

[Alerts and Updates]

President Obama Signs into Law the Fraud Enforcement and Recovery Act

May 27, 2009

In our [April 2, 2009 Alert](#), we reported on four pieces of legislation that have been introduced relating to "false claims" in federal procurement. These bills respectively were:

- S. 386, "Fraud Enforcement and Recovery Act" (Feb. 5, 2009),
- H.R. 1788, "False Claims Correction Act of 2009" (Mar. 30, 2009)
- S. 458, "False Claims Clarification Act of 2009" (Feb. 24, 2009); and
- H.R. 1667, "War Profiteering Prevention Act of 2009" (Mar. 23, 2009).

While three of the bills remain pending in committee, on May 20, 2009, President Obama signed into law S. 386, the Fraud Enforcement and Recovery Act (P.L. 111-21) ("FERA"). FERA seeks to "provide the federal government with more tools to investigate and prosecute financial fraud." The bill targets all kinds of fraudulent activity, from mortgage lending to securities fraud, but in the federal government contracting arena, this law:

- Amends the major fraud statute to protect funds expended under the TARP and the economic stimulus package;
- Authorizes funding to hire fraud prosecutors and investigators at the U.S. Department of Justice, the Federal Bureau of Investigation and other law enforcement agencies; and
- Extends the coverage of the False Claims Act to any false or fraudulent claim for government money or property, whether or not the claim is presented to a government official or employee, whether or not the government has physical custody of the money, or whether or not the claimant specifically intended to defraud the government.

The portion of the law pertaining to the False Claims Act is a direct response to the U.S. Supreme Court's decision in *Allison Engine Co. v. United States ex rel. Sanders*, discussed in our [June 27, 2008 Alert](#), wherein the Court held that the mere involvement of the United States' funding was insufficient to bring a matter under the False Claims Act.

For Further Information

If you have any questions about this Alert or would like more information, please contact [Tamara M. McNulty, LEED AP](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.