



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 11, 1997

H.R. 695

Security and Freedom Through Encryption (SAFE) Act

As ordered reported by the House Committee on National Security on September 9, 1997

SUMMARY

H.R. 695 would allow individuals in the United States to use or sell any encryption product 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 authorize the President to determine which encryption products could be granted an export license exception and thus could be exported following a one-time product review by the Department of Commerce's Bureau of Export Administration (BXA). Other encryption products would be subject to more stringent export controls imposed by the Secretary of Commerce with the concurrence of the Secretary of Defense. H.R. 695 would establish criminal penalties and fines for the use of encryption technologies to conceal from law enforcement officials incriminating information relating to a crime.

CBO estimates that implementing this bill would not add to BXA's costs of reviewing encryption products intended for export. Both under current policies and under the provisions of H.R. 695, CBO estimates that spending by BXA for reviewing the export of nonmilitary encryption products would total about \$4.5 million over the 1998-2000 period.

The bill would affect direct spending and receipts beginning in fiscal year 1998 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. 695 contains no private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but it contains an intergovernmental mandate on state governments. CBO estimates that states would not incur any costs to comply with the mandate.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

In November 1996, the Administration issued an executive order and memorandum that authorized the export of encryption products up to 56 bits in length following a one-time product review by BXA, contingent on the exporter's commitment to develop a key recovery system. H.R. 695 would maintain the President's discretion to determine which encryption products could be exported following a one-time review by BXA and which products would be subject to more stringent export controls by the agency. Based on information from BXA, CBO expects that the President would not modify the current policy of allowing license exceptions for encryption products of up to 56 bits in length. Thus, enacting this bill would not significantly change the scope of BXA's activities. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 695 would result in costs to BXA of about \$900,000 in each fiscal year, totaling about \$4.5 million over the 1998-2002 period, about the same as would be expected under current law. BXA was authorized to spend \$850,000 in fiscal year 1997 to control encryption exports.

Enacting H.R. 695 would affect direct spending and receipts through the imposition of criminal fines for encrypting incriminating information related to a felony. CBO estimates that collections from such fines are likely to be negligible, however, because the federal government would probably not pursue many cases under the bill. Any such collections would be recorded in the budget as governmental receipts, or revenues. They would be deposited in the Crime Victims Fund and spent the following year. Because the increase in direct spending would be the same as the amount of fines collected with a one-year lag, the additional direct spending also would be negligible.

The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 695 would affect direct spending and receipts through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. CBO estimates, however, that any collections and spending resulting from such fines would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 695 would prohibit states from requiring persons to make encryption keys available to another person or entity. This prohibition would be an intergovernmental mandate as defined in UMRA. However, states would bear no costs as the result of the mandate because none currently require the registration or availability of such keys.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

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

PREVIOUS CBO ESTIMATE

CBO provided cost estimates for H.R. 695 as ordered reported by the House Committee on the Judiciary on May 14, 1997, and as ordered reported by the House Committee on International Relations on July 22, 1997. Assuming appropriation of the necessary amounts, CBO estimates that implementing the Judiciary Committee's version of the bill would cost between \$5 million and \$7 million over the 1998-2002 period and that implementing the International Relations Committee's version would cost about \$2.2 million over the same period. The estimated cost under current policies and for the National Security Committee's version is \$4.5 million.

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