



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

January 31, 2008

### **S. 2488**

#### **OPEN Government Act of 2007**

*As cleared by the Congress on December 18, 2007,  
and signed by the President on December 31, 2007*

#### **SUMMARY**

S. 2488 (enacted as Public Law 110-175) amends the Freedom of Information Act (FOIA), the 1966 act that governs public access to federal information. The new legislation prohibits the use of the Judgment Fund to pay attorneys' fees and other litigation costs incurred by parties who seek federal information under FOIA. Such payments will instead be made by the federal agency responsible for the claim—from that agency's appropriated funds.

CBO estimates that curtailing the use of the Judgment Fund, a permanent, indefinite appropriation, for compensation under FOIA will reduce direct spending by \$29 million over the 2008-2017 period. (Discretionary spending by some federal agencies may rise as a result, but such increases will depend on future appropriation actions.) S. 2488 also will reduce revenues from fees charged for certain FOIA requests, but CBO estimates that the loss will be less than \$500,000 annually.

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of S. 2488 is shown in the following table. The costs of the legislation fall within budget function 800 (general government).

By Fiscal Years, in Millions of Dollars												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008-2012	2008-2017
<b>CHANGES IN DIRECT SPENDING</b>												
Attorneys' Fees and Litigation Costs												
Estimated Budget Authority	-2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-14	-29
Estimated Outlays	-2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-14	-29
<b>CHANGES IN REVENUES</b>												
FOIA Fees												
Estimated Revenues	*	*	*	*	*	*	*	*	*	*	*	*

Note: \* = less than \$500,000.

## BASIS OF ESTIMATE

### Attorneys' Fees and Litigation Reimbursements

The legislation will require federal agencies to reimburse—from their appropriated funds—certain attorneys' fees and other litigation costs incurred by parties seeking to obtain information under FOIA. Before enactment of S. 2488, such payments were made from the permanent, indefinite Judgment Fund, which will no longer be available for that purpose.

CBO estimates that the new payment mechanism will reduce direct spending from the Judgment Fund by \$14 million over the 2008-2012 period and by \$29 million over the 2008-2017 period. This estimate is based on data from recent court decisions, which indicate that about 350 FOIA cases a year result in about \$3 million of reimbursements to claimants for legal expenses, paid from the Judgment Fund.

### FOIA Fees

S. 2488 will cause a small loss in revenues from FOIA fees by allowing more users of government information to be eligible for the lower fees charged to researchers and the news media. Also, the legislation will prohibit agencies from collecting fees if they miss certain deadlines for responding to FOIA requests. CBO estimates that those changes will reduce revenues from FOIA fees by less than \$500,000 annually.

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