CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 6, 2009

H.R. 233
Railroad Antitrust Enforcement Act of 2009

As ordered reported by the House Committee on the Judiciary on September 16, 2009

H.R. 233 would expand the authority of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to prosecute, under the Sherman and Clayton Acts, certain antitrust violations relating to railroads. Currently, the Surface Transportation Board (STB) has the primary authority to regulate mergers, acquisitions, rate-setting, and pooling arrangements under the Interstate Commerce Act. The roles of DOJ and FTC are generally limited to investigating potential violations and providing advice to the STB.

Based on information provided by DOJ, CBO estimates that implementing H.R. 233 would have no significant effect on the federal budget. We expect that DOJ would continue to perform investigations of railroads (investigations under current law are similar to those that would be performed under the bill) and that few of those investigations would result in enforcement actions. Accordingly, CBO expects that DOJ's workload would not increase substantially under the bill. CBO also expects that DOJ, rather than FTC, would handle antitrust enforcement matters specified under the bill; thus, we do not anticipate that FTC would incur significant additional enforcement costs.

Anyone convicted of antitrust violations specified in the bill would be subject to criminal fines, which are recorded as revenues, deposited in the Crime Victims Fund, and later spent. Thus, enacting H.R. 233 could increase revenues and direct spending, but CBO estimate that any such effects would be insignificant given the small number of cases that would likely be affected.

H.R. 233 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 233 would impose a private-sector mandate, as defined in UMRA, on railroads because it would eliminate their exemptions from certain antitrust laws. It is unclear how making railroads subject to the standards of those antitrust statutes would affect current business practices, if at all. The extent to which railroad carriers would have to forgo business opportunities and what the value of those lost opportunities would be are also uncertain. Because of those uncertainties, CBO has no basis for estimating the cost to railroad carriers or whether that cost would exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

On March 12, 2009, CBO transmitted a cost estimate for S. 146, the Railroad Antitrust Enforcement Act of 2009, as ordered reported by the Senate Committee on the Judiciary on March 5, 2009. The two bills are similar, and the cost estimates are identical.

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