Administrative Conference of the United States

REPORT OF THE OFFICE OF THE CHAIRMAN

EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2020

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Executive Summary

The Equal Access to Justice Act (EAJA) authorizes the award of attorney's fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and adversary adjudications before federal agencies when the government's position is not substantially justified. Section 4201 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act),[1] signed into law in March 2019, requires the Office of the Chairman of the Administrative Conference of the United States (ACUS) to establish a publicly available database (https://eaja.acus.gov) and prepare an annual report that accounts, on a fiscal-year basis, for all fee awards against the United States under EAJA.

In 2019, the Office of the Chairman established a reporting system to facilitate the data-collection process, worked with many relevant federal agencies to collect awards data, and developed a new publicly available, online, and searchable database on ACUS's website to make the required information about EAJA awards easily accessible to the public. The first annual report, covering Fiscal Year (FY) 2019, was released on March 31, 2020. This report covers the reporting period for FY 2020: October 1, 2019, through September 30, 2020.

In FY 2020, federal agencies reported paying more than $101 million in awards of attorney's fees and other expenses under EAJA.

- In total, 16 federal agencies reported 15,596 separate awards totaling $101,420,591.45.
- Of the 15,596 total awards, 15,569 were made in court cases, and 21 were made in adversary adjudications (6 were unclassified by the agency).
- In total, 47 federal agencies[2] reported paying no EAJA awards during FY 2020.
- Of the 58 agencies contacted, the Office of the Chairman achieved a 98% compliance rate. Just one agency did not report by March 30, 2021, in response to the Office of the Chairman's requests.

** All totals current as of March 30, 2021.*

[1] Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019) (codified at 5 U.S.C. § 504(e)–(h) and 28 U.S.C. § 2412(d)(5)–(8)).
[2] This number includes multiple subunits from the Department of Homeland Security and the Department of the Treasury as outlined in Table 4. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, no matter how many subunits reported paying no awards.

Table 1. Summary of Agencies Reporting EAJA Awards (by total amount reported)

Agency	# of Awards Reported	Total Amount Reported
Social Security Administration	8,888	$ 50,178,105.01
Department of Veterans Affairs	6,567	$ 38,213,805.51
Department of Homeland Security*	75	$ 4,202,503.45
Department of Commerce	2	$ 2,300,000.00
Department of the Interior	17	$ 1,977,713.98
Department of Health and Human Services	9	$ 1,553,219.27
Department of Agriculture	16	$ 983,637.00
Federal Trade Commission	1	$ 843,173.67
Department of Justice	11	$ 404,670.00
Department of State	1	$ 220,470.12
Federal Election Commission	1	$ 200,548.74
Environmental Protection Agency	2	$ 126,500.00
Department of Education	1	$ 115,000.00
Department of Labor	1	$ 62,500.00
Railroad Retirement Board	1	$ 20,014.70
Department of Transportation	3	$ 18,730.00
Totals	**15,596**	**$ 101,420,591.45**

** Some award amounts redacted by the agency.[3] Redacted awards are reflected as $0 in these totals.*

[3] The database of EAJA awards "may not reveal any information the disclosure of which is prohibited by law or a court order." 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). The Office of the Chairman deferred to the reporting agency's decisions about whether to redact specific information.

I. Background

A. Purpose and Legal Framework

EAJA, enacted in 1980, authorizes the award of attorney's fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and adversary adjudications[4] when the government's position is not substantially justified. The stated purpose of EAJA, among other things, is to "diminish the deterrent effect of seeking review of, or defending against, governmental action by providing" for the award of certain attorney's fees and other expenses against the United States. Nearly all EAJA awards are paid from the agency's appropriation, not the Judgment Fund.[5]

EAJA awards arise from one of three provisions of the United States Code: (1) 28 U.S.C. § 2412(d), (2) 28 U.S.C. § 2412(b), or (3) 5 U.S.C. § 504.

(1) **28 U.S.C. § 2412(d)**: Most EAJA awards fall under this provision, which authorizes courts to award attorney's fees and other expenses under the familiar EAJA standard: when a party prevails against the United States in a civil action and the government's position was not "substantially justified."[6] All but 21 of the 15,596 EAJA awards reported in the new database fall within this provision.

(2) **28 U.S.C. § 2412(b)**: There are very few § 2412(b) awards. This EAJA provision "expands any existing statutory and court-created exceptions to the American rule (which "provides that each party pays its own litigation costs, regardless of the outcome of a case"[7]) to apply to the federal government as they would to a private party."[8] The Office of the Chairman located just nine of these awards in FY 2020, which were paid from the Judgment Fund rather than the agency's appropriation. These awards do not appear in the Office of the Chairman's database because of the

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[4] EAJA uses the phrase "adversary adjudication," which it defines to include: (1) formal-hearing proceedings under 5 U.S.C. § 554 (other than "adjudications for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license") "in which the position of the United States is represented by counsel or otherwise[;]" (2) "any appeal of a decision made pursuant to" the Contract Disputes Act of 1978 "before an agency board of contract appeals[;]" (3) administrative civil penalty proceedings under the Program Fraud Civil Remedies Act; and (4) hearings under the Religious Freedom Restoration Act of 1993. 5 U.S.C. § 504(b)(1)(C); *see also Equal Access to Justice Act*, FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (Mar. 30, 2021), https://sourcebook.acus.gov/wiki/Equal_Access_to_Justice_Act/view.

[5] 31 U.S.C. § 1304. In 1956, Congress created the Judgment Fund, "a permanent, indefinite appropriation" setting aside an unlimited amount of money "to pay judgments against the United States." VIVIAN S. CHU & BRIAN T. YEH, CONG. RES. SERV., REPORT R42835, THE JUDGMENT FUND: HISTORY, ADMINISTRATION, AND COMMON USAGE 1 (2013), *available at* https://fas.org/sgp/crs/misc/R42835.pdf. The Judgment Fund "is only accessible when the United States has waived its sovereign immunity and certain statutory conditions are met." *Id.* "Most importantly, the Judgment Fund cannot be used in place of a specific appropriation." *Id.*

[6] 28 U.S.C. § 2412(d); *see also* JOANNA R. LAMPE, CONG. RES. SERV., IF11246, IN FOCUS: ATTORNEY'S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK 1 (2019), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11246.

[7] LAMPE, *supra* note 6, at 1. "The alternative regime, known as the 'English rule,' provides that the losing party pays the winner's attorney's fees." *Id.* at 1.

[8] *Id.*

statutory language included in the Dingell Act, which directs the Office of the Chairman to report awards issued only under § 2412(d) (as well as the awards under 5 U.S.C. § 504).[9]

(3) **5 U.S.C. § 504**: Very few EAJA awards fall under this provision, which authorizes the award of attorney's fees in adversary adjudications (those subject to the Administrative Procedure Act's formal-hearing provisions).[10] Only five agencies reported any EAJA awards under this provision during FY 2020 (the Department of Homeland Security, the Department of Agriculture, the Department of Transportation, the Environmental Protection Agency, and the Railroad Retirement Board), and these awards accounted for just 21 of the 15,596 total EAJA awards.

[9] 28 U.S.C. § 2412(d)(5) (repeatedly referencing awards under "this subsection," in other words, those under § 2412(d)).

[10] 5 U.S.C. § 504; *see also id.* §§ 554, 556–557 (formal hearing provisions of the Administrative Procedure Act); LAMPE, *supra* note 6, at 1.

B. Historical Reporting and Model EAJA Rules

As originally enacted in 1980, EAJA assigned to the Office of the Chairman of ACUS two responsibilities: (1) to track information about the payment of EAJA awards by federal agencies in adversary adjudications, and (2) to work with agencies to establish uniform procedures for submission and consideration of EAJA-award applications in such proceedings.[11]

Through FY 1994, the Office of the Chairman prepared the required annual reports of EAJA awards in adversary adjudications under this statutory requirement.[12] Congress terminated the reporting requirement in 1995.[13]

In carrying out the second statutory charge of establishing uniform agency procedures for EAJA-award applications, the Office of the Chairman first issued in 1981 model rules to help agencies establish uniform procedures for the submission and consideration of EAJA applications.[14] The Office of the Chairman revised the model rules in 1986[15] and again in 2019.[16]

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[11] Small Business Export Expansion Act of 1980, Pub. L. No. 96-481, §§ 203–204, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504 and 28 U.S.C. § 2412). EAJA originally tasked the Office of the Chairman with reporting only on adversary adjudications and required similar reports on awards in judicial proceedings, first from the Administrative Office of the U.S. Courts and later the Department of Justice. Paul R. Verkuil, Admin. Conf. of the U.S., Office of the Chairman, Report of the Chairman on Agency and Court Awards in FY 2010 under the Equal Access to Justice Act 1 (Jan. 9, 2013), https://www.acus.gov/report/equal-access-justice-act-awards-fy-2010-report-chairman. For more information about the history of EAJA, consult the House Judiciary Committee's 2015 Report accompanying H.R. 3279, the "Open Book on Equal Access to Justice Act," which proposed to reinstate the tracking and reporting requirements of EAJA payments made by the Federal Government. H.R. REP. NO. 114-351, at 2–4 (2015).

[12] Verkuil, *supra* note 11, at 1. Other published reports publicly available on the ACUS website include: Thomasina V. Rogers, Admin. Conf. of the U.S., Office of the Chairman, Agency Activity Under the Equal Access to Justice Act, October 1, 1993 – September 30, 1994 (Oct. 31, 1995), https://www.acus.gov/report/equal-access-justice-act-awards-fy-1994-report-chairman; Thomasina V. Rogers, Admin. Conf. of the U.S., Office of the Chairman, Agency Activity Under the Equal Access to Justice Act, October 1, 1992 – September 30, 1993 (Feb. 22, 1995), https://www.acus.gov/report/equal-access-justice-act-awards-fy-1993-report-chairman; Robert S. Ross, Jr., Admin. Conf. of the U.S., Office of the Chairman, Agency Activities Under the Equal Access to Justice Act, October 1, 1990 – September 30, 1991 (Sept. 8, 1992), https://www.acus.gov/report/equal-access-justice-act-awards-fy-1991-report-chairman; Loren A. Smith, Admin. Conf. of the U.S., Office of the Chairman, Agency Activities Under the Equal Access to Justice Act, October 1, 1982 – September 30, 1983 (Dec. 30, 1983), https://www.acus.gov/report/equal-access-justice-act-awards-fy-1983-report-chairman.

[13] Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, §§ 1091, 3003, 109 Stat. 707 (1995); *see also* H.R. REP. NO. 114-351, *supra* note 11, at 4 (describing the elimination). In 2013, the Office of the Chairman voluntarily prepared a report, at the request of several members of Congress, of FY 2010 EAJA awards in both judicial and agency-adjudicative proceedings. Verkuil, *supra* note 11, at 1.

[14] Admin. Conf. of the U.S., Equal Access to Justice Act: Agency Implementation, 46 Fed. Reg. 32900 (June 25, 1981).

[15] Admin. Conf. of the U.S., Model Rules for Implementation of the Equal Access to Justice Act: Issuance of Final Revised Model Rules, 51 Fed. Reg. 16659 (May 6, 1986).

[16] Admin. Conf. of the U.S., Revised Model Rules for Implementation of the Equal Access to Justice Act, 84 Fed. Reg. 38934 (Aug. 8, 2019). *See also* Admin. Conf. of the U.S., Recommendation 2019-4, *Revised Model Rules for Implementation of the Equal Access to Justice Act*, 84 Fed. Reg. 38933 (Aug. 8, 2019).

Other agencies have reported on selected EAJA awards over the years, including the Administrative Office of the U.S. Courts,[17] the Department of Justice,[18] the Government Accountability Office,[19] and the Congressional Research Service.[20]

[17] *See, e.g.*, ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: ACTIVITIES OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 92 (1992) ("Report of Fees and Expenses Under the Equal Access to Justice Act"); ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: ACTIVITIES OF THE ADMINISTRATIVE OFFICE 119 (1991) ("Report of Fees and Expenses Awarded Under the Equal Access to Justice Act"); ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 34 (1990) ("Report of Fees and Expenses Awarded Under the Equal Access to Justice Act").

[18] *See, e.g.*, U.S. DEP'T OF JUSTICE, EQUAL ACCESS TO JUSTICE ACT: 1994 ANNUAL REPORT (1995).

[19] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABILITY ON USDA AND INTERIOR FEE CLAIMS AND PAYMENTS (2012), *available at* https://www.gao.gov/assets/600/590084.pdf; U.S. GOV'T ACCOUNTABILITY OFF., GAO/GGD-96-18, PRIVATE ATTORNEYS: SELECTED ATTORNEYS' FEE AWARDS AGAINST NINE FEDERAL AGENCIES IN 1993 AND 1994 (1995), *available at* https://www.gao.gov/assets/230/221977.pdf.

[20] *See, e.g.*, LAMPE, *supra* note 6; HENRY COHEN, CONG. RES. SERV., REPORT 94-970, AWARDS OF ATTORNEYS' FEES BY FEDERAL COURTS AND FEDERAL AGENCIES (2008), *available at* https://fas.org/sgp/crs/misc/94-970.pdf.

C. The Dingell Act

In March 2019, Congress passed and the President signed the Dingell Act, which required the Office of the Chairman to conduct two related activities to promote increased transparency for EAJA awards.[21] The Dingell Act required the Office of the Chairman to prepare an annual report on EAJA awards against the government for FY 2019 by March 31, 2020, and to prepare a similar report for every FY thereafter. It also required the Office of the Chairman to establish and maintain a publicly available, online, and searchable database containing detailed information about each award by March 31, 2020.[22] The Office of the Chairman launched the database on March 31, 2020.

The database must include EAJA awards in both adversary adjudications[23] and the much larger number of awards in federal-court cases.[24] For every award, the Office of the Chairman must report and publish the following information:

- the case name and its docket number (including a hyperlink, if available);
- the name of the agency involved;
- the name of the party to whom the award was made;
- a description of the claims;
- the amount of the award; and
- a brief statement of the legal basis for the award.[25]

Agency heads must "timely" comply with requests from the Office of the Chairman to supply this information.[26]

The Office of the Chairman worked with many federal agencies to collect awards data and update the publicly available, online, and searchable database to make this information about EAJA awards easily accessible to the public. This Report covers the FY 2020 reporting period: October 1, 2019, through September 30, 2020.

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[21] Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019) (codified at 5 U.S.C. § 504(e)–(h) and 28 U.S.C. § 2412(d)(5)–(8)). The relevant statutory provisions appear in Appendix A. These provisions were drawn from the Open Book on Equal Access to Justice Act, H.R. 752, 116th Cong. § 2 (2019) (sponsored by Senator Barrasso of Wyoming), and the Open Book on Equal Access to Justice Act, S. 217, 116th Cong. § 2 (2019) (sponsored by Representative Collins of Georgia).

[22] These provisions reinstated the tracking and reporting requirements because "[t]he current lack of any comprehensive reporting and record keeping regarding the actual use of EAJA in courts and administrative proceedings makes it difficult, if not impossible, for Congress to assess accurately the impact and effectiveness of EAJA." H.R. REP. NO. 114-351, *supra* note 11, at 2.

[23] 5 U.S.C. § 504(e)–(h).

[24] 28 U.S.C. § 2412(d)(5)–(8).

[25] 5 U.S.C. § 504(f); 28 U.S.C. § 2412(d)(6).

[26] 5 U.S.C. § 504(h); 28 U.S.C. § 2412(d)(8).

II. Data-Collection Process

This section describes the data-collection process for this FY 2020 Report, including the process of identifying relevant agencies, the Office of the Chairman's outreach to those agencies, and the reporting process.

A. Identifying Relevant Agencies

The Office of the Chairman determined which agencies to contact as part of the data-collection process by relying on the FY 2019 Report, which listed 63 federal agencies that might have relevant EAJA awards to report.[27] As explained in the FY 2019 Report, five of the 63 entities responded that they did not constitute an "agency" for purposes of the EAJA statute and therefore had no awards to report.[28] The Office of the Chairman omitted these five agencies from the FY 2020 data collection request, for a total of 58 federal agencies this year. The Office of the Chairman did not identify any additional agencies likely to have relevant EAJA rewards to report. Table 2 lists the 58 federal agencies to which the Office of the Chairman conducted outreach and submitted requests for information about EAJA awards.

Along with reviewing the relevant statutory provisions, the Office of the Chairman originally consulted many sources in preparing the FY 2019 Report in order to (1) create a comprehensive list of federal agencies and (2) identify the subset of relevant federal agencies that might have EAJA awards to report.

First, the Office of the Chairman consulted several of the most authoritative and comprehensive lists of federal agencies. It first consulted ACUS's *Sourcebook of United States Executive Agencies*, the leading authority on the subject of federal agencies.[29] Appendix A-1 of the *Sourcebook* lists more than 270 federal agencies and their subunits.[30] The Office of the Chairman also reviewed for comparison purposes the lists in the *United States Government Manual*[31] and the congressionally prepared *United States Government Policy and Supporting*

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[27] Matthew Lee Wiener, Admin. Conf. of the U.S., Office of the Chairman, Report of the Office of the Chairman: Equal Access to Justice Act Awards, Report to Congress, Fiscal Year 2019 10–12 (Mar. 31, 2020), https://www.acus.gov/report/equal-access-justice-act-awards-fy-2019-report-chairman.

[28] These five entities were the Federal Agricultural Mortgage Corporation, the Legal Services Corporation, the National Consumer Cooperative Bank, the Puerto Rico Financial Oversight and Management Board, and the Securities Investor Protection Corporation.

[29] JENNIFER L. SELIN & DAVID E. LEWIS, ADMIN. CONF. OF THE U.S., SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES (2d ed. 2018), *available at* https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition. The *Sourcebook* defines an agency as "a federal executive instrumentality directed by one or more political appointees nominated by the President and confirmed by the Senate (the instrumentality itself rather than its bureaus, offices, or divisions)." *Id.* at 14. The *Sourcebook* also considers and accounts for the Administrative Procedure Act's definition of "agency." *Id.* at 11 n.38 (citing 5 U.S.C. § 551(1)).

[30] *Id.* at 125.

[31] NAT'L ARCHIVES & REC. ADMIN., THE UNITED STATES GOVERNMENT MANUAL (2019). The *Government Manual* is the "official handbook of the Federal Government" and "generally includes information about the legislative, judicial, and executive branches, as well as quasi-official agencies, international organizations with U.S. membership, and various federal boards, commissions, and committees." Bobby Ochoa, Listing Agency Officials 28–32 (Nov. 13,

Positions ("Plum Book").[32] By consulting these various lists of federal agencies, the Office of the Chairman ensured a comprehensive list.

Second, to decide which of the agencies on the list might have EAJA awards to report, the Office of the Chairman reviewed past EAJA reports and other relevant sources, including past EAJA reports by the Office of the Chairman,[33] the Administrative Office of the U.S. Courts,[34] the Department of Justice,[35] and the Government Accountability Office.[36] The Office of the Chairman also reviewed other relevant sources of information.[37]

Using these varied sources, the Office of the Chairman generated a targeted list of the 58 federal agencies that might have relevant EAJA awards to report. This targeted list included all agencies that had ever reported an EAJA award and all agencies with independent litigating authority.[38] In the case of the 15 agencies designated as executive-branch departments by statute,[39] the Office of the Chairman generally circulated all communications and requests directly to the central headquarters for dissemination to all relevant bureaus, components, and subunits.[40] Table

2019) (report to the Admin. Conf. of the U.S.), https://www.acus.gov/report/final-report-listing-agency-officials (citing the *Government Manual*).

[32] SEN. COMM. ON HOMELAND SEC. & GOV'T AFFAIRS, 116TH CONG., UNITED STATES GOVERNMENT POLICY AND SUPPORTING POSITIONS 212 (THE PLUM BOOK) (Comm. Print 2020), *available at* https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2020/pdf/GPO-PLUMBOOK-2020.pdf. The *Plum Book* periodically "provides information about more than '9,000 Federal civil service leadership and support positions in the legislative and executive branches of the Federal Government that may be subject to noncompetitive appointment.'" Ochoa, *supra* note 31, at 21 (quoting the 2016 Edition of the *Plum Book*).

[33] Verkuil, *supra* note 11, at 9; Rogers, *supra* note 12; Rogers, *supra* note 12; Ross, *supra* note 12; Smith, *supra* note 12.

[34] ADMIN. OFFICE OF THE U.S. COURTS, 1992 ANNUAL REPORT, *supra* note 17; ADMIN. OFFICE OF THE U.S. COURTS, 1991 ANNUAL REPORT, *supra* note 17; ADMIN. OFFICE OF THE U.S. COURTS, 1990 ANNUAL REPORT, *supra* note 17.

[35] DEP'T OF JUSTICE, 1994 ANNUAL REPORT, *supra* note 18.

[36] GOV'T ACCOUNTABILITY OFF., PRIVATE ATTORNEYS, *supra* note 19.

[37] They included: (1) Admin. Conf. of the U.S. Office of the Chairman & Stanford Law School, Federal Administrative Adjudication Database, http://acus.law.stanford.edu/ (last visited Mar. 30, 2021) (housing a database jointly established by the Office of the Chairman and Stanford Law School that includes the most comprehensive list of adjudicative programs ever assembled); (2) an internal Office of the Chairman list of agencies that adopted or implemented the Office of the Chairman's 1986 Model EAJA Rules (as of 2019); and (3) an ongoing Lexis search for court cases and other relevant materials citing EAJA.

[38] SELIN & LEWIS, *supra* note 29, at 105, 106 n.401 (describing the general framework where "Congress has granted control of federal litigation to the Department of Justice in order to promote coherence and consistency in the enforcement of federal law[,]" and "some agencies are authorized to litigate on their own.").

[39] 5 U.S.C. § 101 (designating 15 "Executive departments").

[40] The *Sourcebook of United States Executive Agencies* lists 173 bureaus within the 15 executive-branch departments. SELIN & LEWIS, *supra* note 29, at 5–6, 36, 125–30 (defining bureau as "a general term that refers to many different sub-units within larger departments" that vary in size and significance). The Office of the Chairman captured information for most of these subunits by circulating the request to the parent Department and asking it to circulate to all subunits. For example, the Department of Justice's headquarters collected and reported information about all components, such as the Federal Bureau of Investigation. This efficient and administrable procedure allowed the Office of the Chairman to report information for much more than just the 58 agencies.

2 lists the 58 federal agencies to which the Office of the Chairman conducted outreach and submitted requests for information about EAJA awards.

Table 2. Final List of Agencies Included in Data Call

List of Agencies Included in Data Call	
Department of Agriculture	Federal Labor Relations Authority
Department of Commerce	Federal Maritime Commission
Department of Defense	Federal Mine Safety and Health Review Commission
Department of Education	Federal Trade Commission
Department of Energy	General Services Administration
Department of Health and Human Services	Government National Mortgage Association
Department of Homeland Security	Inter-American Foundation
Department of Housing and Urban Development	Merit Systems Protection Board
Department of Justice	National Aeronautics and Space Administration
Department of Labor	National Archives and Records Administration
Department of State	National Credit Union Administration
Department of the Interior	National Labor Relations Board
Department of the Treasury	National Transportation Safety Board
Department of Transportation	Nuclear Regulatory Commission
Department of Veterans Affairs	Occupational Safety and Health Review Commission
Board of Governors of the Federal Reserve System	Office of Government Ethics
Commodity Futures Trading Commission	Office of Personnel Management
Consumer Financial Protection Bureau	Overseas Private Investment Corporation/U.S. International Development Finance Corporation
Consumer Product Safety Commission	Pension Benefit Guaranty Corporation
Environmental Protection Agency	Postal Regulatory Commission
Equal Employment Opportunity Commission	Railroad Retirement Board
Export-Import Bank of the United States	Securities and Exchange Commission
Farm Credit Administration	Small Business Administration
Farm Credit System Insurance Corporation	Social Security Administration
Federal Communications Commission	Surface Transportation Board
Federal Deposit Insurance Corporation	United States African Development Foundation
Federal Election Commission	United States Institute of Peace
Federal Energy Regulatory Commission	United States International Trade Commission
Federal Housing Finance Agency	United States Postal Service

B. Agency Outreach and Agency Designees

After generating a clearly defined list of 58 relevant agencies, the Office of the Chairman identified relevant government officials within each agency who were most likely to have the relevant information about EAJA awards or assist the Office of the Chairman with the data-collection process. Most agencies had an agency designee on file with ACUS from the FY 2019 reporting process. If this information was outdated or missing, the Office of the Chairman identified an alternate contact for outreach. For most agencies, this initial agency contact was the agency's general counsel (or acting general counsel) or another senior leader.

On September 8, 2020, the Office of the Chairman circulated a letter to each agency contact, with a copy to that agency's ACUS member (if any).[41] This initial communication reminded each agency about the Dingell Act's reporting requirement, alerted each agency that the Office of the Chairman would request the required information for FY 2020 shortly after the end of the Fiscal Year, and requested that each agency designate an official to serve as a point of contact moving forward for the data-collection process, particularly if the information needed to be updated due to changes in personnel. The Office of the Chairman transmitted these initial letters by email. Many agencies responded by letters or email (or both) acknowledging the reporting requirement and designating a point of contact.

The Office of the Chairman greatly appreciates the diligent efforts of these agency designees to coordinate the collection and reporting process, as well as the work of the many other agency officials throughout the government who helped collect this information and establish more efficient systems to track this information moving forward.

[41] By law, numerous federal agencies appoint members to ACUS to participate in ACUS's activities and serve as one of the 101 voting members of its Assembly. 5 U.S.C. § 593. These members diligently assisted the Office of the Chairman with circulating agency communications and requests and ensuring the agency meets those requests, for which the Office of the Chairman is very appreciative.

C. Formal Reporting Process

On October 5, 2020, the Office of the Chairman circulated the formal request for information about each agency's EAJA awards to the agency designees and ACUS government members by email. The request included a spreadsheet and memorandum with detailed instructions for completing the data call for FY 2020. On February 2, 2021, the Office of the Chairman circulated a final request for information.

Ninety-eight percent of agencies complied with the request for data. Sixteen agencies supplied detailed information about EAJA awards during FY 2020 by completing the spreadsheet as instructed. Forty-seven agencies notified the Office of the Chairman that the agency had no awards to report.[42] As of March 30, 2021, only one agency had not reported.[43] Tables 3 and 4 identify how each agency complied with the reporting requirement.

[42] This number includes multiple subunits from the Department of Homeland Security and the Department of the Treasury as outlined in Table 4. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, no matter how many subunits reported paying no awards.

[43] The agency is the Department of Defense, which likely has no or few awards to report.

Table 3. List of Agencies Reporting EAJA Awards (as of March 30, 2021)

List of Agencies Reporting EAJA Awards
Department of Agriculture
Department of Commerce
Department of Education
Department of Health and Human Services
Department of Homeland Security
Department of Justice
Department of Labor
Department of State
Department of the Interior
Department of Transportation
Department of Veterans Affairs
Environmental Protection Agency
Federal Election Commission
Federal Trade Commission
Railroad Retirement Board
Social Security Administration

Table 4. List of Agencies Reporting No EAJA Awards (as of March 30, 2021)

List of Departments Reporting No EAJA Awards	
Department of Energy	Department of the Treasury: Bureau of Engraving and Printing*
Department of Homeland Security: Federal Law Enforcement Training Center, Office of Chief Counsel*	Department of the Treasury: Bureau of the Fiscal Service*
Department of Homeland Security: Science and Technology Directorate*	Department of the Treasury: Departmental Offices (Headquarters)*
Department of Housing and Urban Development	Department of the Treasury: Treasury Inspector General for Tax Administration*
Department of the Treasury: Alcohol and Tobacco Tax and Trade Bureau*	

List of Independent Agencies and Government Corporations Reporting No EAJA Awards	
Board of Governors of the Federal Reserve System	National Aeronautics and Space Administration
Commodity Futures Trading Commission	National Archives and Records Administration
Consumer Financial Protection Bureau	National Credit Union Administration
Consumer Product Safety Commission	National Labor Relations Board
Equal Employment Opportunity Commission	National Transportation Safety Board
Export-Import Bank of the United States	Nuclear Regulatory Commission
Farm Credit Administration	Occupational Safety and Health Review Commission
Farm Credit System Insurance Corporation	Office of Government Ethics
Federal Communications Commission	Office of Personnel Management
Federal Deposit Insurance Corporation	Overseas Private Investment Corporation/U.S. International Development Finance Corporation
Federal Energy Regulatory Commission	Pension Benefit Guaranty Corporation
Federal Housing Finance Agency	Postal Regulatory Commission
Federal Labor Relations Authority	Securities and Exchange Commission
Federal Maritime Commission	Small Business Administration
Federal Mine Safety and Health Review Commission	Surface Transportation Board
General Services Administration	United States African Development Foundation
Government National Mortgage Association	United States Institute of Peace
Inter-American Foundation	United States International Trade Commission
Merit Systems Protection Board	United States Postal Service

** The Office of the Chairman accommodated requests from the Department of Homeland Security and the Department of the Treasury to communicate with each component separately, so the table lists those components separately.*

D. Consultation with the Small Business Administration

The Dingell Act requires the Office of the Chairman to submit and publish the annual report "after consultation with the Chief Counsel for Advocacy of the Small Business Administration [(SBA)]."[44] After the Office of the Chairman consulted with the Acting Chief Counsel and submitted to him a draft of the annual report for review, he submitted a letter confirming the diligent discharge of this requirement. The letter appears in Appendix B.

[44] 5 U.S.C. § 504(e)(1).

E. Summary of the Information Collected and Published

The database displays the eleven data fields (described below) about each reported EAJA award that the Office of the Chairman requested and received from the agencies.

1. **Name:** This field displays the name of the case, no matter if the EAJA award comes from a court case or an adversary adjudication. This field typically includes the names of parties and federal agencies and their leaders. The Office of the Chairman encouraged agencies to standardize case names when feasible.

Name
REDACTED v. Secretary

2. **Number:** This field displays the associated case number. For awards in court cases, this is typically the associated federal court docket number. For adversary adjudications, this may appear as an internal agency docket number.

Number	16-72773

3. **Award Date:** This field displays the date of the order or other court or adjudicative document making the EAJA award, which should fall within FY 2020. During the data-collection process, these dates were standardized and appear in the online database formatted as "MM-DD-YYYY."

Award date
06-12-2019

4. **Agency:** Along with the next category, this field identifies the agency involved. This field identifies (1) one of the 15 executive branch departments (Department of Labor, for example) or (2) an "Other Agency" option for agencies that are not bureaus, components, subunits, or otherwise housed within one of the 15 executive branch departments (Social Security Administration, for example).

Agency	Agency subcomponent
U.S. Department of Labor	Null

5. **Agency Subcomponent:** Along with the previous category, this field identifies the specific agency subcomponent involved. This field includes the full name of the agency, as well as any commonly used abbreviation in parentheses to facilitate the database's search and filter functions.[45] If a department or agency appears in the database, the name of the department or agency will appear as an option in the filter function.

Agency	Agency subcomponent
Other Agency	Social Security Administration (SSA)

[45] For consistency, the Office of the Chairman relied on a list of common agency abbreviations in Appendix A-2 of the *Sourcebook of United States Executive Agencies*. SELIN & LEWIS, *supra* note 29, at 133–40 (Appendix A-2: List of Agencies and Subunits—By Abbreviation).

For example, the Social Security Administration is not housed in a larger agency or department, so it is listed as an "Other Agency" in the prior category and appears as "Social Security Administration (SSA)" in the Agency Subcomponent category. For another example, the Federal Bureau of Investigation would appear as an Agency Subcomponent within the Department of Justice. For agencies that did not provide specific agency components, this field will be blank or appear as "Null" in the database.

6. **Awardees:** This field displays "[t]he name of each party to whom the award was made as such party is identified in the order or other court document making the award."[46] When possible, agencies identified a single individual or entity for each award. If there were multiple awardees in a single court case or order, agencies typically identified each awardee as a separate award on a separate row (when feasible).

Awardees
REDACTED

7. **Award Amount:** This field displays the total dollar amount of the EAJA award.

Award amount
$ 24,050

8. **Claims Description:** This field displays a brief "description of the claims."[47] The responding agency provided a concise description for each award. Nearly all the descriptions provided enough information for the Office of the Chairman to identify the statute under which the plaintiff filed suit in court cases for purposes of the overview included in Table 7.[48] Given the nature of these descriptions in some cases, the Office of the Chairman urged agencies to be attentive to privileged, confidential, or otherwise protected information that should not be disclosed by law to the Office of the Chairman or included in the publicly available online database.[49]

Claims description
Denial of benefits because

[46] 5 U.S.C. § 504(f)(4); 28 U.S.C. § 2412(d)(6)(C).

[47] 5 U.S.C. § 504(f)(3); 28 U.S.C. § 2412(d)(6)(D).

[48] For each court case, the Office of the Chairman identified the statute under which the plaintiff filed suit for each EAJA award reported by the responding agencies using this field and after reviewing relevant court dockets and filings if the responding agency provided insufficient information. This requirement did not apply to adjudications.

[49] The Dingell Act states that the publicly available, online, and searchable database "may not reveal any information the disclosure of which is prohibited by law or a court order." 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). Moreover, the House Judiciary Committee's 2015 report accompanying H.R. 3279, the Open Book on Equal Access to Justice Act, stated that "ACUS must take appropriate measures to ensure that individual-specific healthcare information, such as an individual's diagnoses and treatments, is not contained in the database." H.R. REP. NO. 114-351, *supra* note 11, at 5. In coordination with the responding agencies, the Office of the Chairman has complied with these requirements.

9. **Findings Basis:** This field displays the basis for finding that the agency's position was not substantially justified.[50] As with the previous field, the Office of the Chairman again flagged the potential issues regarding privileged, confidential, or otherwise protected information that should not be disclosed by law in these summaries or included in the publicly available online database.

Finding basis
Settlement agreement

10. **Type of Case (court case or adjudication):** This field displays whether the award was made in an adversary adjudication or in a court case.

11. **Hyperlink:** This field displays a hyperlink to the case, if one is available. Some hyperlinks may direct to documents behind paywalls or other websites requiring a paid subscription. The Office of the Chairman encouraged agencies to provide hyperlinks to free websites that are not behind a paywall, if available (for example, the agency's website). Common sources of hyperlinks from agencies included the agency's website, Public Access to Court Electronic Records (PACER), federal court dockets or other court websites, and online databases such as LexisNexis and Westlaw.

[50] Specifically, the statute requires a brief narrative description of "[t]he basis for the finding that the position of the agency concerned was not substantially justified." 5 U.S.C. § 504(f)(6); 28 U.S.C. § 2412(d)(6)(F).

III. EAJA Awards Data and Related Information for FY 2020

In FY 2020, federal agencies reported paying more than $101 million in awards of attorney's fees and other expenses under EAJA.

- In total, 16 federal agencies reported 15,596 separate awards totaling $101,420,591.45.
- Of the 15,596 total awards, 15,569 were made in court cases, and 21 were made in adversary adjudications (6 were unclassified by the agency).
- In total, 47 federal agencies[51] reported paying no EAJA awards during FY 2020.
- Of the 58 agencies contacted, the Office of the Chairman achieved a 98% compliance rate. Just one agency did not report by March 30, 2021, in response to the Office of the Chairman's requests.

** All totals current as of March 30, 2021.*

[51] This number includes multiple subunits from the Department of Homeland Security and the Department of the Treasury as outlined in Table 4. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, regardless of how many subunits reported paying no awards.

Reproduced Table 1. Summary of Agencies Reporting EAJA Awards (by total amount reported)

Agency	# of Awards Reported	Total Amount Reported
Social Security Administration	8,888	$ 50,178,105.01
Department of Veterans Affairs	6,567	$ 38,213,805.51
Department of Homeland Security*	75	$ 4,202,503.45
Department of Commerce	2	$ 2,300,000.00
Department of the Interior	17	$ 1,977,713.98
Department of Health and Human Services	9	$ 1,553,219.27
Department of Agriculture	16	$ 983,637.00
Federal Trade Commission	1	$ 843,173.67
Department of Justice	11	$ 404,670.00
Department of State	1	$ 220,470.12
Federal Election Commission	1	$ 200,548.74
Environmental Protection Agency	2	$ 126,500.00
Department of Education	1	$ 115,000.00
Department of Labor	1	$ 62,500.00
Railroad Retirement Board	1	$ 20,014.70
Department of Transportation	3	$ 18,730.00
Totals	**15,596**	**$ 101,420,591.45**

** Some award amounts redacted by the agency.*[52] *Redacted awards are reflected as $0 in these totals.*

In the next sections, the Office of the Chairman has assembled other information about the reported EAJA awards, including:

- a breakdown of court cases and adversary adjudications;
- a summary of Judgment Fund amounts paid under 31 U.S.C. § 1304; and
- for court cases, an overview of statutes under which plaintiffs filed suit.

[52] The new database of EAJA awards "may not reveal any information the disclosure of which is prohibited by law or a court order." 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). The Office of the Chairman deferred to the reporting agency's decisions about whether to redact specific information.

A. Breakdown of Awards in Court Cases and Adversary Adjudications

In FY 2020, federal agencies reported data showing that the overwhelming majority of EAJA awards were made in court cases. As of March 30, 2021, 15,571 of 15,596 total awards (99.83%) were made in court cases and just 21 of 15,596 total awards (0.14%) in adversary adjudications. Only five federal agencies reported EAJA awards from adversary adjudications: the Department of Homeland Security, the Department of Agriculture, the Department of Transportation, the Environmental Protection Agency, and the Railroad Retirement Board.

Table 5. Breakdown of EAJA Awards by Type of Case

Agency	# in Court Cases	# in Adj.	Total Awards Reported
Social Security Administration	8,888	0	8,888
Department of Veterans Affairs	6,567	0	6,567
Department of Homeland Security*	62	7	75
Department of the Interior	17	0	17
Department of Agriculture	7	9	16
Department of Justice	11	0	11
Department of Health and Human Services	9	0	9
Department of Transportation	0	3	3
Department of Commerce	2	0	2
Environmental Protection Agency	1	1	2
Department of Education	1	0	1
Department of Labor	1	0	1
Department of State	1	0	1
Federal Election Commission	1	0	1
Federal Trade Commission	1	0	1
Railroad Retirement Board	0	1	1
Totals	15,569	21	15,596

* *Six awards not categorized by agency.*

B. Judgment Fund Amounts Paid (31 U.S.C. § 1304)

The Dingell Act requires the Office of the Chairman to identify in each annual report "any amounts paid under § 1304 of title 31 for a judgment in the case."[53] This is a statutory reference to the Judgment Fund,[54] which Congress established to pay for "judgments against the United States for which no appropriation is otherwise available."[55] The Dingell Act requires the Secretary of the Treasury to publish information about Judgment Fund payments on a new public website,[56] which the Bureau of the Fiscal Service has established.

The Office of the Chairman identified nine distinct EAJA payments from the Bureau of the Fiscal Service's Judgment Fund database during FY 2020. Table 6 lists these nine EAJA awards.[57] The Office of the Chairman reviewed the data published on the Bureau of the Fiscal Service's website when compiling Table 6.[58]

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[53] 28 U.S.C. § 2412(d)(5)(D)(i).

[54] 31 U.S.C. § 1304.

[55] *Responsibility of Agencies to Pay Attorney's Fee Awards Under the Equal Access to Justice Act*, 31 Op. O.L.C. 229, 233–34 (2007) (describing the purpose of the Judgment Fund and citing 31 U.S.C. § 1304); s*ee also supra* note 5 (describing the Judgment Fund).

[56] Pub. L. No. 116-9, § 4201(c), 133 Stat. 580 (2019) (codified at 31 U.S.C. § 1304(d)).

[57] Table 6 summarizes the detailed information from the Judgment Fund database. To supplement this summary, the Office of the Chairman has assembled the raw data in a consolidated spreadsheet at the following link: https://www.acus.gov/appendix/eaja-report-fy2020-appendix-material-list-judgment-fund-eaja-payments-fy2020. The Judgment Fund information is publicly available on the websites identified below at n.58.

[58] The Department of the Treasury publishes a "Bi-Weekly Payment Report" on the Bureau of the Fiscal Service's website. These reports provide regularly updated information about the Judgment Fund. Bureau of the Fiscal Service, Bi-Weekly Payment Report, https://fiscal.treasury.gov/judgment-fund/bi-weekly-payment-report.html (last visited Mar. 30, 2021). The Judgment Fund website also provides a searchable database of payment information covering each FY starting in 2006. Bureau of the Fiscal Service, Judgment Fund Payment Search, https://jfund.fiscal.treasury.gov/jfradSearchWeb/JFPymtSearchAction.do (last visited Mar. 30, 2021). On this website, the Bureau of the Fiscal Service also publishes Annual Transparency Reports to Congress, which provide data about all Judgment Fund payments each FY. Bureau of the Fiscal Service, Annual Report to Congress, https://fiscal.treasury.gov/judgment-fund/annual-report-congress.html (last visited Mar. 30, 2021).

Table 6. List of EAJA Awards Appearing in Judgment Fund Database (by date)

Agency	Amount	Date
Dep't of Education; Social Security Administration	$50,000.00	Nov. 19, 2019
Dep't of Homeland Security (CIS)	$1,135.90	Nov. 22, 2019
Dep't of Justice (BOP)	$22,000.00	Dec. 12, 2019
Dep't of Homeland Security (CBP)	$10,000.00	Dec. 13, 2019
Dep't of Homeland Security (CBP)	$30,000.00	Feb. 27, 2020
Dep't of Health and Human Services	$17,509.83	May 1, 2020
Dep't of Health and Human Services	$7,450.00	May 4, 2020
Dep't of Agriculture (NRCS)*	$14,117.29	June 16, 2020
Dep't of Commerce; Dep't of Justice	$51,000.00	Aug. 7, 2020
Total	$203,213.02	

** This is the only award that appears in both the EAJA Database and the Judgment Fund database.*

As noted in the background section above, EAJA awards arise from one of three EAJA provisions: (1) 28 U.S.C. § 2412(b), (2) 28 U.S.C. § 2412(d), or (3) 5 U.S.C. § 504. The vast majority of EAJA awards are paid directly by the agency under § 2412(d) (and some under 5 U.S.C. § 504), but a few awards are paid from the Judgment Fund under § 2412(b) are generally paid from the Judgment Fund. As described above, Congress established the Judgment Fund to pay for judgments against the United States when no other appropriation is available. Awards made under § 2412(b) are generally paid from the Judgment Fund, but this is a minor exception to the vast majority of EAJA awards paid directly by the agency.

Our review identified nine awards paid under the Judgment Fund, all of which arose under § 2412(b) and appeared on the Bureau of the Fiscal Service's website. These awards typically do not appear in the Office of the Chairman's database, however, because of the statutory language included in the Dingell Act, which directs the Office of the Chairman to report awards issued only under § 2412(d) (as well as the awards under 5 U.S.C. § 504).[59] Table 6 identifies the sole award that also appears in the Office of the Chairman's database. The other 15,597 EAJA awards in the database published by the Office of the Chairman were paid by the responsible agency, not from the Judgment Fund.

Most of the legal and technical details about the operation of the Judgment Fund are beyond the scope of this Report. More information can be found in several opinions issued by the Department of Justice's Office of Legal Counsel.[60] The *Justice Manual* also provides relevant information.[61] The Congressional Research Service has also published helpful reports and resources on the subject of the Judgment Fund, as well as EAJA generally.[62]

[59] 28 U.S.C. § 2412(d)(5) (repeatedly referencing awards under "this subsection," in other words, those under § 2412(d)).

[60] *See, e.g.*, *Responsibility of Agencies to Pay Attorney's Fee Awards Under the Equal Access to Justice Act*, *supra* note 55; *Payment of Attorney's Fees in Litigation Involving Successful Challenges to Federal Agency Action Arising Under the Administrative Procedure Act and the Citizen-Suit Provisions of the Endangered Species Act*, 24 Op. O.L.C. 311 (2000); *Authority of USDA to Award Monetary Relief for Discrimination*, 18 Op. O.L.C. 52 (1994); *Payment of Attorney Fee Awards Against the United States Under 28 U.S.C. § 2412(b)*, 7 Op. O.L.C. 180 (1983); *Funding of Attorney Fee Awards Under the Equal Access to Justice Act*, 6 Op. O.L.C. 204 (1982); *Award of Attorney Fees in Administrative Adjudications Under § 609 of the Federal Aviation Act*, 6 Op. O.L.C. 197 (1982).

[61] DEP'T OF JUSTICE, JUSTICE MANUAL §§ 4-10.000 *et seq.* ("Judgments Against the Government"), *available at* https://www.justice.gov/jm/jm-4-10000-judgments-against-government (last visited Mar. 30, 2021).

[62] LAMPE, *supra* note 6; CHU & YEH, *supra* note 5; COHEN, *supra* note 20.

C. Overview of Statutes Under Which Plaintiffs Filed Suit in Court Cases

For court cases, the Dingell Act requires the Office of the Chairman to identify in each annual report "the statute under which the plaintiff filed suit."[63] Most agencies reported the nature of the plaintiff's lawsuit in the "Claims Description" field. Table 7 provides a broad overview of the major statutes involved in the litigation resulting in EAJA awards for each reporting agency. In formulating this information, the Office of the Chairman examined the agency-awards data and reviewed publicly available court documents and other relevant court filings. The information presented below is merely intended to provide a high-level overview. It is important to keep in mind that plaintiffs can assert multiple causes of action within a single complaint and that multiple cases can be consolidated.[64] This requirement did not apply to adjudications.

[63] 28 U.S.C. § 2412(d)(5)(D)(iii).

[64] One example of possible distortions when presenting the information generally in this table is that it can overrepresent certain statutes. For example, nearly all of the 6,567 awards reported by the Department of Veterans Affairs arose under the Veterans' Benefits Act. In contrast, only one EAJA plaintiff received an EAJA award in a court case from the Department of Veterans Affairs in an action under the Agent Orange Act (listed as AOA in the Table 7). Thus, the table can appear to overrepresent certain statutes and distort the relative prominence of certain statutes for certain agencies.

Table 7. Overview of Statutes Under Which EAJA Plaintiffs Filed Suit in Court Cases (by Agency)

Agency	Statutes*
Department of Agriculture	APA; ESA; FCIA; FSA; NEPA; NFMA; WA
Department of Commerce	APA; DJA
Department of Education	APA
Department of Health and Human Services	APA; AWA; DJA; FSMA; SSA; *Bivens*[65]
Department of Homeland Security	APA; CRA; DJA; ESA; FAR; FTCLA; INA; MVA; PWHC; TA
Department of Justice	APA; DJA; INA; PWHC
Department of Labor	APA
Department of State	APA; CRA; *Bivens*
Department of the Interior	ANILCA; APA; ESA; FLPMA; FOIA; NEPA; NHPA; NPATMA; QTA; WFRHBA
Department of Transportation	No Court Cases[66]
Department of Veterans Affairs	AOA; BWA; CDA; VBA; VDA
Environmental Protection Agency	APA; CWA; FIFRA
Federal Election Commission	FECA
Federal Trade Commission	FTCA
Railroad Retirement Board	No Court Cases
Social Security Administration	SSA

* *Statutes listed alphabetically. List of abbreviations on next page.*

[65] *See* Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) (recognizing non-statutory cause of action for deprivation of certain constitutional rights).

[66] This reporting requirement applied only to court cases and did not apply to adjudications. Thus, agencies reporting only adjudications have the label "No Court Cases" for clarity.

List of Abbreviations

Abbrev.	Common Name of Act	Citation
AOA	Agent Orange Act	38 U.S.C. § 1116
ANILCA	Alaska National Interest Lands Conservation Act	16 U.S.C. § 3101 *et seq.*
APA	Administrative Procedure Act	5 U.S.C. §§ 553, 706 *et seq.*
AWA	All Writs Act	28 U.S.C. § 1651
BWA	Blue Water Navy Vietnam Veterans Act	38 U.S.C. § 1116A
CDA	Contract Disputes Act	41 U.S.C. § 7101 *et seq.*
CRA	Civil Rights Act	42 U.S.C. § 1981 *et seq.*
CWA	Clean Water Act	33 U.S.C. § 1251 *et seq.*
DJA	Declaratory Judgment Act	28 U.S.C. § 2201 *et seq.*
ESA	Endangered Species Act	16 U.S.C. § 1531 *et seq.*
FAR	Federal Acquisition Regulation	48 C.F.R. pt. 1 *et seq.*
FCIA	Federal Crop Insurance Act	7 U.S.C. § 1501 *et seq.*
FECA	Federal Election Campaign Act	52 U.S.C. § 30101 *et seq.*
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	7 U.S.C. § 136 *et seq.*
FLPMA	Federal Land Policy and Management Act	43 U.S.C. § 1701 *et seq.*
FOIA	Freedom of Information Act	5 U.S.C. § 552
FSMA	Food Safety Modernization Act	21 U.S.C. § 301 *et seq.*
FSA	Food Security Act	7 U.S.C. § 3801 *et seq.*
FTCA	Federal Trade Commission Act	15 U.S.C. § 41 *et seq.*
FTCLA	Federal Tort Claims Act	28 U.S.C. §§ 1346(b), 2671 *et seq.*
INA	Immigration and Nationality Act	8 U.S.C. § 1101 *et seq.*
MVA	Mandamus and Venue Act	28 U.S.C. § 1361
NEPA	National Environmental Policy Act	42 U.S.C. § 4321 *et seq.*
NHPA	National Historic Preservation Act	54 U.S.C. §§ 300101 *et seq.*
NPATMA	National Parks Air Tour Management Act	49 U.S.C. § 40128
PWHC	Petition for Writ of Habeas Corpus	28 U.S.C. § 2241 *et seq.*
QTA	Quiet Title Act	28 U.S.C. § 2409a
SSA	Social Security Act	42 U.S.C. § 301 *et seq.*
TA	Tucker Act (Bid Protest)	28 U.S.C. § 1491(b)
VBA	Veterans' Benefits Act	38 U.S.C. § 101 *et seq.*
VDA	Veterans' Dioxin and Radiation Exposure Compensation Standards Act	38 U.S.C. § 1154
WFRHBA	Wild Free-Roaming Horses and Burros Act	16 U.S.C. § 1331 *et seq.*

IV. Database and Website

A. Simultaneous Release of Data and Report in March 2021

In 2020, the Office of the Chairman created two websites related to the EAJA reporting requirements: (1) a "Project Page" at www.acus.gov/EAJA, and (2) an "EAJA Database" at https://eaja.acus.gov. The Project Page at www.acus.gov/EAJA hosts annual reports and raw data sets, summaries and statistics, a direct link to the new EAJA Database, and other background information. The EAJA Database at https://eaja.acus.gov houses all EAJA awards information in an easily accessible database.

Simultaneous with the publication of this FY 2020 Report, the Office of the Chairman updated the online searchable database of EAJA awards. The Office of the Chairman hosts a centralized clearinghouse for information about EAJA on a special Project Page on the ACUS website at www.acus.gov/EAJA. As shown in the picture on the next page, this ACUS website hosts background information about EAJA and the reporting requirements; provides easy access to the annual reports, including summaries and statistics; lists contact information; and provides a link to the EAJA awards database at https://eaja.acus.gov.

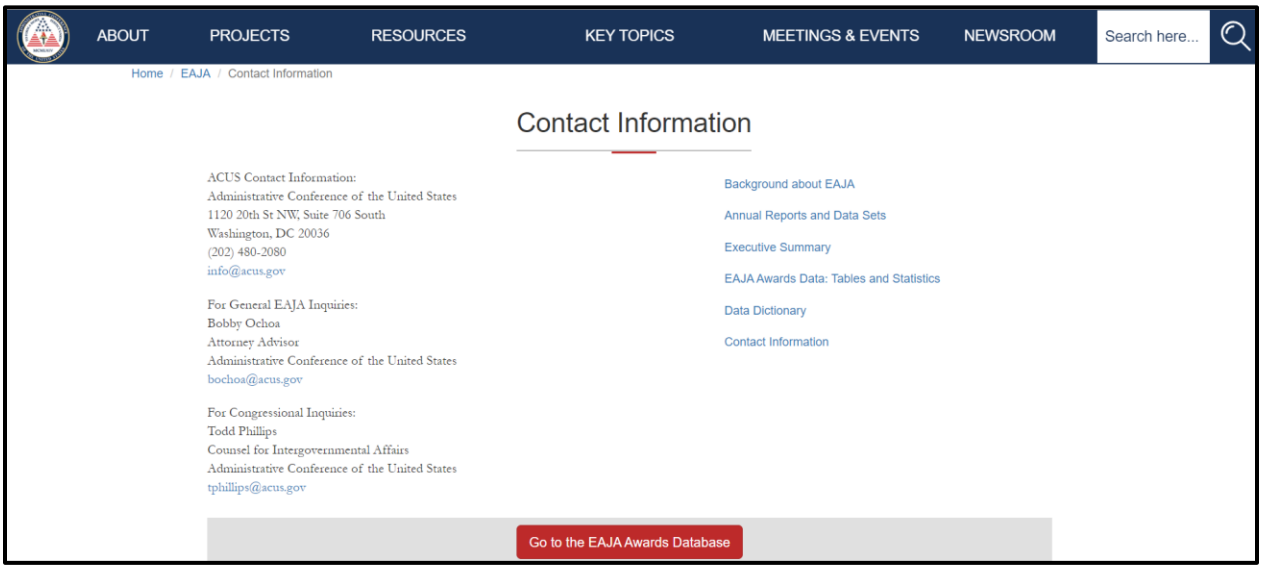
The EAJA Database at https://eaja.acus.gov includes all reported awards from agencies during the FY 2020 data-collection process as of March 30, 2021. The EAJA Database also includes the awards agencies reported for FY 2019. Given the Office of the Chairman's responsibility for maintaining this online database, the Office of the Chairman will promptly incorporate any new, supplementary, or amended awards information reported by agencies after the deadlines directly in the online database. The annual report becomes final on the publication date, and the Office of the Chairman will not make any post-release changes. As a result, the online database and downloadable data sets are the best sources for the most updated information about each FY's EAJA awards moving forward.

EAJA Project Page at www.acus.gov/EAJA	EAJA Awards Database at https://eaja.acus.gov
• Annual reports • Link to online database • Background information • Summaries and statistics • Data dictionary • Downloadable data sets • Contact information	• Eleven information fields about each award • Ability to search, sort, filter, and export • Detailed award view

B. The ACUS Project Page at www.acus.gov/EAJA

In order to seamlessly integrate the new EAJA content into the current ACUS website, the Office of the Chairman created a Project Page dedicated to the new EAJA reporting responsibilities at www.acus.gov/EAJA. This website provides convenient access to:

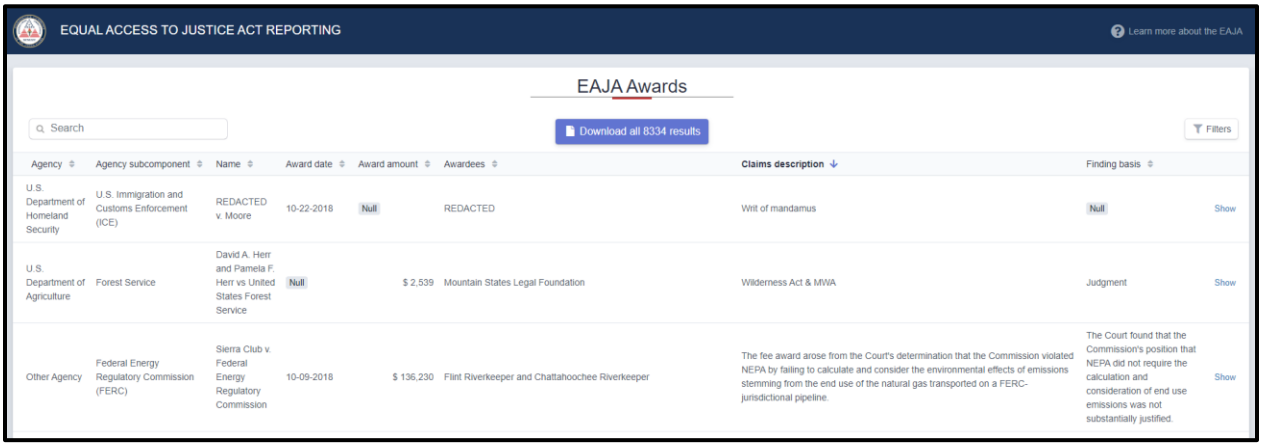
- background information about the Office of the Chairman's EAJA reporting responsibilities;
- summaries and statistics about the data for each FY;
- a data dictionary, which describes the information fields about each award that the Office of the Chairman collected and included in the online database;
- each of the Office of the Chairman's annual reports;
- the downloadable raw data sets in Excel spreadsheets;
- contact information for relevant Office of the Chairman staff members; and
- a direct link to the EAJA Database at https://eaja.acus.gov.



The Project Page at www.acus.gov/EAJA describing background information.

C. The EAJA Database at https://eaja.acus.gov

To carry out the Dingell Act's requirements carefully and to facilitate the public's ability to view, search, and sort the information in the new EAJA database, the Office of the Chairman established a dedicated website hosting EAJA awards information at https://eaja.acus.gov. This dedicated website contains more functionality and features that ensure users can search the database easily.



*The EAJA Database at https://eaja.acus.*gov *listing all EAJA awards.*

The website's landing page brings users directly to the publicly available, online, and searchable EAJA Database, which is updated annually. Each reported EAJA award is listed in a different row. From this landing page, which displays 15 awards per page, users can view, search, sort, filter, and export the information in the database. The database includes the same eleven types of information about each reported EAJA award that the Office of the Chairman requested and received from the agencies.[67]

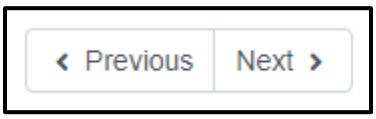
The remainder of this section describes the online database's various features and functions available to the public.[68]

[67] The landing-page view displays 8 fields, and users may view the details of all fields for an award in a case details view, which displays detailed information for each individual award. Descriptions of the 11 fields are included in Section II.E.

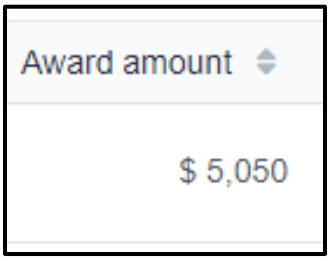
[68] Along with the visible features and functions described in the next section, the Office of the Chairman included many behind-the-scenes features and functions to create an accessible, compliant, and responsive database and website. Some of the key accessibility features include setting up access to key attributes for main controls to enable keyboard shortcuts; adding scope attributes to table headers; assigning presentation roles to markups (icons); adding descriptive labels to links; improving the layout elements to improve use with small screens; permitting expanded scrolling functionality for small screens; and adding more functionality to the administrative side of the website.

Database Features and Functions

Navigation: The online database includes navigation buttons ("Previous" and "Next") at the bottom right of the webpage. There is also a status message at the bottom left of the webpage showing how many awards are displayed currently (e.g., "Viewing 15 of 51 results").

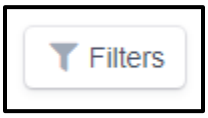


Sorting: To make the online database easily accessible and navigable, the default page displays for each award a subset of eight out of the total eleven fields: agency, agency subcomponent, case name, award date, award amount, awardees, claims description, and findings basis. Users may sort all the displayed fields by column by clicking on the up/down arrows to the right of the field's title (as shown in the figure).



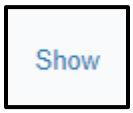
Searching: In a box anchored above the database information on the left side of the page, the website includes an intuitive search bar that can find and display results across all fields and awards.

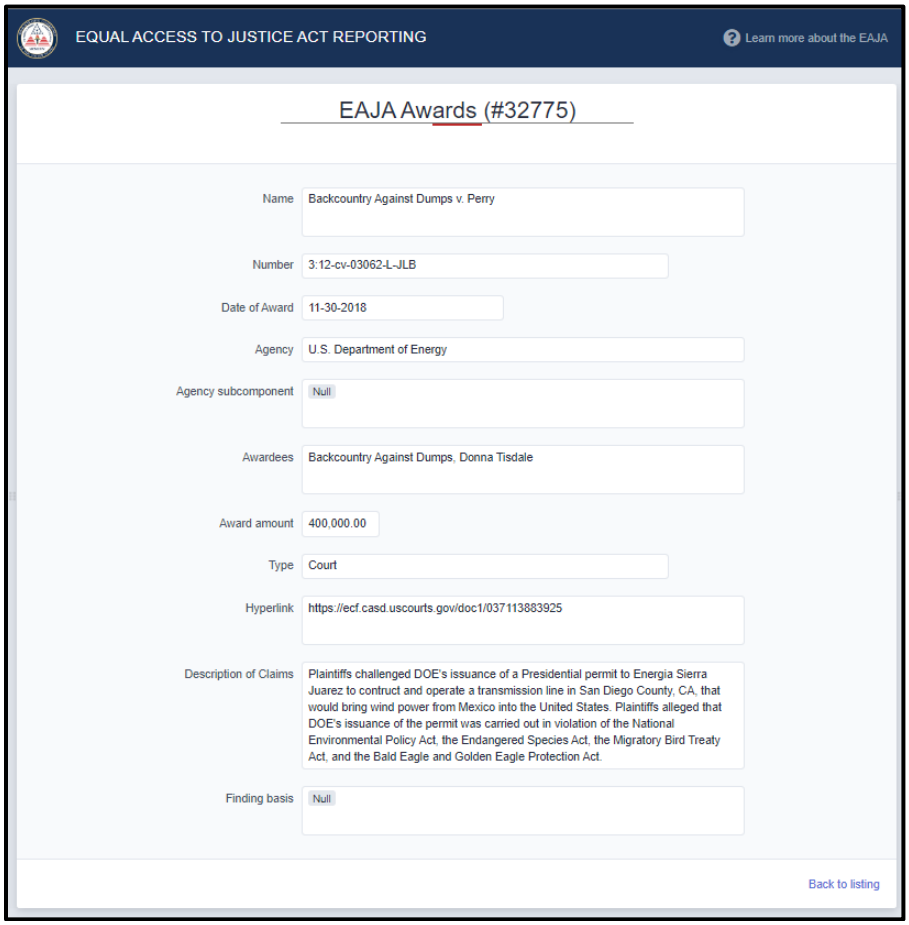
Filtering: There is also a "Filters" button in a box anchored above the database information on the right side of the page. When selected, the filter function provides the option to conduct more complex searches and filter awards information by agency, by award date, and by award amount. For example, users can use this function to search for awards from a specific agency or department, or for awards exceeding a certain dollar amount.



Detailed View and Suppressed Fields: The database displays eight of eleven information fields. The remaining fields ("Number," "Type," and "Hyperlink") still reside in the database, and users can access the information by using the case details view or the export/download function described in the next section.

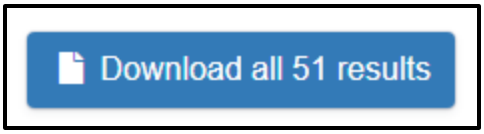
Users may select a single award for a more detailed and informative view. To view the details of a single award, users can select a specific award by clicking on the "Show" button at the far right of the page. This will open a new page showing more detailed information about the selected award, including the remaining three fields.





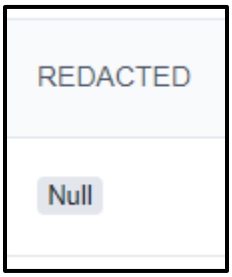
*Case details view in the EAJA Database at https://eaja.acus.*gov.

Export/Download Function: Users may download the entire database (or a subset based on a search or filter) into a spreadsheet that may be viewed, searched, and sorted offline. They may do so simply by selecting the button reading "Download all __ results" in a box centrally anchored above the database information (as shown in the figure). This will export the database (or a subset based on a search or filter) to a basic comma separated values (.csv) file.



Alternatively, the raw data sets are available to download as an Excel spreadsheet from the ACUS Project Page at www.acus.gov/EAJA/reports, which includes all eleven fields for each award. With these formats, users can easily view, search, sort, and filter the database information offline in other software (including Microsoft Excel).

Redaction: Reporting agencies supplied all information populating the online database during the data-collection process. The Office of the Chairman did not apply any substantive redactions to reported information. Rather, it asked reporting agencies to be attentive to privileged, confidential, or otherwise protected information that should not, by law, be disclosed to the Office of the Chairman or included in the database. As required, reporting agencies applied redactions for certain information. Sometimes these redactions appear in the database conspicuously (using "Redacted" or "Not provided" in place of the information). In other instances, the information is simply omitted or appears as a blank or null field.



When it had questions or concerns about the data agencies submitted, the Office of the Chairman reached out directly to each agency for resolution and approval of any necessary technical changes and to address any other issues. The Office of the Chairman generally deferred to the agency's resolution of any data-related issues, particularly with respect to the agency's legal conclusions (such as those about specific redactions). The Office of the Chairman will use a similar resolution process to address any future issues that may arise with information in the database. In the event of such requests or issues, the database website also includes a redaction function (aside from the ability to simply redact or remove the underlying database information on a temporary or permanent basis, if necessary).

V. Moving Forward

The Dingell Act requires the Office of the Chairman to prepare reports for FY 2019 "and every fiscal year thereafter[.]"[69] The Office of the Chairman will launch another data-collection process at the end of FY 2021 and work to incorporate the new data and report into the Project Page and EAJA Database. Each year, the Office of the Chairman will continue to integrate new data, host each new report, and preserve and archive prior data sets. Over time, the Office of the Chairman plans to iterate and improve upon this initial version of the website and database. As agency tracking and reporting processes improve over time, so too will the government-wide accuracy and comprehensiveness of this database. The Office of the Chairman will work to maintain a high agency-response rate and track legal developments to ensure the database captures the universe of relevant agencies each year. After receiving communications from agency points of contact addressing common questions and issues (both technical and legal) related to the reporting process, the Office of the Chairman also plans to coordinate with agencies and promote best practices to improve the tracking and reporting process over time.

If any agency seeks to correct, redact, or supplement information in the online database, the Office of the Chairman will incorporate those changes on the website and public database directly. Although the online database is subject to change in this way, the annual report becomes final on the publication date, and the Office of the Chairman will not similarly update the final report.

If any person or other entity alerts the Office of the Chairman (through the new website or otherwise) that information in the online database should be redacted, the Office of the Chairman will work diligently with the relevant agency and the person or entity to address the issue. The Office of the Chairman will generally defer to the agency's resolution of the issue, particularly with respect to the agency's legal conclusions.

To contact the Office of the Chairman about suggested improvements to the website, please use the EAJA website or the ACUS website, or contact the appropriate staff member using the contact information provided at the end of this report and on the Project Page.

[69] 5 U.S.C. § 504(e)(1); 28 U.S.C. § 2412(d)(5)(A).

Subtitle C—Open Book on Equal Access to Justice

SEC. 4201. FEDERAL ACTION TRANSPARENCY.

(a) MODIFICATION OF EQUAL ACCESS TO JUSTICE PROVISIONS.—

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

(A) in subsection (c)(1), by striking ", United States Code";

(B) by redesignating subsection (f) as subsection (i); and

(C) by striking subsection (e) and inserting the following:

"(e)(1) Not later than March 31 of the first fiscal year beginning after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and every fiscal year thereafter, the Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall submit to Congress and make publicly available online a report on the amount of fees and other expenses awarded during the preceding fiscal year under this section.

"(2) Each report under paragraph (1) shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information that may aid Congress in evaluating the scope and impact of such awards.

"(3)(A) Each report under paragraph (1) shall account for all payments of fees and other expenses awarded under this section that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is sealed or otherwise subject to a nondisclosure provision.

"(B) The disclosure of fees and other expenses required under subparagraph (A) shall not affect any other information that is subject to a nondisclosure provision in a settlement agreement.

"(f) As soon as practicable, and in any event not later than the date on which the first report under subsection (e)(1) is required to be submitted, the Chairman of the Administrative Conference of the United States shall create and maintain online a searchable database containing, with respect to each award of fees and other expenses under this section made on or after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the following information:

"(1) The case name and number of the adversary adjudication, if available, hyperlinked to the case, if available.

"(2) The name of the agency involved in the adversary adjudication.

"(3) A description of the claims in the adversary adjudication.

"(4) The name of each party to whom the award was made as such party is identified in the order or other court document making the award.

"(5) The amount of the award.

"(6) The basis for the finding that the position of the agency concerned was not substantially justified.

"(g) The online searchable database described in subsection (f) may not reveal any information the disclosure of which is prohibited by law or a court order.

"(h) The head of each agency shall provide to the Chairman of the Administrative Conference of the United States in a timely manner all information requested by the Chairman to comply with the requirements of subsections (e), (f), and (g).".

(2) COURT CASES.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

"(5)(A) Not later than March 31 of the first fiscal year beginning after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and every fiscal year thereafter, the Chairman of the Administrative Conference of the United States shall submit to Congress and make publicly available online a report on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection.

"(B) Each report under subparagraph (A) shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information that may aid Congress in evaluating the scope and impact of such awards.

"(C)(i) Each report under subparagraph (A) shall account for all payments of fees and other expenses awarded under this subsection that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is sealed or otherwise subject to a nondisclosure provision.

"(ii) The disclosure of fees and other expenses required under clause (i) shall not affect any other information that is subject to a nondisclosure provision in a settlement agreement.

"(D) The Chairman of the Administrative Conference of the United States shall include and clearly identify in each annual report under subparagraph (A), for each case in which an award of fees and other expenses is included in the report—

"(i) any amounts paid under section 1304 of title 31 for a judgment in the case;

"(ii) the amount of the award of fees and other expenses; and

"(iii) the statute under which the plaintiff filed suit.

"(6) As soon as practicable, and in any event not later than the date on which the first report under paragraph (5)(A) is required to be submitted, the Chairman of the Administrative Conference of the United States shall create and maintain online a searchable database containing, with respect to each award of fees and other expenses under this subsection made on or after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the following information:

"(A) The case name and number, hyperlinked to the case, if available.

"(B) The name of the agency involved in the case.

"(C) The name of each party to whom the award was made as such party is identified in the order or other court document making the award.

"(D) A description of the claims in the case.

"(E) The amount of the award.

"(F) The basis for the finding that the position of the agency concerned was not substantially justified.

"(7) The online searchable database described in paragraph (6) may not reveal any information the disclosure of which is prohibited by law or a court order.

"(8) The head of each agency (including the Attorney General of the United States) shall provide to the Chairman of the Administrative Conference of the United States in a timely manner all information requested by the Chairman to comply with the requirements of paragraphs (5), (6), and (7).".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Section 2412 of title 28, United States Code, is amended—

(A) in subsection (d)(3), by striking "United States Code,"; and

(B) in subsection (e)—

(i) by striking "of section 2412 of title 28, United States Code," and inserting "of this section"; and

(ii) by striking "of such title" and inserting "of this title".

(b) JUDGMENT FUND TRANSPARENCY.—Section 1304 of title 31, United States Code, is amended by adding at the end the following:

"(d) Beginning not later than the date that is 60 days after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and unless the disclosure of such information is otherwise prohibited by law or a court order, the Secretary of the Treasury shall make available to the public on a website, as soon as practicable, but not later than 30 days after the date on which a payment under this section is tendered, the following information with regard to that payment:

"(1) The name of the specific agency or entity whose actions gave rise to the claim or judgment.

"(2) The name of the plaintiff or claimant.

"(3) The name of counsel for the plaintiff or claimant.

"(4) The amount paid representing principal liability, and any amounts paid representing any ancillary liability, including attorney fees, costs, and interest.

"(5) A brief description of the facts that gave rise to the claim.

"(6) The name of the agency that submitted the claim.".

Appendix B. SBA Consultation Confirmation Letter

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

March 16, 2021

Bobby Ochoa
Attorney Advisor
Administrative Conference of the United States
1120 20th Street, NW
Washington, DC 20036

Dear Mr. Ochoa:

This is to acknowledge that the consultation required by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019),[1] took place by via email on March 16, 2020, and I received the draft report on March 4, 2021. I continue to look forward to working with the Administrative Conference on further iterations of the report and other projects in the coming years.

/s/
Major L. Clark
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

[1] Codified at 5 U.S.C. § 504(e)(1)

409 3rd Street SW / MC 3110 / Washington, DC 20416
Ph 202-205-6533 / advocacy.sba.gov

SBA U.S. Small Business Administration

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