

99TH CONGRESS
2D SESSION

H. R. 4827

To amend title 31, United States Code, with respect to the fraudulent use of public property or money.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1986

Mr. GLICKMAN (for himself, Mr. FRANK, Mr. BERMAN, Mr. BOUCHER, Mr. STAGGERS, Mr. BRYANT, Mr. IRELAND, Mr. BEDELL, and Mr. STARK) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 31, United States Code, with respect to the fraudulent use of public property or money.

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 "False Claims Amendments
5 Act of 1986".

6 **SEC. 2. FALSE CLAIMS.**

7 Section 3729 of title 31, United States Code, is
8 amended—

1 (1) by striking the matter preceding paragraph (1)
2 and inserting in lieu thereof the following:

3 “(a) LIABILITY FOR CERTAIN ACTS.—Any person
4 who—”;

5 (2) in paragraph (4)—

6 (A) by striking “public”; and

7 (B) by striking “in an armed force” and
8 inserting “by the United States Government”;

9 (3) in paragraph (5)—

10 (A) by striking “in an armed force” and in-
11 serting “by the United States Government”; and

12 (B) by striking “or” after the semicolon;

13 (4) in paragraph (6)—

14 (A) by striking “a member of an armed
15 force” and inserting “an officer or employee of
16 the Government, or a member of the armed
17 forces,”; and

18 (B) by striking the period at the end of the
19 paragraph and inserting “; or”; and

20 (5) by adding at the end of the subsection the
21 following:

22 “(7) knowingly makes, uses, or causes to be made
23 or used, a false record or statement to conceal, avoid,
24 or decrease an obligation to pay or transmit money or
25 property to the Government;

1 is liable to the United States Government for a civil penalty
2 of \$10,000, for an amount equal to 3 times the amount of
3 damages (other than consequential damages as set forth in
4 subsection (b)) which the Government sustains because of the
5 act of that person, and for the costs of a civil action brought
6 to recover any such penalty.

7 “(b) CALCULATION OF DAMAGES.—(1) For purposes of
8 this section, consequential damages include damages which
9 the United States would not have sustained but for—

10 “(A) the commission of any of the acts prohibited
11 by subsection (a); or

12 “(B) entering into or making any contract or
13 grant as a result, in any material part, of any false
14 statement, record, or claim.

15 “(2) Any credits to which the defendant establishes enti-
16 tlement may be deducted from the amount payable under
17 subsection (a) only after the damages sustained by the United
18 States have been tripled as set forth in subsection (a).

19 “(3) If any portion of the damages sustained by the
20 United States under paragraph (1) is considered reasonably
21 unforeseeable by the court, the court may reduce the total
22 amount of damages payable under paragraph (1).

23 “(c) KNOWING AND KNOWINGLY DEFINED.—For pur-
24 poses of this section, the terms ‘knowing’ and ‘knowingly’
25 mean that a person, with respect to information—

1 “(1) has actual knowledge of the information,

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

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

6 “(d) CLAIM DEFINED.—For purposes of this section,
7 ‘claim’ includes any request or demand, whether under a con-
8 tract or otherwise, for money or property which is made to a
9 contractor, grantee, or other recipient if the United States
10 Government provides any portion of the money or property
11 which is requested or demanded, or if the Government will
12 reimburse such contractor, grantee, or other recipient for any
13 portion of the money or property which is requested or
14 demanded.”.

15 **SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.**

16 Section 3730 of title 31, United States Code, is
17 amended to read as follows:

18 **“§3730. Civil actions for false claims**

19 “(a) The Attorney General diligently shall investigate a
20 violation under section 3729. If the Attorney General finds
21 that a person has violated or is violating section 3729, the
22 Attorney General may bring a civil action under this section
23 against the person.

24 “(b)(1) A person may bring a civil action for a violation
25 of section 3729 for the person and for the United States Gov-

1 ernment. The action shall be brought in the name of the Gov-
2 ernment. Subject to paragraph (5), an action may be dis-
3 missed only if the court and the Attorney General give writ-
4 ten consent to the dismissal and their reasons for consenting.

5 “(2) A copy of the complaint and written disclosure of
6 substantially all material evidence and information the person
7 possesses shall be served on the Government pursuant to
8 Rule 4(d)(4) of the Federal Rules of Civil Procedure. The
9 complaint shall be filed in camera, shall remain under seal for
10 at least 60 days, and shall not be served on the defendant
11 until the court so orders. The Government may elect to inter-
12 vene and proceed with the action within 60 days after it re-
13 ceives both the complaint and the material evidence.

14 “(3) The Government may, for good cause shown, move
15 the court for extensions of the time during which the com-
16 plaint remains under seal under paragraph (2). Any such mo-
17 tions may be supported by affidavits or other submissions in
18 camera. The defendant shall not be required to respond to
19 any complaint filed under this section until 20 days after the
20 complaint is unsealed and served upon the defendant pursu-
21 ant to Rule 4 of the Federal Rules of Civil Procedure.

22 “(4) Subject to paragraph (5), before the expiration of
23 the 60-day period or any extensions obtained under para-
24 graph (3), the Government shall—

1 “(A) proceed with the action, in which case the
2 action shall be conducted by the Government; or

3 “(B) notify the court that it declines to take over
4 the action, in which case the person bringing the action
5 shall have the right to conduct the action.

6 “(5) If the court finds that an action brought by a person
7 under this subsection—

8 “(A) is based on specific evidence or specific infor-
9 mation which the Government disclosed as a basis for
10 allegations made in a prior administrative, civil, or
11 criminal proceeding; or

12 “(B) is based on specific information disclosed
13 during the course of a congressional investigation or
14 based on specific public information disseminated by
15 any news media,

16 the court shall dismiss the action unless the Government pro-
17 ceeds with the action within 60 days after being notified of
18 the action. Notwithstanding the preceding sentence, the court
19 shall not dismiss an action subject to the preceding sentence
20 if the Government has not initiated a civil action within 6
21 months after becoming aware of the evidence or information
22 described in subparagraph (A) or (B), or within such addition-
23 al times as the court allows upon a showing of good cause.
24 The defendant must prove the facts warranting dismissal of a
25 case to which this paragraph applies.

1 “(6) When a person brings an action under this subsec-
2 tion, no person other than the Government may intervene or
3 bring a related action based on the facts underlying the pend-
4 ing action.

5 “(c)(1) If the Government proceeds with the action, it
6 shall have the primary responsibility for prosecuting the
7 action. The person bringing the action shall have a right to
8 continue in the action with the same rights as provided by
9 Rule 24(a) of the Federal Rules of Civil Procedure. The Gov-
10 ernment is not bound by an act of the person bringing the
11 action.

12 “(2) The Government may settle the action with the
13 defendant notwithstanding the objections of the party initiat-
14 ing the action if the court determines after a hearing, includ-
15 ing the opportunity for presentation of evidence, that the pro-
16 posed settlement is fair, adequate, and reasonable under all
17 the circumstances.

18 “(3) Upon a showing of the Government that certain
19 actions of discovery by the person initiating the action would
20 significantly interfere with the Government’s investigation or
21 prosecution of a criminal or civil matter arising out of the
22 same facts, the Court may stay such discovery for a period of
23 not more than 60 days. The Court may extend the 60-day
24 period upon a showing that the Government has pursued the
25 criminal or civil investigation or proceedings with reasonable

1 diligence and any proposed discovery in the civil action will
2 interfere with the ongoing criminal or civil investigation or
3 proceedings.

4 “(4) If the Government elects not to proceed with the
5 action, the person who initiated the action shall have the
6 right to conduct the action. If the Government so requests, it
7 shall be served with copies of all pleadings filed in the action
8 and shall be supplied with copies of all deposition transcripts
9 (at the Government’s expense). When a person proceeds with
10 the action, the court, without limiting the status and rights of
11 the person initiating the action, may nevertheless permit the
12 Government to intervene at a later date upon a showing of
13 good cause.

14 “(5) Notwithstanding subsection (b), the Government
15 may elect to pursue its claim through any alternate remedy
16 available to the Government, including any administrative
17 proceeding to determine a civil money penalty. If any such
18 alternate remedy is pursued in another proceeding, the
19 person initiating the action shall have the same rights in such
20 proceeding as such person would have had if the action had
21 continued under this section.

22 “(d)(1) If the Government proceeds with an action under
23 this section, and the person bringing the action discloses rele-
24 vant evidence, or relevant information, which the Govern-
25 ment did not have at the time the action was brought, such

1 person shall receive at least 15 percent but not more than 25
2 percent of the proceeds of the action or settlement of the
3 claim, depending upon the extent to which the person sub-
4 stantially contributed to the prosecution of the action. Where
5 the action is one which the court finds, under subsection
6 (b)(5), to be based solely on evidence or information described
7 in subparagraph (A) or (B) of that subsection, the court may
8 award such sums as it considers appropriate, but in no case
9 more than 10 percent of the proceeds, taking into account the
10 significance of the evidence or information and the role of a
11 person in advancing the case to litigation. Any payment
12 under this paragraph shall be made from the proceeds. Such
13 person shall also receive an amount for reasonable expenses
14 which the court finds to have been necessarily incurred, plus
15 reasonable attorneys' fees and costs. All such expenses, fees,
16 and costs shall be awarded against the defendant.

17 “(2) If the Government does not proceed with an action
18 under this section, the person bringing the action or settling
19 the claim shall receive an amount which the court decides is
20 reasonable for collecting the civil penalty and damages. The
21 amount shall be not less than 25 percent and not more than
22 30 percent of the proceeds of the action or settlement and
23 shall be paid out of such proceeds. Such person shall also
24 receive an amount for reasonable expenses which the court
25 finds to have been necessarily incurred, plus reasonable attor-

1 neys' fees and costs. All such expenses, fees, and costs shall
2 be awarded against the defendant.

3 “(3) If the Government does not proceed with the action
4 and the person bringing the action conducts the action, the
5 court may award to the defendant its reasonable attorneys'
6 fees and expenses if the defendant prevails in the action and
7 the court finds that the claim of the person bringing the
8 action was clearly frivolous, vexatious, or brought solely for
9 purposes of harassment.

10 “(e) The Government is not liable for expenses which a
11 person incurs in bringing an action under this section.”.

12 **SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY**
13 **EMPLOYERS AGAINST EMPLOYEES WHO**
14 **REPORT VIOLATIONS.**

15 Section 3730 of title 31, United States Code, as amend-
16 ed by section 3 of this Act, is further amended by adding at
17 the end the following new subsection:

18 “(f) Any employee who is discharged, demoted, sus-
19 pended, threatened, harassed, or in any other manner dis-
20 criminated against in the terms and conditions of employment
21 by his or her employer in whole or in part because of lawful
22 acts done by the employee on behalf of the employee or
23 others in furtherance of an action under this section, includ-
24 ing investigation for, initiation of, testimony for, or assistance
25 in an action filed or to be filed under this section, shall be

1 entitled to all relief necessary to make the employee whole.
2 Such relief shall include reinstatement with the same seniori-
3 ty status such employee would have had but for the discrimi-
4 nation, twice the amount of back pay, interest on the back
5 pay, and compensation for any special damages sustained as
6 a result of the discrimination, including litigation costs and
7 reasonable attorneys' fees. An employee may bring an action
8 in the appropriate district court of the United States for the
9 relief provided in this subsection.”.

10 **SEC. 5. FALSE CLAIMS PROCEDURE.**

11 Section 3731 of title 31, United States Code, is amend-
12 ed by striking subsection (b) and inserting the following:

13 “(b) A civil action under section 3730 may not be
14 brought—

15 “(1) more than 6 years after the date on which
16 the violation is committed, or

17 “(2) more than 3 years after the date when facts
18 material to the right of action are known or reasonably
19 should have been known by the official of the United
20 States charged with responsibility to act in the circum-
21 stances, but in no event more than 10 years after the
22 date on which the violation is committed,
23 whichever occurs last.

24 “(c) In any action brought under section 3730, the
25 United States shall be required to prove all essential ele-

1 ments of the cause of action, including damages, by a prepon-
2 derance of the evidence.

3 “(d) Notwithstanding any other provision of law, the
4 Federal Rules of Criminal Procedure, or the Federal Rules of
5 Evidence, a final judgment rendered in favor of the United
6 States in any criminal proceeding charging fraud or false
7 statements, whether upon a verdict after trial or upon a plea
8 of guilty or nolo contendere, shall estop the defendant from
9 denying the essential elements of the offense in any action
10 which involves the same transaction as in the criminal pro-
11 ceeding and which is brought under subsection (a) or (b) of
12 section 3730.”.

13 **SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE**
14 **DEMANDS.**

15 (a) **IN GENERAL.**—Subchapter III of chapter 37 of title
16 31, United States Code, is amended by adding at the end the
17 following new sections:

18 **“§3732. False claims jurisdiction**

19 “(a) **ACTIONS UNDER SECTION 3730.**—Any action
20 under section 3730 may be brought in any judicial district in
21 which the defendant, or in the case of multiple defendants,
22 any one defendant can be found, resides, transacts business,
23 or in which any act proscribed by section 3729 occurred. A
24 summons as required by the Federal Rules of Civil Procedure

1 shall be issued by the appropriate district court and served at
2 any place within or outside the United States.

3 “(b) CLAIMS UNDER STATE LAW.—The district courts
4 shall have jurisdiction over any action brought under the laws
5 of any State for the recovery of funds paid by a State or local
6 government if the action arises from the same transaction or
7 occurrence as an action brought under section 3730.

8 **“§3733. Civil investigative demands**

9 “(a) CIVIL INVESTIGATIVE DEMANDS.—

10 “(1) ISSUANCE AND SERVICE.—Whenever the
11 Attorney General, the Deputy Attorney General, or an
12 Assistant Attorney General has reason to believe that
13 any person may be in possession, custody, or control of
14 any documentary material or information relevant to a
15 false claims law investigation, the Attorney General,
16 Deputy Attorney General, or Assistant Attorney Gen-
17 eral may, before commencing a civil proceeding under
18 section 3730, issue in writing and cause to be served
19 upon such person, a civil investigative demand requir-
20 ing such person—

21 “(A) to produce such documentary material
22 for inspection and copying,

23 “(B) to answer in writing written interroga-
24 tories,

1 “(C) to give oral testimony concerning docu-
2 mentary material or information, or

3 “(D) to furnish any combination of such ma-
4 terial, answers, or testimony.

5 Whenever a civil investigative demand is an express
6 demand for any product of discovery, the Attorney
7 General, the Deputy Attorney General, or an Assistant
8 Attorney General shall cause to be served, in any
9 manner authorized by this section, a copy of such
10 demand upon the person from whom the discovery was
11 obtained and shall notify the person to whom such
12 demand is issued of the date on which such copy was
13 served.

14 “(2) CONTENTS AND DEADLINES.—

15 “(A) Each civil investigative demand issued
16 under paragraph (1) shall state the nature of the
17 conduct constituting the alleged violation of a
18 false claims law which is under investigation, and
19 the applicable provision of law alleged to be vio-
20 lated.

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

23 “(i) describe each class of documentary
24 material to be produced with such definite-

1 ness and certainty as to permit such material
2 to be fairly identified;

3 “(ii) prescribe a return date for each
4 such class which will provide a reasonable
5 period of time within which the material so
6 demanded may be assembled and made avail-
7 able for inspection and copying; and

8 “(iii) identify the false claims law inves-
9 tigator to whom such material shall be made
10 available.

11 “(C) If such demand is for answers to writ-
12 ten interrogatories, the demand shall—

13 “(i) set forth with specificity the written
14 interrogatories to be answered;

15 “(ii) prescribe dates at which time an-
16 swers to written interrogatories shall be sub-
17 mitted; and

18 (iii) identify the false claims law investi-
19 gator to whom such answers shall be submit-
20 ted.

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

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

1 “(ii) identify a false claims law investi-
2 gator who shall conduct the examination and
3 the custodian to whom the transcript of such
4 examination shall be submitted.

5 Any such demand which is an express demand for any
6 product of discovery shall not be returned or returnable
7 until 20 days after the date on which a copy of such
8 demand has been served upon the person from whom
9 the discovery was obtained.

10 “(b) PROTECTED MATERIAL OR INFORMATION.—

11 “(1) IN GENERAL.—No civil investigative demand
12 issued under subsection (a) may require the production
13 of any documentary material, the submission of any an-
14 swers to written interrogatories, or the giving of any
15 oral testimony if such material, answers, or testimony
16 would be protected from disclosure under—

17 “(A) the standards applicable to subpoenas
18 or subpoenas duces tecum issued by a court of the
19 United States to aid in a grand jury investigation;
20 or

21 “(B) the standards applicable to discovery re-
22 quests under the Federal Rules of Civil Proce-
23 dure, to the extent that the application of such
24 standards to any such demand is appropriate and

1 consistent with the provisions and purposes of this
2 section and sections 3729 through 3732.

3 “(2) EFFECT ON OTHER ORDERS, RULES, AND
4 LAWS.—Any such demand which is an express demand
5 for any product of discovery supersedes any inconsis-
6 tent order, rule, or provision of law (other than this sec-
7 tion) preventing or restraining disclosure of such prod-
8 uct of discovery to any person. Disclosure of any prod-
9 uct of discovery pursuant to any such express demand
10 does not constitute a waiver of any right or privilege
11 which may be invoked to resist discovery of trial prep-
12 aration materials to which the person making such dis-
13 closure may be entitled.

14 “(c) SERVICE; JURISDICTION.—

15 “(1) BY WHOM SERVED.—Any civil investigative
16 demand issued under subsection (a) may be served by a
17 false claims law investigator, or by a United States
18 marshal or a deputy marshal, at any place within the
19 territorial jurisdiction of any court of the United States.

20 “(2) SERVICE IN FOREIGN COUNTRIES.—Any
21 such demand or any petition filed under subsection (j)
22 may be served upon any person who is not found
23 within the territorial jurisdiction of any court of the
24 United States in such manner as the Federal Rules of
25 Civil Procedure prescribe for service in a foreign coun-

1 try. To the extent that the courts of the United States
2 can assert jurisdiction over any such person consistent
3 with due process, the United States District Court for
4 the District of Columbia shall have the same jurisdic-
5 tion to take any action respecting compliance with this
6 section by any such person that any such court of the
7 United States would have if such person were person-
8 ally within the jurisdiction of such a court.

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

11 “(1) LEGAL ENTITIES.—Service of any civil in-
12 vestigative demand issued under subsection (a) or of
13 any petition filed under subsection (j) may be made
14 upon a partnership, corporation, association, or other
15 legal entity by—

16 “(A) delivering an executed copy of such
17 demand or petition to any partner, executive offi-
18 cer, managing agent, or general agent of the part-
19 nership, corporation, association, or entity, or to
20 any agent authorized by appointment or by law to
21 receive service of process on behalf of such part-
22 nership, corporation, association, or entity;

23 “(B) delivering an executed copy of such
24 demand or petition to the principal office or place

1 of business of the partnership, corporation, asso-
2 ciation, or entity to be served; or

3 “(C) depositing an executed copy of such
4 demand or petition in the United States mails by
5 registered or certified mail, with a return receipt
6 requested, addressed to such partnership, corpora-
7 tion, association, or entity at its principal office or
8 place of business.

9 “(2) NATURAL PERSONS.—Service of any such
10 demand or petition may be made upon any natural
11 person by—

12 “(A) delivering an executed copy of such
13 demand or petition to the person to be served; or

14 “(B) depositing an executed copy of such
15 demand or petition in the United States mails by
16 registered or certified mail, with a return receipt
17 requested, addressed to such person at the per-
18 son’s residence or principal office or place of busi-
19 ness.

20 “(e) PROOF OF SERVICE.—A verified return by the in-
21 dividual serving any civil investigative demand issued under
22 subsection (a) or any petition filed under subsection (j) setting
23 forth the manner of such service shall be proof of such serv-
24 ice. In the case of service by registered or certified mail, such

1 return shall be accompanied by the return post office receipt
2 of delivery of such demand.

3 “(f) SWORN CERTIFICATES.—The production of docu-
4 mentary material in response to a civil investigative demand
5 served under this section shall be made under a sworn certifi-
6 cate, in such form as the demand designates, by—

7 “(1) in the case of a natural person, the person to
8 whom the demand is directed, or

9 “(2) in the case of a person other than a natural
10 person, a person having knowledge of the facts and cir-
11 cumstances relating to such production and authorized
12 to act on behalf of such person.

13 The certificate shall state that all of the documentary materi-
14 al required by the demand and in the possession, custody, or
15 control of the person to whom the demand is directed has
16 been produced and made available to the custodian.

17 “(g) INTERROGATORIES.—Each interrogatory in a civil
18 investigative demand served under this section shall be an-
19 swered separately and fully in writing under oath and shall
20 be submitted under a sworn certificate, in such form as the
21 demand designates, by—

22 “(1) in the case of a natural person, the person to
23 whom the demand is directed, or

1 “(2) in the case of a person other than a natural
2 person, the person or persons responsible for answering
3 each interrogatory.

4 If any interrogatory is objected to, the reasons for the objec-
5 tion shall be stated in the certificate instead of an answer.
6 The certificate shall state that all information required by the
7 demand and in the possession, custody, control, or knowledge
8 of the person to whom the demand is directed has been sub-
9 mitted. To the extent that any materials are not furnished,
10 they shall be identified and reasons set forth with particulari-
11 ty regarding the reasons why such materials were not fur-
12 nished.

13 “(h) ORAL EXAMINATIONS.—

14 “(1) PROCEDURES.—The examination of any
15 person pursuant to a civil investigative demand for oral
16 testimony served under this section shall be taken
17 before an officer authorized to administer oaths and af-
18 firmations by the laws of the United States or of the
19 place where the examination is held. The officer before
20 whom the testimony is to be taken shall put the wit-
21 ness on oath or affirmation and shall, personally or by
22 someone acting under the direction of the officer and in
23 the officer’s presence, record the testimony of the wit-
24 ness. The testimony shall be taken stenographically
25 and shall be transcribed. When the testimony is fully

1 transcribed, the officer before whom the testimony is
2 taken shall promptly transmit a copy of the transcript
3 of the testimony to the custodian. This subsection shall
4 not preclude the taking of testimony by any means au-
5 thorized by, and in a manner consistent with, the Fed-
6 eral Rules of Civil Procedure.

7 “(2) PERSONS PRESENT.—The false claims law
8 investigator conducting the examination shall exclude
9 from the place where the examination is held all other
10 persons except the person being examined, the person’s
11 counsel, the officer before whom the testimony is to be
12 taken, and any other stenographer taking such
13 testimony.

14 “(3) WHERE TESTIMONY TAKEN.—The oral tes-
15 timony of any person taken pursuant to a civil investi-
16 gative demand served under this section shall be taken
17 in the judicial district of the United States within
18 which such person resides, is found, or transacts busi-
19 ness, or in such other place as may be agreed upon by
20 the false claims law investigator conducting the exami-
21 nation and such person.

22 “(4) TRANSCRIPT OF TESTIMONY.—When the
23 testimony is fully transcribed, the false claims law in-
24 vestigator or the officer shall afford the witness, who
25 may be accompanied by counsel, a reasonable opportu-

1 nity to examine and read the transcript, unless such
2 examination and reading are waived by the witness.
3 Any changes in form or substance which the witness
4 desires to make shall be entered and identified upon
5 the transcript by the officer or the false claims law in-
6 vestigator with a statement of the reasons given by the
7 witness for making such changes. The transcript shall
8 then be signed by the witness, unless the witness in
9 writing waives the signing, is ill, cannot be found, or
10 refuses to sign. If the transcript is not signed by the
11 witness within 30 days after being afforded a reasona-
12 ble opportunity to examine it, the officer or the false
13 claims law investigator shall sign it and state on the
14 record the fact of the waiver, illness, absence of the
15 witness, or the refusal to sign, together with the
16 reason, if any, given therefor.

17 “(5) CERTIFICATION AND DELIVERY TO CUSTO-
18 DIAN.—The officer shall certify on the transcript that
19 the witness was sworn by the officer and that the tran-
20 script is a true record of the testimony given by the
21 witness, and the officer or false claims law investigator
22 shall promptly deliver it or send it by registered or cer-
23 tified mail to the custodian.

24 “(6) FURNISHING OR INSPECTION OF TRAN-
25 SCRIPT BY WITNESS.—Upon payment of reasonable

1 charges therefor, the false claims law investigator shall
2 furnish a copy of the transcript to the witness only,
3 except that the Attorney General, the Deputy Attor-
4 ney General, or an Assistant Attorney General may,
5 for good cause, limit such witness to inspection of the
6 official transcript of the witness's testimony.

7 “(7) CONDUCT OF ORAL TESTIMONY.—(A) Any
8 person compelled to appear for oral testimony under a
9 civil investigative demand issued under subsection (a)
10 may be accompanied, represented, and advised by
11 counsel. Counsel may advise such person, in confi-
12 dence, with respect to any question asked of such
13 person. Such person or counsel may object on the
14 record to any question, in whole or in part, and shall
15 briefly state for the record the reason for the objection.
16 An objection may be properly made, received, and en-
17 tered upon the record when it is claimed that such
18 person is entitled to refuse to answer the question on
19 grounds of any constitutional or other legal right or
20 privilege, including the privilege against self-incrimina-
21 tion. Such person may not otherwise object to or refuse
22 to answer any question, and may not directly or
23 through counsel otherwise interrupt the oral examina-
24 tion. If such person refuses to answer any question, the
25 false claims law investigator conducting the examina-

1 tion may petition the district court of the United States
2 under subsection (j)(1) for an order compelling such
3 person to answer such question.

4 “(B) If such person refuses to answer any ques-
5 tion on the grounds of the privilege against self-in-
6 crimination, the testimony of such person may be com-
7 pelled in accordance with the provisions of part V of
8 title 18.

9 “(8) WITNESS FEES AND ALLOWANCES.—Any
10 person appearing for oral testimony under a civil inves-
11 tigative demand issued under subsection (a) shall be en-
12 titled to the same fees and allowances which are paid
13 to witnesses in the district courts of the United States.

14 “(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND
15 TRANSCRIPTS.—

16 “(1) DESIGNATION.—The Attorney General shall
17 designate a false claims law investigator to serve as
18 custodian of documentary material, answers to inter-
19 rogatories, and transcripts of oral testimony received
20 under this section, and shall designate such additional
21 false claims law investigators as the Attorney General
22 determines from time to time to be necessary to serve
23 as deputies to the custodian.

24 “(2) PRODUCTION OF MATERIALS.—Any person
25 upon whom any civil investigative demand for the pro-

1 duction of documentary material has been served under
2 this section shall make such material available for in-
3 spection and copying to the false claims law investiga-
4 tor designated in such demand at the principal place of
5 business of such person, or at such other place as such
6 false claims law investigator and such person thereafter
7 may agree and prescribe in writing, or as the court
8 may direct under subsection (j)(1). Such material shall
9 be made so available on the return date specified in
10 such demand, or on such later date as such custodian
11 may prescribe in writing. Such person may, upon writ-
12 ten agreement between such person and the custodian,
13 substitute copies for originals of all or any part of such
14 material.

15 “(3) RESPONSIBILITY FOR MATERIALS; DISCLO-
16 SURE.—(A) The false claims law investigator to whom
17 any documentary material, answers to interrogatories,
18 or transcripts of oral testimony are delivered under this
19 section shall take physical possession of such material,
20 answers, or transcripts and shall transmit them to the
21 custodian, who shall be responsible for the use made of
22 them and for the return of documentary material under
23 paragraph (5).

24 “(B) The custodian may cause the preparation of
25 such copies of such documentary material, answers to

1 interrogatories, or transcripts of oral testimony as may
2 be required for official use by any false claims law in-
3 vestigator, or other officer or employee of the Depart-
4 ment of Justice, who is authorized for such use under
5 regulations which the Attorney General shall issue.
6 Such material, answers, and transcripts may be used
7 by any such authorized false claims law investigator or
8 other officer or employee in connection with the taking
9 of oral testimony under this section.

10 “(C) Except as otherwise provided in this subsec-
11 tion, no documentary material, answers to interroгато-
12 ries, or transcripts of oral testimony, or copies thereof,
13 while in the possession of the custodian, shall be avail-
14 able for examination by any individual other than a
15 false claims law investigator or other officer or employ-
16 ee of the Department of Justice authorized under sub-
17 paragraph (B). The prohibition in the preceding sen-
18 tence on the availability of material, answers, or tran-
19 scripts shall not apply if consent is given by the person
20 who produced such material, answers, or transcripts,
21 or, in the case of any product of discovery produced
22 pursuant to an express demand for such material, con-
23 sent is given by the person from whom the discovery
24 was obtained. Nothing in this subparagraph is intended

1 to prevent disclosure to the Congress, including any
2 committee or subcommittee of the Congress.

3 “(D) While in the possession of the custodian and
4 under such reasonable terms and conditions as the At-
5 torney General shall prescribe—

6 “(i) documentary material and answers to in-
7 terrogatories shall be available for examination by
8 the person who produced such material or an-
9 swers, or by a representative of that person au-
10 thorized by that person to examine such material
11 and answers; and

12 “(ii) transcripts of oral testimony shall be
13 available for examination by the person who pro-
14 duced such testimony, or by a representative of
15 that person authorized by that person to examine
16 such transcripts.

17 “(4) USE OF MATERIAL, ANSWERS, OR TRAN-
18 SCRIPTS IN OTHER PROCEEDINGS.—Whenever any at-
19 torney of the Department of Justice has been designat-
20 ed to appear before any court, grand jury, or Federal
21 agency in any case or proceeding, the custodian of any
22 documentary material, answers to interrogatories, or
23 transcripts of oral testimony received under this section
24 may deliver to such attorney such material, answers,
25 or transcripts for official use in connection with any

1 such case or proceeding as such attorney determines to
2 be required. Upon the completion of any such case or
3 proceeding, such attorney shall return to the custodian
4 any such material, answers, or transcripts so delivered
5 which have not passed into the control of such court,
6 grand jury, or agency through introduction into the
7 record of such case or proceeding.

8 “(5) CONDITIONS FOR RETURN OF MATERIAL.—

9 If any documentary material has been produced in the
10 course of any false claims law investigation by any
11 person pursuant to a civil investigative demand under
12 this section, and—

13 “(A) any case or proceeding before any court
14 or grand jury arising out of such investigation, or
15 any proceeding before any Federal agency involv-
16 ing such material, has been completed, or

17 “(B) no case or proceeding in which such
18 material may be used has been commenced within
19 a reasonable time after completion of the exami-
20 nation and analysis of all documentary material
21 and other information assembled in the course of
22 such investigation,

23 the custodian shall, upon written request of the person
24 who produced such material, return to such person any
25 such material (other than copies furnished to the custo-

1 dian under paragraph (2) or made by the Department
2 of Justice under paragraph (3)(B)) which has not
3 passed into the control of any court, grand jury, or
4 agency through introduction into the record of such
5 case or proceeding.

6 “(6) APPOINTMENT OF SUCCESSOR CUSTO-
7 DIANS.—In the event of the death, disability, or sepa-
8 ration from service in the Department of Justice of the
9 custodian of any documentary material, answers to in-
10 terrogatories, or transcripts of oral testimony produced
11 pursuant to a civil investigative demand under this sec-
12 tion, or in the event of the official relief of such custo-
13 dian from responsibility for the custody and control of
14 such material, answers, or transcripts, the Attorney
15 General shall promptly—

16 “(A) designate another false claims law in-
17 vestigator to serve as custodian of such material,
18 answers, or transcripts, and

19 “(B) transmit in writing to the person who
20 produced such material, answers, or testimony
21 notice of the identity and address of the successor
22 so designated.

23 Any person who is designated to be a successor under
24 this paragraph shall have, with regard to such materi-
25 al, answers, or transcripts, the same duties and respon-

1 sibilities as were imposed by this section upon that per-
2 son's predecessor in office, except that the successor
3 shall not be held responsible for any default or derelic-
4 tion which occurred before that designation.

5 “(j) JUDICIAL PROCEEDINGS.—

6 “(1) PETITION FOR ENFORCEMENT.—Whenever
7 any person fails to comply with any civil investigative
8 demand issued under subsection (a), or whenever satis-
9 factory copying or reproduction of any material re-
10 quested in such demand cannot be done and such
11 person refuses to surrender such material, the Attorney
12 General may file, in the district court of the United
13 States for any judicial district in which such person re-
14 sides, is found, or transacts business, and serve upon
15 such person a petition for an order of such court for
16 the enforcement of the civil investigative demand.

17 “(2) PETITION TO MODIFY OR SET ASIDE
18 DEMAND.—(A) Any person who has received a civil in-
19 vestigative demand issued under subsection (a) may
20 file, in the district court of the United States for the
21 judicial district within which such person resides, is
22 found, or transacts business, and serve upon the false
23 claims law investigator named in such demand a peti-
24 tion for an order of the court to modify or set aside
25 such demand. In the case of a petition addressed to an

1 express demand for any product of discovery, a petition
2 to modify or set aside such demand may be brought
3 only in the district court of the United States for the
4 judicial district in which the proceeding in which such
5 discovery was obtained is or was last pending. Any pe-
6 tition under this subparagraph must be filed—

7 “(i) within 20 days after the date of service
8 of the civil investigative demand, or at any time
9 before the return date specified in the demand,
10 whichever date is earlier, or

11 “(ii) within such longer period as may be
12 prescribed in writing by any false claims law in-
13 vestigator named in the demand.

14 “(B) The petition shall specify each ground upon
15 which the petitioner relies in seeking relief under sub-
16 paragraph (A), and may be based upon any failure of
17 the demand to comply with the provisions of this sec-
18 tion or upon any constitutional or other legal right or
19 privilege of such person. During the pendency of the
20 petition in the court, the court may stay, as it deems
21 proper, the running of the time allowed for compliance
22 with the demand, in whole or in part, except that the
23 person filing the petition shall comply with any por-
24 tions of the demand not sought to be modified or set
25 aside.

1 “(3) PETITION TO MODIFY OR SET ASIDE
2 DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the
3 case of any civil investigative demand issued under
4 subsection (a) which is an express demand for any
5 product of discovery, the person from whom such dis-
6 covery was obtained may file, in the district court of
7 the United States for the judicial district in which the
8 proceeding in which such discovery was obtained or
9 was last pending, and serve upon any false claims law
10 investigator named in the demand and upon the recipi-
11 ent of the demand, a petition for an order of such court
12 to modify or set aside those portions of the demand re-
13 quiring production of any such product of discovery.
14 Any petition under this subparagraph must be filed—

15 “(i) within 20 days after the date of service
16 of the civil investigative demand, or at any time
17 before the return date specified in the demand,
18 whichever date is earlier, or

19 “(ii) within such longer period as may be
20 prescribed in writing by any false claims law in-
21 vestigator named in the demand.

22 “(B) The petition shall specify each ground upon
23 which the petitioner relies in seeking relief under sub-
24 paragraph (A), and may be based upon any failure of
25 the portions of the demand from which relief is sought

1 to comply with the provisions of this section, or upon
2 any constitutional or other legal right or privilege of
3 the petitioner. During the pendency of the petition, the
4 court may stay, as it deems proper, compliance with
5 the demand and the running of the time allowed for
6 compliance with the demand.

7 “(4) PETITION TO REQUIRE PERFORMANCE BY
8 CUSTODIAN OF DUTIES.—At any time during which
9 any custodian is in custody or control of any documen-
10 tary material or answers to interrogatories produced,
11 or transcripts of oral testimony given, by any person in
12 compliance with any civil investigative demand issued
13 under subsection (a), such person, and in the case of an
14 express demand for any product of discovery, the
15 person from whom such discovery was obtained, may
16 file, in the district court of the United States for the
17 judicial district within which the office of such custodi-
18 an is situated, and serve upon such custodian, a peti-
19 tion for an order of such court to require the perform-
20 ance by the custodian of any duty imposed upon the
21 custodian by this section.

22 “(5) JURISDICTION.—Whenever any petition is
23 filed in any district court of the United States under
24 this subsection, such court shall have jurisdiction to
25 hear and determine the matter so presented, and to

1 enter such order or orders as may be required to carry
2 into effect the provisions of this section. Any final
3 order so entered shall be subject to appeal under sec-
4 tion 1291 of title 28. Any disobedience of any final
5 order entered under this section by any court shall be
6 punished as a contempt of the court.

7 “(6) **APPLICABILITY OF FEDERAL RULES OF**
8 **CIVIL PROCEDURE.**—The Federal Rules of Civil Pro-
9 cedure shall apply to any petition under this subsec-
10 tion, to the extent that such rules are not inconsistent
11 with the provisions of this section.

12 “(7) **DISCLOSURE EXEMPTION.**—Any documenta-
13 ry material, answers to written interrogatories, or oral
14 testimony provided under any civil investigative
15 demand issued under subsection (a) shall be exempt
16 from disclosure under section 552 of title 5.

17 “(k) **DEFINITIONS.**—For purposes of this section, the
18 term—

19 “(1) ‘false claims law’ means—

20 “(A) this section and sections 3729 through
21 3732, and

22 “(B) any Act of Congress enacted after the
23 date of the enactment of this section which pro-
24 hibits, or makes available to the United States in
25 any court of the United States any civil remedy

1 with respect to, any false claim against, bribery
2 of, or corruption of any officer or employee of the
3 United States;

4 “(2) ‘false claims law investigation’ means any in-
5 quiry conducted by any false claims law investigator
6 for the purpose of ascertaining whether any person is
7 or has been engaged in any violation of a false claims
8 law;

9 “(3) ‘false claims law investigator’ means any at-
10 torney or investigator employed by the Department of
11 Justice who is charged with the duty of enforcing or
12 carrying into effect any false claims law, or any officer
13 or employee of the United States acting under the di-
14 rection and supervision of such attorney or investigator
15 in connection with a false claims law investigation;

16 “(4) ‘person’ means any natural person, partner-
17 ship, corporation, association, or other legal entity, in-
18 cluding any State or political subdivision of a State;

19 “(5) ‘documentary material’ includes the original
20 or any copy of any book, record, report, memorandum,
21 paper, communication, tabulation, chart, or other docu-
22 ment, or data compilations stored in or accessible
23 through computer or other information retrieval sys-
24 tems, together with instructions and all other materials

1 necessary to use or interpret such data compilations,
2 and any product of discovery;

3 “(6) ‘custodian’ means the custodian, or any
4 deputy custodian, designated by the Attorney General
5 under subsection (i)(1);

6 “(7) ‘product of discovery’ includes—

7 “(A) the original or duplicate of any deposi-
8 tion, interrogatory, document, thing, result of the
9 inspection of land or other property, examination,
10 or admission obtained by any method of discovery
11 in any judicial or administrative proceeding of an
12 adversarial nature;

13 “(B) any digest, analysis, selection, compila-
14 tion, or derivation of any item listed in subpara-
15 graph (A); and

16 “(C) any index or manner of access to any
17 item listed in subparagraph (A).”.

18 (b) CLERICAL AMENDMENT.—The table of contents for
19 chapter 37 of title 31, United States Code, is amended by
20 adding after the item relating to section 3731 the following:

“3732. False claims jurisdiction.

“3733. Civil investigative demands.”.

21 **SEC. 7. ADMINISTRATIVE REMEDY.**

22 (a) Chapter 37 of title 31, United States Code, as
23 amended by section 6 of this Act, is further amended by
24 adding at the end the following:

1 **“§3734. Administrative determination of liability for false**
2 **claims and false statements**

3 **“(a) LIABILITY.—**

4 (1) **IN GENERAL.—**An agency head may impose
5 upon any person who violates section 3729 the penal-
6 ties and damages set forth in that section, in accord-
7 ance with the procedures set forth in this section. In
8 addition, an agency head, in accordance with the pro-
9 cedures set forth in this section, may impose upon any
10 person who makes, presents, or submits, or causes to
11 be made, presented, or submitted, a statement that the
12 person knows or has reason to know—

13 **“(A) asserts a material fact which is false or**
14 **fraudulent; or**

15 **“(B) omits a material fact if—**

16 **“(i) as a result of such omission, such**
17 **statement is false or fraudulent, and**

18 **“(ii) the person making, presenting, or**
19 **submitting such statement has a duty to in-**
20 **clude such material fact in the statement,**

21 **a civil penalty of not more than \$10,000 for each such**
22 **statement, in addition to any other remedy that may be**
23 **prescribed by law.**

24 **“(2) EXCEPTION FOR CERTAIN BENEFICIARIES**
25 **OF FEDERAL PROGRAMS.—(A) Notwithstanding the**
26 **definition of ‘claim’ set forth in section 3729(d), the**

1 procedures set forth in this section shall not apply to
2 an individual with respect to benefits received by that
3 individual under a Federal program intended to provide
4 an income, health, nutrition, or social services benefit
5 for the personal use of the individual or members of
6 the individual's family.

7 “(B) For purposes of this paragraph, the term
8 ‘benefits under a Federal program intended to provide
9 an income, health, nutrition, or social services benefit’
10 means—

11 “(i) benefits under the supplemental security
12 income program under title XVI of the Social Se-
13 curity Act;

14 “(ii) old age, survivors, and disability insur-
15 ance benefits under title II of the Social Security
16 Act;

17 “(iii) benefits under title XVIII of the Social
18 Security Act.

19 “(iv) aid to families with dependent children
20 under a State plan approved under section 402(a)
21 of the Social Security Act;

22 “(v) medical assistance under a State plan
23 approved under section 1902(a) of the Social Se-
24 curity Act;

1 “(vi) benefits under title XX of the Social
2 Security Act;

3 “(vii) benefits under the food stamp program
4 as defined in section 3(h) of the Food Stamp Act
5 of 1977 (7 U.S.C. 2412(h);

6 “(viii) benefits under laws administered by
7 the Veteran’s Administration;

8 “(ix) benefits under the Black Lung Benefits
9 Act;

10 “(x) benefits under the special supplemental
11 food program for women, infants, and children
12 under section 17 of the Child Nutrition Act of
13 1966;

14 “(xi) benefits under section 336 of the Older
15 Americans Act;

16 “(xii) any annuity or other benefit under the
17 Railroad Retirement Act of 1974;

18 “(xiv) benefits under subchapter III of chap-
19 ter 83 of title 5; and

20 “(xv) benefits under any other Federal pro-
21 gram which has a similar purpose to those pro-
22 grams described in clauses (i) through (xiv) of pro-
23 viding for income, health, nutrition, or social serv-
24 ices needs.

1 The Attorney General shall, after notice and an oppor-
2 tunity for the submission of public comments, publish a
3 list of those programs described in clause (xv).

4 “(b) DETERMINATIONS OF LIABILITY.—

5 “(1) INVESTIGATION.—The investigating official
6 of an agency may investigate allegations that a person
7 has violated section 3729 or has made, presented, or
8 submitted a false or fraudulent statement described in
9 subsection (a)(1), and shall (unless the allegations are
10 determined to be without merit) report the results of
11 such investigation to the reviewing official of the
12 agency. Nothing in this subsection alters any responsi-
13 bilities under section 4(d) of the Inspector General Act
14 of 1978 of an investigating official to report expedi-
15 tiously any criminal violations to the Attorney General.

16 “(2) REFERRAL TO PRESIDING OFFICER.—(A) If
17 the reviewing official of an agency determines that
18 there is adequate evidence to believe that a person has
19 violated section 3729 or has made, presented, or sub-
20 mitted a false or fraudulent statement described in sub-
21 section (a)(1), the reviewing official shall, in accordance
22 with subparagraphs (B) through (F), refer the allega-
23 tions of such violation to a presiding officer of the
24 agency for a hearing.

1 “(B) Before referring allegations of a violation to
2 a presiding officer under subparagraph (A), the review-
3 ing official of an agency shall transmit to the Attorney
4 General a written notice of the intention of such offi-
5 cial to refer such allegations and a statement of the
6 reasons for such intention. Such notice shall include—

7 “(i) a statement of the reasons of the review-
8 ing official for the referral of such allegations;

9 “(ii) a statement specifying the evidence
10 which supports such allegations;

11 “(iii) a description of the claims for which li-
12 ability under section 3729 is alleged;

13 “(iv) an estimate of the amount of money or
14 the value of property or services requested or de-
15 manded in violation of section 3729; and

16 “(v) a statement of any exculpatory or miti-
17 gating circumstances which may relate to such
18 claims or statements.

19 “(C) A reviewing official may refer allegations of
20 a violation to a presiding officer if—

21 “(i) the Attorney General approves the refer-
22 ral of such allegations; or

23 “(ii) the Attorney General takes no action to
24 disapprove the referral of such allegations—

1 “(I) within 90 days after the date on
2 which the Attorney General receives the
3 notice required by subparagraph (B); or

4 “(II) within such period as may be pro-
5 vided in a memorandum of understanding en-
6 tered into by the agency head involved and
7 the Attorney General with respect to such
8 allegations.

9 “(D) A reviewing official may not refer allegations
10 to a presiding officer under this paragraph if the Attor-
11 ney General transmits a written statement to the re-
12 viewing official which specifies that the Attorney Gen-
13 eral disapproves the referral of the allegations and
14 states the reasons for such disapproval.

15 “(E) If the Attorney General transmits to an
16 agency head a written finding that the continuation of
17 any hearing under subsection (c) may adversely affect
18 any pending or potential criminal or civil action related
19 to an alleged violation of section 3729 or of section
20 1001 of title 18 under consideration in such hearing,
21 the hearing shall be immediately stayed and may be re-
22 sumed only upon written authorization of the Attorney
23 General.

24 “(c) HEARINGS.—

1 “(1) NOTICE OF HEARING.—A reviewing official
2 who refers under subsection (b) allegations of a viola-
3 tion by a person of section 3729, or allegations that a
4 person has made, presented, or submitted a false or
5 fraudulent statement described in subsection (a)(1),
6 shall give notice to the person, in accordance with sec-
7 tion 554(b) of title 5, of the hearing to be conducted
8 with respect to those allegations. The reviewing official
9 shall prosecute the case on behalf of the agency.

10 “(2) CONDUCT OF HEARING.—The presiding offi-
11 cer shall conduct a hearing on the record regarding
12 any allegation of a violation by a person of section
13 3729, or any allegation that a person has made, pre-
14 sented, or submitted a false or fraudulent statement de-
15 scribed in subsection (a)(1), which is referred to the
16 presiding officer by the reviewing official under subsec-
17 tion (b) in order to determine—

18 “(A) whether the person committed the vio-
19 lation; and

20 “(B) the amount of any penalty or damages
21 to be imposed on such person.

22 Any such determination shall be based on a preponder-
23 ance of the evidence.

24 “(3) APPLICABILITY OF TITLE 5 PROCE-
25 DURES.—The provisions of subchapter II of chapter 5

1 of title 5 shall apply to each hearing conducted under
2 paragraph (2).

3 “(d) SUBPOENA AUTHORITY.—

4 “(1) OF INVESTIGATING OFFICIALS.—For the
5 purpose of an investigation under subsection (b)(1), an
6 investigating official is authorized to require by subpoena
7 the production of all information, documents, re-
8 ports, answers, records, accounts, papers, and other
9 data not otherwise reasonably available to the agency
10 involved.

11 “(2) OF PRESIDING OFFICERS.—For the purpose
12 of conducting a hearing under subsection (c)(2), a pre-
13 siding officer is authorized to require by subpoena the
14 attendance and testimony of witnesses and the produc-
15 tion of all information, documents, reports, answers,
16 records, accounts, papers, and other data and docu-
17 mentary evidence which the presiding officer considers
18 relevant and material to the hearing.

19 “(3) ENFORCEMENT OF SUBPOENAS.—The provi-
20 sions of section 555(d) of title 5 shall apply to any sub-
21 poena issued under this subsection.

22 “(e) JUDICIAL REVIEW.—Any person who is deter-
23 mined under this section to have violated section 3729 or to
24 have made, presented, or submitted a false or fraudulent
25 statement described in subsection (a)(1) may obtain review of

1 that determination in the United States district court for the
2 district in which the person resides or in which the violation
3 occurred, or in the United States District Court for the Dis-
4 trict of Columbia. The provisions of chapter 7 of title 5 shall
5 apply to such review.

6 “(f) COLLECTION OF CIVIL PENALTIES.—

7 “(1) CIVIL ACTION FOR RECOVERY.—Any penal-
8 ty or damages imposed in a determination under this
9 section which has become final may be recovered in a
10 civil action brought by the Attorney General in the ap-
11 propriate district court of the United States. In any
12 such action, no matter that was raised or that could
13 have been raised in a hearing conducted under subsec-
14 tion (c) or pursuant to judicial review under subsection
15 (e) may be raised as a defense, and the determination
16 of a violation and the determination of amounts of pen-
17 alties or damages shall not be subject to review.

18 “(2) CONSOLIDATION OF ACTIONS.—Any action
19 under paragraph (1) may, without regard to venue re-
20 quirements, be joined and consolidated with or asserted
21 as a counterclaim, cross-claim, or setoff by the United
22 States in any other civil action which includes as par-
23 ties the United States and the person against whom
24 the action under paragraph (1) is brought.

1 “(3) COMPROMISE AUTHORITY.—The Attorney
2 General shall have exclusive authority to compromise
3 or settle any penalty or damages the determination of
4 which is the subject of a pending appeal under subsec-
5 tion (e) or a pending action to recover such penalty
6 under this subsection.

7 “(4) DEPOSIT OF PENALTIES COLLECTED.—Any
8 amount of penalty or damages collected under this sec-
9 tion shall be deposited in the miscellaneous receipts of
10 the Treasury of the United States, except that any
11 such amount collected by the United States Postal
12 Service shall be deposited in the Postal Service Fund
13 established by section 2003 of title 39.

14 “(g) LIMITATIONS.—

15 “(1) ON LIABILITY.—No person shall be subject
16 to any penalty or damages under this section—

17 “(A) more than 6 years after the date on
18 which the violation is committed, or

19 “(B) more than 3 years after the date when
20 facts material to the right of action are known or
21 reasonably should have been known by the official
22 within the agency charged with responsibility to
23 act in the circumstances, but in no event more
24 than 10 years after the date on which the viola-
25 tion is committed,

1 whichever occurs last.

2 “(2) ON ACTIONS TO RECOVER PENALTIES.—A
3 civil action to recover a penalty or damages under sub-
4 section (f) may not be brought more than 3 years after
5 the date on which the determination of liability for
6 such penalty or damages becomes final.

7 “(3) REPORTING OF ADDITIONAL INFORMA-
8 TION.—If at any time during the course of proceedings
9 brought under this section the agency head involved
10 receives or discovers any specific information regarding
11 bribery, gratuities, conflict of interest, or other corrup-
12 tion or similar activity in relation to a false claim,
13 statement, or record or other activity prohibited by
14 section 3729, the agency head shall immediately report
15 such information to the Attorney General, and in the
16 case of an agency in which an Office of Inspector Gen-
17 eral is established by the Inspector General Act of
18 1978 or by any other Federal law, to the Inspector
19 General of that agency.

20 “(h) REGULATIONS.—Each agency head shall issue
21 such regulations as are necessary to implement the provisions
22 of this section.

23 “(i) RIGHT TO SETOFF.—

24 “(1) IN GENERAL.—The amount of any penalty
25 or damages the determination of which has become

1 final under this section, or for which a judgment has
2 been entered under subsection (e) or (f) of this section,
3 or any amount agreed upon in a settlement or compro-
4 mise under subsection (f)(4), may be deducted from any
5 sum then or later owing by the United States to the
6 person liable for such penalty, unless otherwise prohib-
7 ited by law or except in a case in which the Federal
8 Government has agreed by contract not to exercise any
9 rights of setoff the Government has.

10 “(2) NOTICE.—The agency head involved shall
11 transmit written notice to the person liable for such
12 penalty before commencing a deduction or series of de-
13 ductions under this subsection.

14 “(3) DEPOSIT OF AMOUNTS.—All amounts re-
15 tained under this subsection shall be remitted to the
16 Secretary of the Treasury for deposits in accordance
17 with subsection (f)(5).

18 “(4) NOTIFICATION OF THE SECRETARY OF THE
19 TREASURY.—An agency head may forward a certified
20 copy of any determination as to liability for any penal-
21 ty which has become final under this section, or a cer-
22 tified copy of any judgment which has been entered
23 under subsection (e) or (f), to the Secretary of the
24 Treasury for action in accordance with this subsection.

25 “(j) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘agency’ means an agency as de-
2 fined in section 551 of title 5;

3 “(2) the term ‘agency head’ means—

4 “(A) the head of an agency, or

5 “(B) an officer or employee of the agency
6 designated, in regulations promulgated by the
7 head of the agency, to act on behalf of the head of
8 the agency;

9 except that, in the case of a military department,
10 ‘agency head’ means the Secretary of Defense;

11 “(3) the term ‘investigating official’ means—

12 “(A) in the case of an agency in which an
13 Office of Inspector General is established by the
14 Inspector General Act of 1978 or by any other
15 Federal law, the Inspector General of that
16 agency;

17 “(B) in the case of an agency in which an
18 Office of Inspector General is not established by
19 the Inspector General Act of 1978 or by any
20 other Federal law, any officer or employee of the
21 agency designated by the agency head to conduct
22 investigations under subsection (b) of this section;
23 or

24 “(C) in the case of a military department,
25 the Inspector General of the Department of De-

1 fense or an officer or employee within the military
2 department designated by the Inspector General;

3 “(4) the term ‘reviewing official’ means any offi-
4 cer or employee of an agency—

5 “(A) who is designated by the agency head
6 to make determinations required by subsection
7 (b)(2)(A) of this section;

8 “(B) who, if a member of the Armed Forces
9 of the United States on active duty, is serving in
10 grade O-7 or above or, if a civilian employee, is
11 serving in a position for which the rate of basic
12 pay is not less than the minimum rate of basic
13 pay payable for grade GS-16 of the General
14 Schedule; and

15 “(C) who—

16 “(i) is not subject to supervision by, or
17 required to report to, the investigating offi-
18 cial; and

19 “(ii) is not employed in the organiza-
20 tional unit of the agency in which the inves-
21 tigating official is employed; and

22 “(5) the term ‘presiding officer’ means—

23 “(A) an administrative law judge appointed
24 under section 3105 of title 5; or

1 “(B) if such an administrative law judge is
2 not available to an agency, an official designated
3 by the agency head who performs functions com-
4 parable to and in a similar manner as administra-
5 tive law judges appointed under section 3105 of
6 title 5, and is selected, compensated, and other-
7 wise treated in a similar manner as such adminis-
8 trative law judges.”.

9 (b) **CLERICAL AMENDMENT.**—The table of contents for
10 chapter 37 of title 31, United States Code, as amended by
11 section 6(b) of this Act, is further amended by adding at the
12 end the following new item:

“3734. Administrative remedy.”.

13 **SEC. 8. CRIMINAL PENALTIES.**

14 Section 287 of title 18, United States Code, is amended
15 by striking “five” and inserting “ten”.

16 **SEC. 9. EFFECTIVE DATE.**

17 (a) **IN GENERAL.**—Except as provided in subsection (b),
18 this Act and the amendments made by this Act shall take
19 effect on the date of the enactment of this Act.

20 (b) **SECTION 7.**—(1) The amendments made by section
21 7 shall take effect 180 days after the date of the enactment of
22 this Act.

23 (2) Section 3734(h) of title 31, United States Code (as
24 added by section 7 of this Act), shall take effect on the date
25 of the enactment of this Act.