



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 27, 2009

### **H.R. 985** **Free Flow of Information Act of 2009**

*As ordered reported by the House Committee on the Judiciary on March 25, 2009*

CBO estimates that implementing H.R. 985 would have no significant effect on the federal budget. H.R. 985 would exempt journalists from being compelled to produce documents or provide testimony unless a court finds that one of the following exceptions apply:

- The party seeking information has exhausted all reasonable alternative sources;
- In criminal investigations or prosecutions, there are reasonable grounds to believe a crime has occurred, and the testimony or document sought is critical to the investigation, prosecution, or defense;
- In all other matters, the information sought is critical to the completion of the matter;
- In cases where a source's identity could be revealed, the document or testimony sought is necessary to prevent certain actions, including an act of terrorism, among others; and
- The public interest in compelling disclosure of the document or information involved outweighs the public interest in gathering or disseminating news information.

The bill also would limit the content of subpoenaed testimony or documents. Finally, under the bill, communication service providers (i.e., telecommunications carriers and Internet service providers) could not be compelled to provide testimony or documents relating to a reporter's phone, email, and computer use, unless one of the above exceptions applies.

Under current law, requests to subpoena journalists on matters related to federal cases typically originate within the Department of Justice (DOJ). Federal prosecutors can request a subpoena of a journalist from a court after an internal review by DOJ. Information from DOJ indicates that very few subpoena requests seeking confidential source information are approved each year (there were a total of 19 over the 1991-2007 period) and that it is unlikely that the bill would substantially increase such requests. Thus, CBO assumes that there would be very few instances each year when such a subpoena could be challenged in court.

Journalists already challenge some subpoenas under current law, and H.R. 985 would clarify the instances when a journalist would be compelled to produce information or testify. The bill might increase federal attorneys' litigation duties if more subpoenas would be challenged than under current law, but given the small number of potential cases, CBO estimates that any increase in federal spending would be insignificant. In addition, based on information from the Administrative Office of the United States Courts, CBO expects that the bill would not appreciably increase the courts' workloads. Therefore, CBO estimates that implementing H.R. 985 would have no significant budgetary impact.

H.R. 985 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Leigh Angres. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.