

## **Risk of False Claims Act Liability for Claimants of Federal “Bailout” Funds**

**December 22, 2008**

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (EESA) was signed into law. The EESA authorized the Secretary of the Treasury to purchase troubled assets with taxpayer funds up to a limit of \$700 billion. Through the Troubled Assets Relief Program (TARP) and the Capital Purchase Program (CPP), the Department of Treasury has made about half of that capital available to financial institutions.

In a November 17, 2008 letter to the U.S. Department of Justice and the U.S. Department of the Treasury, Senator Chuck Grassley (R-Iowa) urged the use of the provisions of the False Claims Act (FCA) against those who use false or fraudulent submissions to obtain federal “bailout” funds through the TARP or CPP, and strongly encouraged whistleblowers to report any fraud with respect to such funds. Senator Grassley stated that he believed the “FCA can and will play an important role in preventing, deterring, and prosecuting fraud against the TARP and CPP.” Senator Grassley called on Treasury Secretary Henry Paulson and Attorney General Michael Mukasey to “both work to ensure that all entities participating in the TARP or CPP are made aware that allegations of fraud, waste, or abuse will be treated seriously.”

Senator Grassley called the FCA an “effective deterrent to fraud against the Government” and lauded the “courageous whistleblowers who risk their jobs and livelihoods to bring forth allegations of fraud, waste, and abuse of taxpayer monies.” Senator Grassley also pushed for Secretary Paulson and Attorney General Mukasey to “ensure that whistleblowers are treated seriously, their concerns are viewed in an expeditious manner, and that any legitimate claims of fraud, waste, or abuse are aggressively investigated and prosecuted to the fullest extent of the law, including seeking recovery of all funds lost via the FCA.”

Senator Grassley provided example situations that he suggested would be actionable under the FCA against those claiming funds through the TARP or CPP. These examples include:

- Seeking payment pursuant to a program an entity is not eligible for
- Fraudulently seeking to obtain a government contract
- Submitting fraudulent applications for a grant of government funds
- Submitting a false application for a government loan
- Submitting a claim that falsely certifies that the defendant has complied with a law, contract term or regulation

Grassley stated that these “examples do show that entities who receive federal funds under the TARP or CPP are subject to the provisions of the FCA should they use false or fraudulent submissions in order to obtain federal funds.”

Senator Grassley was co-author, with Rep. Howard Berman, of the 1986 amendments to the FCA that significantly expanded its scope by authorizing whistleblowers to file suit on behalf of the United States against those who fraudulently claim funds from the federal government. A whistleblower can share in as much as 30% of the government’s recovery under the FCA. The FCA provides for treble damages and civil monetary penalties of \$5,500 to \$11,000 per claim. The Department of Justice recently reported recoveries under the FCA of more than \$1 billion for this past year. Proposed amendments to the FCA that would substantially expand liability have also recently been circulating in Congress.

Senator Grassley’s letter is a harbinger of potential FCA enforcement against financial institutions. In the last few years, FCA enforcement has predominantly focused on the healthcare and defense industries and left financial institutions to be regulated through other means. Financial institutions seeking federal funds under the TARP or CPP should be on notice of the potential risk of liability posed by the FCA.

Senator Grassley’s letter can be read in full at [http://www.grassley.senate.gov/news/Article.cfm?customel\\_dataPageID\\_1502=18128](http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=18128)

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