



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 19, 2017

H.R. 469 **Sunshine for Regulations and Regulatory Decrees and Settlements** **Act of 2017**

As ordered reported by the House Committee on the Judiciary on July 12, 2017

H.R. 469 would modify the process used to develop consent decrees and settlement agreements that require federal agencies to take specified regulatory actions. When citizens or organizations file a lawsuit against a government agency, both parties can negotiate a consent decree or settlement agreement as an alternative to a trial. In certain cases, the terms of the consent decree or settlement agreement may require an agency to undertake a regulatory action before a specified deadline. H.R. 469 would apply to such cases.

Under the bill, federal agencies would be required to publish proposed consent decrees and settlement agreements in the Federal Register for public comment 60 days prior to filing with the court and to respond to all public comments. The bill also would prohibit a court from approving a consent decree or settlement agreement unless any such agreement incorporates adequate time and procedures for agencies to comply with statutes that govern rulemaking. The legislation would require the Attorney General (for cases litigated by the Department of Justice) or the head of the relevant federal agency to certify approval of certain types of settlement agreements and consent decrees to the court. Finally, H.R. 469 would require courts to more closely review consent decrees and settlement agreements when agencies seek to modify them.

Based on an analysis of preliminary information provided by the Department of Justice, the Administrative Office of the U.S. Courts, and other agencies that are frequently involved in consent decrees—the Environmental Protection Agency, the Forest Service, and the Department of the Interior—CBO estimates that implementing H.R. 469 would cost \$9 million over the 2018-2022 period; any such spending would be subject to the availability of appropriated funds. Most of those additional costs would be incurred to hire additional staff because litigation involving consent decrees and settlement agreements would probably take longer under the bill. Federal agencies and courts would face additional administrative requirements, including the requirement to make more information available to the public.

Enacting H.R. 469 would affect direct spending; therefore, pay-as-you-go procedures apply. Under several statutes, plaintiffs who successfully challenge the federal government

are entitled to repayment of attorneys' fees through the Department of the Treasury's Judgment Fund (a permanent appropriation available to pay claims against the government). The annual total of all such payments has averaged about \$2 million in recent years. By lengthening the process of developing consent decrees and settlement agreements, H.R. 469 would lead to an increase in the amount of reimbursable attorneys' fees, thus increasing the amount of such payments from the Judgment Fund. Based on average hourly attorney fees and the number of covered civil actions in recent years, CBO estimates that the small additional workload would increase reimbursable attorney's costs and direct spending by about \$1 million over the 2018-2027 period. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 469 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 469 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 Janani Shankaran. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.