

FOURTEENTH CONGRESS OF THE REPUBLIC)
 OF THE PHILIPPINES)
 First Regular Session)

8 FEB 12 P2:56

SENATE
 S. No. 2068

RECEIVED BY: _____

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

This bill¹ is an adaptation of the US False Claims Act that seeks to combat financial fraud perpetrated against the government by individuals and companies.

In the United States, the False Claims Act has proven to be one of the most effective tools in fighting all types of financial fraud perpetrated against the government. It contained *qui tam* provisions that allow private citizens to sue, on the government's behalf, companies and individuals that are defrauding the government. *Qui tam* is short for a Latin phrase, "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which roughly means, "he who brings an action for the king as well as for himself."

The *qui tam* provisions have been the key to the law's success. Many people who file *qui tam* lawsuits (called the "relators") are employees or former employees of companies that commit fraud, but anyone who knows of an instance where the government has paid false claims can file a *qui tam* lawsuit. That could be, for example, a competitor, a subcontractor, or even a patient.

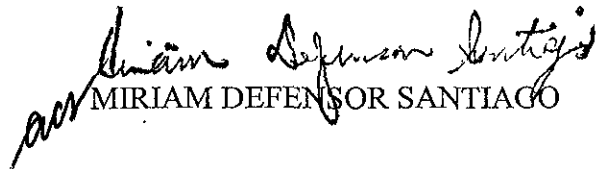
The whistleblower does not need to have personal knowledge of the fraud to file a False Claims Act case. The lawsuit can be based on information the relator learned from a friend, a relative, a competitor, etc. As long as the individual is not publicly disclosed and the government has not already sued the individual or company for the fraud, the relator may bring a *qui tam* lawsuit.

The False Claims Act has encouraged a number of individuals to step forward and report fraud because it gives whistleblowers pecuniary incentives. Since 1986, the US

¹ This bill was originally filed by the Senator during the 13th Congress

government has recovered more than \$3.5 billion as a result of qui tam lawsuits (Department of Justice Statistics, as of February 24, 2000).

This bill also seeks to give whistleblowers a share of the recoveries that result from *qui tam* lawsuits to give people a strong incentive to step forward and take the personal and professional risks involved in pursuing a false claim lawsuit; hence, reducing fraud perpetrated against the government.


MIRIAM DEFENSOR SANTIAGO

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AN ACT
TO COMBAT FINANCIAL FRAUD PERPETRATED AGAINST
THE GOVERNMENT

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* - This Act shall be known as the "False Claims Act of 2008."

SECTION 2. *Declaration of Policy.* - It is hereby declared to be the policy of the State to give priority to the enactment and enforcement of stronger measures to combat financial fraud perpetrated against the government by individuals and companies.

SECTION 3. *False Claims.* - (1) Liability for certain acts - Any person who - (A) knowingly presents, or causes to be presented, to an officer or employee of the government or a member of the Armed Forces of the Philippines a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;

(C) conspires to defraud the government by getting a false or fraudulent claim allowed or paid;

(D) has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government, willfully conceals the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(E) authorizes to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government,

1 makes or delivers the receipt without completely knowing that the information on
2 the receipt is true;

3 (F) knowingly buys, or receives as a pledge of an obligation or debt,
4 public property from an officer or employee of the government, or a member of
5 the Armed Forces, who may not lawfully sell or pledge the property; or

6 (G) knowingly makes, uses, or causes to be made or used, a false record or
7 statement to conceal, avoid, or decrease an obligation to pay or transmit money or
8 property to the government, is liable to the government for a civil penalty of not
9 less than Two Hundred Thousand Pesos (P200,000.00) but not more than Four
10 Hundred Thousand Pesos (P400,000.00), plus three times the amount of damages
11 which the government sustains because of the act of that person, except that if the
12 court finds that --

13 (i) the person committing the violation of this Act furnished
14 officials of the government responsible for investigating false claims
15 violations with all information known to such person about the violation
16 within thirty (30) days after the date on which the defendant first obtained
17 the information;

18 (ii) such person fully cooperated with any government
19 investigation of such violation; and

20 (iii) at the time such person furnished the government with the
21 information about the violation, no criminal prosecution, civil action, or
22 administrative action had commenced under this Act with respect to such
23 violation, and the person did not have actual knowledge of the existence of
24 an investigation into such violation; the court may assess not less than two
25 times the amount of damages which the government sustains because of
26 the act of the person. A person violating this section shall also be liable to
27 the government for the costs of a civil action brought to recover any such
28 penalty or damages.

1 (2) Knowing and Knowingly Defined - For purposes of this Act, the terms
2 “knowing” and “knowingly” mean that a person, with respect to information -

3 (A) has actual knowledge of the information;

4 (B) acts in deliberate ignorance of the truth or falsity of the information; or

5 (C) acts in reckless disregard of the truth or falsity of the information, and
6 no proof of specific intent to defraud is required.

7 (3) Claim Defined - For purposes of this section, “claim” includes any request or
8 demand, whether under a contract or otherwise, for money or property which is made to a
9 contractor, grantee, or other recipient for any portion of the money or property which is
10 requested or demanded, or if the government will reimburse such contractor, grantee, or
11 other recipient for any portion of the money or property which is requested or demanded.

12 (4) Exclusion - This section does not apply to claims, records, or statements made
13 under the National Internal Revenue Code.

14 SECTION 4. *Civil Actions for False Claims.* -

15 (1) Responsibilities of the Solicitor General - The Solicitor General shall
16 investigate a violation under Section 3. If the Solicitor General finds that a person has
17 violated or is violating Section 3, he may bring a civil action under this section against
18 that person.

19 (2) Actions by Private Persons - (A) A person may bring a civil action for a
20 violation of section 3 for the person and for the government. The action shall be brought
21 in the name of the government. The action may be dismissed only if the court and the
22 Solicitor General give written consent to the dismissal and their reasons for consenting.

23 (B) A copy of the complaint and written disclosure of substantially all
24 material evidence and information the person possesses shall be served on the
25 government pursuant to the pertinent provisions of the Rules of Court on Civil
26 Procedure. The complaint shall remain under seal for at least sixty (60) days and
27 shall not be served on the defendant until the court so orders. The government

1 may elect to intervene and proceed with the action within sixty (60) days after it
2 receives both the complaint and the material evidence and information.

3 (C) The government may, for good cause shown, move the court for
4 extensions of the time during which the complaint remains under seal. Any such
5 motions may be supported by affidavits. The defendant shall not be required to
6 respond to any complaint filed under this section until twenty (20) days after the
7 complaint is unsealed and served upon the defendant.

8 (D) Before the expiration of the sixty (60) day period, the government
9 shall -

10 (i) proceed with the action, in which case the action shall be
11 conducted by the government; or

12 (ii) notify the court that it declines to take over the action, in which
13 case the person bringing the action shall have the right to conduct the
14 action.

15 (E) When a person brings an action under this section, no person other
16 than the government may intervene or bring a related action on the facts
17 underlying the pending action.

18 (3) Rights of the Parties to Qui Tam Actions - (A) If the government proceeds
19 with the action, it shall have the primary responsibility for prosecuting the action, and
20 shall not be bound by an act of the person bringing the action. Such person shall have the
21 right to continue as a party to the action, subject to the limitations set forth in paragraph

22 (B).

23 (B) (i) The government may dismiss the action, notwithstanding the
24 objections of the person initiating the action, if the person has been notified by the
25 government of the filing of the motion and the court has provided the person with
26 an opportunity for a hearing on the motion.

27 (ii) The government may settle the action with the defendant,
28 notwithstanding the objections of the person initiating the action, if the

1 court determines, after hearing, that the proposed settlement is fair,
2 adequate, and reasonable under all the circumstances.

3 (iii) Upon showing by the government that unrestricted
4 participation during the course of the litigation by the person initiating the
5 action would interfere with or unduly delay the government's prosecution
6 of the case, or would be repetitious, irrelevant, or for purposes of
7 harassment, the court may, in its discretion, impose limitations on the
8 person's participation, such as -

9 (a) limiting the number of witnesses the person may call;

10 (b) limiting the length of the testimony of such witnesses;

11 (c) limiting the person's cross-examination of the
12 witnesses; or

13 (d) otherwise limiting the participation by the person in
14 litigation.

15 (iv) Upon a showing by the defendant that unrestricted
16 participation during the course of the litigation by the person initiating the
17 action would be for purposes of harassment or would cause the defendant
18 undue burden or unnecessary expense, the court may limit the
19 participation by the person in the litigation.

20 (C) If the government elects not to proceed with the action, the person
21 who initiated the action shall have the right to conduct the action. If the
22 government so requests, it shall be served with copies of all pleadings filed in the
23 action and shall be supplied with copies of all deposition transcripts (at the
24 government's expense). When a person proceeds with the action, the court,
25 without limiting the status and rights of the person initiating the action, may
26 nevertheless permit the government to intervene at a later date upon a showing of
27 good cause.

28 (D) Whether or not the government proceeds with the action, upon a
29 showing by the government that certain actions of discovery by the person

1 initiating the action would interfere with the government's investigation or
2 prosecution of a criminal or civil matter arising out of the same facts, the court
3 may stay such discovery for a period of not more than sixty (60) days. The court
4 may extend the 60-day period upon a further showing that the government has
5 pursued the criminal or civil investigation or proceedings with reasonable
6 diligence and any proposed discovery in the civil action will interfere with
7 reasonable diligence and any proposed discovery in the civil action will interfere
8 with the ongoing criminal or civil investigation or proceedings.

9 (4) Award to Qui Tam Plaintiff - (A) If the government proceeds with an action
10 brought by a person under subsection (2), such person shall, subject to the second
11 sentence of this paragraph, receive at least fifteen percent (15%) but not more than
12 twenty-five percent (25%) of the proceeds of the action or settlement of the claim,
13 depending upon the extent to which the person substantially contributed to the
14 prosecution of the action. Where the action is one which the court finds to be based
15 primarily on disclosures of specific information (other than information provided by the
16 person bringing the action) relating to allegations or transactions in a criminal, civil, or
17 administrative hearing, in a congressional, administrative, report, hearing, audit, or
18 investigation, or from the news media, the court may award such sums as it considers
19 appropriate, but in no case more than ten percent (10%) of the proceeds, taking into
20 account the significance of the information and the role of the person bringing the action
21 in advancing the case to litigation. Any payment to a person under the first or second
22 sentence of this paragraph shall be made from the proceeds. Any such person shall also
23 receive an amount for reasonable expenses which the court finds to have been necessarily
24 incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs
25 shall be awarded against the defendant.

26 (B) If the government does not proceed with an action under this section,
27 the person bringing the action or settling the claim shall receive an amount which
28 the court decides is reasonable for collecting the civil penalty and damages. The
29 amount shall be not less than twenty-five percent (25%) and not more than thirty

1 percent (30%) of the proceeds of the action or settlement and shall be paid out of
2 such proceeds. Such person shall also receive an amount for reasonable expenses
3 which the court finds to have been necessarily incurred, plus reasonable attorney's
4 fees and costs. All such expenses, fees, and costs shall be awarded against the
5 defendant.

6 (C) Whether or not the government proceeds with the action, if the court
7 finds that the action was brought by a person who planned and initiated the
8 violation of section 3 upon which the action was brought, then the court may, to
9 the extent the court considers appropriate, reduce the share of the proceeds of the
10 action which the person would otherwise receive under paragraph (A) or (B) of
11 this section, taking into account the role of that person in advancing the case to
12 litigation and any relevant circumstances pertaining to the violation. If the person
13 bringing the action is convicted of criminal conduct arising from his or her role in
14 the violation of section 3, that person shall be dismissed from the civil action and
15 shall not receive any share of the proceeds of the action. Such dismissal shall not
16 prejudice the right of the government to continue the action, represented by the
17 Department of Justice.

18 (D) If the government does not proceed with the action and the person
19 bringing the action conducts the action, the court may award to the defendant its
20 reasonable attorney's fees and expenses if the defendant prevails in the action and
21 the court finds that the claim of the person bringing the action was clearly
22 frivolous, clearly vexatious, or brought primarily for purposes of harassment.

23 (5) Certain Actions Barred - (A) No court shall have jurisdiction over an action
24 brought by a former or present member of the armed forces under subsection (2) of this
25 section against a member of the Armed Forces arising out of such person's service in the
26 Armed Forces.

27 (B) No court shall have jurisdiction over an action brought under
28 subsection (2) against a member of Congress, a member of the judiciary, or a

1 senior executive branch official if the action is based on evidence or information
2 known to the government when the action was brought.

3 (C) In no event may a person bring an action under subsection (2) which is
4 based upon allegations or transactions which are the subject of a civil suit or an
5 administrative civil money penalty proceeding in which the government is already
6 a party.

7 (D) (i) No court shall have jurisdiction over an action under this section
8 based upon the public disclosure of allegations or transactions in a criminal, civil,
9 or administrative hearing, in a congressional, administrative report, hearing, audit,
10 or investigation, or from the news media, unless the action is brought by the
11 Solicitor General or the person bringing the action is an original source of the
12 information.

13 (ii) For purposes of this paragraph, "original source" means an
14 individual who has direct and independent knowledge of the information
15 on which the allegations are based and has voluntarily provided the
16 information to the government before filing an action under this section
17 which is based on the information.

18 (6) *Government not liable for certain expenses* - The government is not liable for
19 expenses which a person incurs in bringing an action under this section.

20 (7) Any employee who is discharged, demoted, suspended, threatened, harassed,
21 or in any manner discriminated against in the terms and conditions of employment by his
22 or her employer because of lawful acts done by the employee on behalf of the employee
23 or others in furtherance of an action under this section, including investigation for,
24 initiation of, testimony for, or assistance in an action filed or to be filed under this
25 section, shall be entitled to all relief necessary to make the employee whole. Such relief
26 shall include reinstatement with the same seniority status such employee would have had
27 but for the discrimination, two times the amount of back pay, interest on the back pay,
28 and compensation for any special damages sustained as a result of the discrimination,
29 including litigation costs and reasonable attorney's fees.

1 SECTION 5. *False Claims Procedure.* –

2 (1) A subpoena requiring the attendance of a witness at a trial or hearing
3 conducted under section 4 of this Act may be served at any place in the Philippines.

4 (2) A civil action under section 4 may not be brought - (A) more than six (6) years
5 after the date on which the violation of section 3 is committed, or

6 (B) more than three (3) years after the date when facts material to the right
7 of action are known or reasonably should have been known by the official of the
8 government charged with responsibility to act in the circumstances, but in no
9 event more than ten (10) years after the date on which the violation is committed,
10 whichever occurs last.

11 (3) In any action brought under section 4, the government shall be required to
12 prove all essential elements of the cause of action, including damages, by a
13 preponderance of the evidence.

14 (4) Notwithstanding any other provision of law or the Rules of Criminal
15 Procedure, a final judgment rendered in favor of the government in any criminal
16 proceeding charging fraud or false statements, whether upon a verdict after trial or upon a
17 plea of guilty, shall stop the defendant from denying the essential elements of the offense
18 in any action which involves the same transaction as in the criminal proceeding and
19 which is brought under subsection (1) or (2) of section 4.

20 SECTION 6. *False Claims Jurisdiction.* – Any action under section 4 may be
21 brought in any court in which the defendant or, in the case of multiple defendants, any
22 one defendant can be found, resides, transacts business, or in which any act proscribed by
23 section 4 occurred. A summons as required by the Rules of Civil Procedure shall be
24 issued by the appropriate court and served at any place within or outside the country.

25 SECTION 7. *Civil Investigative Demands.* –

26 (1) In General -

1 (A) Issuance and service - Whenever the Solicitor General has reason to
2 believe that any person may be in possession, custody, or control of any
3 documentary material or information relevant to a false claims law investigation,
4 the Solicitor General may, before commencing a civil proceeding under section 4
5 or other false claims law, issue in writing and cause to be served upon such
6 person, a civil investigative demand requiring such person –

7 (i) to produce such documentary material for inspection and
8 copying;

9 (ii) to answer in writing written interrogatories with respect to such
10 documentary material or information;

11 (iii) to give oral testimony concerning such documentary material
12 or information; or

13 (iv) to furnish any combination of such material, answers, or
14 testimony.

15 The Solicitor General may not delegate the authority to issue civil
16 investigative demands under this subsection. Whenever a civil investigative
17 demand is an express demand for any product of discovery, the Solicitor General
18 shall cause to be served, in any manner authorized by this section, a copy of such
19 demand upon the person from whom the discovery was obtained and shall notify
20 the person to whom such demand is issued of the date on which such copy was
21 served.

22 (B) Contents and deadlines –

23 (i) Each civil investigative demand issued under paragraph (A)
24 shall state the nature of the conduct constituting the alleged violation of a
25 false claims law which is under investigation, and the applicable provision
26 of law alleged to be violated.

27 (ii) If such demand is for the production of documentary material,
28 the demand shall –

1 (a) describe each class of documentary material to be
2 produced with such definiteness and certainty as to permit such
3 material to be fairly identified;

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

8 (c) identify the false claims law investigator to whom such
9 material shall be made available.

10 (iii) If such demand is for answers to written interrogatories, the
11 demand shall –

12 (a) set forth with specificity the written interrogatories to be
13 answered;

14 (b) prescribe dates at which time answers to written
15 interrogatories shall be submitted; and

16 (c) identify the false claims law investigator to whom such
17 answers shall be submitted.

18 (iv) If such demand is for the giving of oral testimony, the demand
19 shall -

20 (a) prescribe a date, time, and place at which oral testimony
21 shall be commenced;

22 (b) identify a false claims law investigator who shall conduct
23 the examination and the custodian to whom the transcript of such
24 examination shall be submitted;

25 (c) specify that such attendance and testimony are necessary to
26 the conduct of the investigation;

27 (d) notify the person receiving the demand of the right to be
28 accompanied by an attorney and any other representative; and

1 (e) describe the general purpose for which the demand is being
2 issued and the general nature of the testimony, including the primary
3 areas of inquiry, which will be taken pursuant to the demand.

4 (v) Any civil investigative demand issued under this section which is
5 an express demand for any product of discovery shall not be returned or
6 returnable until twenty (20) days after a copy of such demand has been served
7 upon the persons from whom the directory was obtained.

8 (vi) The date prescribed for the commencement of oral testimony
9 pursuant to a civil investigative demand issued under this section shall be a
10 date which is not less than seven (7) days after the date on which demand is
11 received, unless the Solicitor General determines that exceptional
12 circumstances are present which warrant the commencement of such
13 testimony within a lesser period of time.

14 (vii) The Solicitor General shall not authorize the issuance under this
15 section of more than one (1) civil investigative demand for oral testimony by
16 the same person unless the person requests otherwise or unless the Solicitor
17 General, after investigation, notifies that person in writing that an additional
18 demand for oral testimony is necessary. The Solicitor General may not
19 authorize the performance, by any other officer, employee, or agency, or any
20 function vested in the Solicitor General under this subparagraph.

21 (C) Protected Material or Information -

22 (i) In general - A civil investigative demand issued under subsection
23 (1) may not require the production of any documentary material, the
24 submission of any answers to written interrogatories, or the giving of any oral
25 testimony if such material, answers, or testimony would be protected from
26 disclosure under -

27 (a) the standards applicable to subpoenas or subpoenas *duces*
28 *tecum* issued by a court; or (b) the standards applicable to the
29 discovery requests of the Rules of Civil Procedure, to the extent that

1 the application of such standards to any such demand is appropriate
2 and consistent with the provisions and purposes of this section.

3 (ii) Effect on other orders, rules, and laws - Any such demand which is
4 an express demand for any product of discovery supersedes any inconsistent
5 order, rule, or provision of law (other than this section) preventing or
6 restraining disclosure of such product of discovery to any person. Disclosure
7 of my product of discovery pursuant to any such express demand does not
8 constitute a waiver of any right or privilege which the person making such
9 disclosure may be entitled to invoke to resist discovery of trial preparation
10 materials.

11 (D) Service; Jurisdiction -

12 (i) By whom served - Any civil investigative demand issued under
13 subsection (1) may be served by a false claims law investigator, at any place
14 within the territorial jurisdiction of any court.

15 (ii) Service in foreign countries - Any such demand or any petition
16 filed under paragraph (H) may be served upon any person who is not found
17 within the territorial jurisdiction of any court in such manner as the Rules of
18 Civil Procedure prescribe for service in a foreign country.

19 (iii) Service upon legal entities and natural persons - (a) Legal entities
20 - Service of any civil investigative demand issued under subsection (1) or of
21 any petition filed under paragraph (H) may be made upon a partnership,
22 corporation, association, or other legal entity by -

23 (1) delivering an executed copy of such demand or petition to
24 any partner, executive officer, managing agent, or general agent of the
25 partnership, corporation, association or entity, or to any agent
26 authorized by appointment or by law to receive service of process on
27 behalf of such partnership, corporation, association, or entity.

1 (2) delivering an executed copy of such demand or petition to
2 the principal office or place of business of the partnership, corporation,
3 association, or entity, or

4 (3) depositing an executed copy of such demand or petition in
5 the mails by registered or certified mail, with a return receipt
6 requested, addressed to such partnership, corporation, association, or
7 entity at its principal office or place of business.

8 (b) Natural persons - Service of any such demand or petition may
9 be made upon any natural person by -

10 (1) delivering an executed copy of such demand or petition to
11 the person; or

12 (2) depositing an executed copy of such demand or petition in
13 the mails by registered or certified mail, with a return receipt
14 requested, addressed to the person at the person's residence or
15 principal office or place of business.

16 (E) Proof of Service - A verified return by the individual serving any civil
17 investigative demand issued under subsection (1) or any petition file under
18 paragraph (H) setting forth the manner of such service shall be proof of such
19 service. In the case of service by registered or certified mail, such return shall be
20 accompanied by the return post office receipt of delivery of such demand.

21 (F) Documentary Material - The production of documentary material in
22 response to a civil investigative demand served under this section shall be made
23 under a sworn certificate, in such form as the demand designates, by -

24 (i) in the case of a natural person, the person to whom the demand
25 is directed; or control, or knowledge of the person to whom the demand is
26 directed has been submitted. To the extent that any information is not
27 furnished, the information shall be identified and reasons set forth with
28 particularity regarding the reasons why the information was not furnished.

(G) Oral Examinations -

1 (i) Procedure - The examination of any person pursuant to a civil
2 investigative demand for oral testimony served under this section shall be
3 taken before an officer authorized to administer oaths and affirmations by
4 law of the Philippines or of the place where the examination is held. The
5 officer before whom the testimony is to be taken shall put the witness on
6 oath or affirmation and shall, personally or by someone acting under the
7 direction of the officer and in the officer's presence, record the testimony
8 of the witness. The testimony shall be taken stenographically and shall be
9 transcribed. When the testimony is fully transcribed, the officer before
10 whom the testimony is taken shall promptly transmit a copy of the
11 transcript of the testimony by any means authorized by, and in a manner
12 consistent with, the Rules of Civil Procedure.

13 (ii) Persons present - The false claims law investigator conducting
14 the examination shall exclude from the place where the examination is
15 held all persons except the person giving the testimony, the attorney for,
16 and any other representative of the person giving the testimony, the
17 attorney for the government, any person who may be agreed upon by the
18 attorney for the government and the person giving the testimony, the
19 officer before whom the testimony is to be taken, and any stenographer
20 taking such testimony.

21 (iii) Where testimony taken - The oral testimony of any person
22 taken pursuant to a civil investigative demand served under this Section
23 shall be taken in the court within which such person resides, is found, or
24 transacts business, or in such other place as may be agreed upon by the
25 false claims law investigator conducting the examination and such person.

26 (iv) Transcript of testimony - When the testimony is fully
27 transcribed, the false claims law investigator or the officer before whom
28 the testimony is taken shall afford the witness, who may be accompanied

1 by counsel, a reasonable opportunity to examine and read the transcript,
2 unless such examination and reading are waived by the witness. Any
3 changes in form or substance which the witness desires to make shall be
4 entered and identified upon the transcript by the officer or the false claims
5 law investigator, with a statement of the reasons given by the witness for
6 making such changes. The transcript shall then be signed by the witness,
7 unless the witness in writing waives the signing, is ill, cannot be found, or
8 refuses to sign. If the transcript is not signed by the witness within thirty
9 (30) days after being afforded a reasonable opportunity to examine it, the
10 officer or the false claims law investigator shall sign it and state on the
11 record the fact of the waiver, illness, absence of the witness, or the refusal
12 to sign, together with the reasons, if any, given therefore.

13 (v) Certification and delivery to custodian - The officer before
14 whom the testimony is taken shall certify on the transcript that the witness
15 was sworn by the officer and that the transcript is a true record of the
16 testimony given by the witness, and the officer or false claims law
17 investigator shall promptly deliver the transcript, or send the transcript by
18 registered or certified mail, to the custodian.

19 (vi) Furnishing or inspection of transcript by witness - Upon
20 payment of reasonable charges therefore, the false claims investigator
21 shall furnish a copy of the transcript to the witness only except that the
22 Solicitor General may, for good cause, limit such witness to inspection of
23 the official transcript of the witness' testimony.

24 (vii) Conduct of oral testimony - (a) Any person compelled to
25 appear for oral testimony under a civil investigative demand issued under
26 subsection (1) may be accompanied, represented, and advised by counsel.
27 Counsel may advise such person, in confidence, with respect to any
28 question asked of such person. Such person or counsel may object on the
29 record to any question, in whole or in part, and shall briefly state for the

1 record the reason for the objection. An objection made, received, and
2 entered upon the record when it is claimed that such person is entitled to
3 refuse to answer the question on the grounds of any constitutional or other
4 legal rights of privilege, including the privilege against self-incrimination.
5 Such person may not otherwise object to or refuse to answer any question,
6 and may not directly or through counsel otherwise interrupt the oral
7 examination. If such person refuses to answer any question, a petition may
8 be filed in the court under subsection (H)(i) for an order compelling such
9 person to answer such question.

10 (b) If such person refuses to answer any question on the
11 grounds of the privilege against self-incrimination, the testimony
12 of such person may be compelled in accordance with the
13 provisions of the Rules of Court.

14 (viii) Witness fees and allowances - Any person appearing for oral
15 testimony under a civil investigative demand issued under subsection (1)
16 shall be entitled to the same fees and allowances which are paid to
17 witnesses as provided in the appropriate provisions of the Rules of Court.

18 (ix) Custodians of Documents, Answers, and Transcripts - (a)
19 Designation - The Solicitor General shall designate a false claims law
20 investigator to serve as custodian of documentary material, answers to
21 interrogatories, and transcripts of oral testimony received under this
22 section, and shall designate such additional false claims law investigators
23 as the Solicitor General determines from time to time to be necessary to
24 serve as deputies to the custodian.

25 (b) Responsibility for materials; disclosure - (1) A false
26 claims investigator who receives any documentary material,
27 answers to interrogatories, or transcripts of oral testimony received
28 under this section shall transmit them to the custodian. The
29 custodian shall take physical possession of such material, answers,

1 or transcripts and shall be responsible for the use made of them and
2 for the return of documentary material under paragraph (D).

3 (2) The custodian may cause the preparation of such
4 copies of such documentary material, answers to
5 interrogatories, or transcripts of oral testimony as may be
6 required for official use by any false claims law
7 investigator, or other officer or employee of the
8 Department of Justice, who is authorized for such use under
9 regulations which the Solicitor General shall issue. Such
10 material, answers, and transcripts may be used by any such
11 authorized false claims law investigator or other officer or
12 employee in connection with the taking of oral testimony
13 under this section.

14 (3) Except as otherwise provided in this subsection,
15 no documentary material, answers to interrogatories, or
16 transcripts of oral testimony, or copies thereof, while in the
17 possession of the custodian and under such reasonable
18 terms and conditions as the Solicitor General shall
19 prescribe -

20 (a) documentary material and answers to
21 interrogatories shall be available for examination by the
22 person who produced such material or answers, or by a
23 representative of that person authorized by that person to
24 examine such materials and answers; and

25 (b) transcripts of oral testimony shall be available
26 for examination by the person who produced such
27 testimony, or by a representative of that person authorized
28 by that person to examine such transcripts.

1 (c) Use of materials, answers, or transcripts in other
2 proceedings - Whether any attorney of the Department of
3 Justice has been designated to appear before any court or
4 agency in any case or proceeding, the custodian of any
5 documentary material, answers to interrogatories, or
6 transcripts of oral testimony received under this section
7 may deliver to such attorney such material, answers, or
8 transcripts for official use in connection with any such case
9 or proceeding as such attorney determines to be required.
10 Upon the completion of any such case or proceeding, such
11 attorney shall return to the custodian any such material,
12 answers, or transcripts so delivered which have not passed
13 into the control of such court, or agency through
14 introduction into the record of such case or proceeding.

15 (d) Conditions for return of material - If any
16 documentary material has been produced by any person in
17 the course of any false claims law investigation pursuant to
18 a civil investigative demand under this section, and -

19 (1) any case or proceeding before the court
20 arising out of such investigation, or any proceeding
21 before any agency involving such material, has been
22 completed, or

23 (2) any case or proceeding in which such
24 material may be used has been commenced within a
25 reasonable time after completion of the examination
26 and analysis of all documentary material and other
27 information assembled in the course of such
28 investigation, the custodian shall, upon written
29 request of the person who produced such material,

1 return to such person any such material (other than
2 copies furnished to the false claims law investigator
3 under subsection (G)(ii) or made for the Department
4 of Justice under paragraph (2)(B)) which has not
5 passed into the control of any court or agency
6 through the introduction into the record of such case
7 or proceeding.

8 (e) Appointment of successor custodians - In the
9 event of the death, disability, or separation from service in
10 the Department of Justice of the custodian of any
11 documentary material, answers to interrogatories, or
12 transcripts of oral testimony produced pursuant to such
13 custodian from responsibility for the custody and control of
14 such materials, answers, or transcripts, the Solicitor
15 General shall promptly -

16 (1) designate another false claims law
17 investigator to serve as custodian of such material,
18 answers, or transcripts; and

19 (2) transmit in writing to the person who
20 produced such material, answers, or testimony
21 notice of the identity and address of the successor
22 so designated. Any person who is designated to be a
23 successor under this paragraph shall have, with
24 regard to such material, answers, or transcripts, the
25 same duties and responsibilities as were imposed by
26 this section upon that person's predecessor in office,
27 except that the successor shall not be held
28 responsible for any default or dereliction which
29 occurred before that designation.

1 (H) Judicial Proceedings -

2 (i) Petition for enforcement - Whenever any person fails to comply
3 with any civil investigative demand issued under subsection (I), or whenever
4 satisfactory copying or reproduction of any material requested in such demand
5 cannot be done and such person refuses to surrender such material, the
6 Solicitor General may file, in the court in which such person resides, is found,
7 or transacts business, and serve upon such person a petition for an order of
8 such court for the enforcement of the civil investigative demand.

9 (ii) Petition to modify or set aside demand - (a) Any person who has
10 received a civil investigative demand issued under subsection (1) may file, in
11 the court within which such person resides, is found, or transacts business, and
12 serve upon the false claims law investigator identified in such demand a
13 petition for an order of the court to modify or set aside such demand. In the
14 case of a petition addressed to an express demand for any product of
15 discovery, a petition to modify or set aside such demand may be brought only
16 in the court in which the proceeding in which such discovery was obtained is
17 or was last pending. Any petition under this subparagraph must be filed -

18 (1) within twenty (20) days after the date of service of the
19 civil investigative demand, or at any time before the return date
20 specified in the demand, whichever date is earlier; or

21 (2) within such longer period as may be prescribed in
22 writing by any false claims law investigator identified in the
23 demand.

24 (b) The petition shall specify each ground upon which the
25 petitioner relies in seeking relief under subparagraph (a), and may be
26 based upon any failure of the demand to comply with the provisions of
27 this section or upon any constitutional or other legal right or privilege
28 of such person. During the pendency of the petition in the court, the
29 court may stay, as it deems proper, the running of the time allowed for

1 *compliance with the demand, in whole or in part, except that the*
2 *person filing the petition shall comply with any portions of the demand*
3 *not sought to be modified or set aside.*

4 (iii) *Petition to modify or set aside demand for product of discovery -*

5 (a) *In the case of any civil investigative demand issued under subsection (1)*
6 *which is an express demand for any product of discovery, the person from*
7 *whom such discovery was obtained may file, in the court in which the*
8 *proceeding in which said discovery was obtained is or was last pending, and*
9 *serve upon any false claims law investigator identified in the demand and*
10 *upon the recipient of the demand, a petition for an order of such court to*
11 *modify or set aside those portions of the demand requiring production of any*
12 *such product or discovery. Any petition under this subparagraph must be filed*

13 (1) *within twenty (20) days after the date of service of the*
14 *civil investigative demand, or at any time before the return date*
15 *specified in the demand, whichever date is earlier; or*

16 (2) *within such longer period as may be prescribed in*
17 *writing by any false claims law investigator identified in the*
18 *demand.*

19 (3) *The petition shall specify each ground upon which the*
20 *petitioner relies in seeking relief under subparagraph (a), and*
21 *may be based upon any failure of the portions of the demand*
22 *from which relief is sought to comply with the provisions of*
23 *this section, or upon any constitutional or other legal right or*
24 *privilege of the petitioner. During the pendency of the petition,*
25 *the court may stay, as it deems proper, compliance with the*
26 *demand and the running of the time allowed for compliance*
27 *with the demand.*

28 (iv) *Petition to require performance by custodian of duties - At any*
29 *time during which any custodian is in custody or control of any documentary*

1 material or answers to interrogatories produced, or transcripts of oral
2 testimony given, by any person in compliance with any civil investigative
3 demand issued under subsection (l), such person, and in the case of an express
4 demand for any product of discovery, the person from whom such discovery
5 was obtained, may file, in the court within which the office of such custodian
6 is situated, and serve upon such custodian, a petition for an order of such court
7 to require the performance by the custodian of any duty imposed upon the
8 custodian by this section.

9 (v) Jurisdiction - Whenever any petition is filed in any court under this
10 subsection, such court shall have jurisdiction to hear and determine the matter
11 so presented, and to enter such order or orders as may be required to carry out
12 the provisions of this section. Any final order so entered shall be subject to
13 appeal under the appropriate provisions of the Rules of Procedure. Any
14 disobedience of any final order entered under this section by any court shall
15 be punished as contempt of the court.

16 (vi) Applicability of rules of civil procedure - The Rules of Civil
17 Procedure shall apply to any petition under this subsection, to the extent that
18 such rules are not inconsistent with the provisions of this section.

19 (l) Definitions - For purposes of this section -

20 (i) the term "false claims law" means -

21 (a) this section and sections 3 and 4; and

22 (b) any Act of Congress enacted after the date of the enactment
23 of this section which prohibits, or makes available to the court any
24 civil remedy with respect to, any false claim against, bribery of, or
25 corruption of any officer or employee of the government;

26 (ii) the term "false claims law investigation" means any inquiry
27 conducted by any false claims investigator for the purpose of ascertaining
28 whether any person is or has been engaged in any violation of a false claims
29 law;

1 (iii) the term “false claims investigator” means any attorney or
2 investigator employed by the Department of Justice who is charged with the
3 duty of enforcing or carrying into effect any false claims law, or any officer or
4 employee of the government acting under the direction and supervision of
5 such attorney or investigator in connection with a false claims law
6 investigation;

7 (iv) the term “person” means any natural person, partnership,
8 corporation, association, or other legal entity, including any political
9 subdivision of a State;

10 (v) the term “documentary material” includes the original or any copy
11 of any book, record, report, memorandum, paper, communication, tabulation,
12 chart, or other document, or data compilations stored in or accessible through
13 computer or other information retrieval systems, together with instructions
14 and all other materials necessary to use or interpret such data compilations,
15 and any product of discovery;

16 (vi) the term “custodian” means the custodian, or any deputy
17 custodian, designated by the Solicitor General under subsection (G)(ix); and

18 (vii) the term “product of discovery” includes -

19 (a) the original or duplicate of any deposition, interrogatory,
20 document, thing, result of the inspection of land or other property,
21 examination, or admission, which is obtained by any method of
22 discovery in any judicial or administrative proceeding of an
23 adversarial nature;

24 (b) any digest, analysis, selection, compilation, or derivation of
25 any item listed in subparagraph (i); and

26 (c) any index or other manner of access to any item listed in
27 subparagraph (i).

1 SECTION 8. *Separability Clause.* - If any provision, or part hereof, is held invalid
2 or unconstitutional, the remainder of the law or the provision not otherwise affected shall
3 remain valid and subsisting.

4 SECTION 9. *Repealing Clause.* - Any law, presidential decree or issuance,
5 executive order, letter of instruction, administrative order, rule or regulation contrary to
6 or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended
7 accordingly.

8 SECTION 10. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after
9 its publication in at least two (2) newspapers of general circulation.

10 Approved,