19 “(e) FINANCIAL MANAGEMENT MATTERS.—In order  
20 to assist the Deputy Inspector General for Response and  
21 Recovery in carrying out this section, the heads of all de-  
22 partmental entities receiving or distributing Federal funds  
23 to respond to acts of terrorism, natural disasters, or other  
24 emergencies shall establish and maintain budgetary proce-

1 dures to distinguish funds related to response and relief  
2 efforts from other agency funds.

3 “(f) FUNDING.—

4 “(1) AUTHORIZATION OF APPROPRIATIONS.—

5 There is authorized to be appropriated for oper-  
6 ations of the Office of the Deputy Inspector General  
7 for Response and Recovery \$15,000,000 for each fis-  
8 cal year.

9 “(2) TRANSFERS OF FUNDS.—In addition to  
10 amounts authorized by paragraph (1), there shall be  
11 transferred to the Inspector General not less than  
12 0.005 percent of the first \$5,000,000,000 of the  
13 amount appropriated for response to or recovery  
14 from an act of terrorism, natural disaster, or other  
15 emergency, in order to carry out the duties of the  
16 Inspector General to audit and execute oversight of  
17 such funds, as appropriate. Amounts transferred  
18 under this paragraph shall remain available until ex-  
19 pended.

20 “(3) AUTHORIZATION OF ADDITIONAL APPRO-  
21 PRIATIONS.—If more than \$5,000,000,000 is appro-  
22 priated for response to or recovery from an act of  
23 terrorism, natural disaster, or other emergency,  
24 there are authorized to be appropriated to the In-  
25 spector General such additional sums as may be ap-

1       appropriate to audit and execute oversight of such  
2       funds.”.

3       (b) CLERICAL AMENDMENT.—The table of contents  
4       in section 1(b) of such Act is further amended by inserting  
5       after the item related to section 812 the following:

“Sec. 813. Deputy Inspector General for Response and Recovery.”.

6       (c) DEADLINE FOR APPOINTMENT.—The Inspector  
7       General of the Department of Homeland Security shall ap-  
8       point the Deputy Inspector General for Response and Re-  
9       covery under this section not later than 90 days after the  
10      date of enactment of this Act.

○