

Statement of

The Honorable Chuck Grassley

United States Senator
Iowa
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Prepared Statement of Senator Chuck Grassley of Iowa
Senate Committee on the Judiciary
"The Need for Increased Fraud Enforcement
in the Wake of Economic Downturn"
Wednesday, February 11, 2009

Mr. Chairman, thank you for holding today's important hearing on fraud enforcement. It is a timely hearing given the economic downturn and the unprecedented amounts of taxpayer money being expended to shore up the banking industry, retail lending institutions, and efforts to stabilize the housing market. In these times of massive federal financial intervention in the marketplace, we need heightened awareness about how taxpayer dollars are being spent and what controls are in place to ensure they are used effectively and efficiently.

Today's hearing is an opportunity to discuss the important work done by auditors, federal agents, and prosecutors and their efforts to investigate and prosecute those who committed mortgage fraud. The economic crisis that the country is experiencing began with problems that were related to the overleveraged, overpriced, and unsustainable housing bubble. Simply put, the housing market got too big, too fast and there weren't enough controls.

During this same period we've seen a significant amount of government resources used to try and shore up these markets. Like many of the thousands of constituents that I've heard from, I share the concern that these stabilization efforts are risky and need significant oversight. Be it the stabilization of financial institutions and the credit markets, or the nationalization of Fannie Mae and Freddie Mac, taxpayers are on the hook for it. That's why I've been pushing so hard to ensure that whenever Congress has approved more money, we make sure to have watchdogs such as inspectors general overseeing these expenditures. We're here today to discuss what tools and resources are necessary to ensure that these investments are protected.

With so much money in the housing markets, unscrupulous individuals found a marketplace that was lax in regulation and enforcement making it easy to commit fraud. I refer to a chart that is based upon information collected by the Financial Crimes Enforcement Network (FinCEN) at the Department of the Treasury. This chart shows the number of "suspicious activity reports" or SARs, filed by banks related to mortgage transactions. As you can see, the number of these SARs increased dramatically from 1996 to 2007, with over 52,000 of these reports filed in 2007. While suspicious activity reports do not in themselves represent criminal wrongdoing, they are an indicator of potential criminal acts such as mortgage fraud, money laundering, identity theft, or tax evasion.

This hearing isn't limited to mortgage fraud, and we have an opportunity to examine the impact that fraud and abuse are having on our entire economy. As I stated earlier, the problems in our housing market are the root cause of the economic downturn but the impact has been felt across the economy. Each and every American has been impacted whether they've lost a job, whether they owe more on their home than it's worth, or even if they try to purchase a new car. The financial markets have experienced the most dramatic decline, but so have manufacturers, consumers, and small businesses.

When Congress passed the Emergency Economic Stabilization Act in October 2008 and it created the TARP, I pushed to ensure that we had a strong, independent Inspector General and that led to the creation of the SIGTARP. I'm pleased that Neil Barofsky was confirmed by the Senate and is here to talk about his efforts to figure out how TARP money has been spent and to ensure that taxpayer dollars are accounted for.

In a short period of time, Mr. Barofsky has been able to set up a skeleton operation and recently issued his first report to Congress regarding the TARP. This report provides a cumulative review of TARP investments and is a good summation of how the TARP has been utilized thus far. I'll also add that I'm pleased that legislation I cosponsored with Senator McCaskill that clarifies that the SIGTARP has jurisdiction over all the different ways the TARP has expended taxpayer funds, not just direct asset purchases, cleared the Senate last week by unanimous consent. I hope that the House takes up this vital legislation in short order so it can be signed into law. I look forward to asking Mr. Barofsky some questions about what he anticipates finding when he starts to peel back the layers of the onion and see if our investments were worthwhile.

Today, I'm interested in examining the prevention and recovery side of the TARP program and all other efforts to stabilize the economy. Mainly, I want to know what we can do with our criminal laws to deter and prevent wrong doing that may have occurred and I also want to focus on how our civil fraud laws can be used to recover taxpayer dollars in the event they were fraudulently obtained. I think today's panel of witnesses will help shed some light about potential criminal activity that may have occurred in the housing market, economic recovery programs such as the TARP, and other areas the Government is focusing financial resources to help turn the economy around. They will also be able to discuss the danger that unscrupulous individuals pose to a successful recovery. I want to ask our witnesses representing the Department of Justice and the Federal Bureau of Investigation what initiatives they have ongoing and whether they have the tools and resources needed to get the job done and get the bad guys off the street.

This hearing also provides an opportunity to discuss important legislation that Chairman Leahy and I recently introduced that will strengthen existing criminal laws, provide important fraud fighting resources, and strengthen the federal False Claims Act to ensure that taxpayer dollars lost to fraud are recovered. The Fraud Enforcement and Recovery Act of 2009 is timely and necessary to help restore confidence in both the housing and financial markets. It provides federal investigators and prosecutors the tools and resources they need to prosecute and investigate complex financial frauds and also amends the criminal law in a couple important ways.

The bill redefines "financial institution" to include mortgage lending businesses--a category that is currently missing from that definition. It also amends the statute making it illegal to make false

statements on a mortgage application to include false statements and appraisals by mortgage brokers and agents. Further, it ensures that economic relief funds and funds from the TARP are included in criminal laws prohibiting fraud against the Government, and adds commodities futures to the securities fraud statute.

The bill also makes two important clarifications to the anti-money laundering laws. First, by defining the term "proceeds" so that a recent Supreme Court decision doesn't limit the ability to go after criminals and drug dealers who launder the proceeds of their ill gotten gains. Second, the bill amends the international money laundering statute to make it a crime to transport or transfer money out of the country to evade taxes.

Finally, the legislation makes important changes to the Federal False Claims Act (FCA). The FCA is the Government's premier tool to recover Government money lost to fraud and abuse. It has recovered over \$20 billion since 1986 when it was amended by legislation I introduced. This provision will ensure that the original intent of the FCA adhered to and it will prevent fraudfeasors from evading liability simply by hiring subcontractors. These amendments are not all the necessary fixes to restore the FCA to its original intent that has been eroded by the Courts, but they are necessary to ensure that all the recently expended taxpayer dollars are protected from fraud.

This legislation could not come at a more important time and will help send a message to those who have defrauded homeowners and mortgage lenders and will send an even stronger message to those who are thinking about committing a future fraud. I hope my colleagues will join Chairman Leahy and me in supporting this vital legislation.

I look forward to hearing the testimony from the witnesses and to the opportunity to question them about ways we can strengthen enforcement efforts against those who defraud individual homeowners and government programs, as well as ways we can recovery taxpayer dollars lost to fraud and abuse. I thank the witnesses in advance for their testimony.