



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 1, 1999

H.R. 850

Security and Freedom Through Encryption (SAFE) Act

As ordered reported by the House Committee on Commerce on June 23, 1999

SUMMARY

H.R. 850 would allow individuals in the United States to use and sell any form of encryption and would prohibit states or the federal government from requiring individuals to relinquish the key to encryption products. The bill also would prevent the Department of Commerce (DOC) from restricting the export of most nonmilitary encryption products. H.R. 850 would establish a National Electronic Technologies (NET) Center within DOC's National Telecommunications and Information Administration (NTIA) to provide assistance and information on encryption products to law enforcement officials. The bill also would require the Attorney General to maintain data on the instances in which encryption impedes or obstructs the ability of the Department of Justice (DOJ) to enforce criminal laws. Finally, the bill would establish criminal penalties and fines for the use of encryption technologies to conceal incriminating information related to a felony, for transferring certain encryption products to the military of the People's Republic of China, and for providing information that is required by a court order in only an encrypted format.

Assuming the appropriation of the necessary amounts, CBO estimates that enacting this bill would result in additional discretionary spending by DOC and DOJ of at least \$25 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.

H.R. 850 contains intergovernmental mandates on state governments as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that states would not incur any costs to comply with the mandates, and that local and tribal governments would not be affected by the bill. H.R. 850 contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that implementing H.R. 850 would increase discretionary costs for DOC and DOJ by about \$5 million a year over the 2000-2004 period. The costs of this legislation fall within budget function 370 (commerce and housing credit) and 750 (administration of justice). Direct spending and revenues would also increase, but by less than \$500,000 a year.

Spending Subject to Appropriation

Under current policy, BXA would likely spend about \$500,000 a year reviewing exports of encryption products, assuming appropriation of the necessary amounts. In November 1996, the Administration issued an executive order and memorandum that authorized BXA to control the export of all nonmilitary encryption products. If H.R. 850 were enacted, BXA would still be required to review requests to export most computer hardware with encryption capabilities but would not be required to review most requests to export computer software with encryption capabilities. Within two years of enactment, H.R. 850 would shift such responsibilities and the associated costs from BXA to NTIA. Thus, CBO estimates that implementing H.R. 850 not significantly change the costs to DOC to control exports of nonmilitary encryption products.

H.R. 850 would require the Secretary of Commerce to conduct a number of studies on electronic commerce and domestic and foreign impediments to trade in encryption products. Based on information from the Department of Commerce, CBO estimates that completing the required studies would cost about \$1 million in fiscal year 2000, assuming appropriation of the necessary funds.

H.R. 850 would establish within NTIA the NET Center, which would assist federal, state, and local law enforcement agencies with issues involving encryption and information security. The bill would assign the NET Center a broad range of duties, including providing information and assistance, serving as an information clearinghouse, and conducting research. The costs to establish and operate the NET Center would depend on the extent to which service would be provided to the law enforcement community nationwide. Based on information from DOC, we estimate that the minimum costs to fulfill the bill's requirements would be roughly \$4 million annually, but the costs could be much greater. Any spending relating to the NET Center would be subject to the availability of appropriations.

DOJ would also be required to collect and maintain data on the instances in which encryption impedes or obstructs the ability of the agency to enforce criminal laws. CBO projects that collecting and maintaining the data would cost DOJ between \$500,000 and \$1 million a year.

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 also would be negligible.

Direct spending and revenues also could result from the provision that would allow the NET Center to accept donations to further its work. CBO expects that the amount of any contributions (recorded in the budget as revenues) would be less than \$500,000 a year, and that they would be used in the same year as they were received. Therefore, we estimate that the net budgetary impact of the gift authority granted to the NET Center would be negligible for all years.

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 the new NET Center to accept donations. 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 preempt state law by prohibiting states from setting standards for encryption products or methodology. The bill would also prohibit states from requiring persons to build decryption keys into computer hardware or software, make decryption keys available to another person or entity, or retain encryption keys. These preemptions would be mandates

as defined by UMRA. However, states would bear no costs as the result of the mandates because none currently require the availability of such keys or require private individuals to use a particular encryption standard.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

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

PREVIOUS CBO ESTIMATES

On April 21, 1999, CBO transmitted a cost estimate for H.R. 850 as ordered reported by the House Committee on the Judiciary on May 24, 1999. CBO estimated that the Judiciary Committee's version would increase total discretionary costs over the 2000-2004 period by between \$3 million and \$5 million. In comparison, CBO estimates that implementing this version of the bill would cost at least \$25 million over the same period.

ESTIMATE PREPARED BY:

Federal Costs: Mark Hadley and Mark Grabowicz
Impact on State, Local, and Tribal Governments: Shelly Finlayson

ESTIMATE APPROVED BY:

Robert A. Sunshine
Deputy Assistant Director for Budget Analysis