

communication or representation of a person regarding a particular matter, any compensation, financial gain or remuneration.

"(2) As used in this subsection, the term 'compensation' means anything of value which is provided, directly or indirectly, for services rendered, including a payment, gift, benefit, reward, favor, or gratuity.

"(h) PENALTIES.—The punishment for an offense under subsection (a), (b), (c), (d), (e) or (f) is the following:

"(1) Any person who engages in the conduct constituting the offense shall be imprisoned for not more than 2 years or fined in the amount set forth in this title, or both.

"(2) Any person who willfully engages in the conduct constituting the offense shall be imprisoned for not more than 4 years or fined in the amount set forth in this title, or both.

"(i) GENERAL EXCEPTIONS.—

"(1) CERTAIN ELECTED OFFICIALS AND EMPLOYEES.—(A) The restrictions contained in subsection (a) shall not apply to any appropriate, communication, or representation which is made in carrying out official duties as an elected official of a State or local government.

"(B) The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), (e) and (f) shall not apply to any appearance, communication, or representation by a former Member of Congress or officer or employee of the executive or legislative branch, which is made in carrying out official duties as—

"(i) an elected official of a State or local government, or

"(ii) an employee of (I) an agency or instrumentality of a State or local government, (II) an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (III) a hospital or medical research organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, if the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

"(2) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), (e) and (f) shall not apply to the employment by, representation of, or advice or aid to, an international organization of which the United States is a member except in cases in which the individual (1) had access to classified materials or intelligence information related to the international organization, or (2) had been officially responsible, in any way, for the determination or implementation of United States policies or programs associated with the international organization.

"(3) The restrictions contained in subsections (b), (c), (d), and (e) shall not apply to the making of public speeches or public appearances.

"(j) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (b), (c), and (d) shall not apply with respect to the making of communications by a former officer or employee solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest

would be served by the participation of the former officer or employee.

"(k) RESTRICTIONS ON PARTNERS OF OFFICERS AND EMPLOYEES.—Any person who is a partner of an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States (including the Government Printing Office and the General Accounting Office), including the President, the Vice President, and any special Government employee, and who knowingly acts as agent or attorney for anyone other than the United States before any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which—

"(1) the United States is a party or has a direct and substantial interest, and

"(2) such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise,

shall be imprisoned for not more than 1 year or fined in the amount set forth in this title, or both.

"(l) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(m) ADMINISTRATIVE DEPARTMENT.—

"(1) AUTHORITY.—If the head of a department or agency in which a former officer or employee of the executive branch or of an independent agency served finds, after notice and an opportunity for a hearing, that such former officer or employee knowingly engaged in conduct constituting an offense under subsection (a), (b), (c), or (d) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any communication to, such department or agency on a pending matter of business for a period of not more than 5 years, or may take other appropriate disciplinary action. For purposes of this subsection, proof of conduct constituting an offense must be established by a preponderance of the evidence.

"(2) REVIEW OF DISCIPLINARY ACTION.—Any disciplinary action under paragraph (1) shall be subject to review in an appropriate United States district court.

"(3) PROCEDURES.—Departments and agencies in the executive branch and independent agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

"(n) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), (c), (d), (e), (f) or (j) and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000, or the amount of compensation which the person receives for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other remedy which is available by law to the United States or any other person.

"(o) INJUNCTIVE RELIEF.—If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under subsection (a), (b), (c), (d), (e), or (j), the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court shall order the trial of the action on the merits to be advanced and consolidated with the hearing on the petition. The court may issue such order if it finds that such conduct constitutes such an offense. The filing of a petition under this subsection does not preclude any other remedy which is available by law to the United States or any other person."

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 11 of title 18, United States Code is amended by amending the item relating to section 207 to read as follows:

"207. Restrictions on former officers [employees, and elected officials of the executive and legislative branches; restrictions on partners of certain current officers and employees of the executive branch."

#### SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this Act and the amendments made by this Act take effect 9 months after the date of the enactment of this Act.

(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by this Act apply only to persons whose service as a Member of Congress or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

(2) With respect to service as an officer or employee which terminates before the effective date of this Act, section 207 of title 18, United States Code, as in effect at the time of the termination to such service, shall continue to apply, on and after such effective date, with respect to such service.

#### SEC. 4. SEVERABILITY.

If any provision of this Act, including the amendments made by this Act, or the application of any such provision to any circumstance or person is held invalid, the remainder of this Act, or the application of such provisions to any other circumstance or person is not affected thereby.

### INCREASED PENALTIES FOR MAJOR FRAUDS AGAINST THE UNITED STATES

#### CRANSTON AMENDMENT NO. 3732

Mr. CRANSTON proposed an amendment to the bill (H.R. 3911) to amend title 18, United States Code, to provide increased penalties for certain major frauds against the United States, as follows:

At the end of the bill insert:

That (a) notwithstanding section 2675 of title 28, United States Code, and section 2401(b) of such title, or any other limitation on actions at law or in equity, the United States District Court for the District of Columbia shall have jurisdiction to hear, determine, and render judgment on any claim of Paulette Mendes-Silva against the United States for personal injuries which she allegedly incurred after an inoculation on March 12, 1963, by an employee of the Public Health Service of the United States Department of Health, Education, and Wel-

the violation or failure referred to in paragraph (1).

"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

"(D) A final decision by the Department of Defense—

"(i) to debar or suspend the contractor;

"(ii) to rescind or void the contract; or

"(iii) to terminate the contract for default, by reason of the violation or failure referred to in paragraph (1).

"(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

"(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency.

"(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

"(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)).

"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

"(1)(1) In this section, the term 'covered contract' means a contract for an amount more than \$100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.

"(2) In subsection (k):

"(A) The term 'proceeding' includes an investigation.

"(B) The term 'costs', with respect to a proceeding—

"(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

"(ii) includes—

"(I) administrative and clerical expenses;

"(II) the cost of legal services, including legal services performed by an employee of the contractor;

"(III) the cost of the services of accountants and consultants retained by the contractor; and

"(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

"(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages."

(c) TECHNICAL AMENDMENT.—Section 832(b) of the National Defense Authorization Act, Fiscal Year 1989 is repealed.

(d) REGULATIONS.—The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 (as added by subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

(1) shall be prescribed not later than 120 days after the date of the enactment of this Act; and

(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect with respect to contracts awarded after the date of the enactment of this Act.

#### GRASSLEY AMENDMENT NO. 3736

Mr. GRASSLEY proposed an amendment to the bill H.R. 3911, supra as follows:

At the appropriate place in the bill, insert the following:

##### SEC. QUITAM ACTIONS.

(a) AWARDS OF DAMAGES.—Section 3730(d) of title 31, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice."

(b) TECHNICAL AMENDMENTS.—Section 3730 of title 28, United States Code, is amended—

(1) in subsection (c)(4) by inserting "the" after "Government proceeds with"; and

(2) in subsection (d)(4), as redesignated by subsection (a)(1) of this section, by striking out "actions" and inserting in lieu thereof "action".

#### NATIONAL COMMISSION ON THE THRIFT INDUSTRY

##### PROXMIRE AMENDMENT NO. 3737

Mr. PROXMIRE proposed an amendment to the amendment of the House to the bill (S. 2653) to establish a National Commission on the Thrift Industry, as follows:

In lieu of the language proposed to be inserted by the House, insert the following:

##### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Proxmire Financial Modernization Act of 1988".

##### BYRD AMENDMENT NO. 3737

Mr. BYRD proposed an amendment to amendment No. 3737 proposed by Mr. PROXMIRE to the amendment of the House to the bill S. 2653, supra, as follows:

Strike out all after the first word, and insert in lieu thereof the following:

##### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Proxmire Financial Modernization Act of 1988".

(b) TABLE OF CONTENTS.—

##### TITLE I—QUALIFIED AFFILIATES OF BANK HOLDING COMPANIES

Sec. 101. Authorization for bank holding companies to acquire qualified affiliates.

Sec. 102. Definition of qualified affiliate.

Sec. 103. Ninety-one day rule for qualified affiliate applications.

Sec. 104. Effect on State laws prohibiting the affiliation of banks and certain companies.

Sec. 105. Amendment to the Federal Reserve Act.

Sec. 106. Certain affiliations of FDIC-insured banks.

Sec. 107. Authorization for national banks to underwrite municipal revenue bonds, sponsor unit investment trusts, and distribute investment company securities.

Sec. 108. Amendments to the International Banking Act of 1978.

Sec. 109. Diversified financial holding companies.

Sec. 110. Study of the national payments system.

Sec. 111. Congressional vote on whether to permit qualified affiliates to underwrite equity securities.

##### TITLE II—EXPEDITED PROCEDURES

Sec. 201. Expedited procedures for forming a bank holding company.

Sec. 202. Expedited procedures for bank holding companies to seek approval to engage in nonbanking activities.

Sec. 203. Reduction of post-approval waiting period for bank holding company acquisitions.

Sec. 204. Reduction of post-approval waiting period for bank mergers.

Sec. 205. Amendments to the Depository Institution Management Interlocks Act.

Sec. 206. Bankers' banks.

##### TITLE III—STRENGTHENED ENFORCEMENT AUTHORITY

Sec. 301. Short title.