EXCERPT FROM THE LEGISLATIVE REORGANIZATION ACT OF 1970

(Public Law 91-510; 2 U.S.C. 281 et seq.) as amended by the Legislative Branch Appropriation Act, 1972

TITLE V—OFFICE OF THE LEGISLATIVE COUNSEL

Subtitle A—House of Representatives

PART 1—PURPOSE, POLICY, AND FUNCTION

ESTABLISHMENT

SEC. 501. There is established in the House of Representatives an office to be known as the Office of the Legislative Counsel, referred to hereinafter in this subtitle as the "Office".

PURPOSE AND POLICY

SEC. 502. The purpose of the Office shall be to advise and assist the House of Representatives, and its committees and Members, in the achievement of a clear, faithful, and coherent expression of legislative policies. The Office shall maintain impartiality as to issues of legislative policy to be determined by the House of Representatives, and shall not advocate the adoption or rejection of any legislation except when duly requested by the Speaker or a committee to comment on a proposal directly affecting the functions of the Office. The Office shall maintain the attorney-client relationship with respect to all communications between it and any Member or committee of the House.

FUNCTIONS

SEC. 503. The functions of the Office shall be as follows:

(1) Upon request of the managers on the part of the House at any conference on the disagreeing votes of the two Houses, to advise and assist the managers on the part of the House in the course of the conference, and to assist the committee of conference in the preparation of the conference report and any accompanying explanatory statement.

(2) Upon request of any committee of the House, or any joint committee having authority to report legislation to the House, to advise and assist the committee in the consideration of any legislation before it, and to assist the committee in the preparation of drafts of any such legislation, amendments thereto, and reports thereon.

(3) Upon request of any Member having control of time during the consideration of any legislation by the House, to have in attendance on the floor of the House not more than two members of the staff of the Office (and, in his discretion, the Legislative Counsel) to advise and assist such Member and, to the extent feasible, any other Member, in the course of such consideration.

(4) Upon request of any Member, subject to such reasonable restrictions as the Legislative Counsel may impose with the approval of the Speaker on the proportion of the resources of the Office which may be devoted to the requests of any one Member, to prepare drafts of legislation and to furnish drafting advice with respect to drafts of legislation prepared by others.

(5) At the direction of the Speaker, to perform on behalf of the House of Representatives any legal services which are within the capabilities of the Office and the performance of which would not be inconsistent with the provisions of section 502 or the preceding provisions of this section.

PART 2—ADMINISTRATION

LEGISLATIVE COUNSEL

SEC. 521. The management, supervision, and administration of the Office are vested in the Legislative Counsel, who shall be appointed by the Speaker of the House of Representatives without regard to political affilia-

tion and solely on the basis of fitness to perform the duties of the position. Any person so appointed shall serve at the pleasure of the Speaker.

STAFF

SEC. 522. (a) With the approval of the Speaker, or in accordance with policies and procedures approved by the Speaker, the Legislative Counsel shall appoint such attorneys and other employees as may be necessary for the prompt and efficient performance of the functions of the Office. Any such appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person so appointed may be removed by the Legislative Counsel with the approval of the Speaker, or in accordance with policies and procedures approved by the Speaker.

(b) (1) One of the attorneys appointed under subsection (a) shall be designated by the Legislative Counsel as Deputy Legislative Counsel. During the absence or disability of the Legislative Counsel, or when the office is vacant, the Deputy Legislative Counsel shall perform the functions of the Legislative Counsel.

(2) The Legislative Counsel may delegate to the Deputy Legislative Counsel and to other employees appointed under subsection (a) such of his functions as he considers necessary or appropriate.

COMPENSATION

SEC. 523. (a) The Legislative Counsel shall be paid at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule of section 5314 of title 5, United States Code.

(b) Members of the staff of the Office other than the Legislative Counsel shall be paid at per annum gross rates fixed by the Legislative Counsel with the approval of the Speaker or in accordance with policies approved by the Speaker, but not in excess of a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level V of the Executive Schedule of section 5316 of title 5, United States Code.

EXPENDITURES

SEC. 524. In accordance with policies and procedures approved by the Speaker, the Legislative Counsel may make such expenditures as may be necessary or appropriate for the functioning of the Office.

OFFICIAL MAIL MATTER

SEC. 525. The Legislative Counsel may send the official mail matter of the Office as franked mail under section 3210 of title 39, United States Code.

AUTHORIZATION OF APPROPRIATIONS

SEC. 526. There are authorized to be appropriated, for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums as may be necessary to carry out this subtitle and to increase the efficiency of the Office and the quality of the services which it provides.

PART 3—TRANSITIONAL PROVISIONS

PERSONNEL, PROPERTY, RECORDS, ETC.

SEC. 531. Any individual who on the date of the enactment of this Act is serving under an appointment by the Speaker as Legislative Counsel of the House of Representatives shall continue as Legislative Counsel of the House of Representatives in accordance with this subtitle. All personnel, positions, property, records, and unexpended balances of appropriations of or for that part of the Office of the Legislative Counsel established under section 1303 of the Revenue Act of 1918 (2 U.S.C., ch. 9) employed or held in or for the House of Representatives shall be transferred to the Office established under this subtitle; and, effective upon the date of enactment of this Act, the provisions of section 1303 of the Revenue Act of 1918 shall have no further applicability of any kind to the Speaker or to any committee, officer, employee, or property of the House of Representatives.

U.S. GOVERNMENT PRINTING OFFICE 62-130-h

About Us

Structure

The Office consists of approximately 40 attorneys and a support staff of about 15 individuals, and is headed by the Legislative Counsel of the House. The Legislative Counsel is appointed by the Speaker of the House and, subject to the approval of the Speaker, appoints and fixes the compensation of the Office's personnel.

The operation of the Office is in many ways unique among governmental offices. There are no formal committees or departments. Attorneys in the Office naturally develop special expertise in certain areas of the law. However, all attorneys are expected to cooperate with, and assist, each other in handling the workload of the Office. Many attorneys work in informal groups or teams of two or more to address a general 'zone' of Federal law.

The Office is impartial as to issues of legislative policy and does not advocate the adoption or rejection of any proposal or policy. In providing services to committees and Members, the Office will assist the committees, Members, and their staffs in analyzing the effects of legislative proposals, but will not advocate any position.

The Office has traditionally been career-oriented, with unusually low turnover among the legal staff. Experienced attorneys in the Office specialize in one or more areas of law and will normally handle requests for assistance in those areas.

Work

The Office provides drafting and related assistance to the Members of the House, the House committees, and the conference committees between the House and the Senate. Although the Members and committees are not required to use the Office, most legislation in the House is worked on by attorneys in the Office.

The typical legislative proposal starts on its way because someone believes that there is a problem about which something can be done by legislation. The attorney who drafts the proposal must gain a clear understanding of the problem, including the factual and legal setting in which it arises, and the intended policy of the Member or committee. This process ordinarily involves consultation with Members and their assistants, and with committee, departmental, and other expert advisers. Work being performed for a committee on a bill often involves attendance at committee markups, at sessions of the House during floor consideration, and at meetings of the conference committee between the House and the Senate to resolve the differences between the two Houses.

In preparing a draft for a Member or committee, it is the goal of the Office that the draft accurately reflect the legislative policy of the Member or committee and that the draft be legally sufficient to carry out that policy. The Office tries to meet this goal in a form and

style consistent with good legislative drafting and strives for clarity of expression while addressing all necessary aspects of what are often highly complex policy matters.

In rendering this drafting and other legal assistance, the attorney must at all times maintain an impartial attitude with respect to the policies which are to be incorporated in the legislative proposal. Thus, the attorney is concerned with the legislative policy only for the purpose of making sure that the bill, resolution, or amendment accurately reflects the policy of the Member or committee for whom it is being drafted.

All communications with the Office are confidential and subject to the attorney-client relationship. Unless otherwise indicated by the Member or staff, no information concerning a request for assistance (including the fact that the request was made) will be disclosed outside the Office.

The Office has a long history of successfully working with opposing sides of legislative policy issues while maintaining confidentiality with respect to communications with each Member. It is, for example, routine for an attorney in the Office who has drafted a bill for a committee to then draft floor amendments for individual Members on all sides of issues raised by the bill.

The pace of the Office varies enormously with the schedule of Congress. A typical week might involve discussions on legislative proposals with Members and their staffs, attendance at committee consideration of a bill and amendments, discussions with counterparts in the Senate and the Executive Branch regarding legislative proposals of common interest, review of the Congressional Record and other legal services and materials regarding matters within the subject areas of the attorney, and the drafting of bills and amendments.

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Office of the Legislative Counsel
136 Cannon House Office Building
Washington, D.C. 20515

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United States Senate

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Character of Services Provided

The Office performs a variety of services relating to the preparation and review of proposed legislation. The Office routinely drafts original measures for introduction in the Senate. The measures range from simple private relief bills to omnibus measures of considerable technical complexity. Frequently, the Office is asked to review drafts of bills prepared in executive agencies and elsewhere, and to make such revisions as may be necessary for technical sufficiency, before introduction in the Senate.

Much of the work of the Office is done at the committee and subcommittee levels. The Office routinely assists subcommittee members in the preparation of amendments required to effectuate policy decisions made by the subcommittee during its consideration of a measure and in the preparation of the measure for reporting to the full committee. Similar assistance is provided to members of the staff of the full committee before the measure is reported for floor action. Assistance also is given in the preparation of any floor amendments by committee members or other Senators. If a conference is requested on a measure, assistance is provided in the preparation of the conference report.

In addition to the preparation and review of proposed legislation, the Office is often consulted by members of the staffs of committees and subcommittees, and by members of the staffs of Senators. The consultations occur regarding possible legislative solutions to particular problems, technical questions of substantive and procedural
law, and the mechanics of preparation of committee reports and the technical and legal sufficiency of those reports.

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Policies Governing the Performance of Duties

While attorneys in the Office do not participate in the formulation of legislative policy, attorneys do discuss the intended policy to ascertain the policy accurately and in adequate detail to draft a bill or amendment that is effective to carry out the intended policy.

The Office serves the committees of the Senate and individual Senators without regard to political considerations. The Committee on Rules and Administration of the Senate establishes the order of priority to be given by the Office to requests for service. The order of priority currently in effect is as follows: (1) measures in conference; (2) amendments to measures pending on the floor of the Senate; (3) amendments to measures pending before committees; and (4) preparation of measures for introduction in the Senate. Within each of these categories, the Office gives priority to requests on the basis of the time of receipt.

All service is provided on a confidential basis, and care is taken to prevent any violation of confidence.

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Responsibilities of the Legislative Drafter

Legislative drafting for Congress is an exacting occupation. Effective drafting requires careful analysis of the legal problems involved, arrangement of matter in a logical sequence, and accurate expression of the concepts set forth. Constitutional limitations must always be observed. Most legislative proposals deal with matters that have been the subject of one or more previous enactments. A new measure must be carefully related to earlier enactments to produce, as far as possible, a consistent body of law that will achieve the congressional purpose without producing unintended consequences. Often, the drafter must work under severe time limitations.

The volume of work of the Office has dramatically increased in recent years. The number of requests for assistance each Congress has nearly doubled during the last five Congresses, rising from 20,757 to 40,079. In addition to the increase in the number of drafts, the drafting of new legislation is becoming increasingly more difficult and time-consuming because of the addition of a number of new subjects of Federal legislation and the increasing technical complexity of Federal statutory law.

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In Fire's Wake, Logging Study Inflames Debate

University Study Challenges Cutting Of Burnt Timber

By Blaine Harden
Washington Post Staff Writer
Monday, February 27, 2006; A03

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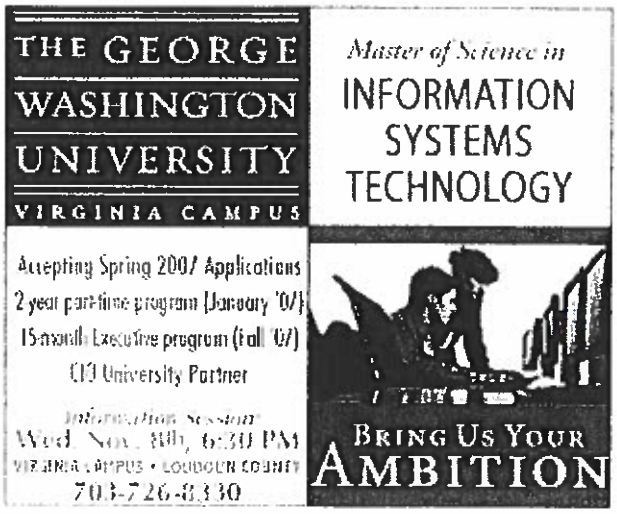

MEDFORD, Ore. -- If fire ravages a national forest, as happened here in southwest Oregon when the Biscuit fire torched a half-million acres four years ago, the Bush administration believes loggers should move in quickly, cut marketable trees that remain and replant a healthy forest.

"We must quickly restore the areas that have been damaged by fire," President Bush said in Oregon four years ago after touring damage from the Biscuit fire. He called it "common sense."

Common sense, though, may not always be sound science. An Oregon State University study has raised an extraordinary ruckus in the Pacific Northwest this winter by saying that logging burned forests does not make much sense.

Logging after the Biscuit fire, the study found, has harmed forest recovery and increased fire risk. What the short study did not say -- but what many critics of the Bush administration are reading into it -- is that the White House has ignored science to please the timber industry. The study is consistent with research findings from around the world that have documented how salvage logging can strip burned forests of the biological diversity that fire and natural recovery help protect.

The study also questions the scientific rationale behind a bill pending in Congress that would ease procedures for post-fire logging in federal forests. This, in turn, has annoyed the bill's lead sponsor, Rep. Greg Walden (R-Ore.), who has received far more campaign money from the forest products industry than from any other source, according to data compiled by the Center for Responsive Politics.

Logging after fires is becoming more and more important to the bottom line of timber companies. It generates about 40 percent of timber volume on the nation's public lands, according to Forest Service data compiled by the World Wildlife Fund, and accounts for nearly half the logging on public land in Oregon.

But there is much more to the dispute than money. The Oregon State study was published in Science, the prestigious peer-reviewed journal. It appeared after a group of professors from the university's College of Forestry, which gets 10 percent of its funding from the timber industry, tried to halt its publication.

Professors behind the failed attempt to keep the article out of Science had earlier written their own non-peer-reviewed study of the Biscuit fire -- a study embraced by the Bush administration and the timber industry. It said post-fire logging and replanting were exactly what was needed to speed growth of big trees and suppress fire.

A couple of weeks after the Science article appeared and infuriated the forest industry, the federal Bureau of Land Management, which footed the bill for the study of the Biscuit fire, cut off the final year of the three-year, $300,000 grant. BLM officials said the authors violated their funding contract by attempting to influence legislation pending in Congress.

After the cutoff, Democrats in the Northwest congressional delegation complained about government censorship, academic freedom and the politicization of science in the Bush administration. Within a week, the BLM backed down and restored the grant.

Oregon State University has officially scolded the forestry professors for inappropriate behavior and praised the authors of the Science article.

Still, the issue is far from over.

On Friday here in Medford, there was a field hearing of the House subcommittee on forests and forest health, which is chaired by Walden, chief sponsor of the forest recovery bill that was cast in a dim light by the Science article.

In this corner of Oregon, where environmentalists and logging interests have been jousting for decades, jawboning about forest policy is a spectator sport. The hearing, held in Medford City Hall, was so packed with spectators that the fire marshal insisted it could begin only after he delivered a stern lecture on emergency exits.

The hearing's star witness -- and principal punching bag -- was Daniel Donato, lead author of the Science article and a graduate student at Oregon State's forestry school. By at least a decade, he was the youngest participant in the hearing. Rail thin and wearing neatly pressed khakis, he looked even younger.

Walden accused Donato, 29, of having failed to tell his federal research supervisor about the findings of his study, as is required by the terms of his research contract with the federal government. Donato conceded that he had not known about the requirement for consultation and that he knows more about it now.

Rep. Brian Baird (D-Wash.), another member of the subcommittee and a co-sponsor of the forest recovery bill, was even more disgruntled. He charged Donato with a long list of professional failings and character flaws, including "deliberate bias," lack of humility and ignorance of statistical theory.

Donato smiled nervously through these attacks and politely -- but firmly -- told the hearing that his article was solid on its facts and fair in its conclusions. He also said the forest study should not be viewed as, nor was it intended to be, the final word on post-fire logging.

After Donato was excused, one of the nation's best-known forest ecologists attempted to summarize the world's collective scientific knowledge on logging after fires. Jerry Franklin, a professor of ecosystem science at the University of Washington's College of Forest Resources, warned the hearing that Congress should be careful not to prescribe salvage logging as a cure-all for every forest fire.

Salvage logging and replanting can often succeed, Franklin said, if the intent is to turn a scorched landscape into a stand of trees for commercial harvest.

If, however, Congress wants to promote the ecologically sound recovery of burned federal forests,

Franklin said, the overwhelming weight of scientific research suggests that "salvage logging is not going to be appropriate."

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Memorandum

To: Legislative Counsel

CC: Chief of Staff

From: Congressman T. R. "Whit" Tompkins

Date: 3/1/2006

Re: Reporting requirements for colleges conducting research with Federal funds

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Please prepare a bill for me which will require any State college receiving Federal funds for conducting a study to submit the study for publication in a peer-reviewed journal. If the college fails to do so, it should be subject to a penalty of $1,000 and required to repay the funds.

tition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) DEFINITIONS.—For purposes of this section—

(1) the term "false claims law" means—

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

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

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

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

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

(7) the term "product of discovery" includes—

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

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A).

(Added Pub. L. 99-562, § 6(a), Oct. 27, 1986, 100 Stat. 3159.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(1)(B), (c)(2), (h)(1), and (j)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The date of enactment of this section, referred to in subsec. (l)(1)(B), is the date of enactment of Pub. L. 99-562, which was approved Oct. 27, 1986.

CHAPTER 38—ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

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3812.	Prohibition against delegation.

AMENDMENTS

1995—Pub. L. 104-66, title III, § 3001(c)(2), Dec. 21, 1995, 109 Stat. 734, struck out item 3810 "Reports".

§ 3801. Definitions

(a) For purposes of this chapter—

(1) "authority" means—

(A) an executive department;

(B) a military department;

(C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; and

(D) the United States Postal Service;

(2) "authority head" means—

(A) the head of an authority; or

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

(3) "claim" means any request, demand, or submission—

(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

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

(I) provided such property or services;

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

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

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

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

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money,

except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) "investigating official" means an individual who—

(A)(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule;

(5) "knows or has reason to know", for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

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

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

(C) acts in reckless disregard of the truth or falsity of the claim or statement,

and no proof of specific intent to defraud is required;

(6) "person" means any individual, partnership, corporation, association, or private organization;

(7) "presiding officer" means—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

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

(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;

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

(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;

(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

(8) "reviewing official" means any officer or employee of an authority—

(A) who is designated by the authority head to make the determination required under section 3803(a)(2) of this title;

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule; and

(C) who is—

(i) not subject to supervision by, or required to report to, the investigating official; and

(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and

(9) "statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

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

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

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

(ii) a grant, loan, or benefit from,

an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

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

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

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

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

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

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

(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(Added Pub. L. 99-509, title VI, § 6103(a), Oct. 21, 1986, 100 Stat. 1934; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-272, § 4(f)(1)(Q), July 5, 1994, 108 Stat. 1362.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(1)(C), (4)(A), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Internal Revenue Code of 1986, referred to in subsec. (a)(3), (9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a)(7)(B)(ii). Pub. L. 103-272 substituted "section 3803 of this title" for "section 3803 of such title".

1986—Subsec. (a)(3), (9). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

EFFECTIVE DATE

Section 6104 of subtitle B (§§ 6101-6104) of title VI of Pub. L. 99-509 provided that: "This subtitle and the amendments made by this subtitle [see Short Title note below] shall take effect on the date of enactment of this Act [Oct. 21, 1986], and shall apply to any claim or statement made, presented, or submitted on or after such date."

SHORT TITLE

Section 6101 of subtitle B (§§ 6101-6104) of title VI of Pub. L. 99-509 provided that: "This subtitle [enacting this chapter, amending section 504 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Program Fraud Civil Remedies Act of 1986'."

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

CONGRESSIONAL FINDINGS AND PURPOSES

Section 6102 of subtitle B (§§ 6101-6104) of title VI of Pub. L. 99-509 provided that:

"(a) FINDINGS.—The Congress finds that—

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

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

"(3) false, fictitious, and fraudulent claims and statements in Government programs undermine the integrity of such programs by allowing ineligible persons to participate in such programs; and

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

"(b) PURPOSES.—The purposes of this subtitle [see Short Title note above] are—

"(1) to provide Federal agencies which are the victims of false, fictitious, and fraudulent claims and statements with an administrative remedy to recompense such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present, or submit such claims and statements, and to deter the making, presenting, and submitting of such claims and statements in the future; and

"(2) to provide due process protections to all persons who are subject to the administrative adjudication of false, fictitious, or fraudulent claims or statements."

§ 3802. False claims and statements; liability

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

(A) is false, fictitious, or fraudulent;

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

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

(i) omits a material fact;

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

(iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(A) the person knows or has reason to know—

(i) asserts a material fact which is false, fictitious, or fraudulent; or

(ii)(I) omits a material fact; and

(II) is false, fictitious, or fraudulent as a result of such omission;

(B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.

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

(A) a determination under section 3803(a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section,

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

(2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

(3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

(Added Pub. L. 99–509, title VI, § 6103(a), Oct. 21, 1986, 100 Stat. 1937.)

§ 3803. Hearing and determinations

(a)(1) The investigating official of an authority may investigate allegations that a person is liable under section 3802 of this title and shall report the findings and conclusions of such investigation to the reviewing official of the authority. The preceding sentence does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(2) If the reviewing official of an authority determines, based upon the report of the investigating official under paragraph (1) of this subsection, that there is adequate evidence to believe that a person is liable under section 3802 of this title, the reviewing official shall transmit to the Attorney General a written notice of the intention of such official to refer the allegations of such liability to a presiding officer of such authority. Such notice shall include—

(A) a statement of the reasons of the reviewing official for the referral of such allegations;

(B) a statement specifying the evidence which supports such allegations;

(C) a description of the claims or statements for which liability under section 3802 of this title is alleged;

(D) an estimate of the amount of money or the value of property or services requested or demanded in violation of section 3802 of this title; and

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

(b)(1) Within 90 days after receipt of a notice from a reviewing official under paragraph (2) of subsection (a), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official which specifies—

(A) that the Attorney General or such Assistant Attorney General approves or disapproves the referral to a presiding officer of the allegations of liability stated in such notice;

(B) in any case in which the referral of allegations is approved, that the initiation of a proceeding under this section with respect to such allegations is appropriate; and

(C) in any case in which the referral of allegations is disapproved, the reasons for such disapproval.

(2) A reviewing official may refer allegations of liability to a presiding officer only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of such allegations in a written statement described in paragraph (1) of this subsection.

(3) If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to an authority head a written finding that the continuation of any hearing under this section with respect to a claim or