



Administrative Conference of the United States

REPORT OF THE OFFICE OF THE CHAIR

EQUAL ACCESS TO JUSTICE ACT AWARDS

REPORT TO CONGRESS

FISCAL YEAR 2022

March 31, 2023

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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 that 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 Chair 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 Chair 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 fourth annual report covers the reporting period for FY 2022: October 1, 2021, through September 30, 2022.

In FY 2022, federal agencies reported paying more than \$179 million in awards of attorney’s fees and other expenses under EAJA.

- ♦ In total, 17 federal agencies reported 18,341 separate awards totaling \$179,508,528.91.
- ♦ Of the 18,341 total awards, 18,331 were made in court cases, and 10 were made in adversary adjudications.
- ♦ In total, 37 federal agencies reported paying no EAJA awards during FY 2022.
- ♦ Of the 58 agencies contacted, the Office of the Chair achieved a 93 percent compliance rate. Just four agencies did not report by March 31, 2023, in response to the Office of the Chair’s requests.

** All totals current as of March 31, 2023.*

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)).

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

Agency	# of Awards Reported	Total Amount Reported
Department of Veterans Affairs	6,473	\$ 94,664,784.07
Social Security Administration	11,710	\$ 68,380,977.32
Department of Homeland Security*	85	\$ 7,004,352.82
Department of Justice	12	\$ 3,325,225.23
Department of Agriculture	15	\$ 1,564,007.00
Department of the Interior	15	\$ 1,377,506.77
Department of Defense	9	\$ 986,977.69
Department of Commerce	4	\$ 691,853.00
Federal Trade Commission	1	\$ 260,000.00
Department of Health and Human Services	4	\$ 249,038.07
Department of State	2	\$ 244,071.99
Environmental Protection Agency	2	\$ 219,699.80
National Labor Relations Board	1	\$ 150,000.00
Department of Labor	3	\$ 138,265.78
Department of Transportation	3	\$ 135,533.96
National Archives and Records Administration	1	\$ 60,779.41
Federal Energy Regulatory Commission	1	\$ 55,456.00
Totals	18,341	\$ 179,508,528.91

** Some award amounts redacted by the agency.² Redacted awards are reflected as \$0 in these totals.*

² 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 Chair 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 adjudications³ 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.⁴

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.”⁵ All but 10 of the 18,341 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”] to apply to the federal government as they would to a private party.”⁶ The Office of the Chair located none of these

³ 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. 31, 2021), https://sourcebook.acus.gov/wiki/Equal_Access_to_Justice_Act/view.

⁴ 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.*

⁵ 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>.

⁶ LAMPE, *supra* note 5, 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.

awards, which would have been paid from the Judgment Fund rather than the agency's appropriation, in FY 2022.

(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).⁷ Only five agencies reported any EAJA awards under this provision during FY 2022 (the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Transportation, and the Department of Veterans Affairs), and these awards accounted for just 10 of the 18,341 total EAJA awards.

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

B. Historical Reporting and Model EAJA Rules

As originally enacted in 1980, EAJA assigned to the Office of the Chair 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.⁸

Through FY 1994, the Office of the Chair prepared the required annual reports of EAJA awards in adversary adjudications under this statutory requirement.⁹ Congress terminated the reporting requirement in 1995.¹⁰

In carrying out the second statutory charge of establishing uniform agency procedures for EAJA-award applications, the Office of the Chair first issued in 1981 model rules to help agencies

⁸ 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 Chair 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).

⁹ 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>.

¹⁰ 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 Chair 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.

establish uniform procedures for the submission and consideration of EAJA applications.¹¹ The Office of the Chair revised the model rules in 1986¹² and again in 2019.¹³

Other agencies have reported on selected EAJA awards over the years, including the Administrative Office of the U.S. Courts,¹⁴ the Department of Justice,¹⁵ the Government Accountability Office,¹⁶ and the Congressional Research Service.¹⁷

¹¹ Admin. Conf. of the U.S., Equal Access to Justice Act: Agency Implementation, 46 Fed. Reg. 32900 (June 25, 1981).

¹² 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).

¹³ 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).

¹⁴ *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”).

¹⁵ *See, e.g.*, U.S. DEP’T OF JUSTICE, EQUAL ACCESS TO JUSTICE ACT: 1994 ANNUAL REPORT (1995).

¹⁶ *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>.

¹⁷ *See, e.g.*, LAMPE, *supra* note 5; 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 Chair to conduct two related activities to promote increased transparency for EAJA awards.¹⁸ The Dingell Act required the Office of the Chair 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 Chair to establish and maintain a publicly available, online, and searchable database containing detailed information about each award by March 31, 2020.¹⁹ The Office of the Chair launched the database on March 31, 2020.

The database must include EAJA awards in both adversary adjudications²⁰ and the much larger number of awards in federal-court cases.²¹ For every award, the Office of the Chair 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.²²

Agency heads must “timely” comply with requests from the Office of the Chair to supply this information.²³

The Office of the Chair 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 2022 reporting period: October 1, 2021, through September 30, 2022.

¹⁸ 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).

¹⁹ 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.

²⁰ 5 U.S.C. § 504(e)–(h).

²¹ 28 U.S.C. § 2412(d)(5)–(8).

²² 5 U.S.C. § 504(f); 28 U.S.C. § 2412(d)(6).

²³ 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 2022 Report, including the process of identifying relevant agencies, the Office of the Chair’s outreach to those agencies, and the reporting process.

A. Identifying Relevant Agencies

The Office of the Chair determined which agencies to contact as part of the data-collection process by relying on the FY 2021 Report, which listed 58 federal agencies that might have relevant EAJA awards to report.²⁴ Table 2 lists the 58 federal agencies to which the Office of the Chair conducted outreach and submitted requests for information about EAJA awards.

²⁴ 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 2021 11 (Mar. 31, 2022), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-2021-report-chairman>. For a full explanation of how the Office of the Chair originally compiled the comprehensive list of federal agencies that might have EAJA awards to report, please see the FY 2019 (<https://www.acus.gov/report/equal-access-justice-act-awards-fy-2019-report-chairman>) and FY 2020 (<https://www.acus.gov/report/equal-access-justice-act-awards-fy-2020-report-chairman>) reports.

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

The Office of the Chair maintains a list of relevant government officials within each agency who assist the Office of the Chair with the data-collection process. Most agencies had an agency designee on file with ACUS from the FY 2021 reporting process. If this information was outdated or missing, the Office of the Chair identified an alternate contact for outreach.

On September 6, 2022, the Office of the Chair circulated a letter to each agency contact, with a copy to that agency's ACUS member (if any).²⁵ This initial communication reminded each agency about the Dingell Act's reporting requirement, alerted each agency that the Office of the Chair would request the required information for FY 2022 shortly after the end of the Fiscal Year, and requested that each agency inform the Office of the Chair if the official designated to serve as a point of contact for the data-collection process had changed. The Office of the Chair transmitted these initial letters by email. Many agencies responded, acknowledging the reporting requirement and indicating if the designee had changed.

The Office of the Chair 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.

²⁵ 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 Chair with circulating agency communications and requests and ensuring the agency meets those requests, for which the Office of the Chair is very appreciative.

C. Formal Reporting Process

On October 4, 2022, the Office of the Chair 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 2022. On February 1, 2023, the Office of the Chair circulated a final request for information.

Ninety-three percent of agencies complied with the request for data. Seventeen agencies supplied detailed information about EAJA awards during FY 2022 by completing the spreadsheet as instructed. Thirty-seven agencies notified the Office of the Chair that the agency had no awards to report.²⁶ As of March 31, 2023, only four agencies had not reported.²⁷ Tables 3 and 4 identify how each agency complied with the reporting requirement.

²⁶ This number includes multiple subunits from 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.

²⁷ The agencies are the Government National Mortgage Association, the Office of Personnel Management, the United States African Development Foundation, and the United States Institute of Peace, which likely had no or few awards to report.

Table 3. List of Agencies Reporting EAJA Awards (as of March 31, 2023)

List of Agencies Reporting EAJA Awards
Department of Agriculture
Department of Commerce
Department of Defense
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 Energy Regulatory Commission
Federal Trade Commission
National Archives and Records Administration
National Labor Relations Board
Social Security Administration

Table 4. List of Agencies Reporting No EAJA Awards (as of March 31, 2023)

List of Departments Reporting No EAJA Awards	
Department of Education	Department of Housing and Urban Development
Department of Energy	Department of the Treasury

List of Independent Agencies and Government Corporations Reporting No EAJA Awards	
Board of Governors of the Federal Reserve System	International Development Finance Corporation
Commodity Futures Trading Commission	Merit Systems Protection Board
Consumer Financial Protection Bureau	National Aeronautics and Space Administration
Consumer Product Safety Commission	National Credit Union Administration
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	Pension Benefit Guaranty Corporation
Federal Election Commission	Postal Regulatory Commission
Federal Housing Finance Agency	Railroad Retirement Board
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 International Trade Commission
Inter-American Foundation	United States Postal Service

D. Consultation with the Small Business Administration

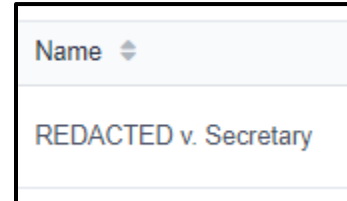
The Dingell Act requires the Office of the Chair to submit and publish the annual report “after consultation with the Chief Counsel for Advocacy of the Small Business Administration [(SBA)].”²⁸ After the Office of the Chair consulted with the Acting Chief Counsel and submitted to him a draft of the annual report for review, he submitted a letter confirming the diligent discharge of this requirement. The letter appears in Appendix B.

²⁸ 5 U.S.C. § 504(e)(1).

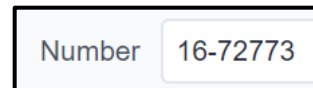
E. Summary of the Information Collected and Published

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

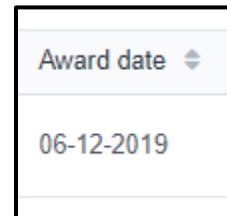
1. **Name:** This field displays the name of the case, no matter if the EAJA award comes from a court case or an adversary adjudication. This field typically includes the names of parties and federal agencies and their leaders. The Office of the Chair encouraged agencies to standardize case names when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

A screenshot of a web interface showing a dropdown menu for the 'Name' field. The dropdown is open, displaying the text 'REDACTED v. Secretary' in blue.

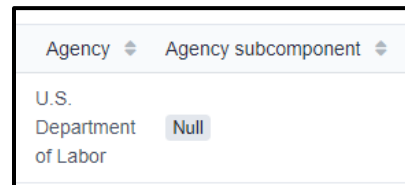
2. **Number:** This field displays the associated case number. For awards in court cases, this is typically the associated federal court docket number. For adversary adjudications, this may appear as an internal agency docket number.

A screenshot of a web interface showing a text input field for the 'Number' field. The field contains the value '16-72773'.

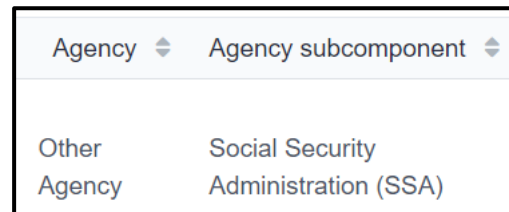
3. **Award Date:** This field displays the date of the order or other court or adjudicative document making the EAJA award, which should fall within FY 2022. During the data-collection process, these dates were standardized and appear in the online database formatted as “MM-DD-YYYY.”

A screenshot of a web interface showing a dropdown menu for the 'Award date' field. The dropdown is open, displaying the date '06-12-2019' in blue.

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).

A screenshot of a web interface showing a dropdown menu for the 'Agency' field. The dropdown is open, displaying 'U.S. Department of Labor' in blue. To the right of the dropdown is a 'Null' button.

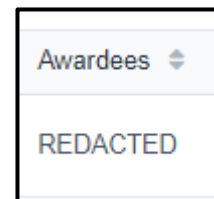
5. **Agency Subcomponent:** Along with the previous category, this field identifies the specific agency subcomponent involved. This field includes the full name of the agency, as well as any commonly used abbreviation in parentheses to facilitate the database’s search and filter functions.²⁹ If a department or agency appears in the database, the name of the department or agency will appear as an option in the filter function.

A screenshot of a web interface showing a dropdown menu for the 'Agency subcomponent' field. The dropdown is open, displaying 'Social Security Administration (SSA)' in blue. To the left of the dropdown is a button labeled 'Other Agency'.

²⁹ For consistency, the Office of the Chair 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.

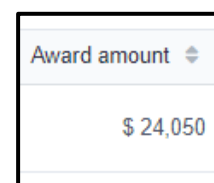
6. **Awardees:** This field displays “[t]he name of each party to whom the award was made as such party is identified in the order or other court document making the award.”³⁰ When possible, agencies identified a single individual or entity for each award. If there were multiple awardees in a single court case or order, agencies typically identified each awardee as a separate award on a separate row (when feasible).



Awardees ▾

REDACTED

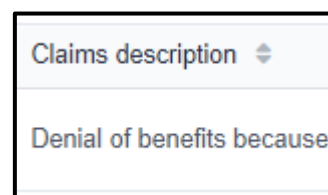
7. **Award Amount:** This field displays the total dollar amount of the EAJA award.



Award amount ▾

\$ 24,050

8. **Claims Description:** This field displays a brief “description of the claims.”³¹ The responding agency provided a concise description for each award. Nearly all the descriptions provided enough information for the Office of the Chair to identify the statute under which the plaintiff filed suit in court cases for purposes of the overview included in Table 7.³² Given the nature of these descriptions in some cases, the Office of the Chair urged agencies to be attentive to privileged, confidential, or otherwise protected information that should not be disclosed by law to the Office of the Chair or included in the publicly available online database.³³



Claims description ▾

Denial of benefits because

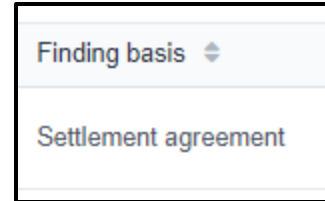
³⁰ 5 U.S.C. § 504(f)(4); 28 U.S.C. § 2412(d)(6)(C).

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

³² For each court case, the Office of the Chair 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.

³³ 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 Chair has complied with these requirements.

-
9. **Findings Basis:** This field displays the basis for finding that the agency's position was not substantially justified.³⁴ As with the previous field, the Office of the Chair 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.



The image shows a screenshot of a web interface. It features a light blue header bar with the text 'Finding basis' and a small downward-pointing arrow icon. Below this header, there is a white box containing the text 'Settlement agreement' in a blue font.

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 Chair 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.

³⁴ 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 2022

In FY 2022, federal agencies reported paying more than \$179 million in awards of attorney's fees and other expenses under EAJA.

- ♦ In total, 17 federal agencies reported 18,341 separate awards totaling \$179,508,528.91.
- ♦ Of the 18,341 total awards, 18,331 were made in court cases, and 10 were made in adversary adjudications.
- ♦ In total, 37 federal agencies reported paying no EAJA awards during FY 2022.
- ♦ Of the 58 agencies contacted, the Office of the Chair achieved a 93 percent compliance rate. Just four agencies did not report by March 31, 2023, in response to the Office of the Chair's requests.

** All totals current as of March 31, 2023.*

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

Agency	# of Awards Reported	Total Amount Reported
Department of Veterans Affairs	6,473	\$ 94,664,784.07
Social Security Administration	11,710	\$ 68,380,977.32
Department of Homeland Security*	85	\$ 7,004,352.82
Department of Justice	12	\$ 3,325,225.23
Department of Agriculture	15	\$ 1,564,007.00
Department of the Interior	15	\$ 1,377,507.00
Department of Defense	9	\$ 986,977.69
Department of Commerce	4	\$ 691,853.00
Federal Trade Commission	1	\$ 260,000.00
Department of Health and Human Services	4	\$ 249,038.07
Department of State	2	\$ 244,071.99
Environmental Protection Agency	2	\$ 219,699.80
National Labor Relations Board	1	\$ 150,000.00
Department of Labor	3	\$ 138,265.78
Department of Transportation	3	\$ 135,533.96
National Archives and Records Administration	1	\$ 60,779.41
Federal Energy Regulatory Commission	1	\$ 55,456.00
Totals	18,341	\$ 179,508,528.91

** Some award amounts redacted by the agency.³⁵ Redacted awards are reflected as \$0 in these totals.*

In the next sections, the Office of the Chair 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.

³⁵ 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 Chair 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 2022, federal agencies reported data showing that the overwhelming majority of EAJA awards were made in court cases. As of March 31, 2023, 18,331 of 18,341 total awards (99.95 percent) were made in court cases and just 10 of 18,341 total awards (0.05 percent) in adversary adjudications. Only five federal agencies reported EAJA awards from adversary adjudications: the Department of Agriculture, the Department of Defense, the Department of Health and Human Services, the Department of Transportation, and the Department of Veterans Affairs.

Table 5. Breakdown of EAJA Awards by Type of Case

Agency	# in Court Cases	# in Adj.	Total Awards Reported
Social Security Administration	11,710	0	11,710
Department of Veterans Affairs	6,471	2	6,473
Department of Homeland Security	85	0	85
Department of Agriculture	14	1	15
Department of the Interior	15	0	15
Department of Justice	12	0	12
Department of Defense	7	2	9
Department of Commerce	4	0	4
Department of Health and Human Services	0	4	4
Department of Labor	3	0	3
Department of Transportation	2	1	3
Department of State	2	0	2
Environmental Protection Agency	2	0	2
Federal Energy Regulatory Commission	1	0	1
Federal Trade Commission	1	0	1
National Labor Relations Board	1	0	1
National Archives and Records Administration	1	0	1
Totals	18,331	10	18,341

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

The Dingell Act requires the Office of the Chair to identify in each annual report “any amounts paid under § 1304 of title 31 for a judgment in the case.”³⁶ This is a statutory reference to the Judgment Fund,³⁷ which Congress established to pay for “judgments against the United States for which no appropriation is otherwise available.”³⁸ The Dingell Act requires the Secretary of the Treasury to publish information about Judgment Fund payments on a public website,³⁹ which the Bureau of the Fiscal Service has established.

The Office of the Chair identified no distinct EAJA payments from the Bureau of the Fiscal Service’s Judgment Fund database during FY 2022. The Office of the Chair reviewed the data published on the Bureau of the Fiscal Service’s website in making this determination.⁴⁰

³⁶ 28 U.S.C. § 2412(d)(5)(D)(i).

³⁷ 31 U.S.C. § 1304.

³⁸ *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); *see also supra* note 5 (describing the Judgment Fund).

³⁹ Pub. L. No. 116-9, § 4201(c), 133 Stat. 580 (2019) (codified at 31 U.S.C. § 1304(d)).

⁴⁰ 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. 31, 2023). 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/jfundSearchWeb/JFPymtSearchAction.do> (last visited Mar. 31, 2023). 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. 31, 2023).

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). As described above, Congress established the Judgment Fund to pay for judgments against the United States when no other appropriation is available.

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.⁴¹ The *Justice Manual* also provides relevant information.⁴² The Congressional Research Service has also published helpful reports and resources on the subject of the Judgment Fund, as well as EAJA generally.⁴³

⁴¹ 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).

⁴² 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. 31, 2023).

⁴³ LAMPE, *supra* note 5; 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 Chair to identify in each annual report “the statute under which the plaintiff filed suit.”⁴⁴ Most agencies reported the nature of the plaintiff’s lawsuit in the “Claims Description” field. Table 6 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 Chair 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.⁴⁵ This requirement did not apply to adjudications.

⁴⁴ 28 U.S.C. § 2412(d)(5)(D)(iii).

⁴⁵ 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 6,476 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 Contract Disputes Act (listed as CDA in Table 7). Thus, the table can appear to overrepresent certain statutes and distort the relative prominence of certain statutes for certain agencies.

Table 6. Overview of Causes of Action Under Which EAJA Plaintiffs Filed Suit in Court Cases (by Agency)

Agency	Causes of Action *
Department of Agriculture	ANILCA; APA; ESA; MLA; MUSYA; NEPA; NFMA; NSTA
Department of Commerce	APA; ESA; NEPA; MMPA; MSA
Department of Defense	APA; CDA; DJA; U.S. Constitution
Department of Health and Human Services	No Court Cases ⁴⁶
Department of Homeland Security	APA; DJA; INA; MVA; PWHC; TA; U.S. Constitution
Department of Justice	APA; CRA; DJA; FOIA; INA; JAG; MVA; RA; RFRA; <i>Bivens</i> ⁴⁷ ; U.S. Constitution
Department of Labor	APA; ERISA; INA
Department of State	APA; INA
Department of the Interior	APA; CWA; ESA; FLPMA; MMPA; NEPA; NFMA; NHPA
Department of Transportation	APA; DTA; FAA; NEPA; TA
Department of Veterans Affairs	CDA; TA; VBA; VDA
Environmental Protection Agency	APA; FFDCA; FIFRA
Federal Energy Regulatory Commission	NEPA
Federal Trade Commission	FTCA
National Archives and Records Administration	APA, DJA; FRA
National Labor Relations Board	NLRA
Social Security Administration	APA; SSA; U.S. Constitution

* Listed alphabetically. List of abbreviations on next page.

⁴⁶ 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.

⁴⁷ 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).

List of Abbreviations

Abbrev.	Common Name of Act	Citation
ANILCA	Alaska National Interest Lands Conservation Act	16 U.S.C. § 3101 <i>et seq.</i>
APA	Administrative Procedure Act	5 U.S.C. §§ 553, 706 <i>et seq.</i>
CDA	Contract Disputes Act	41 U.S.C. § 7101 <i>et seq.</i>
CRA	Civil Rights Act	42 U.S.C. § 1981 <i>et seq.</i>
CWA	Clean Water Act	33 U.S.C. § 1251 <i>et seq.</i>
DJA	Declaratory Judgment Act	28 U.S.C. § 2201 <i>et seq.</i>
DTA	Department of Transportation Act	49 U.S.C. § 101 <i>et seq.</i>
ERISA	Employee Retirement Income Security Act	29 U.S.C. § 1001 <i>et seq.</i>
ESA	Endangered Species Act	16 U.S.C. § 1531 <i>et seq.</i>
FAA	Federal Aviation Act	49 U.S.C. § 40101 <i>et seq.</i>
FFDCA	Federal Food, Drug, and Cosmetic Act	21 U.S.C. § 301 <i>et seq.</i>
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	7 U.S.C. § 136 <i>et seq.</i>
FLPMA	Federal Land Policy and Management Act	43 U.S.C. § 1701 <i>et seq.</i>
FOIA	Freedom of Information Act	5 U.S.C. § 552
FRA	Federal Records Act	44 U.S.C. § 3301 <i>et seq.</i>
FTCA	Federal Trade Commission Act	15 U.S.C. § 41 <i>et seq.</i>
INA	Immigration and Nationality Act	8 U.S.C. § 1101 <i>et seq.</i>
JAG	The JAG Program	34 U.S.C. § 10151 <i>et seq.</i>
MLA	Mineral Leasing Act	30 U.S.C. § 181 <i>et seq.</i>
MMPA	Marine Mammals Protection Act	16 U.S.C. § 1361 <i>et seq.</i>
MSA	Magnuson-Stevens Act	16 U.S.C. § 1801 <i>et seq.</i>
MUSYA	Multiple Use Sustained Yield Act	16 U.S.C. §§ 528-531
MVA	Mandamus and Venue Act	28 U.S.C. § 1361
NEPA	National Environmental Policy Act	42 U.S.C. § 4321 <i>et seq.</i>
NFMA	National Forest Management Act	16 U.S.C. § 1600 <i>et seq.</i>
NHPA	National Historic Preservation Act	54 U.S.C. § 300101 <i>et seq.</i>
NLRA	National Labor Relations Act	29 U.S.C. § 151 <i>et seq.</i>
NSTA	National System Trails Act	16 U.S.C. §§ 1241-1251
PWHC	Petition for Writ of Habeas Corpus	28 U.S.C. § 2241 <i>et seq.</i>
RA	Rehabilitation Act	29 U.S.C. § 701 <i>et seq.</i>
RFRA	Religious Freedom Restoration Act	42 U.S.C. § 2000bb <i>et seq.</i>
SSA	Social Security Act	42 U.S.C. § 301 <i>et seq.</i>
TA	Tucker Act (Bid Protest)	28 U.S.C. § 1491(b)
VBA	Veterans' Benefits Act	38 U.S.C. § 101 <i>et seq.</i>
VDA	Veterans' Dioxin and Radiation Exposure Compensation Standards Act	38 U.S.C. § 1154

IV. Database and Website

A. Simultaneous Release of Data and Report in March 2023

In 2020, the Office of the Chair 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 2022 Report, the Office of the Chair updated the online searchable database of EAJA awards. The Office of the Chair 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>.

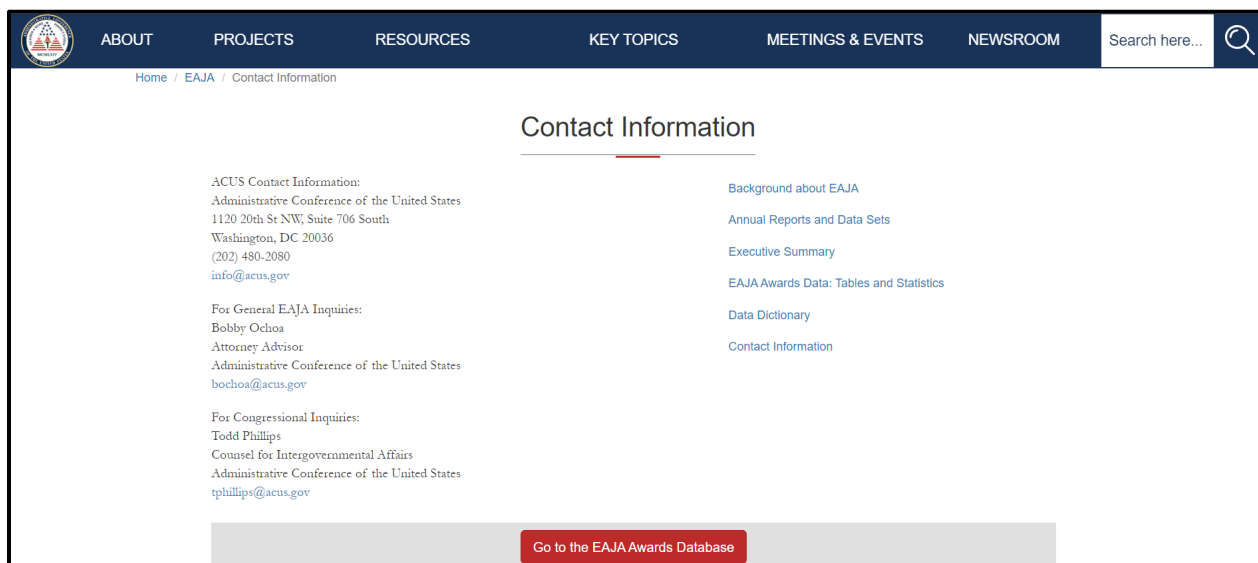
The EAJA Database at <https://eaja.acus.gov> includes all reported awards from agencies during the FY 2022 data-collection process as of March 31, 2023. The EAJA Database also includes the awards agencies reported for FY 2019-2021. Given the Office of the Chair’s responsibility for maintaining this online database, the Office of the Chair 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 Chair 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
<ul style="list-style-type: none">• Annual reports• Link to online database• Background information• Summaries and statistics• Data dictionary• Downloadable data sets• Contact information	<ul style="list-style-type: none">• 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 Chair created a Project Page dedicated to the new EAJA reporting responsibilities at www.acus.gov/EAJA. This website provides convenient access to:

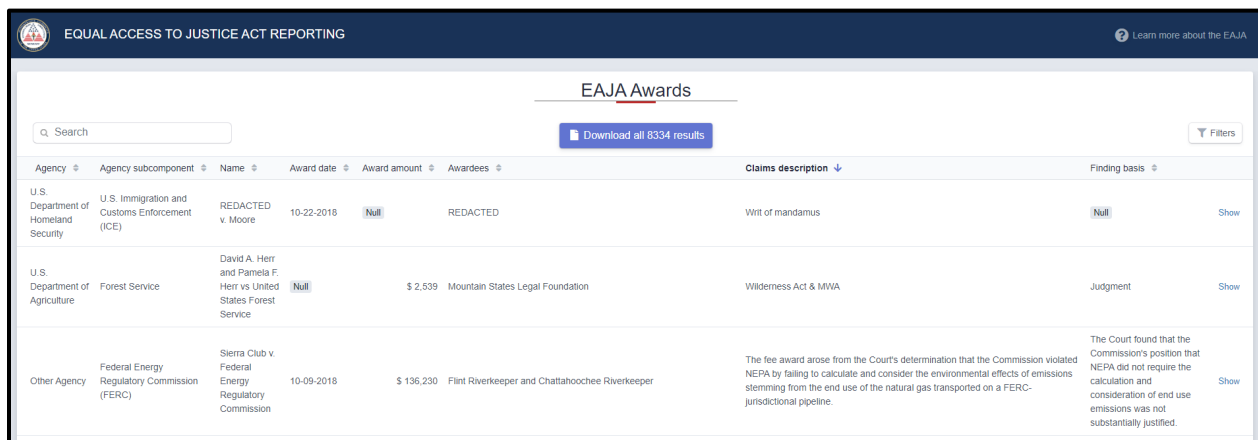
- ♦ background information about the Office of the Chair’s EAJA reporting responsibilities;
- ♦ summaries and statistics about the data for each FY;
- ♦ a data dictionary, which describes the information fields about each award that the Office of the Chair collected and included in the online database;
- ♦ each of the Office of the Chair’s annual reports;
- ♦ the downloadable raw data sets in Excel spreadsheets;
- ♦ contact information for relevant Office of the Chair 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 Chair 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 screenshot shows the 'EAJA Awards' page on the 'EQUAL ACCESS TO JUSTICE ACT REPORTING' website. It features a search bar, a 'Download all 8334 results' button, and a table of awards. The table has columns for Agency, Agency subcomponent, Name, Award date, Award amount, Awardees, Claims description, and Finding basis. Three rows are visible, each with a 'Show' link for more details.

Agency	Agency subcomponent	Name	Award date	Award amount	Awardees	Claims description	Finding basis
U.S. Department of Homeland Security	U.S. Immigration and Customs Enforcement (ICE)	REDACTED v. Moore	10-22-2018	Null	REDACTED	Writ of mandamus	Null
U.S. Department of Agriculture	Forest Service	David A. Herr and Pamela F. Herr vs United States Forest Service	Null	\$ 2,539	Mountain States Legal Foundation	Wilderness Act & MWA	Judgment
Other Agency	Federal Energy Regulatory Commission (FERC)	Sierra Club v. Federal Energy Regulatory Commission	10-09-2018	\$ 136,230	Flint Riverkeeper and Chattahoochee Riverkeeper	The fee award arose from the Court's determination that the Commission violated NEPA by failing to calculate and consider the environmental effects of emissions stemming from the end use of the natural gas transported on a FERC-jurisdictional pipeline.	The Court found that the Commission's position that NEPA did not require the calculation and consideration of end use emissions was not substantially justified.

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 Chair requested and received from the agencies.⁴⁸

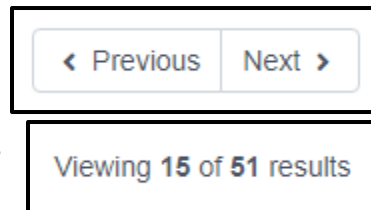
The remainder of this section describes the online database’s various features and functions available to the public.⁴⁹

⁴⁸ The landing-page view displays eight 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.

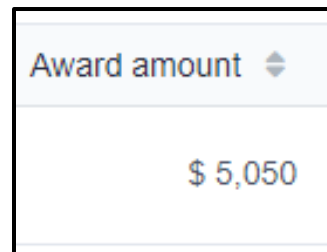
⁴⁹ Along with the visible features and functions described in the next section, the Office of the Chair included many behind-the-scenes features and functions to create an accessible, compliant, and responsive database and website. Some of the key accessibility features include setting up access to key 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”).



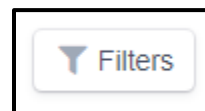
Sorting: To make the online database easily accessible and navigable, the default page displays for each award a subset of eight out of the total 11 fields: agency, agency subcomponent, case name, award date, award amount, awardees, claims description, and findings basis. Users may sort all the displayed 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.

Show

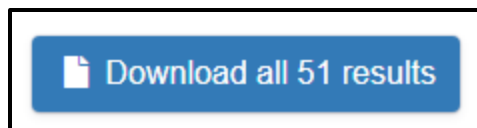
The screenshot shows the 'EQUAL ACCESS TO JUSTICE ACT REPORTING' header with a logo on the left and a link 'Learn more about the EAJA' on the right. The main title is 'EAJA Awards (#32775)'. Below this, the details for the award 'Backcountry Against Dumps v. Perry' are displayed in a form-like layout. The fields and their values are: Name: Backcountry Against Dumps v. Perry; Number: 3:12-cv-03062-L-JLB; Date of Award: 11-30-2018; Agency: U.S. Department of Energy; Agency subcomponent: Null; Awardees: Backcountry Against Dumps, Donna Tisdale; Award amount: 400,000.00; Type: Court; Hyperlink: https://ecf.casd.uscourts.gov/doc1/037113883925; Description of Claims: Plaintiffs challenged DOE's issuance of a Presidential permit to Energia Sierra Juarez to construct and operate a transmission line in San Diego County, CA, that would bring wind power from Mexico into the United States. Plaintiffs alleged that DOE's issuance of the permit was carried out in violation of the National Environmental Policy Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle and Golden Eagle Protection Act; Finding basis: Null. A 'Back to listing' link is at the bottom right.

Field	Value
Name	Backcountry Against Dumps v. Perry
Number	3:12-cv-03062-L-JLB
Date of Award	11-30-2018
Agency	U.S. Department of Energy
Agency subcomponent	Null
Awardees	Backcountry Against Dumps, Donna Tisdale
Award amount	400,000.00
Type	Court
Hyperlink	https://ecf.casd.uscourts.gov/doc1/037113883925
Description of Claims	Plaintiffs challenged DOE's issuance of a Presidential permit to Energia Sierra Juarez to construct and operate a transmission line in San Diego County, CA, that would bring wind power from Mexico into the United States. Plaintiffs alleged that DOE's issuance of the permit was carried out in violation of the National Environmental Policy Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle and Golden Eagle Protection Act.
Finding basis	Null

Back to listing

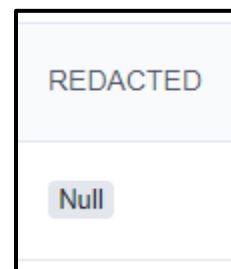
Case details view in the EAJA Database at <https://ejja.acus.gov>.

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 Chair 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 Chair 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 Chair 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 Chair 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 Chair 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 Chair to prepare reports for FY 2019 “and every fiscal year thereafter[.]”⁵⁰ The Office of the Chair will launch another data-collection process at the end of FY 2023 and work to incorporate the new data and report into the Project Page and EAJA Database. Each year, the Office of the Chair will continue to integrate new data, host each new report, and preserve and archive prior data sets. Over time, the Office of the Chair plans to iterate and improve upon 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 Chair 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 Chair 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 Chair 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 Chair will not similarly update the final report.

If any person or other entity alerts the Office of the Chair (through the new website or otherwise) that information in the online database should be redacted, the Office of the Chair will work diligently with the relevant agency and the person or entity to address the issue. The Office of the Chair 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 Chair 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.

⁵⁰ 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



March 23, 2023

Matthew Gluth
Attorney Advisor
Administrative Conference of the United States
1120 20th Street, NW
Washington, DC 200

Dear Mr. Gluth:

This is to acknowledge the consultation required by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019).¹ The Office of Advocacy received the draft report on March 13, 2023. I continue to look forward to working with the Administrative Conference on further iterations of the report and other projects in the coming years.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy

¹ Codified at 5 U.S.C. § 504(e)(1).

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