



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 9, 2007

H.R. 985

Whistleblower Protection Enhancement Act of 2007

*As ordered reported by the House Committee on Oversight and Government Reform
on February 12, 2007*

H.R. 985 would amend the Whistleblower Protection Act (WPA), clarify current law, and give new protections to federal employees and contractors who report abuse, fraud, and waste involving government activities. The legislation also would make several changes to the laws governing the Merit Systems Protection Board (MSPB) and the Office of Special Counsel (OSC). In addition, the legislation would require a study by the Government Accountability Office (GAO) regarding the revocation of security clearances.

CBO estimates that implementing H.R. 985 would cost \$5 million a year and about \$25 million over the 2008-2012 period, assuming appropriation of the necessary amounts. Enacting the legislation could affect direct spending, but we estimate any amounts would not be significant in any year. Enacting the bill would not affect revenues. H.R. 985 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

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 seeks corrective action for valid complaints. If agencies fail to take corrective action, 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.

According to the MSPB and OSC, there generally are between 400 and 500 whistleblower cases per year. Major provisions of H.R. 985 would expand the definition of protected whistleblowing, and extend employee protections to federal contractors, Transportation Security Administration passenger and baggage screeners, and federal employees working on scientific research or national security issues. The bill would allow for access to jury trials for federal employees and contractors in whistleblower cases, authorize the payment of compensatory damages for employees involved in such cases, and remove the exclusive jurisdiction of the U.S. Court of Appeals over whistleblower appeals.

In 2007, the MSPB received an appropriation of \$36 million, and the OSC received \$15 million. CBO expects that the bill's changes in whistleblower laws would increase the workload of the MSPB and OSC. Based on information from those agencies, we estimate that implementing this bill would cost up to \$3 million a year to cover additional staffing, travel, and security clearance reviews.

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 to pay for an employee's attorney, back pay, and any associated travel and medical costs. Under H.R. 985, federal employees and contractors could also receive compensatory damages for employment disputes.

CBO cannot estimate the cost of compensatory damage awards in such cases because the amount awarded would depend on the particular circumstances of each case and the frequency of cases involving such damages. Recent settlement amounts under the Whistleblower Protection Act have ranged from \$20,000 to \$200,000. While it is uncertain how often compensatory damages would be awarded in such cases, OSC and MSBP believe such awards could more than double the cost of some settlements. Hence, CBO expects that this provision would add a few million dollars each year to the cost of agency settlements, which are paid from individual agency appropriations.

In addition, the legislation would require the GAO to prepare a study within nine months on security clearance revocations since 1996. Based on the cost of similar reports, CBO estimates that preparing the report would cost less than \$500,000 over the 2007-2008 period, assuming the availability of appropriated funds.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.