Congressional Budget Office
Cost Estimate

June 19, 2019

H.R. 2534, Insider Trading Prohibition Act

As ordered reported by the House Committee on Financial Services on May 8, 2019

By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Deficit Effect	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	n.e.

Pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
		Contains intergovernmental mandate?	No
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains private-sector mandate?	Yes, Cannot Determine Costs

n.e. = not estimated; * = between -$500,000 and $500,000.

H.R. 2534 would define and prohibit illegal insider trading.[1] It also would prohibit instances in which one person wrongfully communicates nonpublic, material information to another person in connection with securities trading, regardless of whether or not a payment or a promised personal benefit was involved. Under H.R. 2534, the Securities and Exchange Commission (SEC) would determine if the new insider trading prohibitions also apply to automated security-trading transactions.

Current law prohibits the use of "any manipulative or deceptive device or contrivance" when trading securities.[2] Likewise, federal regulations prohibit people from engaging in "any act, practice, or course of business which operates … as a fraud or deceit" in connection with securities trading.[3] To date, the SEC has used those general anti-fraud provisions, informed by judicial decisions and case law, to prosecute instances of illegal insider trading.

CBO expects that H.R. 2534 would expand the SEC's authority to prosecute unlawful insider traders. The SEC might commence more enforcement actions and impose additional

1. According to the Securities and Exchange Commission, "illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, on the basis of material, nonpublic information about the security."

2. 15 U.S. Code 78j.

3. 17 CFR 240.10b-5.

penalties if illegal insider trading continued at the same rate following enactment; but the agency would probably commence fewer enforcement actions if enactment of H.R. 2534 deterred illegal insider trading.

Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that any net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Also under current law, people found guilty of illegal insider trading are subject to criminal and civil penalties, which are recorded in the federal budget as revenues. CBO estimates that revenue collections and associated direct spending of criminal penalties would not significantly change under the bill.

H.R. 2534 contains private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). However, CBO cannot estimate whether the cost of those mandates would exceed the threshold established in UMRA ($164 million in 2019, adjusted annually for inflation).

H.R. 2534 would exempt employers from liability for insider trading solely for employing a person who has violated the new prohibitions in the bill. This exemption would be a mandate under UMRA because it would remove a private right of action. Further, the SEC would be allowed to exempt a person, transaction, or security from requirements in the bill, thereby shielding additional entities from liability. The cost of the mandate would be the foregone net value of awards and settlements that would have been granted for such claims in the absence of the bill. CBO cannot estimate the number of suits that would have been brought or the amount of potential forgone settlements, and, therefore, cannot determine whether the cost would exceed UMRA's annual private-sector threshold.

If the SEC increased fees to offset the costs associated with implementing the bill, H.R. 2534 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of the mandate would be very small.

H.R. 2534 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by Theresa Gullo, Assistant Director for Budget Analysis.