

At a Glance

H.R. 3826, Platform Competition and Opportunity Act of 2021

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)	6	56	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 acquiring other companies valued at over \$50 million, with certain exceptions
- Require the Federal Trade Commission (FTC) and Department of Justice (DOJ) to issue guidelines and supervise and enforce violations
- Impose private-sector mandates by prohibiting large online platforms from engaging in mergers and acquisitions valued over \$50 million, with certain exceptions

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. 3826 would prohibit a large online platform from acquiring another company valued at greater than \$50 million unless it can demonstrate that:

- The acquisition is already exempt from the federal premerger notification program administered by the Federal Trade Commission (FTC) and Department of Justice (DOJ), or
- The target company is not in current or potential competition with the platform and the acquisition would not enhance the platform operator’s market position.

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.

Under the bill, covered platforms would be designated by the FTC or DOJ, 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. 3826 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. 3826

	By Fiscal Year, Millions of Dollars					2023-2027
	2023	2024	2025	2026	2027	
Federal Trade Commission						
Estimated Authorization	5	8	9	9	9	40
Estimated Outlays	4	7	9	9	9	38
Department of Justice						
Estimated Authorization	3	4	4	4	4	19
Estimated Outlays	2	4	4	4	4	18
Total Changes						
Estimated Authorization	8	12	13	13	13	59
Estimated Outlays	6	11	13	13	13	56

Basis of Estimate

For this estimate, CBO assumes that H.R. 3826 will be enacted by the end of 2022. Using information from the affected agencies, CBO estimates that implementing H.R. 3826 would cost \$56 million over the 2023-2027 period, assuming appropriation of the estimated amounts.

Spending Subject to Appropriation

CBO estimates that it would cost the agencies \$3 million over the 2023-2027 period to issue and update enforcement guidelines. 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 \$48 million to supervise and enforce violations of H.R. 3826, 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. CBO expects that the FTC would need 30 additional employees and the DOJ would need 18 additional employees to supervise covered platforms and conduct enforcement.

Revenues

Covered platforms found to violate the provisions of H.R. 3826 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 and over the 2023-2032 period.

Increase in Long-Term Deficits: None.

Mandates

H.R. 3826 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 impose a mandate on covered platforms by prohibiting mergers and acquisitions valued over \$50 million, with certain exceptions. In doing so, other small companies would be prevented from being acquired by the covered platforms. The cost of the mandate would be any income lost as a consequence.

Because the FTC and DOJ have not issued regulations required by the bill, CBO cannot determine the exact cost of the mandates. However, publicly available data from ongoing mergers and acquisitions of large online platforms show that even a single deal could be valued at billions of dollars. Therefore, 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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