AN ACT

To amend title 18, United States Code, to provide increased penalties for certain major frauds against the United States.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1, SHORT TITLE.
4 This Act may be cited as the "Major Fraud Act of
5 1988".
6 SEC. 2, CHAPTER 47 AMENDMENT.
7 (a) In General.—Chapter 47 of title 18, United
8 States Code, is amended by adding at the end the following:
"§ 1031. Major fraud against the United States

(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice—

(1) to defraud the United States; or

(2) to obtain money or property from the United States by means of false or fraudulent pretenses, representations, or promises;

in any procurement of property or services for the Government, if the value of the contract for such property or services is $1,000,000 or more, shall be fined under this title or imprisoned not more than 10 years, or both:

(b) If the offense involves a foreseeable and substantial risk of personal injury; the term of imprisonment imposed under subsection (a) of this section shall not be less than 2 years. The fine imposed for an offense under this section may exceed the maximum otherwise provided by law; if such fine does not exceed $10,000,000 and—

(1) the amount of the fraud is substantial in relation to the value of such contract and the gross loss to the Government or the gross gain to a defendant is $250,000 or greater; or

(2) the offense involves a foreseeable and substantial risk of personal injury.

(c) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed.
"(d)(1) Upon application by the Attorney General, the court may order a payment from a criminal fine under this section to an individual who furnished information leading to the conviction under this section. The amount of such payment shall not exceed $250,000.

"(2) An individual is not eligible for such a payment if—

"(A) that individual is an officer or employee of a government who furnishes information or renders service in the performance of official duties;

"(B) that individual failed to furnish the information in a timely manner to the individual's employer; unless the court determines the individual had justifiable reasons for that failure; or

"(C) that individual participated in the violation of this section with respect to which such payment would be made.

"(e) Any individual who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with
the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay; interest on the back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees:"

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding at the end the following new item:

"1031 Major fraud against the United States:"

SECTION 1. SHORT TITLE.

This Act may be cited as the "Major Fraud Act of 1988".

SEC. 2. CHAPTER 47 AMENDMENT.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"§ 1031. Major fraud against the United States.

"(a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

"(1) to defraud the United States; or

"(2) to obtain money or property from the United States by means of false or fraudulent pretenses, representations, or promises,

in any procurement of property or services for the Government, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is $1,000,000 or more shall, subject to the applicability of subsection (c) of
this section, be fined not more than $1,000,000, or impris-
oned not more than 10 years, or both.

"(b) The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed $5,000,000 and

(1) the gross loss to the Government or the gross gain to a defendant is $500,000 or greater; or

(2) the offense involves a conscious or reckless risk of serious personal injury.

"(c) The maximum fine imposed upon a defendant for a prosecution including a prosecution with multiple counts under this section shall not exceed $10 million.

"(d) Nothing in this section shall preclude a court from imposing any other sentences available under this title, including without limitation a fine up to twice the amount of the gross loss or gross gain involved in the offense pursuant to 18 U.S.C. section 3571(d).

"(e) The amount of any fine imposed under this section shall be proportional to the offense. In determining the amount of the fine, the court shall take into account—

"(A) the egregiousness of the conduct proven at trial;

"(B) the amount of the loss or gain resulting therefrom;
"(C) any past convictions or judgments for fraudulent or other illegal acts against the United States entered against the defendant; and

"(D) any other factors deemed by the court to be relevant to determining the amount of the fine to be imposed.

"(f) A prosecution of an offense under this section may be commenced any time not later than 7 years after the offense is committed, plus any additional time allowed under 18 U.S.C. section 3292.

"(g)(1) Upon application by the Attorney General, the court may order a payment from a criminal fine under this section to an individual who furnished information leading to the conviction under this section. The amount of such payment shall not exceed the lesser of $250,000 or 10 percent of the criminal fine imposed under this section.

"(2) An individual is not eligible for such a payment if—

"(A) that individual is an officer or employee of a government who furnishes information or renders service in the performance of official duties;

"(B) that individual failed to furnish the information to the individual's employer prior to furnishing it to law enforcement authorities, unless the court deter-
mines the individual has justifiable reasons for that failure;

"(C) the furnished information is based upon public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or GAO report, hearing, audit or investigation, or from the news media unless the person is the original source of the information. For the purposes of this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government; or

"(D) that individual participated in the violation of this section with respect to which such payment would be made.

"(h) Any individual who—

"(I) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), and
“(2) was not a participant in the unlawful activi-
ty that is the subject of said prosecution, may, in a
civil action, obtain all relief necessary to make such
individual whole. Such relief shall include reinstate-
ment with the same seniority status such individual
would have had but for the discrimination, 2 times the
amount of back pay, interest on the back pay, and
compensation for any special damages sustained as a
result of the discrimination, including litigation costs
and reasonable attorney's fees.”.

(b) SENTENCING GUIDELINES.—Pursuant to its au-
thority under section 994(p) of title 28, United States Code
and section 21 of the Sentencing Act of 1987, the United
States Sentencing Commission shall promulgate guidelines,
or shall amend existing guidelines, to provide for appropriate
penalty enhancements, including an additional incarceration
of two years in cases under this section, where conscious or
reckless risk of serious personal injury resulting from the
fraud has occurred.

(c) CLERICAL AMENDMENT.—The table of sections at
the beginning of chapter 47 of title 18, United States Code,
is amended by adding at the end the following new item:

“1031. Major fraud against the United States.”.
SEC. 3. LIMITATION ON ALLOWABILITY OF COSTS OF CONTRACTORS INCURRED IN CERTAIN PROCEEDINGS.

(a) In General.—Chapter 15 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§293. Limitation on Government contract costs

"(a) Any proceeding costs incurred in connection with any proceeding brought by the United States or a State government that relates to a violation of, or failure to comply with, any Federal or State law or regulation on the part of the Contractor are not allowable costs in a covered contract if the proceeding results in any of the following:

"(1) an indictment by a Federal grand jury, or a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of such violation or failure to comply;

"(2) the assessment of a monetary penalty by reason of a civil or administrative finding of such violation or failure to comply;

"(3) a civil judgment containing a finding of liability, or an administrative finding of liability, by reason of such violation or failure to comply, if the charges which are the subject of the proceeding involve fraud or similar offenses;"
"(4) a decision to debar or suspend the contractor or rescind, void, or terminate a contract for default, by reason of such violation or failure to comply; or

"(5) the resolution of the proceeding by consent or compromise, where the penalty or relief sought by the government included the actions described in paragraphs (1) through (5).

"(b) In any proceeding brought by the United States or a State government that does not result in any of the actions described in paragraphs (1) through (5) of subsection (a), costs for legal services incurred by a contractor in connection with such proceeding shall not be allowed in excess of the rate specified in the Equal Access to Justice Act (28 U.S.C. 2412(d)(2)(A); 5 U.S.C. 504(a)) unless the responsible contracting officer finds that a special factor (such as the limited availability of qualified attorneys or agents) justifies an award of higher rates.

"(c) For purposes of this section—

"(1) the term 'covered contract' means a contract for an amount more than $100,000 entered into by a department or agency of the United States other than a fixed-price contract without cost incentives;

"(2) the term 'proceeding' means a civil, criminal, or an administrative investigation, prosecution, or proceeding; and
“(3) the term ‘proceeding costs’ means all costs relating to a proceeding incurred before, during, or after the commencement of the proceeding, and such term includes—

“(A) administrative and clerical expenses;

“(B) the cost of legal services (whether performed by an employee of the contractor or otherwise);

“(C) the cost of the services of accountants and consultants retained by a contractor; and

“(D) the salaries and wages of employees, including officers and directors.”.

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 15 of title 18, United States Code, by adding at the end thereof the following:

“293. Limitation on Government contract costs.”.

(c) APPLICABILITY.—The amendments made by this section shall apply to contracts entered into after the date of the enactment of this Act.

SEC. 4. ESTABLISHMENT OF ADDITIONAL ASSISTANT UNITED STATES ATTORNEY AND SUPPORT PROVISIONS.

(a) ESTABLISHMENT OF POSITIONS.—Subject to the funding authorization limitations in section (a), there are hereby established within the Department of Justice additional Assistant United States Attorney positions and addi-
tional support staff positions for prosecuting cases under both
the criminal and civil statutes.

(b) FUNCTION OF PERSONNEL.—The primary func-
tion of individuals selected for the positions specified in sub-
section (a) shall be dedicated to the investigation and prosecu-
tion of fraud against the Government.

(c) LOCATIONS.—The Attorney General shall deter-
mine the locations for assignment of such personnel. In
making such determination the Attorney General shall con-
sider concentrations of government programs and procure-
ments and concentrations of pending Government fraud in-
vestigations and allegations.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Subject to the provisions of sub-
section (b), for the purpose of carrying out the purposes of
this Act there are authorized to be appropriated $8,000,000
for fiscal year 1989, and such sums as may be necessary for
each of the four succeeding fiscal years, to be available until
expended.

(b) LIMITATION.—Before expending funds appropri-
ated pursuant to subsection (a) to carry out the purposes of
this section, the Attorney General shall utilize available ex-
isting resources within the Department of Justice for such
purposes.
SEC. 6. CONGRESSIONAL OVERSIGHT.

Commencing with the first year after the date of enactment of this section, the Attorney General shall annually report to the Congress with respect to—

(1) the number of referrals of fraud cases by the Department of Defense of defense contractors (with specific statistics with respect to the one hundred largest contractors), the number of open investigation of such contractors, and a breakdown of to which United States Attorney's Office or other component of the Department of Justice each such case was referred;

(2) the number of referrals of fraud cases from other agencies or sources;

(3) the number of attorneys and support staff assigned pursuant to this Act;

(4) the number of investigative agents assigned to each investigation and the period of time each investigation has been opened;

(5) the number of convictions and acquittals achieved by individuals assigned to positions established by the Act; and
(6) the sentences, recoveries, and penalties achieved by individuals assigned to positions established by this Act.


Attest: DONNALD K. ANDERSON, Clerk.