

At a Glance

S. 2429, Administrative False Claims Act of 2021

As reported by the Senate Committee on the Judiciary on November 1, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	4	11
Revenues	*	46	160
Increase or Decrease (-) in the Deficit	*	-42	-149
Spending Subject to Appropriation (Outlays)	*	10	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

* = between zero and \$500,000.

The bill would

- Raise the maximum amount of a claim of fraud that federal agencies may pursue under the Program Fraud and Civil Remedies Act (PFCRA) from \$150,000 to \$1 million and allow that amount to be adjusted for inflation
- Allow agencies to recover costs from penalties collected under PFCRA and spend those amounts
- Reduce agencies' administrative burden by expanding the types of employees that can serve as judges in PFCRA cases and the number of employees at the Department of Justice who can approve PFCRA cases

Estimated budgetary effects would mainly stem from

- Additional revenues collected from higher penalties paid to the government under PFCRA
- Additional revenues collected from PFCRA cases that would not otherwise have been pursued
- Spending of recovered funds by agencies using PFCRA
- Spending by federal agencies and inspectors general to develop new PFCRA regulations

Areas of significant uncertainty include

- Estimating the number and dollar value of additional PFCRA cases that would be brought under the bill's provisions

Detailed estimate begins on the next page.

Bill Summary

The Program Fraud and Civil Remedies Act (PFCRA) allows federal agencies to use administrative procedures to pursue cases against individuals and entities that are suspected of making false claims and statements against the government that lead to fraud of up to \$150,000. Individuals and entities that are found to have violated federal fraud statutes are subject to civil penalties of \$5,000 (adjusted yearly for inflation) and up to double the assessed value of the fraud. S. 2429 would amend PFCRA in several ways: by raising the maximum amount of fraud that agencies can pursue under the statute to \$1 million (adjusted in future years for inflation), allowing agencies to recover costs from the penalties collected, and reducing the administrative burden for agencies that pursue PFCRA cases.

Estimated Federal Cost

The estimated budgetary effect of S. 2429 is shown in Table 1. The costs of the legislation cross many budget functions, but most are within budget functions 600 (income security) and 750 (administration of justice).

Table 1.
Estimated Budgetary Effects of S. 2429

	By Fiscal Year, Millions of Dollars										2022-2026	2022-2031
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031		
Increases in Direct Spending												
Estimated Budget Authority	*	1	1	1	1	1	1	2	2	2	4	11
Estimated Outlays	*	1	1	1	1	1	1	2	2	2	4	11
Increases in Revenues												
Estimated Revenues	*	8	10	13	15	18	20	23	25	28	46	160
Net Decrease (-) in the Deficit From Changes in Direct Spending and Revenues												
Effect on the Deficit	*	-7	-9	-12	-14	-17	-19	-22	-23	-26	-42	-149
Increases in Spending Subject to Appropriation												
Estimated Budget Authority	*	3	2	2	3	n.e.	n.e.	n.e.	n.e.	n.e.	10	n.e.
Estimated Outlays	*	3	2	2	3	n.e.	n.e.	n.e.	n.e.	n.e.	10	n.e.

Components may not sum to totals because of rounding; n.e. = not estimated; * = between zero and \$500,000.

Basis of Estimate

PFCRA allows federal agencies to use administrative means to seek redress for fraud committed by individuals or entities against the government. S. 2429 would amend the law and rename it the Administrative False Claims Act. Under PFCRA, an agency may pursue a

case if the amount in question does not exceed \$150,000. According to the Department of Justice, the Department of Housing and Urban Development (HUD) initiates about 95 percent of the roughly 20 PFCRA cases filed in any year. For this estimate, CBO assumes that S. 2429 will be enacted near the end of fiscal year 2022.

Revenues

S. 2429 would increase the maximum amount an agency can pursue under PFCRA from \$150,000 to \$1 million; that amount would be adjusted for inflation in future years. CBO expects that the change could lead more agencies to pursue PFCRA cases and increase the amount of penalties collected in all cases, including those pursued under current law. Other provisions of the bill would make it more likely that agencies would pursue PFCRA cases. The bill would:

- Allow an agency to deposit a portion of the penalties collected into its appropriations or other spending account that equals the costs of the investigation or prosecution,
- Allow members of a board of contract appeals to preside over PFCRA cases if an administrative law judge is not available,
- Increase the number of Justice Department employees who can review PFCRA cases for approval, and
- Extend the statute of limitations in PFCRA cases from 6 years to 10 years.

Significant uncertainty surrounds CBO's estimate of the number of additional cases that would be pursued under the bill because the extent to which the new rules would induce agencies other than HUD to pursue cases is uncertain. CBO anticipates that in each year after the bill was enacted there would be a modest increase in the number of cases that agencies pursue, totaling five more PFCRA cases than in the year before, but that number could be higher or lower. As a result, CBO expects that the average number of PFCRA cases filed would rise from 20 cases in 2022 to about 65 in 2031.

Data on historical collections under PFCRA are limited. CBO estimates that the average new penalty imposed for a case would be \$500,000, which is half the maximum penalty that agencies would be able to pursue, adjusted annually for inflation. CBO also anticipates that one-quarter of the penalties imposed ultimately would not be collected. On that basis, and accounting for estimated collections under current law, CBO estimates that the government would collect about \$160 million in additional penalties over the 2022-2031 period under S. 2429.

Direct Spending

S. 2429 would allow agencies to recover costs for processing PFCRA claims. (Under current law, only the Postal Service may recover penalties collected from successful PFCRA cases.) Collections would be deposited into the relevant appropriations account or other spending

account and would be available until expended. Assuming that agencies would devote about one month of attorney staff time, on average, to process each case, CBO estimates that agencies would recover and spend a total of about \$11 million over the 2022-2031 period to process new and existing PFCRA cases. Some cases could require significantly more or fewer resources to process.

Spending Subject to Appropriation

S. 2429 would require most federal agencies and offices of inspectors general to promulgate regulations to implement the bill's requirements within six months of enactment. The bill also would require the 57 federal offices of inspectors general to submit semiannual reports on PFCRA actions. Using information about similar requirements, CBO estimates that those requirements would cost a total of \$10 million over the 2022-2026 period; such spending would be subject to the availability of appropriated funds.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 1.

Increase in Long-Term Deficits: None.

Mandates: None.

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