

Calendar No. 94

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-40

CONGRESSIONAL BUDGET OFFICE DATA
ACCESS ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1549

TO PROVIDE THE CONGRESSIONAL BUDGET OFFICE WITH
NECESSARY AUTHORITIES TO EXPEDITE THE SHARING OF
DATA FROM EXECUTIVE BRANCH AGENCIES, AND FOR OTHER
PURPOSES

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JUNE 13, 2023.—Ordered to be printed

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CONGRESSIONAL BUDGET OFFICE DATA ACCESS ACT

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Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1549]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1549), to provide the Congressional Budget Office with necessary authorities to expedite the sharing of data from executive branch agencies, and for other purposes, having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis of the Bill, as Reported	4
V. Evaluation of Regulatory Impact	4
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Bill, as Reported	5

I. PURPOSE AND SUMMARY

S. 1549, the *Congressional Budget Office Data Access Act*, accelerates the speed and improves the accuracy with which the Congressional Budget Office (CBO) analyzes the budgetary impact of proposed legislation. The bill provides CBO with an exemption to the *Privacy Act of 1974* (hereinafter “Privacy Act”), which would allow CBO to more easily access data and information maintained by federal agencies that it needs to conduct its assessments. The bill authorizes agencies to disclose records in their systems to the Director of CBO or authorized CBO representative without requir-

ing prior written consent of the individual to whom the record pertains under the Privacy Act.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The *Congressional Budget and Impoundment Control Act of 1974* (commonly referred to as the “Budget Act”) established CBO and authorized it to perform cost estimates on all legislation that moves through one or both chambers of Congress. The law authorizes CBO to “secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions,” and requires those agencies to provide that information to the CBO Director in carrying out their duties.¹ CBO’s non-partisan products, like cost estimates or analytic reports, are critical for Congress to gain access to objective, nonpartisan information to inform the budget process. For example, CBO’s cost estimates are the primary method for Members of Congress to understand and assess the budgetary consequences of enacting legislation approved by a Congressional committee.² Additionally, Senate Rule XXVI requires cost estimates to report legislation out of Committee (except the Committee on Appropriations and the Committee on the Budget), and prohibits the Senate from considering bills without these estimates.³ As a result, delays in receiving cost estimates can hold up the legislative process, by delaying the Senate’s ability to vote on legislation.⁴ CBO’s analytic reports, often produced at the request of committee or party leadership, cover every major federal policy area and frequently present options for and estimates associated with changing a federal program or tax rule.⁵ All of these products rely on quick access to accurate data and information.⁶

Despite a mandate for agencies to provide information to CBO, obstacles remain, particularly around Privacy Act restrictions on sharing data.⁷ This bill would remove obstacles facing CBO in obtaining agency data necessary to carry out its duties efficiently and accurately. Access to agencies’ data is critical for CBO to fulfill its mission and provide baseline budget projections, economic projections, cost estimates, and reports. While publicly available data can help CBO respond to Congressional requests quickly, CBO also needs to rely on non-public data to produce the most accurate analyses. Access to some non-public restricted data requires CBO to enter into memorandums of understanding or data sharing agreements with agencies. Data sharing agreements can result in lengthy negotiations; CBO estimates that agreements can take, in

¹Congressional Budget and Impoundment Control Act of 1974 Pub. L. 93–344, Sec. 201(d)(1974).

²Congressional Budget Office, *Frequently Asked Questions About CBO Cost Estimates* (Feb. 2013).

³Senate Rule XXVI; Senate Committee on Homeland Security and Governmental Affairs, *Rules of Procedure of the Committee on Homeland Security and Governmental Affairs*, Rule 6(E) (S. Prt. 118–6) (Mar. 2023).

⁴*Id.*

⁵Congressional Budget Office, About CBO, Products (www.cbo.gov/about/products#5) (accessed May 23, 2023); for example, see Congressional Budget Office, *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues* (May 2023).

⁶Congressional Budget Office, *The Congressional Budget Office’s Access to Data From Federal Agencies* (June 2021) (hereinafter “CBO Data Access Report”).

⁷Congressional Budget Office, Meeting with Majority Staff of the Senate Committee on Homeland Security and Governmental Affairs (Apr. 2023).

extenuating circumstances, up to five years to negotiate.⁸ A lack of agreement can reduce the accuracy of CBO cost estimates (when those estimates do not include data that are still in negotiation) or delay production of other products (while data agreements are negotiated).⁹ Because Congress does not currently provide CBO with an explicit Privacy Act exemption, some agencies' interpretations of the Privacy Act have caused them to delay access to information because they believed that a data set included personal information which would require prior written consent from an individual.¹⁰ Delays for key agency information can be costly; prohibiting CBO's ability to factor certain data into time sensitive analyses and delaying CBO's delivery of certain products.

In 2022, agency data helped CBO produce 760 cost estimates (generally on bills reported out of Senate and House committees), thousands of requests for technical assistance, and 83 reports, working papers, testimonies, and interactive tools.¹¹ While CBO continues to evolve to meet the evolving needs of Congress, CBO outlined how shifting legal and regulatory frameworks of federal agencies can restrict CBO's access to federal data, like pharmaceutical pricing data and student loan data. In response to one of these issues—potential loss of access to pharmaceutical pricing data—Congress amended the Social Security Act, which put CBO on equal footing with agencies like the Government Accountability Office (GAO) to help restore CBO's access to pharmaceutical pricing information.¹² Similarly, this bill would put CBO on equal footing with GAO, by providing CBO the same exemption to the Privacy Act provided to GAO and both Houses of Congress.¹³ In drafting the Privacy Act, the Comptroller General was provided an exemption to the restrictions on data access and sharing for the performance of his auditing duties.¹⁴ However, CBO, which was established the same year as the Privacy Act's enactment, was not granted the same exemption.¹⁵

As with GAO's statutory obligation to maintain the same level of confidentiality required of an agency head for any record made available by an agency to GAO under GAO's information gathering authority, CBO's existing authorization for access to agency data requires CBO to maintain the same level of confidentiality as is required of the agency or commission from which it is obtained.¹⁶ This bill provides clarity for agency information managers that CBO is authorized to receive personal information otherwise protected by the Privacy Act and ensures that CBO continues to maintain the same confidentiality protections as applied to the agency itself. This legislation will reduce the time that CBO spends negotiating with an agency for data and improve CBO's analyses.

⁸ CBO Data Access Report.

⁹ House Select Committee on the Modernization of Congress, Questions Submitted for the Record of Phillip L. Swagel, Director of the Congressional Budget Office, *CBO's Efforts to Enhance its Transparency, Effectiveness, and Efficiency*, 117th Cong. (Dec. 7, 2021); Congressional Budget Office, Meeting with Majority Staff of the Senate Committee on Homeland Security and Governmental Affairs (Apr. 2023).

¹⁰ *Id.*

¹¹ Congressional Budget Office, *The Congressional Budget Office's Request for Appropriations for Fiscal Year 2024* (Feb. 2023).

¹² *Id.*

¹³ 5 U.S. Code § 552(a).

¹⁴ *Id.*

¹⁵ Pub. L. No. 93-344 (1974).

¹⁶ 2 U.S.C. § 603(e).

III. LEGISLATIVE HISTORY

Senator Gary Peters (D–MI) introduced S. 1549, the *Congressional Budget Office Data Access Act*, on May 10, 2023, with original cosponsor Senator Susan Collins (R–ME). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator James Lankford (R–OK) joined as a cosponsor on May 15, 2023.

The Committee considered S. 1549 at a business meeting on May 17, 2023. At the business meeting, S. 1549 was ordered reported favorably by a roll call vote of 11 yeas to 0 nays, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Blumenthal, Paul, Lankford, Romney, and Scott voting in the affirmative. Senators Carper, Johnson, Hawley, and Marshall voted yea by proxy, for the record only.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the name of the bill as the “Congressional Budget Office Data Access Act.”

Section 2. Conditions of Disclosure for Federal Agency Information with the Congressional Budget Office

This section amends section 552a of Title 5, United States Code (known as the Privacy Act) by adding the Director of CBO, or any authorized representative of the CBO Director, in the course of their official duties to those who are exempt from the Privacy Act. This section also makes technical changes to section 552a of Title 5, United States Code.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

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S. 1549 would amend the Privacy Act of 1974 to authorize the disclosure of certain information to the Congressional Budget Office (CBO). In general, the Privacy Act prohibits executive branch agencies from disclosing certain records without the prior written consent of the people to whom the records pertain. There are currently twelve exceptions to this prohibition, and S. 1549 would add a thirteenth specifically for disclosures to CBO.

The Congressional Budget Act provides CBO with access to information from the Executive Branch unless disclosure would be a violation of law. In addition, that Act requires CBO to maintain the same level of confidentiality as is required by the agency from which the data is obtained. CBO employees are also subject to the same statutory penalties as employees at the executive branch agency are for unauthorized disclosure or use.

S. 1549 would strengthen CBO's ability to access data, which would allow CBO to obtain some data more quickly. In total, CBO estimates that implementing S.1549 would have no significant net effect on federal spending.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

**TITLE 5—GOVERNMENT ORGANIZATION
AND EMPLOYEES**

* * * * *

PART 1—THE AGENCIES GENERALLY

* * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * *

Subchapter II—Administrative Procedure

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SEC. 552a. RECORDS MAINTAINED ON INDIVIDUALS.

(a) * * *

(b) * * *

(1) * * *

* * * * *

(11) to the Director of the Congressional Budget Office, or any authorized representative of the Director, in the course of performance of the duties of the Congressional Budget Office;

[(11)] *(12)* pursuant to the order of a court of competent jurisdiction; or

[[12]] *(13)* to a consumer reporting agency in accordance with section 3711(e) of title 31.

* * * * *