



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 21, 2008

H.R. 4854

False Claims Act Correction Act of 2007

As ordered reported by the House Committee on the Judiciary on July 17, 2008

H.R. 4854 would amend certain provisions of the False Claims Act (FCA), which allows private individuals with knowledge of past or present fraud committed against the government to file qui tam claims against federal contractors. In qui tam claims, such individuals (known as relators or whistleblowers) receive a share of any amounts recovered as a result of such claims. If additional funding is provided to pursue new claims, CBO estimates that H.R. 4854 would, on net, increase revenues and offsetting receipts collected by the federal government because it would likely lead to the initiation of additional claims under FCA. CBO cannot predict the amount of any additional revenues or receipts because it is uncertain how much the government would collect from additional claims under FCA or from claims pursued under existing federal laws. H.R. 4854 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.

Most of the amendments in the bill would take effect on the date of enactment and apply to all civil actions filed before, on, or after such date. The legislation would:

- Stipulate that individuals who present false claims to contractors, grantees, and others can be held liable under the FCA (under current law, that liability exists only for false claims presented to government employees);
- Permit qui tam suits by government employees under certain circumstances;
- Bar waivers or releases of claims except as part of a court-approved settlement;
- Modify when a court, upon a motion by the Attorney General, can dismiss an action if, when it was filed, the same matters were disclosed in federal hearings, investigations, or reports from the news media;
- Expand the court's authority in reducing the relator's share of proceeds under certain circumstances;

- Clarify that the government can pursue cases against individuals who knowingly retain an overpayment;
- Permit a third party to join a pending action with the consent of the person who brought the claim;
- Modify a pleading standard that would not require a relator, under certain circumstances, to identify specific false claims that result from an alleged course of misconduct if the facts provide reasonable assurance that a violation has likely occurred;
- Place a 10-year statute of limitations on the filing of civil actions against individuals who submit a false or fraudulent claim for payment; and
- Permit the Attorney General to delegate authority to other officials of the Department of Justice (DOJ) to issue a civil investigative demand against an individual possessing information relevant to a false claims investigation.

DOJ handles several hundred qui tam cases under the False Claims Act each year. In 2006 and 2007, the government recovered (net of awards to relators) more than \$5 billion from settlements and judgments in such cases. Under H.R. 4854, the government would be able to initiate FCA cases that it otherwise would not be able to pursue under that act. Accordingly, additional litigation activities could require more resources; funding for such activities would be subject to appropriation.

More prosecutions would result in the collection of civil fines, which are recorded in the budget as revenues, and additional recoveries would be recorded as offsetting receipts and collections to the government. The outcome of any new FCA cases pursued as a result of this legislation is uncertain, and the outcome of cases that might be prosecuted under other authorities if H.R. 4854 were not enacted is unknown.

On April 21, 2008, CBO transmitted a cost estimate for S. 2041, the False Claims Act Corrections Act of 2008, as ordered reported by the Senate Committee on the Judiciary on April 3, 2008. Many provisions of S. 2041 and H.R. 4854 are similar. CBO originally estimated that S. 2041 would not significantly increase revenues and collections. However, based on additional information, CBO now expects that either H.R. 4854 or S. 2041 could increase revenues and collections.

The CBO staff contact for this estimate is Leigh Angres. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.