# Congressional Budget Office
## Cost Estimate

October 18, 2022

## At a Glance

### H.R. 3816, American Innovation and Choice Online Act
**As ordered reported by the House Committee on the Judiciary on June 24, 2021**

| By Fiscal Year, Millions of Dollars | 2023 | 2023-2027 | 2023-2032 |
|---|---|---|---|
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | * | * |
| Increase or Decrease (-) in the Deficit | 0 | * | * |
| Spending Subject to Appropriation (Outlays) | 20 | 172 | 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 2033? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | Yes, Over Threshold |

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

**The bill would**
- Prohibit large online platforms from conferring an advantage on their own products and services to the detriment of the products and services of their business users, among other restrictions
- Require the Federal Trade Commission (FTC) and Department of Justice (DOJ) to issue guidelines and supervise and enforce violations
- Impose a private-sector mandate by prohibiting large online platforms from engaging in certain behavior, as defined by the bill

**Estimated budgetary effects would mainly stem from**
- Spending subject to appropriation by the FTC and DOJ to implement the bill’s requirements
- Insignificant increases in revenues from additional civil monetary penalty collections

**Detailed estimate begins on the next page.**

## Bill Summary

H.R. 3816 would restrict some types of business activities for large online platforms, specified in the bill, including discriminating against products offered by business users and preferentially boosting their own products. The new restrictions would apply to federally designated "covered platforms," which have at least 50 million active users each month or 100,000 active business users each month, are owned or controlled by a company with a market capitalization or annual sales exceeding $600 billion, and have the ability to impede business users from accessing the platform's customer base.

Some of the behaviors the bill would prohibit for large online platforms include:

- Excluding or disadvantaging business users' products or services in order to benefit the covered platform's products or services;
- Restricting business users' access to platforms, operating systems, hardware, or software features that the covered platform uses for its own products or services;
- Compelling business users to purchase products or services to obtain access to or preferred placement on the platform;
- Using nonpublic data generated from business users' activity on the platform to advantage the platform operator's products and services; and
- Treating the platform's products and services more favorably than those of business users in search or ranking functions.

Under the bill, covered platforms would be designated by the Department of Justice (DOJ) or the Federal Trade Commission (FTC), and would be required to adhere to the bill's provisions. That designation as a covered platform would apply for 10 years or until removed by DOJ or the FTC. H.R. 3816 would direct those agencies to issue enforcement guidelines, supervise and enforce violations, and collect civil monetary penalties from violators.

## Estimated Federal Cost

The costs of the legislation, detailed in Table 1, fall within budget function 370 (commerce and housing credit) and 750 (administration of justice).

**Table 1.**
**Estimated Increases in Spending Subject to Appropriation Under H.R. 3816**

| | By Fiscal Year, Millions of Dollars | | | | | |
|---|---|---|---|---|---|---|
| | 2023 | 2024 | 2025 | 2026 | 2027 | 2023-2027 |
| Federal Trade Commission | | | | | | |
| Estimated Authorization | 20 | 33 | 33 | 34 | 34 | 154 |
| Estimated Outlays | 16 | 30 | 33 | 34 | 34 | 147 |
| Department of Justice | | | | | | |
| Estimated Authorization | 5 | 5 | 5 | 6 | 6 | 27 |
| Estimated Outlays | 4 | 5 | 5 | 5 | 6 | 25 |
| Total Changes | | | | | | |
| Estimated Authorization | 25 | 38 | 38 | 40 | 40 | 181 |
| Estimated Outlays | 20 | 35 | 38 | 39 | 40 | 172 |

## Basis of Estimate

For this estimate, CBO assumes that H.R. 3816 will be enacted near the end of calendar year 2022. Using information from the affected agencies, CBO estimates that implementing H.R. 3816 would cost $172 million over the 2023-2027 period, assuming appropriation of the estimated amounts.

### Spending Subject to Appropriation

CBO estimates that it would cost the agencies $4 million over the 2023-2027 period to issue and update enforcement guidelines and another $2 million to establish new offices and hire staff. Designating and updating the status of covered platforms would cost the agencies about $8 million over the 2023-2027 period; the designation process could take up to two years.

In addition, CBO estimates that it would cost the agencies about $158 million to supervise and enforce violations of H.R. 3816, mainly for employee salaries and overhead. CBO anticipates that DOJ and the FTC would begin hiring in 2023 and that the new enforcement offices and staff would be fully operational in 2024. Using information from the agencies about current salaries and overhead costs for antitrust staff, CBO estimates each new employee would cost about $200,000 annually, on average. The FTC would establish a bureau of digital markets with about 85 employees. DOJ currently has more than 30 employees dedicated to antitrust efforts related to large technology companies. Using information provided by the agency about projected workload under the bill, CBO expects that the department would need 25 additional staff members to conduct enforcement.

### Revenues

Covered platforms found to violate the provisions of H.R. 3816 would be subject to civil monetary penalties, which are generally remitted to the Treasury and recorded as revenues. The collection of most civil fines would depend on the level of appropriations provided in future appropriation acts. In addition, whether the FTC would pursue civil penalties or some other remedy for violations is unclear. In any event, CBO estimates that any increases in revenues from civil penalties would be insignificant.

## 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 increases in revenues that are subject to those pay-as-you-go procedures would not be significant in each year or over the 2023-2032 period.

**Increase in Long-Term Deficits:** None.

## Mandates

H.R. 3816 would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of the mandates would exceed the threshold for private-sector mandates established in UMRA ($184 million in 2022, adjusted annually for inflation).

The bill would require the FTC to enforce new regulations prohibiting covered platforms from engaging in behavior that discriminates against products offered by business users and preferentially boosts their own products. The cost of the mandate would be any income lost as a consequence of the regulations.

Because the FTC has not issued the regulations required by the bill, CBO cannot determine the exact cost of the mandates. However, the entities likely to be affected are large multinational companies with market capitalizations in the hundreds of billions of dollars. Using market research on the fees that some platforms charge developers of applications or for “in-app” purchases, CBO estimates that the aggregate cost of the mandate would greatly exceed the threshold established in UMRA for private-sector mandates.

The bill contains no intergovernmental mandates as defined in UMRA.

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