

H.R. 2988, Whistleblower Protection Improvement Act of 2021

As ordered reported by the House Committee on Oversight and Reform on June 29, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	4	9
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	4	9
Spending Subject to Appropriation (Outlays)	0	15	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 2988 would create new protections for federal employees who report fraud or other improprieties, expand and clarify existing protections, and establish new procedures to ensure that employees receive timely relief if their claims of retaliation are affirmed. The bill also would extend whistleblower protections to noncareer appointees in the Senior Executive Service, Public Health Service officers or applicants, and members of the National Oceanic and Atmospheric Administration’s commissioned officer corps.

Specifically, the bill would:

- Prohibit federal employees from disclosing a whistleblower’s identity,
- Grant whistleblowers the right to furnish information to the Congress,
- Permit whistleblowers to seek a review in district court if a retaliation claim is not adjudicated within 180 days,
- Require federal agencies to pay attorneys’ fees for employees or former employees who prevail in proceedings before the Merit Systems Protection Board (MSPB), and
- Establish protections for federal employees who disclose censorship of research or technical information.

The costs of the legislation, detailed in Table 1, fall within budget function 800 (general government).



**Table 1.
Estimated Budgetary Effects of H.R. 2988**

	By Fiscal Year, Millions of Dollars										2022-2026	2022-2031	
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031			
Increases in Direct Spending^a													
Estimated Budget Authority	0	1	1	1	1	1	1	1	1	1	1	4	9
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1	4	9
Increases in Spending Subject to Appropriation													
Estimated Authorization	0	3	4	4	4	n.e.	n.e.	n.e.	n.e.	n.e.	n.e.	15	n.e.
Estimated Outlays	0	3	4	4	4	n.e.	n.e.	n.e.	n.e.	n.e.	n.e.	15	n.e.

Components may not sum to totals because of rounding; n.e. = not estimated.

a. Payments for successful whistleblower claims and related attorney fees would be paid from the Judgment Fund (a permanent indefinite appropriation). Under the No Fear Act (Public Law 107-174), spending from the Judgment Fund would be reimbursed from discretionary funds appropriated to the federal agency where the claim arose. Those reimbursements are not counted as reductions in direct spending because they are dependent on future appropriations.

For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2022.

H.R. 2988 would allow some whistleblowers who prevail in an action before the MSPB to be reimbursed for attorneys’ fees. Some awards could be significant and initially would be paid from the Judgment Fund (a permanent, indefinite appropriation used to pay claims against the government), which would be reimbursed by the federal agency involved. Using a historical analysis of whistleblower cases and information from the Office of Special Counsel (OSC) and the MSPB, CBO estimates that enacting H.R. 2988 would increase direct spending by \$9 million over the 2022-2031 period for payments to whistleblowers and for attorneys’ fees.

Over the 2015-2020 period, OSC received about 1,500 new cases annually for investigation. Using information from OSC and the MSPB, CBO expects that the bill would increase costs for those agencies by \$3 million annually (or about a 5 percent increase in their costs) for investigation and administration. Additionally, all federal agencies would incur some new costs for training and employee education and some federal agencies would be required to reimburse the Judgment Fund for successful claims. Those reimbursements would generally be made one year after an award was paid. In total, CBO estimates that implementing H.R. 2988 would cost \$15 million over the 2022-2026 period; any spending would be subject to the availability of appropriated funds.

The CBO staff contacts for this estimate are Matthew Pickford and Sofia Guo. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.