



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 20, 2013

### **H.R. 1493** **Sunshine for Regulatory Decrees and Settlements Act of 2013**

*As ordered reported by the House Committee on the Judiciary on July 24, 2013*

H.R. 1493 would modify the process used to develop consent decrees and settlement agreements that require federal agencies to take specified regulatory actions. Under the bill, complaints against federal agencies, the terms of the consent decree or settlement agreement, and the award of attorneys' fees would need to be published and accessible to the public in an electronic format. The legislation would require that any proposed consent decree or settlement agreement be published in the Federal Register for 60 days for public comment prior to filing with the court. H.R. 1493 also would require that settlement negotiations be conducted through mediation or alternative dispute resolution programs.

Under the bill, agencies that submit certain consent decrees or settlement agreements to the court would be required to inform the court of the agency's other outstanding mandatory duties under current law and explain how the proposed consent decree or settlement agreement would further the public interest. The legislation would require the Attorney General (for cases litigated by the Department of Justice) or the head of a federal agency that independently litigates a case to certify to the court his or her approval of certain types of settlement agreements and consent decrees. Finally, H.R. 1493 also would require courts to more closely review consent decrees when agencies seek to modify them.

Based on information provided by the Department of Justice and assuming the appropriation of the necessary funds, CBO estimates that implementing H.R. 1493 would cost \$7 million over the 2014-2018 period, primarily because litigation involving consent decrees and settlement agreements would probably take longer and agencies would face additional administrative requirements, including new requirements to report more information to the public.

Enacting H.R. 1493 could affect direct spending; therefore, pay-as-you-go procedures apply. Under the Clean Air Act, the Clean Water Act, and other statutes, successful plaintiffs are entitled to repayment of attorneys' fees through the Treasury's Judgment Fund. Such payments have averaged about \$2 million annually in recent years. By lengthening the process of developing consent decrees, H.R. 1493 could increase the

amount of reimbursable attorneys' fees, thus increasing the amount of such payments from the Judgment Fund. However, the increased length of the process to finalize consent decrees and settlement agreements might deter some future lawsuits and decrease the number of future cases. On net, CBO estimates that enacting the legislation would increase annual direct spending by an insignificant amount. Enacting the bill would not affect revenues.

H.R. 1493 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

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