

Calendar No. 60

112TH CONGRESS
1ST SESSION**S. 890**

To establish the supplemental fraud fighting account, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2011

Mr. LEAHY (for himself, Mr. GRASSLEY, Ms. KLOBUCHAR, and Mr. COONS)
introduced the following bill; which was read twice and referred to the
Committee on the Judiciary

MAY 19, 2011

Reported by Mr. LEAHY, without amendment

A BILL

To establish the supplemental fraud fighting account, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fighting Fraud to Pro-
5 tect Taxpayers Act of 2011”.

1 **SEC. 2. DEPARTMENT OF JUSTICE WORKING CAPITAL**
2 **FUND REFORMS.**

3 Section 11013(a) of the 21st Century Department of
4 Justice Appropriations Authorization Act (28 U.S.C. 527
5 note) is amended—

6 (1) by striking “Notwithstanding” and insert-
7 ing the following:

8 “(1) DEFINITIONS.—In this subsection—

9 “(A) the term ‘covered amounts’ means—

10 “(i) the unobligated balances in the
11 debt collection management account; and

12 “(ii) the unobligated balances in the
13 supplemental fraud fighting account;

14 “(B) the term ‘debt collection management
15 account’ means the account established in the
16 Department of Justice Working Capital Fund
17 under paragraph (2);

18 “(C) the term ‘fraud offense’ includes—

19 “(i) an offense under section 30A of
20 the Securities Exchange Act of 1934 (15
21 U.S.C. 78dd–1) and an offense under sec-
22 tion 104 or 104A of the Foreign Corrupt
23 Practices Act of 1977 (15 U.S.C. 78dd–2
24 and 78dd–3);

1 “(ii) a securities fraud offense, as de-
2 fined in section 3301 of title 18, United
3 States Code;

4 “(iii) a fraud offense relating to a fi-
5 nancial institution or a federally related
6 mortgage loan, as defined in section 3 of
7 the Real Estate Settlement Procedures Act
8 of 1974 (12 U.S.C. 2602), including an of-
9 fense under section 152, 157, 1004, 1005,
10 1006, 1007, 1011, or 1014 of title 18,
11 United States Code;

12 “(iv) an offense involving procurement
13 fraud, including defective pricing, bid rig-
14 ging, product substitution, misuse of clas-
15 sified or procurement sensitive informa-
16 tion, grant fraud, fraud associated with
17 labor mischarging, and fraud involving for-
18 eign military sales;

19 “(v) an offense under the Internal
20 Revenue Code of 1986 involving fraud;

21 “(vi) an action under subchapter III
22 of chapter 37 of title 31, United States
23 Code (commonly known as the ‘False
24 Claims Act’), and an offense under chapter
25 15 of title 18, United States Code;

1 “(vii) an offense under section 1029,
2 1030, or 1031 of title 18, United States
3 Code; and

4 “(viii) an offense under chapter 63 of
5 title 18, United States Code; and

6 “(D) the term ‘supplemental fraud fighting
7 account’ means the supplemental fraud fighting
8 account established in the Department of Jus-
9 tice Working Capital Fund under paragraph
10 (3)(A).

11 “(2) DEBT COLLECTION MANAGEMENT AC-
12 COUNT.—Notwithstanding”;

13 (2) by striking “Such amounts” and inserting
14 “Subject to paragraph (4), such amounts”; and

15 (3) by adding at the end the following:

16 “(3) SUPPLEMENTAL FRAUD FIGHTING AC-
17 COUNT.—

18 “(A) ESTABLISHMENT.—There is estab-
19 lished as a separate account in the Department
20 of Justice Working Capital Fund established
21 under section 527 of title 28, United States
22 Code, a supplemental fraud fighting account.

23 “(B) CREDITING OF AMOUNTS.—Notwith-
24 standing section 3302 of title 31, United States
25 Code, or any other statute affecting the cred-

1 iting of collections, the Attorney General may
2 credit, as an offsetting collection, to the supple-
3 mental fraud fighting account up to 0.5 percent
4 of all amounts collected pursuant to civil debt
5 collection litigation activities of the Department
6 of Justice.

7 “(C) USE OF FUNDS.—

8 “(i) IN GENERAL.—Subject to clause
9 (ii), the Attorney General may use
10 amounts in the supplemental fraud fight-
11 ing account for the cost (including equip-
12 ment, salaries and benefits, travel and
13 training, and interagency task force oper-
14 ations) of the investigation of and conduct
15 of criminal, civil, or administrative pro-
16 ceedings relating to fraud offenses.

17 “(ii) LIMITATION.—The Attorney
18 General may not use amounts in the sup-
19 plemental fraud fighting account for the
20 cost of the investigation of or the conduct
21 of criminal, civil, or administrative pro-
22 ceedings relating to—

23 “(I) an offense under section
24 30A of the Securities Exchange Act of
25 1934 (15 U.S.C. 78dd-1); or

1 “(II) an offense under section
2 104 or 104A of the Foreign Corrupt
3 Practices Act of 1977 (15 U.S.C.
4 78dd-2 and 78dd-3).

5 “(D) CONDITIONS.—Subject to paragraph
6 (4), amounts in the supplemental fraud fighting
7 account shall remain available until expended
8 and shall be subject to the terms and conditions
9 of the Department of Justice Working Capital
10 Fund.

11 “(4) MAXIMUM AMOUNT.—

12 “(A) IN GENERAL.—There are rescinded
13 all covered amounts in excess of \$175,000,000
14 at the end of fiscal year 2012 and the end of
15 each fiscal year thereafter.

16 “(B) RATIO.—For any rescission under
17 subparagraph (A), the Secretary of the Treas-
18 ury shall rescind amounts from the debt collec-
19 tion management account and the supplemental
20 fraud fighting account in a ratio of 6 dollars to
21 1 dollar, respectively.

22 “(5) ANNUAL REPORT.—Not later than 6
23 months after the date of enactment of the Taxpayer
24 Protection and Fraud Enforcement Act of 2011, and
25 every year thereafter, the Attorney General shall

1 submit to Congress a report that identifies, for the
2 most recent fiscal year before the date of the re-
3 port—

4 “(A) the amount credited to the debt col-
5 lection management account and the amount
6 credited to the supplemental fraud fighting ac-
7 count from civil debt collection litigation, which
8 shall include, for each account—

9 “(i) a comprehensive description of
10 the source of the amount credited; and

11 “(ii) a list the civil actions and settle-
12 ments from which amounts were collected
13 and credited to the account;

14 “(B) the amount expended from the debt
15 collection management account for civil debt
16 collection, which shall include a comprehensive
17 description of the use of amounts in the ac-
18 count that identifies the amount expended for—

19 “(i) paying the costs of processing
20 and tracking civil and criminal debt-collec-
21 tion litigation;

22 “(ii) financial systems;

23 “(iii) debt-collection-related personnel
24 expenses;

1 “(iv) debt-collection-related adminis-
2 trative expenses; and

3 “(v) debt-collection-related litigation
4 expenses;

5 “(C) the amounts expended from the sup-
6 plemental fraud fighting account and the jus-
7 tification for the expenditure of such amounts;
8 and

9 “(D) the unobligated balance in the debt
10 collection management account and the unobli-
11 gated balance in the supplemental fraud fight-
12 ing account at the end of the fiscal year.”.

13 **SEC. 3. REIMBURSEMENT OF COSTS AWARDED IN FALSE**
14 **CLAIMS ACT PROSECUTIONS.**

15 Section 3729(a)(3) of title 31, United States Code,
16 is amended by adding at the end the following: “Any costs
17 paid under this paragraph shall be credited to the appro-
18 priations accounts of the executive agency from which the
19 funds used for the costs of the civil action were paid.”.

20 **SEC. 4. INTERLOCUTORY APPEALS OF SUPPRESSION OR**
21 **EXCLUSION OF EVIDENCE.**

22 Section 3731 of title 18, United States Code, is
23 amended in the second undesignated paragraph by insert-
24 ing “Attorney General, the Deputy Attorney General, an

1 Assistant Attorney General, or the” after “an indictment
2 or information, if the”.

3 **SEC. 5. EXTENSION OF INTERNATIONAL MONEY LAUN-**
4 **DERING STATUTE TO TAX EVASION CRIMES.**

5 Section 1956(a)(2)(A) of title 18, United States
6 Code, is amended—

7 (1) by striking “intent to promote—” and in-
8 serting the following: “intent to—

9 “(i) promote”; and

10 (2) by adding at the end the following:

11 “(ii) engage in conduct constituting a vio-
12 lation of section 7201 or 7206 of the Internal
13 Revenue Code of 1986; or”.

14 **SEC. 6. STRENGTHENING THE PROHIBITION AGAINST**
15 **TRAFFICKING IN PASSWORDS.**

16 Section 1030(a)(6) of title 18, United States Code,
17 is amended—

18 (1) in the matter preceding subparagraph (A),
19 by inserting “protected” before “computer”; and

20 (2) by striking “, if—” and all that follows and
21 inserting “; or”.

22 **SEC. 7. CLARIFYING VENUE FOR FEDERAL MAIL FRAUD OF-**
23 **FENSES.**

24 (a) IN GENERAL.—Section 3237(a) of title 18,
25 United States Code, is amended in the second undesig-

1 nated paragraph by adding before the period at the end
 2 the following: “or in any district in which an act in fur-
 3 therance of the offense is committed”.

4 (b) SECTION HEADING.—Section 3237 of title 18,
 5 United States Code, is amended in the section heading by
 6 striking “**begun**” and all that follows and inserting
 7 “**taking place in more than one district**”.

8 (c) TABLE OF SECTIONS.—The table of sections for
 9 chapter 211 of title 18, United States Code, is amended
 10 by striking the item relating to section 3237 and inserting
 11 the following:

“3237. Offenses taking place in more than one district.”.

12 **SEC. 8. EXPANSION OF AUTHORITY OF SECRET SERVICE.**

13 Section 3056 of title 18, United States Code, is
 14 amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1)—

17 (i) by inserting “641, 656, 657,” after
 18 “510,”; and

19 (ii) by striking “493, 657,” and in-
 20 serting “493,”; and

21 (B) in paragraph (3), by striking “feder-
 22 ally insured”; and

23 (2) by adding at the end the following:

24 “(h)(1) For any undercover investigative operation of
 25 the United States Secret Service that is necessary for the

1 detection and prosecution of a crime against the United
2 States, the United States Secret Service may—

3 “(A) use amounts appropriated for the United
4 States Secret Service, including unobligated balances
5 available from prior fiscal years, to—

6 “(i) purchase property, buildings, and
7 other facilities and lease space within the
8 United States (including the District of Colum-
9 bia and the territories and possessions of the
10 United States), without regard to sections 1341
11 and 3324 of title 31, section 8141 of title 40,
12 and sections 3901, 4501 through 4506, 6301,
13 and 6306(a) of title 41; and

14 “(ii) establish, acquire, and operate on a
15 commercial basis proprietary corporations and
16 business entities as part of the undercover in-
17 vestigative operation, without regard to sections
18 9102 and 9103 of title 31;

19 “(B) deposit in banks and other financial insti-
20 tutions amounts appropriated for the United States
21 Secret Service, including unobligated balances avail-
22 able from prior fiscal years, and the proceeds from
23 the undercover investigative operation, without re-
24 gard to section 648 of this title and section 3302 of
25 title 31; and

1 “(C) use the proceeds from the undercover in-
2 vestigative operation to offset necessary and reason-
3 able expenses incurred in the undercover investiga-
4 tive operation, without regard to section 3302 of
5 title 31.

6 “(2) The authority under paragraph (1) may be exer-
7 cised only upon a written determination by the Director
8 of the United States Secret Service (in this subsection re-
9 ferred to as the ‘Director’) that the action being author-
10 ized under paragraph (1) is necessary for the conduct of
11 an undercover investigative operation. A determination
12 under this paragraph may continue in effect for the dura-
13 tion of an undercover investigative operation, without fis-
14 cal year limitation.

15 “(3) If the Director authorizes the proceeds from an
16 undercover investigative operation to be used as described
17 in subparagraph (B) or (C) of paragraph (1), as soon as
18 practicable after the proceeds are no longer necessary for
19 the conduct of the undercover investigative operation, the
20 proceeds remaining shall be deposited in the general fund
21 of the Treasury as miscellaneous receipts.

22 “(4) As early as the Director determines practicable
23 before the date on which a corporation or business entity
24 established or acquired under paragraph (1)(A)(ii) with a
25 net value of more than \$50,000 is to be liquidated, sold,

1 or otherwise disposed of, the Director shall notify the Sec-
2 retary of Homeland Security regarding the circumstances
3 of the corporation or business entity and the liquidation,
4 sale, or other disposition. The proceeds of the liquidation,
5 sale, or other disposition, after obligations are met, shall
6 be deposited in the general fund of the Treasury as mis-
7 cellaneous receipts.

8 “(5)(A) The Director shall—

9 “(i) on a quarterly basis, conduct detailed fi-
10 nancial audits of closed undercover investigative op-
11 erations for which a written determination is made
12 under paragraph (2); and

13 “(ii) submit to the Secretary of Homeland Se-
14 curity a written report of the results of each audit
15 conducted under clause (i).

16 “(B) On the date on which the budget of the Presi-
17 dent is submitted under section 1105(a) of title 31 for
18 each year, the Secretary of Homeland Security shall sub-
19 mit to the Committee on Appropriations of the Senate and
20 the Committee on Appropriations of the House of Rep-
21 resentatives a report summarizing the audits conducted
22 under subparagraph (A)(i) relating to the previous fiscal
23 year.”.

1 **SEC. 9. FALSE CLAIMS SETTLEMENTS.**

2 (a) **REPORTS BY ATTORNEY GENERAL.**—Not later
3 than November 1 of each year, the Attorney General shall
4 submit to the Committee on the Judiciary of the Senate
5 and the Committee on the Judiciary of the House of Rep-
6 resentatives a report that describes each settlement or
7 compromise of any claim, suit, or other action entered into
8 with the Department of Justice that—

9 (1) relates to an alleged violation of section
10 1031 of title 18, United States Code, or section
11 3729 of title 31, United States Code (including all
12 settlements of alternative remedies); and

13 (2) results from a claim for damages of more
14 than \$100,000.

15 (b) **CONTENTS OF REPORTS.**—The description of
16 each settlement or compromise required to be included in
17 an annual report under subsection (a) shall include—

18 (1) the total amount of the settlement or com-
19 promise and the portions of the settlement attrib-
20 utable to violations of various statutory authorities;

21 (2) the amount of actual damages, or if the
22 amount of actual damages is not available a good
23 faith estimate of the damages, that have been sus-
24 tained and the minimum and maximum potential
25 civil penalties that may be incurred as a consequence

1 of the conduct of the defendant that is the subject
2 of the settlement or compromise;

3 (3) the basis for any estimate of damages sus-
4 tained and the potential civil penalties incurred;

5 (4) the amount of the settlement that rep-
6 resents damages and the multiplier or percentage of
7 the actual damages used in determining the amount
8 to be paid under the settlement or compromise;

9 (5) the amount of the settlement that rep-
10 represents civil penalties and the percentage of the
11 maximum potential civil penalty to be paid under the
12 settlement or compromise;

13 (6) the amount of the settlement that rep-
14 represents criminal fines and a statement of the basis
15 for the fines;

16 (7) a description of the period during which the
17 matter to which the settlement or compromise re-
18 lates was pending, including—

19 (A) the date on which the complaint was
20 originally filed;

21 (B) a description of the period the matter
22 remained under seal;

23 (C) the date on which the Department of
24 Justice determined whether to intervene in the
25 case; and

1 (D) the date on which the settlement or
2 compromise was finalized;

3 (8) whether a defendant or any division, sub-
4 sidiary, affiliate, or related entity of a defendant had
5 previously entered into a settlement or compromise
6 relating to section 1031 of title 18, United States
7 Code, or section 3730(b) of title 31, United States
8 Code, and, if so, the date of and amount to be paid
9 under each such settlement or compromise;

10 (9) whether a defendant or any division, sub-
11 sidiary, affiliate, or related entity of a defendant—

12 (A) entered into a corporate integrity
13 agreement relating to the settlement or com-
14 promise;

15 (B) entered into a deferred prosecution
16 agreement or nonprosecution agreement relat-
17 ing to the settlement or compromise; or

18 (C)(i) previously entered into—

19 (I) a corporate integrity agreement re-
20 lating to a settlement or compromise relat-
21 ing to a different violation of section
22 3730(b) of title 31, United States Code; or

23 (II) a deferred prosecution agreement
24 or nonprosecution agreement relating to a
25 settlement or compromise relating to a dif-

1 ferent violation of section 1031 of title 18,
2 United States Code; and

3 (ii) if the defendant had entered an agree-
4 ment described in clause (i), whether the agree-
5 ment applied to the conduct that is the subject
6 of the settlement or compromise described in
7 the report or similar conduct;

8 (10) for a settlement involving Medicaid, the
9 amounts paid to the Federal Government and to
10 each State participating in the settlement or com-
11 promise;

12 (11) whether civil investigative demands were
13 issued in process of investigating the matter to
14 which the settlement or compromise relates;

15 (12) for a qui tam action—

16 (A) the percentage of the settlement
17 amount awarded to the relator; and

18 (B) whether the relator requested a fair-
19 ness hearing relating to the percentage received
20 by the relator or the total amount of the settle-
21 ment;

22 (13) the extent to which officers of the agency
23 that was the victim of the loss resolved by the settle-
24 ment or compromise participated in the settlement
25 negotiations; and

1 (14) the extent to which a relator or counsel for
2 a relators participated in the settlement negotia-
3 tions.

4 **SEC. 10. AGGRAVATED IDENTITY THEFT AND FRAUD.**

5 (a) IN GENERAL.—Section 1028A of title 18, United
6 States Code, is amended in the section heading by adding
7 **“and fraud”** at the end.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—
9 The table of sections for chapter 47 of title 18, United
10 States Code, is amended by striking the item relating to
11 section 1028A and inserting the following:

“1028A. Aggravated identity theft and fraud.”.

12 **SEC. 11. FRAUD AND RELATED ACTIVITY IN CONNECTION**
13 **WITH IDENTIFICATION DOCUMENTS, AU-**
14 **TENTICATION FEATURES, AND INFORMA-**
15 **TION.**

16 (a) IN GENERAL.—Section 1028(a)(7) of title 18,
17 United States Code, is amended by inserting “(including
18 an organization)” after “person”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—
20 The table of sections for chapter 47 of title 18, United
21 States Code, is amended by striking the item relating to
22 section 1028 and inserting the following:

“1028. Fraud and related activity in connection with identification documents,
authentication features, and information.”.

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