

111TH CONGRESS  
1ST SESSION

# S. 386

---

## 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.

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

1 **TITLE I—FRAUD ENFORCEMENT**  
 2 **AND RECOVERY ACT OF 2009**

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fraud Enforcement  
 5 and Recovery Act of 2009” or “FERA”.

6 **SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURI-**  
 7 **TIES, AND FINANCIAL FRAUD RECOVERY AND**  
 8 **ENFORCEMENT.**

9 (a) DEFINITION OF FINANCIAL INSTITUTION  
 10 AMENDED TO INCLUDE MORTGAGE LENDING BUSI-  
 11 NESS.—Section 20 of title 18, United States Code, is  
 12 amended—

13 (1) in paragraph (8), by striking “or” after the  
 14 semicolon;

15 (2) in paragraph (9), by striking the period and  
 16 inserting “; or”; and

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

18 “(10) a mortgage lending business (as defined  
 19 in section 27 of this title) or any person or entity  
 20 that makes in whole or in part a federally related  
 21 mortgage loan as defined in 12 U.S.C. 2602(1).”.

22 (b) MORTGAGE LENDING BUSINESS DEFINED.—

23 (1) IN GENERAL.—Chapter 1 of title 18, United  
 24 States Code, is amended by inserting after section  
 25 26 the following:

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

2 “In this title, the term ‘mortgage lending business’  
3 means an organization which finances or refinances any  
4 debt secured by an interest in real estate, including private  
5 mortgage companies and any subsidiaries of such organi-  
6 zations, and whose activities affect interstate or foreign  
7 commerce.”.

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

“27. Mortgage lending business defined.”.

11 (c) FALSE STATEMENTS IN MORTGAGE APPLICA-  
12 TIONS AMENDED TO INCLUDE FALSE STATEMENTS BY  
13 MORTGAGE BROKERS AND AGENTS OF MORTGAGE LEND-  
14 ING BUSINESSES.—Section 1014 of title 18, United States  
15 Code, is amended by—

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

18 (2) inserting after “section 25(a) of the Federal  
19 Reserve Act” the following: “or a mortgage lending  
20 business whose activities affect interstate or foreign  
21 commerce, or any person or entity that makes in  
22 whole or in part a federally related mortgage loan as  
23 defined in 12 U.S.C. 2602(1)”.

24 (d) MAJOR FRAUD AGAINST THE GOVERNMENT  
25 AMENDED TO INCLUDE ECONOMIC RELIEF AND TROU-

1 BLED ASSET RELIEF PROGRAM FUNDS.—Section 1031(a)  
 2 of title 18, United States Code, is amended by—

3 (1) inserting after “or promises, in” the fol-  
 4 lowing: “any grant, contract, subcontract, subsidy,  
 5 loan, guarantee, insurance or other form of Federal  
 6 assistance, including through the Troubled Assets  
 7 Relief Program, an economic stimulus, recovery or  
 8 rescue plan provided by the Government, or the Gov-  
 9 ernment’s purchase of any troubled asset as defined  
 10 in the Emergency Economic Stabilization Act of  
 11 2008, or in”;

12 (2) striking “the contract, subcontract” and in-  
 13 serting “such grant, contract, subcontract, subsidy,  
 14 loan, guarantee, insurance or other form of Federal  
 15 assistance,”; and

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

17 (e) SECURITIES FRAUD AMENDED TO INCLUDE  
 18 FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-  
 19 ITIES.—

20 (1) IN GENERAL.—Section 1348 of title 18,  
 21 United States Code, is amended—

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

24 (B) by inserting “any commodity for fu-  
 25 ture delivery, or any option on a commodity for

1 future delivery, or” after “any person in con-  
 2 nection with”; and

3 (C) by inserting “any commodity for fu-  
 4 ture delivery, or any option on a commodity for  
 5 future delivery, or” after “in connection with  
 6 the purchase or sale of”.

7 (2) CHAPTER ANALYSIS.—The item for section  
 8 1348 in the chapter analysis for chapter 63 of title  
 9 18, United States Code, is amended by inserting  
 10 “and commodities” after “Securities”.

11 (f) MONEY LAUNDERING AMENDED TO DEFINE  
 12 PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.—

13 (1) MONEY LAUNDERING.—Section 1956(c) of  
 14 title 18, United States Code, is amended—

15 (A) in paragraph (8), by striking the pe-  
 16 riod and inserting “; and”; and

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

18 “(9) the term ‘proceeds’ means any property  
 19 derived from or obtained or retained, directly or in-  
 20 directly, through some form of unlawful activity, in-  
 21 cluding the gross receipts of such activity.”.

22 (2) MONETARY TRANSACTIONS.—Section  
 23 1957(f) of title 18, United States Code, is amended  
 24 by striking paragraph (3) and inserting the fol-  
 25 lowing:

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

4 (g) MAKING THE INTERNATIONAL MONEY LAUN-  
 5 DERING STATUTE APPLY TO TAX EVASION.—Section  
 6 1956(a)(2)(A) of title 18, United States Code, is amended  
 7 by—

8 (1) inserting “(i)” before “with the intent to  
 9 promote”; and

10 (2) adding at the end the following:

11 “(ii) with the intent to engage in con-  
 12 duct constituting a violation of section  
 13 7201 or 7206 of the Internal Revenue  
 14 Code of 1986; or”.

15 **SEC. 3. ADDITIONAL FUNDING FOR INVESTIGATORS AND**  
 16 **PROSECUTORS FOR MORTGAGE FRAUD, SE-**  
 17 **CURITIES FRAUD, AND OTHER CASES IN-**  
 18 **VOLVING FEDERAL ECONOMIC ASSISTANCE.**

19 (a) IN GENERAL.—

20 (1) AUTHORIZATION.—There is authorized to  
 21 be appropriated to the Attorney General, to remain  
 22 available until expended, \$165,000,000 for each of  
 23 the fiscal years 2010 and 2011, for the purposes of  
 24 investigations, prosecutions, and civil proceedings in-  
 25 volving Federal assistance programs and financial

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

3 (2) ALLOCATIONS.—With respect to fiscal years  
4 2010 and 2011, the amount authorized to be appro-  
5 priated under paragraph (1) shall be allocated as  
6 follows:

7 (A) Federal Bureau of Investigation:  
8 \$75,000,000 for fiscal year 2010 and  
9 \$65,000,000 for fiscal year 2011.

10 (B) The offices of the United States Attor-  
11 neys: \$50,000,000.

12 (C) The criminal division of the Depart-  
13 ment of Justice: \$20,000,000.

14 (D) The civil division of the Department of  
15 Justice: \$15,000,000.

16 (E) The tax division of the Department of  
17 Justice: \$5,000,000.

18 (b) ADDITIONAL APPROPRIATIONS FOR THE POSTAL  
19 INSPECTION SERVICE.—There is authorized to be appro-  
20 priated to the Postal Inspection Service of the United  
21 States Postal Service, \$30,000,000 for each of the fiscal  
22 years 2010 and 2011 for investigations involving Federal  
23 assistance programs and financial institutions, including  
24 financial institutions to which this Act and amendments  
25 made by this Act apply.

1       (c) ADDITIONAL APPROPRIATIONS FOR THE INSPEC-  
2 TOR GENERAL FOR THE DEPARTMENT OF HOUSING AND  
3 URBAN DEVELOPMENT.—There is authorized to be appro-  
4 priated to the Inspector General of the Department of  
5 Housing and Urban Development, \$30,000,000 for each  
6 of the fiscal years 2010 and 2011 for investigations involv-  
7 ing Federal assistance programs and financial institutions,  
8 including financial institutions to which this Act and  
9 amendments made by this Act apply.

10       (d) ADDITIONAL APPROPRIATIONS FOR THE UNITED  
11 STATES SECRET SERVICE.—There is authorized to be ap-  
12 propriated to the United States Secret Service of the De-  
13 partment of Homeland Security, \$20,000,000 for each of  
14 the fiscal years 2010 and 2011 for investigations involving  
15 Federal assistance programs and financial institutions, in-  
16 cluding financial institutions to which this Act and amend-  
17 ments made by this Act apply.

18       (e) USE OF FUNDS.—The funds authorized to be ap-  
19 propriated under subsections (a), (b), (c), and (d) shall  
20 be limited to cover the costs of each listed agency or de-  
21 partment for investigating possible criminal, civil, or ad-  
22 ministrative violations and for prosecuting criminal, civil,  
23 or administrative proceedings involving financial crimes  
24 and crimes against Federal assistance programs, including  
25 mortgage fraud, securities fraud, financial institution



1 fraud, and other frauds related to Federal assistance and  
2 relief programs.

3 (f) REPORT TO CONGRESS.—Following the final ex-  
4 penditure of all funds appropriated under this section that  
5 were authorized by subsections (a), (b), (c), and (d) the  
6 Attorney General, in consultation with the United States  
7 Postal Inspection Service, the Inspector General for the  
8 Department of Housing and Urban Development, and the  
9 Secretary of Homeland Security, shall submit a joint re-  
10 port to Congress identifying—

11 (1) the amounts expended under subsections  
12 (a), (b), (c), and (d) and a certification of compli-  
13 ance with the requirements listed in subsection (e);  
14 and

15 (2) the amounts recovered as a result of crimi-  
16 nal or civil restitution, fines, penalties, and other  
17 monetary recoveries resulting from criminal, civil, or  
18 administrative proceedings and settlements under-  
19 taken with funds authorized by this Act.

20 (g) ADDITIONAL APPROPRIATIONS FOR THE SECURI-  
21 TIES AND EXCHANGE COMMISSION.—

22 (1) IN GENERAL.—There is authorized to be  
23 appropriated to the Securities and Exchange Com-  
24 mission, \$20,000,000 for each of the fiscal years  
25 2010 and 2011 for investigations and enforcement

1 proceedings involving financial institutions, including  
 2 financial institutions to which this Act and amend-  
 3 ments made by this Act apply.

4 (2) INSPECTOR GENERAL.—There is authorized  
 5 to be appropriated to the Securities and Exchange  
 6 Commission, \$1,000,000 for each of the fiscal years  
 7 2010 and 2011 for the salaries and expenses of the  
 8 Office of the Inspector General of the Securities and  
 9 Exchange Commission.

10 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO**  
 11 **REFLECT THE ORIGINAL INTENT OF THE**  
 12 **LAW.**

13 (a) CLARIFICATION OF THE FALSE CLAIMS ACT.—  
 14 Section 3729 of title 31, United States Code, is amend-  
 15 ed—

16 (1) by striking subsection (a) and inserting the  
 17 following:

18 “(a) LIABILITY FOR CERTAIN ACTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2),  
 20 any person who—

21 “(A) knowingly presents, or causes to be  
 22 presented, a false or fraudulent claim for pay-  
 23 ment or approval;

1           “(B) knowingly makes, uses, or causes to  
2           be made or used, a false record or statement  
3           material to a false or fraudulent claim;

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

6           “(D) has possession, custody, or control of  
7           property or money used, or to be used, by the  
8           Government and knowingly delivers, or causes  
9           to be delivered, less than all of that money or  
10          property;

11          “(E) is authorized to make or deliver a  
12          document certifying receipt of property used, or  
13          to be used, by the Government and, intending  
14          to defraud the Government, makes or delivers  
15          the receipt without completely knowing that the  
16          information on the receipt is true;

17          “(F) knowingly buys, or receives as a  
18          pledge of an obligation or debt, public property  
19          from an officer or employee of the Government,  
20          or a member of the Armed Forces, who lawfully  
21          may not sell or pledge property; or

22          “(G) knowingly makes, uses, or causes to  
23          be made or used, a false record or statement  
24          material to an obligation to pay or transmit  
25          money or property to the Government, or know-

1           ingly conceals or knowingly and improperly  
2           avoids or decreases an obligation to pay or  
3           transmit money or property to the Government,  
4           is liable to the United States Government for a civil  
5           penalty of not less than \$5,000 and not more than  
6           \$10,000, as adjusted by the Federal Civil Penalties  
7           Inflation Adjustment Act of 1990 (28 U.S.C. 2461  
8           note; Public Law 104–410), plus 3 times the  
9           amount of damages which the Government sustains  
10          because of the act of that person.

11           “(2) REDUCED DAMAGES.—If the court finds  
12          that—

13                   “(A) the person committing the violation  
14                   of this subsection furnished officials of the  
15                   United States responsible for investigating false  
16                   claims violations with all information known to  
17                   such person about the violation within 30 days  
18                   after the date on which the defendant first ob-  
19                   tained the information;

20                   “(B) such person fully cooperated with any  
21                   Government investigation of such violation; and

22                   “(C) at the time such person furnished the  
23                   United States with the information about the  
24                   violation, no criminal prosecution, civil action,  
25                   or administrative action had commenced under

1           this title with respect to such violation, and the  
 2           person did not have actual knowledge of the ex-  
 3           istence of an investigation into such violation,  
 4       the court may assess not less than 2 times the  
 5       amount of damages which the Government sustains  
 6       because of the act of that person.

7           “(3) COSTS OF CIVIL ACTIONS.—A person vio-  
 8       lating this subsection shall also be liable to the  
 9       United States Government for the costs of a civil ac-  
 10      tion brought to recover any such penalty or dam-  
 11      ages.”;

12           (2) by striking subsections (b) and (c) and in-  
 13      serting the following:

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

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

16                   “(A) mean that a person, with respect to  
 17           information—

18                           “(i) has actual knowledge of the infor-  
 19                   mation;

20                           “(ii) acts in deliberate ignorance of  
 21                   the truth or falsity of the information; or

22                           “(iii) acts in reckless disregard of the  
 23                   truth or falsity of the information; and

24                   “(B) require no proof of specific intent to  
 25           defraud;

1 “(2) the term ‘claim’—

2 “(A) means any request or demand, wheth-  
3 er under a contract or otherwise, for money or  
4 property and whether or not the United States  
5 has title to the money or property, that—

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

8 “(ii) is made to a contractor, grantee,  
9 or other recipient, if the money or property  
10 is to be spent or used on the Government’s  
11 behalf or to advance a Government pro-  
12 gram or interest, and if the United States  
13 Government—

14 “(I) provides or has provided any  
15 portion of the money or property re-  
16 quested or demanded; or

17 “(II) will reimburse such con-  
18 tractor, grantee, or other recipient for  
19 any portion of the money or property  
20 which is requested or demanded; and

21 “(B) does not include requests or demands  
22 for money or property that the Government has  
23 paid to an individual as compensation for Fed-  
24 eral employment or as an income subsidy with

1 no restrictions on that individual’s use of the  
 2 money or property;

3 “(3) the term ‘obligation’ means an established  
 4 duty, whether or not fixed, arising from an express  
 5 or implied contractual, grantor-grantee, or licensor-  
 6 licensee relationship, from a fee-based or similar re-  
 7 lationship, from statute or regulation, or from the  
 8 retention of any overpayment; and

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

12 (3) by redesignating subsections (d) and (e) as  
 13 subsections (c) and (d), respectively; and

14 (4) in subsection (c), as redesignated, by strik-  
 15 ing “subparagraphs (A) through (C) of subsection  
 16 (a)” and inserting “subsection (a)(2)”.

17 (b) EFFECTIVE DATE AND APPLICATION.—The  
 18 amendments made by this section shall take effect on the  
 19 date of enactment of this Act and shall apply to conduct  
 20 on or after the date of enactment, except that subpara-  
 21 graph (B) of section 3729(a)(1) of title 31, United States  
 22 Code, as added by subsection (a)(1), shall take effect as  
 23 if enacted on June 7, 2008, and apply to all claims under  
 24 the False Claims Act (31 U.S.C. 3729 et seq.) that are  
 25 pending on or after that date.

1 **SEC. 5. FINANCIAL MARKETS COMMISSION.**

2 (a) ESTABLISHMENT OF COMMISSION.—There is es-  
 3 tablished in the legislative branch the Financial Markets  
 4 Commission (in this section referred to as the “Commis-  
 5 sion”) to examine all causes, domestic and global, of the  
 6 current financial and economic crisis in the United States.

7 (b) COMPOSITION OF THE COMMISSION.—

8 (1) MEMBERS.—The Commission shall be com-  
 9 posed of 10 members, of whom—

10 (A) 2 members shall be appointed by the  
 11 majority leader of the Senate;

12 (B) 2 members shall be appointed by the  
 13 Speaker of the House of Representatives;

14 (C) 1 member shall be appointed by the  
 15 minority leader of the Senate;

16 (D) 1 member shall be appointed by the  
 17 minority leader of the House of Representa-  
 18 tives;

19 (E) 1 member shall be appointed by the  
 20 Chairman of the Committee on Banking, Hous-  
 21 ing, and Urban Affairs of the Senate;

22 (F) 1 member shall be appointed by the  
 23 ranking member of the Committee on Banking,  
 24 Housing, and Urban Affairs of the Senate;



1 (G) 1 member shall be appointed by the  
 2 chairman of the Committee on Financial Serv-  
 3 ices of the House of Representatives; and

4 (H) 1 member shall be appointed by the  
 5 ranking member of the Committee on Financial  
 6 Services of the House of Representatives.

7 (2) QUALIFICATIONS; LIMITATION.—

8 (A) IN GENERAL.—Individuals appointed  
 9 to the Commission shall be United States citi-  
 10 zens having significant experience in such fields  
 11 as banking, regulation of markets, taxation, fi-  
 12 nance, economics and housing.

13 (B) LIMITATION.—No person who is a  
 14 member of Congress or an officer or employee  
 15 of the Federal Government or any State or local  
 16 government may serve as a member of the  
 17 Commission.

18 (3) CHAIRPERSON; VICE CHAIRPERSON.—

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

1           nORITY Leader of the Senate and the Minority  
2           Leader of the House of Representatives.

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

7                   (4) INITIAL MEETING.—If, 45 days after the  
8           date of enactment of this Act, 4 or more members  
9           of the Commission have been appointed, those mem-  
10          bers who have been appointed may meet and, if nec-  
11          essary, select a temporary Chairperson and Vice  
12          Chairperson, who may begin the operations of the  
13          Commission, including the hiring of staff.

14                   (5) QUORUM; VACANCIES.—After the initial  
15          meeting of the Commission, the Commission shall  
16          meet upon the call of the Chairperson or a majority  
17          of its members. Six members of the Commission  
18          shall constitute a quorum. Any vacancy on the Com-  
19          mission shall not affect its powers, but shall be filled  
20          in the same manner in which the original appoint-  
21          ment was made.

22                   (c) FUNCTIONS OF THE COMMISSION.—The func-  
23          tions of the Commission are—

1           (1) to examine the causes of the current finan-  
2           cial and economic crisis in the United States, includ-  
3           ing the role, if any, of—

4                   (A) fraud and abuse in the financial sector;

5                   (B) Federal and State financial regulators,  
6           including the extent to which they enforced, or  
7           failed to enforce statutory, regulatory, or super-  
8           visory requirements;

9                   (C) the global imbalance of savings, inter-  
10          national capital flows, and fiscal imbalances of  
11          various governments;

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

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

17                  (F) tax treatment of financial products  
18          and investments;

19                  (G) capital requirements and regulations  
20          on leverage and liquidity, including the capital  
21          structures of regulated and non-regulated finan-  
22          cial entities;

23                  (H) credit rating agencies;

1 (I) lending practices and securitization, in-  
2 cluding the originate-to-distribute model for ex-  
3 tending credit and transferring risk;

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

7 (K) market participant expectations that  
8 certain institutions were “too-big-to-fail”;

9 (L) corporate governance, including the  
10 impact of company conversions from partner-  
11 ships to corporations;

12 (M) compensation structures;

13 (N) changes in compensation for employees  
14 of financial companies, as compared to com-  
15 pensation for others with similar skill sets in  
16 the labor market;

17 (O) Federal housing policy;

18 (P) derivatives and unregulated financial  
19 products and practices;

20 (Q) short-selling;

21 (R) financial institution reliance on numer-  
22 ical models, including risk models and credit  
23 ratings;

24 (S) the legal and regulatory structure gov-  
25 erning financial institutions;

1 (T) the legal and regulatory structure gov-  
2 erning investor protection;

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

5 (V) the reliance on credit ratings by Fed-  
6 eral financial regulators, and the use of credit  
7 ratings in financial regulation; and

8 (W) the quality of due diligence under-  
9 taken by financial institutions;

10 (2) to examine the causes of the collapse of  
11 each major financial institution that failed (includ-  
12 ing institutions that were acquired to prevent their  
13 failure) or was likely to have failed if not for the re-  
14 ceipt of exceptional Government assistance from the  
15 Department of the Treasury during the period be-  
16 ginning in August 2007 through April 2009;

17 (3) to submit a report under subsection (g);

18 (4) to refer to the Attorney General of the  
19 United States and any appropriate State attorney  
20 general any person that the Commission finds may  
21 have violated the laws of the United States in rela-  
22 tion to such crisis; and

23 (5) to review and build upon the record of the  
24 Committee on Banking, Housing, and Urban Affairs  
25 of the Senate, the Committee on Financial Services

1 of the House of Representatives, other Congressional  
 2 committees, the Government Accountability Office,  
 3 and other legislative panels with respect to the cur-  
 4 rent financial and economic crisis.

5 (d) POWERS OF THE COMMISSION.—

6 (1) HEARINGS AND EVIDENCE.—The Commis-  
 7 sion may, for purposes of carrying out this section—

8 (A) hold hearings, sit and act at times and  
 9 places, take testimony, receive evidence, and ad-  
 10 minister oaths; and

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

15 (2) SUBPOENAS.—

16 (A) SERVICE.—Subpoenas issued under  
 17 paragraph (1)(B) may be served by any person  
 18 designated by the Commission.

19 (B) ENFORCEMENT.—

20 (i) IN GENERAL.—In the case of con-  
 21 tumacy or failure to obey a subpoena  
 22 issued under paragraph (1)(B), the United  
 23 States district court for the judicial district  
 24 in which the subpoenaed person resides, is  
 25 served, or may be found, or where the sub-

1 poena is returnable, may issue an order re-  
 2 quiring such person to appear at any des-  
 3 ignated place to testify or to produce docu-  
 4 mentary or other evidence. Any failure to  
 5 obey the order of the court may be pun-  
 6 ished by the court as a contempt of that  
 7 court.

8 (ii) ADDITIONAL ENFORCEMENT.—

9 Sections 102 through 104 of the Revised  
 10 Statutes of the United States (2 U.S.C.  
 11 192 through 194) shall apply in the case  
 12 of any failure of any witness to comply  
 13 with any subpoena or to testify when sum-  
 14 moned under the authority of this section.

15 (3) CONTRACTING.—The Commission may

16 enter into contracts to enable the Commission to dis-  
 17 charge its duties under this section.

18 (4) INFORMATION FROM FEDERAL AGENCIES

19 AND OTHER ENTITIES.—

20 (A) IN GENERAL.—The Commission may

21 secure directly from any department, agency, or  
 22 instrumentality of the United States any infor-  
 23 mation related to any inquiry of the Commis-  
 24 sion conducted under this section, including in-  
 25 formation of a confidential nature (which the

1 Commission shall maintain in a secure man-  
2 ner). Each such department, agency, or instru-  
3 mentality shall furnish such information di-  
4 rectly to the Commission upon request.

5 (B) OTHER ENTITIES.—It is the sense of  
6 the Congress that the Commission should seek  
7 testimony or information from principals and  
8 other representatives of government agencies  
9 and private entities that were significant par-  
10 ticipants in the United States and global finan-  
11 cial and housing markets during the time pe-  
12 riod examined by the Commission.

13 (5) FUNDING.—The Secretary of the Treasury  
14 shall provide, out of money previously appropriated,  
15 \$5,000,000 to the Commission to carry out this sec-  
16 tion, to remain available until expended or until ter-  
17 mination of the Commission under subsection (h).

18 (6) DONATIONS OF GOODS AND SERVICES.—  
19 The Commission may accept, use, and dispose of  
20 gifts or donations of services or property.

21 (7) POSTAL SERVICES.—The Commission may  
22 use the United States mails in the same manner and  
23 under the same conditions as departments and agen-  
24 cies of the United States.



1           (8) POWERS OF SUBCOMMITTEES, MEMBERS,  
2           AND AGENTS.—Any subcommittee, member, or agent  
3           of the Commission may, if authorized by the Com-  
4           mission, take any action which the Commission is  
5           authorized to take by this section.

6           (e) STAFF OF THE COMMISSION.—

7           (1) DIRECTOR.—The Commission shall have a  
8           Director who shall be appointed by the Chairperson  
9           and the Vice Chairperson, acting jointly.

10          (2) STAFF.—The Chairperson and the Vice  
11          Chairperson may jointly appoint additional per-  
12          sonnel, as may be necessary, to enable the Commis-  
13          sion to carry out its functions.

14          (3) APPLICABILITY OF CERTAIN CIVIL SERVICE  
15          LAWS.—The Director and staff of the Commission  
16          may be appointed without regard to the provisions  
17          of title 5, United States Code, governing appoint-  
18          ments in the competitive service, and may be paid  
19          without regard to the provisions of chapter 51 and  
20          subchapter III of chapter 53 of such title relating to  
21          classification and General Schedule pay rates, except  
22          that no rate of pay fixed under this paragraph may  
23          exceed the equivalent of that payable for a position  
24          at level V of the Executive Schedule under section  
25          5316 of title 5, United States Code. Any individual

1 appointed under paragraph (1) or (2) shall be treat-  
2 ed as an employee for purposes of chapters 63, 81,  
3 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

4 (4) DETAILEES.—Any Federal Government em-  
5 ployee may be detailed to the Commission without  
6 reimbursement from the Commission, and such  
7 detailee shall retain the rights, status, and privileges  
8 of his or her regular employment without interrup-  
9 tion.

10 (5) CONSULTANT SERVICES.—The Commission  
11 is authorized to procure the services of experts and  
12 consultants in accordance with section 3109 of title  
13 5, United States Code, but at rates not to exceed the  
14 daily rate paid a person occupying a position at level  
15 IV of the Executive Schedule under section 5315 of  
16 title 5, United States Code.

17 (f) COMPENSATION AND TRAVEL EXPENSES.—

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

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

9           (g) REPORT OF THE COMMISSION; APPEARANCE BE-  
 10          FORE AND CONSULTATIONS WITH CONGRESS.—

11           (1) REPORT.—On December 15, 2010, the  
 12           Commission shall submit to the President and to  
 13           Congress a report containing the findings and con-  
 14           clusions of the Commission on the causes of the cur-  
 15           rent financial and economic crisis in the United  
 16           States.

17           (2) INSTITUTION-SPECIFIC REPORTS AUTHOR-  
 18           IZED.—At the discretion of the chairperson of the  
 19           Commission, the report under paragraph (1) may in-  
 20           clude reports or specific findings on any financial in-  
 21           stitution examined by the Commission under sub-  
 22           section (c)(2).

23           (3) APPEARANCE BEFORE CONGRESS.—The  
 24           chairperson of the Commission shall, not later than  
 25           120 days after the date of submission of the final

1 reports under paragraph (1), appear before the  
 2 Committee on Banking, Housing, and Urban Affairs  
 3 of the Senate and the Committee on Financial Serv-  
 4 ices of the House of Representatives regarding such  
 5 reports and the findings of the Commission.

6 (4) CONSULTATIONS WITH CONGRESS.—The  
 7 Commission shall consult with the Committee on  
 8 Banking, Housing, and Urban Affairs of the Senate  
 9 and the Committee on Financial Services of the  
 10 House of Representatives, and may consult with  
 11 other Committees of Congress, for purposes of in-  
 12 forming Congress on the work of the Commission.

13 (h) TERMINATION OF COMMISSION.—

14 (1) IN GENERAL.—The Commission, and all the  
 15 authorities of this section, shall terminate 60 days  
 16 after the date on which the final report is submitted  
 17 under subsection (g).

18 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-  
 19 MINATION.—The Commission may use the 60-day  
 20 period referred to in paragraph (1) for the purpose  
 21 of concluding its activities, including providing testi-  
 22 mony to committees of Congress concerning its re-  
 23 ports and disseminating the final report submitted  
 24 under subsection (g).

1 **TITLE II—SELECT COMMITTEE**  
2 **ON INVESTIGATION OF THE**  
3 **ECONOMIC CRISIS**

4 **SEC. 201. FINDINGS.**

5 The Senate finds the following:

6 (1) The United States is currently facing an  
7 unprecedented economic crisis, with massive losses  
8 of jobs in the United States and an alarming con-  
9 traction of economic activity in the United States.

10 (2) The United States Government has pledged,  
11 committed, or loaned more than \$9,000,000,000,000  
12 as of February 2009 in an attempt to mitigate and  
13 resolve the economic crisis and trillions of dollars  
14 more may well be necessary before the crisis is over.

15 (3) The economic crisis reaches into, and has  
16 impacted, almost every aspect of the United States  
17 economy and significant parts of the international  
18 economy.

19 (4) Any thorough and complete study and in-  
20 vestigation of this complex and far-reaching eco-  
21 nomic crisis will require sustained and singular focus  
22 for many months.

23 (5) A study and investigation of this size and  
24 scope implicates the jurisdiction of several Standing  
25 Committees of the Senate and, if it is to be done

1       correctly and timely, will require a degree of undi-  
 2       vided attention and resources beyond the capacity of  
 3       the Standing Committees of the Senate, which are  
 4       already over-burdened.

5           (6) Adding such a significant study and inves-  
 6       tigation to the duties of the existing Standing Com-  
 7       mittees of the Senate would make it difficult for  
 8       such committees to get their regular required work  
 9       accomplished, particularly when so much attention  
 10      and so many resources are appropriately devoted to  
 11      responding to the ongoing economic crisis.

12          (7) Dozens of important investigations have  
 13      been conducted with the creation of a select com-  
 14      mittee of the Senate for a specific purpose and a set  
 15      time.

16          (8) The American public has a right to get  
 17      straight answers on how this economic crisis devel-  
 18      oped and what steps should be taken to make sure  
 19      that nothing like it happens again.

20   **SEC. 202. SELECT COMMITTEE ON INVESTIGATION OF THE**  
 21                   **ECONOMIC CRISIS.**

22      There is established a select committee of the Senate  
 23      to be known as the Select Committee on Investigation of  
 24      the Economic Crisis (hereafter in this title referred to as  
 25      the “Select Committee”).

1 **SEC. 203. PURPOSE AND DUTIES.**

2 (a) PURPOSE.—The purpose of the Select Committee  
3 is to study and investigate the facts and circumstances  
4 giving rise to the current economic crisis facing the United  
5 States and to recommend actions to be taken to prevent  
6 a future recurrence of such a crisis.

7 (b) DUTIES.—The Select Committee is authorized  
8 and directed to do everything necessary or appropriate to  
9 conduct the study and investigation specified in subsection  
10 (a). Without restricting in any way the authority conferred  
11 on the Select Committee by the preceding sentence, the  
12 Senate further expressly authorizes and directs the Select  
13 Committee to examine the facts and circumstances giving  
14 rise to the current economic crisis facing the United  
15 States, and report on such examination, regarding the fol-  
16 lowing:

17 (1) The causes of the current economic crisis.

18 (2) Lessons learned from the current economic  
19 crisis.

20 (3) Actions to prevent a recurrence of an eco-  
21 nomic crisis such as the current economic crisis.

22 **SEC. 204. COMPOSITION OF SELECT COMMITTEE.**

23 (a) MEMBERSHIP.—

24 (1) IN GENERAL.—The Select Committee shall  
25 consist of 7 members of the Senate of whom—

1 (A) 4 members shall be appointed by the  
 2 majority leader of the Senate; and

3 (B) 3 members shall be appointed by the  
 4 minority leader of the Senate.

5 (2) DATE.—The appointments of the members  
 6 of the Select Committee shall be made not later than  
 7 30 days after the date of enactment of this title.

8 (b) VACANCIES.—Any vacancy in the Select Com-  
 9 mittee shall not affect its powers, but shall be filled in  
 10 the same manner as the original appointment.

11 (c) SERVICE.—Service of a Senator as a member,  
 12 Chair, or Vice Chair of the Select Committee shall not  
 13 be taken into account for the purposes of paragraph (4)  
 14 of rule XXV of the Standing Rules of the Senate.

15 (d) CHAIR AND VICE CHAIR.—The Chair of the Se-  
 16 lect Committee shall be designated by the majority leader  
 17 of the Senate, and the Vice Chair of the Select Committee  
 18 shall be designated by the minority leader of the Senate.

19 (e) QUORUM.—

20 (1) REPORTS AND RECOMMENDATIONS.—A ma-  
 21 jority of the members of the Select Committee shall  
 22 constitute a quorum for the purpose of reporting a  
 23 matter or recommendation to the Senate.



1           (2) TESTIMONY.—One member of the Select  
2       Committee shall constitute a quorum for the purpose  
3       of taking testimony.

4           (3) OTHER BUSINESS.—A majority of the mem-  
5       bers of the Select Committee, or  $\frac{1}{3}$  of the members  
6       of the Select Committee if at least one member of  
7       the minority party is present, shall constitute a  
8       quorum for the purpose of conducting any other  
9       business of the Select Committee.

10 **SEC. 205. RULES AND PROCEDURES.**

11       (a) GOVERNANCE UNDER STANDING RULES OF SEN-  
12       ATE.—Except as otherwise specifically provided in this  
13       title, the investigation, study, and hearings conducted by  
14       the Select Committee shall be governed by the Standing  
15       Rules of the Senate.

16       (b) ADDITIONAL RULES AND PROCEDURES.—In ad-  
17       dition to the provisions of section 208(h), the Select Com-  
18       mittee may adopt additional rules or procedures if the  
19       Chair and the Vice Chair of the Select Committee agree,  
20       or if the Select Committee by majority vote so decides,  
21       that such additional rules or procedures are necessary or  
22       advisable to enable the Select Committee to conduct the  
23       investigation, study, and hearings authorized by this title.  
24       Any such additional rules and procedures—

1           (1) shall not be inconsistent with this title or  
2           the Standing Rules of the Senate; and

3           (2) shall become effective upon publication in  
4           the Congressional Record.

5 **SEC. 206. AUTHORITY OF SELECT COMMITTEE.**

6           (a) IN GENERAL.—The Select Committee may exer-  
7           cise all of the powers and responsibilities of a committee  
8           under rule XXVI of the Standing Rules of the Senate.

9           (b) POWERS.—The Select Committee or, at its direc-  
10          tion, any subcommittee or member of the Select Com-  
11          mittee, may, for the purpose of carrying out this title—

12               (1) hold hearings;

13               (2) administer oaths;

14               (3) sit and act at any time or place during the  
15          sessions, recess, and adjournment periods of the  
16          Senate;

17               (4) authorize and require, by issuance of sub-  
18          poena or otherwise, the attendance and testimony of  
19          witnesses and the preservation and production of  
20          books, records, correspondence, memoranda, papers,  
21          documents, tapes, and any other materials in what-  
22          ever form the Select Committee considers advisable;

23               (5) take testimony, orally, by sworn statement,  
24          by sworn written interrogatory, or by deposition, and  
25          authorize staff members to do the same; and

1           (6) issue letters rogatory and requests, through  
 2           appropriate channels, for any other means of inter-  
 3           national assistance.

4           (c) AUTHORIZATION, ISSUANCE, AND ENFORCEMENT  
 5 OF SUBPOENAS.—

6           (1) AUTHORIZATION AND ISSUANCE.—Sub-  
 7           poenas authorized and issued under this section—

8                   (A) may be done only with the joint con-  
 9                   currence of the Chair and the Vice Chair of the  
 10                  Select Committee;

11                  (B) shall bear the signature of the Chair  
 12                  or the designee of the Chair; and

13                  (C) shall be served by any person or class  
 14                  of persons designated by the Chair for that pur-  
 15                  pose anywhere within or without the borders of  
 16                  the United States to the full extent provided by  
 17                  law.

18           (2) ENFORCEMENT.—The Select Committee  
 19           may make to the Senate by report or resolution any  
 20           recommendation, including a recommendation for  
 21           criminal or civil enforcement, that the Select Com-  
 22           mittee considers appropriate with respect to—

23                   (A) the failure or refusal of any person to  
 24                   appear at a hearing or deposition or to produce  
 25                   or preserve documents or materials described in

1 subsection (b)(4) in obedience to a subpoena or  
 2 order of the Select Committee;

3 (B) the failure or refusal of any person to  
 4 answer questions truthfully and completely dur-  
 5 ing the person's appearance as a witness at a  
 6 hearing or deposition of the Select Committee;  
 7 or

8 (C) the failure or refusal of any person to  
 9 comply with any subpoena or order issued  
 10 under the authority of subsection (b).

11 (d) AVOIDANCE OF DUPLICATION.—

12 (1) IN GENERAL.—To expedite the study and  
 13 investigation, avoid duplication, and promote effi-  
 14 ciency under this title, the Select Committee shall  
 15 seek to—

16 (A) confer with other investigations into  
 17 the matters set forth in section 203(a); and

18 (B) access all information and materials  
 19 acquired or developed in such other investiga-  
 20 tions.

21 (2) ACCESS TO INFORMATION AND MATE-  
 22 RIALS.—The Select Committee shall have, to the  
 23 fullest extent permitted by law, access to any such  
 24 information or materials obtained by any other gov-

1       ernmental department, agency, or body investigating  
2       the matters set forth in section 203(a).

3   **SEC. 207. REPORTS.**

4       (a) INITIAL REPORT.—The Select Committee shall  
5       submit to the Senate a report on the study and investiga-  
6       tion conducted pursuant to section 203 not later than one  
7       year after the appointment of all of the members of the  
8       Select Committee.

9       (b) UPDATED REPORT.—The Select Committee shall  
10      submit an updated report on such investigation not later  
11      than 180 days after the submittal of the report under sub-  
12      section (a).

13      (c) FINAL REPORT.—The Select Committee shall  
14      submit a final report on such investigation not later than  
15      two years after the appointment of all of the members of  
16      the Select Committee.

17      (d) ADDITIONAL REPORTS.—The Select Committee  
18      may submit any additional report or reports that the Se-  
19      lect Committee considers appropriate.

20      (e) FINDINGS AND RECOMMENDATIONS.—The re-  
21      ports under this section shall include findings and rec-  
22      ommendations of the Select Committee regarding the mat-  
23      ters considered under section 203.

24      (f) DISPOSITION OF REPORTS.—All reports made by  
25      the Select Committee shall be submitted to the Secretary

1 of the Senate. All reports made by the Select Committee  
 2 shall be referred to the committee or committees that have  
 3 jurisdiction over the subject matter of the report.

4 **SEC. 208. ADMINISTRATIVE PROVISIONS.**

5 (a) STAFF.—

6 (1) IN GENERAL.—The Select Committee may  
 7 employ in accordance with paragraph (2) a staff  
 8 composed of such clerical, investigatory, legal, tech-  
 9 nical, and other personnel as the Select Committee,  
 10 or the Chair and the Vice Chair of the Select Com-  
 11 mittee considers necessary or appropriate.

12 (2) APPOINTMENT OF STAFF.—The staff of the  
 13 Select Committee shall consist of such personnel as  
 14 the Chair and the Vice Chair shall jointly appoint.  
 15 Such staff may be removed jointly by the Chair and  
 16 the Vice Chair, and shall work under the joint gen-  
 17 eral supervision and direction of the Chair and the  
 18 Vice Chair.

19 (b) COMPENSATION.—The Chair and the Vice Chair  
 20 of the Select Committee shall jointly fix the compensation  
 21 of all personnel of the staff of the Select Committee.

22 (c) REIMBURSEMENT OF EXPENSES.—The Select  
 23 Committee may reimburse the members of its staff for  
 24 travel, subsistence, and other necessary expenses incurred

1 by such staff members in the performance of their func-  
2 tions for the Select Committee.

3 (d) SERVICES OF SENATE STAFF.—The Select Com-  
4 mittee may use, with the prior consent of the chair of any  
5 other committee of the Senate or the chair of any sub-  
6 committee of any committee of the Senate, the facilities  
7 of any other committee of the Senate, or the services of  
8 any members of the staff of such committee or sub-  
9 committee, whenever the Select Committee or the Chair  
10 of the Select Committee considers that such action is nec-  
11 essary or appropriate to enable the Select Committee to  
12 carry out its responsibilities, duties, or functions under  
13 this title.

14 (e) DETAIL OF EMPLOYEES.—The Select Committee  
15 may use on a reimbursable basis, with the prior consent  
16 of the head of the department or agency of Government  
17 concerned and the approval of the Committee on Rules  
18 and Administration of the Senate, the services of per-  
19 sonnel of such department or agency.

20 (f) TEMPORARY AND INTERMITTENT SERVICES.—  
21 The Select Committee may procure the temporary or  
22 intermittent services of individual consultants, or organi-  
23 zations thereof.

24 (g) PAYMENT OF EXPENSES.—There shall be paid  
25 out of the applicable accounts of the Senate such sums

1 as may be necessary for the expenses of the Select Com-  
2 mittee. Such payments shall be made on vouchers signed  
3 by the Chair of the Select Committee and approved in the  
4 manner directed by the Committee on Rules and Adminis-  
5 tration of the Senate. Amounts made available under this  
6 subsection shall be expended in accordance with regula-  
7 tions prescribed by the Committee on Rules and Adminis-  
8 tration of the Senate.

9 (h) CONFLICTS OF INTEREST.—The Select Com-  
10 mittee shall issue rules to prohibit or minimize any con-  
11 flicts of interest involving its members, staff, detailed per-  
12 sonnel, consultants, and any others providing assistance  
13 to the Select Committee. Such rules shall not be incon-  
14 sistent with the Code of Official Conduct of the Senate  
15 or applicable Federal law.

16 **SEC. 209. EFFECTIVE DATE; TERMINATION.**

17 (a) EFFECTIVE DATE.—This title shall take effect on  
18 the date of enactment of this title.



- 1       (b) TERMINATION.—The Select Committee shall ter-  
2   minate three months after the submittal of the report re-  
3   quired by section 207(c).

Passed the Senate April 28, 2009.

Attest:

*Secretary.*

11TH CONGRESS  
1ST Session

**S. 386**

---

**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.