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To require repayment of wasteful agency spending, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CARPER introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require repayment of wasteful agency spending, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Executive Branch Waste and Fraud Recovery Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) AGENCY.—The term “agency” has the meaning given the term in section 551 of title 5, United States Code.
(2) Authority Head.—The term “authority head” means, with respect to an agency—

(A) the head of the agency; or

(B) if the political appointee being investigated under this Act is the head of the agency—

(i) the second most senior individual in the agency; or

(ii) if applicable, the individual serving as the acting officer under section 3345 of title 5, United States Code.

(3) Political Appointee.—The term “political appointee” has the meaning given the term in section 714(h) of title 38, United States Code.

(4) Presiding Officer.—The term “presiding officer” has the meaning given the term in section 3801 of title 31, United States Code.

(5) Reviewing Official.—The term “reviewing official” means any officer or employee of an agency who is designated by the authority head of the agency to make the determination required under section 4(b)(1).

SEC. 3. REPAYMENT OF WASTEFUL AGENCY SPENDING.

(a) In General.—If the Inspector General of an agency determines that a current or former political ap-
pointee of the agency directed the agency, or agency component over which the political appointee had authority, to spend Federal funds available to the agency or component in a manner that is unlawful or inconsistent with applicable regulations or agency policies or procedures, the authority head of the agency shall investigate the spending, assess appropriate penalties, and require the political appointee to repay those funds to the United States Government.

(b) TREATMENT AS CLAIM.—Any funds required to be repaid under subsection (a) shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

(c) LIMITATION.—An agency may not require a current or former political appointee to repay a claim for more than $300,000 under this Act.

SEC. 4. DUE PROCESS AND SUBMISSION TO ATTORNEY GENERAL.

(a) REVIEWING OFFICIAL.—The authority head of an agency shall appoint a reviewing official to review the determination of an Inspector General of an agency under section 3(a).

(b) TRANSMISSION TO ATTORNEY GENERAL.—

(1) IN GENERAL.—If the reviewing official of an agency determines, based on information pro-
vided by the Inspector General of the agency under section 3(a), that there is adequate evidence to believe that a current or former political appointee is required to repay funds under section 3, the reviewing official shall transmit to the Attorney General a written notice of the intention of the reviewing official to refer the allegations of liability to a presiding officer of the agency, which shall include—

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

(B) a statement specifying the evidence that supports the allegations;

(C) a description of the claims or statements for which liability under section 3 is alleged;

(D) an estimate of the amount of money that the political appointee shall be required to repay under section 3; and

(E) a statement of any exculpatory or mitigating circumstances that may relate to the claims or statements described in subparagraph (C).

(2) APPROVAL OR DISAPPROVAL OF REFERRAL.—
(A) IN GENERAL.—Not later than 90 days after the date on which the Attorney General receives a notice from a reviewing official under paragraph (1), the Attorney General or an Assistant Attorney General designated by the Attorney General shall transmit a written statement to the reviewing official that specifies—

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

(ii) in any case in which the referral of allegations is approved, that the initiation of a proceeding with respect to the allegations is appropriate; and

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

(B) LIMITATION.—A reviewing official may refer allegations of liability to a presiding officer of the agency only if the Attorney General or an Assistant Attorney General designated by the Attorney General approves the referral of
the allegations in a written statement described in subparagraph (A).

(C) Delay of hearing.—If the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head of an agency a written finding that the continuation of any hearing with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to the claim or statement, the hearing shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

(e) Notice and hearing.—

(1) Notice.—

(A) In general.—On or after the date on which a reviewing official is permitted to refer allegations of liability under subsection (b)(2), the reviewing official shall mail, by registered or certified mail, or shall deliver, a notice to the current or former political appointee alleged to be liable to repay funds under section 3, which shall specify the allegations of liability against the individual and shall state the right of the
individual to request a hearing with respect to those allegations.

(B) Request for Hearing.—If, within 30 days after receiving a notice subparagraph (A), the individual receiving the notice requests a hearing with respect to the allegations contained in the notice—

(i) the reviewing official shall refer the allegations to a presiding officer for the commencement of the hearing; and

(ii) the presiding officer shall commence the hearing by mailing by registered or certified mail, or by delivery of, a notice that complies with clauses (ii)(I) and (iii)(I) of paragraph (3)(B) to that individual.

(2) Relevant Documents.—

(A) In General.—Except as provided in subparagraph (B), at any time after receiving a notice under paragraph (1)(A), the individual receiving the notice shall be entitled to review, and upon payment of a reasonable fee for duplication, shall be entitled to obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to the
allegations and upon which the findings and conclusions of the reviewing official are based.

(B) Privileged information.—An individual is not entitled under subparagraph (A) to review and obtain a copy of any document, transcript, record, or material that is privileged under Federal law.

(C) Exculpatory information.—At any time after receiving a notice under paragraph (1)(A), the individual receiving the notice shall be entitled to obtain all exculpatory information in the possession of the reviewing official relating to the allegations contained in the notice. Subparagraph (B) shall not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(3) Hearings.—

(A) In general.—Any hearing commenced under paragraph (1)(B)(ii) shall be conducted by the presiding officer on the record in order to determine, based on the preponderance of the evidence—

(i) the liability of an individual under section 3; and
(ii) if an individual is determined to be liable to repay funds under such section, the amount of any civil penalty or assessment to be imposed on the individual.

(B) PROCEDURES.—

(i) IN GENERAL.—Each hearing under this subsection shall be conducted—

(I) in the case of an agency to which the provisions of subchapter II of chapter 5 of title 5, United States apply, in accordance with—

(aa) the provisions of such subchapter to the extent that such provisions are not inconsistent with the provisions of this Act; and

(bb) procedures promulgated by the authority head of the agency under clause (iii); or

(II) in the case of an agency to which the provisions of such subchapter do not apply, in accordance with procedures promulgated by the authority head of the agency.
(ii) AGENCIES TO WHICH SUB-
CHAPTER II OF CHAPTER 5 DOES NOT
APPLY.—The authority head of an agency
shall by regulation promulgate procedures
for the conduct of hearings under this sub-
section, which shall include the following:

(I) The provision of written no-
tice of the hearing to any individual
alleged to be liable to repay funds
under section 3, including written no-
tice of—

(aa) the time, place, and na-
ture of the hearing;

(bb) the legal authority and
jurisdiction under which the
hearing is to be held; and

(cc) the matters of facts and
law to be asserted.

(II) The provision to any indi-
vidual alleged to be liable to repay
funds under section 3 of opportunities
for the submission of facts, argu-
ments, offers of settlement, or pro-
posals of adjustment.
(III) Procedures to ensure that
the presiding officer shall not, except
to the extent required for the disposi-
tion of ex parte matters as authorized
by law—

(aa) consult a person or
party on a fact in issue, unless
on notice and opportunity for all
parties to the hearing to partici-
pate; or

(bb) be responsible to or
subject to the supervision or di-
rection of the reviewing official.

(IV) Procedures to ensure that
the reviewing official does not partici-
pate or advise in the decision required
under subparagraph (D).

(V) The provision to any indi-
vidual alleged to be liable to repay
funds under section 3 of opportunities
to present the individual’s case
through oral or documentary evidence,
to submit rebuttal evidence, and to
conduct such cross-examination as
may be required for a full and true
disclosure of the facts.

(VI) Procedures to permit any
individual alleged to be liable to repay
funds under section 3 to be accom-
panied, represented, and advised by
counsel or such other qualified rep-
resentative as authority head of the
agency may specify by regulation.

(VII) Procedures to ensure that
the hearing is conducted in an impar-
tial manner, including procedures
to—

(aa) permit the presiding off-
ficer to at any time disqualify
himself or herself; and

(bb) permit the filing, in
good faith, of a timely and suffi-
cient affidavit alleging personal
bias or another reason for dis-
qualification of a presiding officer
or a reviewing official.

(iii) ALL AGENCIES.—The authority
head of an agency shall promulgate by reg-
ulation the following procedures for the
conduct of hearings under this subsection, which shall be in addition to any procedures described in clauses (i) and (ii):

(I) Procedures for the inclusion, in any written notice of a hearing under this section to any individual alleged to be liable to repay funds under section 3, of a description of the procedures for the conduct of the hearing.

(II) Procedures to permit discovery by any individual alleged to be liable to repay funds under section 3, only to the extent that the presiding officer determines that the discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, except that the procedures shall not apply to documents, transcripts, records, or other material which an individual is entitled to review under paragraph (2)(A) or to information to which an individual is entitled under paragraph (2)(C). Procedures promulgated under this sub-
clause shall prohibit the discovery of
the notice required under paragraph
(1).

(C) VENUE.—Each hearing under this
subsection shall be held—

(i) in the judicial district of the
United States in which the individual al-
leged to be liable to repay funds under sec-
tion 3 resides or transacts business;

(ii) in the judicial district of the
United States in which the claim or state-
ment upon which the allegation of liability
under such section was made, presented,
or submitted; or

(iii) in such other place as may be
agreed upon by the individual and the pre-
siding officer who will conduct the hearing.

(D) WRITTEN DECISION.—

(i) IN GENERAL.—The presiding offi-
cer shall issue a written decision after the
conclusion of a hearing under this sub-
section, which shall include the findings of
fact and conclusions of law which the pre-
siding officer relied upon in determining
whether an individual is liable to repay funds under section 3.

(ii) APPEAL.—The presiding officer shall promptly send to each party to the hearing a copy of the written decision and a statement describing the right of any individual determined to be liable to repay funds under section to appeal the decision of the presiding officer in accordance with section 5.

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—

(1) DETERMINATION BY REVIEWING OFFICIAL.—A determination by a reviewing official under section 4(b)(1) shall be final and shall not be subject to judicial review.

(2) DETERMINATION OF LIABILITY.—Unless a petition is filed under this section, a determination by a presiding officer under section 4(c)(3)(D) that an individual is required to repay funds shall be final and shall not be subject to judicial review.

(b) PETITION.—

(1) IN GENERAL.—An individual who has been determined under section 4 to be liable to repay funds may obtain review of the determination in—
(A) the United States district court for the district in which the individual resides or transacts business;

(B) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or

(C) the United States District Court for the District of Columbia.

(2) DEADLINE.—A review under paragraph (1) may be obtained by filing in any court described in such paragraph a written petition that the determination be modified or set aside. The petition shall be filed—

(A) only after the individual has exhausted all administrative remedies under this Act; and

(B) within 60 days after the date on which the presiding officer sends the individual a copy of the written decision under section 4(c)(3)(D).

(3) TRANSMISSION TO ATTORNEY GENERAL.—The clerk of the court shall transmit a copy of a petition filed under this subsection to the agency and to the Attorney General. Upon receipt of the copy of the petition, the authority head of the agency shall transmit to the Attorney General the record in the
proceeding resulting in the determination of liability
under this Act. Except as otherwise provided in this
section, the district courts of the United States shall
have jurisdiction to review the decision, findings, and
determinations in issue and to affirm, modify, re-
mand for further consideration, or set aside, in
whole or in part, the decision, findings, and deter-
minations of the agency and to enforce such deci-
sion, findings, and determinations to the extent that
the decision, findings, and determinations are af-

(c) Questions of Fact.—The decisions, findings,
and determinations of an agency with respect to questions
of fact shall be final and conclusive, and shall not be set
aside unless the decisions, findings, and determinations
are found by the court to be unsupported by substantial
evidence. In concluding whether the decisions, findings,
and determinations of the agency are unsupported by sub-
stantial evidence, the court shall review the whole record
or those parts of it cited by a party, and due account shall
be taken of the rule of prejudicial error.

(d) Hearing Proceedings.—Any district court re-
viewing under this section the decision, findings, and de-
terminations of an agency shall not consider any objection
that was not raised in the hearing conducted under section
4 unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the authority for consideration of such additional evidence.

(e) Final Judgment.—Upon a final determination by the district court that an individual is liable to repay funds under this Act, the court shall enter a final judgment for the appropriate amount in favor of the United States.

SEC. 6. COLLECTION OF PENALTIES.

(a) In General.—The Attorney General shall be responsible for judicial enforcement of any civil penalty or assessment with respect to the repayment of funds imposed pursuant to the provisions of this Act.

(b) Civil Action.—Any penalty or assessment imposed in a determination which has become final pursuant to this Act may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under section 4 or pursuant to judicial review under section 5 may be raised as a defense, and the deter-
mination of liability and the determination of amounts of penalties and assessments shall not be subject to review.

(c) JURISDICTION.—The district courts of the United States shall have jurisdiction of any action commenced by the United States under subsection (b).

(d) CONSOLIDATION.—Any action under subsection (b) may, without regard to venue requirements, be joined and consolidated with or asserted as a counterclaim, cross-claim, or setoff by the United States in any other civil action which includes as parties the United States and the individual against whom such action may be brought.

(e) COURT OF FEDERAL CLAIMS.—The United States Court of Federal Claims shall have jurisdiction of any action under subsection (b) of this section to recover any penalty or assessment if the cause of action is asserted by the United States as a counterclaim in a matter pending in such court.

(f) COMPROMISE OR SETTLEMENT.—The Attorney General shall have exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition pursuant to section 5 or a pending action to recover such penalty or assessment pursuant to this section.

(g) DEPOSITS.—
(1) IN GENERAL.—Except as provided in paragraph (2), any amount of penalty or assessment collected under this Act shall be deposited as miscellaneous receipts in the Treasury of the United States.

(2) EXCEPTIONS.—

(A) Any amount of a penalty or assessment imposed by the United States Postal Service under this Act shall be deposited in the Postal Service Fund established by section 2003 of title 39, United States Code.

(B) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this Act with respect to a claim or statement made in connection with old age and survivors benefits under title II of the Social Security Act shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund.

(C) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this Act with respect to a claim or statement made in connection with disability benefits under title II of the Social Security Act shall be deposited in the Federal Disability Insurance Trust Fund.
(D) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this Act with respect to a claim or statement made in connection with benefits under part A of title XVIII of the Social Security Act shall be deposited in the Federal Hospital Insurance Trust Fund.

(E) Any amount of a penalty or assessment imposed by the Secretary of Health and Human Services under this Act with respect to a claim or statement made in connection with benefits under part B of title XVIII of the Social Security Act shall be deposited in the Federal Supplementary Medical Insurance Trust Fund.

SEC. 7. ADMINISTRATIVE OFFSET.

(a) IN GENERAL.—The amount of any penalty or assessment which has become final under section 4, or for which a judgment has been entered under section 5 or 6, or any amount agreed upon in a settlement or compromise under section 6(f), may be collected by administrative offset under section 3716 of title 31, United States Code, except that an administrative offset may not be made under this subsection against a refund of an overpayment
of Federal taxes, then or later owing by the United States to the individual liable for the penalty or assessment.

(b) DEPOSIT.—All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 6(g).