To amend title 5, United States Code, to provide civil penalties for false claims and statements made to the United States, to certain recipients of property, services, or money from the United States, or to parties to contracts with the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1985

Mr. HERTEL of Michigan introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to provide civil penalties for false claims and statements made to the United States, to certain recipients of property, services, or money from the United States, or to parties to contracts with the United States, and for other purposes.

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

That this Act may be cited as the “Program Fraud Civil Penalties Act of 1985”.

SEC. 2. (a)(1) The Congress finds that—

(A) fraud in Government programs is a serious and growing problem;
(B) present civil and criminal remedies for program fraud are not sufficiently responsive to this problem;

(C) fraud in Government programs results in the loss of millions of dollars annually; and

(D) fraud in Government programs undermines the integrity of these programs by allowing ineligible persons to participate and receive Federal funds to which they are not entitled.

(2) The Congress further finds that it is desirable to create an expeditious and inexpensive administrative procedure which Federal agencies may use to impose an administrative penalty for false, fictitious, or fraudulent claims and statements.

(b) The purposes of this Act are—

(1) to allow Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements to have an administrative remedy penalizing persons who submit such claims and statements;

(2) to provide an administrative penalty procedure which is comparable with administrative penalty procedures with respect to Government contracts, personnel disciplinary proceedings, and Government grants; and

(3) to provide reasonable due process protections to all persons who are subject to the adjudication of
administrative penalties for false, fictitious, or fraudulent claims or statements.

SEC. 3. (a) Title 5 of the United States Code is amended by inserting after chapter 7 the following new chapter:

"CHAPTER 8—ADMINISTRATIVE PENALTIES AND ASSESSMENTS FOR FALSE CLAIMS AND STATEMENTS"

"Sec. 801. Definitions.
"802. False claims and statements; liability.
"803. Hearing and determination by authority head; subpoena authority.
"804. Judicial review.
"805. Collection of civil penalties and assessments.
"806. Limitations.
"807. Right to setoff.
"808. Regulations.
"809. Reports.

§ 801. Definitions

(a) As used in this chapter—

(1) 'authority' means any establishment as defined in section 11(2) of the Inspector General Act of 1978 (92 Stat. 1109), any executive department, any military department, and the United States Postal Service;

(2) 'authority head' means—

(A) the head of an authority, or

(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to make findings and deter-
minations under this chapter on behalf of the head of the authority;

"(3) 'claim' means any request or demand, whether under a contract or otherwise—

"(A) to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits); or

"(B) to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

"(i) for property or services if the United States provided such property or services or any portion of the funds for the purchase of such property or services or will reimburse such recipient or party for the purchase of such property or services; or

"(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States provided any portion of the money requested or demanded or will reimburse such recipient for any portion of the money paid on such request or demand;

"(4) 'statement' means any written representation or certification—
"(A) with respect to a claim; or

"(B) with respect to—

"(i) a contract with, or a bid or proposal for a contract with,

"(ii) a grant, loan, or benefit from,

"(iii) an application for insurance from,

or

"(iv) an application for employment with,

an authority, or any State, political subdivision of a State, or other party acting on behalf of, or based upon the credit or guarantee of, an authority;

"(5) 'person' means any individual, partnership, corporation, association, or private organization;

"(6) 'investigating official' means—

"(A) the Inspector General in an authority which is authorized an Inspector General by the Inspector General Act of 1978 (92 Stat. 1101) or any other Federal law; or

"(B) in the case of an authority which is not authorized an Inspector General by the Inspector General Act of 1978 (91 Stat. 1101) or any other Federal law, any official or employee of the authority when designated by the head of the au-
authority to conduct investigations under the provisions of section 803(a)(1) of this title; and

"(7) 'reviewing official' means any official or employee of an authority—

"(A) whose rate of basic pay is equal to or greater than the minimum rate of basic pay for grade GS–18 under section 5332 of this title; and

"(B) who is designated by the head of the authority to make the determination provided in section 803(a)(2) of this title.

"(b) For the purposes of subsection (a)(3) of this section—

"(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim whether submitted separately or together with other claims;

"(2) each request or demand for property, services, or money constitutes a claim regardless of whether such property, services, or money is actually delivered or paid; and

"(3) a claim shall be considered made to an authority, recipient, or party when such claim is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.
"(c) For the purposes of subsection (a)(4) of this section—

"(1) each written representation or certification constitutes a separate statement whether submitted separately or together with other statements; and

"(2) a statement shall be considered made to an authority although such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

§ 802. False claims and statements; liability

"(a) For purposes of this chapter—

"(1) a claim is false when the claim—

"(A) includes or is supported by any false, fictitious, fraudulent, or intentionally misleading statement, document, record, or accounting or bookkeeping entry;

"(B) is for payment for the provision of property or services which the claimant has not provided, or has not provided in accordance with the terms of the contract on which such claim is based, or has provided in violation of any applicable Federal or State statute or regulation; or

"(C) is for the payment of an amount in excess of the amount which is properly due; and
"(2) a statement is false when a material fact—

"(A) is asserted in such statement and is false, fictitious, fraudulent, or intentionally misleading; or

"(B) is omitted from such statement and—

"(i) as a result of the omission, such statement is substantially false, fictitious, or fraudulent or, in the case of an intentional omission, is intentionally misleading; or

"(ii) the person making such statement has a duty to include such material fact in the statement.

"(b) Any person who, on or after the effective date of the Program Fraud Civil Penalties Act of 1983, knowingly makes, presents, or submits, or knowingly causes to be made, presented, or submitted, a false claim or statement, is liable to the United States for—

"(1) a civil penalty of not more than $10,000 for each false claim or statement; and

"(2) an assessment of not more than double—

"(A) the full amount of money paid to and the full value of property or services delivered to a person as a result of the false claim or statement of such person; or
“(B) the amount of damages, including the amount of consequential damages and the cost of investigating such false claim or statement, sustained by the United States as a result of the false claim or statement.

“(c) Except as provided in section 803(b)(5) or 805(f)(1) of this title, the total amount of the penalty and assessment determined under this section shall not be less than the amount of damages sustained by the United States as a result of the false claim or statement.

“(d)(1) The penalties and assessments provided in this section shall be in addition to all criminal penalties provided by law.

“(2) Except as provided in subsection (e) of this section, the authority head may use any administrative and contractual remedy authorized by any other applicable provision of Federal law in addition to the provisions of this chapter to impose or enforce a civil penalty and assessment for false claims and statements.

“(e) Notwithstanding any other provision of Federal law, a civil penalty or assessment imposed under any other provision of Federal law in any case subject to this chapter may be in any amount authorized in this section.
§ 803. Hearing and determination by authority head; subpoena authority

“(a)(1) The investigating official of an authority shall investigate allegations that a person is liable under section 802(b) of this title and report the findings and conclusions to the reviewing official of the authority.

“(2) If the reviewing official determines, based upon the report of the investigating official or upon information from any other source, that there is probable cause to believe that a person is liable under section 802(b) of this title, the reviewing official shall refer the allegations contained in such report to the authority head for a hearing. Before referring the allegations to the authority head, the reviewing official may refer the allegations to the investigating official and require the investigating official to obtain more information with respect to the allegations.

“(b)(1) The authority head shall conduct a hearing on the record regarding any allegation referred to him pursuant to subsection (a) of this section to determine, based on the preponderance of the evidence—

“(A) the liability of any person under section 802(b) of this title;

“(B) the amount of damages suffered by the United States as a result of the false claim or statement creating the liability of such person; and
"(C) the amount of any penalty and assessment to be imposed on such person.

"(2) The person alleged to be liable under section 802(b) of this title shall be entitled—

"(A) to written notice of the hearing specifically setting forth all allegations and the date, time, and place for such hearing;

"(B) to be present at such hearing;

"(C) to be represented by counsel;

"(D) to present evidence; and

"(E) to cross-examine any witnesses.

"(3) Each hearing under paragraph (1) of this subsection shall be conducted in an impartial manner and resolve the issues expeditiously and inexpensively consistent with fundamental fairness. A written decision including findings and determinations shall be issued after the conclusion of the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph and section 804 of this title, the findings and determinations of the authority head issued in connection with a hearing conducted under paragraph (1) of this subsection are final.

"(B) If the authority head conducting the hearing under paragraph (1) of this subsection is an individual described in section 801(a)(2)(B) of this title, the amount of the penalty
and assessment imposed on a person may be reduced by the authority head described in section 801(a)(2)(A) of this title to any amount not less than the amount provided in section 802(c) of this title.

"(5) The total amount of the penalty and assessment determined under this section may be less than the amount provided in section 802(c) of this title if the authority head determines that a lower amount is in the best interest of the United States and enters in the written decision and makes available for public inspection the determination and the reasons for the determination.

"(c) After a hearing pursuant to subsection (b) of this section, the authority head shall promptly send to any person determined to be liable under section 802(b) of this title written notice of the findings and determinations of the authority head and the right to judicial review under section 804 of this title.

"(d) For the purposes of an investigation under subsection (a) of this section the investigating official is authorized—

"(1) to administer oaths or affirmations; and

"(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts,
papers, and other data and documentary evidence necessary to conduct such investigation.

"(e) For the purposes of conducting a hearing under subsection (b) of this section, the authority head is authorized—

"(1) to administer oaths or affirmations; and

"(2) to require by subpoena the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the authority head considers relevant and material to the hearing.

"(f) In the case of contumacy or refusal to obey a subpoena issued pursuant to subsection (d) or (e) of this section, the investigating official or authority head, as the case may be, may invoke the aid of any district court of the United States where such investigation or hearing is being conducted, or where such subpoenaed person resides or conducts business. The district courts of the United States shall have jurisdiction to issue an appropriate order for the enforcement of any such subpoena. Any failure to obey such order of the court is punishable by such court as contempt.

"(g) Unless a petition is filed as provided in section 804 of this title, the determination of liability pursuant to this
section shall be final and shall not be subject to judicial review.

§ 804. Judicial review

(a) Any person who has been determined pursuant to section 803 of this title to be liable under section 802(b) of this title may obtain review of such determination in the United States Court of Appeals for the circuit in which such person resides or in which the claim or statement upon which the determination of liability is based was made, presented, or submitted, or for the District of Columbia Circuit, by filing in such court, within sixty days after the date on which the notice required by section 803(c) of this title is sent, a written petition that such determination be modified or set aside. The clerk of the court shall transmit a copy of such petition to the authority head concerned and to the Attorney General. Upon receipt of the copy of such petition the authority head shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability. Except as otherwise provided in this section, the courts of appeals of the United States shall have jurisdiction to review the findings and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the findings and determinations of the authority head, and to enforce such findings and determinations to the extent that such findings and determinations are affirmed or modified.
“(b) The findings of the authority head with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

“(c) The determination of the authority head as to the amount of any penalty and assessment shall be conclusive and shall not be subject to review except to determine whether such amount exceeds the maximum amount provided in section 802 of this title.

“(d) Any court of appeals reviewing, under this section, the findings and determinations of the authority head shall not consider any objection that was not raised in the hearing conducted pursuant to section 803(b) of this title, if any, absent a showing of extraordinary circumstances causing the failure to raise the objection. If any party shows to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the court shall remand the matter to the authority head for consideration of such additional evidence.

“(e) Upon a final determination by the court of appeals that a person is liable under section 802(b) of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States, and such judgment may be recorded and enforced by the Attorney General to the same
extent and in the same manner as a judgment entered by any United States district court.

§ 805. Collection of civil penalties and assessments

“(a) The Attorney General, with the support of the authority head when required, shall be responsible for judicial enforcement of any civil penalty or assessment imposed pursuant to the provisions of this chapter.

“(b) Any penalty or assessment imposed in a determination which has become final pursuant to section 803(g) of this chapter may be recovered in a civil action brought by the Attorney General. In any such action, no matters that were raised or that could have been raised in a hearing conducted under section 803(b) of this title or in a review pursuant to section 804 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

“(c) The district courts of the United States and of any territory or possession of the United States shall have jurisdiction of any action commenced by the United States under subsection (b) of this section.

“(d) Any action under subsection (b) of this section may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which
includes as parties the United States and the person against whom such action may be brought.

"(e)(1) The United States Claims Court shall have jurisdiction of any action under subsection (b) of this section to recover any penalty and assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court. The United States may join as additional parties in such counterclaim all persons who may be jointly and severally liable with the person against whom such counterclaim is asserted.

"(2) No cross-claims or third-party claims not otherwise within the jurisdiction of the United States Claims Court shall be asserted among additional parties joined under paragraph (1) of this subsection.

"(f)(1) Except as provided in paragraph (2) of this subsection, the authority head may compromise or settle any penalty and assessment determined pursuant to section 803 of this title. No compromise or settlement under this subsection shall provide for a recovery of an amount less than the amount described in section 802(c) of this title unless the authority head makes the determination and takes the action provided in section 803(b)(5) of this title.

"(2) The Attorney General shall have exclusive authority to compromise or settle any penalty and assessment the determination of which is the subject of a pending petition
pursuant to section 804 of this title or a pending action to recover such penalty or assessment pursuant to this section.

"(g) Whenever a penalty and assessment is imposed and collected pursuant to this chapter and part of any money paid or property or services delivered as a result of the false claim or statement on which such penalty and assessment is based was provided by a State or political subdivision thereof which has not previously been reimbursed for such money or property, the United States shall reimburse such State or political subdivision the lesser of—

"(1) an amount bearing the same ratio to the civil penalty and assessment recovered as the amount paid, or the cost to the State or political subdivision of property or services delivered, by the State or political subdivision on the basis of such false claim or statement bears to the total amount paid, or total cost of property or services delivered, based on such false claim or statement; or

"(2) the total amount actually paid, or the total actual cost to the State or political subdivision of property or services delivered, by the State or political subdivision on the basis of such false claim or statement.

"(h) Except as provided in subsection (g) of this section, any amount of penalty and assessment collected under this
chapter shall be deposited as miscellaneous receipts in the Treasury of the United States.

§ 806. Limitations

"(a)(1) Prior to initiating a proceeding under section 803(b) of this title the authority head shall transmit to the Attorney General written notice of the intention to initiate such proceeding together with the reasons for such intention.

"(2) The authority head may initiate a proceeding under section 803(b) of this title if—

"(A) the Attorney General approves the initiation of such proceeding; or

"(B) the Attorney General takes no action to disapprove the initiation of such proceeding within ninety days after the date on which the notice required by paragraph (1) of this subsection is received or within such longer period after such date as is provided in a memorandum of understanding entered into by the authority head and the Attorney General with respect to such proceeding.

"(b)(1) No proceeding under section 803(b) of this title shall be commenced more than six years after the date on which the claim or statement alleged to be a false claim or statement is made, presented, or submitted.
“(2) A proceeding under such section is commenced by mailing by registered or certified mail the notice required in section 803(b)(2)(A) of this title.

“(c) A civil action to recover a penalty and assessment under section 805 of this title shall be commenced within three years after the date on which the determination of liability for such penalty and assessment becomes final.

“(d) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to—

“(1) the Inspector General of the authority, if an Inspector General is authorized for the authority by the Inspector General Act of 1978 (92 Stat. 1101) or any other Federal law, for transmission to the Attorney General; or

“(2) the Attorney General, if the authority is not authorized an Inspector General by the Inspector General Act of 1978 (92 Stat. 1101) or any other Federal law.

“(e) If the Attorney General transmits to an authority head a written finding that the continuation of any proceeding under section 803 of this title may adversely affect any
pending or potential criminal or civil action related to an alleged false claim or statement under consideration in such proceeding, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

"(f) No proceeding shall be commenced under section 803(b) of this title with respect to any claim, statement, or group of claims or statements submitted before the commencement of such proceedings by any person or group of persons acting in concert if (1) the amount of money or the value of property or services requested or demanded in such claim, statement, or group of claims or statements exceeds $100,000, or (2) the amount of damages, including the amount of consequential damages, sustained by the United States as a result of such claim, statement, or group of claims or statements exceeds $100,000.

§ 807. Right to setoff

"(a)(1) The amount of any penalty and assessment which has become final under section 803(g) of this title, or for which a judgment has been entered under section 804(e) or 805 of this title, or any amount agreed upon in a settlement or compromise under section 805(f) of this title, may be deducted from any sum, including a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty and assessment.
"(2) The authority head shall transmit written notice of each deduction made under this paragraph to the person liable for such penalty and assessment.

"(3) All amounts retained pursuant to this paragraph shall be remitted to the Secretary of the Treasury for deposit in accordance with section 805(h) of this title.

"(b) An authority head may forward a certified copy of any determination as to liability for any penalty and assessment which has become final under section 803(g) of this title, or a certified copy of any judgment which has been entered under section 804(e) or 805 of this title to the Secretary of the Treasury for action in accordance with subsection (a) of this section.

§ 808. Regulations

"(a) The head of each authority shall issue rules and regulations implementing paragraphs (1), (2), and (3) of section 803(b) of this title and such additional rules and regulations as may be necessary to carry out the provisions of this chapter. Such rules and regulations shall insure that investigating officials are not responsible for making the determinations or conducting the hearing required in section 803(b) of this title or making the collections under section 805 of this title.

"(b) The Attorney General may enter into a memorandum of understanding with the head of any authority to pro-
vide expeditious procedures for approving or disapproving the
initiation of proceedings under section 803(b) of this title and
for referral of matters for action under sections 804, 805, and
806(e) of this title. Such memorandum of understanding may
provide advanced authorization to initiate proceedings under
section 803(b) of this title with respect to any particular type
or class of alleged false claims or statements if not otherwise
barred by section 806 of this title.

§ 809. Reports

"(a) Each investigating official shall, not later than Oc-
tober 31 of each year, prepare an annual report summarizing
actions taken under this chapter during the most recent
twelve-month period ending September 30. Such report shall
include—

"(1) a summary of matters referred to the author-
ity head under section 803(a)(2) of this title during
such period;

"(2) a summary of matters transmitted to the At-
torney General under section 806(a)(1) of this title
during such period;

"(3) a summary of all proceedings initiated by the
authority head under section 803(b) of this title, and
the results of such proceedings, during such period; and
"(4) a summary of the actions taken during such period to collect any civil penalty or assessment im-
posed under this chapter.

"(b) The annual report of an investigating official shall be furnished to the authority head not later than October 31 of the year such report is prepared. Each such report shall be transmitted to the appropriate committees and subcommittees of Congress in the same manner as the October 31 reports of Inspectors General are transmitted under section 5 (b) of the Inspector General Act of 1978 (92 Stat. 1103).".

(b) The table of chapters at the beginning of part I of title 5, United States Code, is amended by inserting after the item relating to chapter 7 the following new item:

"8. Administrative Penalties and Assessments for False Claims and Statements 801."

SEC. 4. The regulations required by section 808 of title 5, United States Code, as added by section 3(a) of this Act, shall be promulgated not later than one hundred and eighty days after the effective date of this Act.

SEC. 5. This Act and the amendments made by this Act shall take effect December 31, 1985.