CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 24, 2002

S. 630
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2002

As ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 17, 2002

SUMMARY

S. 630 would impose new restrictions on the transmission of unsolicited commercial electronic mail (UCE). The bill would require all senders of UCE to identify the messages as UCE, provide accurate header information, include a functioning return email address, and stop sending messages to recipients who opt not to receive them. In addition, the bill would create criminal penalties for knowingly sending UCE that contains false information in the email's header line.

The provisions of S. 630 would be enforced primarily by the Federal Trade Commission (FTC) under the authorities provided in the Federal Trade Commission Act, which includes assessments of civil penalties for violations of the act. However, agencies such as the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Securities and Exchange Commission (SEC), and the Secretary of Transportation would enforce the bill as it applies to businesses within the agencies' respective jurisdictions. These agencies would punish violations of the bill's provisions with civil and criminal penalties.

CBO estimates that implementing S. 630 would cost about $2 million in 2003 and about $1 million a year in 2004 and thereafter, assuming appropriation of the necessary amounts. CBO estimates that civil penalties collected as a result of enacting this bill would increase governmental receipts (revenues) by about $3 million a year over the 2003-2012 period. The bill also would have additional effects on revenues and direct spending by imposing costs on banking regulators and by creating new criminal penalties. However, CBO estimates that these additional effects would be negligible. Because the bill would affect both receipts and direct spending, pay-as-you-go procedures would apply.

S. 630 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state and local laws that regulate the use of electronic mail to send commercial messages. CBO estimates that complying with that mandate would result in no direct costs to state and local governments and thus would not exceed the threshold established by that act ($58 million in 2002, adjusted annually for inflation).

S. 630 would impose private-sector mandates as defined by UMRA by requiring that senders of commercial electronic mail include certain information within their messages. Based on information provided by government and industry sources, CBO expects that the direct costs of complying with the mandates would fall well below the annual threshold established by UMRA ($115 million in 2002, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 630 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2003	2004	2005	2006	2007
CHANGES IN FTC SPENDING SUBJECT TO APPROPRIATION [a]					
Estimated Authorization Level[b]	2	1	1	1	1
Estimated Outlays	2	1	1	1	1
CHANGES IN REVENUES					
Estimated Revenues	1	3	3	3	3

a. S. 630 also would increase direct spending by less than $500,000 a year.

b. The FTC received a gross 2002 appropriation of $156 million. This amount will be offset by an estimated $108 million in fees the FTC collects for merger reviews.

BASIS OF ESTIMATE

S. 630 would require that the FTC enforce the provisions of the bill under the Federal Trade Commission Act. Based on information from the FTC, CBO expects that the agency would need to upgrade its database of UCE complaints, hire additional staff to investigate possible violations, and assist companies attempting to comply with the bill's provisions. CBO estimates that these activities would cost $2 million in 2003 and $1 million a year in subsequent years, assuming appropriation of the necessary amounts.

S. 630 would create a variety of new civil and criminal penalties, which are classified in the budget as governmental receipts (revenues). The FTC would enforce the bill with civil penalties using its authority under the Federal Trade Commission Act. Based on information from the FTC, CBO estimates that these enforcement efforts would cause revenues to rise by $3 million a year under the bill. The bill also would create new criminal penalties and authorize other agencies, including the SEC and the Department of Transportation, to enforce the bill's provisions on industries within their jurisdictions using both civil and criminal penalties. However, CBO estimates that the effect of those additional provisions on revenues would not be significant in any year.

Collections of criminal fines are deposited in the Crime Victims Fund and spent in subsequent years. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be negligible.

The OCC, NCUA, OTS, FDIC, and the Board of Governors of the Federal Reserve System would enforce the provisions of S. 630 as they apply to financial institutions. The OCC, NCUA, and OTS charge fees to the institutions they regulate to cover all of their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill's requirement that the FDIC enforce the bill's restrictions on UCE sent by these banks would cause a small increase in FDIC spending but would not affect its premium income. In total, CBO estimates that S. 630 would increase net direct spending of the OCC, NCUA, OTS, and FDIC by less than $500,000 a year.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting S. 630 would reduce such revenues by less than $500,000 a year.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. (The estimated impact on outlays is less than $500,000 a year.) For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in Outlays	0	0	0	0	0	0	0	0	0	0	0
Changes in Receipts	0	1	3	3	3	3	3	3	3	3	3

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 630 would impose an intergovernmental mandate as defined in UMRA because it would preempt certain state and local laws that regulate the use of electronic mail to send commercial messages. CBO estimates that complying with that mandate would result in no direct costs to state and local governments and thus would not exceed the threshold established by that Act ($58 million in 2002, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 630 would impose private-sector mandates as defined by UMRA by requiring that senders of commercial electronic mail include certain information within their messages. The bill would require that all senders of commercial electronic mail include a valid return electronic mail address and an accurate subject heading within their message. Senders of UCE would further be required to identify their messages as UCE and to include a valid physical postal address within their messages. The bill would specify that the electronic mail address of the UCE sender must remain functioning for at least 30 days after transmission of UCE.

In addition, S. 630 would require persons who send UCE to provide the recipients of their messages with an option to discontinue receiving UCE from the sender and to notify recipients of that option to discontinue in each UCE message. If a recipient makes a request to a sender not to receive some or any UCE messages from such sender, then the sender, or anyone acting on their behalf, would be prohibited from initiating a transmission to the recipient 10 days after the receipt of such a request. Based on information from government and industry sources, CBO estimates that the direct costs of complying with the mandates contained in the bill would fall well below the annual threshold established by UMRA for private-sector mandates ($115 million in 2002, adjusted annually for inflation).

PREVIOUS CBO ESTIMATE

On April 13, 2001, CBO transmitted a cost estimate for H.R. 718, the Unsolicited Commercial Electronic Mail Act of 2001, as ordered reported by the House Committee on Energy and Commerce on April 4, 2001. Although the two bills are similar, H.R. 718 does not contain the provisions requiring banking regulators to enforce the bill within their jurisdictions. The estimated costs of the bills are very similar, with the only difference reflecting later enactment. In our earlier cost estimate for H.R. 718, CBO included an estimated impact for 2002, based on the assumption that the bill would be enacted near the start of 2002.

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