



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 23, 1999

H.R. 1658 **Civil Asset Forfeiture Reform Act of 1999**

As reported by the House Committee on the Judiciary on June 18, 1999

SUMMARY

H.R. 1658 would make many changes to federal asset forfeiture laws that would significantly affect the processing of about 60,000 civil seizures conducted each year by the Department of Justice (DOJ) and the Department of the Treasury. (The Treasury Department makes an additional 50,000 seizures annually that would not be affected by this bill.) Assuming appropriation of the necessary amounts, CBO estimates that implementing H. R. 1658 would cost \$58 million over the 2000-2004 period for court-appointed counsel. In addition, enacting the bill would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

Because CBO expects that enacting this bill would result in fewer civil seizures by DOJ and the Treasury Department, we estimate that governmental receipts (i.e., revenues) deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decrease by about \$140 million each year beginning in fiscal year 2000. The corresponding direct spending from the two funds would also decline, but with some lag. CBO estimates that enacting this bill would decrease projected surpluses by a total of \$48 million over the fiscal years 2000 and 2001 (the difference between lower revenues and lower direct spending over those years), but that by fiscal year 2002 the changes in receipts and spending would be equal, resulting in no net budgetary impact thereafter.

In addition, this bill would make the federal government liable for any property damage and pre-judgment and post-judgment interest on certain assets to prevailing parties in civil forfeiture proceedings. However, CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation. Compensation payments could come from appropriated funds or as direct spending from the claims, judgments, and relief acts account or both.

H.R. 1658 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO expects that enacting this bill would lead to a reduction in payments to state and local governments from the Assets Forfeiture Fund and the Treasury Forfeiture Fund.

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

H.R. 1658 would make various changes to federal laws relating to the forfeiture of civil assets. In particular, the bill would:

- Establish a short statutory time limit for the federal government to notify interested parties of a seizure and to file a complaint;
- Eliminate the cost bond requirement, whereby claimants have to post bond in an amount of the lesser of \$5,000 or 10 percent of the value of the seized property (but not less than \$250) to preserve the right to contest a forfeiture;
- Permit federal courts to appoint counsel for indigent claimants;
- Increase the federal government's burden of proof to a clear and convincing standard;
- Require the federal government to compensate prevailing claimants for property damage; and
- Establish the federal government's liability for payment of pre-judgment and post-judgment interest.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

As shown in the following table, CBO estimates that implementing H.R. 1658 would increase discretionary spending for court-appointed counsel by \$58 million over the 2000-2004 period, assuming appropriation of the necessary funds. (Spending for this purpose would come from the Defender Services account.) In addition, we estimate that over the next two years, the reductions in direct spending would be smaller than the reductions in revenues, resulting in a net cost of \$35 million in 2000 and \$13 million in 2001. In subsequent years, the decrease in receipts collected would be matched by an equivalent decrease in direct spending. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Defender Services						
Estimated Authorization Level ^a	361	371	383	393	404	415
Estimated Outlays	360	371	382	393	403	414
Proposed Changes						
Estimated Authorization Level	0	6	13	13	13	13
Estimated Outlays	0	6	13	13	13	13
Spending Under H.R. 1658 for Defender Services						
Estimated Authorization Level	361	377	396	406	417	428
Estimated Outlays	360	377	395	406	416	427
CHANGES IN REVENUES AND DIRECT SPENDING						
Changes in Forfeiture Receipts						
Estimated Revenues	0	-140	-140	-140	-140	-140
Spending of Forfeiture Receipts						
Estimated Budget Authority	0	-105	-127	-140	-140	-140
Estimated Outlays	0	-105	-127	-140	-140	-140

a. The 1999 level is the amount appropriated for that year. The estimated authorization levels for 2000 through 2004 reflect CBO baseline estimates, assuming adjustments for anticipated inflation.

BASIS OF ESTIMATE

For purposes of this estimate, CBO assumes that H.R. 1658 will be enacted by the end of fiscal year 1999 and that the necessary amounts will be appropriated for each fiscal year.

Spending Subject to Appropriation

H.R. 1658 would allow for court-appointed counsel for parties contesting a forfeiture and would eliminate the requirement that such parties post bond. Consequently, CBO anticipates that enacting this bill would make it easier for people whose assets have been seized to challenge the forfeiture of such assets. Based on information from DOJ, we estimate that the percentage of seizures that would result in contested civil cases would increase from 5 percent annually to at least 20 percent in fiscal year 2000. As the defense bar becomes increasingly aware of and more familiar with the provisions of H.R. 1658, CBO expects that the

percentage of contested civil cases would increase to about 40 percent each year. While the decision to appoint counsel would be at the discretion of the judge assigned to each case, CBO expects that judges would not want to encourage litigation in many cases. Moreover, CBO expects that many of the contested cases would involve larger assets, and such cases usually do not involve indigent claimants who would need court-appointed counsel. Therefore, CBO estimates that court-appointed counsel would be provided in about 20 percent of contested civil cases. In addition, because forfeiture cases involve property, the courts might have to appoint more than one attorney to represent multiple claimants in the same case. Historical data suggest an average of 1.5 claims per case.

Under the bill, compensation paid to the court-appointed counsel would be equivalent to compensation paid to court-appointed counsel in criminal cases. Based on information from the Administrative Office of the United States Courts, CBO estimates that court-appointed counsel would be paid about \$3,000 per claimant per case. In total, we estimate that additional defender services related to civil asset forfeiture proceedings would cost about \$58 million over the next five years.

In addition, other discretionary spending could be affected by this bill. On the one hand, the federal court system could require additional resources in the future if additional cases are brought to trial and the amount of time spent on each case increases. On the other hand, some savings in law enforcement resources could be realized if fewer seizures are conducted each year. While CBO cannot predict the amount of any such costs or savings, we expect that, on balance, implementing the bill would result in no significant additional discretionary spending other than the increases for court-appointed counsel.

Revenues and Direct Spending

Based on information from DOJ and the Treasury Department, CBO estimates that about 25,000 seizures that would otherwise occur each year under current law would be eliminated under H.R. 1658. (Such seizures primarily involve assets whose value is less than \$25,000). The various changes to civil forfeiture laws under this bill would make proving cases more difficult and more-time consuming for the federal government. In many instances, law enforcement agencies, including the state and local agencies that work on investigations jointly with the federal government and then receive a portion of the receipts generated from the forfeitures, may determine that certain cases, especially those with a value less than \$25,000, may no longer be cost-effective to pursue. While the federal government and other law enforcement agencies would take a few years following enactment of the bill to realize the full effects of the bill's provisions on the forfeiture and claims process, CBO expects that the total number of seizures would decrease by at least 40 percent. CBO estimates that such

a reduction in seizures would reduce total forfeiture receipts by about \$140 million in fiscal year 2000 and by \$700 million over the 2000-2004 period.

The receipts deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund are used to pay for all costs associated with the operation of the forfeiture program, the payment of equitable shares of proceeds to foreign, state, and local law enforcement agencies, and other expenses not directly associated with a forfeiture case, such as payment of awards to informants. Because about 75 percent of total asset forfeiture receipts collected in a given year are spent in the same year in which they are collected, we estimate that enacting H.R. 1658 would result in a decrease in federal spending of \$105 million in fiscal year 2000, \$127 million in 2001, and \$140 million in subsequent years.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The following table summarizes the estimated pay-as-you-go effects of H.R. 1658. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	-105	-127	-140	-140	-140	-140	-140	-140	-140	-140
Changes in receipts	0	-140	-140	-140	-140	-140	-140	-140	-140	-140	-140

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1658 contains no intergovernmental mandates as defined in UMRA. However, because CBO expects that the seizure of assets would decline under the bill, CBO estimates that payments to state and local law enforcement agencies from the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decline by about \$280 million over the 2000-2004 period. State and local law enforcement agencies receive, on average, about 40 percent of the receipts in these forfeiture funds either because they participate in joint investigations that result in the seizure of assets, or because they turn over assets seized in their own investigations to the federal government, which conducts the civil asset forfeiture case. In both cases the receipts

from a seizure are accumulated in the funds and a portion is distributed to state and local agencies according to their involvement.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman

Impact on State, Local, and Tribal Governments: Lisa Cash Driskill

ESTIMATE APPROVED BY:

Robert A. Sunshine

Deputy Assistant Director for Budget Analysis