

At a Glance

H.R. 5, Equality Act

As passed by the House of Representatives on May 17, 2019

By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	5	10
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	5	10
Spending Subject to Appropriation (Outlays)	*	47	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?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold

* = between zero and \$500,000.

The bill would

- Amend federal antidiscrimination laws to add protections for sexual orientation and gender identity
- Clarify that unlawful sex discrimination includes discrimination on the basis of sexual orientation or gender identity in cases where sex is already included as a protected class
- Impose intergovernmental and private-sector mandates by prohibiting certain forms of discrimination

Estimated budgetary effects would primarily stem from

- Payments made by the government to settle additional discrimination claims brought against federal agencies
- Additional cases filed with the Equal Employment Opportunity Commission

Areas of significant uncertainty include

- Predicting the number and outcome of claims brought against federal agencies each year

Detailed estimate begins on the next page.

Bill Summary

H.R. 5 would prohibit discrimination on the basis of sexual orientation and gender identity by expanding the definitions of protected classes under several federal antidiscrimination laws, including the Civil Rights Act of 1964, the Fair Housing Act of 1968, and the Equal Credit Opportunity Act. If a federal law already includes sex as a protected class, the act would clarify that unlawful discrimination includes discrimination on the basis of sexual orientation or gender identity.

By expanding the reach of those laws, H.R. 5 would affect certain areas of public life and federal policy that are subject to federal prohibitions against discrimination, including employment, housing, public spaces and services, education, access to credit (such as for mortgages), and all activities that receive federal funding. H.R. 5 also would expand the definition of public accommodations to include places or establishments that provide exhibitions, recreation, exercise, amusement, gatherings, or displays; goods, services, or programs; and transportation services.

H.R. 5 would prohibit the use of the Religious Freedom Restoration Act as a basis for a defense or claim in response to the enforcement of any antidiscrimination law amended by the act, and it would authorize the Attorney General to intervene in equal protection actions in federal court on account of sexual orientation or gender identity.

Estimated Federal Cost

The estimated budgetary effect of H.R. 5 is shown in Table 1. The costs of the legislation fall within budget function 750 (administration of justice).

Table 1.
Estimated Budgetary Effects of H.R. 5

	By Fiscal Year, Millions of Dollars											2020-2025	2020-2030
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030		
Increases in Direct Spending													
Estimated Budget Authority	0	1	1	1	1	1	1	1	1	1	1	5	10
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1	5	10
Increases in Spending Subject to Appropriation													
Estimated Authorization	*	7	10	10	10	10	n.e.	n.e.	n.e.	n.e.	n.e.	47	n.e.
Estimated Outlays	*	7	10	10	10	10	n.e.	n.e.	n.e.	n.e.	n.e.	47	n.e.

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

Basis of Estimate

For this estimate, CBO assumes that H.R. 5 will be enacted in fiscal year 2020. Under that assumption, the agency could incur some costs in 2020, but CBO expects that most of the costs would be incurred in 2021 and later. Any spending would be subject to the availability of appropriated funds.

No existing federal statute provides explicit protection against discrimination on the basis of sexual orientation or gender identity. By amending federal antidiscrimination laws to add sexual orientation and gender identity as protected classes, H.R. 5 probably would result in additional discrimination cases filed with the Equal Employment Opportunity Commission (EEOC) and would expand federal agencies' liability. As a result, CBO estimates that more lawsuits against federal agencies for discrimination in matters such as employment would be brought and payment of awards and settlements stemming from those cases would increase direct spending.

Direct Spending

Although sexual orientation and gender identity are not covered as protected classes under title VII of the Civil Rights Act, the Department of Justice (DOJ) handles 10 to 20 cases a year involving lawsuits against federal agencies that allege employment discrimination on the basis of sexual orientation or gender identity. Some of those cases are dismissed, some are litigated, and others are settled.

Using information from DOJ, CBO expects that enacting H.R. 5 would increase the number of cases that DOJ litigates or settles each year because more plaintiffs would bring cases against the government and a greater share of those cases would proceed to litigation or settlement. CBO estimates that the number of cases brought each year would increase by 50 percent and half of those additional cases would result in payments from the Judgment Fund for damages or legal fees. Over the 2015-2018 period, DOJ made 330 payments from the fund to provide awards to plaintiffs or settle cases concerning discrimination in federal employment; the average payment was \$200,000. Under H.R. 5, five additional payments per year, on average, would occur, CBO estimates, and direct spending would increase by \$1 million annually over the next 10 years.

Spending Subject to Appropriation

CBO expects that implementing H.R. 5 would have a modest effect on the EEOC's workload because employers are generally aware of current antidiscrimination laws. Using information on current caseloads provided by the EEOC, CBO estimates that implementing the legislation would increase the agency's caseload by less than 5 percent and that the agency would incur costs of about \$10 million annually to handle the additional cases. (The Congress appropriated about \$380 million for the EEOC in fiscal year 2019.) Any additional spending would be subject to appropriation of the necessary amounts.

Uncertainty

CBO cannot predict how many cases would be brought against the federal government each year, whether they would be successful, or the value of damages that would be awarded, so the estimated increases in direct spending could be higher or lower than CBO estimates.

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 Pay-As-You-Go Effects of H.R. 5, the Equality Act, as Passed by the House of Representatives on May 17, 2019

	By Fiscal Year, Millions of Dollars											2020-2025	2020-2030
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030		
Pay-As-You-Go Effect	0	1	1	1	1	1	1	1	1	1	1	5	10

Increase in Long-Term Deficits.

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

Mandates

H.R. 5 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting discrimination on the basis of gender (where such discrimination is not already prohibited), sexual orientation, and gender identity in employment, public accommodations, schools, and other settings specified in the act. Although covered entities may incur minor costs to make administrative changes and update policies, H.R. 5 would not require any specific action or limit revenue-generating activities. Any potential cost would be further mitigated by the application of state laws that also prohibit such discrimination.

The act would impose an intergovernmental mandate by preempting state laws that conflict with the expanded protections in public accommodations. Although the bill would limit the application of state law, CBO expects that there would be no resulting loss of state revenues.

CBO estimates that the cost of complying with the mandates would fall below UMRA’s annual thresholds for intergovernmental and private-sector mandates (\$84 million and \$168 million in 2020, respectively, adjusted annually for inflation).

Section 4 of UMRA excludes from the application of that act any legislative provision that establishes or enforces any statutory rights that prohibit certain forms of discrimination. However, the definition of the types of discrimination to be excluded under UMRA does not include sexual orientation and gender identity. Therefore, CBO has determined that H.R. 5 should not be excluded from review under UMRA.

Estimate Prepared By

Federal Costs: Jon Sperl
Mandates: Andrew Laughlin

Estimate Reviewed By

Kim P. Cawley
Chief, Natural and Physical Resources Cost Estimates Unit

Susan Willie
Chief, Public and Private Mandates Unit

H. Samuel Papenfuss
Deputy Director of Budget Analysis

Theresa Gullo
Director of Budget Analysis