

At a Glance

S. 3905, the Intelligence Authorization Act for Fiscal Year 2021

As reported by the Senate Select Committee on Intelligence on June 8, 2020

By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	*	1	2
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	1	2
Spending Subject to Appropriation (Outlays)	505	1,533	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

* = between -\$500,000 and \$500,000.

The bill would

- Authorize appropriations of \$1.5 billion to develop technologies for fifth-generation wireless communications
- Authorize appropriations of \$731 million for fiscal year 2021 for the Intelligence Community Management Account (ICMA)
- Require the Director of National Intelligence to carry out a program to analyze information on social media platforms
- Modify the process to appeal the revocation or denial of a security clearance
- Provide whistleblowers a right of action in federal courts to seek compensatory and punitive damages
- Impose a private-sector mandate on the committees of Presidential campaigns by requiring them to report to the Federal Bureau of Investigation contacts by foreign entities offering contributions or election coordination

Estimated budgetary effects would primarily stem from

- Authorizing appropriations to develop fifth-generation wireless communications technologies
- Authorizing appropriations for the ICMA
- Paying for the analysis of information found on social media platforms
- Modifying the process to appeal revoked and denied security clearances

Areas of significant uncertainty include

- Predicting the number of whistleblowers who would successfully obtain monetary awards through the judicial system and the amounts of such awards

Detailed estimate begins on the next page.

Bill Summary

S. 3905 would authorize appropriations for fiscal year 2021 for intelligence activities of the U.S. government, including the Intelligence Community Management Account and the Central Intelligence Agency Retirement and Disability System. The bill also would establish a program to develop technologies for secure, fifth-generation wireless communications; allow certain whistleblowers to seek punitive and compensatory damages in federal court; modify the process for appealing the revocation or denial of security clearances; and, create or modify other programs affecting the intelligence community.

CBO does not provide estimates for classified programs; therefore, this estimate addresses only the unclassified aspects of the bill. In addition, CBO cannot provide estimates for certain provisions in the unclassified portion of the bill because they concern classified programs. On that limited basis, CBO estimates that implementing the unclassified provisions of the bill would cost about \$1.5 billion over the 2021-2025 period; that spending would be subject to appropriation of the specified and estimated amounts.

In addition, CBO estimates that enacting S. 3905 would increase direct spending by at least \$2 million over the 2021-2030 period. Enacting the bill would have an insignificant effect on revenues.

Estimated Federal Cost

The estimated budgetary effects of S. 3905 are shown in Table 1. The costs of the legislation fall within budget functions 050 (national defense), 750 (administration of justice), and other budget functions that fund security clearance adjudications.

Basis of Estimate

For this estimate, CBO assumes that S. 3905 will be enacted in the first quarter of fiscal year 2021. Outlays are based on historical spending patterns for existing or similar programs.

Spending Subject to Appropriation

CBO estimates that implementing the bill would cost about \$1.5 billion over the 2021-2025 period. Such spending would be subject to appropriation of the specified and estimated amounts.

**Table 1.
Estimated Budgetary Effects of S. 3905**

	By Fiscal Year, Millions of Dollars					2021-2025
	2021	2022	2023	2024	2025	
Spending Subject to Appropriation						
Fifth-Generation Wireless Technology						
Authorization	1,500	0	0	0	0	1,500
Estimated Outlays	15	140	200	180	180	715
Intelligence Community Management Account						
Authorization	731	0	0	0	0	731
Estimated Outlays	475	205	26	11	4	721
Social Media Analysis						
Estimated Authorization	15	15	15	16	16	77
Estimated Outlays	10	14	15	15	16	70
Appeals Process for Denied or Revoked Security Clearances						
Estimated Authorization	5	5	5	5	5	25
Estimated Outlays	5	5	5	5	5	25
National Intelligence University Pay Authority						
Estimated Authorization	*	*	*	*	1	2
Estimated Outlays	*	*	*	*	1	2
Total Changes						
Estimated Authorization	2,251	20	20	21	22	2,335
Estimated Outlays	505	364	246	211	206	1,533

Components may not sum to totals because of rounding; * = between zero and \$500,000.

In addition to the budgetary effects shown above, CBO estimates that enacting S. 3905 would increase direct spending by at least \$2 million and increase revenues by less than \$500,000 over the 2021-2030 period.

Fifth-Generation Wireless Technology. Section 501 would authorize appropriations of \$1.5 billion to support the development and global adoption of technologies for secure, fifth-generation wireless communication. The section would require the Director of the Defense Advanced Research Projects Agency and the Director of the Intelligence Advanced Research Projects Activity to use half of the authorized amounts to issue grants to entities that are developing such technologies. It also would establish an advisory committee composed of public and private-sector experts to provide advice on the strategic direction of the grant program.

The section also would require the Director of National Intelligence and the Secretary of Defense to use the other half of the authorized amounts to support the global adoption of secure telecommunications technologies. On the basis of information from the Administration, CBO estimates that implementing section 501 would cost \$715 million over the 2021-2025 period and \$785 million after 2025.

Intelligence Community Management Account (ICMA). Section 103 would authorize the appropriation of \$731 million for fiscal year 2021 for the ICMA. That amount is 32 percent more than the \$556 million appropriated for that account for fiscal year 2020. The ICMA is the principal source of funding for the Office of the Director of National Intelligence and for coordinating the intelligence activities of the federal government. CBO estimates that implementing section 103 would cost \$721 million over the 2021-2025 period.

Social Media Analysis. Section 307 would require the Director of National Intelligence to provide grants to or enter contracts with an independent, nonprofit organization to detect, analyze, and counter foreign-influence operations on social media platforms. The section would authorize a total of \$30 million to carry out those efforts over the 2021-2022 period. CBO estimates that implementing section 307 would cost \$70 million over the 2021-2025 period: \$24 million over the 2021-2022 period and about \$15 million each year thereafter, adjusted annually for inflation, to continue those efforts beyond 2022.

Appeals Process for Denied or Revoked Security Clearances. Section 401 would expand the process through which individuals may appeal the revocation or denial of their security clearances. Specifically, section 401 would require the Security Executive Agent to establish a panel to review agencies' decisions to revoke or deny security clearances. If the panel determines that an agency violated someone's rights or that the decision to revoke or deny a clearance was based on an improperly conducted review, the panel would vacate the agency's decision and send the case back for a new review. If the agency determines that it wrongfully denied or revoked a person's clearance, it would be required under section 401 to take corrective action and return the person to the position they would have held had the improper denial or revocation not occurred.

CBO estimates that it would take about two dozen full-time employees each year to staff and run the new panel. Salaries for those employees and other operating expenses of the panel would cost \$25 million over the 2021-2025 period, CBO estimates.

In addition to the increases in spending subject to appropriation described above, enacting section 401 also would affect direct spending. It would authorize compensation of up to \$300,000 to people whose clearances were improperly denied or revoked. Those effects are described in the "Direct Spending" section of this estimate.

National Intelligence University (NIU) Pay Authority. Section 306 would authorize the NIU to establish a separate pay schedule for its faculty members. Under current law, university faculty are paid under the Defense Civilian Intelligence Personnel System (DCIPS). On the basis of information from the Department of Defense (DoD), CBO expects that some current faculty members, as well as all new faculty members could receive higher rates of pay established under this authority.

Under the DCIPS pay schedule, salary increases for faculty members are based on longevity. The university is not able to offer faculty members higher salaries for credentials such as academic achievement. CBO expects that the NIU would increase pay rates to attract and retain individuals with the qualifications necessary to teach at the university. Those instances, however, would occur infrequently because turnover is low among NIU faculty. Thus, CBO estimates that by 2025 fewer than two dozen new faculty members would receive higher salaries under this authority.

On the basis of information from DoD, CBO estimates that those employees would receive an average of about \$13,200 more in compensation in fiscal year 2021 under section 306. That estimate is based on CBO's expectation that the new pay rates would take effect six months following enactment (about halfway into the fiscal year) to allow NIU time to develop and apply those higher rates of pay. After accounting for annual pay increases, CBO estimates that by 2025 the average increase in annual compensation would be about \$31,000. In total, CBO estimates that implementing section 306 would cost \$2 million over the 2021-2025 period.

Direct Spending and Revenues

S. 3905 would authorize payments of up to \$300,000 to compensate individuals whose security clearances were wrongfully denied or revoked. The bill also would grant whistleblowers a right of action to seek punitive and compensatory damages in federal courts. Other provisions would have insignificant effects on direct spending and revenues. Excluding provisions related to classified programs, CBO estimates that enacting S. 3905 would increase direct spending by at least \$2 million over the 2021-2030 period (see Table 2).

Appeals Process for Denied or Revoked Security Clearances. As discussed earlier under the heading "Spending Subject to Appropriation," section 401 would authorize compensation of up to \$300,000 for lost wages and benefits, or for expenses, to people whose security clearances were improperly denied or revoked. Such payments are classified as direct spending. It also would establish a new appeals panel to review revocations and denials of security clearances.

Some people whose revocations or denials will be overturned under current law would be newly eligible for the compensation authorized by section 401. Further, by establishing the additional appeals panel, CBO expects more people will successfully appeal and, thus, be eligible for compensation payments. However, CBO expects that the panel would not return many cases to the agencies for another review. CBO further expects that reviewing agencies are likely to make the same determination that they reached in the original review. Thus, CBO estimates that few individuals would receive compensation payments for back pay and that enacting section 401 would increase direct spending by an insignificant amount each year and by \$2 million over the 2021-2030 period.

Right of Action for Whistleblowers. Section 321 would prohibit publicly identifying a whistleblower employed by or detailed to an element of the intelligence community as an act of reprisal for a lawful disclosure of information, and it would provide a right of action in federal court for the whistleblower to seek compensatory and punitive damages from the people responsible for doing so.

Federal agencies could be listed as co-defendants in such cases. CBO has no basis to estimate how many whistleblowers would successfully obtain compensation from the United States or the amounts they would be awarded. Thus, the federal government's potential liability under section 321 could be significant. Because awards could be paid from the Claims and Judgment Fund (a permanent, indefinite appropriation available to pay claims against the government), those payments would be classified as direct spending.

In addition to those payments, the federal judiciary charges fees to file suit in district courts. Those fees are recorded as revenues and can be spent without further appropriation. Thus, the net effect on the deficit from any change in judiciary fees would be insignificant.

Other Provisions. Several provisions in S. 3905 would have insignificant effects on direct spending or revenues, generally because very few people would be affected, or because the proposal would allow the spending of new receipts so that the net effect would be small.

- Section 306 would authorize NIU to accept and use faculty research grants.
- Section 324 would prohibit the unlawful sharing of a whistleblower's complaint with any person named as a subject of such complaint. Section 506 would require individuals associated with presidential campaigns to report certain contacts with foreign persons as specified in the bill and would prohibit individuals from concealing or destroying materials related to such contacts. Individuals who fail to comply with any of those provisions would be fined, imprisoned, or both. Those criminal fines would be recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation.
- Section 402 would change the standard-of-proof threshold and allow the use of circumstantial evidence in determining whether a whistleblower's security clearance was denied or revoked as an act of reprisal. CBO estimates that enacting section 402 would increase the number of whistleblowers found to have been victims of reprisal action and that some of those people would receive retroactive pay and benefits.
- Enacting S. 3905 also would increase administrative costs for agencies not funded through annual appropriations to satisfy requirements of the bill. Such spending is considered direct spending. Those agencies are allowed to use fees, receipts from the sale of goods, and other collections to cover the increase in administrative expenses. CBO estimates that any net changes in direct spending by those agencies would be negligible

because most of them can adjust amounts collected to account for changes in operating costs.

CIARDS Fund Payment. Section 201 would authorize the appropriation of \$514 million for the Central Intelligence Agency Retirement and Disability System (CIARDS) for fiscal year 2021 to maintain the necessary funding level for operating that retirement and disability system. Appropriations to CIARDS are treated as direct spending in the budget and are projected to continue at the authorized levels in CBO’s baseline pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985. Because the amount that would be authorized by the bill is included in CBO’s baseline, that authorization would have no budgetary effect relative to the baseline.

Uncertainty

The liability imposed on the federal government by section 321 is subject to considerable uncertainty. CBO is unable to predict the timing and frequency of any prohibited actions against whistleblowers, how many whistleblowers would successfully obtain monetary awards through the judicial system, and the amount of those awards.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 2.

Table 2.
CBO’s Estimate of the Statutory Pay-As-You-Go Effects of S. 3905, the Intelligence Authorization Act for Fiscal Year 2021, as Reported by the Senate Select Committee on Intelligence on June 8, 2020

	By Fiscal Year, Millions of Dollars										2021-2025	2021-2030	
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030			
	Net Increase in the Deficit												
Pay-As-You-Go Effect	0	0	0	0	0	0	0	0	0	0	0	1	2

Increase in Long-Term Deficits

CBO estimates that enacting S. 3905 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2031.

Mandates

S. 3905 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the committees of Presidential campaigns. Section 506 would require campaign committees to report to the Federal Bureau of Investigation if foreign

entities offer to make contributions or coordinate election activities. Committees also would have to establish a policy requiring staff to report such contacts to a designated campaign official. The bill would incrementally increase the reporting requirements of presidential campaigns. Because the cost to file a report and the number of entities affected also would be small, CBO estimates the cost to comply with the mandate is also small and well below the annual threshold for private-sector mandates established in the UMRA (\$168 million in 2020, adjusted annually for inflation).

The bill would impose no intergovernmental mandates as defined in UMRA.

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