CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 26, 2012

H.R. 1996
Government Litigation Savings Act

As ordered reported by the House Committee on the Judiciary on November 17, 2011

SUMMARY

H.R. 1996 would make several amendments to the Equal Access to Justice Act (EAJA), which allows plaintiffs to recover attorneys' fees and other costs from the federal government when they prevail in a case against the government. Specifically, the legislation would increase the cap on hourly attorney rates, restrict who is eligible to receive EAJA awards, and impose new reporting requirements on the Administrative Conference of the United States (ACUS).

Based on information from affected federal agencies, CBO estimates that implementing H.R. 1996 would cost about $95 million over the 2013-2017 period, assuming appropriation of the necessary amounts. Enacting the legislation also could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 1996 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1996 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice), 800 (general government), and all other budget functions from which EAJA claims are paid.

	By Fiscal Year, in Millions of Dollars					
	2013	2014	2015	2016	2017	2013-2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	21	18	18	19	19	95
Estimated Outlays	20	19	18	19	19	95

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 1996 would cost $95 million over the 2013-2017 period. That amount includes increased payments to reimburse attorneys' fees and the estimated costs of carrying out new reporting and auditing requirements by federal agencies. For this estimate, CBO assumes that the bill will be enacted by the end of 2012, that the necessary amounts will be appropriated each year, and that spending will follow historical patterns for EAJA payments and litigation against the federal government.

Increased Payments for Attorneys' Fees

Generally, in the United States, parties involved in litigation pay their own attorneys' fees. However, under EAJA, parties that sue the federal government and prevail are entitled to repayment of attorneys' fees, subject to certain conditions. In general, EAJA allows smaller groups with limited resources to pursue claims against the federal government. Based on information provided by the affected agencies, CBO estimates that payments of attorneys' fees under EAJA from agencies' appropriations have totaled around $40 million annually in recent years.

Under EAJA, plaintiffs who successfully bring a civil action against the federal government through a statute that lacks what is known as a "fee-shifting provision" for attorneys' fees are entitled to repayment of attorneys' fees from the defendant agency's appropriation. Fee-shifting provisions require that payments to plaintiffs be paid through the Treasury's Judgment Fund. This legislation would affect only payments that are made from an agency's appropriation.

H.R. 1996 would make several changes that CBO estimates would increase discretionary spending for that subset of EAJA payments. Specifically, the bill would raise the cap for attorneys' fees, payable from agency appropriations, from $125 per hour to $200 per hour; it would prohibit reimbursements above the cap for special factors, such as cost-of-living adjustments as allowed under current law; and it would require the Office of Management and Budget to adjust the hourly cap to reflect changes in the Consumer Price Index. Based

on information provided by the Departments of Justice (DOJ) and Veterans Affairs, the Environmental Protection Agency, the Social Security Administration, and various private-sector entities, CBO estimates that those changes would have a net cost of about $17 million annually, predominantly from increasing the cap on attorneys' fees for cases involving the Social Security Administration and the Department of Veterans Affairs.

The bill also would restrict the class of parties eligible for repayment and require judges to reduce awards in specified situations. Based on information provided by the affected agencies, CBO projects that those provisions would not have a significant impact on caseload or awards of attorneys' fees. The majority of cases that would be affected by the legislation currently meet the eligibility restrictions for plaintiffs required under the legislation.

Auditing and Reporting Requirements

The legislation also would require the ACUS to annually report EAJA fee payments made by all government agencies and to maintain an online searchable database of such payments. In addition, the Government Accountability Office (GAO) would be required to audit all EAJA payments since 1995. CBO estimates that those provisions would cost about $10 million over the 2013-2017 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 1996 could affect direct spending by agencies not funded through the appropriation process, but CBO estimates that such effects would not be significant in any year.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1996 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

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