

Suspend the Rules and Pass the Bill, S. 386, with Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

111TH CONGRESS
1ST SESSION

S. 386

AN ACT

To improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

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 “Fraud Enforcement
5 and Recovery Act of 2009” or “FERA”.

6 **SEC. 2. AMENDMENTS TO IMPROVE MORTGAGE, SECURI-**
7 **TIES, COMMODITIES, AND FINANCIAL FRAUD**
8 **RECOVERY AND ENFORCEMENT.**

9 (a) DEFINITION OF FINANCIAL INSTITUTION
10 AMENDED TO INCLUDE MORTGAGE LENDING BUSI-
11 NESS.—Section 20 of title 18, United States Code, is
12 amended—

1 (1) in paragraph (8), by striking “or” after the
2 semicolon;

3 (2) in paragraph (9), by striking the period and
4 inserting “; or”; and

5 (3) by inserting at the end the following:

6 “(10) a mortgage lending business (as defined
7 in section 27 of this title) or any person or entity
8 that makes in whole or in part a federally related
9 mortgage loan as defined in section 3 of the Real
10 Estate Settlement Procedures Act of 1974.”.

11 (b) MORTGAGE LENDING BUSINESS DEFINED.—

12 (1) IN GENERAL.—Chapter 1 of title 18, United
13 States Code, is amended by inserting after section
14 26 the following:

15 **“§ 27. Mortgage lending business defined**

16 “In this title, the term ‘mortgage lending business’
17 means an organization which finances or refinances any
18 debt secured by an interest in real estate, including private
19 mortgage companies and any subsidiaries of such organi-
20 zations, and whose activities affect interstate or foreign
21 commerce.”.

22 (2) CHAPTER ANALYSIS.—The chapter analysis
23 for chapter 1 of title 18, United States Code, is
24 amended by adding at the end the following:

“27. Mortgage lending business defined.”.

1 (c) FALSE STATEMENTS IN MORTGAGE APPLICA-
2 TIONS AMENDED TO INCLUDE FALSE STATEMENTS BY
3 MORTGAGE BROKERS AND AGENTS OF MORTGAGE LEND-
4 ING BUSINESSES.—Section 1014 of title 18, United States
5 Code, is amended by—

6 (1) striking “or” after “the International Bank-
7 ing Act of 1978,”; and

8 (2) inserting after “section 25(a) of the Federal
9 Reserve Act” the following: “, or a mortgage lending
10 business, or any person or entity that makes in
11 whole or in part a federally related mortgage loan as
12 defined in section 3 of the Real Estate Settlement
13 Procedures Act of 1974”.

14 (d) MAJOR FRAUD AGAINST THE GOVERNMENT
15 AMENDED TO INCLUDE ECONOMIC RELIEF AND TROU-
16 BLED ASSET RELIEF PROGRAM FUNDS.—Section 1031(a)
17 of title 18, United States Code, is amended by—

18 (1) inserting after “or promises, in” the fol-
19 lowing: “any grant, contract, subcontract, subsidy,
20 loan, guarantee, insurance, or other form of Federal
21 assistance, including through the Troubled Asset Re-
22 lief Program, an economic stimulus, recovery or res-
23 cue plan provided by the Government, or the Gov-
24 ernment’s purchase of any troubled asset as defined

1 in the Emergency Economic Stabilization Act of
2 2008, or in”;

3 (2) striking “the contract, subcontract” and in-
4 sserting “such grant, contract, subcontract, subsidy,
5 loan, guarantee, insurance, or other form of Federal
6 assistance”; and

7 (3) striking “for such property or services”.

8 (e) SECURITIES FRAUD AMENDED TO INCLUDE
9 FRAUD INVOLVING OPTIONS AND FUTURES IN COMMOD-
10 ITIES.—

11 (1) IN GENERAL.—Section 1348 of title 18,
12 United States Code, is amended—

13 (A) in the caption, by inserting “**and**
14 **commodities**” after “**Securities**”;

15 (B) in paragraph (1), by inserting “any
16 commodity for future delivery, or any option on
17 a commodity for future delivery, or” after “any
18 person in connection with”; and

19 (C) in paragraph (2), by inserting “any
20 commodity for future delivery, or any option on
21 a commodity for future delivery, or” after “in
22 connection with the purchase or sale of”.

23 (2) CHAPTER ANALYSIS.—The item for section
24 1348 in the chapter analysis for chapter 63 of title

1 18, United States Code, is amended by inserting
2 “and commodities” after “Securities”.

3 (f) MONEY LAUNDERING AMENDED TO DEFINE
4 PROCEEDS OF SPECIFIED UNLAWFUL ACTIVITY.—

5 (1) MONEY LAUNDERING.—Section 1956(c) of
6 title 18, United States Code, is amended—

7 (A) in paragraph (8), by striking the pe-
8 riod and inserting “; and”; and

9 (B) by inserting at the end the following:

10 “(9) the term ‘proceeds’ means any property
11 derived from or obtained or retained, directly or in-
12 directly, through some form of unlawful activity, in-
13 cluding the gross receipts of such activity.”.

14 (2) MONETARY TRANSACTIONS.—Section
15 1957(f) of title 18, United States Code, is amended
16 by striking paragraph (3) and inserting the fol-
17 lowing:

18 “(3) the terms ‘specified unlawful activity’ and
19 ‘proceeds’ shall have the meaning given those terms
20 in section 1956 of this title.”.

21 (g) SENSE OF THE CONGRESS AND REPORT CON-
22 CERNING REQUIRED APPROVAL FOR MERGER CASES.—

23 (1) SENSE OF CONGRESS.—It is the sense of
24 the Congress that no prosecution of an offense
25 under section 1956 or 1957 of title 18, United

1 States Code, should be undertaken in combination
2 with the prosecution of any other offense, without
3 prior approval of the Attorney General, the Deputy
4 Attorney General, the Assistant Attorney General in
5 charge of the Criminal Division, a Deputy Assistant
6 Attorney General in the Criminal Division, or the
7 relevant United States Attorney, if the conduct to be
8 charged as “specified unlawful activity” in connec-
9 tion with the offense under section 1956 or 1957 is
10 so closely connected with the conduct to be charged
11 as the other offense that there is no clear delineation
12 between the two offenses.

13 (2) REPORT.—One year after the date of the
14 enactment of this Act, and at the end of each of the
15 four succeeding one-year periods, the Attorney Gen-
16 eral shall report to the House and Senate Commit-
17 tees on the Judiciary on efforts undertaken by the
18 Department of Justice to ensure that the review and
19 approval described in paragraph (1) takes place in
20 all appropriate cases. The report shall include the
21 following:

22 (A) The number of prosecutions described
23 in paragraph (1) that were undertaken during
24 the previous one-year period after prior ap-
25 proval by an official described in paragraph (1),

1 classified by type of offense and by the approv-
2 ing official.

3 (B) The number of prosecutions described
4 in paragraph (1) that were undertaken during
5 the previous one-year period without such prior
6 approval, classified by type of offense, and the
7 reasons why such prior approval was not ob-
8 tained.

9 (C) The number of times during the pre-
10 vious year in which an approval described in
11 paragraph (1) was denied.

12 **SEC. 3. AUTHORIZATION OF ADDITIONAL FUNDING TO**
13 **COMBAT MORTGAGE FRAUD, SECURITIES**
14 **AND COMMODITIES FRAUD, AND OTHER**
15 **FRAUDS INVOLVING FEDERAL ECONOMIC AS-**
16 **SISTANCE.**

17 (a) AUTHORIZATION OF ADDITIONAL APPROPRIA-
18 TIONS FOR THE DEPARTMENT OF JUSTICE.—

19 (1) IN GENERAL.—There is authorized to be
20 appropriated to the Attorney General, \$165,000,000
21 for each of the fiscal years 2010 and 2011, for the
22 purposes of investigations and prosecutions and civil
23 and administrative proceedings involving Federal as-
24 sistance programs and financial institutions, includ-

1 ing financial institutions to which this Act and
2 amendments made by this Act apply.

3 (2) ALLOCATIONS.—With respect to fiscal years
4 2010 and 2011, the amounts authorized to be ap-
5 propriated under paragraph (1) shall be allocated as
6 follows:

7 (A) Federal Bureau of Investigation:
8 \$75,000,000 for fiscal year 2010 and
9 \$65,000,000 for fiscal year 2011, an appro-
10 priate percentage of which amounts shall be
11 used to investigate mortgage fraud.

12 (B) The offices of the United States Attor-
13 neys: \$50,000,000 for each fiscal year.

14 (C) The criminal division of the Depart-
15 ment of Justice: \$20,000,000 for each fiscal
16 year.

17 (D) The civil division of the Department of
18 Justice: \$15,000,000 for each fiscal year.

19 (E) The tax division of the Department of
20 Justice: \$5,000,000 for each fiscal year.

21 (b) AUTHORIZATION OF ADDITIONAL APPROPRIA-
22 TIONS FOR THE POSTAL INSPECTION SERVICE.—There is
23 authorized to be appropriated to the Postal Inspection
24 Service of the United States Postal Service, \$30,000,000
25 for each of the fiscal years 2010 and 2011 for investiga-

1 tions involving Federal assistance programs and financial
2 institutions, including financial institutions to which this
3 Act and amendments made by this Act apply.

4 (c) AUTHORIZATION OF ADDITIONAL APPROPRIA-
5 TIONS FOR THE INSPECTOR GENERAL FOR THE DEPART-
6 MENT OF HOUSING AND URBAN DEVELOPMENT.—There
7 is authorized to be appropriated to the Inspector General
8 of the Department of Housing and Urban Development,
9 \$30,000,000 for each of the fiscal years 2010 and 2011
10 for investigations involving Federal assistance programs
11 and financial institutions, including financial institutions
12 to which this Act and amendments made by this Act apply.

13 (d) AUTHORIZATION OF ADDITIONAL APPROPRIA-
14 TIONS FOR THE UNITED STATES SECRET SERVICE.—
15 There is authorized to be appropriated to the United
16 States Secret Service of the Department of Homeland Se-
17 curity, \$20,000,000 for each of the fiscal years 2010 and
18 2011 for investigations involving Federal assistance pro-
19 grams and financial institutions, including financial insti-
20 tutions to which this Act and amendments made by this
21 Act apply.

22 (e) AUTHORIZATION OF ADDITIONAL APPROPRIA-
23 TIONS FOR THE SECURITIES AND EXCHANGE COMMIS-
24 SION.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to the Securities and Exchange Com-
3 mission, \$20,000,000 for each of the fiscal years
4 2010 and 2011 for investigations and enforcement
5 proceedings involving financial institutions, including
6 financial institutions to which this Act and amend-
7 ments made by this Act apply.

8 (2) INSPECTOR GENERAL.—There is authorized
9 to be appropriated to the Securities and Exchange
10 Commission, \$1,000,000 for each of the fiscal years
11 2010 and 2011 for the salaries and expenses of the
12 Office of the Inspector General of the Securities and
13 Exchange Commission.

14 (f) USE OF FUNDS.—

15 (1) IN GENERAL.—The funds appropriated pur-
16 suant to authorization under this section shall be
17 limited to covering the costs of each listed agency or
18 department for investigating possible criminal, civil,
19 or administrative violations and for criminal, civil, or
20 administrative proceedings involving financial crimes
21 and crimes against Federal assistance programs, in-
22 cluding mortgage fraud, securities and commodities
23 fraud, financial institution fraud, and other frauds
24 related to Federal assistance and relief programs.

1 (2) FUNDS FOR TRAINING AND RESEARCH.—
2 Funds authorized to be appropriated under this sec-
3 tion may be used and expended for programs for im-
4 proving the detection, investigation, and prosecution
5 of economic crime including financial fraud and
6 mortgage fraud. Funds allocated under this section
7 may be allocated to programs which assist State and
8 local criminal justice agencies to develop, establish,
9 and maintain intelligence-focused policing strategies
10 and related information sharing; provide training
11 and investigative support services to State and local
12 criminal justice agencies to provide such agencies
13 with skills and resources needed to investigate and
14 prosecute such criminal activities and related crimi-
15 nal activities; provide research support, establish
16 partnerships, and provide other resources to aid
17 State and local criminal justice agencies to prevent,
18 investigate, and prosecute such criminal activities
19 and related problems; provide information and re-
20 search to the general public to facilitate the preven-
21 tion of such criminal activities; and any other pro-
22 grams specified by the Attorney General as fur-
23 thering the purposes of this Act.

24 (g) ADDITIONAL NATURE OF AUTHORIZATIONS;
25 AVAILABILITY.—The amounts authorized under this sec-

1 tion are in addition to amounts otherwise authorized in
2 other Acts and shall remain available until expended.

3 (h) REPORT TO CONGRESS.—Following the final ex-
4 penditure of all funds appropriated pursuant to authoriza-
5 tion under this section, the Attorney General, in consulta-
6 tion with the United States Postal Inspection Service, the
7 Inspector General for the Department of Housing and
8 Urban Development, the Secretary of Homeland Security,
9 and the Commissioner of the Securities and Exchange
10 Commission, shall submit a report to Congress identi-
11 fying—

12 (1) the amounts expended under each of sub-
13 sections (a), (b), (c), (d), and (e) and a certification
14 of compliance with the requirements listed in sub-
15 section (f); and

16 (2) the amounts recovered as a result of crimi-
17 nal or civil restitution, fines, penalties, and other
18 monetary recoveries resulting from criminal, civil, or
19 administrative proceedings and settlements under-
20 taken with funds authorized by this Act.

1 **SEC. 4. CLARIFICATIONS TO THE FALSE CLAIMS ACT TO**
2 **REFLECT THE ORIGINAL INTENT OF THE**
3 **LAW.**

4 (a) CLARIFICATION OF THE FALSE CLAIMS ACT.—
5 Section 3729 of title 31, United States Code, is amend-
6 ed—

7 (1) by striking subsection (a) and inserting the
8 following:

9 “(a) LIABILITY FOR CERTAIN ACTS.—

10 “(1) IN GENERAL.—Subject to paragraph (2),
11 any person who—

12 “(A) knowingly presents, or causes to be
13 presented, a false or fraudulent claim for pay-
14 ment or approval;

15 “(B) knowingly makes, uses, or causes to
16 be made or used, a false record or statement
17 material to a false or fraudulent claim;

18 “(C) conspires to commit a violation of
19 subparagraph (A), (B), (D), (E), (F), or (G);

20 “(D) has possession, custody, or control of
21 property or money used, or to be used, by the
22 Government and knowingly delivers, or causes
23 to be delivered, less than all of that money or
24 property;

25 “(E) is authorized to make or deliver a
26 document certifying receipt of property used, or

1 to be used, by the Government and, intending
2 to defraud the Government, makes or delivers
3 the receipt without completely knowing that the
4 information on the receipt is true;

5 “(F) knowingly buys, or receives as a
6 pledge of an obligation or debt, public property
7 from an officer or employee of the Government,
8 or a member of the Armed Forces, who lawfully
9 may not sell or pledge property; or

10 “(G) knowingly makes, uses, or causes to
11 be made or used, a false record or statement
12 material to an obligation to pay or transmit
13 money or property to the Government, or know-
14 ingly conceals or knowingly and improperly
15 avoids or decreases an obligation to pay or
16 transmit money or property to the Government,
17 is liable to the United States Government for a civil
18 penalty of not less than \$5,000 and not more than
19 \$10,000, as adjusted by the Federal Civil Penalties
20 Inflation Adjustment Act of 1990 (28 U.S.C. 2461
21 note; Public Law 104–410), plus 3 times the
22 amount of damages which the Government sustains
23 because of the act of that person.

24 “(2) REDUCED DAMAGES.—If the court finds
25 that—

1 “(A) the person committing the violation
2 of this subsection furnished officials of the
3 United States responsible for investigating false
4 claims violations with all information known to
5 such person about the violation within 30 days
6 after the date on which the defendant first ob-
7 tained the information;

8 “(B) such person fully cooperated with any
9 Government investigation of such violation; and

10 “(C) at the time such person furnished the
11 United States with the information about the
12 violation, no criminal prosecution, civil action,
13 or administrative action had commenced under
14 this title with respect to such violation, and the
15 person did not have actual knowledge of the ex-
16 istence of an investigation into such violation,
17 the court may assess not less than 2 times the
18 amount of damages which the Government sustains
19 because of the act of that person.

20 “(3) COSTS OF CIVIL ACTIONS.—A person vio-
21 lating this subsection shall also be liable to the
22 United States Government for the costs of a civil ac-
23 tion brought to recover any such penalty or dam-
24 ages.”;

1 (2) by striking subsections (b) and (c) and in-
2 serting the following:

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) the terms ‘knowing’ and ‘knowingly’—

5 “(A) mean that a person, with respect to
6 information—

7 “(i) has actual knowledge of the infor-
8 mation;

9 “(ii) acts in deliberate ignorance of
10 the truth or falsity of the information; or

11 “(iii) acts in reckless disregard of the
12 truth or falsity of the information; and

13 “(B) require no proof of specific intent to
14 defraud;

15 “(2) the term ‘claim’—

16 “(A) means any request or demand, wheth-
17 er under a contract or otherwise, for money or
18 property and whether or not the United States
19 has title to the money or property, that—

20 “(i) is presented to an officer, em-
21 ployee, or agent of the United States; or

22 “(ii) is made to a contractor, grantee,
23 or other recipient, if the money or property
24 is to be spent or used on the Government’s
25 behalf or to advance a Government pro-

1 gram or interest, and if the United States
2 Government—

3 “(I) provides or has provided any
4 portion of the money or property re-
5 quested or demanded; or

6 “(II) will reimburse such con-
7 tractor, grantee, or other recipient for
8 any portion of the money or property
9 which is requested or demanded; and

10 “(B) does not include requests or demands
11 for money or property that the Government has
12 paid to an individual as compensation for Fed-
13 eral employment or as an income subsidy with
14 no restrictions on that individual’s use of the
15 money or property;

16 “(3) the term ‘obligation’ means an established
17 duty, whether or not fixed, arising from an express
18 or implied contractual, grantor-grantee, or licensor-
19 licensee relationship, from a fee-based or similar re-
20 lationship, from statute or regulation, or from the
21 retention of any overpayment; and

22 “(4) the term ‘material’ means having a natural
23 tendency to influence, or be capable of influencing,
24 the payment or receipt of money or property.”;

1 (3) by redesignating subsections (d) and (e) as
2 subsections (c) and (d), respectively; and

3 (4) in subsection (c), as redesignated, by strik-
4 ing “subparagraphs (A) through (C) of subsection
5 (a)” and inserting “subsection (a)(2)”.

6 (b) INTERVENTION BY THE GOVERNMENT.—Section
7 3731(b) of title 31, United States Code, is amended—

8 (1) by redesignating subsection (c) as sub-
9 section (d);

10 (2) by redesignating subsection (d) as sub-
11 section (e); and

12 (3) by inserting the new subsection (c):

13 “(c) If the Government elects to intervene and pro-
14 ceed with an action brought under 3730(b), the Govern-
15 ment may file its own complaint or amend the complaint
16 of a person who has brought an action under section
17 3730(b) to clarify or add detail to the claims in which the
18 Government is intervening and to add any additional
19 claims with respect to which the Government contends it
20 is entitled to relief. For statute of limitations purposes,
21 any such Government pleading shall relate back to the fil-
22 ing date of the complaint of the person who originally
23 brought the action, to the extent that the claim of the Gov-
24 ernment arises out of the conduct, transactions, or occur-

1 rences set forth, or attempted to be set forth, in the prior
2 complaint of that person.”.

3 (c) CIVIL INVESTIGATIVE DEMANDS.—Section 3733
4 of title 31, United States Code, is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) in the matter preceding subpara-
8 graph (A)—

9 (I) by inserting “, or a designee
10 (for purposes of this section),” after
11 “Whenever the Attorney General”;
12 and

13 (II) by striking “the Attorney
14 General may, before commencing a
15 civil proceeding under section 3730 or
16 other false claims law,” and inserting
17 “the Attorney General, or a designee,
18 may, before commencing a civil pro-
19 ceeding under section 3730(a) or
20 other false claims law, or making an
21 election under section 3730(b),”; and

22 (ii) in the matter following subpara-
23 graph (D)—

1 (I) by striking “may not dele-
2 gate” and inserting “may delegate”;
3 and

4 (II) by adding at the end the fol-
5 lowing: “Any information obtained by
6 the Attorney General or a designee of
7 the Attorney General under this sec-
8 tion may be shared with any qui tam
9 relator if the Attorney General or des-
10 ignee determine it is necessary as part
11 of any false claims act investigation.”;
12 and

13 (B) in paragraph (2)(G), by striking the
14 second sentence;

15 (2) in subsection (i)(2)—

16 (A) in subparagraph (B), by striking “,
17 who is authorized for such use under regula-
18 tions which the Attorney General shall issue”;
19 and

20 (B) in subparagraph (C), by striking “Dis-
21 closure of information to any such other agency
22 shall be allowed only upon application, made by
23 the Attorney General to a United States district
24 court, showing substantial need for the use of

1 the information by such agency in furtherance
2 of its statutory responsibilities.”; and

3 (3) in subsection (l)—

4 (A) in paragraph (6), by striking “and”
5 after the semicolon;

6 (B) in paragraph (7), by striking the pe-
7 riod and inserting “; and”; and

8 (C) by adding at the end the following:

9 “(8) the term ‘official use’ means any use that
10 is consistent with the law, and the regulations and
11 policies of the Department of Justice, including use
12 in connection with internal Department of Justice
13 memoranda and reports; communications between
14 the Department of Justice and a Federal, State, or
15 local government agency, or a contractor of a Fed-
16 eral, State, or local government agency, undertaken
17 in furtherance of a Department of Justice investiga-
18 tion or prosecution of a case; interviews of any qui
19 tam relator or other witness; oral examinations;
20 depositions; preparation for and response to civil dis-
21 covery requests; introduction into the record of a
22 case or proceeding; applications, motions, memo-
23 randa and briefs submitted to a court or other tri-
24 bunal; and communications with Government inves-
25 tigators, auditors, consultants and experts, the coun-

1 sel of other parties, arbitrators and mediators, con-
2 cerning an investigation, case or proceeding.”.

3 (d) RELIEF FROM RETALIATORY ACTIONS.—Section
4 3730(h) of title 31, United States Code, is amended to
5 read as follows:

6 “(h) RELIEF FROM RETALIATORY ACTIONS.—

7 “(1) IN GENERAL.—Any employee, contractor,
8 or agent shall be entitled to all relief necessary to
9 make that employee, contractor, or agent whole, if
10 that employee, contractor, or agent is discharged,
11 demoted, suspended, threatened, harassed, or in any
12 other manner discriminated against in the terms and
13 conditions of employment because of lawful acts
14 done by the employee, contractor, or agent on behalf
15 of the employee, contractor, or agent or associated
16 others in furtherance of other efforts to stop 1 or
17 more violations of this subchapter.

18 “(2) RELIEF.—Relief under paragraph (1) shall
19 include reinstatement with the same seniority status
20 that employee, contractor, or agent would have had
21 but for the discrimination, 2 times the amount of
22 back pay, interest on the back pay, and compensa-
23 tion for any special damages sustained as a result of
24 the discrimination, including litigation costs and rea-
25 sonable attorneys’ fees. An action under this sub-

1 section may be brought in the appropriate district
2 court of the United States for the relief provided in
3 this subsection.”.

4 (e) FALSE CLAIMS JURISDICTION.—Section 3732 of
5 title 31, United States Code, is amended by adding at the
6 end the following new subsection:

7 “(c) SERVICE ON STATE OR LOCAL AUTHORITIES.—
8 With respect to any State or local government that is
9 named as a co-plaintiff with the United States in an action
10 brought under subsection (b), a seal on the action ordered
11 by the court under section 3730(b) shall not preclude the
12 Government or the person bringing the action from serv-
13 ing the complaint, any other pleadings, or the written dis-
14 closure of substantially all material evidence and informa-
15 tion possessed by the person bringing the action on the
16 law enforcement authorities that are authorized under the
17 law of that State or local government to investigate and
18 prosecute such actions on behalf of such governments, ex-
19 cept that such seal applies to the law enforcement authori-
20 ties so served to the same extent as the seal applies to
21 other parties in the action.”.

22 (f) EFFECTIVE DATE AND APPLICATION.—The
23 amendments made by this section shall take effect on the
24 date of enactment of this Act and shall apply to conduct
25 on or after the date of enactment, except that—

1 (1) subparagraph (B) of section 3729(a)(1) of
2 title 31, United States Code, as added by subsection
3 (a)(1), shall take effect as if enacted on June 7,
4 2008, and apply to all claims under the False
5 Claims Act (31 U.S.C. 3729 et seq.) that are pend-
6 ing on or after that date; and

7 (2) section 3731(b) of title 31, as amended by
8 subsection (b); section 3733, of title 31, as amended
9 by subsection (c); and section 3732 of title 31, as
10 amended by subsection (e); shall apply to cases
11 pending on the date of enactment.

12 **SEC. 5. FINANCIAL CRISIS INQUIRY COMMISSION.**

13 (a) ESTABLISHMENT OF COMMISSION.—There is es-
14 tablished in the legislative branch the Financial Crisis In-
15 quiry Commission (in this section referred to as the “Com-
16 mission”) to examine the causes, domestic and global, of
17 the current financial and economic crisis in the United
18 States.

19 (b) COMPOSITION OF THE COMMISSION.—

20 (1) MEMBERS.—The Commission shall be com-
21 posed of 10 members, of whom—

22 (A) 3 members shall be appointed by the
23 majority leader of the Senate, in consultation
24 with relevant Committees;

1 (B) 3 members shall be appointed by the
2 Speaker of the House of Representatives, in
3 consultation with relevant Committees;

4 (C) 2 members shall be appointed by the
5 minority leader of the Senate, in consultation
6 with relevant Committees; and

7 (D) 2 members shall be appointed by the
8 minority leader of the House of Representa-
9 tives, in consultation with relevant Committees.

10 (2) QUALIFICATIONS; LIMITATION.—

11 (A) IN GENERAL.—It is the sense of the
12 Congress that individuals appointed to the
13 Commission should be prominent United States
14 citizens with national recognition and signifi-
15 cant depth of experience in such fields as bank-
16 ing, regulation of markets, taxation, finance, ec-
17 nomics, consumer protection, and housing.

18 (B) LIMITATION.—No person who is a
19 member of Congress or an officer or employee
20 of the Federal Government or any State or local
21 government may serve as a member of the
22 Commission.

23 (3) CHAIRPERSON; VICE CHAIRPERSON.—

24 (A) IN GENERAL.—Subject to the require-
25 ments of subparagraph (B), the Chairperson of

1 the Commission shall be selected jointly by the
2 Majority Leader of the Senate and the Speaker
3 of the House of Representatives, and the Vice
4 Chairperson shall be selected jointly by the Mi-
5 nority Leader of the Senate and the Minority
6 Leader of the House of Representatives.

7 (B) POLITICAL PARTY AFFILIATION.—The
8 Chairperson and Vice Chairperson of the Com-
9 mission may not be from the same political
10 party.

11 (4) MEETINGS, QUORUM; VACANCIES.—

12 (A) MEETINGS.—

13 (i) INITIAL MEETING.—The initial
14 meeting of the Commission shall be as
15 soon as possible after a quorum of mem-
16 bers have been appointed.

17 (ii) SUBSEQUENT MEETINGS.—After
18 the initial meeting of the Commission, the
19 Commission shall meet upon the call of the
20 Chairperson or a majority of its members.

21 (B) QUORUM.—6 members of the Commis-
22 sion shall constitute a quorum.

23 (C) VACANCIES.—Any vacancy on the
24 Commission shall—

1 (i) not affect the powers of the Com-
2 mission; and

3 (ii) be filled in the same manner in
4 which the original appointment was made.

5 (c) FUNCTIONS OF THE COMMISSION.—The func-
6 tions of the Commission are—

7 (1) to examine the causes of the current finan-
8 cial and economic crisis in the United States, specifi-
9 cally the role of—

10 (A) fraud and abuse in the financial sector,
11 including fraud and abuse towards consumers
12 in the mortgage sector;

13 (B) Federal and State financial regulators,
14 including the extent to which they enforced, or
15 failed to enforce statutory, regulatory, or super-
16 visory requirements;

17 (C) the global imbalance of savings, inter-
18 national capital flows, and fiscal imbalances of
19 various governments;

20 (D) monetary policy and the availability
21 and terms of credit;

22 (E) accounting practices, including, mark-
23 to-market and fair value rules, and treatment of
24 off-balance sheet vehicles;

1 (F) tax treatment of financial products
2 and investments;

3 (G) capital requirements and regulations
4 on leverage and liquidity, including the capital
5 structures of regulated and non-regulated finan-
6 cial entities;

7 (H) credit rating agencies in the financial
8 system, including, reliance on credit ratings by
9 financial institutions and Federal financial reg-
10 ulators, the use of credit ratings in financial
11 regulation, and the use of credit ratings in the
12 securitization markets;

13 (I) lending practices and securitization, in-
14 cluding the originate-to-distribute model for ex-
15 tending credit and transferring risk;

16 (J) affiliations between insured depository
17 institutions and securities, insurance, and other
18 types of nonbanking companies;

19 (K) the concept that certain institutions
20 are “too-big-to-fail” and its impact on market
21 expectations;

22 (L) corporate governance, including the
23 impact of company conversions from partner-
24 ships to corporations;

25 (M) compensation structures;

1 (N) changes in compensation for employees
2 of financial companies, as compared to com-
3 pensation for others with similar skill sets in
4 the labor market;

5 (O) the legal and regulatory structure of
6 the United States housing market;

7 (P) derivatives and unregulated financial
8 products and practices, including credit default
9 swaps;

10 (Q) short-selling;

11 (R) financial institution reliance on numer-
12 ical models, including risk models and credit
13 ratings;

14 (S) the legal and regulatory structure gov-
15 erning financial institutions, including the ex-
16 tent to which the structure creates the oppor-
17 tunity for financial institutions to engage in
18 regulatory arbitrage;

19 (T) the legal and regulatory structure gov-
20 erning investor and mortrgagor protection;

21 (U) financial institutions and government-
22 sponsored enterprises; and

23 (V) the quality of due diligence undertaken
24 by financial institutions;

1 (2) to examine the causes of the collapse of
2 each major financial institution that failed (includ-
3 ing institutions that were acquired to prevent their
4 failure) or was likely to have failed if not for the re-
5 ceipt of exceptional Government assistance from the
6 Secretary of the Treasury during the period begin-
7 ning in August 2007 through April 2009;

8 (3) to submit a report under subsection (h);

9 (4) to refer to the Attorney General of the
10 United States and any appropriate State attorney
11 general any person that the Commission finds may
12 have violated the laws of the United States in rela-
13 tion to such crisis; and

14 (5) to build upon the work of other entities, and
15 avoid unnecessary duplication, by reviewing the
16 record of the Committee on Banking, Housing, and
17 Urban Affairs of the Senate, the Committee on Fi-
18 nancial Services of the House of Representatives,
19 other congressional committees, the Government Ac-
20 countability Office, other legislative panels, and any
21 other department, agency, bureau, board, commis-
22 sion, office, independent establishment, or instru-
23 mentality of the United States (to the fullest extent
24 permitted by law) with respect to the current finan-
25 cial and economic crisis.

1 (d) POWERS OF THE COMMISSION.—

2 (1) HEARINGS AND EVIDENCE.—The Commis-
3 sion may, for purposes of carrying out this section—

4 (A) hold hearings, sit and act at times and
5 places, take testimony, receive evidence, and ad-
6 minister oaths; and

7 (B) require, by subpoena or otherwise, the
8 attendance and testimony of witnesses and the
9 production of books, records, correspondence,
10 memoranda, papers, and documents.

11 (2) SUBPOENAS.—

12 (A) SERVICE.—Subpoenas issued under
13 paragraph (1)(B) may be served by any person
14 designated by the Commission.

15 (B) ENFORCEMENT.—

16 (i) IN GENERAL.—In the case of con-
17 tumacy or failure to obey a subpoena
18 issued under paragraph (1)(B), the United
19 States district court for the judicial district
20 in which the subpoenaed person resides, is
21 served, or may be found, or where the sub-
22 poena is returnable, may issue an order re-
23 quiring such person to appear at any des-
24 ignated place to testify or to produce docu-
25 mentary or other evidence. Any failure to

1 obey the order of the court may be pun-
2 ished by the court as a contempt of that
3 court.

4 (ii) ADDITIONAL ENFORCEMENT.—
5 Sections 102 through 104 of the Revised
6 Statutes of the United States (2 U.S.C.
7 192 through 194) shall apply in the case
8 of any failure of any witness to comply
9 with any subpoena or to testify when sum-
10 moned under the authority of this section.

11 (iii) ISSUANCE.—A subpoena may be
12 issued under this subsection only—

13 (I) by the agreement of the
14 Chairperson and the Vice Chair-
15 person; or

16 (II) by the affirmative vote of a
17 majority of the Commission, a major-
18 ity being present.

19 (3) CONTRACTING.—The Commission may
20 enter into contracts to enable the Commission to dis-
21 charge its duties under this section.

22 (4) INFORMATION FROM FEDERAL AGENCIES
23 AND OTHER ENTITIES.—

24 (A) IN GENERAL.—The Commission may
25 secure directly from any department, agency,

1 bureau, board, commission, office, independent
2 establishment, or instrumentality of the United
3 States any information related to any inquiry of
4 the Commission conducted under this section,
5 including information of a confidential nature
6 (which the Commission shall maintain in a se-
7 cure manner). Each such department, agency,
8 bureau, board, commission, office, independent
9 establishment, or instrumentality shall furnish
10 such information directly to the Commission
11 upon request.

12 (B) OTHER ENTITIES.—It is the sense of
13 the Congress that the Commission should seek
14 testimony or information from principals and
15 other representatives of government agencies
16 and private entities that were significant par-
17 ticipants in the United States and global finan-
18 cial and housing markets during the time pe-
19 riod examined by the Commission.

20 (5) ADMINISTRATIVE SUPPORT SERVICES.—
21 Upon the request of the Commission—

22 (A) the Administrator of General Services
23 shall provide to the Commission, on a reimburs-
24 able basis, the administrative support services

1 necessary for the Commission to carry out its
2 responsibilities under this Act; and

3 (B) other Federal departments and agen-
4 cies may provide to the Commission any admin-
5 istrative support services as may be determined
6 by the head of such department or agency to be
7 advisable and authorized by law.

8 (6) DONATIONS OF GOODS AND SERVICES.—
9 The Commission may accept, use, and dispose of
10 gifts or donations of services or property.

11 (7) POSTAL SERVICES.—The Commission may
12 use the United States mails in the same manner and
13 under the same conditions as departments and agen-
14 cies of the United States.

15 (8) POWERS OF SUBCOMMITTEES, MEMBERS,
16 AND AGENTS.—Any subcommittee, member, or agent
17 of the Commission may, if authorized by the Com-
18 mission, take any action which the Commission is
19 authorized to take by this section.

20 (e) STAFF OF THE COMMISSION.—

21 (1) DIRECTOR.—The Commission shall have a
22 Director who shall be appointed by the Chairperson
23 and the Vice Chairperson, acting jointly.

24 (2) STAFF.—The Chairperson and the Vice
25 Chairperson may jointly appoint additional per-

1 sonnel, as may be necessary, to enable the Commis-
2 sion to carry out its functions.

3 (3) APPLICABILITY OF CERTAIN CIVIL SERVICE
4 LAWS.—The Director and staff of the Commission
5 may be appointed without regard to the provisions
6 of title 5, United States Code, governing appoint-
7 ments in the competitive service, and may be paid
8 without regard to the provisions of chapter 51 and
9 subchapter III of chapter 53 of such title relating to
10 classification and General Schedule pay rates, except
11 that no rate of pay fixed under this paragraph may
12 exceed the equivalent of that payable for a position
13 at level V of the Executive Schedule under section
14 5316 of title 5, United States Code. Any individual
15 appointed under paragraph (1) or (2) shall be treat-
16 ed as an employee for purposes of chapters 63, 81,
17 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

18 (4) DETAILEES.—Any Federal Government em-
19 ployee may be detailed to the Commission without
20 reimbursement from the Commission, and such
21 detailee shall retain the rights, status, and privileges
22 of his or her regular employment without interrup-
23 tion.

24 (5) CONSULTANT SERVICES.—The Commission
25 is authorized to procure the services of experts and

1 consultants in accordance with section 3109 of title
2 5, United States Code, but at rates not to exceed the
3 daily rate paid a person occupying a position at level
4 IV of the Executive Schedule under section 5315 of
5 title 5, United States Code.

6 (f) COMPENSATION AND TRAVEL EXPENSES.—

7 (1) COMPENSATION.—Each member of the
8 Commission may be compensated at a rate not to
9 exceed the daily equivalent of the annual rate of
10 basic pay in effect for a position at level IV of the
11 Executive Schedule under section 5315 of title 5,
12 United States Code, for each day during which that
13 member is engaged in the actual performance of the
14 duties of the Commission.

15 (2) TRAVEL EXPENSES.—While away from
16 their homes or regular places of business in the per-
17 formance of services for the Commission, members
18 of the Commission shall be allowed travel expenses,
19 including per diem in lieu of subsistence, in the
20 same manner as persons employed intermittently in
21 the Government service are allowed expenses under
22 section 5703(b) of title 5, United States Code.

23 (g) NONAPPLICABILITY OF FEDERAL ADVISORY
24 COMMITTEE ACT.—The Federal Advisory Committee Act
25 (5 U.S.C. App.) shall not apply to the Commission.

1 (h) REPORT OF THE COMMISSION; APPEARANCE BE-
2 FORE AND CONSULTATIONS WITH CONGRESS.—

3 (1) REPORT.—On December 15, 2010, the
4 Commission shall submit to the President and to the
5 Congress a report containing the findings and con-
6 clusions of the Commission on the causes of the cur-
7 rent financial and economic crisis in the United
8 States.

9 (2) INSTITUTION-SPECIFIC REPORTS AUTHOR-
10 IZED.—At the discretion of the chairperson of the
11 Commission, the report under paragraph (1) may in-
12 clude reports or specific findings on any financial in-
13 stitution examined by the Commission under sub-
14 section (c)(2).

15 (3) APPEARANCE BEFORE THE CONGRESS.—
16 The chairperson of the Commission shall, not later
17 than 120 days after the date of submission of the
18 final reports under paragraph (1), appear before the
19 Committee on Banking, Housing, and Urban Affairs
20 of the Senate and the Committee on Financial Serv-
21 ices of the House of Representatives regarding such
22 reports and the findings of the Commission.

23 (4) CONSULTATIONS WITH THE CONGRESS.—
24 The Commission shall consult with the Committee
25 on Banking, Housing, and Urban Affairs of the Sen-

1 ate, the Committee on Financial Services of the
2 House of Representatives, and other relevant com-
3 mittees of the Congress, for purposes of informing
4 the Congress on the work of the Commission.

5 (i) TERMINATION OF COMMISSION.—

6 (1) IN GENERAL.—The Commission, and all the
7 authorities of this section, shall terminate 60 days
8 after the date on which the final report is submitted
9 under subsection (h).

10 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
11 MINATION.—The Commission may use the 60-day
12 period referred to in paragraph (1) for the purpose
13 of concluding the activities of the Commission, in-
14 cluding providing testimony to committees of the
15 Congress concerning reports of the Commission and
16 disseminating the final report submitted under sub-
17 section (h).

18 (j) AUTHORIZATION OF APPROPRIATION.—There is
19 authorized to be appropriated to the Secretary of the
20 Treasury such sums as are necessary to cover the costs
21 of the Commission.

Amend the title so as to read: “An Act to improve enforcement of mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.”.