



FY2023 Intelligence Authorization Act: Whistleblower Provisions

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Several provisions in the Senate Select Committee on Intelligence-reported Intelligence Authorization Act for Fiscal Year 2023 (S. 4503) would make changes to laws governing whistleblower protections and procedures in the 18 federal agencies and organizations authorized to conduct intelligence and intelligence-related activities, generally referred to as the [intelligence community](#). The House Permanent Select Committee on Intelligence (HPSCI)- ordered reported the Intelligence Authorization Act for Fiscal Year 2023 (H.R. 8367), which would not make such changes. The provisions of S. 4503 are consistent with previous intelligence community whistleblowing legislation, which has evolved to add both greater protections for federal employees and contractors, and clarity on the process for making a complaint.

Background

Many experts see laws governing whistleblower protections and procedures in the intelligence community as attempts to strike a balance between encouraging individuals to come forward to report alleged wrongdoing and the need to protect classified information. Intelligence community whistleblower laws are codified in the following statutes: the Inspector General Act of 1978, as amended ([5 U.S.C. App. §8H](#)), which applies to the inspectors general of all intelligence community elements; the Central Intelligence Agency (CIA) Act of 1949, as amended ([50 U.S.C. §3517](#)); the National Security Act of 1947, as amended ([50 U.S.C. §3033](#)), which applies to the Inspector General of the Intelligence Community (ICIG); Title VI of the Intelligence Authorization Act for Fiscal Year 2014, as amended ([50 U.S.C. §3234](#)), which provides protections for whistleblowers making a lawful disclosure; and Title III of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended ([50 U.S.C. §3341](#)), governing security clearances.

Legislative Provisions

S. 4503 includes provisions that would amend these statutes by: (1) expanding a whistleblower's access to Congress; (2) strengthening measures to protect classified information; (3) adding protections against disclosure of a whistleblower's identity as a reprisal for making a disclosure; (4) adding protections against revoking a whistleblower's security clearance in retaliation for making a disclosure; (5) expanding

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options for contractor employees to report alleged wrongdoing; and (6) expanding the scope of activities defined in statute as matters of “urgent concern.” H.R. 8367 does not include comparable provisions.

Table I. FY2023 Intelligence Authorization Proposals on Whistleblower Protections

House-introduced (H.R. 8367)	Senate-introduced (S. 4503)
No similar language.	§509 would amend the federal statute governing security clearance or access determinations (50 U.S.C. §3341) by adding protections against revoking a whistleblower’s security clearance in retaliation for making a disclosure.
No similar language.	§601 would allow a whistleblower to report wrongdoing to the Chair, Vice Chair or Ranking Member, a non-partisan staff member designated for the purposes of receiving such complaints, or a member of the majority or minority staff of any committee of jurisdiction over intelligence matters. The provision would enable whistleblowers to approach Congress directly or via their agency, whether or not the relevant inspector general has determined a complaint to be a matter or “urgent concern,” provided whistleblowers follow a set of specified strengthened measures intended to protect classified information.
No similar language.	§602 would expand the reporting options for contractor employees to include reporting to a supervisor of the employing federal agency with responsibility for the subject matter of the disclosure.
No similar language.	§603 would add a prohibition on willful disclosure of a whistleblower’s identity in reprisal for reporting alleged wrongdoing. The provision would afford a whistleblower the option of exercising a private right of action upon final administrative disposition of a claim of reprisal.
No similar language.	§604 would broaden the statutory definition of matters of “urgent concern” to include matters that fall outside the authority and responsibility of the Director of National Intelligence (DNI) and do not necessarily involve classified information.

Source: CRS analysis of H.R. 8367 and S. 4503 on Congress.gov.

Discussion

Sections 601 and 603 of S. 4503 would expand whistleblowers’ options for reporting a complaint. In addition, Section 601 specifies that the relevant inspector general would no longer have to declare reportable allegations of wrongdoing to be matters of urgent concern in order to be brought to Congress’s attention.

Section 604 of the legislation would also expand the scope of what could be reported. The definition of urgent concern would no longer require that a complaint involve classified information or, for complaints brought to the Inspector General of the Intelligence Community, be a matter under the authority and responsibility of the Director of National Intelligence. Instead, matters of urgent concern could concern any “matter of national security” involving flagrant problems, abuses, violations of law, or problems involving the funding, administration, or operation of an intelligence activity.

Section 601 of the legislation, which appears to be aimed at strengthening measures to protect classified information, notably would provide for the appointment of security officers within the offices of the

inspectors general of intelligence community elements who are able to provide “confidential, security-related guidance and direction” to whistleblowers who intend to report a complaint to Congress in a manner that protects classified information.

The legislation would add protections involving security clearance determinations and disclosure of a whistleblower’s identity: Section 509 would place the burden on the relevant agency to prove that a negative determination on a whistleblower’s access to classified information would have been made regardless of the whistleblower making a complaint. Section 603 would protect against the willful disclosure of a whistleblower’s identity in reprisal for making a complaint.

Resources

For more background and analysis on intelligence community whistleblower protections, see CRS Report R45345, *Intelligence Community Whistleblower Provisions*, by Michael E. DeVine.

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