



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 30, 2013

### **S. 987**

#### **Free Flow of Information Act of 2013**

*As ordered reported by the Senate Committee on the Judiciary on September 12, 2013*

S. 987 would exempt journalists from being compelled to disclose protected information (confidential sources or related records, communications, or documents) unless a court finds that a specified exception applies. Based on information provided by the Department of Justice (DOJ), CBO estimates that implementing the legislation would cost \$2 million over the 2014-2017 period, subject to the availability of appropriated funds. Enacting S. 987 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the legislation, journalists could be compelled to disclose protected information when at least one of the following exceptions applies:

- The party seeking protected information has exhausted reasonable alternative sources.
- In criminal investigations or prosecutions, there are reasonable grounds to believe a crime has occurred; the Attorney General has certified that the decision to request compelled disclosure is consistent with federal regulations; the sources or records sought are essential to the investigation, prosecution, or defense; and the journalist has not sufficiently shown that disclosure would be contrary to the public interest.
- The protected information sought is essential to the resolution of the matter, and the public interest in compelling disclosure of the information involved outweighs the public interest in gathering or disseminating news information.
- The protected information was obtained during the alleged criminal conduct of the reporter.
- The information sought is necessary to prevent certain actions, including death and kidnapping, among others.
- The information sought would materially assist the government in preventing or mitigating an act of terrorism or other act that could harm national security.

Under the bill, covered service providers (including telecommunications carriers and Internet service providers) could not be compelled to provide testimony or documents relating to a reporter's phone, email, and computer use, unless one of the above exceptions applies.

S. 987 also would require the DOJ Inspector General to conduct an audit of the effects of the bill's provisions during the period between enactment and December 31, 2016, and to submit a report to the Congress by June 30, 2017.

Under current law, requests to subpoena journalists on matters related to federal cases typically originate within DOJ. Federal prosecutors can request a subpoena of a journalist from a court after an internal review by DOJ. Information from the department indicates that very few subpoena requests seeking confidential-source information are approved each year (there were a total of 12 over the 2007-2013 period) and that it is unlikely that the bill would substantially increase the number of such requests.

Journalists may challenge some subpoenas under current law, and S. 987 would clarify the instances when a journalist would be compelled to produce information or testify. The bill might increase federal attorneys' litigation duties if more subpoenas would be challenged than under current law, but given the small number of potential cases, CBO estimates that any increase in federal spending would be insignificant.

Based on information provided by DOJ, we expect that the department would need to hire about three people to carry out the audits required by S. 987. CBO estimates that it would cost about \$500,000 annually over the 2014-2017 period for DOJ to complete the audits and report required by the bill. Such spending would be subject to the availability of appropriated funds.

S. 987 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.