CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 13, 2001

H.R. 718
Unsolicited Commercial Electronic Mail Act of 2001

As reported by the House Committee on Energy and Commerce on April 4, 2001

SUMMARY

H.R. 718 would impose new restrictions on the transmission of unsolicited commercial electronic mail (UCE). The bill would require that all UCE messages identify themselves as UCE, explain how the consumer could discontinue receiving UCE, and contain accurate information about the senders and how to contact them. These requirements would be enforced 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. In addition, the bill would create criminal penalties for knowingly sending UCE that contains false identification information. Finally, H.R. 718 would give consumers the right to initiate private action to prohibit violations of the bill and recover damages.

CBO estimates that implementing H.R. 718 would cost about $2 million in 2002 and about $1 million a year in 2003 and thereafter, assuming appropriation of the necessary amounts. CBO estimates that civil penalties collected as a result of this bill would increase governmental receipts (revenues) by about $3 million a year over the 2002-2011 period. The new criminal penalties would be deposited as revenues into the Crime Victims Fund and spent in subsequent years as direct spending. CBO estimates, however, that the increase in criminal penalties would not be significant in any year. Because the bill would affect both receipts and direct spending, pay-as-you-go procedures would apply.

H.R. 718 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that complying with these mandates would result in no direct costs to state and local governments and thus would not exceed the threshold established by that act ($55 million in 2000, adjusted annually for inflation). The bill would preempt certain state and local laws to regulate unsolicited commercial e-mail, and certain state and local liability laws. Tribal governments would not be affected.

H.R. 718 also would impose private-sector mandates, as defined by UMRA, on senders of commercial electronic mail and certain Internet service providers. Based on information

provided by government and industry sources, CBO expects that the direct costs of complying with the mandates would not exceed the annual threshold established by UMRA ($109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 718 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				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	1	1	1	1
Estimated Outlays	2	1	1	1	1
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	0	a	a	a	a
Estimated Outlays	0	a	a	a	a
CHANGES IN REVENUES					
Estimated Revenues	1	3	3	3	3

a. H.R. 718 would increase direct spending by less than $500,000 a year during the 2003-2006 period.

BASIS OF ESTIMATE

H.R. 718 would require the FTC to 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 and 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 2002 and $1 million a year in subsequent years, assuming appropriation of the necessary amounts.

H.R. 718 also would allow the FTC to seek civil penalties against violators of the bill's provisions. Civil penalties are recorded in the budget as governmental receipts (revenues). Based on information from the FTC, CBO estimates that revenues would rise by $3 million a year. The bill also creates new criminal penalties, which would be deposited as revenues into the Crime Victims Fund and spent in subsequent years. Based on information from the Department of Justice, CBO estimates that the increase in revenues and direct spending resulting from the provisions on criminal penalties would not be significant in any 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. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
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

H.R. 718 would preempt state and local regulation of unsolicited commercial e-mail to the extent that such laws exist and conflict with this bill's requirements. In addition, the bill would preempt state and local liability laws as they apply to Internet service providers in certain instances. These preemptions would be intergovernmental mandates as defined in UMRA, but because state and local governments would not be required to take any action, CBO estimates complying with these mandates would result in no direct costs. Thus, the threshold established in that act ($55 million in 2000, adjusted annually for inflation) would not be exceeded. Tribal governments would not be affected.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 718 would impose private-sector mandates on persons who send commercial electronic mail and certain Internet service providers. The bill would require all senders of commercial electronic mail to provide a valid return electronic-mail address within their message. Further, senders of unsolicited commercial electronic mail (UCE) would be required to identify their messages as UCE, as well as provide the physical mailing address of the sender within their message. In addition, the bill 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 to be removed from all distribution lists under control of the sender, the sender would be required to remove the electronic mail address of the recipient from such lists, and the sender would be prohibited from selling a mailing list bearing the electronic address of the recipient.

The bill would also require Internet service providers (ISPs), who receive compensation specifically for the transmission of UCE messages into their systems, to offer an option to their subscribers not to receive any UCE messages. ISPs would not be required to provide such an option, however, if a subscriber has agreed to receive UCE messages in exchange for discounted or free Internet access service.

Based on information from government and industry sources, CBO estimates that the direct costs of these mandates would not exceed the annual threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

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