



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

January 17, 2018

### **H.R. 3989** **Uniting and Strengthening American Liberty Act of 2017**

*As ordered reported by the House Committee on the Judiciary on November 8, 2017*

H.R. 3989 would extend through September 30, 2023, the authority of the federal government to conduct surveillance under title VII of the Foreign Intelligence Surveillance Act (FISA) of 1978 (sections 1881-1881g of title 50, United States Code), as added by the FISA Amendments Act of 2008 (Public Law 110-261) and by the USA FREEDOM Act of 2015 (Public Law 114-23). That authority is set to expire on January 19, 2018. 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 that implementing the unclassified provisions of the bill would cost \$3 million over the 2018-2022 period, subject to the availability of appropriated funds.

#### **Effects on the Federal Budget**

Implementing H.R. 3989 would affect the operations of the Foreign Intelligence Surveillance Court (FISC). Specifically, section 101 would require the FISC to review applications submitted by the Attorney General to access or disseminate certain information acquired under section 1881a of title 50, United States Code. Section 104 would require the FISC, unless it determines otherwise, to appoint an amicus curiae (friend of the court) when it reviews certifications submitted by the government to conduct surveillance under section 1881a. Using information from the Administrative Office of the U.S. Courts, CBO estimates that implementing those provisions would cost less than \$500,000 annually and would total \$1 million over the 2018-2022 period. Those costs could be greater, however, depending on the number of applications that the Attorney General submitted to the FISC for review.

H.R. 3989 also would impose or amend several reporting requirements to be completed by several federal agencies, and it would require the Comptroller General to study both the unauthorized disclosure of classified information and the classification system of the United States. Based on its analysis of the costs of similar efforts, CBO estimates that preparing those reports and conducting the study would cost \$1 million in 2018 and \$2 million over the 2018-2022 period.

Finally, enacting H.R. 3989 could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. Because the bill would extend the authority to surveil and intercept communications of certain persons located outside the United States, the federal government might be able to prosecute criminal cases it otherwise would not be able to pursue. Offenders could be subject to criminal penalties, which are recorded as revenues, deposited in the Crime Victims Fund, and later spent. However, CBO anticipates that any amounts collected and spent would be minimal and that the net effects would be insignificant for each year.

CBO estimates that enacting H.R. 3989 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

## **Mandates**

H.R. 3989 would impose intergovernmental and private-sector mandates by extending existing mandates that require providers of communication services to help the federal government facilitate court-ordered surveillance and that limit civil actions against those providers. Because of limited information about the costs and the prevalence of such surveillance or the amount of potential civil awards, CBO cannot determine whether the costs of those mandates would exceed the annual threshold established by the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

The bill also would extend an existing preemption on state and local governments regarding legal rights of action. CBO estimates that the costs to public entities of all of the intergovernmental mandates in the bill would be small and well below the annual threshold established in UMRA (\$78 million in 2017, adjusted annually for inflation).

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that a provision of the bill would fall under that exclusion because in emergencies that provision would allow the Attorney General, without a specific court order, to access and disseminate certain intelligence information about U.S. persons. Therefore, CBO has not reviewed that provision for intergovernmental or private-sector mandates.

## **Previous CBO Estimates**

On December 11, 2017, CBO transmitted a cost estimate for S. 2010, the FISA Amendments Reauthorization Act of 2017, as reported by the Senate Select Committee on Intelligence on November 7, 2017. The differences in the estimated costs reflect the differences in H.R. 3989 and S. 2010.

On December 20, 2017, CBO transmitted a cost estimate for H.R. 4478, the FISA Amendments Reauthorization Act of 2017, as ordered reported by the House Permanent Select Committee on Intelligence on December 1, 2017. Provisions in H.R. 3989 are similar to those in H.R. 4478, and CBO's estimates of the budgetary effects of the unclassified aspects of the bills are the same.

The CBO staff contacts for this estimate are William Ma and Mark Grabowicz (for federal costs) and Jon Sperl (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.