AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 1735
OFFERED BY MR. GRAYSON OF FLORIDA

At the end of title VIII (page 400, after line 23), add the following new section:

SEC. 865. PROGRAM FRAUD CIVIL REMEDIES STATUTE FOR
THE DEPARTMENT OF DEFENSE AND THE NA-
TIONAL AERONAUTICS AND SPACE ADMINIS-
TRATION.

(a) PURPOSE.—The purpose of this section is to pro-
vide the Secretary of Defense and the Administrator of
the National Aeronautics and Space Administration with
an effective administrative remedy to obtain recompense
for the Department of Defense and the National Aereo-
nautics and Space Administration for losses resulting from
the submission to the Department or the Administration,
respectively, of false, fictitious, or fraudulent claims and
statements.

(b) PROGRAM FRAUD CIVIL REMEDIES.—
(1) IN GENERAL.—Chapter IV of subtitle A of
title 10, United States Code, is amended by insert-
ing after chapter 163 the following new chapter:
CHAPTER 164—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

Sec.

2751. Applicability of chapter; definitions.
2752. False claims and statements; liability.
2753. Hearing and determinations.
2754. Payment; interest on late payments.
2756. Collection of civil penalties and assessments.
2757. Right to administrative offset.
2758. Limitations.
2759. Effect on other laws.

§ 2751. Applicability of chapter; definitions

(a) APPLICABILITY OF CHAPTER.—This chapter applies to the following agencies:

(1) The Department of Defense.

(2) The National Aeronautics and Space Administration.

(b) DEFINITIONS.—In this chapter:

(1) HEAD OF AN AGENCY.—The term ‘head of an agency’ means the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration.

(2) CLAIM.—The term ‘claim’ means any request, demand, or submission—

(A) made to the head of an agency for property, services, or money (including money representing grants, loans, insurance, or benefits);
“(B) made to a recipient of property, services, or money received directly or indirectly from the head of an agency or to a party to a contract with the head of an agency—

“(i) for property or services if the United States—

“(I) provided such property or services;

“(II) provided any portion of the funds for the purchase of such property or services; or

“(III) will reimburse such recipient or party for the purchase of such property or services; or

“(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

“(I) provided any portion of the money requested or demanded; or

“(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or
“(C) made to the head of an agency which has the effect of decreasing an obligation to pay or account for property, services, or money.

“(3) KNOWS OR HAS REASON TO KNOW.—The term ‘knows or has reason to know’, for purposes of establishing liability under section 2752 of this title, means that a person, with respect to a claim or statement—

“(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

“(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

“(C) acts in reckless disregard of the truth or falsity of the claim or statement, and no proof of specific intent to defraud is required.

“(4) RESPONSIBLE OFFICIAL.—The term ‘responsible official’ means a designated debarring and suspending official of the agency named in subsection (a).

“(5) RESPONDENT.—The term ‘respondent’ means a person who has received notice from a responsible official asserting liability under section 2752 of this title.

“(6) STATEMENT.—The term ‘statement’ means any representation, certification, affirmation,
document, record, or an accounting or bookkeeping entry made—

“(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

“(B) with respect to (including relating to eligibility for)—

“(i) a contract with, or a bid or proposal for a contract with the head of an agency; or

“(ii) a grant, loan, or benefit from the head of an agency.

“(c) CLAIMS.—For purposes of paragraph (2) of subsection (b)—

“(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

“(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

“(3) a claim shall be considered made, presented, or submitted to the head of an agency, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity act-
ing for or on behalf of such authority, recipient, or party.

“(d) STATEMENTS.—For purposes of paragraph (6) of subsection (b)—

“(1) each written representation, certification, or affirmation constitutes a separate statement; and

“(2) a statement shall be considered made, presented, or submitted to the head of an agency when such statement is actually made to an agent, fiscal intermediary, or other entity acting for or on behalf of such authority.

“§ 2752. False claims and statements; liability

“(a) FALSE CLAIMS.—Any person who makes, presents, or submits, or causes to be made, presented, or submitted, to the head of an agency a claim that the person knows or has reason to know—

“(1) is false, fictitious, or fraudulent;

“(2) includes or is supported by any written statement which asserts a material fact this is false, fictitious, or fraudulent;

“(3) includes or is supported by any written statement that—

“(A) omits a material fact;

“(B) is false, fictitious, or fraudulent as a result of such omission; and
“(C) the person making, presenting, or submitting such statement has a duty to include such material fact; or

“(4) is for payment for the provision of property or services which the person has not provided as claimed, shall, in addition to any other remedy that may be prescribed by law, be subject to a civil penalty of not more than $5,000 for each such claim. Such person shall also be subject to an assessment of not more than twice the amount of such claim, or the portion of such claim which is determined by the responsible official to be in violation of the preceding sentence.

“(b) FALSE STATEMENTS.—Any person who makes, presents, submits, or causes to be made, presented, or submitted, a written statement in conjunction with a procurement program or acquisition of the an agency named in section 2751(a) of this title that—

“(1) the person knows or has reason to know—

“(A) asserts a material fact that is false, fictitious, or fraudulent; or

“(B)(i) omits a material fact; and

“(ii) is false, fictitious, or fraudulent as a result of such omission;
“(2) in the case of a statement described in subparagraph (B) of paragraph (1), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

“(3) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

§ 2753. Hearing and determinations

“(a) TRANSMITTAL OF NOTICE TO ATTORNEY GENERAL.—If a responsible official determines that there is adequate evidence to believe that a person is liable under section 2752 of this title, the responsible official shall transmit to the Attorney General, or any other officer or employee of the Department of Justice designated by the Attorney General, a written notice of the intention of such official to initiate an action under this section. The notice shall include the following:

“(1) A statement of the reasons for initiating an action under this section.

“(2) A statement specifying the evidence which supports liability under section 2752 of this title.
“(3) A description of the claims or statements for which liability under section 2752 of this title is alleged.

“(4) An estimate of the penalties and assessments that will be demanded under section 2752 of this title.

“(5) A statement of any exculpatory or mitigating circumstances which may relate to such claims or statements.

“(b) STATEMENT FROM ATTORNEY GENERAL.—

“(1) Within 90 days after receipt of a notice from a responsible official under subsection (a), the Attorney General, or any other officer or employee of the Department of Justice designated by the Attorney General, shall transmit a written statement to the responsible official which specifies—

“(A) that the Attorney General, or any other officer or employee of the Department of Justice designated by the Attorney General, approves or disapproves initiating an action under this section based on the allegations of liability stated in such notice; and

“(B) in any case in which the initiation of an action under this section is disapproved, the reasons for such disapproval.
“(2) If at any time after the initiation of an action under this section the Attorney General, or any other officer or employee of the Department of Justice designated by the Attorney General, transmits to a responsible official a written determination that the continuation of any action under this section may adversely affect any pending or potential criminal or civil action, such action shall be immediately stayed and may be resumed only upon written authorization from the Attorney General, or any other officer or employee of the Department of Justice designated by the Attorney General.

“(c) Limitation on Amount of Claim That May Be Pursued Under This Section.—No action shall be initiated under this section, nor shall any assessment be imposed under this section, if the total amount of the claim determined by the responsible official to violate section 2752(a) of this title exceeds $500,000. The $500,000 threshold does not include penalties or any assessment permitted under 2752(a) of this title greater than the amount of the claim determined by the responsible official to violate such section.

“(d) Procedures for Resolving Claims.—(1) Upon receiving approval under subsection (b) to initiate an action under this section, the responsible official shall
mail, by registered or certified mail, or other similar commercial means, or shall deliver, a notice to the person alleged to be liable under section 2752 of this title. Such notice shall specify the allegations of liability against such person, specify the total amount of penalties and assessments sought by the United States, advise the person of the opportunity to submit facts and arguments in opposition to the allegations set forth in the notice, advise the person of the opportunity to submit offers of settlement or proposals of adjustment, and advise the person of the procedures of the agency named in section 2751(a) of this title governing the resolution of actions initiated under this section.

“(2) Within 30 days after receiving a notice under paragraph (1), or any additional period of time granted by the responsible official, the respondent may submit in person, in writing, or through a representative, facts and arguments in opposition to the allegations set forth in the notice, including any additional information that raises a genuine dispute of material fact.

“(3) If the respondent fails to respond within 30 days, or any additional time granted by the responsible official, the responsible official may issue a written decision disposing of the matters raised in the notice. Such decision shall be based on the record before the responsible official.
official. If the responsible official concludes that the respondent is liable under section 2752 of this title, the decision shall include the findings of fact and conclusions of law which the responsible official relied upon in determining that the respondent is liable, and the amount of any penalty and/or assessment to be imposed on the respondent. Any such determination shall be based on a preponderance of the evidence. The responsible official shall promptly send to the respondent a copy of the decision by registered or certified mail, or other similar commercial means, or shall hand deliver a copy of the decision.

“(4) If the respondent makes a timely submission, and the responsible official determines that the respondent has not raised any genuine dispute of material fact, the responsible official may issue a written decision disposing of the matters raised in the notice. Such decision shall be based on the record before the responsible official. If the responsible official concludes that the respondent is liable under section 2752 of this title, the decision shall include the findings of fact and conclusions of law which the responsible official relied upon in determining that the respondent is liable, and the amount of any penalty or assessment to be imposed on the respondent. Any such determination shall be based on a preponderance of the evidence. The responsible official shall promptly send to the
respondent a copy of the decision by registered or certified mail, or other similar commercial means, or shall hand deliver a copy of the decision.

“(5) If the respondent makes a timely submission, and the responsible official determines that the respondent has raised a genuine dispute of material fact, the responsible official shall commence a hearing to resolve the genuinely disputed material facts by mailing by registered or certified mail, or other similar commercial means, or by hand delivery of, a notice informing the respondent of—

“(A) the time, place, and nature of the hearing;

“(B) the legal authority under which the hearing is to be held;

“(C) the material facts determined by the responsible official to be genuinely in dispute that will be the subject of the hearing; and

“(D) a description of the procedures for the conduct of the hearing.

“(6) The responsible official and any person against whom liability is asserted under this chapter may agree to a compromise or settle an action at any time. Any compromise or settlement must be in writing.

“(e) **Respondent Entitled to Copy of the Record.**—At any time after receiving a notice under paragraph (1) of subsection (d), the respondent shall be
entitled to a copy of the entire record before the responsible official.

“(f) HEARINGS.—Any hearing commenced under this section shall be conducted by the responsible official, or a fact-finder designated by the responsible official, solely to resolve genuinely disputed material facts identified by the responsible official and set forth in the notice to the respondent.

“(g) PROCEDURES FOR HEARINGS.—(1) Each hearing shall be conducted under procedures prescribed by the head of the agency. Such procedures shall include the following:

“(A) The provision of written notice of the hearing to the respondent, including written notice of—

“(i) the time, place, and nature of the hearing;

“(ii) the legal authority under which the hearing is to be held;

“(iii) the material facts determined by the responsible official to be genuinely in dispute that will be the subject of the hearing; and

“(iv) a description of the procedures for the conduct of the hearing.
“(B) The opportunity for the respondent to present facts and arguments through oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required to resolve any genuinely disputed material facts identified by the responsible official.

“(C) The opportunity for the respondent to be accompanied, represented, and advised by counsel or such other qualified representative as the Secretary may specify in such regulations.

“(2) For the purpose of conducting hearings under this section, the responsible official is authorized to administer oaths or affirmations.

“(3) Hearings shall be held at the responsible official’s office, or at such other place as may be agreed upon by the respondent and the responsible official.

“(h) DECISION FOLLOWING HEARING.—The responsible official shall issue a written decision within 60 days after the conclusion of the hearing. That decision shall set forth specific findings of fact resolving the genuinely disputed material facts that were the subject of the hearing. The written decision shall also dispose of the matters raised in the notice required under paragraph (1) of subsection (d). If the responsible official concludes that the respondent is liable under section 2752 of this title, the
decision shall include the findings of fact and conclusions of law which the responsible official relied upon in determining that the respondent is liable, and the amount of any penalty or assessment to be imposed on the respondent. Any decisions issued under this subparagraph shall be based on the record before the responsible official and shall be supported by a preponderance of the evidence. The responsible official shall promptly send to the respondent a copy of the decision by registered or certified mail, or other similar commercial means, or shall hand deliver a copy of the decision.

§ 2754. Payment; interest on late payments

(a) PAYMENT OF ASSESSMENTS AND PENALTIES.—A respondent shall render payment of any assessment and penalty imposed by a responsible official, or any amount otherwise agreed to as part of a settlement or adjustment, not later than the date—

(1) that is 30 days after the date of the receipt by the respondent of the responsible official’s decision; or

(2) as otherwise agreed to by the respondent and the responsible official.

(b) INTEREST.—If there is an unpaid balance as of the date determined under paragraph (1), interest shall accrue from that date on any unpaid balance. The rate
of interest charged shall be the rate in effect as of that
date that is published by the Secretary of the Treasury
under section 3717 of title 31.

“(c) TREATMENT OF RECEIPTS.—All penalties, as-
sessments, or interest paid, collected, or otherwise recov-
ered under this chapter shall be deposited into the Treas-
ury as miscellaneous receipts as provided in section 3302
of title 31.

“§ 2755. Judicial review

“A decision by a responsible official under section
2753(d) or 2753(h) of this title shall be final. Any such
final decision is subject to judicial review only under chap-
ter 7 of title 5.

“§ 2756. Collection of civil penalties and assessments

“(a) JUDICIAL ENFORCEMENT OF CIVIL PENALTIES
AND ASSESSMENTS.—The Attorney General shall be re-
sponsible for judicial enforcement of any civil penalty or
assessment imposed under this chapter.

“(b) CIVIL ACTIONS FOR RECOVERY.—Any penalty
or assessment imposed in a decision by a responsible offi-
cial, or amounts otherwise agreed to as part of a settle-
ment or adjustment, along with any accrued interest, may
be recovered in a civil action brought by the Attorney Gen-
eral. In any such action, no matter that was raised or that
could have been raised in a proceeding under this chapter
or pursuant to judicial review under section 2755 of this title may be raised as a defense, and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

"(e) Jurisdiction of United States District Courts.—The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b).

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

"(e) Jurisdiction of United States Court of Federal Claims.—The United States Court of Federal Claims shall have jurisdiction of any action under subsection (b) to recover any penalty or assessment, or amounts otherwise agreed to as part of a settlement or adjustment, along with any accrued interest, if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court. The counterclaim need not relate to the subject matter of the underlying claim.
§ 2757. Right to administrative offset

“The amount of any penalty or assessment that has been imposed by a responsible official, or any amount agreed upon in a settlement or compromise, along with any accrued interest, may be collected by administrative offset.

§ 2758. Limitations

“(a) LIMITATION ON PERIOD FOR INITIATION OF ADMINISTRATIVE ACTION.—An action under section 2752 of this title with respect to a claim or statement shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

“(b) LIMITATION PERIOD FOR INITIATION OF CIVIL ACTION FOR RECOVERY OF ADMINISTRATIVE PENALTY OR ASSESSMENT.—A civil action to recover a penalty or assessment under section 2756 of this title shall be commenced within three years after the date of the decision of the responsible official imposing the penalty or assessment.

§ 2759. Effect on other laws

“(a) RELATIONSHIP TO TITLE 44 AUTHORITIES.—This chapter does not diminish the responsibility of the head of an agency to comply with the provisions of chapter 35 of title 44, relating to coordination of Federal information policy.
“(b) Relationship to Title 31 Authorities.—
The procedures set forth in this chapter apply to the agencies named in section 2751(a) of this title in lieu of the procedures under chapter 38 of title 31, relating to administrative remedies for false claims and statements.

“(c) Relationship to Other Authorities.—Any action, inaction, or decision under this chapter shall be based solely upon the information before the responsible official and shall not limit or restrict any agency of the Government from instituting any other action arising outside this chapter, including suspension or debarment, based upon the same information. Any action, inaction or decision under this chapter shall not restrict the ability of the Attorney General to bring judicial action, based upon the same information as long as such action is not otherwise prohibited by law.”.

(2) Clerical Amendment.—The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 163 the following new item:

“164. Administrative Remedies for False Claims and Statements ............ 2751”.

(e) Conforming Amendments.—Section 3801(a)(1) of title 31, United States Code, is amended—
(1) by inserting “(other than the Department of Defense)” in subparagraph (A) after “executive department”; 

(2) by striking subparagraph (B); 

(3) by redesignating subparagraph (C) as subparagraph (B) and by inserting “(other than the National Aeronautics and Space Administration)” in that subparagraph after “not an executive department”; and 

(4) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively. 

(d) EFFECTIVE DATE.—Chapter 164 of title 10, United States Code, as added by subsection (b), and the amendments made by subsection (c), shall apply to any claim or statement made, presented, or submitted on or after the date of the enactment of this Act.