To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on ______________________

A BILL

To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Ending Too Big to
5 Jail Act”.

6 SEC. 2. STOP FINANCIAL INSTITUTION CRIME.

7 (a) FINDINGS.—Congress finds the following:
(1) History has shown that the Office of the Special Inspector General for the Troubled Asset Relief Program (referred to in this subsection as “SIGTARP”) has—

(A) served as an effective model for—

(i) recovering taxpayer dollars; and

(ii) bringing accountability by rooting out waste, fraud, and abuse; and

(B) proven to be a leader in targeting crimes committed by insiders at financial institutions in order to protect the interests of the people of the United States.

(2) The financial crisis in 2008 laid bare one of the biggest vulnerabilities of the United States, which is fraud committed by financial institutions. Fraud committed by financial institutions continues as of the date of enactment of this Act, which demonstrates that such fraud does not disappear, but evolves and grows over time, which weakens financial institutions from the inside.

(3) There is a need for a permanent law enforcement agency dedicated solely to investigating fraud committed by financial institutions and insiders at financial institutions because that type of fraud—
(A) wreaks havoc on the economy of the United States;

(B) puts the finances of the United States at risk; and

(C) ruins the lives of individuals in the United States.

(4) Investigations led by SIGTARP have resulted in criminal charges against more than 400 defendants, including criminal charges against nearly 100 bankers. These criminal charges were related to more than 20 failed banks, with a combined estimated loss to the deposit insurance fund of $7,000,000,000.

(5) SIGTARP’s investigations led to the Department of Justice enforcement actions against 10 financial institutions, with 8 having total assets exceeding $100,000,000,000.

(6) SIGTARP has developed unique methods to search for crime by using industry, financial, and human intelligence, including fraudulent conduct that contributed to the failure of financial institutions, or that was either in, or impacted, financial institutions.

(7) Rather than establishing an entirely new entity, it makes the most sense for taxpayers to rely
on SIGTARP’s understanding of complex bank
records and bank operations and use of intelligence
to—

(A) identify anomalies; and
(B) investigate, and root out fraud at, fi-
nancial institutions.

(8) The vast expertise of SIGTARP, and the
proven results of SIGTARP with respect to the in-
vestigation of crime at financial institutions, should
be used on a permanent basis to bring accountability
and to deter fraud that jeopardizes financial institu-
tions in the United States, especially considering the
extent to which the people of the United States rely
on those institutions.

(b) Redesignation of the Office of the Spe-
cial Inspector General for the Troubled Asset
Relief Program and the Special Inspector Gen-
eral for the Troubled Asset Relief Program.—

(1) In general.—The Emergency Economic
is amended—

(A) by striking “Special Inspector General
for the Troubled Asset Relief Program” each
place the term appears and inserting “Special
Inspector General for Financial Institution
Crime”, except where the term is used to refer to the Special Inspector General for the Troubled Asset Relief Program Act of 2009;

(B) in section 121 (12 U.S.C. 5231), in the section heading, by striking “SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM” and inserting “SPECIAL INSPECTOR GENERAL FOR FINANCIAL INSTITUTION CRIME”; and

(C) in the table of contents, by striking the item relating to section 121 and inserting the following:

“Sec. 121. Special Inspector General for Financial Institution Crime.”.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) ADDITIONAL APPROPRIATIONS PROVISION.—The Helping Families Save Their Homes Act of 2009 (Public Law 111–22; 123 Stat. 1632) is amended—

(i) in section 402 (12 U.S.C. 5231a)—

(I) in the section heading, by striking “SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM” and inserting “SPECIAL INSPECTOR GEN-
ERAL FOR FINANCIAL INSTITU-
TION CRIME”; and

(II) in subsection (b)(1)(A), by
striking “Special Inspector General of
the Trouble Asset Relief Program”
and inserting “Special Inspector Gen-
eral for Financial Institution Crime”; and

(ii) in the table of contents, by strik-
ing the item relating to section 402 and in-
serting the following:

“Sec. 402. Special Inspector General for Financial Institution Crime.”.

(B) EXEMPTION FROM BUDGET REDUC-
TION.—Section 255(i) of the Balanced Budget
and Emergency Deficit Control Act of 1985 (2
U.S.C. 905(i)) is amended by striking “Special
Inspector General for the Troubled Asset Relief
Program” and inserting “Special Inspector
General for Financial Institution Crime”.

(3) REFERENCES.—

(A) OFFICE REFERENCES.—Any reference
to the Office of the Special Inspector General
for the Troubled Asset Relief Program in any
law, rule, regulation, certificate, directive, in-
struction, or other official paper in force on the
date of enactment of this Act shall be consid-
erred to refer and apply to the Office of the Special Inspector General for Financial Institution Crime.

(B) Special inspector general references.—Any reference to the Special Inspector General for the Troubled Asset Relief Program in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Special Inspector General for Financial Institution Crime.

(c) Duties of Special Inspector General for Financial Institution Crime.—

(1) In general.—Section 121 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231) is amended—

(A) in subsection (b)—

(i) by striking paragraph (3); and

(ii) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(B) by striking subsection (c) and inserting the following:

“(c) Duties.—
“(1) IN GENERAL.—It shall be the duty of the Special Inspector General to conduct, supervise and coordinate—

“(A) investigations of fraudulent conduct in, or impacting—

“(i) an entity described in any of subparagraphs (A) through (F) of section 5312(a)(2) of title 31, United States Code;

“(ii) a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

“(iii) a savings and loan holding company, as defined in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)); and

“(B) audits and investigations of—

“(i) the purchase, management, and sale of assets by the Secretary under any program established by the Secretary under section 101; and

“(ii) the management by the Secretary of any program established under section 102, including by collecting and
summarizing the information described in paragraph (2).

“(2) INFORMATION REQUIRED.—The information described in this paragraph is the following:

“(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

“(B) A listing of the troubled assets purchased in each such category described in subparagraph (A).

“(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

“(D) A listing of each financial institution from which those troubled assets were purchased.

“(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

“(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 101, the amount of troubled assets on the books of the Treasury, the amount of troubled assets
sold, and the profit and loss incurred on each
sale or disposition of each such troubled asset.

“(G) A listing of the insurance contracts
issued under section 102.

“(3) ADDITIONAL DUTIES.—The Special In-
spector General shall—

“(A) establish, maintain, and oversee such
systems, procedures, and controls as the Special
Inspector General considers appropriate to dis-
charge the duty under paragraph (1); and

“(B) have the duties and responsibilities of
inspectors general under the Inspector General
Act of 1978 (5 U.S.C. App.); and

“(C) have the duties necessary to carry out
material loss reviews under section 2(d) of the
Ending Too Big to Jail Act.

“(4) ADDITIONAL AUTHORITY.—

“(A) IN GENERAL.—Except as provided
under subparagraph (B), and in addition to the
duties specified in paragraphs (1) and (2), the
Special Inspector General shall have the author-
ity to conduct, supervise, and coordinate an
audit or investigation of any action take under
this title as the Special Inspector General deter-
mines appropriate.
“(B) Exception.—Subparagraph (A) shall not apply with respect to any action taken under section 115, 116, 117, or 125.”;

(C) in subsection (e)—

(i) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B)(i) Subject to clause (ii), notwithstanding the fact that the Office of the Special Inspector General for Financial Institutions Crime Enforcement is not a temporary organization, as defined in subsection (a) of section 3161 of title 5, United States Code, the Special Inspector General may exercise the authorities of subsections (b) through (i) of that section.

“(ii) If the Special Inspector General exercises the authorities described in clause (i)—

“(I) section 3161(b)(2) of title 5, United States Code (relating to periods of appointments) shall not apply; and

“(II) with respect to an individual who is hired after the date of enactment of the Ending Too Big to Jail Act, section 3161(b)(3) of title 5, United States Code, shall not apply unless that individual is a reemployed annuitant described in paragraph (5).’’; and

(ii) in paragraph (5)—
(I) in subparagraph (A)—

(aa) by striking “(A)”; and

(bb) in the first sentence, by striking “Except as provided under subparagraph (B), if” and inserting “If”; and

(II) by striking subparagraph (B);

(D) by striking subsection (g) and inserting the following:

“(g) Cooperation and Coordination With Other Entities.—

“(1) Definitions.—In this subsection—

“(A) the term ‘bank holding company’ has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

“(B) the term ‘financial institutions’ means an entity described in any of subparagraphs (A) through (F) of section 5312(a)(2) of title 31, United States Code; and

“(C) the term ‘savings and loan holding company’ has the meaning given the term in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)).
“(2) REQUIRED COORDINATION.—In carrying out the duties, responsibilities, and authorities of the Special Inspector General under this section, the Special Inspector General shall work with the entities described in paragraph (3), with a view toward avoiding duplication of effort and ensuring comprehensive oversight of—

“(A) financial institutions, bank holding companies, and savings and loan holding companies;

“(B) any fraudulent conduct in, or impacting, an entity described in subparagraph (A); and

“(C) the Troubled Asset Relief Program.

“(3) ENTITIES.—The entities described in this paragraph are the following:

“(A) The Inspector General of the Department of the Treasury.

“(B) The Inspector General of the Federal Deposit Insurance Corporation.


“(D) The Inspector General of the Board of Governors of the Federal Reserve System.
and the Bureau of Consumer Financial Protec-
tion.

“(E) The Inspector General of the Federal
Housing Finance Agency.

“(F) The Inspector General of any other
entity as appropriate.”;

(E) in subsection (h), by striking “until
the date of termination of the Office of the Spe-
cial Inspector General for the Troubled Asset
Relief Program”;

(F) by striking subsection (i) and inserting
the following:

“(i) REPORTS.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Subject to subpara-
graph (B), not later than April 30 and October
31 of each year, the Special Inspector General
shall submit to the appropriate committees of
Congress a semiannual report with respect to
the 6-month period that ends on March 31 and
September 30 of that year, respectively.

“(B) INITIAL REPORT.—The first report
submitted by the Special Inspector General
under subparagraph (A) after the date of enact-
ment of the Ending Too Big to Jail Act shall
be with respect to the first full 6-month period that ends on March 31 or September 30 after that date of enactment, whichever is earlier.

“(2) CONTENTS.—Each report submitted under paragraph (1) shall include a summary of, for the period covered by the report, the relevant actions taken by the Special Inspector General.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to authorize the public disclosure of information that is—

“(A) specifically prohibited from disclosure by any other provision of law;

“(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

“(C) a part of an ongoing criminal investigation.

“(4) PUBLIC AVAILABILITY.—Except as provided under paragraph (3), all reports submitted under this subsection shall be available to the public.”;

(G) in subsection (j), by adding at the end the following:
“(3) the amounts made available under section 402(c) of the Public-Private Investment Program Improvement and Oversight Act of 2009 (12 U.S.C. 5231a(c)) shall remain available until expended for any purpose in furtherance of the mission of the Office of the Special Inspector General for Financial Institution Crime;

and

“(4) the Office of the Special Inspector General for Financial Institution Crime shall receive annual appropriations from Congress separate and apart from appropriations made to the U.S. Department of Treasury. (8) by striking subsection (k).”; and

(H) by striking subsection (k).

(2) CONTINUING SERVICE.—If the individual serving as the Special Inspector General for the Troubled Asset Relief Program on the day before the date of enactment of this Act was appointed to that position by the President, by and with the advice and consent of the Senate, that individual shall continue to serve as the Special Inspector General for Financial Institution Crime.

(d) MATERIAL LOSS REVIEWS.—Notwithstanding any other provision of law, beginning on the date of enactment of this Act, the Special Inspector General for Financial Institution Crime shall have the exclusive authority
to perform material loss reviews and has authority to promulgate regulations related to those reviews. For each review, the Special Inspector General shall make a written report to the agency reviewing the agency’s supervision of an entity defined in section 121(c)(1)(A) of the Emergency Economic Stabilization Act (12 U.S.C. 5231(c)(1)(A)), as amended by subsection (c)(1)(B) of this section, which shall ascertain why the entity’s problems resulted in a material loss, and make recommendations for preventing any such loss in the future.

(e) AUTHORITY OF SPECIAL INSPECTOR GENERAL.—

Section 121 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231) is amended by adding at the end the following:

“(l) DISCLOSURE.—

“(1) IN GENERAL.—Without approval of the Special Inspector General, no person, financial institution (as defined in section 5312(a) of title 31, United States Code, bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)), savings and loan holding company (as defined in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a))), or any other entity, including an entity that lawfully possesses non-public information and records of the
Special Inspector General, may disclose information and records with respect to the duties of the Special Inspector General under this section unless—

“(A) the Special Inspector General has approved a request for that information or those records, as applicable, under procedures established by the Special Inspector General; or

“(B)(i) an appropriate court of the United States has ordered that information or those records, as applicable, be released; and

“(ii) the Special Inspector General had the opportunity to oppose the release of the material described in clause (i) in a proceeding before the court described in that clause.

“(2) APPLICATION OF PRIVILEGE.—No Federal or State financial institutions regulatory agency, including the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal reserve banks, the Federal Deposit Insurance Corporation, the Bureau of Consumer Financial Protection, the Federal Housing Finance Agency, and any State banking agency, may, on the basis of any common law privilege, including the bank examiner privilege, deny the Special Inspector General access to information or records
after the Special Inspector General has requested that information or those records, as applicable.”.

SEC. 3. CERTIFICATION.

(a) DEFINITIONS.—In this section—

(1) the term “appropriate entity” means—

(A) the Special Inspector General for the Troubled Asset Relief Program or any successor entity; or

(B) if the Program or entity described in subparagraph (A) does not exist, the Attorney General;

(2) the terms “bank holding company” and “savings and loan holding company” has the meanings given those terms in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)); and

(3) the term “financial institution” has the meaning given the term in section 5312(a) of title 31, United States Code.

(b) CERTIFICATION.—The chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company with assets greater than $10,000,000,000 shall submit to the appropriate entity, subject to section 1001 of title 18, United States Code, an annual certification that the offi-
cers have conducted due diligence and found that there is no criminal conduct or civil fraud in the financial institution, bank holding company, or savings and loan holding company, as applicable, that has not been disclosed in full to the Department of Justice or the applicable regulator. If a disclosure to the Department of Justice or the applicable regulator has been made, the certification shall explicitly describe all of the details of the conduct that has been disclosed, including but not limited to, the date of disclosure, and the person to whom the disclosure was made.

(c) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the appropriate entity shall promulgate regulations on the process under which certifications made under subsection (b) shall be submitted.

(d) WEBSITE.—The appropriate entity shall, on the website of the appropriate entity—

(1) within 90 calendar days following the promulgation of regulations under subsection (c), and on an annual basis thereafter, publish a list of all financial institutions, bank holding companies, and savings and loan holding companies subject to the upcoming year’s annual certification requirement under subsection (b); and
(2) maintain on the homepage a direct link for
the public to report alleged misconduct pertaining to
any entity listed under paragraph (1).

(e) EFFECTIVE DATE.—Subsection (b) shall take ef-
fect on the effective date of the regulations promulgated
under subsection (e).

(f) ENFORCEMENT.—

(1) INJUNCTIONS.—When the Secretary of the
Treasury believes a person has violated, is violating,
or will violate this section or a regulation prescribed
under this section, the Secretary may bring a civil
action in the appropriate district court of the United
States or appropriate United States court of a terri-
tory or possession of the United States to enjoin the
violation or to enforce compliance with the section or
regulation. An injunction or temporary restraining
order shall be issued without bond.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—A chief executive offi-
cer, chief financial officer, chief operating offi-
cer, and chief compliance officer of a financial
institution, a bank holding company, or a sav-
ings and loan holding company, willfully vio-
lating this section or a regulation prescribed
under this section is liable to the United States
Government for a civil penalty of not more than $25,000.

(B) NEGLIGENCE.—

(i) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company who negligently violates any provision of this section or any regulation prescribed under this section.

(ii) PATTERN OF NEGLIGENT ACTIVITY.—If any chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company engages in a pattern of negligent violations of any provision of this section or any regulation prescribed under this section, the Secretary of the Treasury may, in addition to any penalty imposed under clause (i) with respect to any such violation, impose a civil
money penalty of not more than $50,000 on the chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company.

(3) CRIMINAL PENALTIES.—

(A) IN GENERAL.—A chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company willfully violating this section or a regulation prescribed under this section shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

(B) OTHER LAWS.—A chief executive officer, chief financial officer, chief operating officer, and chief compliance officer of a financial institution, a bank holding company, or a savings and loan holding company willfully violating this section or a regulation prescribed under this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in
a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

SEC. 4. ACCOUNTABILITY IN DEFERRED PROSECUTION AGREEMENTS.

Section 3161(h)(2) of title 18, United States Code, is amended—

(1) by striking “Any” and inserting “(A) Any”; and

(2) by adding at the end the following:

“(B)(i) If the defendant described in subparagraph (A) is a person other than an individual, the court may not approve an agreement described in that subparagraph unless the court determines that the agreement is in the public interest, including extending the term of such an agreement.

“(ii) In making the determination under clause (i), the court shall consider—

“(I) whether any reforms required under the agreement are likely to prevent similar unlawful behavior in the future;

“(II) whether any penalties under the agreement are sufficient to compensate victims and deter future unlawful actions;
“(III) if the defendant has previously been convicted or entered into a deferred prosecution agreement with the Government in connection with related activity, the court may not, without good cause, approve such an agreement.

“(iii) Any period of delay during which the court is making the determination under this subparagraph shall be included in the period of delay described in subparagraph (A).

“(C)(i) The court may, on its own or on motion of any party or of an independent monitor, if one is appointed pursuant to an agreement described in subparagraph (A), review the implementation or termination of the agreement, and take any appropriate action, to assure that the implementation or termination is in the public interest.

“(ii) The court may order a party or an independent monitor to file evidence with the court to aid the court in making the determination under clause (i).

“(D)(i) Except as provided in clause (ii), the Attorney General shall make available on the public website of the Department of Justice—

“(I) the text of any agreement described in subparagraph (A) between an attorney for the
Government and a defendant that is a person other than an individual; and

“(II) all the terms and conditions of any agreement or understanding between an independent monitor appointed pursuant to the agreement described in subclause (I) and the defendant.

“(ii) The information described in clause (i) and subparagraph (C)(ii) shall not be made publicly available if, upon petition by any interested party, the court finds that there is good cause to not make such information public, including that the information is proprietary, confidential, a trade secret, or meets the requirements of rule 49.1 of the Federal Rules of Criminal Procedure.”.