



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 6, 2017

### **H.R. 985** **Fairness in Class Action Litigation Act of 2017**

*As ordered reported by the House Committee on the Judiciary on February 15, 2017*

H.R. 985 would amend the federal judicial code to update the standards by which a court determines whether a case meets the requirements to be heard as a class-action suit. The bill also would require the Judicial Conference of the United States to submit an annual report to the Congress on payments from class-action settlements. Finally, the bill would amend the procedures that federal courts use when considering certain multi-plaintiff claims and multi-district litigation proceedings.

The effect that H.R. 985 would have on litigation strategy is uncertain and could lead to an increase or decrease in the number of cases brought to federal courts. Based on an analysis of information from the Administrative Office of the United States Courts (AOUSC) and research regarding class-action suits, CBO estimates that imposing new requirements on the courts for the consideration of class-action cases would cost \$2 million over the 2018-2022 period; such spending would be subject to the availability of appropriated funds. Those additional administrative expenses to determine whether cases qualify to be considered as class-action suits would be incurred whether or not overall caseloads increased or decreased under the bill.

Under the bill, the Judicial Conference would be required to submit to the Congress an annual report summarizing the disbursement of settlement payments to class members for all ongoing class-action settlements. Based on an analysis of information from the AOUSC on the amount of work necessary to analyze the relevant data and complete the report, CBO estimates that implementing this requirement would cost less than \$500,000 over the 2018-2022 period.

Enacting H.R. 985 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 985 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 985 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 985 would impose private-sector mandates, as defined in UMRA, by limiting the timing and amount of fees attorneys could receive in class-action lawsuits and multi-district litigation. For example, the bill would:

- Prohibit fee awards to attorneys that exceed the total amount of money distributed to all class members;
- Prohibit the payment of fee awards to attorneys in class-action cases until the distribution of any monetary recovery to class members has been completed; and
- Limit the fees to attorneys in multi-district proceedings to no more than 20 percent of the total recovery.

The limits on attorney fees would be a mandate because it would restrict amounts that attorneys might otherwise be able to collect from their clients. The direct cost of the mandates is measured as the annual loss of net income that attorneys would experience in both pending and future cases. Based on information from legal scholars about how attorney's fees are currently structured in such cases and the possible number of cases that could be affected (some research suggests about 1,000 annually), CBO estimates that the annual cost of the mandates would exceed the threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation) in each of the first five years the mandates are in effect.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Paige Piper/Bach (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.