



**Potential False Claims Act Liability for  
Federal “Bailout” Participants**  
*Senator Grassley Urges Use of the False Claims Act to Prosecute  
Fraud by Recipients of “Bailout” Funds*

The Emergency Economic Stabilization Act of 2008 (“EESA”),<sup>1</sup> signed into law on October 3, 2008, authorized the Secretary of the Treasury to use up to \$700 billion in taxpayer funds to purchase troubled assets from financial institutions. Through the Troubled Assets Relief Program (“TARP”) and the Capital Purchase Program (“CPP”), the Department of Treasury has made available \$250 billion of capital to United States financial institutions. Recently, Secretary of Treasury Paulson has announced that the bailout money will be used for a broader campaign to stabilize the financial markets.<sup>2</sup>

On November 17, 2008, Senator Chuck Grassley of Iowa wrote a letter to the Departments of Treasury and Justice emphasizing the role of whistleblower litigation in prosecuting fraud by recipients of these federal “bailout” monies. Arguing that the False Claims Act (“FCA”) and its *qui tam* whistleblower provisions “can and will play an important role in preventing, deterring, and prosecuting fraud against the TARP and CPP,” Senator Grassley urged the Departments of Treasury and Justice to “ensure that whistleblowers are treated seriously, their concerns are reviewed 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.”<sup>3</sup> Senator Grassley can be expected to maintain congressional oversight of the Departments of Treasury and Justice as well as private sector entities who receive federal funds under the TARP and CPP.

The FCA empowers individual whistleblowers, or “*qui tam* relators,” to bring civil actions on behalf of the United States for “false or fraudulent claims” to government programs.<sup>4</sup> Whistleblowers who sue under the FCA can share in as much as 30% of the government’s recovery of treble damages plus penalties, making *qui tam* actions highly attractive to whistleblowers and an increasingly active plaintiff’s bar. Indeed, whistleblowers have filed

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between 300 and 400 cases under the FCA in each year since 2001.<sup>5</sup> The statute is an important enforcement tool for the federal government as well. In FY 2008 alone, it recovered more than \$1.3 billion from FCA actions.<sup>6</sup>

Senator Grassley argued that entities who receive federal funds under the TARP and CPP may be subject to FCA liability under several recognized legal theories. For example, an entity that submits false or fraudulent information in an application to the Department of the Treasury in order to obtain funds under the programs arguably would be in violation of the statute. Even before Senator Grassley's letter, members of the plaintiff's bar had noticed the potential for FCA liability under the EESA. One website devoted to whistleblower litigation, for example, announced that "[w]histleblowers will be essential to minimizing the theft of the bailout billions. . . ."<sup>7</sup>

Given the intense public scrutiny of the financial bailout and emerging emphasis on whistleblower litigation in this area, bailout participants need to be aware of the scope of the False Claims Act and the legal and financial implications of potential whistleblower litigation. Bailout participants should also prepare for the possibility of congressional oversight investigations, high-profile public hearings, extensive press coverage, and potential criminal and/or civil referrals. King & Spalding attorneys have extensive experience in defending False Claims Act litigation and are available to answer any questions you may have about the risks associated with applying for and receiving bailout funds.



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<sup>1</sup> Pub. L. No. 110-343 (2008).

<sup>2</sup> Press Release, United States Department of Treasury, Remarks by Secretary Henry M. Paulson, Jr. on Financial Rescue Package and Economic Update (Nov. 12, 2008).

<sup>3</sup> Press Release, Senator Chuck Grassley, Grassley Urges Federal Government to Utilize "Lincolns' Law" to Help Protect and Recover Taxpayer Dollars Lost to Fraud in Economic Stabilization Programs (Nov. 17, 2008).

<sup>4</sup> 31 U.S.C. § 3729 et seq.

<sup>5</sup> Carrie Johnson, *A Backlog of Cases Alleging Fraud: Whistle-Blower Suits Languish at Justice*, WASH. POST, July 2, 2008, at A01.

<sup>6</sup> Press Release, Department of Justice, More than \$1 Billion Recovered by the Justice Department in Fraud and False Claims in Fiscal Year 2008 (Nov. 10, 2008).

<sup>7</sup> See, e.g., Finch McCranie, LLP, *With Wall Street Bailout, Whistleblowers to Reveal Fraud and Abuses Through IRS Whistleblower Claims and Qui Tam False Claims Act Cases*, WHISTLEBLOWER LAWYER BLOG, [http://www.whistleblowerlawyerblog.com/2008/10/with\\_wall\\_street\\_bailout\\_whist.html](http://www.whistleblowerlawyerblog.com/2008/10/with_wall_street_bailout_whist.html) (last visited Nov. 19, 2008).

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