



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 14, 2014

H.R. 3361 USA FREEDOM Act

*As ordered reported by the House Permanent Select Committee on Intelligence
on May 8, 2014*

H.R. 3361 would make several amendments to investigative and surveillance authorities of the United States government, and would specify the conditions under which the federal government may conduct certain types of surveillance. CBO does not provide estimates for classified programs; therefore, this estimate addresses only the unclassified aspects of the bill. On that limited basis, CBO estimates implementing H.R. 3361 would cost approximately \$15 million over the 2015-2019 period, subject to the appropriation of the necessary amounts.

Enacting H.R. 3361 also could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. The bill could potentially result in additional criminal penalties because it would extend for two years the authority of the government to conduct surveillance in certain instances. Such penalties are recorded as revenues, deposited in the Crime Victims Fund, and later spent. However, CBO anticipates that any amounts collected would be minimal and the net impact would be insignificant.

Effects on the Federal Budget

The bill would amend the Foreign Intelligence Surveillance Act (FISA). Those amendments would affect the operations of the Foreign Intelligence Surveillance Court (FISC) and the Judiciary. First, H.R. 3361 would permit the FISC to appoint an amicus curiae, or “friend of the court,” to assist the court when the government makes an application under FISA that presents a novel or significant interpretation of FISA. Second, the bill would limit collection of telephone call records, thereby requiring the intelligence agencies—acting through the Department of Justice—to seek additional warrants from the FISC to access such data. Finally, the bill would require an annual report by the Director of the Administrative Office of the U.S. Courts (AOUSC), providing data on certain types of FISA orders. Based on information from the AOUSC, CBO estimates that implementing those requirements would cost approximately \$5 million over the 2015-2019 period, assuming appropriation of the necessary amounts.

In addition, the bill would require federal agencies to conduct several program assessments and reviews, and would establish new reporting requirements. Section 108 would require the Inspectors General of the Justice Department and the Intelligence Community to assess the effectiveness of the surveillance programs affected by the bill; section 402 would require the Attorney General to conduct declassification reviews of certain court decisions, orders, and opinions related to FISA. CBO estimates that fulfilling these and other reporting requirements in the bill would cost approximately \$10 million over the 2015-2019 period, assuming appropriation of the necessary amounts.

Intergovernmental and Private-Sector Mandates

The bill would impose two mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on both private and governmental entities. First, the bill would expand liability protections and limit the ability of plaintiffs to sue in cases where a defendant provides information to the federal government pursuant to a FISA order. Second, it would require entities, when compelled to provide information about telephone calls to federal officials, to protect the secrecy of the records and to minimize any disruption of services.

CBO estimates that the costs of those mandates would be small. The change in expanded liability protection is a slight modification to current law, and CBO estimates that the elimination of any legal right of action for future plaintiffs would affect a limited number of potential lawsuits. Information from the Department of Justice indicates that public entities receive few requests for call records, and the cost to those entities of providing that information is negligible. In addition, since public and private entities already take action to protect private information in complying with requests from the federal government and such entities would be fully compensated by the government at the prevailing rate for the services they provide, the costs to those entities would be insignificant. Consequently, CBO estimates that the total costs of all mandates in the bill would fall well below the intergovernmental and private-sector thresholds established in UMRA (\$76 million and \$152 million in 2014, respectively, adjusted annually for inflation).

Previous CBO Estimate

On May 7, 2014, the House Committee on the Judiciary ordered reported a similar version of H.R. 3361. CBO's cost estimates for both versions are the same.

Staff Contacts

The CBO staff contacts for this estimate are Jason Wheelock (for federal costs), J'neil L. Blanco (for the intergovernmental effects), and Elizabeth Bass (for the private-sector effects). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.