CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 18, 2002

S. 2201
Online Personal Privacy Act

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

SUMMARY

S. 2201 would impose several restrictions on the collection of personal information over the Internet. For example, Internet service providers, online service providers, and operators of commercial websites would be required to obtain users' consent before collecting sensitive data and provide users the opportunity to "opt out" before gathering nonsensitive data. Also, under the bill, the Federal Trade Commission (FTC) would propose and implement similar restrictions on the collection of personal information by means other than the Internet. Finally, the National Institute of Standards and Technology (NIST) would be required to support the development of new software that gives Internet users automatic access only to websites with the users' preferred policies on privacy.

The restrictions on collecting personal information contained in S. 2201 would be enforced primarily by the FTC. 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 the agencies' respective jurisdictions. These agencies would punish violations with civil and criminal penalties. Under the bill, any civil penalties collected by the FTC would be distributed to the victims of the violations.

Assuming appropriation of the necessary amounts, CBO estimates that implementing this bill would cost the FTC $9 million and NIST $11 million over the 2003-2007 period. Because S. 2201 would create new civil and criminal penalties and would impose costs on federal banking regulators, we also estimate that the bill would have negligible effects on both direct spending and revenues. Therefore, pay-as-you-go procedures would apply.

S. 2201 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO cannot determine whether the costs of complying with some of these mandates would exceed the threshold established in UMRA ($58 million in 2002, adjusted annually for inflation).

S. 2201 also contains private-sector mandates as defined in UMRA. CBO cannot determine whether the direct cost of those mandates would exceed the annual threshold set by UMRA for private-sector mandates ($115 million in 2002, adjusted annually for inflation). The mandate costs are difficult to estimate because of uncertainties about (1) the number of online firms affected by S. 2201, (2) the incremental costs the bill would impose on any of those firms in light of existing privacy statutes, and (3) how the Federal Trade Commission would implement certain of the requirements of S. 2201 with regard to online and offline personal privacy.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2201 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Million of Dollars				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
FTC Spending To Enforce Privacy Restrictions [a]					
Estimated Authorization Level	1	2	2	2	2
Estimated Outlays	1	2	2	2	2
NIST Spending To Develop Internet Software [b]					
Estimated Authorization Level	3	2	2	2	2
Estimated Outlays	3	2	2	2	2
Total Changes					
Estimated Authorization Level	4	4	4	4	4
Estimated Outlays	4	4	4	4	4

a. 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.

b. NIST received a total appropriation of $680 million in 2002.

BASIS OF ESTIMATE

Subject to the availability of appropriated funds, CBO estimates that implementing S. 2201 would cost the FTC and NIST a total of $20 million over the 2003-2007 period. We also estimate that the bill would have an insignificant effect on direct spending and revenues. For this estimate, CBO assumes that the bill will enacted by the end of fiscal year 2002 and that funds will be appropriated near the beginning of each fiscal year.

Spending Subject to Appropriation

S. 2201 would require the FTC to develop and enforce new regulations on the collection of personal information through the Internet. The bill also would require the FTC to draft regulations concerning the privacy of information collected by entities by means other than the Internet. In the absence of additional legislation, the FTC would implement those regulations 19 months after enactment. Finally, the agency would distribute any civil penalties collected for violations of the bill's provisions to the victims of those violations. Based on information from the FTC, CBO estimates that implementing the bill would require the agency to hire about 20 additional staff that would cost about $2 million a year, subject to the availability of appropriated funds. (First-year costs—in 2003—are likely to be about $1 million.)

S. 2201 also would require NIST to undertake efforts to promote and develop software that would enable Internet users to access only those websites that employ the users' preferred privacy policies. CBO expects that the agency would fulfill this requirement research and testing on such software and the development of relevant standards. Based on information from NIST, CBO estimates that the new personal and equipment needed to undertake these activities would cost about $2 million a year over the 2003-2007 period, assuming the appropriation of the necessary amounts. (We estimate costs of $3 million for 2003 because the agency would need to acquire new computers and testing equipment.)

Direct Spending and Revenues

The OCC, NCUA, OTS, FDIC, and the Board of Governors of the Federal Reserve System would enforce the provisions of S. 2201 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 oversee financial institutions' collection of personal information through the Internet would cause a small increase in FDIC spending, but would not affect its premium income. In total, CBO estimates that S. 2201 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. 2201 would reduce such revenues by less than $500,000 a year.

Because those who violate the provisions of S. 2201 could be subject to civil and criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of civil and criminal penalties are classified in the budget as revenues. However, based on information from the FTC, CBO estimates that any such increase in collections would be less than $500,000 per year.

Under the bill, any civil penalties collected by the FTC for violations of the bill's provisions would be distributed to victims of the violations. In addition, 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 some lag), the net impact on spending also would be negligible.

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. Although S. 2201 would affect both direct spending and receipts, CBO estimates that the net effects would be insignificant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 2201 would preempt certain state laws regulating Internet privacy and disclosure, thus imposing an intergovernmental mandate as defined in UMRA. The cost of the preemption would not be significant. To the extent that public entities fall under the definition of online service providers (to be defined by the Federal Trade Commission), the requirements of this bill regarding the collection, use, and disclosure of certain information also would constitute mandates, but CBO cannot determine whether the cost of complying with the collection, use, and disclosure requirements would exceed the intergovernmental mandates threshold established in UMRA ($58 million in 2002, adjusted annually for inflation). It is difficult to estimate these costs because uncertainties in determining the total number of public entities that would be affected.

In addition, because of the wide range of existing practices regarding the collection of personally identifiable information, we cannot establish a reliable baseline of costs currently being incurred. Some states have a number of protections already in place, but other public online services have less-developed privacy policies and practices. Finally, we cannot predict how the legislation would be interpreted by the Federal Trade Commission (or in future legislation by the Congress) for both online and offline personally identifiable information collection, use, and disclosure.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 2201 would impose several mandates on the private sector. The bill would require Internet service providers, online service providers and other parties (e.g., operators of a website or online advertisers) to comply with a variety of privacy and disclosure requirements for personal information that they collect online and that allows them to identify individuals (defined in S. 2201 as "Personally Identifiable Information"). In particular, S.2201 would require such businesses to:

- Provide notice to users, either before or at the point of information collection online, of the types of personal information being collected, and of the subsequent use and disclosure that will be made of that information;

- Provide users a choice of whether to allow collection of their personal information, by enabling them to opt-out from the collection of nonsensitive personal information and opt-in to the collection of sensitive personal information;

- Update users and allow for their consent whenever personal information is collected or disclosed under a "materially different" policy from that previously in effect, or notify all users when privacy has been compromised by an unintentional act of the information collector, (e.g., by a system malfunction or security breach);

- Designate a privacy compliance officer responsible for insuring that online collection and disclosure policies satisfy the requirements of the bill;

- Provide users with "reasonable" access to their personal information and allow them to make changes and deletions;

- Ensure the security of collected personal information; and

- Provide whistle-blower protection to employees who notify federal or state agencies of violations of the bill's requirements.

S. 2201 would further require the Federal Trade Commission to promulgate regulations for offline personal information, if the Congress does not pass legislation regulating offline personal information collection and disclosure which is similar in intent and scope to the online provisions in S. 2201 within 18 months of enactment.

CBO cannot determine whether the direct costs of those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($115 million in 2002, adjusted annually for inflation). The mandate costs are difficult to estimate because of uncertainties about (1) the number of online firms affected by S. 2201, (2) the incremental costs the bill would impose on any of those firms in light of existing privacy statutes including the loss in revenue, if any, that would result from not being able subsequently to use or sell certain personal information; and (3) how the Federal Trade Commission would implement certain of the requirements of S. 2201 with regard to online and offline personal privacy.

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