



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

December 20, 2017

H.R. 4478 **FISA Amendments Reauthorization Act of 2017**

*As ordered reported by the House Permanent Select Committee on Intelligence
on December 1, 2017*

H.R. 4478 would extend for four 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 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. 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

Various sections of the bill would affect the operations of the Foreign Intelligence Surveillance Court (FISC): Section 201 would require the FISC to review querying procedures adopted by the Attorney General and applications for court orders submitted by the Federal Bureau of Investigation (FBI) to access the contents of certain information acquired under section 1881a of title 50, United States Code. Section 203 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 federal government to conduct certain surveillance activities as specified in the bill. Finally, section 205 would authorize the FISC to compensate amici curiae as it considers appropriate.

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, however, could be greater, depending on the number of applications that the FBI submitted to the FISC for review.

H.R. 4478 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 classification system of the United States and the protection of classified information.

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. 4478 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. 4478 would not significantly increase net direct spending or significantly affect on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Mandates

H.R. 4478 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 section 101 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.

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 the underlying bills.

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.