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WAR PROFITEERING PREVENTION ACT OF 2007

Mr. LEAHY, from the Committee on Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 119]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 119) to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts, and for other purposes, reports favorably thereon with amendments, and recommends that the bill, as amended, do pass.

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I. PURPOSE OF THE WAR PROFITEERING PREVENTION ACT OF 2007

Chairman Patrick Leahy introduced the War Profiteering Prevention Act of 2007 on January 4, 2007, which was cosponsored by Senators Bingaman, Kerry, Harkin, Rockefeller, Dorgan, Wyden, Schumer, Nelson of Florida, Clinton, Lautenberg, and Menendez. Senators Feinstein, Feingold, Durbin, Landrieu, Mikulski, Boxer, Cardin, and Byrd have since joined as cosponsors. This legislation strengthens the tools available to federal law enforcement to combat contracting fraud during times of war, military action, or relief

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or reconstruction activities. This legislation also extends the extraterritorial jurisdiction for these frauds to the full extent of the law in order to reach fraudulent conduct wherever it occurs.

The legislation creates a new criminal fraud offense in title 18 of the United States Code to prohibit fraudulent acts involving the provision of goods or services in connection with a war, military action, or relief or reconstruction activities. It also makes this new offense a predicate crime for criminal and civil forfeiture, as well as for federal money laundering and racketeering offenses.

A. BACKGROUND

Efforts to combat war profiteering have a long history in this nation. During the Civil War, President Abraham Lincoln fought against war profiteers, denouncing them as "worse than traitors." He signed the first civil laws curbing this abuse.

In World War II, President Franklin Delano Roosevelt spoke out against "war millionaires" who made excessive profits exploiting the calamity of war. President Harry Truman, when he served in the Senate, held historic public hearings to expose gross fraud, waste and abuse by military contractors.

Over the past four years, war profiteering has again plagued this nation during the engagement of U.S. forces in Iraq and Afghanistan. The United States has devoted hundreds of billions of dollars to military, relief, and reconstruction activities in Iraq and Afghanistan, including more than $50 billion to relief and reconstruction activities. Private contractors have been used to a greater extent during these war-time activities than at any time in our history. The exigencies of war overseas, however, often make oversight of these contractors more difficult, and expenditures are often made with fewer audit and other controls than during normal government procurement. As a result, the provision of goods and services during these military actions, as well as during relief and reconstruction activities, are more vulnerable to acts of fraud and abuse.

Inspectors General overseeing the provision of goods and services in Iraq and Afghanistan have found that billions of dollars spent in Iraq are unaccounted for and may have been lost to fraud or other misconduct. These Inspectors General have opened hundreds of investigations into fraud, waste, and abuse in Iraq, Kuwait, and Afghanistan involving, among other things, illegal kickbacks, bid-rigging, embezzlement, and fraudulent over-billing. These investigations have uncovered crimes committed by employees of large and small government contractors in Iraq and Afghanistan, and many of these investigations involve abuse of the "cost-plus" and "no-bid" contracts used during times of emergency, such as military, relief, or reconstruction activities.

B. NEED FOR LEGISLATION

There is no federal criminal law specifically targeted at prohibiting contracting fraud during times of war, military action, or relief or reconstruction activities. The current regime of federal fraud statutes does not provide an offense for those who take advantage of the exigent circumstances created by these times of extreme emergency. Moreover, no federal law provides enhanced criminal punishment for fraudulent acts during times of war, or relief or reconstruction activities.

In addition, none of the current fraud statutes explicitly extend extraterritorial jurisdiction for fraud offenses during times of war, military action, or relief or reconstruction activities. While in some cases courts have implied extraterritorial jurisdiction for fraud offenses, the common law suggests that extraterritoriality in a criminal statute should be clearly asserted and, without such a provision, there is a presumption against extraterritorial application. This bill addresses all of these gaps in existing federal criminal law.

C. THE WAR PROFITEERING PREVENTION ACT OF 2007

The War Profiteering Prevention Act of 2007 creates a new criminal offense in title 18 of the United States Code for fraudulent acts involving contracts or the provision of goods and services in connection with war, military actions, and relief or reconstruction activities. This new offense provides a significant new tool for federal law enforcement, as well as creating a strong deterrent to those who would contemplate exploiting the exigencies of war, military actions, relief or reconstruction activities to commit fraud and profit thereby.

The new offense may be committed in two ways: (1) by committing fraud or (2) by making a materially false statement. The fraud provisions would make it a crime to execute or attempt to execute a scheme or artifice to defraud the United States or to materially overvalue any good or service with the specific intent to defraud. These provisions are designed to prohibit schemes to defraud the United States, including efforts to exploit "cost plus" or "no-bid" contracts by materially overvaluing goods or services with the specific intent to defraud. These provisions are not intended to prohibit or punish contractors providing goods or services in the normal course of business, and the legislation specifically requires that violators may only be criminally liable if they materially overvalue any good or service "with the specific intent to defraud." This provision has been included to ensure that no contractor shall be prosecuted under this offense for mere negligent or mistaken conduct.

The material false statement provisions would make it a crime (1) to falsify, conceal, or covering up by any trick, scheme or device a material fact, or (2) to make any materially false, fictitious, or fraudulent statements or representations, or (3) to make or use any materially false writing or document knowing they contain a false, fictitious, or fraudulent statement. This language is consistent with other material false statement provisions under federal law, such as 18 U.S.C. §§ 1001, 1035. The new offense also requires that conduct be done knowingly and willfully to be a criminal violation.

The new offense would require that any fraud or material false statement be in connection with any war, military action, or relief or reconstruction activities. This would include circumstances where war was declared, or where the executive branch was engaged in any military action with or without congressional authorization. This would also include relief or reconstruction activities, whether or not a war or military action was undertaken. This new offense is intended to deter fraud and material false statements committed in connection to any of these emergency circumstances.

The new offense also requires that the conduct be subject to the jurisdiction of the United States. This term is to be interpreted

broadly consistent with the jurisdictional scope of the federal material false statement statute, 18 U.S.C. §1001. In addition, the new offense explicitly provides extraterritorial jurisdiction and is intended to extend jurisdiction for this offense to the full extent of U.S. law. This provision has been included to ensure that offenses occurring outside the United States, even by non-U.S. nationals, may be prosecuted. Furthermore, consistent with other federal fraud provisions, the U.S. Government need not be a victim or suffer a loss from this offense provided the conduct meets the other elements of the offense. The bill also establishes venue for the offense as authorized by existing federal statutes (see 18 U.S.C. §§ 3231–3244) including extradition, or in any district where any act in further of the offense took place, or where any party to the contract or the provider of goods or services is located.

Violations of the fraud provisions in this bill would be punishable by imprisonment for up to 20 years, and violations of the material false statement provisions would be punishable by imprisonment for up to 10 years. All violations of this new offense would be subject to fines of up to $1,000,000 or twice the gross profits or other proceeds of the offense. The offense provides for criminal and civil forfeiture of any unlawful proceeds, and makes the new offense a predicate crime for money laundering (18 U.S.C. § 1956(c)(7)) and for racketeering offenses (18 U.S.C. § 1961(1)).

II. History of the Bill and Committee Consideration

A. HEARING

On March 20, 2007, the Judiciary Committee held a hearing on "Combating War Profiteering: Are We Doing Enough to Investigate and Prosecute Contracting Fraud and Abuse in Iraq?" which examined the War Profiteering Prevention Act of 2007 and ongoing efforts to investigate and prosecute contracting fraud in Iraq. At the hearing, the Special Inspector General for Iraq Reconstruction, Stuart W. Bowen, Jr., and the Acting Inspector General for the Department of Defense, Thomas F. Gimble, testified concerning their ongoing investigations of contracting fraud and abuse in Iraq and Afghanistan. The Inspectors General testified that fraud and abuse during the military actions and relief and reconstruction activities in Iraq and Afghanistan remain a serious problem, and they reported on their investigations of criminal conduct involving illegal kickbacks, bid-rigging, embezzlement, and fraudulent over-billing. Special Inspector General Bowen confirmed that billions in cash transferred to Iraq remained unaccounted for and may be lost to fraud and abuse. Both Inspectors General indicated that they would support more tools to combat contracting fraud in Iraq, Afghanistan, and Kuwait. At the hearing, Deputy Assistant Attorney General for the Criminal Division at the Department of Justice Barry Sabin also testified concerning efforts by the Department to investigate and prosecute contracting fraud in Iraq. He confirmed that, in the four years since the start of military action in Iraq, the Justice Department had prosecuted 9 cases involving 25 individuals, and these cases involved fraud of approximately $10 million.

B. LEGISLATIVE HISTORY

On September 30, 2003, Senator Leahy offered the War Profiteering Prevention Act of 2003 as an amendment to the Iraq emergency supplemental appropriations bill (S. 1689), and the amendment was accepted by the Senate Appropriations Committee, incorporated into the bill, and reported to the Senate. On October 17, 2003, the Senate passed S. 1689, as amended with the War Profiteering Prevention Act; however, the provision was deleted from the bill in conference. On November 3, 2003, Senator Leahy reintroduced the bill (S.1813), the bill was referred to the Judiciary Committee and, on November 19, 2003, it was also referred to the Foreign Relations Committee, but no further action was taken by either committee.

On March 2, 2006, Senator Leahy introduced the War Profiteering Prevention Act of 2006 (S. 2356). The bill was referred to the Committee on the Judiciary, but no further action was taken. Provisions of the bill were also incorporated in the Honest Leadership and Accountability in Contracting Act of 2006 (S. 2361). That bill was referred to the Committee on Homeland Security and Governmental Affairs, but no further action was taken.

On January 4, 2007, Senator Leahy and cosponsors introduced the War Profiteering Prevention Act of 2007 (S. 119). The bill currently has 20 cosponsors: Senators Leahy, Bingaman, Kerry, Harkin, Rockefeller, Dorgan, Wyden, Schumer, Nelson of Florida, Clinton, Lautenberg, Menendez, Feinstein, Feingold, Durbin, Landrieu, Mikulski, Boxer, Cardin, and Byrd. After the hearing on March 20, 2007, the bill was placed on the agendas for business meetings of the Committee on March 22, March 29, April 12 and April 25. It was considered by the Committee on April 25, 2007. During that consideration, Senator Leahy offered an amendment to clarify language related to one of the fraud provisions by striking certain language [1] and to add the new violation as a predicate offense for federal racketeering. The Committee agreed by unanimous consent to the amendment and to report the bill favorably to the Senate.[2]

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Sec. 1. Short Title. This section provides that the legislation may be cited as the "War Profiteering Prevention Act of 2007."

Sec. 2. Prohibition of Profiteering. This provision creates a new criminal offense to be added to Title 18 of the United States Code, as Section 1039.[3] This offense would make it a crime for any person to commit fraud or make material false statements involving a contract or the provision of goods or services in connection with a war, military action, relief or reconstruction activities. The fraud offense may be committed either by executing or attempting to execute a scheme or artifice to defraud the United States or by materially overvaluing any good or service with the specific intent to de-

[1] The amendment struck the words "and excessively profit from the war, military action, or relief or reconstruction activities" from Section 1039(a)(1)(A)(ii).

[2] Senator Kyl considered offering two amendments related to material support for terrorism and enhanced penalties for crimes committed outside the United States, but he agreed to proceed to report the bill without amendment and to introduce his amendments as separate bills.

[3] After S. 119 was introduced, Pub. L. 109–476 was signed into law and created a Section 1039 in Title 18. A technical amendment will be offered once this bill is considered by the full Senate to correct this problem.

fraud. The material false statement offense may be committed by falsifying, concealing, or covering up any material fact, by making a materially false statement, document, or writing. Violations of the fraud provisions would be imprisoned for up to 20 years; violations of the material false statement provisions would be imprisoned for up to 10 years. All violations of this provision could be also be punished with a fine of up to $1,000,000 or twice the gross profits or other proceeds of the offense. The statute asserts extraterritorial jurisdiction for this offense and establishes venue for the offense as authorized by current U.S. law, or in any district where any act in furtherance of the offense took place, or where any party to the contract or the provider of goods or services is located. The offense provides for criminal and civil forfeiture of any unlawful proceeds, and makes the new offense a predicate crime for money laundering and racketeering offenses.

IV. Congressional Budget Office Cost Estimate

May 2, 2007.

Hon. Patrick J. Leahy,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 119, the War Profiteering Prevention Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

Peter R. Orszag.

Enclosure.

S. 119—War Profiteering Prevention Act of 2007

CBO estimates that implementing S. 119 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant. S. 119 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 119 would make it a federal crime to commit fraudulent acts while providing goods or services for a U.S. military action, or relief or reconstruction activities. Because the bill would establish a new offense, the government would be able to pursue cases that it otherwise would not be able to prosecute. We expect that S. 119 would apply to a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 119 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

Persons prosecuted and convicted under the bill also could be subject to the seizure of certain assets by the federal government. Proceeds from the sale of such assets would be deposited into the Assets Forfeiture Fund and spent from that fund, mostly in the same year. Thus, enacting S. 119 could increase both revenues deposited into the fund and direct spending from the fund. However, CBO estimates that any increased revenues or spending would be negligible.

Estimate prepared by: Federal costs: Mark Grabowicz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. Regulatory Impact Evaluation

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 119.

VI. Conclusion

Passage and enactment of the War Profiteering Act of 2007, S. 119, will give federal law enforcement a potent new tool to combat fraudulent acts during times of war, military action, or relief or reconstruction activities. This legislation will create a new criminal offense to deter and punish those who take advantage of the exigencies of war, military actions, or relief or reconstruction activities to commit fraud.

VI. Additional Views of Senator Sessions

This legislation deals with two issues that are very important to me: contractor fraud in Iraq and disaster relief fraud. It will ensure that those who commit fraud against the United States by fraudulently obtaining war or emergency disaster relief funds will be brought to justice.

The Chairman and I have worked together in past years to pass legislation to ensure that crimes and frauds perpetrated in Iraq or in other places overseas are rightly brought to justice here in the United States. I am glad to be working with him again to make sure we give the Department of Justice all the tools they need to bring contractors who commit fraud to justice.

THE MILITARY EXTRATERRITORIAL JURISDICTION ACT

I first looked into this issue almost a decade ago. In 1999, one of my constituents approached me with a horrifying story of how two innocent children were molested while living overseas with their father, an Army serviceman. Because the perpetrator committed this despicable act overseas, he was beyond the scope of jurisdiction in the United States. Moreover, German law did not allow for prosecution.

Immediately after hearing this story, I began working to introduce the Military Extraterritorial Jurisdiction Act ("MEJA"), which was signed into law in 2000. The Chairman was an original cosponsor of my bill, and we worked together to close a legal loophole which had shielded civilian employees working overseas from being prosecuted for criminal acts they commit abroad.

Because of the loophole, these persons were outside the scope of military justice, and beyond the jurisdiction of U.S. federal courts. When foreign countries declined prosecuting these individuals, they were never brought to justice for their acts.

MEJA provided U.S. federal courts with jurisdiction over civilian employees, contractors and subcontractors affiliated with the Defense Department who commit crimes that would have otherwise subjected that person to at least one year in prison—if the offense had been committed in America.

By eliminating the statutory loophole that previously allowed these criminals to walk free, MEJA provided the Department of Justice with the necessary prosecutorial tools to hold criminals accountable for their actions.

2004 SESSIONS/SCHUMER AMENDMENT TO MEJA

In 2004, Senator Schumer and I recognized that events overseas had clouded the scope of who could be prosecuted under MEJA. On its face, it applied only to persons directly associated with the Department of Defense, either as contractors or civilian employees. The statute did not address contractors employed by other federal agencies.

Some of the prison abuses at Abu Gharib involved employees of private contractors who may not have been directly affiliated with the Department of Defense, but with other federal entities.

As such, these private contractors could fall outside the scope of MEJA, and accordingly, outside the jurisdiction of U.S. federal courts. These events highlighted the need to clarify and expand the coverage of MEJA to cover all types of contractors—no matter what federal agency was signing their paycheck.

In June 2004, Senator Schumer and I offered an amendment to the Department of Defense Reauthorization Bill that would give the Justice Department authority to prosecute civilian contractors employed not only with the Department of Defense, but with any federal agency supporting American military missions overseas.

At that time, the number of private contractors working in Iraq was about 10 times as great as it was during the Persian Gulf conflict. I argued then and I reiterate now that private contractors are necessary to rebuilding a healthy Iraq, yet we cannot allow them to escape justice for crimes committed overseas.

The Senate accepted the Sessions-Schumer amendment by voice vote, forever closing a jurisdictional gap and leaving no doubt as to whether overseas offenders can be brought to justice.

HISTORY OF THE WAR PROFITEERING PREVENTION ACT OF 2007

In June 2004, the Chairman also offered an amendment to the Department of Defense Reauthorization bill aimed at cracking down on contracting fraud. At that time, his amendment was defeated 52–46. Many Senators, myself included, agreed that there was a need for legislation to impose criminal penalties on persons who commit wrongdoing in contracting in the course of our military operations. However, we were concerned that the language in the amendment introduced a new standard of criminality that required further review.

At that time, the amendment created a specific crime when an individual, contractor, entity, or corporation knowingly and will-

fully "materially overvalues any good or service with the specific intent to excessively profit from the war, military action, or relief or reconstruction activities in Iraq, Afghanistan, or such other country."

The term "excessively profit" has been used in civil statutes, but not in criminal statutes. Many Senators who opposed the Chairman's amendment did not want to introduce such vague language into the Criminal Code. I preferred to use language found in other fraud statutes so we know precisely what the language means.

On April 25, 2007, the War Profiteering Prevention Act passed out of the Judiciary Committee. This legislation is very similar to Senator Leahy's 2004 amendment, but he has made some very important changes. I am pleased that before the bill passed out of Committee, Senator Leahy offered an amendment that removes the vague phrase "excessively profits" from the bill. In its amended form, the language now creates a specific crime for:

> "Whoever, in any matter involving a contract or the provision of goods or services, directly or indirectly, in connection with a war, military action, or relief or reconstruction activities . . . knowingly and willfully . . . materially overvalues any good or service with the specific intent to defraud."

The "materially overvalues" language comes directly from the insurance fraud section of Title 18 (18 U.S.C. § 1033), which includes the phrase "materially overvalues any land, property, or security." Importantly, the current language of "specific intent to defraud" will be a much clearer standard than the previous language of "specific intent to excessively profit."

DISASTER RELIEF FRAUD

The intent of this bill somewhat overlaps the intent of my Emergency and Disaster Assistance Fraud Penalty Enhancement Act, which was passed out of the Judiciary Committee in March of this year. The chairman's bill includes disaster relief efforts, which are the specific focus of my anti-fraud bill.

The goal of my bill is to protect the victims of disasters like Hurricane Katrina by making it a specific crime under the existing fraud chapter of Title 18 (18 U.S.C., chapter 47) to fraudulently obtain emergency disaster funds.

After an emergency or disaster like the tornadoes that devastated the city of Enterprise in my home state this March, and the deadly tornadoes that devastated Texas this April, we should do everything we can to make sure 100% of federal relief funds get into the hands of real victims and not people pretending to be victims. Taxpayers should not sustain a financial loss at the hands of scam artists, and wrongdoers should not profit from exploiting the victims of such horrific events.

Common sense requires that those who deceive the government and obtain emergency disaster funds by fraud be subject to criminal punishment. We need to create a mindset that disaster relief funds are sacred; that they are for the benefit of people who have suffered tremendous loss; and only people who have suffered should gain the benefit of federal relief monies.

The total price tag for the fraud committed after Hurricanes Katrina and Rita is not yet known, but the Government Account-

ability Office investigators have testified that it will be in the billions of dollars for the federal government.

Billions of dollars in fraudulent payments is an insult to the victims of these natural disasters and an insult to the ultimate victim in this fraud, the American taxpayer. Natural disasters and emergency situations often create an opportunity for unscrupulous individuals to take advantage of both the immediate victims of the disaster or emergency, as well as those who offer financial and other assistance to the victims. The American people are extremely generous in responding to disasters, but they will not tolerate fraud by those who deceitfully exploit their generosity.

Our resources are not unlimited, and it is critical that we ensure that every relief dollar goes to legitimate victims. It is important we give prosecutors the tools they need to protect legitimate victims and to protect American taxpayers. Exploiting the kindness of the American people in times of crisis is a serious crime that will be treated with appropriate severity. We will not tolerate criminals stealing from the pockets of disaster victims. We must ensure that victims and the generous members of the American public are not preyed upon by criminals attempting to profit from these disasters and emergencies.

This bill creates a new section in the fraud chapter of Title 18 that prohibits fraud relating to military action, relief, and reconstruction efforts, while my bill adds a section to the fraud chapter which prohibits fraud in connection with major disaster or emergency benefits. My bill also increases the penalties currently available for such acts. It is clear that these two important pieces of legislation must be harmonized before they become law.

CONCLUSION

I am pleased that the Chairman amended this legislation to remove a potentially vague term, "excessively profits," from the language of the bill. After this revision, the bill sets forth a clear criminal standard that is both fair to contractors and appropriate for prosecuting these terrible crimes. In light of this significant change, I am happy to express my support for this legislation.

VII. Changes in Existing Law Made by the Bill as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 119, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

* * * * * * *

CHAPTER 46—FORFEITURE

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SEC. 981. Civil Forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

* * * * * * *

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, *1039*, or 1344 of this title or any offense constituting specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

* * * * * * *

SEC. 982. Criminal Forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, ⟦or 1030⟧ *1030 or 1030* of this title, shall order that the property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

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CHAPTER 47—FRAUD AND FALSE STATEMENTS

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SEC.

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1038. False Information and hoaxes.

1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity.

1039. War profiteering and fraud relating to military action, relief, and reconstruction efforts.

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§ 1039. War profiteering and fraud relating to military action, relief, and reconstruction efforts

(a) PROHIBITION.—

(1) IN GENERAL.—Whoever, in any matter involving a contract or the provision of goods or services, directly or indirectly, in connection with a war, military action, or relief or reconstruction activities within the jurisdiction of the United States Government, knowingly and willfully—

(A)(i) executes or attempts to execute a scheme or artifice to defraud the United States; or

(ii) materially overvalues any good or service with the specific intent to defraud; shall be fined under paragraph (2), imprisoned not more than 20 years, or both; or

(B)(i) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(ii) makes any materially false, fictitious, or fraudulent statements or representations; or

(iii) makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry; shall be fined under paragraph (2) imprisoned not more than 10 years, or both.

(2) FINE.— A person convicted of an offense under paragraph (1) may be fined the greater of—

(A) $1,000,000; or

(B) if such person derives profits or other proceeds from the offense, not more than twice the gross profits or other proceeds.

(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

(c) VENUE.—A prosecution for an offense under this section may be brought—

(1) as authorized by chapter 211 of this title;

(2) in any district where any act in furtherance of the offense took place; or

(3) in any district where any party to the contract or provider of goods or services is located.

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CHAPTER 95—RACKETEERING

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SEC. 1956. Laundering of Monetary Instruments

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(c) As used in this section——

* * * * * * *

(7) the term "specified unlawful activity" means—

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(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section

641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(l) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (2) (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), *section 1039 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts),* section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), . . .

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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SEC. 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification doc-

uments), section 1029 (relating to fraud and related activity in connection with access devices), *section 1039 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts),* section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), . . .

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