

99TH CONGRESS
2D SESSION

S. 1562

IN THE HOUSE OF REPRESENTATIVES

AUGUST 15, 1986

Referred to the Committee on the Judiciary

AN ACT

To amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, 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 That section 3729 of title 31, United States Code, is
4 amended by—

5 (1) inserting “(a)” before “A person”;

6 (2) striking out “\$2,000,” and inserting in lieu
7 thereof “\$10,000, unless the court finds:

8 “(A) the defendant furnished officials of the
9 United States responsible for investigating false
10 claims violations with all information known to

1 such defendant about such violation within 30
2 days after the date on which the defendant first
3 obtained the information;

4 “(B) the defendant fully cooperated with any
5 Government investigation of such violation; and

6 “(C) at the time the defendant furnished the
7 United States with the information about the vio-
8 lation, no criminal prosecution, civil action, or ad-
9 ministrative action had commenced under this
10 title, with respect to such violation, and the de-
11 fendant did not have actual knowledge of the ex-
12 istence of an investigation into such violation;

13 in which case the court may assess not less than
14 \$5,000, or unless the court finds that the defendant is
15 a partnership, corporation, association, or organization,
16 the annual gross receipts of which did not exceed
17 \$1,000,000 at the time the action was brought, and
18 which had not more than 80 employees at the time the
19 action was brought, and the court finds the assessment
20 of \$10,000 will result in substantial hardship under the
21 circumstances for the defendant, in which case the
22 court may assess not less than \$5,000;

23 (3) striking out “2 times the amount of damages”
24 and inserting in lieu thereof “3 times the amount of
25 damages unless the court finds the provisions of para-

1 graphs (A) through (C), in which case the court may
2 assess not less than 2 times the amount of damages, in
3 addition to the amount of the consequential damages”;

4 (4) striking out “not a member of the armed
5 forces of the United States” the first place it appears;

6 (5) striking out “or” at the end of clause (5);

7 (6) striking out the period in clause (6) and insert-
8 ing in lieu thereof “; or”; and

9 (7) adding at the end thereof the following:

10 “(7) knowingly makes, uses, or causes to be made
11 or used, a false record or statement to conceal, avoid,
12 or decrease an obligation to pay or transmit money or
13 property to the Government.

14 “(b) Consequential damages as used in subsection (a)
15 shall include damages which the United States would not
16 have sustained but for—

17 “(1) the doing or commission of any of the acts
18 prohibited by subsection (a); or

19 “(2) having entered into or made any contract or
20 grant as a result of any material part of any false
21 statement,

22 and which were reasonably foreseeable to the defendant at
23 the time the alleged fraud was committed or at the time of
24 the submission of the claim or statement.

1 “(c) For purposes of this section, the terms ‘knowing’
2 and ‘knowingly’ mean the defendant—

3 “(1) had actual knowledge;

4 “(2) acted in deliberate ignorance of the truth or
5 falsity of the information; or

6 “(3) acted in reckless disregard of the truth or fal-
7 sity of the information;

8 and no proof of specific intent to defraud is required.

9 “(d) For purposes of this section, ‘claim’ includes any
10 request or demand whether under a contract or otherwise for
11 money or property which is made to a contractor, grantee, or
12 other recipient if the Government provides any portion of the
13 money or property which is requested or demanded or if the
14 Government will reimburse such contractor, grantee, or other
15 recipient for any portion of the money or property which is
16 requested or demanded.

17 “(e)(1) The Attorney General or his designee may apply
18 for provisional relief to any district court having jurisdiction
19 pursuant to section 3732 whenever he has reasonable cause
20 to believe this section or section 3730, or 3731 may have
21 been violated. If the court finds there is a reasonable likeli-
22 hood that the United States will prevail after trial on the
23 merits of its claims, the court shall enjoin the defendant from
24 taking any action which the court, in the exercise of its dis-
25 cretion, finds reasonably likely to hinder or delay the United

1 States in the collection of any judgment which may be ob-
2 tained in such action.

3 “(2) In addition, the court may from time to time make
4 such other orders as it deems appropriate, including requiring
5 the defendant to post security for judgment, to seek the prior
6 approval of the court before making any transfer without ade-
7 quate and full consideration, paying an antecedent debt which
8 has matured more than thirty days prior to the date of pay-
9 ment, or otherwise engaging in any transaction not in the
10 usual and regular course of the defendant’s business. Except
11 as provided in this section, such application and proceedings
12 by the Attorney General shall be governed by Rule 65 of the
13 Federal Rules of Civil Procedure.

14 “(f) Any information furnished pursuant to clauses (A)
15 through (C) of subsection (a) shall be exempt from disclosure
16 under section 552 of title 5.”

17 SEC. 2. Section 3730 of title 31, United States Code, is
18 amended to read as follows:

19 **“§ 3730. Civil actions for false claims**

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

1 “(b)(1) Except as provided in subsection (e), a person
2 may bring a civil action for a violation of section 3729 of this
3 title for the person and for the United States Government.
4 The action shall be brought in the name of the Government.
5 An action may be dismissed only if the court and the Attor-
6 ney General give written consent and their reasons for
7 consenting.

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

17 “(3) The Government may, for good cause shown, move
18 the court for stays and for extensions of the time during
19 which the complaint shall remain under seal. Any such mo-
20 tions may be supported by affidavits or other submissions in
21 camera. The defendant shall not be required to respond to
22 any complaint filed under this section until 20 days after the
23 complaint is unsealed and served upon him pursuant to Rule
24 4 of the Federal Rules of Civil Procedure.

1 “(4) Before the expiration of the initial 60-day period or
2 any stays obtained, the Government shall—

3 “(A) proceed with the action, in which case the
4 action shall be conducted only by the Government; or

5 “(B) notify the court that it declines to take over
6 the action, in which case the action shall be conducted
7 by the person bringing the action.

8 “(5) Where a person brings an action under this subsec-
9 tion, no person other than the Government may intervene or
10 bring a related action based on the facts underlying the pend-
11 ing action.

12 “(c)(1) If the Government proceeds with the action, the
13 action is conducted solely by the Government and it shall not
14 be bound by an act of the person who initiated the action. If
15 he so requests, the person bringing the action shall be served
16 with copies of all pleadings filed in the action, shall be sup-
17 plied with copies of all deposition transcripts (at his expense),
18 and shall be permitted to file objections with the court and
19 petition for an evidentiary hearing to object to any proposed
20 settlement or to any motion to dismiss filed by the Govern-
21 ment. The court may grant such an evidentiary hearing only
22 upon a showing of substantial and particularized need. The
23 person bringing the action may move the court for leave to
24 conduct the action in the name of the United States if, after
25 making its election to take over the suit, the Government

1 does not proceed with the action with reasonable diligence
2 within six months or such reasonable additional time as the
3 court may allow after notice.

4 “(2) If the Government elects not to proceed with the
5 action, the action shall be conducted by the person who initi-
6 ated the action. If the Government so requests, it shall be
7 served with copies of all pleadings filed in the action and
8 shall be supplied with copies of all deposition transcripts (at
9 its expense). Where a person proceeds with the action in the
10 name of the United States pursuant to subsection (b), the
11 court may nevertheless permit the Government to intervene
12 and proceed with the action by its own attorneys at a later
13 date upon a showing of good cause.

14 “(3) Notwithstanding subsection (b), the Government
15 may elect to pursue its claim through any alternate remedy
16 available to it, including, but not limited to, any administra-
17 tive civil money penalty proceeding.

18 “(d)(1) If the Government proceeds with the action, in-
19 cluding any proceeding pursuant to subsection (c)(3), the
20 person bringing the action may receive an amount the court
21 decides is reasonable. The amount may not be less than 10
22 percent, nor more than 20 percent, of the proceeds of the
23 action or settlement of a claim and shall be paid out of those
24 proceeds.

1 “(2) If the Government does not proceed with an action,
2 the person bringing the action or settling the claim may re-
3 ceive an amount the court decides is reasonable for collecting
4 the civil penalty and damages. The amount may not be less
5 than 20 percent, nor more than 30 percent, of the proceeds of
6 the action or settlement and shall be paid out of those
7 proceeds.

8 “(3) The amount awarded under this section shall be in
9 the discretion of the court, taking into account—

10 “(A) the significance of the information provided
11 to the Government;

12 “(B) the contribution of the person bringing the
13 action to the result obtained; and

14 “(C) whether the information which formed the
15 basis for the suit was known to the Government.

16 “(4) Where the persons brought an action based primar-
17 ily on disclosures of specific information relating to allega-
18 tions or transactions in a criminal, civil, or administrative
19 hearing, a congressional or Government Accounting Office
20 report or hearing, or from the news media, the court may
21 award such sums as it deems appropriate, not to exceed 10
22 percent of the recovery and taking into account the signifi-
23 cance of the information and the role of the person in advanc-
24 ing the case to litigation.

1 “(5) In addition to any other amounts awarded by the
2 court, the court may also award the person bringing the
3 action reasonable attorney fees and other expenses. The Gov-
4 ernment shall not be liable for the expenses or legal fees a
5 person incurs in bringing or defending an action under this
6 section.

7 “(6) If the Government does not proceed with the action
8 and it is litigated by the person bringing the action, the court
9 shall award to the defendant its reasonable attorney fees and
10 expenses if the defendant prevails in such action and the
11 court finds that the claim of the person bringing the action
12 was clearly frivolous, vexatious, or brought for purposes of
13 harassment. In cases where it appears that the person is
14 bringing an action which is frivolous, vexatious, or brought
15 for purposes of harassment, the court shall require such as-
16 surances that payment of legal fees and expenses will be
17 made, if such are awarded, as it deems appropriate before
18 allowing the action to proceed.

19 “(7) After any final judgment is issued in any action
20 brought under this section, or any alternate remedy available
21 to the Government, any person who brought an action under
22 subsection (b) shall have 60 days to petition the court for any
23 award to which he is entitled under this section.

24 “(e)(1) No court shall have jurisdiction over an action
25 brought by a former or present member of the armed services

1 under subsection (b) of this section against a member of the
2 armed forces arising out of such person's service in the armed
3 forces.

4 “(2) No court shall have jurisdiction over an action
5 brought against a member of Congress, a member of the judi-
6 ciary, or a senior executive branch official if the action is
7 based on evidence or information known to the Government
8 when the action was brought.

9 “(3) For purposes of this subsection, ‘senior executive
10 branch official’ means those officials listed in section 201(f) of
11 Appendix IV of title 5.

12 “(4) In no event may a person bring an action under this
13 section based upon allegations or transactions which are the
14 subject of a civil suit or an administrative civil money penalty
15 proceeding in which the Government is already a party.

16 “(5)(A) No court shall have jurisdiction over an action
17 under this section based upon the public disclosure of allega-
18 tions or transactions in a criminal, civil, or administrative
19 hearing, a congressional, administrative, or Government Ac-
20 counting Office report, hearing, audit or investigation, or
21 from the news media, unless the action is brought by the
22 Attorney General or the person bringing the action is an
23 original source of the information.

24 “(B) For purposes of this paragraph, ‘original source’
25 means an individual who has direct and independent knowl-

1 edge of the information on which the allegations are based
2 and has voluntarily informed the Government or the news
3 media prior to an action filed by the Government.

4 “(f) The district courts shall have jurisdiction over any
5 action brought under State law for the recovery of funds paid
6 by State or local governments where such action grows out
7 of the same transaction or occurrence as an action brought
8 under this section.

9 “(g) The Attorney General or his designee is authorized
10 to make payments from Department of Justice appropriations
11 for information or assistance leading to a civil or criminal
12 recovery under this section, section 3729, or sections 3731
13 through 3734, known as the False Claims Act or under sec-
14 tion 286, 287, or 1001 of title 18. Any such payment shall be
15 at the discretion of the Attorney General or his designee.

16 “(h) In civil actions brought under this section by the
17 United States, the provisions of section 2412(d) of title 28
18 shall apply.

19 SEC. 3. Section 3731 of title 31, United States Code, is
20 amended by—

21 (1) inserting before the period at the end of sub-
22 section (b) the following: “or within three years after
23 the date when facts material to the right of action are
24 known or reasonably should have been known by the
25 official of the United States charged with responsibility

1 to act in the circumstances, whichever occurs last”;
2 and

3 (2) inserting after subsection (b), the following
4 new subsections:

5 “(c) In any action brought under this section or section
6 3729, 3730, 3732, or 3733, the United States shall be re-
7 quired to prove all essential elements of the cause of action,
8 including damages, by a preponderance of the evidence.

9 “(d) Notwithstanding any contrary provision of law, the
10 Federal Rules of Criminal Procedure, or the Federal Rules of
11 Evidence, a final judgment rendered in favor of the United
12 States in any criminal proceeding charging fraud or false
13 statements, whether upon a verdict after trial or upon a plea
14 of guilty or nolo contendere, shall estop the defendant from
15 denying the essential elements of the offense in any action
16 brought by the United States pursuant to this section or sec-
17 tion 3729, 3730, 3732, or 3733.”.

18 SEC. 4. Subchapter III of chapter 37 of title 31, United
19 States Code, is amended by adding at the end thereof the
20 following:

21 **“§ 3732. False claims jurisdiction**

22 “(a) The district courts of the United States, including
23 such courts for Puerto Rico, the Virgin Islands, Guam, and
24 any territory or possession of the United States, shall have
25 jurisdiction over any action commenced by the United States

1 under this section, or under section 3729, 3730, 3731, 3733,
2 or 3734. Venue of any such action shall be proper in any
3 district in which any defendant, or in the case of multiple
4 defendants, any one defendant can be found, resides, trans-
5 acts business, or in which any act prescribed by such sections
6 is alleged by the United States to have occurred. A summons
7 as required by the Federal Rules of Civil Procedure shall be
8 issued by the district court and served at any place within the
9 United States, Puerto Rico, the Virgin Islands, Guam, any
10 territory or possession of the United States, or in any foreign
11 country.

12 “(b) The United States Claims Court shall also have
13 jurisdiction of any such action if the action is asserted by way
14 of counterclaim by the United States. The United States may
15 join as additional parties in such counterclaim all persons
16 who may be jointly and severally liable with such party
17 against whom a counterclaim is asserted by reason of having
18 violated this section, or section 3729, 3730, 3731, or 3733,
19 except that no cross-claims or third-party claims shall be as-
20 serted among such additional parties unless such claims are
21 otherwise within the jurisdiction of the United States Claims
22 Court.”.

23 SEC. 5. Subchapter III of chapter 37 of the title 31,
24 United States Code is further amended by adding at the end
25 thereof the following:

1 **“§ 3733. Civil investigative demands**

2 “(a) For purposes of this section, the term—

3 “(1) ‘False Claims Act law’ means—

4 “(A) this section and sections 3729 through
5 3731 of this title, commonly known as the False
6 Claims Act; and

7 “(B) any Act of Congress enacted after this
8 section which prohibits, or makes available to the
9 United States in any court of the United States
10 any civil remedy with respect to any false claim,
11 bribery, or corruption of any officer or employee
12 of the United States;

13 “(2) ‘False Claims Act investigation’ means any
14 inquiry conducted by any False Claims Act investiga-
15 tor for the purpose of ascertaining whether any person
16 is or has been engaged in any violation of any provi-
17 sion of the False Claims Act law;

18 “(3) ‘False Claims Act investigator’ means any
19 attorney or investigator employed by the Department
20 of Justice who is charged with the duty of enforcing or
21 carrying into effect any False Claims Act law or any
22 officer or employee of the United States acting under
23 direction and supervision of such attorney or investiga-
24 tor in connection with a False Claims Act investi-
25 gation;

1 “(4) ‘person’ means any natural person, partner-
2 ship, corporation, association, or other legal entity, in-
3 cluding any State or political subdivision;

4 “(5) ‘documentary material’ includes the original
5 or any copy of any book, record, report, memorandum,
6 paper, communication, tabulation, chart, or other docu-
7 ment, or data compilations stored in or accessible
8 through computer or other information retrieval sys-
9 tems, together with instructions and all other materials
10 necessary to use or interpret such data compilations,
11 and any product or discovery;

12 “(6) ‘custodian’ means the custodian, or any
13 deputy custodian, designated by the Attorney General;
14 and

15 “(7) ‘product of discovery’ includes without limita-
16 tion the original or duplicate of any deposition, inter-
17 rogatory, document, thing, result of an inspection of
18 land or other property, examination, or admission ob-
19 tained by any method of discovery in any judicial or
20 administrative litigation or action of an adversarial
21 nature, any digest, analysis, selection, compilation, or
22 any derivation thereof, and any index or manner of
23 access thereto.

24 “(b)(1)(A) Whenever the Attorney General has reason
25 to believe that any person may be in possession, custody, or

1 control of any documentary material, or may have any infor-
2 mation relevant, and not otherwise reasonably available, to a
3 False Claims Act investigation, he may, prior to the institu-
4 tion of a civil proceeding, issue in writing and cause to be
5 served upon such person, a civil investigative demand requir-
6 ing such person to produce such documentary material for
7 inspection and copying, to answer in writing written interro-
8 atories, to give oral testimony concerning documentary mate-
9 rial or information, or to furnish any combination of such ma-
10 terial, answers, or testimony. Whenever a civil investigative
11 demand is an express demand for any product of discovery,
12 the Attorney General shall cause to be served, in any manner
13 authorized by this section, a copy of such demand upon the
14 person from whom the discovery was obtained and notify the
15 person to whom such demand is issued of the date on which
16 such copy was served.

17 “(B) Notwithstanding the provisions of section 510 of
18 title 28, the Attorney General may not authorize the per-
19 formance of any function of the Attorney General vested in
20 him pursuant to this paragraph, by any other officer, em-
21 ployee, or agency.

22 “(2)(A) Each such demand shall state the nature of the
23 conduct constituting the alleged violation of a False Claims
24 Act law which is under investigation, and the applicable pro-
25 vision of law.

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

3 “(i) describe each class of documentary material
4 to be produced with such definiteness and certainty as
5 to permit such material to be fairly identified;

6 “(ii) prescribe a return date for each such class
7 which will provide a reasonable period of time within
8 which the material so demanded may be assembled and
9 made available for inspection, and copying; and

10 “(iii) identify the False Claims Act investigator to
11 whom such material shall be made available.

12 “(C) If such demand is for answers to written interroga-
13 tories, the demand shall—

14 “(i) set forth with definiteness and certainty the
15 written interrogatories to be answered;

16 “(ii) prescribe dates at which time answers to
17 written interrogatories shall be submitted; and

18 “(iii) identify the False Claims Act investigator to
19 whom such answers shall be submitted.

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

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

24 “(ii) identify a False Claims Act investigator who
25 shall conduct the examination and the custodian to

1 whom the transcript of such examination shall be
2 submitted;

3 “(iii) specify that such attendance and testimony
4 are necessary to the conduct of the investigation;

5 “(iv) notify the person receiving the subpoena of
6 the right to be accompanied by an attorney and any
7 other representative; and

8 “(v) describe the general purpose for which the
9 subpoena is being issued and the general nature of the
10 testimony, including the primary areas of inquiry,
11 which will be taken pursuant to the subpoena.

12 Any such demand which is an express demand for any prod-
13 uct of discovery shall not be returned or returnable until
14 twenty days after a copy of such demand has been served
15 upon the person from whom the discovery was obtained.

16 “(E) The date prescribed for the commencement of oral
17 testimony pursuant to a civil investigation demand issued
18 under this section shall be a date which is not less than seven
19 days after the date on which demand is received, unless the
20 Attorney General or an Assistant Attorney General designat-
21 ed by the Attorney General determines that exceptional cir-
22 cumstance are present which warrant the commencement of
23 such testimony within a lessor period of time.

24 “(F) Any official before whom oral testimony under this
25 section is to be taken shall exclude from the place where the

1 testimony is to be taken all persons except the person giving
2 the testimony, the attorney and any other representative for
3 the person giving the testimony, the attorney for the Govern-
4 ment, any person who may be agreed upon by the attorney
5 for the Government, and the person giving the testimony,
6 and any stenographer taking such testimony.

7 “(G) The Attorney General shall not authorize a second
8 demand for oral testimony to a person unless such person
9 requests otherwise or unless the Attorney General, after in-
10 vestigation, notifies that person in writing that an additional
11 demand for oral testimony is necessary. The Attorney Gener-
12 al may not authorize the performance of any function vested
13 in him under this subparagraph, by any other officer, employ-
14 ee, or agency, notwithstanding section 510 of title 28.”.

15 “(c)(1) No such demand shall require the production of
16 any documentary material, the submission of any answers to
17 written interrogatories, or the giving of any oral testimony if
18 such material, answers, or testimony would be protected from
19 disclosure under—

20 “(A) the standards applicable to subpoenas or sub-
21 poenas duces tecum issued by a court of the United
22 States to aid in a grand jury investigation; or

23 “(B) the standards applicable to discovery re-
24 quests under the Federal Rules of Civil Procedure, to
25 the extent that the application of such standards to any

1 such demand is appropriate and consistent with the
2 provisions and purposes of this section and sections
3 3729 through 3731.

4 “(2) Any such demand which is an express demand for
5 any product of discovery supersedes any inconsistent order,
6 rule, or provision of law (other than this section) preventing
7 or restraining disclosure of such product of discovery to any
8 person. Disclosure of any product of discovery pursuant to
9 any such express demand does not constitute a waiver of any
10 right or privilege which may be invoked to resist discovery of
11 trial preparation materials to which the person making such
12 disclosure may be entitled.

13 “(d)(1) Any such demand may be served by any False
14 Claims Act investigator, or by any United States Marshal or
15 Deputy Marshal, at any place within the United States.

16 “(2) Any such demand or any petition filed under sub-
17 section (k) may be served upon any person who is not found
18 within the United States, in such manner as the Federal
19 Rules of Civil Procedures prescribe for service in a foreign
20 country. To the extent that the courts of the United States
21 can assert jurisdiction over such person consistent with due
22 process, the United States District Court for the District of
23 Columbia shall have the same jurisdiction to take any action
24 respecting compliance with this section by such person that

1 such court would have if such person were personally within
2 the jurisdiction of such court.

3 “(e)(1) Service of any such demand or of any petition
4 filed under subsection (k) may be made upon a partnership,
5 corporation, association, or other legal entity by—

6 “(A) delivering an executed copy thereof to any
7 partner, executive officer, managing agent, or general
8 agent thereof, or to any agent thereof authorized by
9 appointment or by law to receive service of process on
10 behalf of such partnership, corporation, association, or
11 entity;

12 “(B) delivering an executed copy thereof to the
13 principal office or place of business of the partnership,
14 corporation, or entity to be served; or

15 “(C) depositing such copy in the United States
16 mails, by registered or certified mail, return receipt re-
17 quested, addressed to such partnership, corporation, as-
18 sociation, or entity at its principal office or place of
19 business.

20 “(2) Service of any such demand or of any petition filed
21 under subsection (k) may be made upon any natural person
22 by—

23 “(A) delivering an executed copy thereof to the
24 person to be served; or

1 “(B) depositing such copy in the United States
2 mails by registered or certified mail, return receipt re-
3 quested, addressed to such person at his residence or
4 principal office or place of business.

5 “(f) A verified return by the individual serving any such
6 demand or petition setting forth the manner of such service
7 shall be proof of such service. In the case of service by regis-
8 tered or certified mail, such return shall be accompanied by
9 the return post office receipt of delivery of such demand.

10 “(g) The production of documentary material in re-
11 sponse to a demand served pursuant to this section shall be
12 made under a sworn certificate, in such form as the demand
13 designates, by the person, if a natural person, to whom the
14 demand is directed or, if not a natural person, by a person
15 having knowledge of the facts and circumstances relating to
16 such production and authorized to act on behalf of such
17 person. The certificate shall state that all of the documentary
18 material required by the demand and in the possession, custo-
19 dy, or control of the person to whom the demand is directed
20 has been produced and made available to the custodian.

21 “(h) Each interrogatory in a demand served pursuant to
22 this section shall be answered separately and fully in writing
23 under oath unless it is objected to, in which event the reasons
24 for the objection shall be stated in lieu of any answer, and it
25 shall be submitted under a sworn certificate, in such form as

1 the demand designates, by the person, if a natural person, to
2 whom the demand is directed or, if not a natural person, by a
3 person or persons responsible for answering each interrogato-
4 ry. The certificate shall state that all information required by
5 the demand and in the possession, custody, control, or knowl-
6 edge of the person to whom the demand is directed has been
7 submitted. To the extent that any materials are not fur-
8 nished, they shall be identified and reasons set forth with
9 particularity for each.

10 “(i)(1) The examination of any person pursuant to a
11 demand for oral testimony served under this section shall be
12 taken before an officer authorized to administer oaths and
13 affirmations by the laws of the United States or of the place
14 where the examination is held. The officer before whom the
15 testimony is to be taken shall put the witness on oath or
16 affirmation and shall personally, or by someone acting under
17 his direction and in his presence, record the testimony of the
18 witness. The testimony shall be taken stenographically and
19 transcribed. When the testimony is fully transcribed, the offi-
20 cer before whom the testimony is taken shall promptly trans-
21 mit a copy of the transcript of the testimony to the custodian.
22 This subsection shall not preclude the taking of testimony by
23 any means authorized by, and in a manner consistent with,
24 the Federal Rules of Civil Procedure.

1 “(2) The False Claims Act investigator conducting the
2 examination shall exclude from the place where the examina-
3 tion is held all other persons except the person being exam-
4 ined, his counsel, the officer before whom the testimony is to
5 be taken, and any other stenographer taking such testimony.

6 “(3) The oral testimony of any person taken pursuant to
7 a demand served under this section shall be taken in the judi-
8 cial district of the United States within which such person
9 resides, is found, or transacts business, or in such other place
10 as may be agreed upon by the False Claims Act investigator
11 conducting the examination and such person.

12 “(4) When the testimony is fully transcribed, the False
13 Claims Act investigator or the officer shall afford the witness,
14 who may be accompanied by counsel, a reasonable opportuni-
15 ty to examine the transcript and the transcript shall be read
16 to or by the witness, unless such examination and reading are
17 waived by the witness. Any changes in form or substance
18 which the witness desires to make shall be entered and iden-
19 tified upon the transcript by the officer or the False Claims
20 Act investigator with a statement of the reasons given by the
21 witness for making such changes. The transcript shall then
22 be signed by the witness, unless the witness in writing
23 waives the signing, is ill, cannot be found, or refuses to sign.
24 If the transcript is not signed by the witness within thirty
25 days after his being afforded a reasonable opportunity to ex-

1 amine it, the officer or the False Claims Act investigator
2 shall sign it and state on the record the fact of the waiver,
3 illness, absence of the witness, or the refusal to sign, together
4 with the reason, if any, given therefor. A refusal to sign or an
5 unreasonable absence shall be deemed to be an acknowledg-
6 ment of its accuracy and an affirmation of its contents.

7 “(5) The officer shall certify on the transcript that the
8 witness was sworn by him and that the transcript is a true
9 record of the testimony given by the witness, and the officer
10 or False Claims Act investigator shall promptly deliver it or
11 send it by registered or certified mail to the custodian.

12 “(6) Upon payment of reasonable charges therefor, the
13 False Claims Act investigator shall furnish a copy of the
14 transcript to the witness only, except that the Attorney Gen-
15 eral, the Deputy Attorney General, or an Assistant Attorney
16 General may, for good cause, limit such witness to inspection
17 of the official transcript of his testimony.

18 “(7)(A) Any person compelled to appear under a
19 demand for oral testimony pursuant to this section may be
20 accompanied, represented, and advised by counsel. Counsel
21 may advise such person, in confidence, with respect to any
22 question asked of such person. Such person or counsel may
23 object on the record to any question, in whole or in part, and
24 shall briefly state for the record the reason for the objection.
25 An objection may be properly made, received, and entered

1 upon the record when it is claimed that such person is enti-
2 tled to refuse to answer the question on grounds of any con-
3 stitutional or other legal right or privilege, including the
4 privilege against self-incrimination. Such person shall not
5 otherwise object to or refuse to answer any question, and
6 shall not by himself or through counsel otherwise interrupt
7 the oral examination. If such person refuses to answer any
8 question, the False Claims Act investigator conducting the
9 examination may petition the district court of the United
10 States pursuant to subsection (k)(1) for an order compelling
11 such person to answer such question.

12 “(B) If such person refuses to answer any question on
13 the grounds of the privilege against self-incrimination, the
14 testimony of such person may be compelled in accordance
15 with the provisions of part V of title 18.

16 “(8) Any person appearing for oral examination pursu-
17 ant to a demand served under this section shall be entitled to
18 the same fees and mileage which are paid to witnesses in the
19 district courts of the United States.

20 “(j)(1) The Attorney General, or his authorized designee
21 shall designate a False Claims Act investigator to serve as
22 custodian of documentary material, answers to interrogato-
23 ries, and transcripts of oral testimony received under this sec-
24 tion, and shall designate such additional False Claims Act

1 investigators as he determines from time to time to be neces-
2 sary to serve as deputies to such officer.

3 “(2) Any person upon whom any demand under subsec-
4 tion (b)(1) for the production of documentary material has
5 been served shall make such material available for inspection
6 and copying to the False Claims Act investigator designated
7 therein at the principal place of business of such person, or at
8 such other place as such False Claims Act investigator and
9 such person thereafter may agree and prescribe in writing, or
10 as the court may direct pursuant to subsection (k)(1) on the
11 return date specified in such demand, or on such later date as
12 such custodian may prescribe in writing. Such person may,
13 upon written agreement between such person and the custo-
14 dian, substitute copies for originals of all or any part of such
15 material.

16 “(3)(A) The False Claims Act investigator to whom any
17 documentary material, answers to interrogatories, or tran-
18 scripts of oral testimony are delivered shall take physical pos-
19 session thereof, and shall transmit them to the custodian who
20 shall be responsible for the use made thereof and for the
21 return of documentary material pursuant to this section.

22 “(B) The custodian may cause the preparation of such
23 copies of such documentary material, answers to interroga-
24 tories, or transcripts of oral testimony as may be required for
25 official use by any authorized official or employee of the De-

1 partment of Justice or any authorized officer or employee of
2 the United States acting under the direction and supervision
3 of an attorney or investigator of the Department of Justice in
4 connection with any False Claims Act investigation, under
5 regulations promulgated by the Attorney General. Notwith-
6 standing subparagraph (C) of this subsection, such material,
7 answers, and transcripts may be used by any such person in
8 connection with the taking of oral testimony pursuant to this
9 section.

10 “(C) Except as otherwise provided in this section, while
11 in the possession of the custodian, no documentary material,
12 answers to interrogatories, or transcripts of oral testimony,
13 or copies thereof, so produced shall be available for examina-
14 tion, without the consent of the person who produced such
15 material, answers, or transcripts, and, in the case of any
16 product of discovery produced pursuant to an express demand
17 for such material, of the person from whom the discovery was
18 obtained, by any individual other than an authorized official
19 or employee of the Department of Justice, or an authorized
20 officer or employee of the United States acting under the
21 direction and supervision of an attorney or investigator of the
22 Department of Justice in connection with any False Claims
23 Act investigation. Nothing in this section is intended to pre-
24 vent disclosure to either body of the Congress or to any au-
25 thorized committee or subcommittee thereof, or to any other

1 agency of the United States for use by such agency in fur-
2 therance of its statutory responsibilities. Disclosure to any
3 other agency of the United States shall be allowed only upon
4 application, made by the custodian to a United States district
5 court, showing substantial need for use by such agency in
6 furtherance of its statutory responsibilities.

7 “(D) While in the possession of the custodian and under
8 such reasonable terms and conditions as the Attorney Gener-
9 al shall prescribe—

10 “(i) documentary material and answers to inter-
11 rogatories shall be available for examination by the
12 person who produced such material or answers, or by
13 an authorized representative of such person; and

14 “(ii) transcripts of oral testimony shall be avail-
15 able for examination by the person who produced such
16 testimony, or his counsel.

17 “(4) Whenever any attorney of the Department of Jus-
18 tice has been designated to appear before any court, grand
19 jury, or Federal administrative or regulatory agency in any
20 case or proceeding, the custodian of any documentary materi-
21 al, answers to interrogatories, or transcripts of oral testimony
22 may deliver to such attorney such material, answers, or tran-
23 scripts for official use in connection with any such case,
24 grand jury, or proceeding as such attorney determines to be
25 required. Upon the completion of any such case, grand jury,

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

6 “(5) If any documentary material has been produced in
7 the course of any False Claims Act investigation by any
8 person pursuant to a demand under this section, and—

9 “(A) any case or proceeding before any court or
10 grand jury arising out of such investigation, or any
11 proceeding before any Federal administrative or regu-
12 latory agency involving such material, has been com-
13 pleted, or

14 “(B) no case or proceeding in which such material
15 may be used has been commenced within a reasonable
16 time after completion of the examination and analysis
17 of all documentary material and other information as-
18 sembled in the course of such investigation,

19 the custodian shall, upon written request of the person who
20 produced such material, return to such person any such mate-
21 rial (other than copies thereof furnished to the custodian pur-
22 suant to paragraph (2) of this subsection or made by the De-
23 partment of Justice pursuant to paragraph (3)(B) of this sub-
24 section) which has not passed into the control of any court,

1 grand jury, or agency through the introduction thereof into
2 the record of such case or proceedings.

3 “(6) In the event of the death, disability, or separation
4 from service in the Department of Justice of the custodian of
5 any documentary material, answers to interrogatories, or
6 transcripts of oral testimony produced under any demand
7 issued pursuant to this section, or of the official relief of such
8 custodian from responsibility for the custody and control of
9 such material, answers or transcripts, the Attorney General
10 or his authorized designee shall promptly (A) designate an-
11 other False Claims Act investigator to serve as custodian of
12 such material, answers, or transcripts, and (B) transmit in
13 writing to the person who produced such material, answers,
14 or testimony notice as to the identity and address of the suc-
15 cessor so designated. Any successor designated under this
16 subsection shall have, with regard to such material, answers
17 or transcripts, all duties and responsibilities imposed by this
18 Act upon his predecessor in office with regard thereto, except
19 that he shall not be held responsible for any default or dere-
20 liction which occurred prior to his designation.

21 “(k)(1) Whenever any person fails to comply with any
22 civil investigative demand served upon him under subsection
23 (b) or whenever satisfactory copying or reproduction of any
24 such material cannot be done and such person refuses to sur-
25 render such material, the Attorney General, through such of-

1 ficers or attorneys as he may designate, may file in the dis-
2 trict court of the United States for any judicial district in
3 which such person resides, is found, or transacts business,
4 and serve upon such person a petition for an order of such
5 court for the enforcement of this section.

6 “(2)(A) Within twenty days after the service of any such
7 demand upon any person, or at any time before the return
8 date specified in the demand, whichever period is shorter, or
9 within such period exceeding twenty days after service or in
10 excess of such return date as may be prescribed in writing,
11 subsequent to service, by any False Claims Act investigator
12 named in the demand, such person may file, in the district
13 court of the United States for the judicial district within
14 which such person resides, is found, or transacts business,
15 and serve upon such False Claims Act investigator a petition
16 for an order of such court, modifying or setting aside such
17 demand. In the case of a petition addressed to an express
18 demand for any product of discovery, a petition to modify or
19 set aside such demand may be brought only in the district
20 court of the United States for the judicial district in which the
21 proceeding in which such discovery was obtained is or was
22 last pending.

23 “(B) The time allowed for compliance with the demand,
24 in whole or in part, as deemed proper and ordered by the
25 court shall not run during the pendency of such petition in

1 the court, except that such person shall comply with any por-
2 tions of the demand not sought to be modified or set aside.
3 Such petition shall specify each ground upon which the peti-
4 tioner relies in seeking such relief, and may be based upon
5 any failure of such demand to comply with the provisions of
6 this section or upon any constitutional or other legal right or
7 privilege of such person.

8 “(3) Within twenty days after the service of any express
9 demand for any product of discovery upon, or at any time
10 before, the return date specified in the demand, whichever
11 period is shorter, or within such period exceeding twenty
12 days after service or in excess of such return date as may be
13 prescribed in writing, subsequent to service, by any False
14 Claims Act investigator named in the demand, the person
15 from whom such discovery was obtained may file, in the dis-
16 trict court of the United States for the judicial district in
17 which the proceeding in which such discovery was obtained is
18 or was last pending, and serve upon any False Claims Act
19 investigator named in the demand and upon the recipient of
20 the demand, a petition for an order of such court modifying or
21 setting aside those portions of the demand requiring produc-
22 tion of any such product of discovery. Such petition shall
23 specify each ground upon which the petitioner relies in seek-
24 ing such relief and may be based upon any failure of such
25 portions of the demand to comply with the provisions of this

1 section, or upon any constitutional or other legal right or
2 privilege of the petitioner. During the pendency of such peti-
3 tion, the court may stay, as it deems proper, compliance with
4 the demand and the running of the time allowed for compli-
5 ance with the demand.

6 “(4) At any time during which any custodian is in custo-
7 dy or control of any documentary material, answers to inter-
8 rogatories delivered, or transcripts of oral testimony given by
9 any person in compliance with any such demand, such
10 person, and in the case of an express demand for any product
11 of discovery, the person from whom such discovery was ob-
12 tained, may file, in the district court of the United States for
13 the judicial district within which the office of such custodian
14 is situated, and serve upon such custodian, a petition for an
15 order of such court requiring the performance by such custo-
16 dian of any duty imposed upon him by this section.

17 “(5) Whenever any petition is filed in any district court
18 of the United States under this section, such court shall have
19 jurisdiction to hear and determine the matter so presented,
20 and to enter such order or orders as may be required to carry
21 into effect the provisions of this section. Any final order so
22 entered shall be subject to appeal pursuant to section 1291 of
23 title 28. Any disobedience of any final order entered under
24 this section by any court shall be punished as a contempt
25 thereof.

1 “(6) To the extent that such rules may have application
2 and are not inconsistent with the provisions of this section,
3 the Federal Rules of Civil Procedure shall apply to any peti-
4 tion under this subsection.

5 “(7) Any documentary material, answers to written in-
6 terrogatories, or oral testimony provided pursuant to any
7 demand issued under this section and sections 3729 through
8 3731 shall be exempt from disclosure under section 552 of
9 title 5.”.

10 SEC. 6. (a) Subchapter III of chapter 37 of title 31,
11 United States Code, is further amended by adding at the end
12 thereof the following:

13 “§ 3734. Whistleblower protection

14 “Any employee who is discharged, demoted, suspended,
15 threatened, harassed, or in any other manner discriminated
16 against in the terms or conditions of such employment by his
17 employer because of the good faith exercise by such employ-
18 ee on behalf of himself or others of any option afforded by
19 this Act, including investigation for, initiation of, testimony
20 for, or assistance in an action filed or to be filed under this
21 Act, shall be entitled to all relief necessary to make him
22 whole. Such relief shall include reinstatement with full se-
23 niority rights, backpay with interest, and compensation for
24 any special damages sustained as a result of the discrimina-
25 tion, including litigation costs and reasonable attorney fees.

1 In addition, the employer shall be liable to such employee for
2 twice the amount of backpay and special damages and, if
3 appropriate under the circumstances, the court shall award
4 punitive damages.”.

5 (b) The table of sections for chapter 37 of title 31,
6 United States Code, is amended by adding at the end thereof
7 the following new items:

“3732. False claims jurisdiction.

“3733. Civil investigative demands.

“3734. Whistleblower protection.”.

8 SEC. 7. (a) Section 286 of title 18, United States Code,
9 is amended by striking out “\$10,000” and inserting in lieu
10 thereof “\$1,000,000 notwithstanding the provisions of sec-
11 tion 3623,”.

12 (b) Section 287 of title 18, United States Code, is
13 amended by striking out “\$10,000, or imprisoned not more
14 than five years” and inserting in lieu thereof “\$1,000,000, or
15 imprisoned for not more than ten years, or both, notwith-
16 standing the provisions of section 3623”.

17 SEC. 8. This Act and the amendments made by this Act
18 shall become effective upon the date of enactment.

Passed the Senate August 11, 1986.

Attest:

JO-ANNE L. COE,

Secretary.