

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1996
OFFERED BY MR. COBLE

Strike all after the enacting clause and insert the following:

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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Government Litigation
3 Savings Act”.

4 SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE
5 PROVISIONS.

6 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,
7 United States Code, is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) by inserting after the first sentence
11 the following: “Fees and other expenses
12 may be awarded under this subsection only
13 to a prevailing party who has a direct and
14 personal interest in the adversary adjudica-
15 tion because of medical costs, property

1 damage, denial of benefits, unpaid dis-
2 bursement, fees and other expenses in-
3 curred in defense of the adjudication, in-
4 terest in a policy concerning such medical
5 costs, property damage, denial of benefits,
6 unpaid disbursement, or fees and other ex-
7 penses, or otherwise.”; and

8 (ii) by adding at the end the fol-
9 lowing: “The agency conducting the adver-
10 sary adjudication shall make any party
11 against whom the adjudication is brought,
12 at the time the adjudication is commenced,
13 aware of the provisions of this section.”;
14 and

15 (B) in paragraph (3), in the first sen-
16 tence—

17 (i) by striking “may reduce” and in-
18 serting “shall reduce”; and

19 (ii) by striking “unduly and unreason-
20 ably” and inserting “unduly or unreason-
21 ably”;

22 (2) in subsection (b)(1)—

23 (A) in subparagraph (A)(ii), by striking
24 “\$125 per hour” and all that follows through
25 the end and inserting “\$200 per hour.);”; and

1 (B) in subparagraph (B)(ii), by striking “;
2 except that” and all that follows through “sec-
3 tion 601;” and inserting “except that—

4 “(I) the net worth of a party (other than
5 an individual or a unit of local government)
6 shall include the net worth of any parent entity
7 or subsidiary of that party; and

8 “(II) for purposes of subclause (I)—

9 “(aa) a ‘parent entity’ of a party is an
10 entity that owns or controls the equity or
11 other evidences of ownership in that party;
12 and

13 “(bb) a ‘subsidiary’ of a party is an
14 entity the equity or other evidences of own-
15 ership in which are owned or controlled by
16 that party;”.

17 (3) in subsection (c)(1), by striking “, United
18 States Code”; and

19 (4) by striking subsections (e) and (f) and in-
20 serting the following:

21 “(e)(1) The Chairman of the Administrative Con-
22 ference of the United States, after consultation with the
23 Chief Counsel for Advocacy of the Small Business Admin-
24 istration, shall report annually to the Congress on the
25 amount of fees and other expenses awarded during the

1 preceding fiscal year pursuant to this section. The report
2 shall describe the number, nature, and amount of the
3 awards, the claims involved in the controversy, and any
4 other relevant information that may aid the Congress in
5 evaluating the scope and impact of such awards. Each
6 agency shall provide the Chairman in a timely manner all
7 information necessary for the Chairman to comply with
8 the requirements of this subsection. The report shall be
9 made available to the public online.

10 “(2)(A) The report required by paragraph (1) shall
11 account for all payments of fees and other expenses
12 awarded under this section that are made pursuant to a
13 settlement agreement, regardless of whether the settle-
14 ment agreement is sealed or otherwise subject to non-
15 disclosure provisions, except that any version of the report
16 made available to the public may not reveal any informa-
17 tion the disclosure of which is contrary to the national se-
18 curity of the United States.

19 “(B) The disclosure of fees and other expenses re-
20 quired under subparagraph (A) does not affect any other
21 information that is subject to nondisclosure provisions in
22 the settlement agreement.

23 “(f) The Chairman of the Administrative Conference
24 shall create and maintain online a searchable database

1 containing the following information with respect to each
2 award of fees and other expenses under this section:

3 “(1) The name of each party to whom the
4 award was made.

5 “(2) The name of each counsel of record rep-
6 resenting each party to whom the award was made.

7 “(3) The agency to which the application for
8 the award was made.

9 “(4) The name of each counsel of record rep-
10 resenting the agency to which the application for the
11 award was made.

12 “(5) The name of each administrative law
13 judge, and the name of any other agency employee
14 serving in an adjudicative role, in the adversary ad-
15 judication that is the subject of the application for
16 the award.

17 “(6) The amount of the award.

18 “(7) The names and hourly rates of each expert
19 witness for whose services the award was made
20 under the application.

21 “(8) The basis for the finding that the position
22 of the agency concerned was not substantially justi-
23 fied.

24 “(g) The online searchable database described in sub-
25 section (f) may not reveal any information the disclosure

1 of which is prohibited by law or court order, or the dislo-
2 sure of which is contrary to the national security of the
3 United States.

4 “(h) The Director of the Office of Management and
5 Budget shall adjust the maximum hourly fee set forth in
6 subsection (b)(1)(A)(ii) for the fiscal year beginning Octo-
7 ber 1, 2012, and for each fiscal year thereafter, to reflect
8 changes in the Consumer Price Index, as determined by
9 the Secretary of Labor.”.

10 (b) COURT CASES.—Section 2412(d) of title 28,
11 United States Code, is amended—

12 (1) by amending subsection (d)(1)(A) to read
13 as follows:

14 “(d)(1)(A) Except as otherwise specifically provided
15 by statute, a court, in any civil action (other than cases
16 sounding in tort), including proceedings for judicial review
17 of agency action, brought by or against the United States
18 in any court having jurisdiction of that action, shall award
19 to a prevailing party (other than the United States) fees
20 and other expenses, in addition to any costs awarded pur-
21 suant to subsection (a), incurred by that party in the civil
22 action, unless the court finds that the position of the
23 United States was substantially justified or that special
24 circumstances make an award unjust. Fees and other ex-
25 penses may be awarded under this paragraph only to a

1 prevailing party who has a direct and personal interest
2 in the civil action because of medical costs, property dam-
3 age, denial of benefits, unpaid disbursement, fees and
4 other expenses incurred in defense of the civil action, in-
5 terest in a policy concerning such medical costs, property
6 damage, denial of benefits, unpaid disbursement, or fees
7 and other expenses, or otherwise.”;

8 (2) in paragraph (1)(C)—

9 (A) by striking “court, in its discretion,
10 may” and inserting “court shall”; and

11 (B) by striking “unduly and unreasonably”
12 and inserting “unduly or unreasonably”;

13 (3) in paragraph (2)—

14 (A) in subparagraph (A)(ii), by striking
15 “\$125” and all that follows through the end
16 and inserting “\$200 per hour.);”;

17 (B) in subparagraph (B)(ii), by striking “;
18 except that” and all that follows through “sec-
19 tion 601 of title 5;” and inserting “except
20 that—

21 “(I) the net worth of a party (other than an in-
22 dividual or a unit of local government) shall include
23 the net worth of any parent entity or subsidiary of
24 that party; and

25 “(II) for purposes of subclause (I)—

1 “(aa) a ‘parent entity’ of a party is an en-
2 tity that owns or controls the equity or other
3 evidences of ownership in that party; and

4 “(bb) a ‘subsidiary’ of a party is an entity
5 the equity or other evidences of ownership in
6 which are owned or controlled by that party;”.

7 (4) by adding at the end the following:

8 “(5) The Director of the Office of Management and
9 Budget shall adjust the maximum hourly fee set forth in
10 paragraph (2)(A)(ii) for the fiscal year beginning October
11 1, 2012, and for each fiscal year thereafter, to reflect
12 changes in the Consumer Price Index, as determined by
13 the Secretary of Labor.

14 “(6)(A) The Chairman of the Administrative Con-
15 ference of the United States shall report annually to the
16 Congress on the amount of fees and other expenses award-
17 ed during the preceding fiscal year pursuant to this sub-
18 section. The report shall describe the number, nature, and
19 amount of the awards, the claims involved in each con-
20 troversy, and any other relevant information which may
21 aid the Congress in evaluating the scope and impact of
22 such awards. Each agency shall provide the Chairman
23 with such information as is necessary for the Chairman
24 to comply with the requirements of this paragraph. The
25 report shall be made available to the public online.

1 “(B) (i) The report required by subparagraph (A)
2 shall account for all payments of fees and other expenses
3 awarded under this subsection that are made pursuant to
4 a settlement agreement, regardless of whether the settle-
5 ment agreement is sealed or otherwise subject to non-
6 disclosure provisions, except that any version of the report
7 made available to the public may not reveal any informa-
8 tion the disclosure of which is contrary to the national se-
9 curity of the United States.

10 “(ii) The disclosure of fees and other expenses re-
11 quired under clause (i) does not affect any other informa-
12 tion that is subject to nondisclosure provisions in the set-
13 tlement agreement.

14 “(C) The Chairman of the Administrative Conference
15 shall include and clearly identify in the annual report
16 under subparagraph (A), for each case in which an award
17 of fees and other expenses is included in the report—

18 “(i) any amounts paid from section 1304 of
19 title 31 for a judgment in the case;

20 “(ii) the amount of the award of fees and other
21 expenses; and

22 “(iii) the statute under which the plaintiff filed
23 suit.

24 “(7) The Chairman of the Administrative Conference
25 shall create and maintain online a searchable database

1 containing the following information with respect to each
2 award of fees and other expenses under this subsection:

3 “(A) The name of each party to whom the
4 award was made.

5 “(B) The name of each counsel of record rep-
6 resenting each party to whom the award was made.

7 “(C) The agency involved in the case.

8 “(D) The name of each counsel of record rep-
9 resenting the agency involved in the case.

10 “(E) The name of each judge in the case, and
11 the court in which the case was heard.

12 “(F) The amount of the award.

13 “(G) The names and hourly rates of each ex-
14 pert witness for whose services the award was made.

15 “(H) The basis for the finding that the position
16 of the agency concerned was not substantially justi-
17 fied.

18 “(8) The online searchable database described in
19 paragraph (7) may not reveal any information the disclo-
20 sure of which is prohibited by law or court order, or the
21 disclosure of which is contrary to the national security of
22 the United States.

23 “(9) The Attorney General of the United States shall
24 provide to the Chairman of the Administrative Conference
25 of the United States in a timely manner all information

1 necessary for the Chairman to carry out the Chairman's
2 responsibilities under this subsection.”.

3 (c) CLERICAL AMENDMENT.—Section 2412(e) of title
4 28, United States Code, is amended by striking “of section
5 2412 of title 28, United States Code,” and inserting “of
6 this section”.

7 **SEC. 3. GAO STUDY.**

8 Not later than 30 days after the date of the enact-
9 ment of this Act, the Comptroller General shall commence
10 an audit of the implementation of the Equal Access to
11 Justice Act for the years 1995 through the end of the cal-
12 endar year in which this Act is enacted. The Comptroller
13 General shall, to the extent practical, not later than 1 year
14 after the end of the calendar year in which this Act is
15 enacted, complete such audit and submit to the Congress
16 a report on the results of the audit.

