



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

September 8, 2009

**S. 372**

**Whistleblower Protection Enhancement Act of 2009**

*As ordered reported by the Senate Committee on Homeland Security  
and Governmental Affairs on July 29, 2009*

**SUMMARY**

S. 372 would amend the Whistleblower Protection Act (WPA) to clarify current law and give new protections to federal employees including those who report abuse, fraud, and waste involving government activities. 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. 372 would cost \$54 million over the 2010-2014 period, assuming appropriation of the necessary amounts for awards to whistleblowers and additional staffing and reporting requirements. Enacting the bill would not affect direct spending or revenues.

S. 372 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. 372 is shown in the following table. The costs of this legislation fall within budget function 800 (general government) and all other budget functions that include federal salaries and expenses.

	By Fiscal Year, in Millions of Dollars					2010-2014
	2010	2011	2012	2013	2014	
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>						
<b>Whistleblower Awards</b>						
Estimated Authorization Level	5	5	5	5	5	25
Estimated Outlays	5	5	5	5	5	25
<b>Intelligence Community Whistleblower Protection Board</b>						
Estimated Authorization Level	3	3	3	3	3	15
Estimated Outlays	3	3	3	3	3	15
<b>MSPB and OSC</b>						
Estimated Authorization Level	2	2	2	2	2	10
Estimated Outlays	2	2	2	2	2	10
<b>Other Provisions</b>						
Estimated Authorization Level	3	1	*	*	*	4
Estimated Outlays	3	1	*	*	*	4
<b>Total Changes</b>						
Estimated Authorization Level	13	11	10	10	10	54
Estimated Outlays	13	11	10	10	10	54

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 near the start of fiscal year 2010 and that spending will follow historical patterns for similar programs.

Under current law, the OSC investigates complaints regarding reprisals against federal employees that inform authorities of fraud or other improprieties in the operation of federal programs (such individuals are known as whistleblowers). The OSC takes corrective action 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.

### **Whistleblower Awards**

When implementing corrective actions to settle an employment dispute between the federal government and its employees regarding prohibited personnel practices, federal agencies are required to spend appropriated funds (some are paid by the Judgment Fund

and reimbursed by each individual agency) to pay for an employee's attorney, back pay, and any associated travel and medical costs.

S. 372 would expand protections for whistleblowers and extend protections to Transportation Security Administration passenger and baggage screeners and federal employees working on research, analysis, or technical information. This would include additional awards to employees who suffered from retaliation by their agency and compensatory damages 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, there are generally between 400 and 500 whistleblower cases each year and around 2,000 prohibited personnel practice complaints. CBO is unaware of any comprehensive information on the current costs of corrective actions related to those cases. Damage awards in each case depend on the particular circumstances of each case. Recent settlements amounts under the Whistleblower Protection Act have ranged from \$20,000 to \$300,000. In addition, the Government Accountability Office has reported that the Judgment Fund spends about \$15 million annually on equal employment opportunity and whistleblower cases. While it is uncertain how often damages would be awarded in such cases, CBO expects that the added protections under the bill would increase costs for such awards by about \$5 million each year.

### **Intelligence Community Whistleblower Protection Board**

Section 201 would establish the Intelligence Community Whistleblower Protection Board. The new board, which would have five members, would be responsible for issuing guidance on the procedures intelligence agencies should use when reviewing the claims of intelligence community employees who believe that they have experienced an adverse personnel action, such as termination of employment or denial of a promotion, or security clearance determination in retaliation for such employee revealing certain types of misconduct. Based on information from the Office of the Director of National Intelligence about the board's staff requirements and the costs of similar government boards, CBO estimates that implementing that this provision would cost \$3 million annually.

### **MSPB and OSC**

CBO expects that the bill's changes to existing laws would increase the workload of the MSPB and the OSC. For fiscal year 2009, the MSPB received an appropriation of \$39 million, and the OSC received \$17 million. Based on information from those

agencies, we estimate that implementing this bill would cost about \$2 million a year to hire additional professional and administrative staff.

### **Other Provisions**

The bill would require a report by the Government Accountability Office on whistleblowers and the Council of Inspectors General on the security clearance revocations, as well as changes to training and nondisclosure policies governmentwide. Based on information from agencies and on the costs of similar existing requirements, CBO estimates that implementing those provisions would cost \$4 million over the 2010-2014 period.

### **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

S. 372 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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