



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 23, 1999

H.R. 850

Encryption for the National Interest Act

As ordered reported by the House Committee on Intelligence on July 15, 1999

SUMMARY

H.R. 850 would clarify the President's authority to control the export of encryption products. The effectiveness or strength of contemporary encryption products is measured by the number of bits that make up the key for the encryption algorithm. (The term "key" refers to the mathematical code used to translate encrypted information back into its original, unencrypted format.) Under current policy, domestic producers may export encryption products with key lengths of up to 56 bits and stronger products for specified industries.

H.R. 850 would generally allow domestic producers to export encryption products with key lengths of up to 64 bits. The President would determine the maximum strength of encryption products that may be exported (with a review and potential update of that maximum every 180 days). The bill would establish a board to advise the President on the export of encryption products. H.R. 850 also would establish two federal crimes relating to the improper use of encryption technology and would require the Attorney General to issue numerous reports and maintain data on the instances in which encryption impedes or obstructs the ability of the Department of Justice (DOJ) to enforce the criminal laws. Finally, the bill would authorize appropriations of \$75 million over the 2000-2003 period to establish a technical support center within the Federal Bureau of Investigation (FBI).

Assuming the appropriation of the necessary amounts, CBO estimates that enacting this bill would result in additional discretionary spending by DOJ of about \$80 million over the 2000-2004 period. Enacting H.R. 850 also would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply. CBO estimates, however, that the amounts of additional direct spending and receipts would not be significant.

CBO is uncertain whether H.R. 850 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but we estimate that any costs to state, local, or tribal governments would not be significant and would not meet the threshold established by that act (\$50 million in 1996, adjusted annually for inflation).

This bill would impose no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 850 is shown in the following table. For purposes of this estimate, CBO assumes H.R. 850 will be enacted by the beginning of fiscal year 2000 and that the authorized amounts will be provided for each year. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	26	21	16	16	1
Estimated Outlays	19	25	16	16	4

BASIS OF ESTIMATE

Spending Subject to Appropriation

H.R. 850 would establish a technical support center within the FBI and authorize appropriations of \$75 million over the 2000-2003 period. Based on the historical spending patterns of FBI funds, CBO estimates that implementing this provision would result in outlays of \$74 million over the 2000-2004 period.

In addition, CBO estimates that complying with the bill's data collection and reporting requirements would cost DOJ about \$1 million a year, assuming appropriation of the necessary amounts. The expense of compiling and maintaining data on the instances in which encryption impedes or obstructs the ability of the department to enforce the criminal laws is difficult to ascertain because the number of such instances is unknown—but DOJ believes that if H.R. 850 were enacted they would be numerous.

Under current policy, the Department of Commerce's (DOC's) Bureau of Export Administration (BXA) would likely spend about \$500,000 a year reviewing exports of encryption products. If H.R. 850 were enacted, BXA would still be required to review requests to export encryption products. Thus, CBO estimates that implementing H.R. 850

would not significantly change the costs to DOC to control exports of nonmilitary encryption products.

H.R. 850 would establish a new federal crime for using encryption technologies to conceal incriminating information relating to a felony from law enforcement officials and for illegally decrypting private information. The bill would also create a new federal crime for violating privacy by decrypting someone's private information. Because H.R. 850 would establish new federal crimes, CBO anticipates that the U.S. government would be able to pursue cases that it otherwise would be unable to prosecute. Based on information from DOJ, however, we do not expect the government to pursue many additional cases. Thus, CBO estimates that implementing these provisions would not have a significant impact on the cost of federal law enforcement activity.

Direct Spending and Revenues

Enacting H.R. 850 would affect direct spending and receipts by imposing criminal fines. Collections of such fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections as a result of this bill are likely to be negligible, however, because the federal government would probably not pursue many cases under the bill. Because any increase in direct spending would equal the fines collected (with a lag of one year or more), the additional direct spending would be negligible.

Direct spending also could result from the provision that would allow the government to be sued for decrypting private information without a court order. CBO expects that this provision is not likely to result in any significant spending.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 850 would affect direct spending and receipts by imposing criminal fines and by allowing civil actions against the United States government. CBO estimates that the amounts of additional direct spending and receipts would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 850 would require state and local law enforcement agencies to follow specified procedures in order to obtain access to the decryption keys of suspected criminals and would require state courts to undertake additional administrative duties in processing such requests. In addition, the bill would limit the liability of anyone who provides access to a decryption key to law enforcement officials who follow the procedures prescribed by the bill. We cannot determine if the requirements in H.R. 850 would constitute new intergovernmental mandates because it is unclear how these requirements would interact with the current wiretap, search, and seizure laws. CBO estimates that the costs of those requirements would be small because they are similar to current laws and procedures and because the burden of the bill's requirements would fall predominantly on federal entities. We therefore estimate that the bill would not impose significant costs on state, local, or tribal governments and that such costs would not exceed the threshold established by UMRA (\$50 million in 1996, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATES

CBO has completed numerous other estimates of bills affecting the export of encryption products, including three versions of H.R. 850. Differences between this estimate and our previous estimates reflect differences between the bills. On April 21, 1999, CBO transmitted a cost estimate for H.R. 850 as ordered reported by the House Committee on the Judiciary on March 24, 1999. On July 1, 1999, CBO transmitted an estimate for H.R. 850 as ordered reported by the House Committee on Commerce on June 23, 1999. On July 16, 1999, CBO transmitted an estimate of H.R. 850 as ordered reported by the House Committee on International Relations on July 13, 1999. On July 9, 1999, CBO transmitted an estimate for S. 798, the Promote Reliable Online Transactions to Encourage Commerce and Trade (PROTECT) Act of 1999, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 23, 1999. And on July 22, 1999, CBO transmitted an estimate for H.R. 850 as ordered reported by the House Committee on Armed Services on July 21, 1999.

CBO estimated that the versions of H.R. 850 reported by the Judiciary Committee and the International Relations Committee would each cost between \$3 million and \$5 million over

the 2000-2004 period, that the version reported by the Armed Services Committee would cost \$5 million over the 2000-2004 period, and that the House Commerce Committee's version of H.R. 850 and the Senate bill (S. 798) would each increase costs by at least \$25 million over the same period. None of those previously estimated bills contain authorizations for a new technical support center within the FBI.

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