



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 16, 1999

H.R. 850

Security and Freedom Through Encryption (SAFE) Act

As ordered reported by the House Committee on International Relations on July 13, 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 technologies to any third party. The bill also would prevent the Bureau of Export Administration (BXA) in the Department of Commerce from restricting the export of most nonmilitary encryption products, unless there is credible evidence that such exports would be used in connection with certain military, criminal, or terrorist activities. H.R. 850 would establish criminal penalties and fines for the use of encryption technologies to conceal incriminating information relating to a felony from law enforcement officials. Finally, the bill 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 the criminal laws.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 850 would result in additional discretionary spending, by DOJ, of \$3 million to \$5 million over the 2000-2004 period. (The department's spending for activities related to encryption exports is negligible under current law.) Enacting H.R. 850 also would affect direct spending and receipts, beginning in fiscal year 2000, through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. 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. CBO estimates, however, that states would not incur any costs to comply with the mandates. Local and tribal governments would not be affected by the bill. H.R. 850 contains no new private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

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. CBO estimates that such efforts would cost DOJ between \$500,000 and \$1 million a year, assuming appropriation of the necessary amounts. These costs would fall within budget function 750 (administration of justice).

Under current policy, BXA would likely spend about \$500,000 a year reviewing exports of encryption products, pursuant to a November 1996 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 and software with encryption capabilities. Thus, enacting H.R. 850 would not significantly affect BXA's spending.

CBO estimates that the collections from criminal fines established by the bill—for the use of encryption technologies to conceal incriminating information relating to a felony—would not be significant.

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. H.R. 850 would affect direct spending and receipts by imposing criminal fines for encrypting incriminating information related to a felony. 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 under this bill are likely to be negligible because the federal government would probably not pursue many additional 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.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 850 would preempt state law by prohibiting 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 these mandates because none currently require the availability of such keys.

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, the Security and Freedom Through Encryption (SAFE) Act, as ordered reported by the House Committee on the Judiciary on March 24, 1999. On July 1, 1999, CBO transmitted a cost estimate for H.R. 850 as ordered reported by the House Committee on Commerce on June 23, 1999. On July 9, 1999, CBO transmitted a cost 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. CBO estimated that the Judiciary Committee's version of H.R. 850 would cost between \$3 million and \$5 million over the 2000-2004 period and that the Commerce Committee's version of that bill and S. 798 would increase costs by at least \$25 million over the same period.

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