

Pro-Plaintiff False Claims Act Amendments Advance in Congress

2009-05-04

— False Claims Act Correction Act Approved by House Judiciary Committee

On April 28, the House Judiciary Committee approved the False Claims Act Correction Act of 2009 (H.R. 1788), introduced by Rep. Howard Berman (D-CA) and co-sponsored by Reps. John Conyers (D-MI), James Sensenbrenner (R-WI), Dan Lungren (R-CA), and Steve Cohen (D-TN).

As approved by the Committee, H.R. 1788 would:

- remove the requirement of presentment to a Government employee from the basic liability provision for making a false claim or causing one to be made;
- expand the definition of "Government money or property" to include money or provided to any recipient to advance a Government program and money or property held in trust or administered by the Government for a beneficiary;
- expand the causes of action for failing to fully account for the use of property received from the Government or failing to return all property not used for the authorized purpose; these changes are intended to ensure the Act reaches many of the new forms of Government assistance provided under the Troubled Assets Relief Program ("TARP");
- expand the retaliation cause of action to include materially hindering in obtaining new employment or other business opportunities;
- narrow the public disclosure bar so that it would apply only when a relator derives his knowledge of all essential elements of liability exclusively from public disclosures; exclude information gained from FOIA requests that is not otherwise public from the definition of "public disclosure";
- authorize the Government to share information gleaned from the use of civil investigative demands with a relator;
- expand the statute of limitations from 6 to 8 years (but not to 10 years, as the 2008 version of the bill would have done);
- relax pleading requirements for relators, excusing the need to identify specific claims that result from alleged misconduct;
- void all contractual provisions preventing individuals from bringing qui tam actions.

A copy of the bill as approved by the House Judiciary Committee can be found [here](#).

— **Fraud Enforcement and Recovery Act of 2009 Approved by Full Senate**

On April 28, the Senate passed the Fraud Enforcement and Recovery Act of 2009 (S. 386) ("FERA") by a vote of 92-4.

Section 4 of FERA would make a number of amendments to the False Claims Act, including:

- expanding the definition of a "claim" to include any request or demand for money or property, whether or not the Government has title to that money or property, if presented to any recipient of Government funds if the money or property is to be spent or used on the Government's behalf or to advance a Government program;
- removing the requirement of presentment to a Government employee from the basic liability provision for making a false claim or causing one to be made;
- clarifying that specific intent to defraud is not an element of the Act's basic liability provisions.

FERA would also amend a number of federal criminal anti-fraud statutes to broaden their reach and sweep in, for example, mortgage lenders and companies receiving assistance through the Troubled Assets Relief Program ("TARP"). It would provide greater funding for various Government anti-fraud investigative agencies. And it would establish a Financial Markets Commission to investigate the causes of the current financial crisis.

A copy of the bill as approved by the Senate is available [here](#).

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