



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 1, 2012

S. 743

Whistleblower Protection Enhancement Act of 2011

*As ordered reported by the Senate Committee on Homeland Security
and Governmental Affairs on October 19, 2011*

SUMMARY

S. 743 would amend the Whistleblower Protection Act (WPA) to clarify current law and extend new legal protections to federal employees who report abuse, fraud, and waste related to government activities (such individuals are known as whistleblowers). The legislation also would affect activities of the Merit Systems Protection Board (MSPB) and the Office of Special Counsel (OSC). Finally, it would establish an oversight board within the intelligence community to review whistleblower claims.

CBO estimates that implementing S. 743 would cost \$24 million over the 2012-2017 period, assuming appropriation of the necessary amounts for awards to whistleblowers and additional administrative costs. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 743 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 743 is shown in the following table. The costs of this legislation primarily fall within budget functions 800 (general government) and 050 (national defense), as well as all other budget functions that include federal salaries and expenses.

	By Fiscal Year, in Millions of Dollars						2012-
	2012	2013	2014	2015	2016	2017	2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Cost of Corrective Actions							
Estimated Authorization Level	*	1	1	1	1	1	5
Estimated Outlays	*	1	1	1	1	1	5
Intelligence Community Whistleblower Protection Board							
Estimated Authorization Level	*	1	1	1	1	1	5
Estimated Outlays	*	1	1	1	1	1	5
MSPB and OSC							
Estimated Authorization Level	*	2	2	2	2	2	10
Estimated Outlays	*	2	2	2	2	2	10
Other Provisions							
Estimated Authorization Level	*	3	1	*	*	*	4
Estimated Outlays	*	3	1	*	*	*	4
Total Changes							
Estimated Authorization Level	*	7	5	4	4	4	24
Estimated Outlays	*	7	5	4	4	4	24

Notes: MSPB = Merit Systems Protection Board; OSC = Office of Special Counsel.

* = less than \$500,000.

BASIS OF THE ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in fiscal year 2012, that the necessary amounts will be made available from appropriated funds, and that spending will follow historical patterns for similar programs.

Under current law, the OSC investigates complaints regarding reprisals against federal employees who inform authorities of fraud or other improprieties in the operation of federal programs. The OSC orders corrective action (such as job restoration, back pay, and reimbursement of attorneys' fees and medical costs) for valid complaints. If agencies fail to take corrective actions, the OSC or the employee can pursue a case through the MSPB for resolution. Whistleblower cases may also be reviewed by the U.S. Court of Appeals.

Cost of Corrective Actions

When settling an employment dispute between the federal government and an employee regarding prohibited personnel practices, federal agencies are required to pay for an employee's attorney, any retroactive salary payments, and any travel and medical costs associated with the claim.

S. 743 would expand legal protections for whistleblowers and extend protections to passenger and baggage screeners working for the Transportation Security Administration and all federal employees working primarily on scientific research. The bill would authorize monetary awards to federal employees who suffered retaliation by their agency of up to \$300,000. In addition, the legislation would allow access to jury trials and would remove the exclusive jurisdiction of the U.S. Court of Appeals over whistleblower appeals.

According to the MSPB and OSC, approximately 450 whistleblower cases and around 2,000 complaints about prohibited personnel practices (including engaging in reprisals against whistleblowers) are filed against the federal government each year. CBO is unaware of comprehensive information on the current costs of corrective actions related to those cases. Damage awards depend on the particular circumstances of each case. Settlement amounts for whistleblowers have been as high as \$1 million, while the average settlement is around \$18,000 (most corrective action is nonmonetary, for example, amending performance appraisals). In addition, the Government Accountability Office has reported that about \$15 million is spent annually (from the Treasury's Judgment Fund) on equal employment opportunity and whistleblower cases. While it is uncertain how often damages would be awarded in such whistleblower situations, CBO expects that increasing the number of covered employees and legal protections under the bill would increase costs for such awards by about \$1 million each year.

Intelligence Community Whistleblower Protection Board

Section 204 would require the Director of National Intelligence, in consultation with the Secretary of Defense and the Attorney General, to establish an appellate review board. That board would adjudicate appeals from employees who believe that they have been denied security clearances or other types of authorizations to access restricted information in retaliation for revealing certain types of misconduct. Based on information from the Office of the Director of National Intelligence about the staffing needs for similar activities, CBO estimates that implementing this provision would cost \$1 million annually.

MSBP and OSC

CBO expects that enacting the bill would increase the workload of the MSPB and the OSC. For fiscal year 2012, the MSPB received an appropriation of \$40 million, and the

OSC received \$19 million. Based on information from those agencies, we estimate that when the legislation was fully implemented, those offices would spend about \$2 million a year to hire additional professional and administrative staff to handle additional cases.

Other Provisions

S. 743 would require the Government Accountability Office to prepare two reports on whistleblowers. In addition, agencies would be required to make changes to their whistleblower training and nondisclosure policies governmentwide. Based on information from federal agencies on the costs of similar requirements, CBO estimates that implementing those provisions would cost \$4 million over the 2012-2017 period assuming appropriation of the necessary amounts.

PREVIOUS CBO ESTIMATE

On January 25, 2012, CBO transmitted a cost estimate for H.R. 3289, the Platts-Van Hollen Whistleblower Protection Enhancement Act of 2011, as ordered reported by the House Committee on Oversight and Government Reform on November 15, 2011. Both S. 743 and H.R. 3289 would amend the Whistleblower Protection Act. Both bills have similar provisions and implementation costs, but the costs to implement H.R. 3289 would be higher primarily because it would impose additional responsibilities on Inspectors General.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 743 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

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