



September 24, 2014

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Budgetary Impact of Court Decisions Related to Salaries and Benefits of Federal Judges

Dear Mr. Chairman:

In your letter of June 26, 2014, you asked for estimates of the budgetary effects of recent court decisions regarding the compensation of federal judges. Those decisions, including *Beer v. United States* and *Barker v. United States*, established that the Congress may not withhold automatic salary increases for certain judges and that it improperly did so on six separate occasions (in 1995, 1996, 1997, 1999, 2007, and 2010). As a result of those decisions and corresponding administrative actions, many judges will now receive automatic salary increases and subsequent annuity adjustments, as well as restitution for prior automatic salary increases they should have received. This letter addresses the four specific questions you asked.

How many Article III judges are entitled to salary increases, annuity increases, and/or restitution?

Article III judgeships are judgeships that are established under Article III of the United States Constitution. Article III judges include judges of the U.S. District Courts, the U.S. Courts of Appeals, the Supreme Court, and the Court of International Trade. According to the Administrative Office of the U.S. Courts (AOUSC), there are about 1,330 Article III judges entitled to salary increases, about 300 judges entitled to annuity adjustments, and about 1,600 judges entitled to restitution.

Given that the salaries for many non-Article III judges are tied to the salaries for circuit or district court judges, how will *Beer* and *Barker* impact compensation for such non-Article III judges, if at all, and how many non-Article III judges are entitled to a salary increase as a result?

Based on information from the AOUSC, CBO estimates that there are about 950 non-Article III judges. Following the recent court decisions, all are entitled to salary increases, about 570 are entitled to annuity adjustments, and about 1,500 are entitled to restitution.

Will additional funds need to be appropriated by Congress to cover the costs of those salary increases, annuity increases, and restitution?

The salaries of Article III judges are mandatory payments and are thus not subject to annual appropriation.

The salaries of approximately two-thirds of non-Article III judges are treated as discretionary expenditures in the federal budget, and those salaries are provided in annual appropriation acts. The salaries of the remaining non-Article III judges—about 330—are mandatory expenditures.

Payments for retirement benefits of both Article III and all non-Article III judges are mandatory payments that are not subject to annual appropriation acts.

Federal payments for restitution to current and retired judges for prior pay increases will probably come from the Judgment Fund, which has permanent and indefinite authority to pay court judgments against the federal government. Consequently, CBO expects that restitution payments will increase direct spending.

What is the expected total cost to the federal Treasury as a result of *Beer* and *Barker*?

CBO estimates that direct spending will be higher by about \$1 billion over the 2015-2024 period because of those court decisions (see table below). Assuming that the necessary amounts are appropriated for the discretionary salaries of judges at the maximum level permitted, CBO estimates that the additional discretionary costs would total about \$190 million over the next 10 years.

Estimate of Costs Expected to be Incurred over the 2015-2024 period as a result of the *Beer* and *Barker* Decisions (Outlays, in millions of dollars)

	<u>Increase in Direct Spending</u>	<u>Increase in Spending Subject to Appropriation</u>
Salary Increases		
Article III Judges	402	---
Non-Article III Judges	106	190
Increases in Future Retirement Benefits	269	---
Restitution Payments	<u>250</u>	<u>---</u>
Total	1,027	190

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I hope this information is helpful to you. If you need further details, we would be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

A handwritten signature in black ink that reads "Douglas W. Elmendorf". The signature is written in a cursive style with a large, prominent 'D' at the beginning.

Douglas W. Elmendorf
Director

cc: Honorable Chuck Grassley
Ranking Member