

In the House of Representatives, U. S.,

May 6, 2009.

Resolved, That the bill from the Senate (S. 386) entitled “An Act to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Fraud Enforcement and*
3 *Recovery Act of 2009” or “FERA”.*

4 ***SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURI-***
5 ***TIES, COMMODITIES, AND FINANCIAL FRAUD***
6 ***RECOVERY AND ENFORCEMENT.***

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

10 *(1) in paragraph (8), by striking “or” after the*
11 *semicolon;*

12 *(2) in paragraph (9), by striking the period and*
13 *inserting “; or”; and*

14 *(3) by inserting at the end the following:*

1 “(10) a mortgage lending business (as defined in
 2 section 27 of this title) or any person or entity that
 3 makes in whole or in part a federally related mort-
 4 gage loan as defined in section 3 of the Real Estate
 5 Settlement Procedures Act of 1974.”.

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

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

10 **“§27. Mortgage lending business defined**

11 *“In this title, the term ‘mortgage lending business’*
 12 *means an organization which finances or refinances any*
 13 *debt secured by an interest in real estate, including private*
 14 *mortgage companies and any subsidiaries of such organiza-*
 15 *tions, and whose activities affect interstate or foreign com-*
 16 *merce.”.*

17 (2) *CHAPTER ANALYSIS.*—The chapter analysis
 18 for chapter 1 of title 18, United States Code, is
 19 amended by adding at the end the following:

“27. Mortgage lending business defined.”.

20 (c) *FALSE STATEMENTS IN MORTGAGE APPLICATIONS*
 21 *AMENDED TO INCLUDE FALSE STATEMENTS BY MORTGAGE*
 22 *BROKERS AND AGENTS OF MORTGAGE LENDING BUSI-*
 23 *NESSES.*—Section 1014 of title 18, United States Code, is
 24 amended by—

1 (1) striking “or” after “the International Bank-
2 ing Act of 1978),”; and

3 (2) inserting after “section 25(a) of the Federal
4 Reserve Act” the following: “, or a mortgage lending
5 business, or any person or entity that makes in whole
6 or in part a federally related mortgage loan as de-
7 fined in section 3 of the Real Estate Settlement Proce-
8 dures Act of 1974”.

9 (d) MAJOR FRAUD AGAINST THE GOVERNMENT
10 AMENDED TO INCLUDE ECONOMIC RELIEF AND TROUBLED
11 ASSET RELIEF PROGRAM FUNDS.—Section 1031(a) of title
12 18, United States Code, is amended by—

13 (1) inserting after “or promises, in” the fol-
14 lowing: “any grant, contract, subcontract, subsidy,
15 loan, guarantee, insurance, or other form of Federal
16 assistance, including through the Troubled Asset Re-
17 lief Program, an economic stimulus, recovery or res-
18 cue plan provided by the Government, or the Govern-
19 ment’s purchase of any troubled asset as defined in
20 the Emergency Economic Stabilization Act of 2008,
21 or in”;

22 (2) striking “the contract, subcontract” and in-
23 serting “such grant, contract, subcontract, subsidy,
24 loan, guarantee, insurance, or other form of Federal
25 assistance”; and

1 (3) striking “for such property or services”.

2 (e) *SECURITIES FRAUD AMENDED TO INCLUDE*
 3 *FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-*
 4 *ITIES.*—

5 (1) *IN GENERAL.*—Section 1348 of title 18,
 6 *United States Code, is amended—*

7 (A) in the caption, by inserting “**and**
 8 **commodities**” after “**Securities**”;

9 (B) in paragraph (1), by inserting “any
 10 commodity for future delivery, or any option on
 11 a commodity for future delivery, or” after “any
 12 person in connection with”; and

13 (C) in paragraph (2), by inserting “any
 14 commodity for future delivery, or any option on
 15 a commodity for future delivery, or” after “in
 16 connection with the purchase or sale of”.

17 (2) *CHAPTER ANALYSIS.*—The item for section
 18 1348 in the chapter analysis for chapter 63 of title
 19 18, *United States Code, is amended by inserting “and*
 20 *commodities” after “Securities”.*

21 (f) *MONEY LAUNDERING AMENDED TO DEFINE PRO-*
 22 *CEEDS OF SPECIFIED UNLAWFUL ACTIVITY.*—

23 (1) *MONEY LAUNDERING.*—Section 1956(c) of
 24 *title 18, United States Code, is amended—*

1 (A) in paragraph (8), by striking the period
2 and inserting “; and”; and

3 (B) by inserting at the end the following:

4 “(9) the term ‘proceeds’ means any property de-
5 rived from or obtained or retained, directly or indi-
6 rectly, through some form of unlawful activity, in-
7 cluding the gross receipts of such activity.”.

8 (2) *MONETARY TRANSACTIONS.*—Section 1957(f)
9 of title 18, United States Code, is amended by strik-
10 ing paragraph (3) and inserting the following:

11 “(3) the terms ‘specified unlawful activity’ and
12 ‘proceeds’ shall have the meaning given those terms in
13 section 1956 of this title.”.

14 (g) *SENSE OF THE CONGRESS AND REPORT CON-*
15 *CERNING REQUIRED APPROVAL FOR MERGER CASES.*—

16 (1) *SENSE OF CONGRESS.*—It is the sense of the
17 Congress that no prosecution of an offense under sec-
18 tion 1956 or 1957 of title 18, United States Code,
19 should be undertaken in combination with the pros-
20 ecution of any other offense, without prior approval
21 of the Attorney General, the Deputy Attorney General,
22 the Assistant Attorney General in charge of the
23 Criminal Division, a Deputy Assistant Attorney Gen-
24 eral in the Criminal Division, or the relevant United
25 States Attorney, if the conduct to be charged as “spec-

1 *ified unlawful activity” in connection with the offense*
2 *under section 1956 or 1957 is so closely connected*
3 *with the conduct to be charged as the other offense*
4 *that there is no clear delineation between the two of-*
5 *fenses.*

6 (2) *REPORT.—One year after the date of the en-*
7 *actment of this Act, and at the end of each of the four*
8 *succeeding one-year periods, the Attorney General*
9 *shall report to the House and Senate Committees on*
10 *the Judiciary on efforts undertaken by the Depart-*
11 *ment of Justice to ensure that the review and ap-*
12 *proval described in paragraph (1) takes place in all*
13 *appropriate cases. The report shall include the fol-*
14 *lowing:*

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

20 (B) *The number of prosecutions described in*
21 *paragraph (1) that were undertaken during the*
22 *previous one-year period without such prior ap-*
23 *proval, classified by type of offense, and the rea-*
24 *sons why such prior approval was not obtained.*

1 (C) *The number of times during the pre-*
 2 *vious year in which an approval described in*
 3 *paragraph (1) was denied.*

4 **SEC. 3. AUTHORIZATION OF ADDITIONAL FUNDING TO**
 5 **COMBAT MORTGAGE FRAUD, SECURITIES AND**
 6 **COMMODITIES FRAUD, AND OTHER FRAUDS**
 7 **INVOLVING FEDERAL ECONOMIC ASSIST-**
 8 **ANCE.**

9 (a) *AUTHORIZATION OF ADDITIONAL APPROPRIATIONS*
 10 *FOR THE DEPARTMENT OF JUSTICE.—*

11 (1) *IN GENERAL.—There is authorized to be ap-*
 12 *propriated to the Attorney General, \$165,000,000 for*
 13 *each of the fiscal years 2010 and 2011, for the pur-*
 14 *poses of investigations and prosecutions and civil and*
 15 *administrative proceedings involving Federal assist-*
 16 *ance programs and financial institutions, including*
 17 *financial institutions to which this Act and amend-*
 18 *ments made by this Act apply.*

19 (2) *ALLOCATIONS.—With respect to fiscal years*
 20 *2010 and 2011, the amounts authorized to be appro-*
 21 *priated under paragraph (1) shall be allocated as fol-*
 22 *lows:*

23 (A) *Federal Bureau of Investigation:*
 24 *\$75,000,000 for fiscal year 2010 and \$65,000,000*
 25 *for fiscal year 2011, an appropriate percentage*

1 *of which amounts shall be used to investigate*
 2 *mortgage fraud.*

3 *(B) The offices of the United States Attor-*
 4 *neys: \$50,000,000 for each fiscal year.*

5 *(C) The criminal division of the Depart-*
 6 *ment of Justice: \$20,000,000 for each fiscal year.*

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

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

11 *(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS*
 12 *FOR THE POSTAL INSPECTION SERVICE.—There is author-*
 13 *ized to be appropriated to the Postal Inspection Service of*
 14 *the United States Postal Service, \$30,000,000 for each of*
 15 *the fiscal years 2010 and 2011 for investigations involving*
 16 *Federal assistance programs and financial institutions, in-*
 17 *cluding financial institutions to which this Act and amend-*
 18 *ments made by this Act apply.*

19 *(c) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS*
 20 *FOR THE INSPECTOR GENERAL FOR THE DEPARTMENT OF*
 21 *HOUSING AND URBAN DEVELOPMENT.—There is authorized*
 22 *to be appropriated to the Inspector General of the Depart-*
 23 *ment of Housing and Urban Development, \$30,000,000 for*
 24 *each of the fiscal years 2010 and 2011 for investigations*
 25 *involving Federal assistance programs and financial insti-*

1 *tutions, including financial institutions to which this Act*
 2 *and amendments made by this Act apply.*

3 *(d) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS*
 4 *FOR THE UNITED STATES SECRET SERVICE.—There is au-*
 5 *thorized to be appropriated to the United States Secret*
 6 *Service of the Department of Homeland Security,*
 7 *\$20,000,000 for each of the fiscal years 2010 and 2011 for*
 8 *investigations involving Federal assistance programs and*
 9 *financial institutions, including financial institutions to*
 10 *which this Act and amendments made by this Act apply.*

11 *(e) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS*
 12 *FOR THE SECURITIES AND EXCHANGE COMMISSION.—*

13 *(1) IN GENERAL.—There is authorized to be ap-*
 14 *propriated to the Securities and Exchange Commis-*
 15 *sion, \$20,000,000 for each of the fiscal years 2010 and*
 16 *2011 for investigations and enforcement proceedings*
 17 *involving financial institutions, including financial*
 18 *institutions to which this Act and amendments made*
 19 *by this Act apply.*

20 *(2) INSPECTOR GENERAL.—There is authorized*
 21 *to be appropriated to the Securities and Exchange*
 22 *Commission, \$1,000,000 for each of the fiscal years*
 23 *2010 and 2011 for the salaries and expenses of the Of-*
 24 *fice of the Inspector General of the Securities and Ex-*
 25 *change Commission.*

1 (f) *USE OF FUNDS.*—

2 (1) *IN GENERAL.*—*The funds appropriated pur-*
3 *suant to authorization under this section shall be lim-*
4 *ited to covering the costs of each listed agency or de-*
5 *partment for investigating possible criminal, civil, or*
6 *administrative violations and for criminal, civil, or*
7 *administrative proceedings involving financial crimes*
8 *and crimes against Federal assistance programs, in-*
9 *cluding mortgage fraud, securities and commodities*
10 *fraud, financial institution fraud, and other frauds*
11 *related to Federal assistance and relief programs.*

12 (2) *FUNDS FOR TRAINING AND RESEARCH.*—
13 *Funds authorized to be appropriated under this sec-*
14 *tion may be used and expended for programs for im-*
15 *proving the detection, investigation, and prosecution*
16 *of economic crime including financial fraud and*
17 *mortgage fraud. Funds allocated under this section*
18 *may be allocated to programs which assist State and*
19 *local criminal justice agencies to develop, establish,*
20 *and maintain intelligence-focused policing strategies*
21 *and related information sharing; provide training*
22 *and investigative support services to State and local*
23 *criminal justice agencies to provide such agencies*
24 *with skills and resources needed to investigate and*
25 *prosecute such criminal activities and related crimi-*

1 *nal activities; provide research support, establish*
2 *partnerships, and provide other resources to aid State*
3 *and local criminal justice agencies to prevent, inves-*
4 *tigate, and prosecute such criminal activities and re-*
5 *lated problems; provide information and research to*
6 *the general public to facilitate the prevention of such*
7 *criminal activities; and any other programs specified*
8 *by the Attorney General as furthering the purposes of*
9 *this Act.*

10 *(g) ADDITIONAL NATURE OF AUTHORIZATIONS; AVAIL-*
11 *ABILITY.—The amounts authorized under this section are*
12 *in addition to amounts otherwise authorized in other Acts*
13 *and shall remain available until expended.*

14 *(h) REPORT TO CONGRESS.—Following the final ex-*
15 *penditure of all funds appropriated pursuant to authoriza-*
16 *tion under this section, the Attorney General, in consulta-*
17 *tion with the United States Postal Inspection Service, the*
18 *Inspector General for the Department of Housing and*
19 *Urban Development, the Secretary of Homeland Security,*
20 *and the Commissioner of the Securities and Exchange Com-*
21 *mission, shall submit a report to Congress identifying—*

22 *(1) the amounts expended under each of sub-*
23 *sections (a), (b), (c), (d), and (e) and a certification*
24 *of compliance with the requirements listed in sub-*
25 *section (f); and*

1 (2) *the amounts recovered as a result of criminal*
 2 *or civil restitution, fines, penalties, and other mone-*
 3 *tary recoveries resulting from criminal, civil, or ad-*
 4 *ministrative proceedings and settlements undertaken*
 5 *with funds authorized by this Act.*

6 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO RE-**
 7 **FLECT THE ORIGINAL INTENT OF THE LAW.**

8 (a) *CLARIFICATION OF THE FALSE CLAIMS ACT.—Sec-*
 9 *tion 3729 of title 31, United States Code, is amended—*
 10 (1) *by striking subsection (a) and inserting the*
 11 *following:*

12 “(a) *LIABILITY FOR CERTAIN ACTS.—*

13 “(1) *IN GENERAL.—Subject to paragraph (2),*
 14 *any person who—*

15 “(A) *knowingly presents, or causes to be*
 16 *presented, a false or fraudulent claim for pay-*
 17 *ment or approval;*

18 “(B) *knowingly makes, uses, or causes to be*
 19 *made or used, a false record or statement mate-*
 20 *rial to a false or fraudulent claim;*

21 “(C) *conspires to commit a violation of sub-*
 22 *paragraph (A), (B), (D), (E), (F), or (G);*

23 “(D) *has possession, custody, or control of*
 24 *property or money used, or to be used, by the*
 25 *Government and knowingly delivers, or causes to*

1 *be delivered, less than all of that money or prop-*
2 *erty;*

3 *“(E) is authorized to make or deliver a doc-*
4 *ument certifying receipt of property used, or to*
5 *be used, by the Government and, intending to de-*
6 *fraud the Government, makes or delivers the re-*
7 *ceipt without completely knowing that the infor-*
8 *mation on the receipt is true;*

9 *“(F) knowingly buys, or receives as a pledge*
10 *of an obligation or debt, public property from an*
11 *officer or employee of the Government, or a mem-*
12 *ber of the Armed Forces, who lawfully may not*
13 *sell or pledge property; or*

14 *“(G) knowingly makes, uses, or causes to be*
15 *made or used, a false record or statement mate-*
16 *rial to an obligation to pay or transmit money*
17 *or property to the Government, or knowingly*
18 *conceals or knowingly and improperly avoids or*
19 *decreases an obligation to pay or transmit*
20 *money or property to the Government,*

21 *is liable to the United States Government for a civil*
22 *penalty of not less than \$5,000 and not more than*
23 *\$10,000, as adjusted by the Federal Civil Penalties*
24 *Inflation Adjustment Act of 1990 (28 U.S.C. 2461*
25 *note; Public Law 104–410), plus 3 times the amount*

1 *of damages which the Government sustains because of*
 2 *the act of that person.*

3 “(2) *REDUCED DAMAGES.*—*If the court finds*
 4 *that—*

5 “(A) *the person committing the violation of*
 6 *this subsection furnished officials of the United*
 7 *States responsible for investigating false claims*
 8 *violations with all information known to such*
 9 *person about the violation within 30 days after*
 10 *the date on which the defendant first obtained*
 11 *the information;*

12 “(B) *such person fully cooperated with any*
 13 *Government investigation of such violation; and*

14 “(C) *at the time such person furnished the*
 15 *United States with the information about the*
 16 *violation, no criminal prosecution, civil action,*
 17 *or administrative action had commenced under*
 18 *this title with respect to such violation, and the*
 19 *person did not have actual knowledge of the ex-*
 20 *istence of an investigation into such violation,*
 21 *the court may assess not less than 2 times the amount*
 22 *of damages which the Government sustains because of*
 23 *the act of that person.*

24 “(3) *COSTS OF CIVIL ACTIONS.*—*A person vio-*
 25 *lating this subsection shall also be liable to the United*

1 *States Government for the costs of a civil action*
 2 *brought to recover any such penalty or damages.”;*

3 *(2) by striking subsections (b) and (c) and in-*
 4 *serting the following:*

5 “(b) *DEFINITIONS.—For purposes of this section—*

6 *“(1) the terms ‘knowing’ and ‘knowingly’—*

7 *“(A) mean that a person, with respect to in-*
 8 *formation—*

9 *“(i) has actual knowledge of the infor-*
 10 *mation;*

11 *“(ii) acts in deliberate ignorance of the*
 12 *truth or falsity of the information; or*

13 *“(iii) acts in reckless disregard of the*
 14 *truth or falsity of the information; and*

15 *“(B) require no proof of specific intent to*
 16 *defraud;*

17 *“(2) the term ‘claim’—*

18 *“(A) means any request or demand, whether*
 19 *under a contract or otherwise, for money or*
 20 *property and whether or not the United States*
 21 *has title to the money or property, that—*

22 *“(i) is presented to an officer, em-*
 23 *ployee, or agent of the United States; or*

24 *“(ii) is made to a contractor, grantee,*
 25 *or other recipient, if the money or property*

1 *is to be spent or used on the Government's*
2 *behalf or to advance a Government program*
3 *or interest, and if the United States Gov-*
4 *ernment—*

5 *“(I) provides or has provided any*
6 *portion of the money or property re-*
7 *quested or demanded; or*

8 *“(II) will reimburse such con-*
9 *tractor, grantee, or other recipient for*
10 *any portion of the money or property*
11 *which is requested or demanded; and*

12 *“(B) does not include requests or demands*
13 *for money or property that the Government has*
14 *paid to an individual as compensation for Fed-*
15 *eral employment or as an income subsidy with*
16 *no restrictions on that individual's use of the*
17 *money or property;*

18 *“(3) the term ‘obligation’ means an established*
19 *duty, whether or not fixed, arising from an express or*
20 *implied contractual, grantor-grantee, or licensor-li-*
21 *censee relationship, from a fee-based or similar rela-*
22 *tionship, from statute or regulation, or from the re-*
23 *tention of any overpayment; and*

1 “(4) the term ‘material’ means having a natural
2 tendency to influence, or be capable of influencing, the
3 payment or receipt of money or property.”;

4 (3) by redesignating subsections (d) and (e) as
5 subsections (c) and (d), respectively; and

6 (4) in subsection (c), as redesignated, by striking
7 “subparagraphs (A) through (C) of subsection (a)”
8 and inserting “subsection (a)(2)”.

9 (b) *INTERVENTION BY THE GOVERNMENT.*—Section
10 3731(b) of title 31, United States Code, is amended—

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

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

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

16 “(c) If the Government elects to intervene and proceed
17 with an action brought under 3730(b), the Government may
18 file its own complaint or amend the complaint of a person
19 who has brought an action under section 3730(b) to clarify
20 or add detail to the claims in which the Government is in-
21 tervening and to add any additional claims with respect
22 to which the Government contends it is entitled to relief.
23 For statute of limitations purposes, any such Government
24 pleading shall relate back to the filing date of the complaint
25 of the person who originally brought the action, to the extent

1 *that the claim of the Government arises out of the conduct,*
 2 *transactions, or occurrences set forth, or attempted to be set*
 3 *forth, in the prior complaint of that person.”.*

4 (c) *CIVIL INVESTIGATIVE DEMANDS.*—Section 3733 of
 5 *title 31, United States Code, is amended—*

6 (1) *in subsection (a)—*

7 (A) *in paragraph (1)—*

8 (i) *in the matter preceding subpara-*
 9 *graph (A)—*

10 (I) *by inserting “, or a designee*
 11 *(for purposes of this section),” after*
 12 *“Whenever the Attorney General”; and*

13 (II) *by striking “the Attorney*
 14 *General may, before commencing a*
 15 *civil proceeding under section 3730 or*
 16 *other false claims law,” and inserting*
 17 *“the Attorney General, or a designee,*
 18 *may, before commencing a civil pro-*
 19 *ceeding under section 3730(a) or other*
 20 *false claims law, or making an election*
 21 *under section 3730(b),”; and*

22 (ii) *in the matter following subpara-*
 23 *graph (D)—*

24 (I) *by striking “may not delegate”*
 25 *and inserting “may delegate”; and*

1 (II) by adding at the end the fol-
 2 lowing: “Any information obtained by
 3 the Attorney General or a designee of
 4 the Attorney General under this section
 5 may be shared with any qui tam rela-
 6 tor if the Attorney General or designee
 7 determine it is necessary as part of
 8 any false claims act investigation.”;
 9 and

10 (B) in paragraph (2)(G), by striking the
 11 second sentence;

12 (2) in subsection (i)(2)—

13 (A) in subparagraph (B), by striking “,
 14 who is authorized for such use under regulations
 15 which the Attorney General shall issue”; and

16 (B) in subparagraph (C), by striking “Dis-
 17 closure of information to any such other agency
 18 shall be allowed only upon application, made by
 19 the Attorney General to a United States district
 20 court, showing substantial need for the use of the
 21 information by such agency in furtherance of its
 22 statutory responsibilities.”; and

23 (3) in subsection (l)—

24 (A) in paragraph (6), by striking “and”
 25 after the semicolon;

1 (B) in paragraph (7), by striking the period
2 and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(8) the term ‘official use’ means any use that
5 is consistent with the law, and the regulations and
6 policies of the Department of Justice, including use in
7 connection with internal Department of Justice
8 memoranda and reports; communications between the
9 Department of Justice and a Federal, State, or local
10 government agency, or a contractor of a Federal,
11 State, or local government agency, undertaken in fur-
12 therance of a Department of Justice investigation or
13 prosecution of a case; interviews of any qui tam rela-
14 tor or other witness; oral examinations; depositions;
15 preparation for and response to civil discovery re-
16 quests; introduction into the record of a case or pro-
17 ceeding; applications, motions, memoranda and briefs
18 submitted to a court or other tribunal; and commu-
19 nications with Government investigators, auditors,
20 consultants and experts, the counsel of other parties,
21 arbitrators and mediators, concerning an investiga-
22 tion, case or proceeding.”.

23 (d) *RELIEF FROM RETALIATORY ACTIONS*.—Section
24 3730(h) of title 31, United States Code, is amended to read
25 as follows:

1 “(h) *RELIEF FROM RETALIATORY ACTIONS.*—

2 “(1) *IN GENERAL.*—Any employee, contractor, or
3 agent shall be entitled to all relief necessary to make
4 that employee, contractor, or agent whole, if that em-
5 ployee, contractor, or agent is discharged, demoted,
6 suspended, threatened, harassed, or in any other man-
7 ner discriminated against in the terms and condi-
8 tions of employment because of lawful acts done by
9 the employee, contractor, or agent on behalf of the em-
10 ployee, contractor, or agent or associated others in
11 furtherance of other efforts to stop 1 or more viola-
12 tions of this subchapter.

13 “(2) *RELIEF.*—Relief under paragraph (1) shall
14 include reinstatement with the same seniority status
15 that employee, contractor, or agent would have had
16 but for the discrimination, 2 times the amount of
17 back pay, interest on the back pay, and compensation
18 for any special damages sustained as a result of the
19 discrimination, including litigation costs and reason-
20 able attorneys’ fees. An action under this subsection
21 may be brought in the appropriate district court of
22 the United States for the relief provided in this sub-
23 section.”.

1 (e) *FALSE CLAIMS JURISDICTION.*—Section 3732 of
 2 title 31, United States Code, is amended by adding at the
 3 end the following new subsection:

4 “(c) *SERVICE ON STATE OR LOCAL AUTHORITIES.*—
 5 With respect to any State or local government that is named
 6 as a co-plaintiff with the United States in an action
 7 brought under subsection (b), a seal on the action ordered
 8 by the court under section 3730(b) shall not preclude the
 9 Government or the person bringing the action from serving
 10 the complaint, any other pleadings, or the written disclo-
 11 sure of substantially all material evidence and information
 12 possessed by the person bringing the action on the law en-
 13 forcement authorities that are authorized under the law of
 14 that State or local government to investigate and prosecute
 15 such actions on behalf of such governments, except that such
 16 seal applies to the law enforcement authorities so served to
 17 the same extent as the seal applies to other parties in the
 18 action.”.

19 (f) *EFFECTIVE DATE AND APPLICATION.*—The amend-
 20 ments made by this section shall take effect on the date of
 21 enactment of this Act and shall apply to conduct on or after
 22 the date of enactment, except that—

23 (1) subparagraph (B) of section 3729(a)(1) of
 24 title 31, United States Code, as added by subsection
 25 (a)(1), shall take effect as if enacted on June 7, 2008,

1 and apply to all claims under the False Claims Act
 2 (31 U.S.C. 3729 *et seq.*) that are pending on or after
 3 that date; and

4 (2) section 3731(b) of title 31, as amended by
 5 subsection (b); section 3733, of title 31, as amended
 6 by subsection (c); and section 3732 of title 31, as
 7 amended by subsection (e); shall apply to cases pend-
 8 ing on the date of enactment.

9 **SEC. 5. FINANCIAL CRISIS INQUIRY COMMISSION.**

10 (a) *ESTABLISHMENT OF COMMISSION.*—There is estab-
 11 lished in the legislative branch the Financial Crisis Inquiry
 12 Commission (in this section referred to as the “Commis-
 13 sion”) to examine the causes, domestic and global, of the
 14 current financial and economic crisis in the United States.

15 (b) *COMPOSITION OF THE COMMISSION.*—

16 (1) *MEMBERS.*—The Commission shall be com-
 17 posed of 10 members, of whom—

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

21 (B) 3 members shall be appointed by the
 22 Speaker of the House of Representatives, in con-
 23 sultation with relevant Committees;

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

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

7 (2) QUALIFICATIONS; LIMITATION.—

8 (A) IN GENERAL.—It is the sense of the
 9 Congress that individuals appointed to the Com-
 10 mission should be prominent United States citi-
 11 zens with national recognition and significant
 12 depth of experience in such fields as banking,
 13 regulation of markets, taxation, finance, econom-
 14 ics, consumer protection, and housing.

15 (B) LIMITATION.—No person who is a mem-
 16 ber of Congress or an officer or employee of the
 17 Federal Government or any State or local gov-
 18 ernment may serve as a member of the Commis-
 19 sion.

20 (3) CHAIRPERSON; VICE CHAIRPERSON.—

21 (A) IN GENERAL.—Subject to the require-
 22 ments of subparagraph (B), the Chairperson of
 23 the Commission shall be selected jointly by the
 24 Majority Leader of the Senate and the Speaker
 25 of the House of Representatives, and the Vice

1 *Chairperson shall be selected jointly by the Mi-*
 2 *nority Leader of the Senate and the Minority*
 3 *Leader of the House of Representatives.*

4 (B) *POLITICAL PARTY AFFILIATION.*—*The*
 5 *Chairperson and Vice Chairperson of the Com-*
 6 *mission may not be from the same political*
 7 *party.*

8 (4) *MEETINGS, QUORUM; VACANCIES.*—

9 (A) *MEETINGS.*—

10 (i) *INITIAL MEETING.*—*The initial*
 11 *meeting of the Commission shall be as soon*
 12 *as possible after a quorum of members have*
 13 *been appointed.*

14 (ii) *SUBSEQUENT MEETINGS.*—*After*
 15 *the initial meeting of the Commission, the*
 16 *Commission shall meet upon the call of the*
 17 *Chairperson or a majority of its members.*

18 (B) *QUORUM.*—*6 members of the Commis-*
 19 *sion shall constitute a quorum.*

20 (C) *VACANCIES.*—*Any vacancy on the Com-*
 21 *mission shall—*

22 (i) *not affect the powers of the Com-*
 23 *mission; and*

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

1 (c) *FUNCTIONS OF THE COMMISSION.*—*The functions*
 2 *of the Commission are—*

3 (1) *to examine the causes of the current financial*
 4 *and economic crisis in the United States, specifically*
 5 *the role of—*

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

9 (B) *Federal and State financial regulators,*
 10 *including the extent to which they enforced, or*
 11 *failed to enforce statutory, regulatory, or super-*
 12 *visory requirements;*

13 (C) *the global imbalance of savings, inter-*
 14 *national capital flows, and fiscal imbalances of*
 15 *various governments;*

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

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

21 (F) *tax treatment of financial products and*
 22 *investments;*

23 (G) *capital requirements and regulations on*
 24 *leverage and liquidity, including the capital*

1 *structures of regulated and non-regulated finan-*
 2 *cial entities;*

3 *(H) credit rating agencies in the financial*
 4 *system, including, reliance on credit ratings by*
 5 *financial institutions and Federal financial reg-*
 6 *ulators, the use of credit ratings in financial reg-*
 7 *ulation, and the use of credit ratings in the*
 8 *securitization markets;*

9 *(I) lending practices and securitization, in-*
 10 *cluding the originate-to-distribute model for ex-*
 11 *tending credit and transferring risk;*

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

15 *(K) the concept that certain institutions are*
 16 *“too-big-to-fail” and its impact on market expec-*
 17 *tations;*

18 *(L) corporate governance, including the im-*
 19 *pact of company conversions from partnerships*
 20 *to corporations;*

21 *(M) compensation structures;*

22 *(N) changes in compensation for employees*
 23 *of financial companies, as compared to com-*
 24 *pensation for others with similar skill sets in the*
 25 *labor market;*

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

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

6 (Q) short-selling;

7 (R) financial institution reliance on numer-
8 ical models, including risk models and credit
9 ratings;

10 (S) the legal and regulatory structure gov-
11 erning financial institutions, including the ex-
12 tent to which the structure creates the oppor-
13 tunity for financial institutions to engage in reg-
14 ulatory arbitrage;

15 (T) the legal and regulatory structure gov-
16 erning investor and mortgagor protection;

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

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

21 (2) to examine the causes of the collapse of each
22 major financial institution that failed (including in-
23 stitutions that were acquired to prevent their failure)
24 or was likely to have failed if not for the receipt of
25 exceptional Government assistance from the Secretary

1 *of the Treasury during the period beginning in Au-*
 2 *gust 2007 through April 2009;*

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

4 *(4) to refer to the Attorney General of the United*
 5 *States and any appropriate State attorney general*
 6 *any person that the Commission finds may have vio-*
 7 *lated the laws of the United States in relation to such*
 8 *crisis; and*

9 *(5) to build upon the work of other entities, and*
 10 *avoid unnecessary duplication, by reviewing the*
 11 *record of the Committee on Banking, Housing, and*
 12 *Urban Affairs of the Senate, the Committee on Finan-*
 13 *cial Services of the House of Representatives, other*
 14 *congressional committees, the Government Account-*
 15 *ability Office, other legislative panels, and any other*
 16 *department, agency, bureau, board, commission, of-*
 17 *fice, independent establishment, or instrumentality of*
 18 *the United States (to the fullest extent permitted by*
 19 *law) with respect to the current financial and eco-*
 20 *nomie crisis.*

21 *(d) POWERS OF THE COMMISSION.—*

22 *(1) HEARINGS AND EVIDENCE.—The Commission*
 23 *may, for purposes of carrying out this section—*

1 (A) hold hearings, sit and act at times and
 2 places, take testimony, receive evidence, and ad-
 3 minister oaths; and

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

8 (2) SUBPOENAS.—

9 (A) SERVICE.—Subpoenas issued under
 10 paragraph (1)(B) may be served by any person
 11 designated by the Commission.

12 (B) ENFORCEMENT.—

13 (i) IN GENERAL.—In the case of contu-
 14 macy or failure to obey a subpoena issued
 15 under paragraph (1)(B), the United States
 16 district court for the judicial district in
 17 which the subpoenaed person resides, is
 18 served, or may be found, or where the sub-
 19 poena is returnable, may issue an order re-
 20 quiring such person to appear at any des-
 21 ignated place to testify or to produce docu-
 22 mentary or other evidence. Any failure to
 23 obey the order of the court may be punished
 24 by the court as a contempt of that court.

1 (ii) *ADDITIONAL ENFORCEMENT.*—Sec-
 2 tions 102 through 104 of the Revised Stat-
 3 utes of the United States (2 U.S.C. 192
 4 through 194) shall apply in the case of any
 5 failure of any witness to comply with any
 6 subpoena or to testify when summoned
 7 under the authority of this section.

8 (iii) *ISSUANCE.*—A subpoena may be
 9 issued under this subsection only—

10 (I) by the agreement of the Chair-
 11 person and the Vice Chairperson; or

12 (II) by the affirmative vote of a
 13 majority of the Commission, a major-
 14 ity being present.

15 (3) *CONTRACTING.*—The Commission may enter
 16 into contracts to enable the Commission to discharge
 17 its duties under this section.

18 (4) *INFORMATION FROM FEDERAL AGENCIES AND*
 19 *OTHER ENTITIES.*—

20 (A) *IN GENERAL.*—The Commission may se-
 21 cure directly from any department, agency, bu-
 22 reau, board, commission, office, independent es-
 23 tablishment, or instrumentality of the United
 24 States any information related to any inquiry of
 25 the Commission conducted under this section, in-

cluding information of a confidential nature
 (which the Commission shall maintain in a se-
 cure manner). Each such department, agency,
 bureau, board, commission, office, independent
 establishment, or instrumentality shall furnish
 such information directly to the Commission
 upon request.

(B) *OTHER ENTITIES.*—It is the sense of the
 Congress that the Commission should seek testi-
 mony or information from principals and other
 representatives of government agencies and pri-
 vate entities that were significant participants
 in the United States and global financial and
 housing markets during the time period exam-
 ined by the Commission.

(5) *ADMINISTRATIVE SUPPORT SERVICES.*—Upon
 the request of the Commission—

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

(B) other Federal departments and agencies
 may provide to the Commission any administra-
 tive support services as may be determined by

1 *the head of such department or agency to be ad-*
 2 *visable and authorized by law.*

3 (6) *DONATIONS OF GOODS AND SERVICES.—The*
 4 *Commission may accept, use, and dispose of gifts or*
 5 *donations of services or property.*

6 (7) *POSTAL SERVICES.—The Commission may*
 7 *use the United States mails in the same manner and*
 8 *under the same conditions as departments and agen-*
 9 *cies of the United States.*

10 (8) *POWERS OF SUBCOMMITTEES, MEMBERS, AND*
 11 *AGENTS.—Any subcommittee, member, or agent of the*
 12 *Commission may, if authorized by the Commission,*
 13 *take any action which the Commission is authorized*
 14 *to take by this section.*

15 (e) *STAFF OF THE COMMISSION.—*

16 (1) *DIRECTOR.—The Commission shall have a*
 17 *Director who shall be appointed by the Chairperson*
 18 *and the Vice Chairperson, acting jointly.*

19 (2) *STAFF.—The Chairperson and the Vice*
 20 *Chairperson may jointly appoint additional per-*
 21 *sonnel, as may be necessary, to enable the Commis-*
 22 *sion to carry out its functions.*

23 (3) *APPLICABILITY OF CERTAIN CIVIL SERVICE*
 24 *LAWS.—The Director and staff of the Commission*
 25 *may be appointed without regard to the provisions of*

1 *title 5, United States Code, governing appointments*
 2 *in the competitive service, and may be paid without*
 3 *regard to the provisions of chapter 51 and subchapter*
 4 *III of chapter 53 of such title relating to classification*
 5 *and General Schedule pay rates, except that no rate*
 6 *of pay fixed under this paragraph may exceed the*
 7 *equivalent of that payable for a position at level V of*
 8 *the Executive Schedule under section 5316 of title 5,*
 9 *United States Code. Any individual appointed under*
 10 *paragraph (1) or (2) shall be treated as an employee*
 11 *for purposes of chapters 63, 81, 83, 84, 85, 87, 89,*
 12 *89A, 89B, and 90 of that title.*

13 (4) *DETAILEES.*—*Any Federal Government em-*
 14 *ployee may be detailed to the Commission without re-*
 15 *imbursement from the Commission, and such detailee*
 16 *shall retain the rights, status, and privileges of his or*
 17 *her regular employment without interruption.*

18 (5) *CONSULTANT SERVICES.*—*The Commission is*
 19 *authorized to procure the services of experts and con-*
 20 *sultants in accordance with section 3109 of title 5,*
 21 *United States Code, but at rates not to exceed the*
 22 *daily rate paid a person occupying a position at level*
 23 *IV of the Executive Schedule under section 5315 of*
 24 *title 5, United States Code.*

25 (f) *COMPENSATION AND TRAVEL EXPENSES.*—

1 (1) *COMPENSATION.*—*Each member of the Com-*
 2 *mission may be compensated at a rate not to exceed*
 3 *the daily equivalent of the annual rate of basic pay*
 4 *in effect for a position at level IV of the Executive*
 5 *Schedule under section 5315 of title 5, United States*
 6 *Code, for each day during which that member is en-*
 7 *gaged in the actual performance of the duties of the*
 8 *Commission.*

9 (2) *TRAVEL EXPENSES.*—*While away from their*
 10 *homes or regular places of business in the perform-*
 11 *ance of services for the Commission, members of the*
 12 *Commission shall be allowed travel expenses, includ-*
 13 *ing per diem in lieu of subsistence, in the same man-*
 14 *ner as persons employed intermittently in the Govern-*
 15 *ment service are allowed expenses under section*
 16 *5703(b) of title 5, United States Code.*

17 (g) *NONAPPLICABILITY OF FEDERAL ADVISORY COM-*
 18 *MITTEE ACT.*—*The Federal Advisory Committee Act (5*
 19 *U.S.C. App.) shall not apply to the Commission.*

20 (h) *REPORT OF THE COMMISSION; APPEARANCE BE-*
 21 *FORE AND CONSULTATIONS WITH CONGRESS.*—

22 (1) *REPORT.*—*On December 15, 2010, the Com-*
 23 *mission shall submit to the President and to the Con-*
 24 *gress a report containing the findings and conclusions*

1 *of the Commission on the causes of the current finan-*
 2 *cial and economic crisis in the United States.*

3 (2) *INSTITUTION-SPECIFIC REPORTS AUTHORIZED.*—*At the discretion of the chairperson of the*
 4 *Commission, the report under paragraph (1) may in-*
 5 *clude reports or specific findings on any financial in-*
 6 *stitution examined by the Commission under sub-*
 7 *section (c)(2).*

9 (3) *APPEARANCE BEFORE THE CONGRESS.*—*The*
 10 *chairperson of the Commission shall, not later than*
 11 *120 days after the date of submission of the final re-*
 12 *ports under paragraph (1), appear before the Com-*
 13 *mittee on Banking, Housing, and Urban Affairs of*
 14 *the Senate and the Committee on Financial Services*
 15 *of the House of Representatives regarding such reports*
 16 *and the findings of the Commission.*

17 (4) *CONSULTATIONS WITH THE CONGRESS.*—*The*
 18 *Commission shall consult with the Committee on*
 19 *Banking, Housing, and Urban Affairs of the Senate,*
 20 *the Committee on Financial Services of the House of*
 21 *Representatives, and other relevant committees of the*
 22 *Congress, for purposes of informing the Congress on*
 23 *the work of the Commission.*

24 (i) *TERMINATION OF COMMISSION.*—

1 (1) *IN GENERAL.*—*The Commission, and all the*
 2 *authorities of this section, shall terminate 60 days*
 3 *after the date on which the final report is submitted*
 4 *under subsection (h).*

5 (2) *ADMINISTRATIVE ACTIVITIES BEFORE TERMI-*
 6 *NATION.*—*The Commission may use the 60-day period*
 7 *referred to in paragraph (1) for the purpose of con-*
 8 *cluding the activities of the Commission, including*
 9 *providing testimony to committees of the Congress*
 10 *concerning reports of the Commission and dissemi-*
 11 *nating the final report submitted under subsection*
 12 *(h).*

13 (j) *AUTHORIZATION OF APPROPRIATION.*—*There is au-*
 14 *thorized to be appropriated to the Secretary of the Treasury*
 15 *such sums as are necessary to cover the costs of the Commis-*
 16 *sion.*

Amend the title so as to read: “An Act to improve enforcement of mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.”.

Attest:

Clerk.

11TH CONGRESS
1ST Session

S. 386

AMENDMENTS