

Calendar No. 162

117TH CONGRESS
1ST SESSION**S. 2429**

To amend chapter 38 of title 31, United States Code, relating to civil remedies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

Mr. GRASSLEY (for himself, Mr. DURBIN, Ms. HASSAN, Mr. LANKFORD, Mr. PORTMAN, Mr. BLUMENTHAL, Mr. LEAHY, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 1, 2021

Reported by Mr. DURBIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend chapter 38 of title 31, United States Code, relating to civil remedies, 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 “Administrative False
5 Claims Act of 2021”.

1 **SEC. 2. ADMINISTRATIVE FALSE CLAIMS.**

2 (a) CHANGE IN SHORT TITLE.—

3 (1) IN GENERAL.—Subtitle B of title VI of the
4 Omnibus Budget Reconciliation Act of 1986 (Public
5 Law 99–509; 100 Stat. 1934) is amended—

6 (A) in the subtitle heading, by striking
7 **“Program Fraud Civil Remedies”** and
8 inserting **“Administrative False**
9 **Claims”**; and

10 (B) in section 6101 (31 U.S.C. 3801 note),
11 by striking “Program Fraud Civil Remedies Act
12 of 1986” and inserting “Administrative False
13 Claims Act”.

14 (2) REFERENCES.—Any reference to the Pro-
15 gram Fraud Civil Remedies Act of 1986 in any pro-
16 vision of law, regulation, map, document, record, or
17 other paper of the United States shall be deemed a
18 reference to the Administrative False Claims Act.

19 (b) REVERSE FALSE CLAIMS.—Chapter 38 of title
20 31, United States Code, is amended—

21 (1) in section 3801(a)(3), by amending sub-
22 paragraph (C) to read as follows:

23 “(C) made to an authority which has the
24 effect of concealing or improperly avoiding or
25 decreasing an obligation to pay or transmit

1 property, services, or money to the authority.”;
 2 and

3 (2) in section 3802(a)(3)—

4 (A) by striking “An assessment” and in-
 5 serting “(A) Except as provided in subpara-
 6 graph (B), an assessment”; and

7 (B) by adding at the end the following:

8 “(B) In the case of a claim described in section
 9 3801(a)(3)(C), an assessment shall not be made
 10 under the second sentence of paragraph (1) in an
 11 amount that is more than double the value of the
 12 property, services, or money that was wrongfully
 13 withheld from the authority.”.

14 (c) INCREASING DOLLAR AMOUNT OF CLAIMS.—Sec-
 15 tion 3803(c) of title 31, United States Code, is amended—

16 (1) in paragraph (1), by striking “\$150,000”
 17 each place that term appears and inserting
 18 “\$1,000,000”; and

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

20 ~~“(3) ADJUSTMENT FOR INFLATION.—The max-~~
 21 ~~imum amount in paragraph (1) shall be adjusted for~~
 22 ~~inflation in the same manner and to the same extent~~
 23 ~~as civil monetary penalties under the Federal Civil~~
 24 ~~Penalties Inflation Adjustment Act (28 U.S.C. 2461~~
 25 ~~note).~~

1 “(3) *ADJUSTMENT FOR INFLATION.*—*The maximum*
 2 *amount in paragraph (1) shall be adjusted for inflation in*
 3 *the same manner and to the same extent as civil monetary*
 4 *penalties under the Federal Civil Penalties Inflation Ad-*
 5 *justment Act (28 U.S.C. 2461 note).’’.*

6 (d) RECOVERY OF COSTS.—Section 3806(g)(1) of
 7 title 31, United States Code, is amended to read as fol-
 8 lows:

9 “(1)(A) Except as provided in paragraph (2)—

10 “(i) any amount collected under this chapter
 11 shall be credited first to reimburse the authority or
 12 other Federal entity that expended costs in support
 13 of the investigation or prosecution of the action, in-
 14 cluding any court or hearing costs; and

15 “(ii) amounts reimbursed under clause (i)
 16 shall—

17 “(I) be deposited in—

18 “(aa) the appropriations account of
 19 the authority or other Federal entity from
 20 which the costs described in subparagraph
 21 (A) were obligated;

22 “(bb) a similar appropriations account
 23 of the authority or other Federal entity; or

1 “(cc) if the authority or other Federal
 2 entity expended nonappropriated funds,
 3 another appropriate account; and

4 “(II) remain available until expended.

5 “(B) Any amount remaining after reimbursements
 6 described in subparagraph (A) shall be deposited as mis-
 7 cellaneous receipts in the Treasury of the United States.”.

8 (e) SEMIANNUAL REPORTING.—Section 5(b) of the
 9 Inspector General Act of 1978 (5 U.S.C. App.) is amend-
 10 ed—

11 (1) in paragraph (4), by striking “and” at the
 12 end;

13 (2) by redesignating paragraph (5) as para-
 14 graph (6); and

15 (3) by inserting after paragraph (4) the fol-
 16 lowing:

17 “(5) information relating to cases under chap-
 18 ter 38 of title 31, United States, including—

19 “(A) the number of reports submitted by
 20 investigating officials to reviewing officials
 21 under section 3803(a)(1) of title 31, United
 22 States Code;

23 “(B) actions taken in response to reports
 24 described in subparagraph (A), which shall in-
 25 clude statistical tables showing—

- 1 “(i) pending cases;
 2 “(ii) resolved cases;
 3 “(iii) the average length of time to re-
 4 solve each case;
 5 “(iv) the number of final agency deci-
 6 sions that were appealed to a district court
 7 of the United States or a higher court; and
 8 “(v) if the total number of cases in a
 9 report is greater than 2—
 10 “(I) the number of cases that
 11 were settled; and
 12 “(II) the total penalty or assess-
 13 ment amount recovered in each case,
 14 including through a settlement or
 15 compromise; and
 16 “(C) instances in which the reviewing offi-
 17 cial declined to proceed on a case reported by
 18 an investigating official; and”.

19 (f) INCREASING EFFICIENCY OF DOJ PROC-
 20 ESSING.—Title 31, United States Code, is amended—

21 (1) in section 3803(j)—

22 (A) by inserting “(1)” before “The review-
 23 ing”; and

24 (B) by adding at the end the following:

1 “(2) A reviewing official shall notify the Attorney
 2 General in writing not later than 30 days before entering
 3 into any agreement to compromise or settle allegations of
 4 liability under section 3802 of this title and before the
 5 date on which the reviewing official is permitted to refer
 6 allegations of liability to a presiding officer under sub-
 7 section (b).”; ~~and~~

8 *(2) in the table of sections for chapter 38, by*
 9 *striking the item relating to section 3812 and insert-*
 10 *ing the following:*

“3812. Delegation authority.”; and

11 ~~(2)~~(3) in section 3812—

12 (A) in the section heading, by striking
 13 **“Prohibition against delegation”** and
 14 inserting **“Delegation authority”**; and

15 (B) by striking “, shall not be delegated to,
 16 or carried out by,” and inserting “may be dele-
 17 gated to”.

18 (g) REVISION OF DEFINITION OF HEARING OFFI-
 19 CIALS.—

20 (1) IN GENERAL.—Chapter 38 of title 31,
 21 United States Code, is amended—

22 (A) in section 3801(a)(7)—

23 (i) in subparagraph (A), by striking
 24 “or” at the end;

1 (ii) in subparagraph (B)(vii), by add-
 2 ing “or” at the end; and

3 (iii) by adding at the end the fol-
 4 lowing:

5 “(C) a member of the board of contract
 6 appeals pursuant to section 7105 of title 41, if
 7 the authority does not employ an available pre-
 8 siding officer under subparagraph (A);”; and

9 (B) in section 3803(d)(2)—

10 (i) in subparagraph (A), by striking
 11 “and” at the end;

12 (ii) in subparagraph (B)—

13 (I) by striking “the presiding”
 14 and inserting “(i) in the case of a re-
 15 ferral to a presiding officer described
 16 in subparagraph (A) or (B) of section
 17 3801(a)(7), the presiding”;

18 (II) in clause (i), as so des-
 19 ignated, by *striking the period at the*
 20 *end and inserting “; or”* ~~adding “or”~~
 21 ~~at the end~~; and

22 (III) by adding at the end the
 23 following:

1 “(ii) in the case of a referral to a presiding
2 officer described in subparagraph (C) of section
3 3801(a)(7)—

4 “(I) the reviewing official shall submit
5 a copy of the notice required by under
6 paragraph (1) and of the response of the
7 person receiving such notice requesting a
8 hearing—

9 “(aa) to the board of contract
10 appeals that has jurisdiction over
11 matters arising from the agency of the
12 reviewing official pursuant to section
13 7105(e)(1) of title 41; or

14 “(bb) if the Chair of the board of
15 contract appeals declines to accept the
16 referral, to any other board of con-
17 tract appeals; and

18 “(II) the reviewing official shall simul-
19 taneously mail, by registered or certified
20 mail, or shall deliver, notice to the person
21 alleged to be liable under section 3802 that
22 the referral has been made to an agency
23 board of contract appeals with an expla-
24 nation as to where the person may obtain

1 the relevant rules of procedure promul-
 2 gated by the board; *and*”; and

3 (iii) by adding at the end the fol-
 4 lowing:

5 “(C) in the case of a hearing conducted by
 6 a presiding officer described in subparagraph
 7 (C) of section 3801(a)(7)—

8 “(i) the presiding officer shall conduct
 9 the hearing according to the rules and pro-
 10 cedures promulgated by the board of con-
 11 tract appeals; and

12 “(ii) the hearing shall not be subject
 13 to the provisions in subsection (g)(2), (h),
 14 or (i).”.

15 (2) AGENCY BOARDS.—Section 7105(e) of title
 16 41, United States Code, is amended—

17 (A) in paragraph (1), by adding at the end
 18 the following:

19 “(E) ADMINISTRATIVE FALSE CLAIMS
 20 ACT.—

21 “(i) IN GENERAL.—The boards de-
 22 scribed in subparagraphs (B), (C), and (D)
 23 shall have jurisdiction to hear any case re-
 24 ferred to a board of contract appeals under
 25 section 3803(d) of title 31.

1 “(ii) DECLINING REFERRAL.—If the
 2 Chair of a board described in subpara-
 3 graph (B), (C), or (D) determines that ac-
 4 cepting a case under clause (i) would pre-
 5 vent adequate consideration of other cases
 6 being handled by the board, the Chair may
 7 decline to accept the referral.”; and

8 (B) in paragraph (2), by inserting “or, in
 9 the event that a case is filed under chapter 38
 10 of title 31, any relief that would be available to
 11 a litigant under that chapter” before the period
 12 at the end.

13 (3) REGULATIONS.—Not later than 180 days
 14 after the date of enactment of this Act, each author-
 15 ity head, as defined in section 3801 of title 31,
 16 United States Code, and each board of contract ap-
 17 peals of a board described in subparagraphs (B),
 18 (C), and (D) of section 7105(e) of title 41, United
 19 States Code, shall amend procedures regarding pro-
 20 ceedings as necessary to implement the amendments
 21 made by this subsection.

22 (h) REVISION OF LIMITATIONS.—Section 3808 of
 23 title 31, United States Code, is amended by striking sub-
 24 section (a) and inserting the following:

1 “(a) A notice to the person alleged to be liable with
 2 respect to a claim or statement shall be mailed or delivered
 3 in accordance with section 3803(d)(1) of this title not later
 4 than the later of—

5 “(1) 6 years after the date on which the viola-
 6 tion of section 3802 of this title is committed; or

7 “(2) 3 years after the date on which facts mate-
 8 rial to the action are known or reasonably should
 9 have been known by the authority head, but in no
 10 event more than 10 years after the date on which
 11 the violation is committed.”.

12 (i) DEFINITIONS.—Section 3801 of title 31, United
 13 States Code, is amended—

14 (1) in subsection (a)—

15 (A) in paragraph (8), by striking “and” at
 16 the end;

17 (B) in paragraph (9), by striking the pe-
 18 riod at the end and inserting a semicolon; and

19 (C) by adding at the end the following:

20 “(10) ‘material’ has the meaning given the term
 21 in section 3729(b) of this title; and

22 “(11) ‘obligation’ has the meaning given the
 23 term in section 3729(b) of this title.”; and

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

1 “(d) For purposes of subsection (a)(10), materiality
2 shall be determined in the same manner as under section
3 3729 of this title.”.

4 (j) PROMULGATION OF REGULATIONS.—Not later
5 than 180 days after the date of enactment of this Act,
6 each authority head, as defined in section 3801 of title
7 31, United States Code, shall—

8 (1) promulgate regulations and procedures to
9 carry out this Act and the amendments made by this
10 Act; and

11 (2) review and update existing regulations and
12 procedures of the authority to ensure compliance
13 with this Act and the amendments made by this Act.

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