

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 4909
OFFERED BY MR. GRAYSON OF FLORIDA**

At the end of title VIII, add the following new section:

1 **SEC. 843. PROGRAM FRAUD CIVIL REMEDIES STATUTE FOR**
2 **THE DEPARTMENT OF DEFENSE AND THE NA-**
3 **TIONAL AERONAUTICS AND SPACE ADMINIS-**
4 **TRATION.**

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

14 (b) PROGRAM FRAUD CIVIL REMEDIES.—

15 (1) IN GENERAL.—Chapter IV of subtitle A of
16 title 10, United States Code, is amended by insert-
17 ing after chapter 163 the following new chapter:

1 **“CHAPTER 164—ADMINISTRATIVE REM-**
2 **EDIES FOR FALSE CLAIMS AND STATE-**
3 **MENTS**

“Sec.

“2751. Applicability of chapter; definitions.

“2752. False claims and statements; liability.

“2753. Hearing and determinations.

“2754. Payment; interest on late payments.

“2755. Judicial review.

“2756. Collection of civil penalties and assessments.

“2757. Right to administrative offset.

“2758. Limitations.

“2759. Effect on other laws.

4 **“§ 2751. Applicability of chapter; definitions**

5 “(a) **APPLICABILITY OF CHAPTER.**—This chapter ap-
6 plies to the following agencies:

7 “(1) The Department of Defense.

8 “(2) The National Aeronautics and Space Ad-
9 ministration.

10 “(b) **DEFINITIONS.**—In this chapter:

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

15 “(2) **CLAIM.**—The term ‘claim’ means any re-
16 quest, demand, or submission—

17 “(A) made to the head of an agency for
18 property, services, or money (including money
19 representing grants, loans, insurance, or bene-
20 fits);

1 “(B) made to a recipient of property, serv-
2 ices, or money received directly or indirectly
3 from the head of an agency or to a party to a
4 contract with the head of an agency—

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

7 “(I) provided such property or
8 services;

9 “(II) provided any portion of the
10 funds for the purchase of such prop-
11 erty or services; or

12 “(III) will reimburse such recipi-
13 ent or party for the purchase of such
14 property or services; or

15 “(ii) for the payment of money (in-
16 cluding money representing grants, loans,
17 insurance, or benefits) if the United
18 States—

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

21 “(II) will reimburse such recipi-
22 ent or party for any portion of the
23 money paid on such request or de-
24 mand; or

1 “(C) made to the head of an agency which
2 has the effect of decreasing an obligation to pay
3 or account for property, services, or money.

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

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

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

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

16 “(4) RESPONSIBLE OFFICIAL.—The term ‘re-
17 sponsible official’ means a designated debarring and
18 suspending official of the agency named in sub-
19 section (a).

20 “(5) RESPONDENT.—The term ‘respondent’
21 means a person who has received notice from a re-
22 sponsible official asserting liability under section
23 2752 of this title.

24 “(6) STATEMENT.—The term ‘statement’
25 means any representation, certification, affirmation,

1 document, record, or an accounting or bookkeeping
2 entry made—

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

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

8 “(i) a contract with, or a bid or pro-
9 posal for a contract with the head of an
10 agency; or

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

13 “(c) CLAIMS.—For purposes of paragraph (2) of sub-
14 section (b)—

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

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

22 “(3) a claim shall be considered made, pre-
23 sented, or submitted to the head of an agency, re-
24 cipient, or party when such claim is actually made
25 to an agent, fiscal intermediary, or other entity act-

1 ing for or on behalf of such authority, recipient, or
2 party.

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

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

7 “(2) a statement shall be considered made, pre-
8 sented, or submitted to the head of an agency when
9 such statement is actually made to an agent, fiscal
10 intermediary, or other entity acting for or on behalf
11 of such authority.

12 **“§ 2752. False claims and statements; liability**

13 “(a) FALSE CLAIMS.—Any person who makes, pre-
14 sents, or submits, or causes to be made, presented, or sub-
15 mitted, to the head of an agency a claim that the person
16 knows or has reason to know—

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

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

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

23 “(A) omits a material fact;

24 “(B) is false, fictitious, or fraudulent as a
25 result of such omission; and

1 “(C) the person making, presenting, or
2 submitting such statement has a duty to in-
3 clude such material fact; or

4 “(4) is for payment for the provision of prop-
5 erty or services which the person has not provided
6 as claimed, shall, in addition to any other remedy
7 that may be prescribed by law, be subject to a civil
8 penalty of not more than \$5,000 for each such
9 claim. Such person shall also be subject to an as-
10 sessment of not more than twice the amount of such
11 claim, or the portion of such claim which is deter-
12 mined by the responsible official to be in violation of
13 the preceding sentence.

14 “(b) FALSE STATEMENTS.—Any person who makes,
15 presents, submits, or causes to be made, presented, or sub-
16 mitted, a written statement in conjunction with a procure-
17 ment program or acquisition of the an agency named in
18 section 2751(a) of this title that—

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

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

22 “(B)(i) omits a material fact; and

23 “(ii) is false, fictitious, or fraudulent as a
24 result of such omission;

1 “(2) in the case of a statement described in
2 subparagraph (B) of paragraph (1), is a statement
3 in which the person making, presenting, or submit-
4 ting such statement has a duty to include such ma-
5 terial fact; and

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

12 **“§ 2753. Hearing and determinations**

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

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

24 “(2) A statement specifying the evidence which
25 supports liability under section 2752 of this title.

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

4 “(4) An estimate of the penalties and assess-
5 ments that will be demanded under section 2752 of
6 this title.

7 “(5) A statement of any exculpatory or miti-
8 gating circumstances which may relate to such
9 claims or statements.

10 “(b) STATEMENT FROM ATTORNEY GENERAL.—

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

17 “(A) that the Attorney General, or any
18 other officer or employee of the Department of
19 Justice designated by the Attorney General, ap-
20 proves or disapproves initiating an action under
21 this section based on the allegations of liability
22 stated in such notice; and

23 “(B) in any case in which the initiation of
24 an action under this section is disapproved, the
25 reasons for such disapproval.

1 “(2) If at any time after the initiation of an ac-
2 tion under this section the Attorney General, or any
3 other officer or employee of the Department of Jus-
4 tice designated by the Attorney General, transmits
5 to a responsible official a written determination that
6 the continuation of any action under this section
7 may adversely affect any pending or potential crimi-
8 nal or civil action, such action shall be immediately
9 stayed and may be resumed only upon written au-
10 thorization from the Attorney General, or any other
11 officer or employee of the Department of Justice
12 designated by the Attorney General.

13 “(c) LIMITATION ON AMOUNT OF CLAIM THAT MAY
14 BE PURSUED UNDER THIS SECTION.—No action shall be
15 initiated under this section, nor shall any assessment be
16 imposed under this section, if the total amount of the
17 claim determined by the responsible official to violate sec-
18 tion 2752(a) of this title exceeds \$500,000. The \$500,000
19 threshold does not include penalties or any assessment
20 permitted under 2752(a) of this title greater than the
21 amount of the claim determined by the responsible official
22 to violate such section.

23 “(d) PROCEDURES FOR RESOLVING CLAIMS.—(1)
24 Upon receiving approval under subsection (b) to initiate
25 an action under this section, the responsible official shall

1 mail, by registered or certified mail, or other similar com-
2 mercial means, or shall deliver, a notice to the person al-
3 leged to be liable under section 2752 of this title. Such
4 notice shall specify the allegations of liability against such
5 person, specify the total amount of penalties and assess-
6 ments sought by the United States, advise the person of
7 the opportunity to submit facts and arguments in opposi-
8 tion to the allegations set forth in the notice, advise the
9 person of the opportunity to submit offers of settlement
10 or proposals of adjustment, and advise the person of the
11 procedures of the agency named in section 2751(a) of this
12 title governing the resolution of actions initiated under
13 this section.

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

21 “(3) If the respondent fails to respond within 30
22 days, or any additional time granted by the responsible
23 official, the responsible official may issue a written deci-
24 sion disposing of the matters raised in the notice. Such
25 decision shall be based on the record before the responsible

1 official. If the responsible official concludes that the re-
2 spondent is liable under section 2752 of this title, the deci-
3 sion shall include the findings of fact and conclusions of
4 law which the responsible official relied upon in deter-
5 mining that the respondent is liable, and the amount of
6 any penalty and/or assessment to be imposed on the re-
7 spondent. Any such determination shall be based on a pre-
8 ponderance of the evidence. The responsible official shall
9 promptly send to the respondent a copy of the decision
10 by registered or certified mail, or other similar commercial
11 means, or shall hand deliver a copy of the decision.

12 “(4) If the respondent makes a timely submission,
13 and the responsible official determines that the respondent
14 has not raised any genuine dispute of material fact, the
15 responsible official may issue a written decision disposing
16 of the matters raised in the notice. Such decision shall
17 be based on the record before the responsible official. If
18 the responsible official concludes that the respondent is
19 liable under section 2752 of this title, the decision shall
20 include the findings of fact and conclusions of law which
21 the responsible official relied upon in determining that the
22 respondent is liable, and the amount of any penalty or as-
23 sessment to be imposed on the respondent. Any such de-
24 termination shall be based on a preponderance of the evi-
25 dence. The responsible official shall promptly send to the

1 respondent a copy of the decision by registered or certified
2 mail, or other similar commercial means, or shall hand
3 deliver a copy of the decision.

4 “(5) If the respondent makes a timely submission,
5 and the responsible official determines that the respondent
6 has raised a genuine dispute of material fact, the respon-
7 sible official shall commence a hearing to resolve the genu-
8 inely disputed material facts by mailing by registered or
9 certified mail, or other similar commercial means, or by
10 hand delivery of, a notice informing the respondent of—

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

12 “(B) the legal authority under which the hear-
13 ing is to be held;

14 “(C) the material facts determined by the re-
15 sponsible official to be genuinely in dispute that will
16 be the subject of the hearing; and

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

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

23 “(e) RESPONDENT ENTITLED TO COPY OF THE
24 RECORD.—At any time after receiving a notice under
25 paragraph (1) of subsection (d), the respondent shall be

1 entitled to a copy of the entire record before the respon-
2 sible official.

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

9 “(g) PROCEDURES FOR HEARINGS.—(1) Each hear-
10 ing shall be conducted under procedures prescribed by the
11 head of the agency. Such procedures shall include the fol-
12 lowing:

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

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

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

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

23 “(iv) a description of the procedures for
24 the conduct of the hearing.

1 “(B) The opportunity for the respondent to
2 present facts and arguments through oral or docu-
3 mentary evidence, to submit rebuttal evidence, and
4 to conduct such cross-examination as may be re-
5 quired to resolve any genuinely disputed material
6 facts identified by the responsible official.

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

11 “(2) For the purpose of conducting hearings under
12 this section, the responsible official is authorized to admin-
13 ister oaths or affirmations.

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

17 “(h) DECISION FOLLOWING HEARING.—The respon-
18 sible official shall issue a written decision within 60 days
19 after the conclusion of the hearing. That decision shall set
20 forth specific findings of fact resolving the genuinely dis-
21 puted material facts that were the subject of the hearing.
22 The written decision shall also dispose of the matters
23 raised in the notice required under paragraph (1) of sub-
24 section (d). If the responsible official concludes that the
25 respondent is liable under section 2752 of this title, the

1 decision shall include the findings of fact and conclusions
2 of law which the responsible official relied upon in deter-
3 mining that the respondent is liable, and the amount of
4 any penalty or assessment to be imposed on the respond-
5 ent. Any decisions issued under this subparagraph shall
6 be based on the record before the responsible official and
7 shall be supported by a preponderance of the evidence.
8 The responsible official shall promptly send to the re-
9 spondent a copy of the decision by registered or certified
10 mail, or other similar commercial means, or shall hand
11 deliver a copy of the decision.

12 **“§ 2754. Payment; interest on late payments**

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

18 “(1) that is 30 days after the date of the re-
19 ceipt by the respondent of the responsible official’s
20 decision; or

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

23 “(b) INTEREST.—If there is an unpaid balance as of
24 the date determined under paragraph (1), interest shall
25 accrue from that date on any unpaid balance. The rate

1 of interest charged shall be the rate in effect as of that
2 date that is published by the Secretary of the Treasury
3 under section 3717 of title 31.

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

9 **“§ 2755. Judicial review**

10 “A decision by a responsible official under section
11 2753(d) or 2753(h) of this title shall be final. Any such
12 final decision is subject to judicial review only under chap-
13 ter 7 of title 5.

14 **“§ 2756. Collection of civil penalties and assessments**

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

19 “(b) CIVIL ACTIONS FOR RECOVERY.—Any penalty
20 or assessment imposed in a decision by a responsible offi-
21 cial, or amounts otherwise agreed to as part of a settle-
22 ment or adjustment, along with any accrued interest, may
23 be recovered in a civil action brought by the Attorney Gen-
24 eral. In any such action, no matter that was raised or that
25 could have been raised in a proceeding under this chapter

1 or pursuant to judicial review under section 2755 of this
2 title may be raised as a defense, and the determination
3 of liability and the determination of amounts of penalties
4 and assessments shall not be subject to review.

5 “(c) JURISDICTION OF UNITED STATES DISTRICT
6 COURTS.—The district courts of the United States shall
7 have jurisdiction of any action commenced by the United
8 States under subsection (b).

9 “(d) JOINING AND CONSOLIDATING ACTIONS.—Any
10 action under subsection (b) may, without regard to venue
11 requirements, be joined and consolidated with or asserted
12 as a counterclaim, cross-claim, or setoff by the United
13 States in any other civil action which includes as parties
14 the United States, and the person against whom such ac-
15 tion may be brought.

16 “(e) JURISDICTION OF UNITED STATES COURT OF
17 FEDERAL CLAIMS.—The United States Court of Federal
18 Claims shall have jurisdiction of any action under sub-
19 section (b) to recover any penalty or assessment, or
20 amounts otherwise agreed to as part of a settlement or
21 adjustment, along with any accrued interest, if the cause
22 of action is asserted by the United States as a counter-
23 claim in a matter pending in such court. The counterclaim
24 need not relate to the subject matter of the underlying
25 claim.

1 **“§ 2757. Right to administrative offset**

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

7 **“§ 2758. Limitations**

8 “(a) LIMITATION ON PERIOD FOR INITIATION OF AD-
9 MINISTRATIVE ACTION.—An action under section 2752 of
10 this title with respect to a claim or statement shall be com-
11 menced within six years after the date on which such claim
12 or statement is made, presented, or submitted.

13 “(b) LIMITATION PERIOD FOR INITIATION OF CIVIL
14 ACTION FOR RECOVERY OF ADMINISTRATIVE PENALTY
15 OR ASSESSMENT.—A civil action to recover a penalty or
16 assessment under section 2756 of this title shall be com-
17 menced within three years after the date of the decision
18 of the responsible official imposing the penalty or assess-
19 ment.

20 **“§ 2759. Effect on other laws**

21 “(a) RELATIONSHIP TO TITLE 44 AUTHORITIES.—
22 This chapter does not diminish the responsibility of the
23 head of an agency to comply with the provisions of chapter
24 35 of title 44, relating to coordination of Federal informa-
25 tion policy.

1 “(b) RELATIONSHIP TO TITLE 31 AUTHORITIES.—
2 The procedures set forth in this chapter apply to the agen-
3 cies named in section 2751(a) of this title in lieu of the
4 procedures under chapter 38 of title 31, relating to admin-
5 istrative remedies for false claims and statements.

6 “(c) RELATIONSHIP TO OTHER AUTHORITIES.—Any
7 action, inaction, or decision under this chapter shall be
8 based solely upon the information before the responsible
9 official and shall not limit or restrict any agency of the
10 Government from instituting any other action arising out-
11 side this chapter, including suspension or debarment,
12 based upon the same information. Any action, inaction or
13 decision under this chapter shall not restrict the ability
14 of the Attorney General to bring judicial action, based
15 upon the same information as long as such action is not
16 otherwise prohibited by law.”.

17 (2) CLERICAL AMENDMENT.—The tables of
18 chapters at the beginning of subtitle A, and at the
19 beginning of part IV of subtitle A, of such title are
20 each amended by inserting after the item relating to
21 chapter 163 the following new item:

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

22 (c) CONFORMING AMENDMENTS.—Section
23 3801(a)(1) of title 31, United States Code, is amended—

1 (1) by inserting “(other than the Department of
2 Defense)” in subparagraph (A) after “executive de-
3 partment”;

4 (2) by striking subparagraph (B);

5 (3) by redesignating subparagraph (C) as sub-
6 paragraph (B) and by inserting “(other than the
7 National Aeronautics and Space Administration)” in
8 that subparagraph after “not an executive depart-
9 ment”; and

10 (4) by redesignating subparagraphs (D), (E),
11 and (F) as subparagraphs (C), (D), and (E), respec-
12 tively.

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

