

Calendar No. 455

99TH CONGRESS
1ST SESSION**S. 1134****[Report No. 99-212]**

To amend title 5, United States Code, to provide administrative civil penalties for false claims and statements made to the United States by certain recipients of property, services, or money from the United States, by parties to contracts with the United States, or by Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 15), 1985

Mr. COHEN (for himself, Mr. ROTH, Mr. NUNN, Mr. LEVIN, and Mr. CHILES) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

DECEMBER 10 (legislative day, DECEMBER 9), 1985

Reported by Mr. ROTH, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 5, United States Code, to provide administrative civil penalties for false claims and statements made to the United States by certain recipients of property, services, or money from the United States, by parties to contracts with the United States, or by Federal employees, 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 this Act may be cited as the “Program Fraud Civil
4 Penalties Act of 1985”.

5 SEC. 2. (a) The Congress finds that—

6 (1) false, fictitious, and fraudulent claims and
7 statements in Government programs are a serious
8 problem;

9 (2) false, fictitious, and fraudulent claims and
10 statements in Government programs result in the loss
11 of millions of dollars annually by allowing ineligible
12 persons to receive Federal funds to which they are not
13 entitled;

14 (3) false, fictitious, and fraudulent claims and
15 statements in Government programs undermine the in-
16 tegrity of such programs by allowing ineligible persons
17 to participate in such programs; and

18 (4) present civil and criminal remedies for such
19 claims and statements are not sufficiently responsive.

20 (b) The purposes of this Act are—

21 (1) to provide Federal agencies which are the vic-
22 tims of false, fictitious, and fraudulent claims and state-
23 ments with an administrative remedy to recompense
24 such agencies for losses resulting from such claims and
25 statements; to penalize persons who make, present, or

1 submit such claims and statements, and to deter the
2 making, presenting, and submitting of such claims and
3 statements in the future; and

4 (2) to provide due process protections to all per-
5 sons who are subject to the adjudication of administra-
6 tive penalties for false, fictitious, or fraudulent claims
7 or statements.

8 SEC. 3. (a) Title 5, United States Code, is amended by
9 inserting after chapter 7 the following new chapter:

10 **CHAPTER 8—ADMINISTRATIVE PENALTIES AND**
11 **ASSESSMENTS FOR FALSE CLAIMS AND STATE-**
12 **MENTS**

“Sec.

“801. Definitions.

“802. False claims and statements; liability.

“803. Hearing and determinations.

“804. Subpena authority.

“805. Judicial review.

“806. Collection of civil penalties and assessments.

“807. Limitations.

“808. Regulations.

“809. Reports.

13 **“§ 801. Definitions**

14 “(a) For purposes of this chapter—

15 “(1) ‘authority’ means—

16 “(A) an executive department;

17 “(B) an establishment (as such term is de-
18 fined in section 11(2) of the Inspector General
19 Act of 1978) which is not an executive depart-
20 ment; and

CMS Library
C2-07-13
7500 Security Blvd.
Baltimore, Maryland 21244

- 1 ~~“(C) the United States Postal Service;~~
- 2 ~~“(2) ‘authority head’ means—~~
- 3 ~~“(A) the head of an authority; or~~
- 4 ~~“(B) an official or employee of the authority~~
5 ~~designated, in regulations promulgated by the~~
6 ~~head of the authority, to act on behalf of the head~~
7 ~~of the authority;~~
- 8 ~~“(3) ‘claim’ means any request or demand—~~
- 9 ~~“(A) made to an authority for property, serv-~~
10 ~~ices, or money (including money representing~~
11 ~~grants, loans, insurance, or benefits); or~~
- 12 ~~“(B) made to a recipient of property, serv-~~
13 ~~ices, or money from an authority or to a party to~~
14 ~~a contract with an authority—~~
- 15 ~~“(i) for property or services if the~~
16 ~~United States—~~
- 17 ~~“(I) provided such property or~~
18 ~~services;~~
- 19 ~~“(II) provided any portion of the~~
20 ~~funds for the purchase of such property~~
21 ~~or services; or~~
- 22 ~~“(III) will reimburse such recipient~~
23 ~~or party for the purchase of such prop-~~
24 ~~erty or services; or~~

1 “(ii) for the payment of money (includ-
2 ing money representing grants, loans, insur-
3 ance, or benefits) if the United States—

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

6 “(II) will reimburse such recipient
7 for any portion of the money paid on
8 such request or demand;

9 “(4) ‘statement’ includes any written representa-
10 tion, certification, document, record, or accounting or
11 bookkeeping entry—

12 “(A) with respect to a claim; or

13 “(B) with respect to—

14 “(i) a contract with, or a bid or proposal
15 for a contract with;

16 “(ii) a grant, loan, or benefit from;

17 “(iii) an application for insurance from;

18 or

19 “(iv) an application for employment
20 with,

21 an authority, or any State, political subdivision of
22 a State, or other party acting on behalf of, or
23 based upon the credit or guarantee of, an author-
24 ity;

1 “(5) ‘person’ means any individual, partnership,
2 corporation, association, or private organization;

3 “(6) ‘investigating official’ means—

4 “(A) in the case of an authority in which an
5 Office of Inspector General is established by the
6 Inspector General Act of 1978 or by any other
7 Federal law, the Inspector General of that au-
8 thority; or

9 “(B) in the case of an authority in which an
10 Office of Inspector General is not established by
11 the Inspector General Act of 1978 or by any
12 other Federal law, any officer or employee of the
13 authority designated by the authority head to con-
14 duct investigations under section 803(a)(1) of this
15 title;

16 “(7) ‘reviewing official’ means any officer or em-
17 ployee of an authority—

18 “(A) who is designated by the authority head
19 to make the determination required under section
20 803(a)(2) of this title; and

21 “(B) who, if a member of the armed forces
22 on active duty, is serving in grade O-7 or above
23 or, if a civilian, is serving in a position for which
24 the rate of basic pay is not less than the minimum

1 rate of basic pay for grade GS-16 or above under
2 the General Schedule; and

3 “(8) ‘hearing examiner’ means any officer or em-
4 ployee of an authority—

5 “(A) who is appointed by the authority head
6 in the same manner as administrative law judges
7 are appointed pursuant to section 3105 of this
8 title; and

9 “(B) who, if a member of the armed forces
10 on active duty, is serving in grade O-7 or above
11 or, if a civilian, is serving in a position for which
12 the rate of basic pay is not less than the minimum
13 rate of basic pay for grade GS-16 or above under
14 the General Schedule.

15 “(b) For purposes of paragraph (2) of subsection (a)—

16 “(1) each voucher, invoice, claim form, or other
17 individual request or demand for property, services, or
18 money constitutes a separate claim whether made, pre-
19 sented, or submitted separately or together with other
20 claims;

21 “(2) each request or demand for property, serv-
22 ices, or money constitutes a claim regardless of wheth-
23 er such property, services, or money is actually deliv-
24 ered or paid; and

1 “(3) a claim shall be considered made, presented,
2 or submitted to an authority, recipient, or party when
3 such claim is made to an agent, fiscal intermediary, or
4 other entity, including any State or political subdivision
5 thereof, acting for or on behalf of such authority, recip-
6 ient, or party.

7 “(e) For purposes of paragraph (4) of subsection (a)—

8 “(1) each written representation or certification
9 constitutes a separate statement whether made, pre-
10 sented, or submitted separately or together with other
11 statements; and

12 “(2) a statement shall be considered made, pre-
13 sented, or submitted to an authority although such
14 statement is actually made to an agent, fiscal interme-
15 diary, or other entity, including any State or political
16 subdivision thereof, acting for or on behalf of such au-
17 thority.

18 **“§ 802. False claims and statements; liability**

19 “(a)(1) Any person who, on or after the effective date of
20 this chapter, makes, presents, or submits, or causes to be
21 made, presented, or submitted, a claim that the person knows
22 or has reason to know—

23 “(A) is false, fictitious, or fraudulent;

24 “(B) includes or is supported by any statement
25 which violates paragraph (2) of this subsection; or

1 “(C) is for payment for the provision of property
2 or services which the person has not provided as
3 elaimed,

4 shall be subject to, in addition to any other penalty that may
5 be prescribed by law, a civil penalty of not more than
6 \$10,000 for each such elaim. Such person shall also be sub-
7 ject to an assessment, in lieu of damages sustained by the
8 United States because of such elaim, of not more than twice
9 the amount of such elaim.

10 “(2) Any person who, on or after the effective date of
11 this chapter, makes, presents, or submits, or causes to be
12 made, presented, or submitted, a statement that the person
13 knows or has reason to know—

14 “(A) asserts a material fact which is false, ficti-
15 tious, or fraudulent; or

16 “(B)(i) omits a material fact,

17 “(ii) as a result of such omission, such statement
18 is false, fictitious, or fraudulent, and

19 “(iii) the person making, presenting, or submitting
20 such statement has a duty to include such material fact
21 in the statement,

22 shall be subject to, in addition to any other penalty that may
23 be prescribed by law, a civil penalty of not more than
24 \$10,000 for each such statement. In the case of a statement
25 relating to a elaim for money, such person shall also be sub-

1 ject to an assessment, in lieu of damages sustained by the
 2 United States because of such statement, of not more than
 3 twice the amount of such claim.

4 “(b)(1) Except as provided in paragraph (2) of this sub-
 5 section, a determination of—

6 “(A) probable cause that a person is liable under
 7 section 803(a)(2) of this title, or

8 “(B) liability under section 803 of this title,
 9 may provide the authority with grounds for commencing any
 10 administrative or contractual action against such person
 11 which is authorized by law and which is in addition to any
 12 action against such person under this chapter.

13 “(2) A determination referred to in paragraph (1) of this
 14 subsection may be used by the authority, but shall not require
 15 such authority, to commence any administrative or contrac-
 16 tual action which is authorized by law.

17 **“§ 803. Hearing and determinations**

18 “(a)(1) The investigating official of an authority may in-
 19 vestigate allegations that a person is liable under section 802
 20 of this title and shall report the findings and conclusions of
 21 such investigation to the reviewing official of the authority.

22 “(2) If the reviewing official of an authority determines,
 23 based upon the report of the investigating official under para-
 24 graph (1) of this subsection, that there is probable cause to
 25 believe that a person is liable under section 802 of this title,

1 the reviewing official may, in accordance with the provisions
2 of subsections (b) and (c) of this section, refer the allegations
3 of such liability to a hearing examiner of such authority for a
4 hearing.

5 “(b)(1) Prior to referring allegations of liability to a
6 hearing examiner under paragraph (1) of subsection (a), the
7 reviewing official of an authority shall transmit to the Attor-
8 ney General a written notice of the intention of such official
9 to refer such allegations and a statement of the reasons for
10 such intention.

11 “(2) A reviewing official may refer allegations of liabil-
12 ity to a hearing examiner under paragraph (1) of subsection
13 (a) if—

14 “(A) the Attorney General or an Assistant Attor-
15 ney General designated by the Attorney General ap-
16 proves the referral of such allegations; or

17 “(B) the Attorney General or an Assistant Attor-
18 ney General designated by the Attorney General takes
19 no action to disapprove the referral of such allegations
20 within—

21 “(i) ninety days after the date on which the
22 Attorney General receives the notice required by
23 paragraph (1) of this subsection; or

24 “(ii) such period as may be provided in a
25 memorandum of understanding entered into by the

1 authority head and the Attorney General with re-
2 spect to such allegations.

3 “(3) A reviewing official shall not refer allegations to a
4 hearing examiner under paragraph (1) of subsection (a) if the
5 Attorney General or an Assistant Attorney General designat-
6 ed by the Attorney General transmits a written statement to
7 the reviewing official which specifies that the Attorney Gen-
8 eral or such Assistant Attorney General disapproves the re-
9 ferral of such allegations and states the reasons for such dis-
10 approval.

11 “(4) If the Attorney General or an Assistant Attorney
12 General designated by the Attorney General transmits to an
13 authority head a written finding that the continuation of any
14 hearing under section 803 of this title may adversely affect
15 any pending or potential criminal or civil action related to an
16 alleged false, fictitious, or fraudulent claim or statement
17 under consideration in such hearing, such hearing shall be
18 immediately stayed and may be resumed only upon written
19 authorization of the Attorney General.

20 “(e) No allegations of liability under section 802 of this
21 title with respect to any claim or statement, made, presented,
22 or submitted by any person shall be referred to a hearing
23 examiner under paragraph (1) of subsection (a) if the review-
24 ing official determines that the amount of money or the value
25 of property or services falsely, fictitiously, or fraudulently re-

1 requested or demanded in such claim or statement exceeds
2 \$100,000.

3 “(d) A reviewing official shall commence a hearing
4 under subsection (c) of this section by mailing by registered
5 or certified mail, or by delivery, of a notice which complies
6 with the provisions of paragraph (2)(A) of subsection (f) to the
7 person alleged to be liable under section 802 of this title.

8 “(e) The hearing examiner shall conduct a hearing on
9 the record regarding any allegation referred to the hearing
10 examiner by the reviewing official pursuant to subsection (a)
11 of this section to determine—

12 “(1) the liability of a person under section 802 of
13 this title; and

14 “(2) the amount of any penalty and assessment to
15 be imposed on such person.

16 Any such determination shall be based on the preponderance
17 of the evidence.

18 “(f)(1) Each hearing under subsection (e) of this section
19 shall be conducted in accordance with—

20 “(A) the provisions of subchapter II of chapter 5
21 of this title (to the extent that such provisions are not
22 inconsistent with the provisions of this chapter); or

23 “(B) procedures promulgated by the authority
24 head under paragraph (2) of this subsection.

1 “(2) An authority head shall by regulation promulgate
2 procedures for the conduct of hearings under this chapter.

3 Such procedures shall include:

4 “(A) The provision of written notice of the hear-
5 ing to any person alleged to be liable under section
6 802 of this title, including written notice of—

7 “(i) the time, place, and nature of the hear-
8 ing;

9 “(ii) the legal authority and jurisdiction under
10 which the hearing is to be held;

11 “(iii) the matters of facts and law to be as-
12 serted; and

13 “(iv) a description of the procedures for the
14 conduct of hearing established under this para-
15 graph or established under subchapter H of chap-
16 ter 5 of this title, as the case may be.

17 “(B) The provision to any person alleged to be
18 liable under section 802 of this title of opportunities for
19 the submission of facts, arguments, offers of settlement,
20 or proposals of adjustment when time, the nature of
21 the hearing, and the public interest permit.

22 “(C) Procedures to ensure that the hearing exam-
23 iner shall not, except to the extent required for the dis-
24 position of ex parte matters as authorized by law—

1 “(i) consult a person or party on a fact in
2 issue, unless on notice and opportunity for all par-
3 ties to the hearing to participate; or

4 “(ii) be responsible to or subject to the super-
5 vision or direction of the investigating official or
6 the reviewing official.

7 “(D) Procedures to ensure that the investigating
8 official and the reviewing official do not participate or
9 advise in the decision required under subsection (g) of
10 this section or the review of the decision by the au-
11 thority head under subsection (h) of this section, except
12 as provided in subsection (i) of this section.

13 “(E) The provision to any person alleged to be
14 liable under section 802 of this title of opportunities to
15 present such person’s case through oral or documenta-
16 ry evidence, to submit rebuttal evidence, and to con-
17 duct such cross-examination as may be required for a
18 full and true disclosure of the facts.

19 “(F) Procedures to permit discovery by any
20 person alleged to be liable under section 802 of this
21 title only to the extent that the hearing examiner de-
22 termines that such discovery is necessary for the expe-
23 ditious, fair, and reasonable consideration of the issues.

24 “(G) Procedures to permit any person alleged to
25 be liable under section 802 of this title to be accompa-

1 nied, represented, and advised by counsel or such other
2 qualified representative as the authority head may
3 specify in such regulations.

4 “(H) Procedures to ensure that the hearing is
5 conducted in an impartial manner, including procedures
6 to—

7 “(i) permit the hearing examiner to at any
8 time disqualify himself;

9 “(ii) permit the filing, in good faith, of a
10 timely and sufficient affidavit of personal bias or
11 other disqualification of a hearing examiner or re-
12 viewing official; and

13 “(iii) provide for the determination by the au-
14 thority head of a matter filed pursuant to clause
15 (ii) of this subparagraph as a part of the record
16 and decision in the hearing.

17 “(g) The hearing examiner shall issue a written deci-
18 sion, including findings and determinations, after the conclu-
19 sion of the hearing. The hearing examiner shall promptly
20 send to each party to the hearing a copy of such decision and
21 a statement describing the right of any person determined to
22 be liable under section 802 of this title to appeal the decision
23 of the hearing examiner to the authority head under para-
24 graph (2) of subsection (h).

1 “(h)(1) Except as provided in paragraph (2) of this sub-
2 section and section 805 of this title, the decision, including
3 the findings and determinations, of the hearing examiner
4 issued under subsection (g) of this section are final.

5 “(2) Within thirty days after the hearing examiner
6 issues a decision under subsection (g) of this section, any
7 person determined in such decision to be liable under section
8 802 of this title may appeal such decision to the authority
9 head. The authority head may affirm, reduce, compromise,
10 remand, or settle any penalty and assessment determined by
11 the hearing examiner pursuant to this section. The authority
12 head shall promptly send to each party to the appeal a copy
13 of the decision of the authority head and a statement describ-
14 ing the right of any person determined to be liable under
15 section 802 of this title to judicial review under section 805
16 of this title.

17 “(i) The reviewing official has the exclusive authority to
18 compromise or settle any allegations of liability under section
19 802 of this title against a person without the consent of the
20 hearing examiner at any time prior to the date in which the
21 hearing examiner issues a decision under subsection (g) of
22 this section. Any such compromise or settlement shall be in
23 writing.

1 **“§ 804. Subpoena authority**

2 “(a) For the purposes of an investigation under section
3 803(a) of this title, an investigating official is authorized—

4 “(1) to administer oaths or affirmations;

5 “(2) to require by subpoena the production of all
6 information, documents, reports, answers, records, ac-
7 counts, papers, and data not otherwise reasonably
8 available to the authority; or

9 “(3) after notifying the Attorney General, to re-
10 quire by subpoena the attendance and testimony of wit-
11 nesses necessary to the conduct of such investigation.

12 “(b) For the purposes of conducting a hearing under sec-
13 tion 803(e) of this title, a hearing examiner is authorized—

14 “(1) to administer oaths or affirmations; and

15 “(2) to require by subpoena the attendance and tes-
16 timony of witnesses and the production of all informa-
17 tion, documents, reports, answers, records, accounts,
18 papers, and other data and documentary evidence
19 which the hearing examiner considers relevant and ma-
20 terial to the hearing.

21 “(c) In the case of contumacy or refusal to obey a sub-
22 poena issued pursuant to subsection (a) or (b) of this section,
23 an investigating official or a hearing examiner, as the case
24 may be, may invoke the aid of any district court of the United
25 States in the district in which such investigation or hearing is
26 being conducted, or where the person receiving the subpoena

1 resides or conducts business. The district courts of the United
2 States shall have jurisdiction to issue an appropriate order for
3 the enforcement of any such subpoena. Any failure to obey
4 such order of the court is punishable by such court as con-
5 tempt.

6 **“§ 805. Judicial review**

7 “(a) Unless a petition is filed under this section, a deter-
8 mination of liability under section 803 of this title shall be
9 final and shall not be subject to judicial review.

10 “(b)(1) Any person for whom a determination of liability
11 under section 802 of this title has been made pursuant to
12 section 803 of this title may obtain review of such determina-
13 tion in the United States Court of Appeals for the circuit in
14 which such person resides or in which the claim or statement
15 upon which the determination of liability is based was made,
16 presented, or submitted, or in the United States Court of
17 Appeals for the District of Columbia Circuit. Such review
18 may be obtained by filing in any such court a written petition
19 that such determination be modified or set aside. Such peti-
20 tion shall be filed—

21 “(A) only after such person has exhausted all ad-
22 ministrative remedies under this chapter; and

23 “(B) within sixty days after the date on which the
24 authority head sends such person a copy of the deci-

1 sion of such authority head under section 803(h)(2) of
2 this title.

3 “(2) The clerk of the court shall transmit a copy of a
4 petition filed under paragraph (1) of this subsection to the
5 authority head and to the Attorney General. Upon receipt of
6 the copy of such petition, the authority head shall transmit to
7 the Attorney General the record in the proceeding resulting
8 in the determination of liability under section 802 of this title.
9 Except as otherwise provided in this section, the courts of
10 appeals of the United States shall have jurisdiction to review
11 the decision, findings, and determinations in issue and to
12 affirm, modify, remand for further consideration, or set aside,
13 in whole or in part, the decision, findings, and determinations
14 of the hearing examiner, and to enforce such decision, find-
15 ings, and determinations to the extent that such decision,
16 findings, and determinations are affirmed or modified.

17 “(c) The findings of the hearing examiner with respect
18 to questions of fact, if supported by substantial evidence on
19 the record considered as a whole, shall be conclusive.

20 “(d) Any court of appeals reviewing under this section
21 the decision, findings, and determinations of a hearing exam-
22 iner shall not consider any objection that was not raised in
23 the hearing conducted pursuant to section 803(c) of this title
24 unless a demonstration is made of extraordinary circum-
25 stances causing the failure to raise the objection. If any party

1 demonstrates to the satisfaction of the court that additional
2 evidence not presented at such hearing is material and that
3 there were reasonable grounds for the failure to present such
4 evidence at such hearing, the court shall remand the matter
5 to the hearing examiner for consideration of such additional
6 evidence.

7 “(e) Upon a final determination by the court of appeals
8 that a person is liable under section 802 of this title, the
9 court shall enter a final judgment for the appropriate amount
10 in favor of the United States, and such judgment may be
11 recorded and enforced by the Attorney General to the same
12 extent and in the same manner as a judgment entered by any
13 United States district court.

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

15 “(a) The Attorney General shall be responsible for judi-
16 cial enforcement of any civil penalty or assessment imposed
17 pursuant to the provisions of this chapter.

18 “(b) Any penalty or assessment imposed in a determina-
19 tion which has become final pursuant to section 803 of this
20 title may be recovered in a civil action brought by the Attor-
21 ney General. In any such action, no matter that was raised
22 or that could have been raised in a hearing conducted under
23 section 803(e) of this title or pursuant to judicial review
24 under section 805 of this title may be raised as a defense, and
25 the determination of liability and the determination of

1 amounts of penalties and assessments shall not be subject to
2 review.

3 “(e) The district courts of the United States and of any
4 territory or possession of the United States shall have juris-
5 diction of any action commenced by the United States under
6 subsection (b) of this section.

7 “(d) Any action under subsection (b) of this section may,
8 without regard to venue requirements, be joined and consoli-
9 dated with or asserted as a counterclaim, cross-claim, or
10 setoff by the United States in any other civil action which
11 includes as parties the United States and the person against
12 whom such action may be brought.

13 “(e)(1) The United States Claims Court shall have juris-
14 diction of any action under subsection (b) of this section to
15 recover any penalty and assessment if the cause of action is
16 asserted by the United States as a counterclaim in a matter
17 pending in such court. The United States may join as addi-
18 tional parties in such counterclaim all persons who may be
19 jointly and severally liable with the person against whom
20 such counterclaim is asserted.

21 “(2) No cross-claims or third-party claims not otherwise
22 within the jurisdiction of the United States Claims Court
23 shall be asserted among additional parties joined under para-
24 graph (1) of this subsection.

1 “(f) The Attorney General shall have exclusive author-
2 ity to compromise or settle any penalty and assessment the
3 determination of which is the subject of a pending petition
4 pursuant to section 805 of this title or a pending action to
5 recover such penalty or assessment pursuant to this section.

6 “(g) Any amount of penalty and assessment collected
7 under this chapter shall be deposited as miscellaneous re-
8 ceipts in the Treasury of the United States.

9 “§ 807. Limitations

10 “(a) No claim or statement alleged to be a false, ficti-
11 tious, or fraudulent claim or statement shall be subject to
12 liability under section 802 of this title at any time after six
13 years after the date on which such claim or statement is
14 made, presented, or submitted.

15 “(b) A civil action to recover a penalty and assessment
16 under section 806 of this title shall be commenced within
17 three years after the date on which the determination of li-
18 ability for such penalty and assessment becomes final.

19 “(c) If at any time during the course of proceedings
20 brought pursuant to this chapter the authority head receives
21 or discovers any specific information regarding bribery, gra-
22 tuities, conflict of interest, or other corruption or similar ac-
23 tivity in relation to a false claim or statement, the authority
24 head shall immediately report such information to the Attor-
25 ney General, and in the case of an authority in which an

1 Office of Inspector General is established by the Inspector
2 General Act of 1978 or by any other Federal law, to the
3 Inspector General of that authority.

4 **“§ 808. Regulations**

5 “(a) Each authority head shall promulgate rules and
6 regulations necessary to implement the provisions of this
7 chapter. Such rules and regulations shall insure that investi-
8 gating officials are not responsible for conducting the hearing
9 required in section 803(e) of this title, making the determina-
10 tions required by subsections (e) and (g) of section 803 of this
11 title, or making the collections under section 806 of this title.

12 “(b) The Attorney General may enter into a memoran-
13 dum of understanding with the head of any authority to pro-
14 vide expeditious procedures for approving or disapproving the
15 referral of allegations under section 803(b) of this title and for
16 referral of matters for action under sections 805, 806, and
17 807(d) of this title. Such memorandum of understanding may
18 provide advanced authorization to refer allegations under sec-
19 tion 803(b) of this title with respect to any particular type or
20 class of alleged false claims or statements if not otherwise
21 barred by section 807 of this title.

22 **“§ 809. Reports**

23 “(a) Not later than October 31 of each year, each inves-
24 tigating official shall prepare and transmit to the authority
25 head an annual report summarizing actions taken under this

1 chapter during the most recent twelve-month period ending
2 the previous September 30. Such report shall include—

3 “(1) a summary of matters referred to the review-
4 ing official under section 803(a)(2) of this title during
5 such period;

6 “(2) a summary of matters transmitted to the At-
7 torney General under section 803(b)(1) of this title
8 during such period;

9 “(3) a summary of all hearings conducted by hear-
10 ing examiners under section 803(e) of this title, and the
11 results of such hearings, during such period; and

12 “(4) a summary of the actions taken during such
13 period to collect any civil penalty or assessment im-
14 posed under this chapter.

15 “(b) The authority head shall transmit each report re-
16 ceived under subsection (a) of this section to the appropriate
17 committees and subcommittees of Congress in the same
18 manner as the reports of Inspectors General are transmitted
19 under section 5(b) of the Inspector General Act of 1978 on
20 October 31 of each year.”

21 (b) The table of chapters for part I of title 5, United
22 States Code, is amended by inserting after the item relating
23 to chapter 7 the following new item:

“8. Administrative Penalties and Assessments for False Claims
and Statements..... 801.”

1 SEC. 4. (a) Except as provided in subsection (b), this
2 Act and the amendments made by this Act shall take effect
3 180 days after the date of enactment of this Act.

4 (b) Section 808(a) of title 5, United States Code (as
5 added by section 3(a) of this Act) shall take effect on the date
6 of enactment of this Act. Regulations required to be promul-
7 gated under such section 808(a) shall take effect 180 days
8 after the date of enactment of this Act.

9 *That this Act may be cited as the "Program Fraud Civil*
10 *Remedies Act of 1985".*

11 SEC. 2. (a) *The Congress finds that—*

12 (1) *false, fictitious, and fraudulent claims and*
13 *statements in Government programs are a serious*
14 *problem;*

15 (2) *false, fictitious, and fraudulent claims and*
16 *statements in Government programs result in the loss*
17 *of millions of dollars annually by allowing ineligible*
18 *persons to receive Federal funds to which they are not*
19 *entitled;*

20 (3) *false, fictitious, and fraudulent claims and*
21 *statements in Government programs undermine the in-*
22 *tegrity of such programs by allowing ineligible persons*
23 *to participate in such programs; and*

24 (4) *present civil and criminal remedies for such*
25 *claims and statements are not sufficiently responsive.*

1 (b) *The purposes of this Act are—*

2 (1) *to provide Federal agencies which are the vic-*
 3 *tims of false, fictitious, and fraudulent claims and*
 4 *statements with an administrative remedy to recom-*
 5 *pense such agencies for losses resulting from such*
 6 *claims and statements, to permit administrative pro-*
 7 *ceedings to be brought against persons who make,*
 8 *present, or submit such claims and statements, and to*
 9 *deter the making, presenting, and submitting of such*
 10 *claims and statements in the future; and*

11 (2) *to provide due process protections to all per-*
 12 *sons who are subject to the administrative adjudication*
 13 *of false, fictitious, or fraudulent claims or statements.*

14 SEC. 3. (a) *Title 5, United States Code, is amended by*
 15 *inserting after chapter 7 the following new chapter:*

16 **“CHAPTER 8—ADMINISTRATIVE REMEDIES**
 17 **FOR FALSE CLAIMS AND STATEMENTS**

“Sec.

“801. *Definitions.*

“802. *False claims and statements; liability.*

“803. *Hearing and determinations.*

“804. *Subpena authority.*

“805. *Judicial review.*

“806. *Collection of civil penalties and assessments.*

“807. *Right to setoff.*

“808. *Limitations.*

“809. *Regulations.*

“810. *Reports.*

18 **“§ 801. Definitions**

19 “(a) *For purposes of this chapter—*

20 “(1) *‘authority’ means—*

1 “(A) an executive department;

2 “(B) a military department;

3 “(C) an establishment (as such term is de-
4 fined in section 11(2) of the Inspector General
5 Act of 1978) which is not an executive depart-
6 ment; and

7 “(D) the United States Postal Service;

8 “(2) ‘authority head’ means—

9 “(A) the head of an authority; or

10 “(B) an official or employee of the authority
11 designated, in regulations promulgated by the
12 head of the authority, to act on behalf of the head
13 of the authority;

14 “(3) ‘claim’ means any request, demand, or sub-
15 mission—

16 “(A) made to an authority for property, serv-
17 ices, or money (including money representing
18 grants, loans, insurance, or benefits);

19 “(B) made to a recipient of property, serv-
20 ices, or money from an authority or to a party to
21 a contract with an authority—

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

24 “(I) provided such property or
25 services;

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

4 “(III) will reimburse such recipi-
5 ent or party for the purchase of such
6 property or services; or

7 “(ii) for the payment of money (includ-
8 ing money representing grants, loans, insur-
9 ance, or benefits) if the United States—

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

12 “(II) will reimburse such recipient
13 for any portion of the money paid on
14 such request or demand; or

15 “(C) made to an authority which has the
16 effect of decreasing an obligation to pay or ac-
17 count for property, services, or money;

18 “(4) ‘hearing examiner’ means—

19 “(A) in the case of an authority to which the
20 provisions of subchapter II of chapter 5 of this
21 title apply, an administrative law judge appointed
22 in the authority pursuant to section 3105 of this
23 title or detailed to the authority pursuant to sec-
24 tion 3344 of this title; or

1 “(B) in the case of an authority to which the
2 provisions of such subchapter do not apply, an of-
3 ficer or employee of the authority who—

4 “(i) is selected under chapter 33 of this
5 title pursuant to the competitive examination
6 process applicable to administrative law
7 judges;

8 “(ii) is appointed by the authority head
9 to conduct hearings under section 803 of this
10 title;

11 “(iii) is assigned to cases in rotation so
12 far as practicable;

13 “(iv) may not perform duties inconsis-
14 tent with the duties and responsibilities of a
15 hearing examiner;

16 “(v) is entitled to pay prescribed by the
17 Office of Personnel Management independ-
18 ently of ratings and recommendations made
19 by the authority and in accordance with
20 chapter 51 of this title and subchapter III of
21 chapter 53 of this title; and

22 “(vi) may be removed, suspended, fur-
23 loughed, or reduced in grade or pay only for
24 good cause established and determined by the
25 Merit Systems Protection Board on the

1 *record after opportunity for hearing by such*
2 *Board;*

3 *“(5) ‘investigating official’ means an individual*
4 *who—*

5 *“(A)(i) in the case of an authority in which*
6 *an Office of Inspector General is established by*
7 *the Inspector General Act of 1978 or by any*
8 *other Federal law, is the Inspector General of*
9 *that authority or an officer or employee of such*
10 *Office designated by the Inspector General;*

11 *“(ii) in the case of an authority in which an*
12 *Office of Inspector General is not established by*
13 *the Inspector General Act of 1978 or by any*
14 *other Federal law, is an officer or employee of the*
15 *authority designated by the authority head to con-*
16 *duct investigations under section 803(a)(1) of this*
17 *title; or*

18 *“(iii) in the case of a military department, is*
19 *the Inspector General of the Department of De-*
20 *fense or an officer or employee of the Office of In-*
21 *pector General of the Department of Defense who*
22 *is designated by the Inspector General; and*

23 *“(B) who, if a member of the Armed Forces*
24 *of the United States on active duty, is serving in*
25 *grade O-7 or above or, if a civilian employee, is*

1 *...serving in a position for which the rate of basic*
2 *pay is not less than the minimum rate of basic*
3 *pay for grade GS-16 or above under the General*
4 *Schedule;*

5 “(6) ‘knows or has reason to know’, for purposes
6 of establishing liability under section 802, means that
7 a person, with respect to a claim or statement—

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

10 “(B) acts in gross negligence of the duty to
11 make such inquiry as would be reasonable and
12 prudent to conduct under the circumstances to as-
13 certain the true and accurate basis of the claim or
14 statement;

15 “(7) ‘person’ means any individual, partnership,
16 corporation, association, or private organization;

17 “(8) ‘reviewing official’ means any officer or em-
18 ployee of an authority—

19 “(A) who is designated by the authority head
20 to make the determination required under section
21 803(a)(2) of this title;

22 “(B) who, if a member of the Armed Forces
23 of the United States on active duty, is serving in
24 grade O-7 or above or, if a civilian employee, is
25 serving in a position for which the rate of basic

1 *pay is not less than the minimum rate of basic*
2 *pay for grade GS-16 or above under the General*
3 *Schedule; and*

4 *“(C) who is—*

5 *“(i) not subject to supervision by, or re-*
6 *quired to report to, the investigating official;*
7 *and*

8 *“(ii) not employed in the organizational*
9 *unit of the authority in which the investigat-*
10 *ing official is employed; and*

11 *“(9) ‘statement’ includes any written representa-*
12 *tion, certification, document, record, or accounting or*
13 *bookkeeping entry—*

14 *“(A) with respect to a claim; or*

15 *“(B) with respect to—*

16 *“(i) a contract with, or a bid or propos-*
17 *al for a contract with;*

18 *“(ii) a grant, loan, or benefit from;*

19 *“(iii) an application for insurance from;*

20 *or*

21 *“(iv) an application for employment*
22 *with,*

23 *an authority, or any State, political subdivision*
24 *of a State, or other party acting on behalf of, or*

1 *based upon the credit or guarantee of, an author-*
2 *ity.*

3 “(b) For purposes of paragraph (3) of subsection (a)—

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

7 “(2) each claim for property, services, or money is
8 subject to this chapter regardless of whether such prop-
9 erty, services, or money is actually delivered or paid;
10 and

11 “(3) a claim shall be considered made, presented,
12 or submitted to an authority, recipient, or party when
13 such claim is actually made to an agent, fiscal inter-
14 mediary, or other entity, including any State or politi-
15 cal subdivision thereof, acting for or on behalf of such
16 authority, recipient, or party.

17 “(c) For purposes of paragraph (9) of subsection (a)—

18 “(1) each written representation or certification
19 constitutes a separate statement; and

20 “(2) a statement shall be considered made, pre-
21 sented, or submitted to an authority when such state-
22 ment is actually made to an agent, fiscal intermediary,
23 or other entity, including any State or political subdi-
24 vision thereof, acting for or on behalf of such authority.

1 ***“§ 802. False claims and statements; liability***

2 “(a)(1) *Any person who makes, presents, or submits, or*
3 *causes to be made, presented, or submitted, a claim that the*
4 *person knows or has reason to know—*

5 “(A) *is false, fictitious, or fraudulent;*

6 “(B) *includes or is supported by any statement*
7 *which violates paragraph (2) of this subsection; or*

8 “(C) *is for payment for the provision of property*
9 *or services which the person has not provided as*
10 *claimed,*

11 *shall be subject to, in addition to any other remedy that may*
12 *be prescribed by law, a civil penalty of not more than*
13 *\$10,000 for each such claim. Such person shall also be sub-*
14 *ject to an assessment, in lieu of damages sustained by the*
15 *United States because of such claim, of not more than twice*
16 *the amount of such claim, or the portion of such claim, which*
17 *is determined under this chapter to be in violation of the pre-*
18 *ceding sentence.*

19 “(2) *Any person who makes, presents, or submits, or*
20 *causes to be made, presented, or submitted, a statement that*
21 *the person knows or has reason to know—*

22 “(A) *asserts a material fact which is false, ficti-*
23 *tious, or fraudulent; or*

24 “(B)(i) *omits a material fact,*

25 “(ii) *as a result of such omission, such statement*
26 *is false, fictitious, or fraudulent, and*

1 “(iii) the person making, presenting, or submit-
2 ting such statement has a duty to include such materi-
3 al fact in the statement,
4 shall be subject to, in addition to any other remedy that may
5 be prescribed by law, a civil penalty of not more than
6 \$10,000 for each such statement.

7 “(b)(1) Except as provided in paragraphs (2) and (3) of
8 this subsection—

9 “(A) a determination under section 803(a)(2) of
10 this title that there is adequate evidence to believe that
11 a person is liable under subsection (a) of this section,
12 or

13 “(B) a determination under section 803 of this
14 title that a person is liable under subsection (a) of this
15 section,

16 may provide the authority with grounds for commencing any
17 administrative or contractual action against such person
18 which is authorized by law and which is in addition to any
19 action against such person under this chapter.

20 “(2) A determination referred to in paragraph (1) of this
21 subsection may be used by the authority, but shall not require
22 such authority, to commence any administrative or contrac-
23 tual action which is authorized by law.

24 “(3) In the case of an administrative or contractual
25 action to suspend or debar any person who is eligible to enter

1 *into contracts with the Federal Government, a determination*
2 *referred to in paragraph (1) of this subsection shall not be*
3 *considered as a conclusive determination of such person's re-*
4 *sponsibility pursuant to Federal procurement laws and regu-*
5 *lations.*

6 ***“§ 803. Hearing and determinations***

7 *“(a)(1) The investigating official of an authority may*
8 *investigate allegations that a person is liable under section*
9 *802 of this title and shall report the findings and conclusions*
10 *of such investigation to the reviewing official of the authority.*
11 *The preceding sentence does not modify any responsibility of*
12 *an investigating official to report violations of criminal law*
13 *to the Attorney General.*

14 *“(2) If the reviewing official of an authority determines,*
15 *based upon the report of the investigating official under para-*
16 *graph (1) of this subsection, that there is adequate evidence to*
17 *believe that a person is liable under section 802 of this title,*
18 *the reviewing official shall transmit to the Attorney General*
19 *a written notice of the intention of such official to refer the*
20 *allegations of such liability to a hearing examiner of such*
21 *authority. Such notice shall include—*

22 *“(A) a statement of the reasons of the reviewing*
23 *official for the referral of such allegations;*

24 *“(B) a statement specifying the evidence which*
25 *supports such allegations;*

1 “(C) a description of the claims or statements for
2 which liability under section 802 of this title is
3 alleged;

4 “(D) an estimate of the amount of money or the
5 value of property or services requested or demanded in
6 violation of section 802 of this title; and

7 “(E) a statement of any exculpatory or mitigating
8 circumstances which may relate to such claims or
9 statements.

10 “(b)(1) A reviewing official may refer allegations of li-
11 ability to a hearing examiner if—

12 “(A) the Attorney General or an Assistant Attor-
13 ney General designated by the Attorney General ap-
14 proves the referral of such allegations; or

15 “(B) the Attorney General or an Assistant Attor-
16 ney General designated by the Attorney General takes
17 no action to disapprove the referral of such allegations
18 within 90 days after the date on which the Attorney
19 General receives the notice required by paragraph (2)
20 of subsection (a).

21 “(2) A reviewing official shall not refer allegations to a
22 hearing examiner if the Attorney General or an Assistant
23 Attorney General designated by the Attorney General trans-
24 mits a written statement to the reviewing official which speci-
25 fies that the Attorney General or such Assistant Attorney

1 *General disapproves the referral of such allegations and*
2 *states the reasons for such disapproval.*

3 “(3) *If the Attorney General or an Assistant Attorney*
4 *General designated by the Attorney General transmits to an*
5 *authority head a written finding that the continuation of any*
6 *hearing under section 803 of this title with respect to a claim*
7 *or statement may adversely affect any pending or potential*
8 *criminal or civil action related to such claim or statement,*
9 *such hearing shall be immediately stayed and may be*
10 *resumed only upon written authorization of the Attorney*
11 *General.*

12 “(c) *No allegations of liability under section 802 of this*
13 *title with respect to any claim made, presented, or submitted*
14 *by any person shall be referred to a hearing examiner under*
15 *paragraph (1) of subsection (b) if the reviewing official deter-*
16 *mines that—*

17 “(1) *an amount of money in excess of \$100,000;*
18 *or*

19 “(2) *property or services with a value in excess of*
20 *\$100,000,*

21 *is requested or demanded in violation of section 802 of this*
22 *title in such claim or in a group of related claims which are*
23 *submitted at the time such claim is submitted.*

24 “(d)(1) *On the date on which a reviewing official is*
25 *permitted to refer allegations of liability to a hearing examin-*

1 *er under paragraph (1) of subsection (b), the reviewing offi-*
2 *cial shall mail, by registered or certified mail, or shall deliv-*
3 *er, a notice to the person alleged to be liable under section*
4 *802 of this title. Such notice shall specify the allegations of*
5 *liability against such person and shall state the right of such*
6 *person to request a hearing with respect to such allegations.*

7 “(2) *If, within 30 days after receiving a notice under*
8 *paragraph (1) of this subsection, the person receiving such*
9 *notice requests a hearing with respect to the allegations con-*
10 *tained in such notice—*

11 “(A) *the reviewing official shall refer such allega-*
12 *tions to a hearing examiner for the commencement of*
13 *such hearing; and*

14 “(B) *the hearing examiner shall commence such*
15 *hearing by mailing by registered or certified mail, or*
16 *by delivery, of a notice which complies with para-*
17 *graphs (2)(A) and (3)(B)(i) of subsection (f) to such*
18 *person.*

19 “(e) *Any hearing commenced under paragraph (2) of*
20 *subsection (d) shall be conducted by the hearing examiner on*
21 *the record in order to determine—*

22 “(1) *the liability of a person under section 802 of*
23 *this title; and*

1 “(2) if a person is determined to be liable under
2 such section, the amount of any penalty and assess-
3 ment to be imposed on such person.

4 Any such determination shall be based on the preponderance
5 of the evidence.

6 “(f)(1) Each hearing under subsection (e) of this section
7 shall be conducted—

8 “(A) in the case of an authority to which the pro-
9 visions of subchapter II of chapter 5 of this title apply,
10 in accordance with—

11 “(i) the provisions of such subchapter to the
12 extent that such provisions are not inconsistent
13 with the provisions of this chapter; and

14 “(ii) procedures promulgated by the author-
15 ity head under paragraph (3) of this subsection;
16 or

17 “(B) in the case of an authority to which the pro-
18 visions of such subchapter do not apply, in accordance
19 with procedures promulgated by the authority head
20 under paragraphs (2) and (3) of this subsection.

21 “(2) An authority head of an authority described in
22 subparagraph (B) of paragraph (1) shall by regulation pro-
23 mulgate procedures for the conduct of hearings under this
24 chapter. Such procedures shall include:

1 “(A) *The provision of written notice of the hear-*
2 *ing to any person alleged to be liable under section 802*
3 *of this title, including written notice of—*

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

6 “(ii) *the legal authority and jurisdiction*
7 *under which the hearing is to be held; and*

8 “(iii) *the matters of facts and law to be*
9 *asserted.*

10 “(B) *The provision to any person alleged to be*
11 *liable under section 802 of this title of opportunities for*
12 *the submission of facts, arguments, offers of settlement,*
13 *or proposals of adjustment when time, the nature of the*
14 *hearing, and the public interest permit.*

15 “(C) *Procedures to ensure that the hearing exam-*
16 *iner shall not, except to the extent required for the dis-*
17 *position of ex parte matters as authorized by law—*

18 “(i) *consult a person or party on a fact in*
19 *issue, unless on notice and opportunity for all*
20 *parties to the hearing to participate; or*

21 “(ii) *be responsible to or subject to the super-*
22 *vision or direction of the investigating official or*
23 *the reviewing official.*

24 “(D) *Procedures to ensure that the investigating*
25 *official and the reviewing official do not participate or*

1 *advise in the decision required under subsection (g) of*
2 *this section or the review of the decision by the author-*
3 *ity head under subsection (h) of this section, except as*
4 *provided in subsection (i) of this section.*

5 *“(E) The provision to any person alleged to be*
6 *liable under section 802 of this title of opportunities to*
7 *present such person’s case through oral or documentary*
8 *evidence, to submit rebuttal evidence, and to conduct*
9 *such cross-examination as may be required for a full*
10 *and true disclosure of the facts.*

11 *“(F) Procedures to permit any person alleged to*
12 *be liable under section 802 of this title to be accompa-*
13 *nied, represented, and advised by counsel or such other*
14 *qualified representative as the authority head may*
15 *specify in such regulations.*

16 *“(G) Procedures to ensure that the hearing is*
17 *conducted in an impartial manner, including proce-*
18 *dures to—*

19 *“(i) permit the hearing examiner to at any*
20 *time disqualify himself; and*

21 *“(ii) permit the filing, in good faith, of a*
22 *timely and sufficient affidavit alleging personal*
23 *bias or another reason for disqualification of a*
24 *hearing examiner or a reviewing official.*

1 “(3)(A) Each authority head shall promulgate by regu-
2 lation procedures described in subparagraph (B) of this para-
3 graph for the conduct of hearings under this chapter. Such
4 procedures shall be in addition to the procedures described in
5 paragraph (1) or paragraph (2) of this subsection, as the case
6 may be.

7 “(B) The procedures referred to in subparagraph (A) of
8 this paragraph are:

9 “(i) Procedures for the inclusion, in any written
10 notice of a hearing under this section to any person al-
11 leged to be liable under section 802 of this title, of a
12 description of the procedures for the conduct of the
13 hearing.

14 “(ii) Procedures to permit discovery by any
15 person alleged to be liable under section 802 of this
16 title only to the extent that the hearing examiner deter-
17 mines that such discovery is necessary for the expedi-
18 tious, fair, and reasonable consideration of the issues.
19 Procedures promulgated under this clause shall prohib-
20 it the discovery of the notice required under subsection
21 (a)(2) of this section. Procedures promulgated under
22 this clause shall provide that requests for discovery
23 under this clause shall not be denied unreasonably.

24 “(4) Each hearing under subsection (e) of this section
25 shall be held—

1 “(A) in the judicial district of the United States
2 in which the person alleged to be liable under section
3 802 of this title resides or transacts business;

4 “(B) in the judicial district of the United States
5 in which the claim or statement upon which the allega-
6 tion of liability under such section was made, present-
7 ed, or submitted; or

8 “(C) in such other place as may be agreed upon
9 by such person and the hearing examiner who will
10 conduct such hearing.

11 “(g) The hearing examiner shall issue a written deci-
12 sion, including findings and determinations, after the conclu-
13 sion of the hearing. Such decision shall include the findings
14 of fact and conclusions of law which the hearing examiner
15 relied upon in determining whether a person is liable under
16 this chapter. The hearing examiner shall promptly send to
17 each party to the hearing a copy of such decision and a state-
18 ment describing the right of any person determined to be
19 liable under section 802 of this title to appeal the decision of
20 the hearing examiner to the authority head under paragraph
21 (2) of subsection (h).

22 “(h)(1) Except as provided in paragraph (2) of this sub-
23 section and section 805 of this title, the decision, including
24 the findings and determinations, of the hearing examiner
25 issued under subsection (g) of this section are final.

1 “(2)(A) *Within 30 days after the hearing examiner*
2 *issues a decision under subsection (g) of this section, any*
3 *person determined in such decision to be liable under section*
4 *802 of this title may appeal such decision to the authority*
5 *head.*

6 “(B) *Any authority head reviewing under this section*
7 *the decision, findings, and determinations of a hearing exam-*
8 *iner shall not consider any objection that was not raised in*
9 *the hearing conducted pursuant to subsection (e) of this sec-*
10 *tion unless a demonstration is made of extraordinary circum-*
11 *stances causing the failure to raise the objection. If any party*
12 *demonstrates to the satisfaction of the authority head that*
13 *additional evidence not presented at such hearing is material*
14 *and that there were reasonable grounds for the failure to*
15 *present such evidence at such hearing, the authority head*
16 *shall remand the matter to the hearing examiner for consider-*
17 *ation of such additional evidence.*

18 “(C) *The authority head may affirm, reduce, reverse,*
19 *compromise, remand, or settle any penalty and assessment*
20 *determined by the hearing examiner pursuant to this section.*
21 *The authority head shall promptly send to each party to the*
22 *appeal a copy of the decision of the authority head and a*
23 *statement describing the right of any person determined to be*
24 *liable under section 802 of this title to judicial review under*
25 *section 805 of this title.*

1 “(i) *The reviewing official has the exclusive authority to*
2 *compromise or settle any allegations of liability under section*
3 *802 of this title against a person without the consent of the*
4 *hearing examiner at any time after the date on which the*
5 *reviewing official is permitted to refer allegations of liability*
6 *to a hearing examiner under subsection (b) of this section*
7 *and prior to the date on which the hearing examiner issues a*
8 *decision under subsection (g) of this section. Any such com-*
9 *promise or settlement shall be in writing.*

10 **“§ 804. Subpoena authority**

11 “(a)(1) *For the purposes of an investigation under*
12 *section 803(a)(1) of this title, an investigating official is*
13 *authorized—*

14 “(A) *to administer oaths or affirmations; or*

15 “(B) *to require by subpoena the production of all*
16 *information, documents, reports, answers, records, ac-*
17 *counts, papers, and data not otherwise reasonably*
18 *available to the authority.*

19 “(2) *In conducting an investigation under section*
20 *803(a)(1) of this title, the Inspector General of an authority*
21 *may require by subpoena the attendance and testimony of*
22 *witnesses if—*

23 “(A) *such Inspector General transmits a written*
24 *notice to the Attorney General specifying that—*

1 “(i) such attendance and testimony are nec-
2 essary to the conduct of such investigation; and

3 “(ii) such Inspector General will require by
4 subpoena such attendance and testimony; and

5 “(B) within 45 days after the Attorney General
6 receives the notice required by subparagraph (A) of this
7 paragraph, the Attorney General or an Assistant Attor-
8 ney General designated by the Attorney General does
9 not transmit to such investigating official a written
10 statement disapproving such subpoena.

11 “(3)(A) An Inspector General of an authority may not
12 delegate the authority of such Inspector General under para-
13 graph (2) of this subsection to require by subpoena the at-
14 tendance and testimony of witnesses to any officer or employ-
15 ee of the authority.

16 “(B) For purposes of this paragraph and paragraph (2),
17 the term ‘Inspector General’ means an Inspector General of
18 an authority in which an Office of Inspector General is es-
19 tablished by the Inspector General Act of 1978 or by any
20 other Federal law.

21 “(4) Each subpoena issued under paragraph (2) of this
22 subsection shall—

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

1 “(B) describe the procedures under which, in ac-
2 cordance with this section, such testimony will be
3 taken; and

4 “(C) identify the investigating official who shall
5 conduct the investigation.

6 “(5)(A) Any investigating official before whom oral tes-
7 timony is to be taken shall put the person giving such testi-
8 mony under oath or affirmation and shall personally, or by
9 any individual acting under the direction and in the presence
10 of such investigating official, record and transcribe the testi-
11 mony of such person.

12 “(B) Any investigating official before whom oral testi-
13 mony under this section is to be taken shall exclude from the
14 place where the testimony is to be taken all persons except the
15 person giving the testimony, the attorney for the person
16 giving the testimony, the attorney for the investigating offi-
17 cial, any person who may be agreed upon by the investigating
18 official and the person giving the testimony, and any stenog-
19 rapher taking such testimony.

20 “(C) The oral testimony of any person taken pursuant
21 to a subpoena issued under paragraph (2) of this subsection
22 shall be taken in the judicial district of the United States in
23 which such person resides or transacts business, or in such
24 other place as may be agreed upon by such person and the

1 *investigating official before whom the oral testimony of such*
2 *person is to be taken.*

3 “(D) *Any person compelled to appear under a subpoena*
4 *issued under paragraph (2) of this subsection may be accom-*
5 *panied, represented, and advised by an attorney. The attor-*
6 *ney may advise such person, in confidence, either upon the*
7 *request of such person or upon the initiative of the attorney,*
8 *with respect to any question asked of such person.*

9 “(E)(i) *After the testimony of any person is fully tran-*
10 *scribed, the investigating official shall afford the person (who*
11 *may be accompanied by an attorney) a reasonable opportuni-*
12 *ty to examine the transcript of such testimony. The transcript*
13 *shall be read to or by such person, unless such examination*
14 *and reading are waived by such person. Any changes in form*
15 *or substance which such person desires to make shall be en-*
16 *tered and identified upon the transcript by the investigating*
17 *official with a statement of the reasons given by such person*
18 *for making such changes. The transcript shall then be signed*
19 *by such person, unless such person in writing waives the*
20 *signing, is ill, cannot be found, or refuses to sign.*

21 “(ii) *If the transcript is not signed by the person within*
22 *30 days after the date upon which the person is first afforded*
23 *a reasonable opportunity to examine the transcript, the inves-*
24 *tigating official shall sign the transcript and state on the*
25 *record the fact of the waiver, illness, absence of such person,*

1 *or the refusal to sign, together with any reasons given for the*
2 *failure to sign.*

3 “(F) *The investigating official shall certify on the tran-*
4 *script that the person giving testimony was duly sworn by the*
5 *investigating official and that the transcript is a true record*
6 *of the testimony given by such person.*

7 “(G) *The investigating official shall furnish a copy of*
8 *the transcript (upon payment of reasonable charges for the*
9 *transcript) to the person giving testimony.*

10 “(H) *Any person appearing for the taking of oral testi-*
11 *mony pursuant to a subpoena issued under paragraph (2) of*
12 *this subsection shall be entitled to the same fees and mileage*
13 *which are paid to witnesses in the district courts of the*
14 *United States.*

15 “(b) *For the purposes of conducting a hearing under*
16 *section 803(e) of this title, a hearing examiner is*
17 *authorized—*

18 “(1) *to administer oaths or affirmations; and*

19 “(2) *to require by subpoena the attendance and*
20 *testimony of witnesses and the production of all infor-*
21 *mation, documents, reports, answers, records, accounts,*
22 *papers, and other data and documentary evidence*
23 *which the hearing examiner considers relevant and ma-*
24 *terial to the hearing.*

1 “(c) *In the case of contumacy or refusal to obey a sub-*
2 *poena issued pursuant to subsection (a) or (b) of this section,*
3 *an investigating official or a hearing examiner, as the case*
4 *may be, may request the Attorney General to invoke the aid*
5 *of any district court of the United States in the district in*
6 *which such investigation or hearing is being conducted, or*
7 *where the person receiving the subpoena resides or conducts*
8 *business. The district courts of the United States shall have*
9 *jurisdiction to issue an appropriate order for the enforcement*
10 *of any such subpoena. Any failure to obey such order of the*
11 *court is punishable by such court as contempt.*

12 “**§ 805. Judicial review**

13 “(a)(1) *A determination by a reviewing official under*
14 *section 803 of this title shall be final and shall not be subject*
15 *to judicial review.*

16 “(2) *Unless a petition is filed under this section, a de-*
17 *termination under section 803 of this title that a person is*
18 *liable under section 802 of this title shall be final and shall*
19 *not be subject to judicial review.*

20 “(b)(1)(A) *Any person for whom a determination of li-*
21 *ability under section 802 of this title has been made pursuant*
22 *to section 803 of this title may obtain review of such determi-*
23 *nation in—*

1 “(i) the United States Court of Appeals for the
2 circuit in which such person resides or transacts
3 business;

4 “(ii) the United States Court of Appeals for the
5 circuit in which the claim or statement upon which the
6 determination of liability is based was made, present-
7 ed, or submitted; or

8 “(iii) the United States Court of Appeals for the
9 District of Columbia Circuit.

10 “(B) Such review may be obtained by filing in any
11 such court a written petition that such determination be
12 modified or set aside. Such petition shall be filed—

13 “(i) only after such person has exhausted all ad-
14 ministrative remedies under this chapter; and

15 “(ii) within 60 days after the date on which the
16 authority head sends such person a copy of the decision
17 of such authority head under section 803(h)(2) of this
18 title.

19 “(2) The clerk of the court shall transmit a copy of a
20 petition filed under paragraph (1) of this subsection to the
21 authority head and to the Attorney General. Upon receipt of
22 the copy of such petition, the authority head shall transmit to
23 the Attorney General the record in the proceeding resulting
24 in the determination of liability under section 802 of this
25 title. Except as otherwise provided in this section, the courts

1 of appeals of the United States shall have jurisdiction to
2 review the decision, findings, and determinations in issue
3 and to affirm, modify, remand for further consideration, or
4 set aside, in whole or in part, the decision, findings, and
5 determinations of the hearing examiner and the authority
6 head, and to enforce such decision, findings, and determina-
7 tions to the extent that such decision, findings, and determi-
8 nations are affirmed or modified.

9 “(c) The findings of the hearing examiner with respect
10 to questions of fact shall be final and conclusive, and shall
11 not be set aside unless the decision of the hearing examiner is
12 arbitrary, capricious, an abuse of discretion, or otherwise not
13 in accordance with law, or if such findings are not supported
14 by substantial evidence.

15 “(d) Any court of appeals reviewing under this section
16 the decision, findings, and determinations of a hearing exam-
17 iner or an authority head shall not consider any objection
18 that was not raised in the hearing conducted pursuant to sec-
19 tion 803(e) of this title unless a demonstration is made of
20 extraordinary circumstances causing the failure to raise the
21 objection. If any party demonstrates to the satisfaction of the
22 court that additional evidence not presented at such hearing
23 is material and that there were reasonable grounds for the
24 failure to present such evidence at such hearing, the court

1 shall remand the matter to the hearing examiner for consider-
2 ation of such additional evidence.

3 “(e) Upon a final determination by the court of appeals
4 that a person is liable under section 802 of this title, the court
5 shall enter a final judgment for the appropriate amount in
6 favor of the United States, and such judgment may be re-
7 corded and enforced by the Attorney General to the same
8 extent and in the same manner as a judgment entered by any
9 United States district court.

10 **“§ 806. Collection of civil penalties and assessments**

11 “(a) The Attorney General shall be responsible for judi-
12 cial enforcement of any civil penalty or assessment imposed
13 pursuant to the provisions of this chapter.

14 “(b) Any penalty or assessment imposed in a determina-
15 tion which has become final pursuant to section 803 of this
16 title may be recovered in a civil action brought by the Attor-
17 ney General. In any such action, no matter that was raised
18 or that could have been raised in a hearing conducted under
19 section 803(e) of this title or pursuant to judicial review
20 under section 805 of this title may be raised as a defense,
21 and the determination of liability and the determination of
22 amounts of penalties and assessments shall not be subject to
23 review.

24 “(c) The district courts of the United States and of any
25 territory or possession of the United States shall have juris-

1 *diction of any action commenced by the United States under*
2 *subsection (b) of this section.*

3 “(d) *Any action under subsection (b) of this section*
4 *may, without regard to venue requirements, be joined and*
5 *consolidated with or asserted as a counterclaim, cross-claim,*
6 *or setoff by the United States in any other civil action which*
7 *includes as parties the United States and the person against*
8 *whom such action may be brought.*

9 “(e)(1) *The United States Claims Court shall have ju-*
10 *risdiction of any action under subsection (b) of this section to*
11 *recover any penalty and assessment if the cause of action is*
12 *asserted by the United States as a counterclaim in a matter*
13 *pending in such court. The United States may join as addi-*
14 *tional parties in such counterclaim all persons who may be*
15 *jointly and severally liable with the person against whom*
16 *such counterclaim is asserted.*

17 “(2) *No cross-claims or third-party claims not otherwise*
18 *within the jurisdiction of the United States Claims Court*
19 *shall be asserted among additional parties joined under para-*
20 *graph (1) of this subsection.*

21 “(f) *The Attorney General shall have exclusive author-*
22 *ity to compromise or settle any penalty and assessment the*
23 *determination of which is the subject of a pending petition*
24 *pursuant to section 805 of this title or a pending action to*
25 *recover such penalty or assessment pursuant to this section.*

1 “(g) Any amount of penalty and assessment collected
2 under this chapter shall be deposited as miscellaneous re-
3 ceipts in the Treasury of the United States.

4 “§ 807. **Right to setoff.**

5 “(a)(1) The amount of any penalty or assessment which
6 has become final under section 803 of this title, or for which
7 a judgment has been entered under section 805(e) or 806 of
8 this title, or any amount agreed upon in a settlement or com-
9 promise under section 803(i) or 806(f) of this title, may be
10 deducted from any sum, except for a refund of an overpay-
11 ment of Federal taxes, then or later owing by the United
12 States to the person liable for such penalty and assessment.

13 “(2) The authority head shall transmit written notice of
14 each deduction made under this paragraph to the person
15 liable for such penalty and assessment.

16 “(3) All amounts retained pursuant to this paragraph
17 shall be remitted to the Secretary of the Treasury for deposit
18 in accordance with section 806(g) of this title.

19 “(b) An authority head may forward a certified copy of
20 any determination as to liability for any penalty or assess-
21 ment which has become final under section 803 of this title, a
22 certified copy of any judgment which has been entered under
23 section 805(e) or 806 of this title, or a certified copy of any
24 settlement or compromise under section 803(i) or 806(f) of

1 *this title, to the Secretary of the Treasury for action in ac-*
2 *cordance with subsection (a) of this section.*

3 **“§ 808. Limitations**

4 “(a) A hearing under section 803(d)(2) of this title with
5 respect to a claim or statement shall be commenced within six
6 years after the date on which such claim or statement is
7 made, presented, or submitted.

8 “(b) A civil action to recover a penalty and assessment
9 under section 806 of this title shall be commenced within
10 three years after the date on which the determination of li-
11 ability for such penalty and assessment becomes final.

12 “(c) If at any time during the course of proceedings
13 brought pursuant to this chapter the authority head receives
14 or discovers any specific information regarding bribery, gra-
15 tuities, conflict of interest, or other corruption or similar ac-
16 tivity in relation to a false claim or statement, the authority
17 head shall immediately report such information to the Attor-
18 ney General, and in the case of an authority in which an
19 Office of Inspector General is established by the Inspector
20 General Act of 1978 or by any other Federal law, to the
21 Inspector General of that authority.

22 **“§ 809. Regulations**

23 “(a) Within 180 days after the date of enactment of this
24 chapter, each authority head shall promulgate rules and regu-
25 lations necessary to implement the provisions of this chapter.

1 *Such rules and regulations shall insure that investigating*
2 *officials and reviewing officials are not responsible for con-*
3 *ducting the hearing required in section 803(e) of this title,*
4 *making the determinations required by subsections (e) and*
5 *(g) of section 803 of this title, or making the collections under*
6 *section 806 of this title.*

7 “(b) *The Attorney General may enter into a memoran-*
8 *dum of understanding with the head of any authority to pro-*
9 *vide expeditious procedures for approving or disapproving the*
10 *referral of allegations under section 803(b) of this title and*
11 *for referral of matters for action under sections 805 and 806*
12 *of this title. Such memorandum of understanding may pro-*
13 *vide advanced authorization to refer allegations under section*
14 *803(b) of this title with respect to any particular type or class*
15 *of alleged false claims or statements if not otherwise barred*
16 *by section 808 of this title.*

17 **“§ 810. Reports**

18 “*Not later than October 31 of each year, each authority*
19 *head shall prepare and transmit to the appropriate commit-*
20 *tees and subcommittees of the Congress an annual report*
21 *summarizing actions taken under this chapter during the*
22 *most recent twelve-month period ending the previous Septem-*
23 *ber 30. Such report shall include—*

24 “(1) *a summary of matters referred by the inves-*
25 *tigating official of the authority to the reviewing offi-*

1 *cial of the authority under section 803(a)(1) of this*
 2 *title during such period;*

3 *“(2) a summary of matters transmitted to the At-*
 4 *torney General under section 803(b)(1) of this title*
 5 *during such period;*

6 *“(3) a summary of all hearings conducted by*
 7 *hearing examiners under section 803(e) of this title,*
 8 *and the results of such hearings, during such period;*
 9 *and*

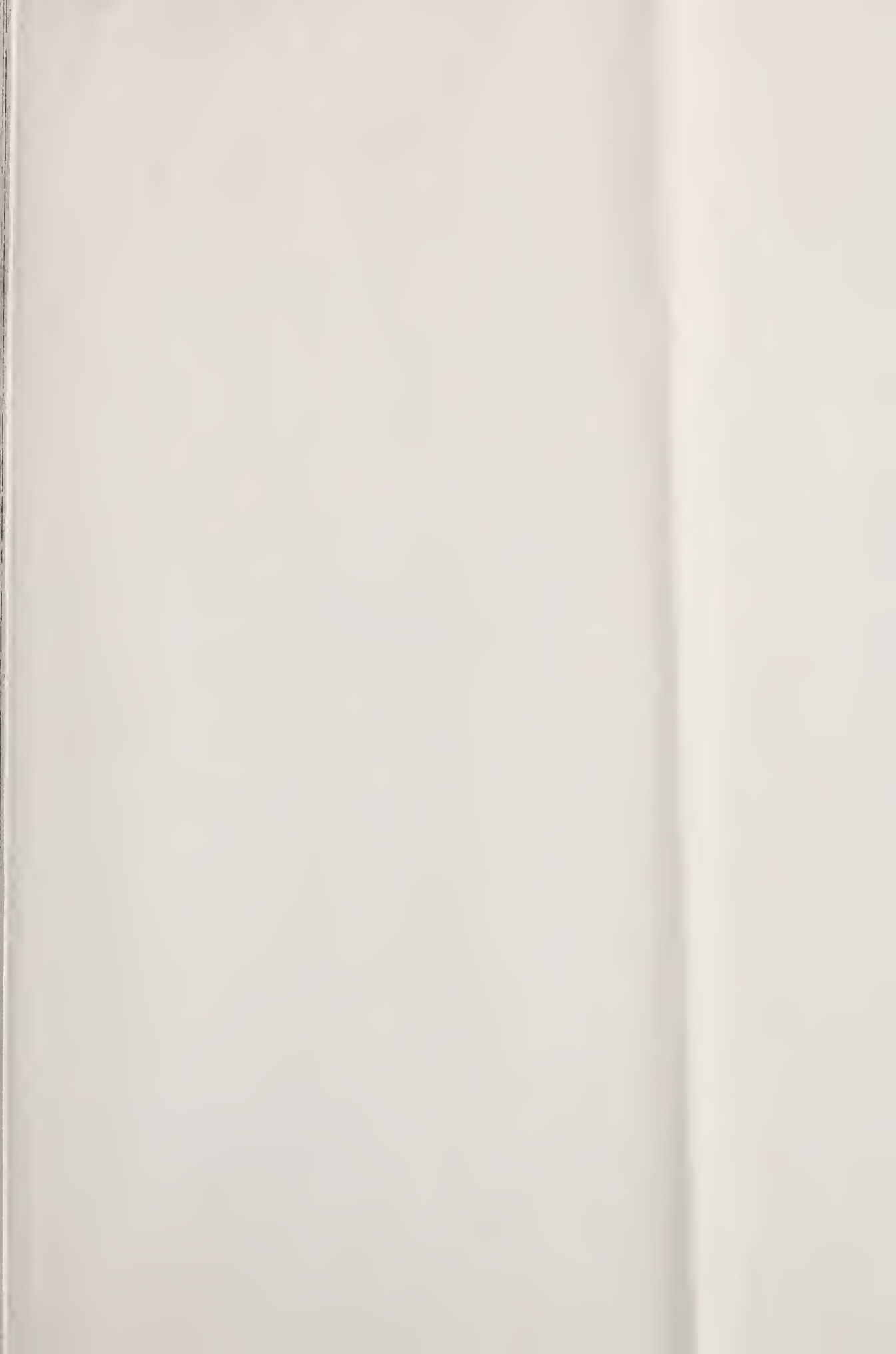
10 *“(4) a summary of the actions taken during such*
 11 *period to collect any civil penalty or assessment im-*
 12 *posed under this chapter.”.*

13 *(b) The table of chapters for part I of title 5, United*
 14 *States Code, is amended by inserting after the item relating*
 15 *to chapter 7 the following new item:*

“8. Administrative Remedies for False Claims and Statements..... 801.”.

16 *SEC. 4. This Act and the amendments made by this Act*
 17 *shall take effect on the date of enactment of this Act, and*
 18 *shall apply to any claim or statement made, presented, or*
 19 *submitted on or after such date.*

 Amend the title so as to read: “A bill to amend title 5, United States Code, to provide administrative civil remedies for false claims and statements made to the United States by certain recipients of property, services, or money from the United States, by parties to contracts with the United States, or by Federal employees, and for other purposes.”



CMS Library
C2-07-13
7500 Security Blvd.
Baltimore, Maryland 21244



Calendar No. 455

99TH CONGRESS
1ST Session

S. 1134

[Report No. 99-212]

A BILL

To amend title 5, United States Code, to provide administrative civil penalties for false claims and statements made to the United States by certain recipients of property, services, or money from the United States, by parties to contracts with the United States, or by Federal employees, and for other purposes.

DECEMBER 10 (legislative day, DECEMBER 9), 1985

Reported with an amendment and an amendment to the title