



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

December 11, 2017

### **S. 2010**

#### **FISA Amendments Reauthorization Act of 2017**

*As reported by the Senate Select Committee on Intelligence on November 7, 2017*

S. 2010 would extend for eight years 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 amended by the USA FREEDOM Act of 2015 (Public Law 114-23). That authority is set to expire on December 31, 2017. CBO does not provide estimates for classified programs; therefore, this estimate addresses only the unclassified aspects of the bill.

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

Various sections of the bill would affect the operations of the Foreign Intelligence Surveillance Court (FISC): Section 4 would require the FISC, unless it determines otherwise, to appoint an amicus curiae (friend of the court) when it reviews the first certification, or amendment thereto, submitted by the government to conduct certain surveillance activities as specified in the bill. Section 5 would authorize the FISC to compensate amici curiae as it considers appropriate. Finally, section 8 would require the FISC to review certain information submitted by the Federal Bureau of Investigation (FBI) and to report to the Congress the number and results of such reviews conducted each year.

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 about \$1 million over the 2018-2022 period. Those costs, which could be greater depending on the number of cases the FBI submits to the FISC for review, would be subject to the availability of appropriated funds.

Enacting S. 2010 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 effect would be insignificant for each year.

CBO estimates that enacting S. 2010 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

## **Mandates**

S. 2010 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 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 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 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 section 9 of the bill would fall under that exclusion because in emergencies section 9 would allow the Attorney General to authorize surveillance, without a specific court order, of certain U.S. persons who are outside of the United States. Therefore, CBO has not reviewed that provision for intergovernmental or private-sector mandates.

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.