



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 16, 2015

H.R. 712 **Sunshine for Regulatory Decrees and Settlements Act of 2015**

As ordered reported by the House Committee on the Judiciary on March 24, 2015

H.R. 712 would modify the process used to develop consent decrees and settlement agreements that require federal agencies to take specified regulatory actions. Under the bill, a summary of all such complaints against federal agencies, the terms of consent decrees or settlement agreements, and the awards of attorneys' fees would need to be published and accessible to the public in an electronic format. Under the legislation any proposed consent decree or settlement agreement involving a federal agency would be published in the Federal Register for 60 days for public comment prior to filing with the court. H.R. 712 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 a 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. 712 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. 712 would cost \$7 million over the 2016-2020 period. Most of those additional costs would be incurred because litigation involving consent decrees and settlement agreements would probably take longer under the bill and agencies would face additional administrative requirements, including the requirement to make more information available to the public.

Enacting H.R. 712 could affect direct spending; therefore, pay-as-you-go procedures apply. Under several statutes, successful plaintiffs are entitled to repayment of attorneys' fees through the Treasury's Judgment Fund. Such payments have averaged about \$2 million in recent years. By lengthening the process of developing consent decrees, H.R. 712 could lead to an increase in 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. 712 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 Marin Burnett. The estimate was approved by Theresa Gullo, Assistant Director of Budget Analysis.