reports that an estimated 1 million cancer survivors are not allowed to resume their careers, begin new ones, or obtain jobs commensurate with their professional abilities. That is 1 million Americans who are denied their right to work and society at large.

Let us not forget the most recent passing of our beloved colleague, Congressman George O'Brien who continued to serve in this body throughout the past four decades and, might I add, served it well. It would never have occurred to any one of us, nor his constituents, to deny George his seat in Congress. His illness in no way impaired his expertise or interest in his work. George is but one example. There are millions of others who survive their cancer, and are robbed of their chance to continue to work and contribute. Due to improved medical research and techniques for early detection, the survival rate of cancer victims has grown rapidly.

By enacting this legislation, House Concurrent Resolution 321, we will be strongly enunciating our opposition to employment discrimination against persons who have or who have had cancer. I am additionally hopeful that this measure will pave the way for further work in this area, by our Federal and State Departments of Labor and other relevant agencies. Accordingly, I urge my colleagues to join in adopting House Concurrent Resolution 321.

Mr. BIAGGI. Mr. Speaker, I yield back the balance of my time.

Mr. HENRY. Mr. Speaker, I yield back the balance of my time.

Mr. BIAGGI. Mr. Speaker, I yield back the balance of my time.

The Speaker pro tempore (Mr. Montgomery). The question is on the motion offered by the gentleman from New York (Mr. Bragg) that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 321. The objection is taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to. A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the concurrent resolution just agreed to.

THE SPEAKER pro tempore. Is there objection to the request of the gentleman from New York? There was no objection.

FALSE CLAIMS AMENDMENTS

ACT OF 1986

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4827) to amend title 31, United States Code, with respect to the fraudulent use of public property or money, as amended. The Clerk read as follows:

H.R. 4827
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "False Claims Amendments Act of 1986".

SEC. 2. FALSE CLAIMS.
Section 3729 of title 31, United States Code, is amended—

(a) by striking "by the Government"; and
(b) by striking "in an armed force and inserting "by the Government";

in paragraph (5)—

(B) by striking "and inserting "by the Government"; and
(C) by striking "the

in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the armed forces";

in subsection (a); or

in subsection (b)(1) plus 2 times the amount equal to consequential damages as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) that the United States sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

the costs of a civil action brought to recover any such penalty or damages.

purposes of this section, consequential damages include damages which the United States have been doubled as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) that the United States sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

For purposes of this section, consequential damages include damages which the United States would not have sustained but for—

(A) the act of such person, or

(B) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

(B) if the Government proceeds with the action before the expiration of the 60-day period or any extension obtained under paragraph (3), the Government shall—

(C) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—

(1) has actual knowledge of the information;

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

(3) acts in reckless disregard of the truth or falsity of the information.

The Government wins such purposes of this section, "claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a Federal contractor, vendor, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government

shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served on the defendant.

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The action, and the Government did not initiate the action solely for purposes of harassment. The requisite showing of good cause is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—If the Government proceeds with an action the person bringing the action is entitled to a reasonable share of recoveries of civil penalties and damages, and any fine, if the action discloses relevant evidence, or relevant information, which the Government did not have at the time the action was brought, the court shall award such person—

proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph applies.

(c) Rights of Parties to Qui Tam Actions.—(1) If the Government proceeds with the action, it shall have the primary responsibility for litigating the action.

The person bringing the action shall have a right to continue in the action with the same rights as those of a person permitted to intervene in an action under Rule 24 of the Federal Rules of Civil Procedure. The Government is not bound by an act of the person bringing the action. A motion by the Government to dismiss the action shall be granted unless the person bringing the action has pursued the civil or criminal investigation or prosecution of a criminal or civil matter arising out of the same facts, which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) The Government may settle the action without the consent of the person bringing the action. The person bringing the action shall have an opportunity for a hearing on the motion.

(3) Upon a showing of the Government that certain actions of discovery by the person bringing the action would significantly interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing must be based on reasonable grounds.

The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or prosecution with responsibility to act in the circumstances, but that no event more than 10 years after the date on which the violation of section 3729 occurred. A summons as required by section 3729 or other false claims law, issue to the prosecution of the action. Where the action is one which the court finds, under the circumstances, to be a civil action in which the Government substantially contributed to the prosecution of the action, the Government may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph applies.

(4) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to continue the action. The person bringing the action under this paragraph shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had in proceeding under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive for the purposes of this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if an appeal is pending but the final conclusion is not subject to judicial review.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had in proceeding under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive for the purposes of this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if an appeal is pending but the final conclusion is not subject to judicial review.

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"(D) to furnish any combination of such material, answers, or testimony."

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is issued for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person that such demand is issued of the date on which such copy was served.

"(2) CONTENTS AND DEADLINES.—

(a) Each civil investigative demand issued under subsection (a) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provisions of law alleged to be violated.

(b) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe dates at which time answers to interrogatories shall be submitted;

(iii) identify the false claims law investigator to whom such material shall be made available;

(c) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with specificity the written interrogatories to be served; and

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(d) If such demand is for the giving of oral testimony, the demand shall—

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

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for documentary material shall not be returned or returned until 30 days after the date on which a copy of such demand has been served upon the person from whom the discovery was obtained.

(b) PROTECTED MATERIAL OR INFORMATION.—

(1) In general.—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral answers as otherwise directed, any such demand, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas duces tecum as described in section 1782 of title 28, and title 28, shall be constructed to provide for the protection of such material; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the applications of such standards to any such demand is appropriate and, to the extent with the provisions of law of the State in which the discovery is to be served.

(2) Effect on other orders, rules, and laws.—Any such demand which is an express demand for documentary material shall supersede any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such civil investigative demand does not constitute a waiver of privilege by the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Served in foreign countries.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the court of the State or foreign jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the State or foreign jurisdiction.

(d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—

(1) Legal entities.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general partner of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity; or

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity, or

(C) depositing an executed copy of such demand or petition in the United States mail with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal or other place of business.

(2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person, by court of the United States District Court for the District of Columbia or of any court of the United States in the State or foreign jurisdiction over any such person, at such place as the false claims law investigator identifies in such demand and in the possession, custody, or control of the person to whom the demand is directed, or at such other place as the false claims law investigator and the person to whom the demand is directed agree to in writing.

(e) SERVICE UPON LAWYERS.—Each civil investigative demand served under this section shall be served upon the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate of service of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person served has been produced and made available, in any form and manner consistent with such demand.

(f) IN CONTESTED ACTIONS.—When a civil investigative demand is served in a contested action respecting compliance with this section, the person to whom such demand is directed may move to quash the demand as it relates to any specific demand for documentary material in response to a civil investigative demand issued under paragraph (1) of subsection (j). Such material shall be made available on the return date specified in such demand, or on such later date as the false claims law investigator and the person to whom the demand is directed agree to in writing.

(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be served separately and fully in writing under oath and in a form and manner consistent with such demand, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or at such other place as the false claims law investigator and the person to whom the demand is directed agree to in writing.

(h) ORAL EXAMINATIONS.—

(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall read to the witness, or some one acting under the direction of the officer and in the officer’s presence, the record of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a true and correct transcript thereof to the false claims law investigator conducting the examination.

(i) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held, or at such other place as the false claims law investigator may prescribe, the person being examined, the person serving the demand, or the officer before whom the testimony is taken.
"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand issued under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, unless such person may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the person or counsel for the person an opportunity to examine the testimony and to read and make changes in form or substance, which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator as the case may be, and shall be signed by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the right to sign the transcript, and the transcript shall be signed by the officer or by the false claims law investigator who transcribed the testimony.

"(5) CERTIFICATION AND DELIVERY TO CUSTOMER.—The officer before whom the testimony is taken shall certify on the transcript that the person was sworn by the officer or false claims law investigator and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly transmit the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the witness may be permitted by the Attorney General, or an Assistant Attorney General, for good cause, limit such witness to inspection of the official transcript of the witness and the official transcript of any testimony taken on a prior occasion and transcribed in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (j) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(1) CUSTOMS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines the time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIAL, DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such documentary material, answers, or transcripts and shall have such custody over them so long as he has the right to retain the record for the return of documentary material under paragraph (4).

"(3) The custodian may cause the preparation of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, or transcripts may be issued by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under the subsection.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or the custodian. The Department of Justice authorized under subparagraph (B) to transmit in writing to the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress.

"(D) Notwithstanding subparagraph (C), documents or portions of documents, or transcripts of oral testimony obtained under a civil investigative demand issued under this section shall be disclosed to agency of the United States if—

"(4) That agency file, in a district court of the United States in which petitions under subsection (j) may be filed, and serves upon the Attorney General a written demand and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained. If any person so served has an opportunity to be heard on the petition; and the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.

"(B) Without limitation of this subparagraph, if any agency of the United States in which petitions under subsection (j) may be filed, and serves upon the Attorney General a written demand and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.
ny notice of the identity and address of the successor so designated. Any person who is designated to be a successor under this paragraph shall have, with respect to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any defect or dereliction which occurred before that designation.

"(3) JUDICIAL PROCEEDINGS.—(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(3) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be supported by such evidence as the petitioner may deem fit. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN.—Any person's predecessor in office, except that the person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, or found, or transacts business, and serve upon such person a petition for an order of such court the enforcement of the civil investigative demand.

"(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand had not been made, and the person refuses to surrender such material, the Attorney General may file, in the district court of the United States for the judicial district in which such person resides, or found, or transacts business, and serve upon such person a petition for an order of such court the enforcement of the civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any property, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section, or any final order entered under this section, whichever date is earlier, or was last pending. Any petition under this subparagraph must be filed within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this section. Any final order so entered shall be subject to appeal under section 1292 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(7) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 3522 of title 31.

"(k) DEFINITIONS.—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(2) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false statement or omission of any officer or employee of the United States;

"(2) the term 'false claims law investigator' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law; and

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Attorney General who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting in connection with the acquisition of such attorney or investigator in connection with a false claims law investigation;
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Members that have helped with this piece of legislation. They are Mr. Kindness, Mr. Fish, and Mr. Brown of Colorado from the Republican side, who has been so cooperative in helping with this area, as well as Mr. Brooks, Mr. Frank, Mr. Bryant, Mr. Strickland, Mr. Berman, and Mr. Ireland.

I also want to particularly give reference to Mr. Berman of California because it was largely through his efforts on the citizens' suit or the qui tam provisions that we were able to work this deal together. Again, to our colleague from Texas, Mr. Brooks, for his help as well.

Mr. Speaker, in 1863, during the Civil War, the False Claims Act became law. This act, sometimes referred to as the “Abraham Lincoln Law”, was enacted amid reports of widespread corruption and fraud in the sale of supplies and provisions to the union government during the war. As originally enacted, the statute imposed civil and criminal liability for false claims against the Government.

Unfortunately against the U.S. Government did not end with the conclusion of the Civil War in 1865. However, the act has only been amended twice in 123 years: Amendments to the qui tam provisions were enacted in 1943, and in 1962, technical amendments were made during the recodification of title 31, where the civil false claims provisions are set forth in the United States Code. With this brief background of the False Claims Act, it is easy to understand why the current law is quite outdated. During hearings before the Subcommittee on Administrative Law and Governmental Relations, several witnesses pointed out that a large part of the problem in prosecuting civil fraud cases is because of the ambiguities and lack of clarity in the current statute, and also because the monetary penalties are no longer a serious deterrent to the filing of false claims.

H.R. 4827, the False Claims Amendments Act of 1986, is a very important piece of legislation. The False Claims Act is the primary vehicle by which the Government prosecutes civil fraud. In 1866, with a deficit in the range of $200 billion, I think it is critically important that we modernize this statute can and should enable the Government to recoup potentially thousands of dollars lost through fraud each year.

Other provisions of the bill include expanding the qui tam or citizen suit, provisions of the law, as well as providing the Government with the power to issue civil investigative demands.

Civil investigative demands (CIDs) are a pre-lawsuit discovery mechanism which allow the Department of Justice to conduct discovery in civil false claims cases, without the expense of first filing a civil fraud case in Federal district court. This CID provision, however, can only be utilized by the Department of Justice if the Attorney General himself approves the issuance of such.

The bill which we are considering today and which is at the desk, is not exactly like the bill which was reported by the full committee on June 10, 1986. Although H.R. 4827, as amended, was reported by the full committee by a unanimous (35-0) rollover vote, several Members still had reservations about the portions contained in the bill. In order to satisfy these reservations, a compromise was reached which includes the following changes to the bill:

First, there is a change to section 3 of the qui tam provisions of the bill. In the bill as reported by the committee, the qui tam plaintiffs when the Government enters the lawsuit, were based on the rights of mandatory intervention, pursuant to rule 24(a) of the Federal Rules of Civil Procedure.

The bill at the desk adopts the standard of intervention to be that of permissive intervention pursuant to rule 24(b) of the Federal Rules. The compromise bill also includes language which provides the qui tam plaintiff with the right to notice of any motion to dismiss filed by the Government and a right to a hearing on any such motion.

Second, the administrative remedy (section 4) is deleted in its entirety. The administrative remedy contained in the bill as reported by the committee applied governmentwide and there were numerous concerns with this provision by several Members. Therefore, this provision has been deleted.

Third, in section 5 of the bill, the Contract Disputes Act language is deleted. With the deletion of the administrative remedy, this bill amends only the current False Claims Act. Since the False Claims Act and the Contract Disputes Act of 1978 have coexisted since 1978, it was decided as part of the compromise, to delete this portion of the bill.

As I said earlier, the False Claims Amendments Act of 1986 is an important piece of legislation. It is important because it is the primary mechanism through which the Government recoups losses suffered through fraud. It is especially important today given the enormous deficit the Government faces. Perhaps, if the False Claims Act had been clarified and updated 30 years ago, we might not face quite the same deficit we do today. In any event, the modernization of this statute can and should enable the Government to recoup potentially thousands of dollars lost through fraud each year.

I would note for the record that the administration supports this bill, and, in addition, the Congressional Budget Office indicates that the bill would have a positive impact on our deficit.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. Brooks. Mr. Speaker, I support H.R. 4827 as it is presented today and hope that my colleagues will also. This legislation makes important improvements to the False Claims Act of 1963. That act was enacted during the Civil War to stem the massive corruption and abuse occurring in the procurement of union war supplies. Today, it serves as the Government’s chief statutory weapon to combat fraud. Except for two relatively minor amendments, however, the False Claims Act has not been revised since its enactment 123 years ago.

Today’s bill would make changes to update the False Claims Act in several significant ways. First, it will increase the civil penalties authorized under the current law. The 1863 act provided for a doubling of actual damages, a $2,000 fine and recovery of the cost of the lawsuit. H.R. 4827 will increase these penalties to double actual damages plus consequential damages, a fine from $5,000 to $10,000, and the costs of suit. These increases in the penalties fixed in 1963 are needed to keep the deterrent value of the False Claims Act current and effective in our modern world.

H.R. 4827 also makes changes to the act’s original qui tam, or citizen suits, provisions. The False Claims Act contains provisions which allow citizens to bring suits for false claims on behalf of the Government. These “Lincoln” provisions, named after President Lincoln, were strengthened by H.R. 4827. The incentives for citizens to file such suits are increased, the ability of the citizen who brings such a suit to follow through with the litigation is enhanced, and “whistle-blower” protections are provided employees who report fraud and abuse in conjunction with false claims prosecutions.

Further, the Justice Department is given greater investigative powers and tools to ferret out false claims and fraud under provisions of the bill.

Together, these changes will add new force and vigor to the Nation’s efforts to stop fraud in Government services and procurements. They are urgently needed in light of the recent indications of massive procurement abuses occurring in the recent military buildup. Along with the changes this bill makes, there are several important special provisions which merit serious consideration. Today’s bill is not a cure-all, but rather an important first step in revising current out-of-date statutory provisions. I hope my colleagues will pass this measure, and I look forward to working with my colleagues in the future on the problem of procurement and services fraud which has plagued our Nation to a greater or lesser extent throughout our history.

Mr. Brown of Colorado. Mr. Speaker, I yield such time as he may
Mr. Speaker, I rise in support of the False Claims Amendments Act of 1986.

The False Claims Act is one of the oldest and potentially most effective remedies available to the United States to discourage and respond to the fraudulent misuse of Federal resources. It is the principal statute upon which the Government relies to seek monetary recovery in fraud cases. The statute was first enacted in 1863 and has made it possible for the Federal Government to recover losses as a result of fraud, waste, and abuse. These cases, in part, are the reason why I introduced the administration's package.

Second, while the False Claims Act is not a penal statute, it does have an important penalty—a double damages recovery. The double damages remedy has been a part of this law since 1863 and implicitly contains a significant deterrence element. The double damages recovery, with the accompanying civil fine, is intended to be a substantial penalty—to forcefully discourage individuals and companies that do business with the United States from engaging in fraudulent practices. Indeed, Mr. Speaker, the dual purpose of any such law should always be to deter as well as punish fraudulent conduct.

Under current law, the Federal Government is limited to actual damages, which are then doubled under the statutory formula. Section 2 of H.R. 4827 would make consequential damages recoverable thus allowing a recovery for indirect losses that are the result of the fraud as well as actual, direct losses. This is a realistic, fair change which ensures the recovery will reflect actual replacement cost in every instance.

Last, but not least, I feel I must stress that I do not view these legislative proposals as anticontractor in nature. Rather, I view these legislative proposals as protaxpayer. There is no question that the responsible representatives of the private sector share our common goals. Specifically, those goals are: First, an efficent Federal procurement process that results in the purchase of quality products and services at fair prices; and second, an effective mechanism for the Government to employ in recovering its losses when victimized by fraud.

Mr. Speaker, allow me to turn to those provisions in the bill that are deserving of special note. To my mind, one of the most important amendments contained in H.R. 4827 deals with the intent standard and the burden of proof in the False Claims Act. The language of the False Claims Act currently provides that the Federal Government need only prove that the defendant knowingly submitted a false claim. However, this statutory standard has been misconstrued by some courts so as to require that the Government prove that the defendant had actual knowledge of the fraud and, even, establish specific intent to submit a false claim. See United States v. Mead, 426 F.2d 118 (9th Cir., 1970).

A specific intent standard, Mr. Speaker, is inappropriate in a civil statute and H.R. 4827 would remove the ambiguity created by this case law by defining knowingly as: First, actual knowledge of the fraud and, second, deliberaite ignorance of the truth or falsity required of the Government. In third, acts in reckless disregard of the truth or falsity of the information.

The burden of proof in civil false claims cases is another area where legislative clarification is necessary to resolve ambiguous decisions. Congress has also developed the civil case law. Some courts have required that the United States prove a violation by clear and convincing, even unequivocal, evidence. United States v. Ueber, 299 F.2d 310 (8th Cir., 1962). The False Claims Act is a civil statute, not a criminal one. The "preponderance of the evidence" burden of proof is more appropriate. Consequently, H.R. 4827 specifically provides that the Government must prove its case by a preponderance of the evidence, the ordinary standard in civil litigation.

H.R. 4827 also contains numerous other amendments, which are designed to resolve specific problems which have arisen under the act:

Section 2(a) raises the fixed statutory penalty for submitting a false claim from $2,000 to not less than $5,000 and not more than $10,000. The $2,000 figure has remained unchanged since the initial enactment of the False Claims Act in 1863.

Section 2(a) also amends the act to permit the United States to bring an action against a member of the Armed Forces, as well as against civilian employees. When the act was first enacted in 1863, the military was excluded because the Government then had available more severe military remedies.

Also, as I mentioned earlier, section 2(a) would permit the Government to recover consequential damages it suffers from the submission of a false claim.

Section 2(a) also provides that an individual who makes a material misrepresentation to avoid paying money owed the Government would be equally liable under the act as if he had submitted a false claim for money or property. This is better known as a reverse false claim. For instance, the manager of HUD-owned property may falsely underestimate income and/or overstate expenses in order to reduce the rental receipts which must be paid to HUD at the end of each month. The existing failure to cover these reverse false claims is a serious loophole in the present law. The requirement that there must be a strict demand for money or property before an actual violation can exist under the False Claim Act should be broadened. Instead, the concept of claim should cover all those circumstances where the Government suffers a real financial loss, through a fraudulent misrepresentation or statement.

Section 5 amends the statute of limitations to permit the Government to bring an action within 6 years of when the false claim is submitted, the current standard, or within 3 years after the Government becomes aware of the violation, whichever is later.

Section 6 of the bill modernizes the jurisdiction and venue provisions of the False Claims Act to permit the Government to bring suit, not only in the district where the defendant is located, but also in any district where a violation occurred. Currently, when multiple defendants live in different districts, the Government may be required to bring multiple suits, a time-consuming process that is wasteful of judicial resources.

Another important amendment contained in section 6—is the grant of civil investigative demand (CID) authority to the Department of Justice.
to aid in the investigation of False Claims Act cases. The CID provisions are patterned after and analogous to the authority already exercised by the Antitrust Division under the Hart-Scott-Rodino Act, 15 U.S.C. 1311-1314. If the Attorney General of the Civil Division believes that a person has access to information relating to a False Claims Act investigation, he may, prior to filing a complaint, require the production of documents, answers to interrogatories, and oral testimony. The standards governing subpoenas and ordinary civil discovery would apply so as to protect against the disclosure of privileged information. The CID authority in the antitrust context has been upheld as constitutional. Hyster Company v. United States, 338 F.2d 183 (9th Cir. 1964); Petition of Gold Bond Stamp Co., 221 F. Supp. 65 (S.D.N.Y. 1963). If so authorized, the CID provisions would apply so as to protect against the disclosure of privileged information. The CID authority in the antitrust context has been upheld as constitutional. Hyster Company v. United States, 338 F.2d 183 (9th Cir. 1964); Petition of Gold Bond Stamp Co., 221 F. Supp. 65 (S.D.N.Y. 1963). If so authorized, the CID provisions would apply so as to protect against the disclosure of privileged information.

In conclusion, Mr. Speaker, I want to commend subcommittee Chairman Dan Glickman, the ranking Republican Tom Kindness, and the other subcommittee members for their hard work in bringing this legislation to the floor. There is no question that Congress must seek out appropriate legislative mechanisms to insure that the taxpayers' money is well spent and protected from fraud and waste. This bill, Mr. Speaker, will accomplish just that.

Mr. BROWN of Colorado. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROWN of Colorado asked and was given permission to revise his remarks.)

Mr. BROWN of Colorado. Mr. Speaker, the bill we have before us today reflects the work of several Members and reflects major improvements in our existing Federal law governing false claims submitted to the United States. Indeed, a 1981 report on Federal agencies identified over 77,000 fraud cases in 21 Federal agencies during a 2 1/2 year period, with estimated losses of $150 to $220 million.

With this background in mind, the Judiciary Committee voted in favor of reporting H.R. 4827, the False Claims Act Amendments of 1986. The bill before us today is an improvement over earlier versions in several respects, such as providing somewhat more realistic and constitutionally defensible penalties. Nonetheless, there remain some areas in which further improvements are sorely needed to insure that due process rights are fully honored.

In supporting this legislation today, it is my hope that some of these concerns will be addressed in conference.

Among the primary areas of concern generated by H.R. 4827, which we hope and hope to have in conference are the following: First, consequential damages should be limited to those which were reasonably foreseeable and proximately caused by prohibited acts; and second, civil investigative demands, if authorized at all, should certainly not extend to written interrogatories.

Civil Investigative Demands

H.R. 4827, as reported by the Judiciary Committee, amends the False Claims Act, 31 U.S.C. 3729 et seq., to include civil penalties for persons who submit false claims in an amount equal to the consequential damages sustained in the committing of the fraud. In the committee bill, such damages are defined to include those "which the United States would not have sustained but for (A) the commission of any of the [prohibited] acts ... or (B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim." Current law, by contrast, has not authorized the imposition of civil penalties based on consequential damages, such as those attributable to false claims submitted by United States vs. Aerodex, Inc., 469 F. 2d 1003, 1011 (5th Cir. 1972).

As reported by the committee, the definition of consequential damages is far too sweeping. From a fairness standpoint, it is my hope that consequential damages should be limited to those which were proximately caused by a prohibited act, and which were reasonable foreseeable. Both of these concepts are well defined in the common law and, consequently, can be readily applied by the courts. In the absence of such limitations, persons may be subject to penalties based on highly speculative, attenuated and subjective considerations.

Mr. Speaker, I strongly support the goal of cracking down on fraud against the Government. H.R. 4827 can be further improved in conference in order to preserve due process rights and achieve its ultimate goals. Accordingly, I hope House conferees will support efforts to modify the definition of consequential damages, and restrict the scope of civil investigative demands.

With these changes, Mr. Speaker, we will have a bill that can work fairly and efficiently.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. Gekas].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I, too, join in what seems to be unanimous support for the fast clearance of this legislation and for its final adoption by the Congress of the United States.

I suppose there is nothing more vital to the taxpayer, if we heed the daily conversations of the average American citizen, than the horror stories that they hear on a daily basis—and most of these stories involve just the tip of the iceberg, as to what goes on in several sectors, in fact, in almost all sectors of the Government at one time or another relating to fraud and waste. If there is anything that tells the taxpayer more, I would like to know what it is, than to learn that their taxpayer dollars are wasted in one form or another.

I do not consider this to be a small thing but, rather, a major thrust, and every little bit that we can do, first of all, to eliminate or reduce fraud and waste, and second, to allay the worries of our taxpayers that indeed there might be an attitude in the Congress that pooh-poohs fraud and waste would be a step in the right direction.

So these kinds of bills ought to be adopted on a regular basis.

Mr. Speaker, I support the measure, and I commend all those who made it possible for us to have a quick resolution of this issue.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. Gekas] for his leadership in this area.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of our Committee on the Judiciary, the gentleman from New Jersey [Mr. Rodino].

(Mr. Rodino asked and was given permission to revise his remarks.)

Mr. RODINO. Mr. Speaker, on June 10, 1986, the Judiciary Committee favorably reported H.R. 4827, the False Claims Act Amendments Act of 1986 to the floor by a unanimous (35-0) roll-call vote. The purpose of this legislation is to amend the existing civil false claims statute in order to strengthen and clarify the Government's ability to detect and prosecute fraud, as well as to recoup damages suffered by the
Government as the result of such fraud.

The False Claims Act was originally enacted in 1863 because of reports of widespread corruption and fraud in the sale of supplies and provisions to the Union Government during the Civil War. Unfortunately, fraud is still prevalent today. While fraud has become more sophisticated, the law through which the Government prosecutes fraud and recovers its losses has not followed the same pattern. This law has remained largely unchanged since its enactment in 1863.

H.R. 4827 updates and clarifies the current law, by defining terms which previously were not defined in the False Claims Act. For example, this statute has never defined the term "claim." Because of this lack of a definition, court interpretations of what constitutes a claim under this statute have varied.

This bill increases the civil penalties for filing a false claim, expands the qui tam or citizen suit provisions of the statute, provides the Government with the power to issue civil investigative demands (CID's).

These amendments to the False Claims Act are long overdue. This statute has existed for 132 years but is out of date and no longer an effective tool for prosecution of civil fraud cases. Passage of H.R. 4827, as amended, will make this 132-year-old statute a more effective tool for prosecution of these cases. It will also provide the Government with a more effective tool for the recovery of the dollar losses suffered through fraud.

I particularly wish to commend the gentleman from Kansas and the other members of the Judiciary Committee for accomplishing the task of reaching a compromise acceptable to everyone while maintaining the goal of this legislation.

I urge my colleagues to pass this important legislation.

Mr. GLICKMAN, Mr. Speaker, I thank the chairman of our committee.

Mr. Speaker, before I yield time to the gentleman from California, Mr. BERMAN, I would like to pay a special tribute to the gentleman from Florida [Mr. IRELAND], who has been intimately involved with the qui tam provisions, and that is the part that the gentleman from California [Mr. BERMAN] has been most responsible for. I want to point out that there has been a genuine bipartisan effort in this bill to try to root out and effectively enhance the enforcement of fraud against the Government, and so all the House record ought to reflect that at least with respect to this particular issue we have had genuine bipartisan support.

So now, Mr. Speaker. I yield such time as he may consume to my colleague, the gentleman from California [Mr. BERMAN], who basically spearheaded the qui tam provisions of this bill.

Mr. BERMAN. Mr. Speaker, I rise in support of H.R. 4827, the False Claims Amendments Act of 1986.

I want in particular to thank the chairman of our subcommittee, the gentleman from Kansas [Mr. GLICKMAN] for his kind words, and, more importantly, for his leadership in bringing before this body the outstanding bill we are considering today. In a few short months, he has established himself as the House leader on this issue, and has brought this important legislation to the point where it now has an acceptable job of prosecuting defense contractor fraud.

Mr. Speaker, I also want to second the gentleman's comments with respect to our friend and colleague, the gentleman from Iowa [Mr. BEDELL]. Long before this speaker had ever heard of this legislation and this issue, these gentlemen were legislating and pushing in this area, and without their help I am sure we would not be where we are today.

But it is indeed the case that if it is comforting or not to realize that many of our contemporary problems were shared by our forebears over a century ago. But it is indeed the case that in the 1860's, President Abraham Lincoln felt obliged to call upon Congress to pass the False Claims Act, in order to crack down on defense contractor fraud.

Instances were uncovered of defense contractors who resold the same horses two and three times to the Union cavalry, and who were paid for muskets but provided boxes of sawdust. There is billions of dollars difference between that fraud and the defense contractor fraud found in our headlines today, but the principle is the same: The U.S. taxpayers are being bilked, and we need all the resources we can obtain to address the problem.

Unfortunately, over the years changes were made in the Abraham Lincoln law which undermined its effectiveness. That is why I joined my colleagues BERKLEY BEDELL and ANDY IRELAND in introducing a false claims amendments bill last year, and why I am so pleased to support the bill before the House today.

I am particularly pleased with the qui tam or citizen suit provisions in the bill. They provide the incentive for citizens with knowledge of fraudulent claims against the Federal Government to go public with the information, and afford such whistleblowers protection against retaliation by their employers.

In particular, H.R. 4827:

Protects plaintiffs and witnesses from being fired, harassed, suspended or demoted.

Allows the plaintiff in a qui tam suit to maintain his or her involvement in the suit even if the United States enters the case, to ensure that the case is effectively prosecuted on its merits.

Prevents a suit from being dismissed on the Government's assertion that it already had the information brought forward by the plaintiff, to ensure that the Government is indeed acting on the information; and

Provides guarantees of adequate monetary awards and attorneys fees for plaintiffs.

Except where an action is based completely on information already known to the Government, the qui tam plaintiff is entitled to at least 15 percent, but not more than 25 percent of the proceeds of the settlement, depending on his or her contribution to the prosecution of the action. This guaranteed minimum is a critical incentive and reward for persons who come forward with information, putting themselves at risk on behalf of the Federal Treasury and American taxpayers.

Mr. Speaker, I want to point out that under H.R. 4827, liability for false claims attaches to a person who has actual knowledge of the falsity of a claim, no matter whether he or she possesses deliberate ignorance of or acts in reckless disregard of its truth or falsity. Given the sorry record of hundreds of millions of dollars in fraudulent claims by Federal contractors, persons and entities doing business with the Government must be made to understand that they have an affirmative obligation to ascertain the truthfulness of the claims they submit. No longer will Federal contractors be able to bury their heads in the sand to insulate themselves from the knowledge a prudent person should have before submitting a claim to the Government. Contractors who ignore or fail to inquire about red flags that should alert them to the fact that false claims are being submitted will be liable for those false claims.

H.R. 4827 contains provisions strengthening the Government's hand in prosecuting false claims cases. And in light of Gramm-Rudman and a newfound reliance on private citizens to help right wrongs, the qui tam provisions of the bill are a critically needed supplement—and prod—to Government prosecution. Frankly, whether as a result of a lack of resources or worse, the Department of Justice has not done an acceptable job of prosecuting defense contractor fraud, H.R. 4827 as a critical incentive to self-policing by Government contractors and, barring that, to effective prosecution of false claims.

I note the support for this bill by thousands of business executives and employees in legitimate businesses across America who belong to Business Executives for National Security (BENS).

And I am particularly delighted to cite the substantial contribution of John Phillips, director of the Center for Law in the Public Interest, based in Los Angeles. John is one of the most knowledgeable people in the
country about how the present False Claims Act works—or fails to work. His introduction to my office received anonymous calls from potential whistleblowers in defense plants who were aware of illegal practices, but were not sure what they should do with the information. They were fearful that if they went to the Government or their employers with the information, at best nothing would be done, and at worst, they would be fired. The center’s research has been instrumental in pointing out the weakness of present law, and the need for the bill we have before us today.

Mr. Speaker, I am convinced that only those who cheat the U.S. Government have anything to fear from H.R. 4827. As members of BENS have noted, “the size of our deficit warrants all reasonable congressional actions to recoup the billions of dollars leaking out of the system through fraud.” H.R. 4827 is sound, urgently needed legislation, and I urge its adoption.

Mr. GLICKMAN. Mr. Speaker, I would just conclude by saying that the other body has passed a comparable bill under the leadership of the senior Senator from Iowa. It is indeed possible that this could become law this year.

Mr. BEDELL. Mr. Speaker, I rise in support of H.R. 4827, the False Claims Act Amendment of 1986. As an original cosponsor of legislation sponsored by Congressman Andy Ireland to restore the qui tam, or informer, provisions of the civil False Claims Act to their original strength, I am pleased that the bill before us today embodies much of our original bill.

Congressman Andy Ireland first introduced legislation in 1983 to restore the Lincoln qui tam law to its original strength. In the 99th Congress, Congressman Howard Berman of the Judiciary Committee assisted in drafting a superior version of the 1983 bill that contained several new elements. Clearly, Congressman Dan Glickman provided the leadership as chairman of the House Judiciary Subcommittee on Administrative Law by holding hearings and bringing a compromise version to the attention of the full House today.

The world’s second oldest profession, some say, is stealing from the public purse. More than 100 years ago, during the Civil War, President Abraham Lincoln became so frustrated with Government fraud and the failure of his Justice Department to deal with the problem that he pushed Congress to enact the qui tam, or informer, provisions of the civil False Claims Act. (Lincoln might encourage informers and to give them standing to bring suit in court on behalf of the Government.)

The question is on the House-passed text which we just passed today and send it back to the Senate. I urge the House to pass this bill today and send it back to the Senate with the House-passed text which we just passed today.

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations be discharged from further consideration of the Senate bill (S. 1562) to amend the False Claims Act, and title 18 of the United State Code regarding penalties for false claims, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. BROWN of Colorado. Reserving the right to object, Mr. Speaker. I reserve the right to object for the purpose of asking the gentleman from Kansas to explain the measure, and I yield to the gentleman for that purpose.

Mr. GLICKMAN. Mr. Speaker, it is my intention to take up the Senate companion bill and engage in the normal legislative action, which is to strike the language of S. 1562 and insert the House-passed text which we just passed today and send it back to the Senate with the House-passed text which we just passed today.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.
The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The Clerk read the Senate bill, as follows:

S.1562

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The amount may not be less than 20 percent, nor more than 20 percent among the classes of any judgment which may be obtained in such action. If the court finds there is a reasonable likelihood that the United States will prevail after trial on the merits of its claims, the court shall award a reasonable attorney's fee to the defendant as liquidated damages unless the court finds that such application and proceedings by the Attorney General shall be governed by Rule 65 of the Federal Rules of Civil Procedure.

"(1) Any information furnished pursuant to clauses (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(2) A copy of the complaint and written demand for payment shall be filed in the action and shall be served with copies of all deposition transcripts (at the expense of the person who initiates the action or settling the claim), and the Government shall—

"(1) have entered into or made any contract or grant as a result of any material misrepresentation of fact or law, and which were reasonably foreseeable to the defendant at the time the alleged fraud was committed or at the time of the submission of the claim or statement;

"(2) have acted in deliberate ignorance of the truth or falsity of the information; or

"(3) acted in reckless disregard of the truth or falsity of the information; and

"(4) had actual knowledge.
"(C) Whether the information which formed the basis for the suit was known to the Government.

"(D) Whether the person brought an action based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, administrative hearing, audit, or investigation, or from the news media, the court may award such summary, not to exceed 10 percent of the recovery and taking into account the significance of the information and the role of the person in advancing the case in litigation.

"(E) In addition to any other amounts awarded by the court, the court may also award the person bringing the action reasonable attorney fees and other expenses. The Government shall not be liable for the expenses or legal fees a person incurs in bringing or defending an action under this section.

"(F) If the Government does not proceed with the action and it is litigation, the court may, on behalf of the person bringing the action, order a judgment awarding the person bringing the action reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the action was brought for purposes of harassment. In cases where it appears that the person is bringing an action for purposes of harassment, vexatious, or brought for purposes of harassment, court shall require such assurances that payment of legal fees and expenses will be made, if such are awarded, as it deems appropriate before allowing the action to proceed.

"(G) After any final judgment is issued in any action brought by the person bringing the action, any defendant may file a motion with the court to recover those costs, fees, and expenses.

"(H) No court shall have jurisdiction over any action brought under this section by a member of the armed forces under section 201(f) of title 31, United States Code, or any former member of the armed services under section 201(f) of title 31, United States Code, or any member of the judiciary, or a senior executive branch official means any inquiry conducted by any False Claims Act investigator in connection with a False Claims Act investigation.

"(I) 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision.

"(J) 'documentary material' includes the original or duplicate of any deposition, interrogatory, document, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any part thereof.

"(K) 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General, and includes any person who may be in possession, custody, or control of such material, or any information relevant, and not otherwise readily obtainable, to a False Claims Act investigation.

"(L) 'investigation' means any inquiry conducted by any False Claims Act investigator in connection with a False Claims Act investigation.

"(M) 'claimant' means any person from whom the discovery was obtained by any methods of discovery in any civil proceeding, issue in writing and served at any place within the United States, Puerto Rico, the Virgin Islands, Guam, or any territory or possession of the United States; or in any foreign country.

"(N) 'written interrogatories' to give oral testimony, written cohesive, or any derivation thereof, and any index or manner of access thereto.

"(O) Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information relevant, and not otherwise readily obtainable, to a False Claims Act investigation, he may, prior to the institution of a civil proceeding, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony, to produce copies of any documentary material, or to furnish any combination of such material, answers, or testimony. Whenever a civil investigative demand is an express request, or requires the production of any evidence of having violated this section, or section 3729, 3730, 3731, or 3733, except that no cross-claims or third-party claims shall be asserted among such additional parties unless such claims are otherwise within the jurisdiction of the United States Claims Court.

"(P) A court may order a judgment awarding the person bringing the action reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the action was brought for purposes of harassment.

"(Q) In addition to any other amounts awarded by the court, the court may also award the person bringing the action reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the action was brought for purposes of harassment.
tained and notify the person to whom such demand is issued of the date on which such copy was served.

"(9) Notwithstanding the provisions of section 510 of title 28, the Attorney General may not authorize the performance of any function of the Attorney General vested in him, by an employee, or any other officer, employee, or agency of the United States.

"(2)(A) Each such demand shall state the nature of the conduct constituting the alleged violation of a False Claims Act, which is under investigation, and the applicable provision of law.

"(B) If such demand is for production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be identified with a degree of certainty.

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection, and copying; and

(iii) identify the False Claims Act investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with definiteness and certainty the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the False Claims Act investigator to whom such answers shall be submitted.

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

(i) describe the nature of the testimony, including the witness, if any, who is to be examined, and place at which oral testimony shall be commenced;

(ii) identify a False Claims Act investigator who shall conduct the examination and the location at which the testimony is to be taken, and the general nature of the testimony, including the witness, if any, who is to be examined, and the location at which the testimony is to be taken;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation; and

(iv) notify the person receiving the subpoena of the right to be accompanied by counsel, a reasonable opportunity to inspect the place where the examination is to be held, and any other stenographer taking such testimony.

"(E) The date prescribed for the commencement of oral testimony pursuant to a civil investigation demand issued under this section shall be a date which is not less than seventy days after the date when the demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony in a lesser period of time.

"(F) Any official before whom oral testimony is given shall exclude from the place where the testimony is to be held all persons except the person giving the testimony, the attorney and any other personwhom the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government, and the stenographer taking such testimony.

"(G) The Attorney General shall not authorize a second demand for oral testimony to a person unless such person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is made by the Attorney General and not the Attorney General, notwithstanding section 510 of title 28.

"(c)(1) No such demand shall require the production of any documentary material, answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure by the Federal Rules of Civil Procedure and in the discretion of the Attorney General.

"(2) Any such demand which is an express demand for any product of discovery superseded any inconsistent order, rule, or provision of law preventing or restraining disclosure of such product of discovery to any person. Disclosure may be required to any such express demand does not constitute a waiver of any right or privilege which may be invoked to resist discovery of trial preparation materials to which the person making such disclosure may be entitled.

"(d)(1) Any such demand may be served by any False Claims Act investigator, or by any other person authorized by the Attorney General, at any place within the United States.

"(2) Any such demand or any petition filed under subsection (k) may be served on, at any place within the United States, in a manner prescribed by the Federal Rules of Civil Procedure for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States shall have the same means available to such person if such person were personally within the jurisdiction of such court.

"(e)(1) Service of any such demand or of any petition filed under subsection (k) may be made—

(A) delivering a copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

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

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or of any petition filed under subsection (k) may be made by registered or certified mail to a person unless such person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is made by the Attorney General and not the Attorney General.

"(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. The case of service by registered or certified mail, such return shall be accomplished by the return post office receipt of delivery of such demand.

"(g) The production of documentary material or answers to written interrogatories to this section shall be made under a sworn certificate. In such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by a person having knowledge of the facts and circumstances relating to such person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory. The certificate shall state that all of the documentary material required by the demand has been produced and available to the custodian.

"(h) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath unless it is objected to, in which event the Attorney General may either summarily direct the testimony or, in lieu of any answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if any, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory. The certificate shall state the name and address of the person served; the date and time of its service; the manner of service; any refusal or objection, the reasons for the objection shall be stated, and in lieu of any answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if any, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory. The certificate shall state that all of the documentary material required by the demand has been produced and available to the custodian.

"(i) The examination of any person pursuant to a demand served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall administer such oath or affirmation as may be made to him by his authority, and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is completed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(j) The False Claims Act investigator conducting the examination shall exclude from the place where the examination is held all other persons except the person giving the testimony, the attorney and any other person who may be agreed upon by the attorney for the Government, and the stenographer taking such testimony.

"(k) When the testimony is fully transcribed, the False Claims Act investigator or the officer shall afford the witness, who may have been granted a reasonable opportunity to examine the transcript and the transcript shall be read to or by the witness, unless such examination and read
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ing are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the False Claims Act investigator. The determination of the reasons given by the witness for making such changes. The transcript shall not be signed by the witness. The witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within a reasonable opportunity to examine it, the officer or the False Claims Act investigator shall sign it and state on the record the fact of the refusal or refusal to sign, together with the reason, if any, given therefor. A refusal to sign or an unreasonable absence shall be deemed to be an acknowledgment of its accuracy and an affirmation of its contents.

(5) The officer shall certify on the transcript that the witness was sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or False Claims Act investigator shall sign the transcript and send it to the custodian, who shall transmit the same by registered or certified mail to the custodian.

(6) Upon payment of reasonable charges therefor, the False Claims Act investigator shall certify the copy of the transcript of oral testimony and copies of the discovery material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person from whom the disclosure is sought, return to such person such material (other than copies thereof furnished to the custodian pursuant to paragraph (2) of this subsection) which has not passed into the control of any court, grand jury, or agency in connection with any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this section, or of the official relief of such person; and

(7)(A) Any person who, after service or in excess of such return date held responsible for any default or dereliction which occurred prior to his designation. Any successor designated under this subsection shall have, with regard to such material, answers, or transcripts, all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

(kx) Whenever any person fails to comply with a demand under subsection (b) or whenever satisfactory copying or reproduction of any such material cannot be obtained by the custodian, the Attorney General, through such officers or attorneys as he may designate, may file in the district courts of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court, grand jury, or any other Judicial Authority with such reason to believe that such person may be compelled to answer any question or to produce any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to any such demand issued pursuant to this section, or of the official relief of such person; and

(ky)(1) The Attorney General, or his authorized designee shall designate a False Claims Act investigator to serve as custodian of documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this section, or of the official relief of such person; and

(kz)(A) Upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

(kl)(1) Whenever any person fails to comply with a demand under subsection (b) or whenever satisfactory copying or reproduction of any such material cannot be obtained by the custodian, the Attorney General, through such officers or attorneys as he may designate, may file in the district courts of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court, grand jury, or any other Judicial Authority with such reason to believe that such person may be compelled to answer any question or to produce any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to any such demand issued pursuant to this section, or of the official relief of such person; and

(km) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers or transcripts, or transcripts of oral testimony delivered, which have not passed into the control of any court, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such court, grand jury, or proceeding, the custodian shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of any such court, grand jury, or proceeding as such attorney determines to be required.
as may be prescribed in writing, subsequent to service, by any False Claims Act investigator named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such False Claims Act investigator named in the demand, such court, modifying or setting aside such demand. In the case of a petition addressed to an express demand for any product of discovery, any petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

"(B) The time allowed for compliance with the demand, in whole or in part, as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in support of the petition to modify or set aside such demand, or any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person against which such demand is directed or upon which such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any False Claims Act investigator named in the demand and upon the recipient of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in support of the petition to modify or set aside such demand, or any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person against which such demand is directed or upon which such discovery was obtained.

"(3) Within twenty days after the service of any express demand for any product of discovery not otherwise provided for in the preceding subsection, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any False Claims Act investigator named in the demand and upon the recipient of the demand a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in support of the petition to modify or set aside such demand, or any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person against which such demand is directed or upon which such discovery was obtained. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) At any time during which any custodian is in custody or control of any documentary material, answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any express demand, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court modifying or setting aside those portions of the demand required production of any such document of discovery, answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any express demand, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, by his employer because of the good faith exercise of any such right under this Act, shall be entitled to all relief necessary to make him whole. Such relief shall include reinstatement with full seniority rights, backpay with interest, and such further equitable remedies as the court shall award punitive damages and, if appropriate under the circumstances, the court shall award punitive damages in an amount not less than twice the amount of backpay and special damages and, if appropriate under the circumstances, the court shall award punitive damages in an amount not less than twice the amount of backpay and special damages and, if appropriate under the circumstances, the court shall award punitive damages. Where the employer shall be liable to such employee for both, notwithstanding the provisions of section 3623.

"(b) The table of sections for chapter 37 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"3732. False claims jurisdiction.

"3733. Civil investigative demands.

"3734. Whistleblower protection ."

Sec. 7. (a) Section 286 of title 18, United States Code, is amended by striking out $10,000 and inserting in lieu thereof $1,000,000 notwithstanding the provisions of section 3623.

"(b) Section 287 of title 18, United States Code, is amended by striking out "$10,000, or imprisoned not more than five years" and inserting in lieu thereof "$1,000,000, or imprisoned not more than ten years", and for other purposes; with a Senate amendment thereto, to the Senate amendment, and agree to the conference asked by the Senate.

"The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

APPPOINTMENT OF CONFEREES ON H.R. 5318, BANKRUPTCY JUDGES AND UNITED STATES TRUSTEES ACT OF 1986

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5318) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States trustees in such cases, and for other purposes; with a Senate amendment thereto, to disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 4787.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.