

111th CONGRESS
1st Session
S. 386

To improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

cited as the "Fraud Enforcement and Recovery Act of 2009" or "FERA".

S. Amendment 995

Mr. ISAKSON (for himself, Mr. Conrad, Mr. Dodd, Mr. Whitehouse, Ms. Snowe, and Mr. Chambliss) proposed an amendment to the bill S. 386, to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. __. FINANCIAL MARKETS COMMISSION.

(a) *Establishment of Commission.*--There is established in the legislative branch the Financial Markets Commission (in this section referred to as the "Commission") to examine all causes, domestic and global, of the current financial and economic crisis in the United States.

(b) *Composition of the Commission.*--

(1) **MEMBERS.**--The Commission shall be composed of 10 members, of whom--

(A) 2 members shall be appointed by the majority leader of the Senate;

(B) 2 members shall be appointed by the Speaker of the House of Representatives;

(C) 1 member shall be appointed by the minority leader of the Senate;

(D) 1 member shall be appointed by the minority leader of the House of Representatives;

(E) 1 member shall be appointed by the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate;

(F) 1 member shall be appointed by the ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate;

(G) 1 member shall be appointed by the chairman of the Committee on Financial Services of the House of Representatives; and

(H) 1 member shall be appointed by the ranking member of the Committee on Financial Services of the House of Representatives.

(2) **QUALIFICATIONS; LIMITATION.--**

(A) **IN GENERAL.--**Individuals appointed to the Commission shall be United States citizens having significant experience in such fields as banking, regulation of markets, taxation, finance, economics and housing.

(B) **LIMITATION.--**No person who is a member of Congress or an officer or employee of the Federal Government or any State or local government may serve as a member of the Commission.

(3) **CHAIRPERSON; VICE CHAIRPERSON.--**

(A) **IN GENERAL.--**Subject to the requirements of subparagraph (B), the Chairperson of the Commission shall be selected jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives, and the Vice Chairperson shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

(B) **POLITICAL PARTY AFFILIATION.--**The Chairperson and Vice Chairperson of the Commission may not be from the same political party.

(4) **INITIAL MEETING.--**If, 45 days after the date of enactment of this Act, 4 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary Chairperson and Vice Chairperson, who may begin the operations of the Commission, including the hiring of staff.

(5) **QUORUM; VACANCIES.--**After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy on the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(c) *Functions of the Commission.--*The functions of the Commission are--

(1) to examine the causes of the current financial and economic crisis in the United States, including the role, if any, of--

(A) fraud and abuse in the financial sector;

(B) Federal and State financial regulators, including the extent to which they enforced, or failed to enforce statutory, regulatory, or supervisory requirements;

(C) the global imbalance of savings, international capital flows, and fiscal imbalances of various governments;

(D) monetary policy and the availability and terms of credit;

(E) accounting practices, including, mark-to-market and fair value rules, and treatment of off-balance sheet vehicles;

(F) tax treatment of financial products and investments;

(G) capital requirements and regulations on leverage and liquidity, including the capital structures of regulated and non-regulated financial entities;

(H) credit rating agencies;

(I) lending practices and securitization, including the originate-to-distribute model for extending credit and transferring risk;

(J) affiliations between insured depository institutions and securities, insurance, and other types of nonbanking companies;

(K) market participant expectations that certain institutions were "too-big-to-fail";

(L) corporate governance, including the impact of company conversions from partnerships to corporations;

(M) compensation structures;

(N) changes in compensation for employees of financial companies, as compared to compensation for others with similar skill sets in the labor market;

(O) Federal housing policy;

(P) derivatives and unregulated financial products and practices;

(Q) short-selling;

(R) financial institution reliance on numerical models, including risk models and credit ratings;

(S) the legal and regulatory structure governing financial institutions;

(T) the legal and regulatory structure governing investor protection;

(U) financial institutions and government-sponsored enterprises;

(V) the reliance on credit ratings by Federal financial regulators, and the use of credit ratings in financial regulation; and

(W) the quality of due diligence undertaken by financial institutions;

(2) to examine the causes of the collapse of each major financial institution that failed (including institutions that were acquired to prevent their failure) or was likely to have failed if not for the receipt of exceptional Government assistance from the Department of the Treasury during the period beginning in August 2007 through April 2009;

(3) to submit a report under subsection (g);

(4) to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis; and

(5) to review and build upon the record of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other Congressional committees, the Government Accountability Office, and other legislative panels with respect to the current financial and economic crisis.

(d) *Powers of the Commission.*--

(1) **HEARINGS AND EVIDENCE.**--The Commission may, for purposes of carrying out this section--

(A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(2) **SUBPOENAS.**--

(A) **SERVICE.**--Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission.

(B) **ENFORCEMENT.**--

(i) **IN GENERAL.**--In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other

evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) **ADDITIONAL ENFORCEMENT.**--Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section.

(3) **CONTRACTING.**--The Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES AND OTHER ENTITIES.--

(A) **IN GENERAL.**--The Commission may secure directly from any department, agency,

[Page: S4592]

or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, including information of a confidential nature (which the Commission shall maintain in a secure manner). Each such department, agency, or instrumentality shall furnish such information directly to the Commission upon request.

(B) **OTHER ENTITIES.**--It is the sense of the Congress that the Commission should seek testimony or information from principals and other representatives of government agencies and private entities that were significant participants in the United States and global financial and housing markets during the time period examined by the Commission.

(5) **FUNDING.**--The Secretary of the Treasury shall provide, out of money previously appropriated, \$5,000,000 to the Commission to carry out this section, to remain available until expended or until termination of the Commission under subsection (h).

(6) **DONATIONS OF GOODS AND SERVICES.**--The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) **POSTAL SERVICES.**--The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(8) **POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS.**--Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(e) *Staff of the Commission.*--

(1) **DIRECTOR.**--The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly.

(2) **STAFF.**--The Chairperson and the Vice Chairperson may jointly appoint additional personnel, as may be necessary, to enable the Commission to carry out its functions.

(3) **APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.**--The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under paragraph (1) or (2) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(4) **DETAILEES.**--Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(5) **CONSULTANT SERVICES.**--The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) Compensation and Travel Expenses.--

(1) **COMPENSATION.**--Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) **TRAVEL EXPENSES.**--While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) Report of the Commission; Appearance Before and Consultations With Congress.--

(1) **REPORT.**--On December 15, 2010, the Commission shall submit to the President and to Congress a report containing the findings and conclusions of

the Commission on the causes of the current financial and economic crisis in the United States.

(2) **INSTITUTION-SPECIFIC REPORTS AUTHORIZED.**--At the discretion of the chairperson of the Commission, the report under paragraph (1) may include reports or specific findings on any financial institution examined by the Commission under subsection (c)(2).

(3) **APPEARANCE BEFORE CONGRESS.**--The chairperson of the Commission shall, not later than 120 days after the date of submission of the final reports under paragraph (1), appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding such reports and the findings of the Commission.

(4) **CONSULTATIONS WITH CONGRESS.**--The Commission shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and may consult with other Committees of Congress, for purposes of informing Congress on the work of the Commission.

(h) *Termination of Commission.*--

(1) **IN GENERAL.**--The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (g).

(2) **ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.**--The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report submitted under subsection (g).