



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ACUS is an independent federal agency that develops recommendations to improve administrative process and procedure. ACUS also arranges for the interchange of useful information to carry out its mission. ACUS Information Interchange Bulletins are intended to help agencies and the public understand the administrative process. They should not be relied upon as legal documents.

### Information Interchange Bulletin No. 013

## Equal Access to Justice Act Basics

### What is the Equal Access to Justice Act?

Under the Equal Access to Justice Act (EAJA) (5 U.S.C. § 504; 28 U.S.C. § 2412), parties who prevail against the federal government in certain cases may be entitled to an award of attorney's fees and other expenses.

EAJA allows awards only in cases where the government's position was not "substantially justified." To show that its position was substantially justified, the government has the burden of proving that its position had a reasonable basis in law and fact.

### What kinds of cases are covered?

- Civil judicial proceedings other than tort and tax cases.
- Most adversary adjudications under the Administrative Procedure Act (5 U.S.C. § 554), Contract Disputes Act, Program Fraud Civil Remedies Act, and Religious Freedom Restoration Act.

### Which parties are eligible to receive awards?

- Individuals with a net worth of no more than \$2 million.
- Businesses, organizations, associations, and local government units with a net worth of no more than \$7 million and no more than 500 employees.
- Tax-exempt organizations and agricultural cooperatives with no more than 500 employees.

### Who is a "prevailing party"?

A party has prevailed if the case results in a material alteration of the legal relationship between the party and the government and the party obtains some relief. Prevailing party status can be achieved through a judgment on the merits or a consent decree.

### What is the process for submitting EAJA applications in adversary adjudications or judicial proceedings?

In general, a prevailing party must submit an application to the agency or court within 30 days of final judgment. The application must:

- show that the party is a prevailing party;
- show that the party is eligible to receive an award;
- include the amount sought; and
- allege that the agency's position was not substantially justified.

### What rules do agencies issue to implement EAJA?

EAJA requires agencies to issue rules establishing procedures for the submission and consideration of applications for attorney's fees and other expenses. More than 30 agencies have established procedures for handling applications for EAJA awards in administrative proceedings.

Agencies must consult with ACUS when they establish such procedures. To help agencies establish fair and effective rules, ACUS has developed [Model Rules for Implementation of the Equal Access to Justice Act](#).

The *Model Rules* address subjects such as:

- application requirements, including how parties show they are eligible to receive an award and document fees and expenses;
- procedures for filing, serving, and responding to applications;
- the record for decisionmaking, including the possibility of oral argument or evidentiary hearings when necessary;
- procedures for issuing decisions on EAJA applications; and
- availability of agency and judicial review.

### Where can I find information about EAJA awards?

By law, ACUS maintains an online database and prepares an annual report detailing EAJA awards against the government during each fiscal year. Annual reports and data sets are available at [www.acus.gov/eaja](http://www.acus.gov/eaja).

### Additional Resources

- [EAJA Reporting](#), ACUS
- [EAJA Awards Database](#), ACUS
- [Equal Access to Justice Act](#), ACUS Administrative Procedure Sourcebook
- [Model Rules for Implementation of the Equal Access to Justice Act](#), ACUS (2019)
- Joanna R. Lampe, [Attorney's Fees and the Equal Access to Justice Act: Legal Framework](#) (CRS June 2019)