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**Collection:** Roberts, John G.: Files  
**Folder Title:** JGR/Legal Fees Reform Act  
(1 of 3)  
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# WITHDRAWAL SHEET

## Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Roberts to Fred F. Fielding, re Justice draft bill (partial)	12/13/83	P5
2. memo	Fielding to Richard G. Darman, re fee cap bill	9/21/83	P5
3. memo	Roberts to Fielding, re Justice draft bill (partial of page 2)	9/29/83	P5 CCB 12/14/00
COLLECTION: ROBERTS, JOHN G.: Files			dlb
FILE FOLDER: Legal Fees Reform Act [1 of 3] OA 12663-12660			3/4/96

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(e)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE

WASHINGTON

December 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Justice Draft Bill, "The Legal Fees  
Reform Act"

OMB has asked for comments by close of business December 14 on the above-referenced proposed bill. This bill would set a \$75/hour ceiling on attorneys fees awarded under fee-shifting statutes to parties prevailing against the United States or state and local governments, and double the rates paid to criminal defense attorneys under the Criminal Justice Act. The bill was first circulated by OMB for comments on September 16. By memorandum dated September 19 we advised OMB that we had no legal objection. By memorandum dated September 21 you recommended to Darman that the Administration "focus very sharply on the issue of whether we should go forward with this at this time." You were concerned that the bill would be portrayed as a means of inhibiting the delivery of legal services to the poor, minorities, etc., and accordingly would not get a fair hearing.

On November 15 Robert McConnell provided us with a copy of the proposed bill as submitted to OMB for clearance. I reviewed the provisions of the bill in a memorandum to you dated November 17. The version of the bill which OMB has now circulated and proposes to clear by the end of the week is essentially identical to the version sent to you by McConnell. There have been no substantive changes.

I have no legal objection to the proposed bill, section-by-section analysis, and Speaker letter. I do not know if you are still interested in pursuing the policy/strategy concerns expressed in your September 21 memorandum to Darman. We should discuss.

Attachment

THE WHITE HOUSE

WASHINGTON

September 21, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT  
AND DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Fee Cap Bill

Upon further reflection on this subject, although I have no objection to it from a legal standpoint, I think we should focus very sharply on the issue of whether we should go forward with this at this time. Although this bill is a "fee cap bill", I am increasingly concerned that it will be viewed and portrayed as yet another example of the Administration trying to use legal devices to inhibit the opportunity for the delivery of legal services to the poor, aged and minorities. Therefore, the bill will never really get any kind of fair airing.

FFF:kkk  
FFF:fielding  
Subj.  
Chron.

THE WHITE HOUSE

WASHINGTON

November 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: A Legislative Proposal "To Provide  
for Comprehensive Reforms in Compensation  
of Attorneys, Pursuant to Federal Statute  
in Civil and Criminal Proceedings Against  
U.S. and Against State and Local  
Governments"

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Assistant Attorney General McConnell has sent you a copy of a package he sent to OMB Director Stockman for clearance. The package contains Justice's proposed "Legal Fees Reform Act," a section-by-section analysis, and a draft letter to the Speaker. Our office has reviewed the substance of this proposal before and noted no legal objection to it (copies of pertinent memoranda attached). The bill would:

- limit award of attorneys fees against the United States or state and local governments to truly "prevailing" parties, and then only for time devoted to issues on which the party prevailed
- set a ceiling on such attorneys fees of \$75 per hour
- permit courts to reduce or deny attorneys fees for a variety of reasons (unreasonable prolonging of litigation, fees unreasonably exceed monetary recovery, fees exceed hourly salary of the attorney, etc.)
- reduce the amount of attorneys fees by 25% of any monetary award (on the theory that litigation costs should be at least partially paid from damages obtained)
- double the rate of compensation for attorneys for indigent defendants under the Criminal Justice Act
- establish uniform procedures for applying for attorneys fees from governments
- clarify and limit the circumstances under which attorneys fees may be awarded when a case is settled or becomes moot due to a policy change

The letter to the Speaker explicitly links support for increased fees for Criminal Justice Act attorneys with the limitations on fee awards against governments in other cases. The letter reviews the abuses that have developed in this area, and justifies the \$75 cap as (1) the same rate as set in the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1) and (3), and (2) more commensurate with compensation paid government attorneys. The latter comparison is considered appropriate since fees are shifted to governments in these cases on the theory that the prevailing plaintiff was acting as a "private attorney general." If this theory is correct, he should be compensated roughly the same as attorneys who work for the real Attorney General, i.e., government lawyers.

I have reviewed the proposed bill, section-by-section analysis, and Speaker letter, and have no objection to them. They are not significantly different from those we approved in September. OMB has not yet formally requested our views, but I wanted to alert you to McConnell's transmittal in case you received any inquiries about it.

Attachment

THE WHITE HOUSE

WASHINGTON

September 20, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS.

SUBJECT: Basis for \$75 Fee Cap

According to Justice, the \$75 fee cap was chosen to bring the attorneys fees paid to private litigants more closely in line with the rates of government lawyers, plus overhead and profit. Private litigants recover fees on the theory that they are acting as "private attorneys general" and, so the argument goes, should be compensated in a manner similar to those working for the real Attorney General, i.e., Justice Department attorneys. The figure is, of course, no more than a rough guess, and in any event is a maximum, not an actual amount to be used in all cases.

THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JR*

SUBJECT: Justice Draft Bill, "The Legal Fees Reform Act"

*[Handwritten signature]*  
*What is basis for fees in DOJ's view?*

OMB has asked for our views by close of business, September 20, on the above-referenced draft bill. The bill, which the Administration will only support as a package, seeks to limit the award of attorneys fees to litigants against the United States and state and local government in civil cases while at the same time increasing the rate of pay to criminal defense attorneys under the Criminal Justice Act. ➤

Section 4 of the draft bill would limit the award of attorneys fees to prevailing parties, and define "prevailing" more narrowly than have several judicial decisions. Section 4 would also permit attorneys fees to be awarded only for hours devoted to points on which the party eventually prevailed.

Section 5 of the act establishes a maximum hourly rate for attorneys fees awards in civil cases of \$75.00 per hour, the same rate set in the Equal Access to Justice Act. The section goes on to list several factors that should be taken into account in reducing awards, including, for example, the fact that the calculated fee unreasonably exceeds the amount of any recovery. In addition, if the litigant obtained a monetary recovery from the government, the amount of the fee is to be reduced by 25 percent of the award. This is on the theory that some portion of amounts recovered should be used to offset fees, as in normal civil litigation. Section 5 also doubles the allowable rate under the Criminal Justice Act for defense attorneys in criminal cases. The limit for courtroom hours is raised from \$30.00 to \$60.00, and for other hours from \$20.00 to \$40.00.

Section 6 of the bill establishes procedures for those applying for award of attorneys fees against the government.

Section 7 specifies that attorneys fees may only be awarded when a case has become moot due to a policy change if the litigation was a material factor in bringing about the



THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Justice Draft Bill, "The Legal Fees  
Reform Act"

OMB has asked for our views by close of business, September 20, on the above-referenced draft bill. The bill, which the Administration will only support as a package, seeks to limit the award of attorneys fees to litigants against the United States and state and local government in civil cases while at the same time increasing the rate of pay to criminal defense attorneys under the Criminal Justice Act.

Section 4 of the draft bill would limit the award of attorneys fees to prevailing parties, and define "prevailing" more narrowly than have several judicial decisions. Section 4 would also permit attorneys fees to be awarded only for hours devoted to points on which the party eventually prevailed.

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Section 6 of the bill establishes procedures for those applying for award of attorneys fees against the government.

Section 7 specifies that attorneys fees may only be awarded when a case has become moot due to a policy change if the litigation was a material factor in bringing about the

policy change. Section 7 also provides that if a litigant has rejected a settlement offer, and does not exceed that offer in any eventual recovery, no attorneys fees may be awarded.

Finally, section 8 requires the Comptroller General to file an annual report with Congress concerning amounts spent by the federal, state and local governments on attorneys fees for opposing parties. The package submitted by OMB also contains a draft letter to the speaker, summarizing the provisions of the draft bill.

I have reviewed the draft bill, the section-by-section analysis, and the draft speaker letter. I have no legal objections. This legislation will, of course, be opposed by the self-styled public interest bar, but the abuses that have arisen in the award of attorneys fees against the government clearly demand remedial action. Linking limitations on civil fee awards to a long overdue increase in the maximum amounts awardable to Criminal Justice Act attorneys strikes me as good strategy.

Attachment

THE WHITE HOUSE  
WASHINGTON

September 19, 1983

MEMORANDUM FOR JAMES C. MURR  
ASSISTANT DIRECTOR FOR LEGISLATIVE AFFAIRS  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Draft Bill, "The Legal Fees  
Reform Act"

Counsel's Office has reviewed the above-referenced draft bill, and finds no objection to it from a legal perspective.

FFF:JGR:aea 9/19/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 / 1Name of Correspondent: James C. MURR☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Justice draft bill, "The Legal Fees  
Reform Act."

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CW4011</u>	ORIGINATOR	<u>83109115</u>			<u>1 / 1</u>
	Referral Note:				
<u>CW4118</u>	<u>D</u>	<u>83109116</u>		<u>S</u>	<u>83109120</u>
	Referral Note:				<u>CDB</u>
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				

## ACTION CODES:

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D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

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C - Completed  
S - Suspended

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Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

**SPECIAL**

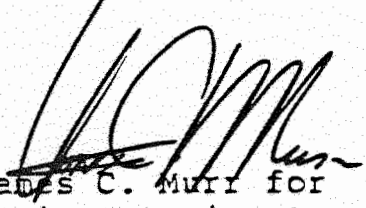
See Distribution Attached

SUBJECT: Justice draft bill, "The Legal Fees Reform Act".

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than COB Tuesday  
September 20, 1983.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosure

cc: F. Fielding  
M. Uhlmann

R. Greene  
P. Szervo

T. Lenard

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Small Business Administration  
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Office of Personnel Management  
Federal Trade Commission  
General Services Administration  
Merit Systems Protection Board  
Interstate Commerce Commission  
Administrative Office of the United States Courts  
Federal Communications Commission



# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING

☐ H - INTERNAL

☐ I - INCOMING

Date Correspondence  
Received (YY/MM/DD) 1 1

Name of Correspondent: Robert A. McConnell

☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: A legislative proposal "To provide for comprehensive reforms in compensation of attorneys, pursuant to federal statute in civil and criminal proceedings against U. S. and against State & local governments"

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>COLL</u>		ORIGINATOR	<u>DD 83/11/15</u>			
		Referral Note:				
<u>CDT 18</u>			<u>DD 83/11/15</u>			
		Referral Note:				
		Referral Note:				
		Referral Note:				
		Referral Note:				
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Code \_\_\_\_\_  
Completion Date \_\_\_\_\_ Date of Outgoing \_\_\_\_\_

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Department of Justice  
Washington, D.C. 20530

184413 *u*

NOV 14 1983

Honorable David A. Stockman  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: a legislative proposal, "To provide for comprehensive reforms in compensation of attorneys, pursuant to federal statute, in civil and criminal proceedings against the United States, and against state and local governments."

Please advise this office as to the relationship of the proposed communication to the Program of the President.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs

To coordinate clearance, please contact Jack Perkins,  
633-2113, OLA.



# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Received (YY/MM/DD) \_\_\_\_\_

Name of Correspondent: James C. MURK☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Justice draft bill, "The Legal Fees Reform Act"

## ROUTE TO:

## ACTION

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Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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	Referral Note:				
<u>CWATIB</u>	<u>D</u>	<u>1 / 1</u>		<u>S</u>	<u>83/12/14</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

SPECIAL

December 9, 1983

LEGISLATIVE REFERRAL MEMORANDUM

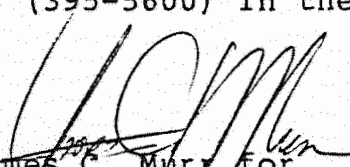
TO: LEGISLATIVE LIAISON OFFICER

SEE DISTRIBUTION

SUBJECT: Justice draft bill, "The Legal Fees Reform Act"

The attached draft bill has been revised by Justice in response to agency comments provided during an earlier review. We plan to clear this legislation no later than Friday, December 16, 1983. If you have suggested changes please advise us by COB Wednesday, December 14, 1983.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office or Rick Irby (395-5600) in the General Counsel's office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosures

cc: F. Fielding ✓  
M. Uhlmann

R. Greene  
P. Szervo

T. Lenard  
K. Wilson

1983 DEC 9 4 PM 03

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Department of Defense  
Department of Labor  
Department of Transportation  
Department of Justice  
Securities and Exchange Commission  
Office of Personnel Management  
Federal Trade Commission  
Merit Systems Protection Board  
Interstate Commerce Commission  
Administrative Office of the United States Courts  
Federal Communications Commission

Department of Justice  
Washington, D.C. 20530

184413 *u*

NOV 14 1983

Honorable David A. Stockman  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: a legislative proposal, "To provide for comprehensive reforms in compensation of attorneys, pursuant to federal statute, in civil and criminal proceedings against the United States, and against state and local governments."

Please advise this office as to the relationship of the proposed communication to the Program of the President.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs

To coordinate clearance, please contact Jack Perkins,  
633-2113, OLA.



Office of the Attorney General  
Washington, D.C. 20530

**DRAFT**

The Honorable Thomas P. O'Neill, Jr.  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To provide for comprehensive reforms in compensation of attorneys, pursuant to federal statute, in civil and criminal proceedings against the United States, and against state and local governments."

The proposal establishes standards and procedures for awards of attorneys' fees in civil judicial and administrative proceedings against the United States, states, and local governments in cases where federal statutes allow such awards, and eliminates excessive awards in such cases. The proposal also provides for a significant increase in the hourly rate of compensation to attorneys who represent indigent criminal defendants in proceedings under the Criminal Justice Act, 18 U.S.C. §§ 3006A(d)(1) and (2). The Administration supports the proposed legislation as a package, and will not support an increase in compensation to criminal defense attorneys without a corresponding reduction of

currently excessive awards of attorneys' fees in civil proceedings.

### Background

Numerous federal statutes provide that parties to civil suits and administrative proceedings against the United States, states, or local governments may, in appropriate circumstances, recover "reasonable attorneys' fees" from government defendants. These fee-shifting statutes, for the most part, provide little or no guidance as to when an award of attorneys' fees is appropriate, or as to what constitutes a reasonable award. As a consequence, courts have reached conflicting interpretations of these statutes, and in some cases have made awards of attorneys' fees that greatly exceed the relief obtained by the parties in the proceeding, and have used "multipliers" and "bonuses" to double, and even triple, normal commercial hourly rates. In addition, courts have regularly awarded attorneys' fees against government defendants at rates in excess of \$100 per hour, with the result that attorneys are oversubsidized at the expense of federal, state, and local taxpayers. These developments have fueled litigation over attorneys' fee awards that frequently overshadows the case on the merits, and have created a cottage industry for legal practitioners and publishers who hold themselves out as experts on how to obtain large awards of attorneys' fees against government defendants.

While civil attorneys have increasingly used federal fee-shifting statutes as a means of obtaining excessive awards against federal, state, and local government defendants, defense attorneys for indigent criminal defendants have been limited to maximum compensation of \$30 per hour for time in court and \$20 per hour for time out of court under provisions of the Criminal Justice Act that have not been changed since 1970.

#### The Proposed Legislation

The legislative proposal establishes a number of important guidelines for awards of attorneys' fees in civil judicial and administrative proceedings against federal, state, and local government defendants, and fashions an equitable compensation scheme for defense attorneys under the Criminal Justice Act. The salient features of the proposal are summarized below.

1. Level of the Fee Cap. The bill would set the maximum rate for attorney compensation in civil judicial and administrative proceedings under all federal fee shifting statutes at \$75 per hour, which is the same rate established in the recently-enacted Equal Access to Justice Act, 28 U.S.C. §§ 2412(d)(1) and (d)(3) and 5 U.S.C. § 504 (b)(1). The bill would, in all cases under federal fee-shifting statutes, eliminate bonuses and multipliers that courts have used excessively to escalate awards of attorneys' fees.

Because private attorneys in cases under federal fee-shifting statutes are, in essence, doing "government legal work," it is inappropriate for the compensation taxpayers pay to "private attorneys general" who sue the government significantly to exceed the compensation paid to the "public attorneys general" who defend the government. The proposed legislation would compensate private attorneys at a level commensurate with that of their government counterparts, and would provide for a reasonable profit sufficient to attract competent counsel in fee-shifting cases.

2. Awards to Prevailing Parties. The bill would allow recovery of attorneys' fees only when a party has prevailed on the merits of its complaint, or, in accordance with existing case law, where the suit is concluded by settlement agreement. In addition, the bill would allow recovery of attorneys' fees only for work performed on issues in the case on which the party prevailed, and only to the extent the work performed was not excessive, redundant, or otherwise unnecessary.

3. Reduction of Fee Awards. The bill would specify several bases for reducing or denying fee awards that otherwise would be allowed under federal fee-shifting statutes. Reduction of the award would be appropriate, for example, in cases where a party has unreasonably protracted the litigation; where no bona fide attorney-client relationship is found to exist; where the award is excessive in comparison to the monetary results achieved



in the litigation; or where the services provided were excessive with regard to the nature of the controversy. The bill would also provide for reduction of the fee award when it unreasonably exceeds the hourly salary of a salaried attorney. As a guideline, the proposal would require special scrutiny of awards at rates exceeding an amount double an attorney's hourly salary. Allowance of twice the hourly salary should cover normal overhead expenses and allow for a reasonable profit in most cases. The provision would not require courts to limit awards to an amount twice the attorneys' hourly salary, but is designed to ensure that courts carefully review awards to salaried attorneys so as to avoid conferring windfalls at the expense of taxpayers.

4. Money Damages Cases. The bill would provide that in any case where a party recovers a money judgment against a federal, state, or local government, 25% of the judgment shall be applied to the party's legal fees. This provision would not apply to suits under certain provisions of the Equal Access to Justice Act that allow attorneys' fees only when the government's position is found not to be substantially justified. In order to prevent inconsistent adjudications under the Tax Code, this provision also would not apply to suits for recovery of disputed taxes under 26 U.S.C. § 7430.

5. Criminal Justice Act Compensation Levels. The bill would double the hourly rate of compensation for defense

attorneys under the Criminal Justice Act. Thus, the level of compensation for Criminal Justice Act attorneys would be increased from \$30 per hour for time in court and \$20 per hour for out-of-court time to \$60 and \$40, respectively. The difference between the \$75 maximum hourly rate for civil attorneys and the \$60 maximum rate for criminal defense attorneys is justified because criminal defense attorneys, unlike those in civil fee-shifting cases, are compensated whether they win or not. The maximum amounts payable to criminal defense lawyers for specific proceedings also would be doubled.

6. Procedural Guidelines. The bill would establish certain procedural requirements for processing of attorneys' fee applications under federal fee-shifting statutes, and would require courts and agencies to develop additional guidelines.

### Conclusion

The Administration urges prompt and favorable consideration of the proposed legislation, enactment of which would establish much-needed guidelines for awards of attorneys' fees in civil cases against federal, state, and local government defendants, and would ensure that Criminal Justice Act attorneys are compensated at a level commensurate with that of their colleagues in civil cases.

Sincerely,

William French Smith  
Attorney General

To provide for comprehensive reforms in compensation of attorneys pursuant to federal statute in civil, criminal, and administrative proceedings in which the United States is a party, and in civil proceedings involving state and local governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as "The Legal Fees Reform Act."

SEC. 2. Findings and Purposes

(a) Congress hereby finds and declares that--

(1) Many Federal statutes authorize awards of attorneys' fees to be made to parties who prevail against the United States, or against state or local governments, in judicial and administrative proceedings;

(2) The failure to provide standards to guide courts and administrative bodies in awarding such fees has led to inconsistent interpretations of these federal civil fee-shifting statutes, and in many instances to excessive awards of attorneys' fees under them;

(3) It is inappropriate for the federal government to impose on state and local governments the statutory requirement to pay awards of attorneys' fees without providing standards by which to make such awards;

(4) The limitation of \$75 per hour recently prescribed by Congress for civil judicial and administrative proceedings under the Equal Access to Justice Act provides a reasonable and appropriate maximum hourly rate for the award of attorneys' fees against the United States, or against state or local governments, in judicial or administrative proceedings;

(5) It is inappropriate for awards of attorneys' fees to be made to parties who have not prevailed on the merits of their complaint against the United States, or against state or local governments, in judicial or administrative proceedings;

(6) It is appropriate that parties in judicial or administrative proceedings against the United States, or against state or local governments, pay a reasonable portion of their attorneys' fees when monetary awards are recovered;

(7) Statutory provisions are necessary to control the circumstances and conditions under which awards of attorneys' fees and related expenses or costs may be made against the United States, or against state or local governments, in judicial or administrative proceedings; and

(8) There is a need to increase the level of compensation for attorneys who defend indigent defendants in federal criminal proceedings under the Criminal Justice Act, 18 U.S.C. § 3006A, which has not been amended since 1970.

(b) It is the purpose of this Act--

(1) To establish a uniform hourly rate that shall be the maximum compensation authorized to be awarded against

the United States, or against state or local governments, in judicial or administrative proceedings to which any federal fee-shifting statute applies;

(2) To require that awards of attorneys' fees against the United States, or against state or local governments, in judicial or administrative proceedings to which any federal fee-shifting statute applies be made only to parties who have prevailed in the proceedings;

(3) To prescribe standards for the awarding of attorneys' fees and related expenses or costs against the United States, or against state or local governments, in judicial or administrative proceedings to which any federal fee-shifting statute applies; and

(4) To increase the maximum hourly rate of compensation payable to attorneys in federal criminal proceedings under the Criminal Justice Act.

### SEC. 3. Definitions

For the purpose of this Act--

(1) "Attorneys' fees" means fees attributable to professional legal services performed by a person, or persons, licensed to practice law (but shall not include services by pro se claimants), or to services by enrolled tax practitioners with respect to proceedings before the United States Tax Court, plus overhead expenses, as defined in this Act, but does not include related expenses;

(2) "Fee-shifting statute" means any federal statute that provides for recovery by a party of attorneys' fees or

related expenses against the United States, or against a state or local government;

(3) "Overhead expenses", except in extraordinary circumstances, shall include, but not be limited to, rent or mortgage payments, maintenance (including heating and cooling costs), furniture and supplies, reporters, treatises, and other books, secretarial and other clerical and librarian time (including computer word processing expenses), telephone services and calls, and mailing expenses;

(4) "Related expenses" means those expenses that may be awarded pursuant to a federal law, and which are actually incurred by the attorney in connection with judicial or administrative proceedings, but does not include attorneys' fees or overhead expenses, as defined in this Act, or costs enumerated in section 1920 of title 28, United States Code;

(5) "Party" means, for purposes of judicial proceedings, a party as defined by Rule 17 of the Federal Rules of Civil Procedure, or, for purposes of administrative proceedings, a party as defined in section 551(3) of Title 5, United States Code, which is an individual, partnership, corporation, association, unincorporated business, estate or public or private organization other than an agency. The term "party" does not include the United States, or any state or local government, except when a state or local government opposes the United States in a judicial or administrative proceeding;

(6) "Judicial proceeding" means a civil proceeding in any court or under the jurisdiction of a judicial officer, in which a party may under federal statute be awarded attorneys' fees or related expenses;

(7) "Administrative proceeding" means any proceeding, other than a judicial proceeding, in which a party may by statute be awarded attorneys' fees or related expenses;

(8) "Administrative officer" means the official(s) or person(s) authorized by statute or regulation to decide the substantive issues being considered in an administrative proceeding, or the official(s) or person(s) designated by the head of the agency as the administrative officer(s) for the purpose of this Act;

(9) "Prevail on the merits" means succeeding on significant issues in the controversy and obtaining significant relief in connection with those issues, and may include, where the party is a defendant in a suit by the government, obtaining the dismissal of the complaint;

(10) "Decision on the merits" means a final judgment by the court, within the meaning of Rules 54-58 of the Federal Rules of Civil Procedure, in which a party establishes entitlement to relief on the merits of the claim or claims brought in the proceeding, and includes a dismissal with prejudice or a dismissal pursuant to a settlement agreement;

(11) "United States" means the United States, or any agency of the United States, or any official of the United States acting in his or her official capacity;



(12) "State" means any state government, or any agency of the state government, or any official of the state government acting in his or her official capacity, and includes the territories and the District of Columbia; and

(13) "Local government" means any county, city, town, municipality, municipal corporation, school board, or other political subdivision created by a state, or any agency of such entity, or any official of such entity acting in his or her official capacity.

SEC. 4. Scope and Application; Relationship to Other Laws

(a) The provisions of this Act --

(1) apply to the award of attorneys' fees and related expenses authorized, pursuant to any federal fee-shifting statute, to be made against the United States, or against state or local governments, in any judicial or administrative proceeding, and

(2) establish minimum criteria and requirements for the award of attorneys' fees and related expenses to which this Act applies.

(b) Notwithstanding any other provision of law, no award of attorneys' fees or related expenses shall be made against the United States, or against state or local governments, in any judicial or administrative proceeding, except as expressly authorized by federal statute (other than this Act), and in accordance with the provisions of this Act. No such award shall exceed the amount determined under the provisions of this Act.



(c) The provisions of any applicable federal fee-shifting statute that establish criteria or requirements in addition to those provided in this Act for the award of attorneys' fees and related expenses in such proceedings, or that otherwise limit awards of attorneys' fees in such proceedings, shall apply in addition to the provisions of this Act. Where an award of attorneys' fees is authorized both under a federal fee-shifting statute and under the common law, such award shall be made in accordance with the provisions of the applicable federal fee-shifting statute and with the provisions of this Act.

(d) Nothing in this Act shall be interpreted--

(1) to create any right to an award of attorneys' fees or related expenses against the United States, or against state or local governments in any judicial or administrative proceeding, or

(2) to provide authority for any court or administrative officer to make such an award of attorneys' fees or related expenses in such proceeding.

(e) Awards of attorneys' fees and related expenses otherwise authorized under section 504 of title 5 of the United States Code or section 2412(d) of title 28 of the United States Code (the Equal Access to Justice Act) shall be made in accordance with the provisions of this Act, except that subsections (a), (b)(4), (b)(5), and (c) of section 6 of this Act shall not apply.

(f) The provisions of this Act, except the amendment made by section 6(d) of this Act, shall not apply to compensation of

attorneys in federal criminal proceedings, or in civil habeas proceedings under the Criminal Justice Act.

SEC. 5. Allowance of Attorneys' Fees

A party otherwise eligible to receive attorneys' fees and related expenses to which this Act applies must establish that --

- (1) The party has prevailed on the merits against the United States, or against a state or local government;
- (2) The attorneys' fees and related expenses for which the award is sought--
  - (A) resulted from work performed in connection with issues upon which the party prevailed, and
  - (B) such work was necessary to resolve the controversy;
- (3) The application for attorneys' fees and related expenses is made in accordance with Section 7 of this Act;
- (4) The attorneys' fees sought are not in excess of the amount permitted under section 6(a) of this Act; and
- (5) The attorneys' fees sought are for services that are not excessive, redundant, or otherwise unnecessary.

SEC. 6. Amount of Attorneys' Fees

(a) No award of attorneys' fees against the United States, or against a state or local government, to which this Act applies shall exceed \$75 per hour. Bonuses or multipliers shall not be used in calculating awards of attorneys' fees.

(b) The court or administrative officer of an agency may reduce or deny the amount of attorneys' fees and related expenses otherwise allowable, based on a finding that--

(1) the prevailing party, during the course of the proceeding, engaged in conduct that unreasonably protracted the final resolution of the controversy;

(2) there is no bona fide attorney-client relationship with an identified client;

(3) the amount of attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly salary of the attorney representing the party;

(4) the time and legal services provided were excessive with regard to the nature of the controversy;

(5) the amount of attorneys' fees otherwise authorized to be awarded unreasonably exceeds the monetary result or injunctive relief achieved in the proceeding; or

(6) a reduction or denial of the amount of attorneys' fees would otherwise be appropriate under the applicable fee-shifting statute.

Courts and administrative officers shall exercise their discretion in determining the amount of any reduction of an award under this subsection.

(c) The monetary judgment awarded in any judicial or administrative proceeding shall be reduced (but not by more than 25% thereof) by the amount of attorneys' fees otherwise authorized to be made against the United States, or against state or local governments. This subsection shall not apply to awards of attorneys' fees--

- (1) as provided in section 4(e) of this Act;
- (2) pursuant to section 7430 of the Internal Revenue Code; or
- (3) where undue hardship would result.

(d) Subsection (d) of Section 3006A of Title 18, United States Code, is amended--

- (1) by striking out "\$30" in paragraph (1) and inserting in lieu thereof "\$60";
- (2) by striking out "\$20" in paragraph (1) and inserting in lieu thereof "\$40";
- (3) by striking out the words ", or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district" in paragraph (1);
- (4) by striking out "\$1000" each place it appears in paragraph (2) and inserting in lieu thereof "\$2000";
- (5) by striking out "\$400" in paragraph (2) and inserting in lieu thereof "\$800"; and
- (6) by striking out "\$250" in paragraph (2) and inserting in lieu thereof "\$500".

#### SEC. 7. Timely Applications and Procedures

(a) In any judicial or administrative proceeding to which this Act applies, a party may seek an award of attorneys' fees and related expenses only within thirty days after either a decision on the merits by the court or the entry by an administrative officer of an agency of a final decision in an

administrative proceeding. The party seeking an award of attorneys' fees shall submit to the court or agency such information as may be required by the court or administrative officer of the agency.

(b) Courts and agencies shall develop procedures, not inconsistent with this Act, for filing of applications for awards of attorneys' fees, which shall provide guidance as to what information should be required to be submitted pursuant to subsection (a) of this section, when such information should be submitted, and when determinations should be made concerning awards of attorneys' fees and related expenses. In no event shall an award of attorneys' fees and related expenses be made prior to entry of a decision on the merits by the court or entry by an administrative officer of a final decision of an administrative proceeding.

#### SEC. 8. Mootness and Settlement Defenses

No award of attorneys' fees and related expenses subject to the provisions of this Act may be made--

(1) where the government demonstrates that--

(A) the claims have become moot due to a change in government policy, and

(B) the pendency of the judicial or administrative proceeding was not a material factor in such change in policy; or

(2) for services performed subsequent to the time a written offer of settlement is made to a party, if the offer

is not accepted and a court or administrative officer finds that--

(A) the relief finally obtained by the party is not more favorable to the party than the offer of settlement, and

(B) the failure of the party to accept the offer of settlement was not reasonable at the time such failure occurred.

#### SEC. 9. Comptroller General Report

The Comptroller General of the United States shall submit on April 1 of each year a report to the President and the Congress on the amount of attorneys' fees and related expenses awarded during the preceding fiscal year against the United States, or against state or local governments, in judicial and administrative proceedings to which this Act applies. The courts and each agency shall provide the Comptroller General with such information as is necessary to comply with the requirements of this section.

#### SEC. 10. Effective Date

The provisions of this Act shall apply to any award of attorneys' fees and related expenses incurred subsequent to the enactment of this Act, including those incurred after such date in actions commenced prior to such enactment.

## Section by Section Analysis

### Section 2 -- Findings and Purposes

Numerous federal statutes provide that parties to civil suits and administrative proceedings against the United States, states, or local governments may, in appropriate circumstances, recover "reasonable attorneys' fees" from government defendants. These statutes have put a great burden on the courts because, for the most part, Congress has provided little or no guidance as to when an award of attorneys' fees is appropriate, or as to what constitutes a reasonable award. As a consequence, courts have reached conflicting interpretations of these statutes -- in some cases using "multipliers" and "bonuses" to double, and even triple, the normal hourly rates of the prevailing party's attorney. The resulting uncertainty and litigation over attorneys' fee awards frequently overshadows the case on the merits, and has led to the creation of a cottage industry for attorneys' fee litigators.

The problems evident in this area are in some respects even more serious with respect to the states and localities. Recent decisions of the Supreme Court have expanded greatly the liability of states and local governments to suits under various Federal statutes, and correspondingly to awards of attorneys' fees. As the liability of the states and localities has greatly expanded in recent years, the obligation of Congress to define more clearly the circumstances and extent to which they should be



held liable for attorneys' fees under Federal statutes has also grown.

The purpose of the bill is to have Congress provide greater guidance to the courts and federal agencies for the award of attorneys' fees pursuant to federal statute, and to reduce the current uncertainties and disparities reflected in the present decisions. The bill is not intended to deny fees to attorneys for prevailing parties; only to set common standards and procedures that would apply to all awards of attorneys' fees against the United States, and against state and local governments.

Another important purpose of the bill is to provide for greater balance between the high hourly rates of compensation for private attorneys' who sue the government in civil litigation and the much lower hourly rates of compensation for attorneys who represent indigent criminal defendants in proceedings under the Criminal Justice Act, 18 U.S.C. § 3006A(d)(1) & (2). In contrast to hourly rates of over \$200 (including multipliers) in some civil attorneys' fee awards, criminal defense attorneys have received the same rates of \$20 and \$30 per hour since 1970. The bill would double the current hourly rates under the CJA.

With respect to civil judicial and administrative proceedings, the bill is intended to provide guidance in the calculation of fee awards, and to limit the hourly rate of compensation to \$75 per hour, which is the same rate established in the recently-enacted Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1) and (d)(3) and 5 U.S.C. § 504(b). The bill would eliminate the use of bonuses and multipliers.



The bill is also intended to limit the recovery of attorneys' fees to those cases in which a party has prevailed on the merits of the complaint, and only for work performed on issues in the case on which the party prevailed. The bill also specifies several discretionary bases for reducing or denying fee awards that otherwise would be allowed under federal fee-shifting statutes -- for example, where a party's conduct unreasonably protracted the litigation; or the requested fee award unreasonably exceeds the hourly salary of a salaried attorney -- and provides, in any case where a party recovers a money judgment against a federal, state, or local government, for 25% of the judgment to be applied to the party's legal fees. 1/

### Section 3 -- Definitions

Section 3 defines the terms used in the bill. "Attorneys' fees" are defined as fees attributable to professional legal services performed by a person, or persons, licensed to practice law, including enrolled tax practitioners who practice before the United States Tax Court. This definition is intended to limit awards to licensed practitioners, and not to allow awards to non-licensed, pro se claimants or law students. 2/ The

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1/ This 25% reduction would not apply to suits under certain provisions of the Equal Access to Justice Act, to suits for recovery of disputed taxes under 26 U.S.C. § 7430, or where undue hardship would result.

2/ Most courts have ruled that pro se litigants generally are ineligible for attorneys' fees awards. See Cofield v. City of Atlanta, 648 F.2d 986 (5th Cir. 1981); Owens - El v. Robinson,

definition is intended to cover all awards of fees that in fact reflect compensation of attorneys, however denominated, including those designated as "costs" by the court or administrative agency. 3/ "Attorneys' fees" includes "overhead expenses" but does not include "related expenses."

Expenses to be included as "overhead expenses" should be considered as such except in extraordinary circumstances. The list of overhead expenses is not exhaustive, and other appropriate expenses may be included as "overhead expenses." The list is intended to preclude considering these expenses as "related expenses," except in extraordinary circumstances.

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498 F. Supp. 877 (W.D. Pa. 1980); Crooker v. Department of Justice, 632 F.2d 916, 922 (1st Cir. 1980); and Burke v. Department of Justice, 559 F.2d 1182 (10th Cir. 1977), aff'g mem. 432 F. Supp. 251 (D. Kan. 1976). The D.C. Circuit, however, has awarded attorneys' fees under the FOIA to pro se prisoners and to law students who received 12 hours of course credit. See Crooker v. Department of Treasury, 663 F.2d 140 (D.C. Cir. 1980); Jordan v. Department of Justice, No. 81-1380 (D.C. Cir. Oct. 5, 1982). The definition of "attorney," however, is not intended to affect judicial interpretations regarding whether individual statutes authorize awards of attorneys' fees to licensed attorneys appearing pro se. For example in White v. Arlen Realty & Development Corp., 614 F.2d 387 (4th Cir.) (per curiam), cert. denied, 447 U.S. 923 (1980), the Fourth Circuit denied an award of attorneys' fees to a plaintiff-attorney under the Truth-in-Lending Act.

3/ Generally, courts have followed the principle that attorneys' fees are not costs, but are separate, with attorneys' fees awards authorized by various fee-shifting statutes and costs authorized by 28 U.S.C. §§ 2412(a) and 1920. However, some statutes, such as Title VII of the Civil Rights Act and 42 U.S.C. § 1988, have been interpreted to make attorneys' fees part of costs. See Delta Air Lines v. August, 450 U.S. 346 (1981) (Title VII). If left unaddressed, parties could attempt to circumvent the \$75 fee limitation and other provisions in this bill regarding attorneys' fees by seeking attorneys' fees as costs under these statutes.

"Related expenses" are those expenses that may be awarded pursuant to federal statute, are not "overhead expenses," and are actually incurred by the attorney as a result of judicial or administrative proceedings. "Related expenses" does not include "attorneys' fees." This definition is not intended to affect case law under Title VII and 42 U.S.C. § 1988 which, in some instances, has authorized awards of costs beyond those specified in 28 U.S.C. § 1920 to include such items as lodging and travel expenses. See, e.g., Northcross v. Board of Education, 611 F.2d 624, 639 (6th Cir. 1979), cert. denied, 447 U.S. 911 (1980). However, as noted, the definition of overhead expenses precludes considering the items enumerated there as "related expenses." The definition also excludes costs enumerated in 28 U.S.C. § 1920, and the bill is not intended to affect the allocation of costs enumerated in that section.

Courts and administrative officers may include as "related expenses" actual costs incurred for the services of paralegals and law clerks who assist attorneys in representing their clients.

The definitions of "decision on the merits" and "prevail on the merits" are discussed in connection with the provisions of section 5(1) of the bill, which requires that a party seeking an award of attorneys' fees must prevail on the merits.

#### Section 4 -- Scope and Application; Relationship to Other Laws

Subsection (a) provides that the provisions of this bill are intended to apply to all awards of attorneys' fees

against the United States, or any state or local government, and to establish minimum criteria for such awards. In this way, this bill will provide greater uniformity and order for the scores of attorneys' fee statutes that authorize awards of attorneys' fees and related expenses against the federal, state, and local governments.

Subsection (b) provides the general rule that, notwithstanding any other provision of law, the provisions of this bill would apply to, and modify, all federal fee-shifting statutes, including the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(b) and (d). No award of attorneys' fees and related expenses would be able to exceed the amounts determined under the bill.

Subsection (c) provides that the criteria for the awards of attorneys' fees and related expenses established by this bill would not supersede more restrictive criteria contained in other statutes for making such awards. The provisions of this bill establish minimum criteria to be applied for determining and awarding attorneys' fees and related expenses or costs in judicial and administrative proceedings against the United States or against state or local governments. 4/

Subsection (d) provides that nothing in the bill shall be interpreted to create any right to an award of attorneys' fees

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4/ For example, 5 U.S.C. § 7701(g)(1) provides that attorneys' fees may be awarded if (1) the party has prevailed; and (2) the award of attorneys' fees would be "warranted in the interest of Justice. . . ." The second of these two criteria, which is not contained in the bill, would continue to apply.

or related expenses. Any right to such an award derives solely from the provisions of other laws.

The bill does not affect the award of attorneys' fees against the government in cases such as those under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, or cases involving National Service Life Insurance or United States Government Life Insurance, under 38 U.S.C. § 784. Those statutes are not federal fee-shifting statutes, because the attorneys' fees are paid from the prevailing party's total award of damages or proceeds and are not a separate award entered against the government.

Subsection (e) provides that, although the bill generally would apply to awards under the Equal Access to Justice Act, the provisions of section 6(a) (establishing a limitation of \$75 per hour for attorneys' fees) and section 6(c) (reduction of fee awards in money damages cases) of the bill would not apply to awards made under 5 U.S.C. § 504(a)(1) and 28 U.S.C.

§ 2412(d)(1)(A) & (d)(3). Those sections of the EAJA provide that awards of attorneys' fees may be made unless the government proves that its position in the litigation was substantially justified. In addition, the factors listed for reduction of fee awards in paragraphs (4) and (5) of section 6(b) of the bill would not apply under those provision of the EAJA. 5/ The language and legislative history of these provisions of the EAJA

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5/ These discretionary factors authorize a reduction of the attorneys' fee award based on findings that the time and legal services were excessive with regard to the nature of the controversy, or that the amount sought unreasonable exceeds the monetary result or injunctive relief achieved.

reflect Congress's intent to award attorneys' fees to prevailing parties who meet the qualifications of that Act, unless the government's position was "substantially justified" or "special circumstances" would make an award of attorneys' fees unjust. The purpose of this subsection is to assure that the special characteristics of the EAJA in this respect will not be affected by this bill. The exceptions described in this subsection would not apply to attorneys' fee awards under 28 U.S.C. § 2412(b), a preexisting provision which was amended by the EAJA.

Subsection (f) provides that the provisions of the bill shall not apply in federal criminal proceedings or civil habeas corpus proceedings in the federal courts, except for the provision in section 6(d) of the bill which would double the allowable amounts of attorneys' fees under the Criminal Justice Act, 18 U.S.C. § 3006A.

#### Section 5 -- Allowance of Attorneys' Fees

Section 5 of the bill establishes the prerequisites to an award of attorneys' fees and related expenses against the United States, or against state or local governments, in any civil judicial or administrative proceeding to which a federal fee-shifting statute applies. The party seeking such awards must establish, and the court or administrative officer must determine, (1) that the party prevailed on the merits of its complaint in the proceeding; (2) that the work for which the award is sought was performed in connection with issues on which the party prevailed and was necessary to resolve the controversy; (3) that the application is submitted in compliance with the

procedural requirements of Section 7; (4) that the attorneys' fees sought do not exceed amounts authorized under Section 6; and (5) that the services for which attorneys' fees are sought are not excessive, redundant, or otherwise unnecessary.

As set forth in section 4(c) of the bill, the requirements of this section for awards of attorneys' fees, including the requirement that a party "prevail," are not intended to supersede other additional requirements established by law, such as those under 5 U.S.C. § 7701(g)(1) (where an award to a prevailing party must be "warranted in the interest of Justice.>").

Nothing in this section is intended to change the burden of proof for determinations of "substantial justification" in applications for fee awards under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1) and 28 U.S.C. § 2412(d)(1)(A) & (d)(3). The burden remains on the government to prove "substantial justification" in connection with such applications.

Prevail on the Merits. Paragraph (1) would preclude awards of attorneys' fees and related expenses against the United States and against state and local governments unless the party seeking the award prevailed on the merits of its complaint. The definition of "prevail on the merits" focuses on whether the party was successful on significant issues in the controversy and obtained significant relief in connection with these issues. This is intended to be a more flexible standard than some formulations of this term. Cf. Taylor v. Sterrett, 640 F.2d 663, 669 (5th Cir. 1981) (a prevailing party for attorneys' fees purposes "has been successful on the central issue" in the case, and has "acquired the primary relief sought"). The relief sought



need not be "central," but must be significant in terms of the result sought by the party. In this respect, the bill reflects the first part of the test enunciated by the Supreme Court in Hensley v. Eckerhart, 103 S. Ct. 1933 (1983) ("plaintiffs may be considered prevailing parties for attorneys' fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit") (emphasis added).

This bill differs, however, from the second part of the Hensley formulation. The language of Hensley is subject to misreading, as the district court did in Laffey v. Northwest Airlines, Inc., No. 2111-70 (D.D.C. July 29, 1983), which found that the plaintiffs to be prevailing parties for all purposes even though they in fact failed to achieve the results sought in important respects.

The purpose of the bill is to state more precisely that the relief obtained by the party must be significant, not merely "some of the benefit" the party sought. The relief obtained should be significant in terms of the result sought by the party in bringing the suit. Cf. Hensley v. Eckerhart, 103 S. Ct. at 1943 ("A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole").

The requirement to show that the party has prevailed on the merits would also apply to statutes, such as the Clean Air

Act, that authorize the award of attorneys' fees "when appropriate." 6/

This paragraph provides that the party must prevail in a "decision on the merits" of a court or a final disposition by an agency in an administrative proceeding. The Federal Rules of Civil Procedure generally define a final judgment as any order from which an appeal lies, including dismissals and default and summary judgments, and final judgments entered on less than all pending claims pursuant to Rule 54(b). The definition of "decision on the merits" is limited to those final judgments in which the party establishes entitlement to relief on the merits. Thus, an award of attorneys' fees would not be appropriate for a party who has prevailed only on a motion for preliminary injunction or for a temporary restraining order, where the merits of the suit have not been resolved. However, the definition would permit the award of attorneys' fees where the party defending against a suit brought by the government obtains the dismissal of a groundless complaint. 7/

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6/ The Supreme Court in Ruckelshaus v. Sierra Club, 51 U.S.L.W. 5132, 5136 (U.S. July 1, 1983) (No. 82-242), held that the claimant must demonstrate that it enjoyed "some degree of success on the merits" in order to receive attorneys' fees under the Clean Air Act, which provides for such fees "when appropriate."

7/ See H.R. Conf. Rep. No. 96-1434, 96th Cong., 2d Sess. 21-22 (1980). See also United States ex rel. Heydt v. Citizens State Bank, 668 F.2d 444, 447 (8th Cir. 1982) (organization which successfully opposed IRS summons in order to protect the confidentiality of its members was a prevailing party under the EAJA; however, no attorneys' fees were awarded because the IRS position was substantially justified).

The bill would not preclude so-called "interim awards" of attorneys' fees where the text or legislative history of an applicable fee-shifting statute indicates that Congress has authorized them, but such awards should be made only "to a party who has established his entitlement to some relief on the merits of his claims, either in the trial court or on appeal." Hanrahan v. Hampton, 446 U.S. 754, 757 (1980) (per curiam). In Hanrahan, the Supreme Court noted that the legislative history of 42 U.S.C. § 1988 cited, as examples of appropriate circumstances for interim fee awards, two cases 8/ in which the "party to whom the fees were awarded had established the liability of the opposing party, although final remedial orders had not been entered." Id. at 757. The Court found that the plaintiffs had not prevailed on the merits of any of their claims and reversed the award of attorneys' fees. Id. at 758. Further, the Court ruled that attorneys' fees are not to be awarded for nondispositive rulings regarding matters of discovery, evidence, or procedure. Id. at 759. See also Smith v. University of North Carolina, 632 F.2d 316, 350-51 (4th Cir. 1980).

Paragraph (1) is not intended to modify existing case law providing that attorneys' fees may be awarded in cases where the litigation is terminated by settlement agreement, as long as the party seeking fees has prevailed on the merits of the relief

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8/ Bradley v. Richmond School Board., 416 U.S. 696 (1974) and Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), are cited in the legislative history of the Civil Rights Attorney's Fees Awards Act of 1976. S. Rep. No. 94-1011, 94th Cong., 2d Sess. 2, and H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 6 (1976).

sought. 9/ Nor is the provision intended to preclude discussions between the parties of attorneys' fees, or the waiver thereof, before the decision on the merits by a court or the final disposition by an administrative officer, or to prevent the government from discussing liability for attorneys' fees in conjunction with liability on the merits as part of a settlement agreement, or from including in a settlement agreement provisions for attorneys' fees and related expenses or costs.

Necessary Work on Prevailing Issues. Under paragraph (2), a prevailing party seeking an award of attorneys' fees and related expenses against the United States, or against state or local governments, must show that the work for which fees are sought was performed in connection with issues, substantive or procedural, upon which the party prevailed, and was necessary to the resolution of the controversy. 10/ This provision is not intended to preclude awards of attorneys' fees and related

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9/ See, e.g., Ward v. Schweiker, 562 F. Supp. 1173 (W.D. Mo. 1983).

As the court stressed in Parker v. Matthews, 411 F. Supp. 1059, 1054 (D.D.C. 1976), aff'd, 561 F.2d 320 (D.C. Cir. 1977), the settlement should be carefully scrutinized to determine if an award of attorneys' fees is justified:

"[W]hether to award attorneys' fees where there has been a settlement of a Title VII lawsuit must be determined by a close scrutiny of the totality of the circumstances surrounding the settlement, focusing particularly on the necessity for bringing the action and whether the party is the successful party with respect to the central issue -- discrimination."

10/ See Hensley v. Eckerhart, supra, 103 S. Ct. at 1940 ("[W]ork on an unsuccessful claim cannot be deemed to have been 'expended in pursuit of the ultimate result achieved.' . . . [T]herefore no fee may be awarded for services on the unsuccessful claim.").

expenses where a party's pleadings contain meritorious alternative grounds for relief based on the same facts, on which a court or administrative officer did not rule because the party prevailed on other grounds. In such instances, awards of attorneys' fees and related expenses may include amounts attributable to time expended on such alternative pleadings, if the court or administrative officer determines that the alternative pleadings were reasonably directed to the resolution of the merits of the controversy. Awards of attorneys' fees and related expenses are not to be made in cases where the specific statutory provisions construed in the case do not provide for the award of attorneys' fees, 11/ nor for work in connection with issues that are rejected by the court or administrative officer. 12/

Other showings. Paragraphs (3) and (4) require that the application for awards of attorneys' fees and related expenses be made in accordance with the provisions of this Act. Paragraph (5) requires the party seeking attorneys' fees to

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11/ See Smith v. Cumberland School District, 703 F.2d 4 (1st Cir. 1983) (reversing district court's award of attorneys' fees where case was grounded on the Education for All Handicapped Children Act, which does not provide for the award of attorneys' fees, even though the plaintiff included allegations based on section 504 of the Rehabilitation Act of 1973 and 42 U.S.C. § 1983, which the courts did not reach), cert. granted sub nom. Smith v. Robinson, 52 U.S.L.W. 3342 (U.S. Oct. 31, 1983) (No. 82-2120).

12/ This requirement would, inter alia, preclude awards of attorneys' fees "where the fee-triggering statute plays no role but that of allowing attorney fees." Tatro v. Texas, 516 F. Supp. 968, 984 (N.D. Tex. 1981), aff'd, 703 F.2d 823 (5th Cir. 1983).

establish that the services for which fees are sought were not "excessive, redundant, or otherwise unnecessary." 13/ Because intervenors are "parties" for the purposes of this bill, they may receive awards of attorneys' fees if they meet the requirements of the applicable fee-shifting statute and this bill, including the showing required by this paragraph.

## Section 6 -- Amount of Attorneys' Fees

### Civil Fee-Shifting Statutes

Paragraph 5(a)(1) establishes a maximum hourly rate of \$75 for attorneys' fees awards against the United States, states, and local governments under federal fee-shifting statutes. 14/ This provision shall not apply to awards under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1) and 28 U.S.C. § 2412(d)(1)(A) and (d)(3), because the EAJA has its own limit of \$75 per hour,

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13/ See Hensley v. Eckerhart, supra, 103 S. Ct. at 1940.

14/ In determining the total award of attorneys' fees, courts and administrative officers should continue the practice of determining the number of hours reasonably expended in the proceeding, multiplied by a reasonable hourly rate not exceeding \$75. In deciding whether the hours claimed were "reasonably expended" under any fee shifting statute, the Supreme Court has admonished that "[h]ours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority." Hensley v. Eckerhart, supra, 103 S. Ct. at 1940, citing Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc). In arriving at the total fee award, the factors set forth in section 6(b) and those identified by the Supreme Court in Hensley v. Eckerhart, supra, 103 S. Ct. at 1940-41.

subject to specified exceptions. 15/ In calculating the amount of any award of fees, multipliers or bonuses shall not be used.

The \$75 per hour limit in subsection (a) is intended to assure that fees paid to private counsel in fee-shifting cases are brought more in line with the salaries of attorneys who represent the government in these cases, while allowing for reasonable overhead. This is appropriate, because many federal fee-shifting statutes are premised on the theory that groups or individuals who sue the government for the public benefit are acting as "private attorneys general." Attorneys' fees paid by taxpayers to these "private attorneys general" should be commensurate with the salaries paid by taxpayers to federal "public attorneys general."

It is emphasized that this subsection establishes only a maximum hourly rate of compensation. Courts should give due consideration to the fees normally received by the attorney for similar work and other relevant factors. Attorneys' fees may be awarded at hourly rates less than the maximum established by this bill.

Subsection (b) provides that courts or administrative officers may reduce or deny awards of attorneys' fees and related expenses against the United States, or against state or local

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15/ The provisions of the Equal Access to Justice Act, unlike other fee-shifting statutes, predicate awards of attorneys' fees not only upon a finding that the party prevailed, but also that the government was not substantially justified in its position. In light of the latter requirement and the EAJA's existing fee limitation provision, it is unnecessary to apply the general fee limitation of this bill to the EAJA.



governments, where it is determined that (1) the prevailing party unreasonably protracted the final resolution of the controversy; (2) there is no bona fide attorney-client relationship with an identified client; (3) the attorneys' fee unreasonably exceeds the hourly salary of a salaried attorney; (4) the time and legal services provided were excessive with regard to the nature of the controversy; (5) that the attorneys' fee award otherwise allowable would unreasonably exceed the monetary result or injunctive relief achieved in the proceeding; or (6) the award would otherwise be unjust or inappropriate. The amount of any reductions pursuant to this subsection shall be at the discretion of the court or administrative officer. The fourth and fifth factors would not apply to awards under 5 U.S.C. § 504 and 28 U.S.C. § 2412(d) of the Equal Access to Justice Act. This exception is intended to maintain the status quo in the interpretation of the "special circumstances" provision of the EAJA, and not to affect the courts' construction of that provision of that term in the context of fee awards under the EAJA.

Paragraph (1) is patterned on the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(C) and 5 U.S.C. § 504(a)(3). Paragraphs (2) and (4) are similar to provisions for determining reasonable attorneys' fees in the Alaska Native Claims Settlement Act, 43 U.S.C. § 1619(d)(2). Paragraph (4) is derived from Hughes v. Repko, 578 F.2d 483 (3d Cir. 1978), where the district court was directed to determine whether it was reasonably necessary to spend the number of hours claimed by the attorneys in order to perform the legal services for which compensation was sought.

Paragraph (3) would provide that the court or administrative officer may consider, as a basis for reducing a fee award otherwise allowable, whether the award would unreasonably exceed the hourly salary of the party's attorney. This provision is intended to apply to all attorneys who are paid on a salaried basis, including in-house counsel and associates in a law firm. As a general guideline, an application for an award may be regarded as unreasonably excessive under paragraph (3) if it is more than twice the attorney's hourly salary. Twice the attorney's hourly salary should, in general, provide reasonable compensation and cover normal overhead expenses. The bill does not require that awards be limited to 200% of an attorney's hourly salary in all cases, but is intended to encourage courts and administrative officers carefully to review applications for awards that would exceed that level, and to reduce awards that would confer windfalls on attorneys.

Paragraph (5) is intended to address the anomalous result where attorneys receive far greater benefit from the litigation than their clients, such as in cases where \$100,000 is awarded in attorneys' fees for a \$20,000 judgment, or where \$22,000 in attorneys' fees is awarded for only a \$500 award to each of three clients. In other cases, the injunctive relief actually achieved in the case might be so limited that it does not warrant the amount of attorneys' fees otherwise allowable. Cf. Hensley v. Eckerhart, supra, 103 S. Ct. at 1941 (The award of full attorneys' fees to a party who has achieved only partial or limited success would be "an excessive amount"). In determining whether reduction of an award is appropriate, courts or

administrative officers should consider both the monetary judgment achieved and any significant injunctive or other equitable relief obtained by the parties in the proceeding.

Paragraph (6) provides that the bases for reducing an award of attorneys' fees that are listed in this subsection are not meant to be exclusive, and courts and administrative officers should continue to consider other factors that are appropriate under existing law. See Hensley v. Eckerhart, supra, 103 S. Ct. at 1940-41. The legislative history of the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, provides that "special circumstances" are to be considered by courts in awarding attorneys' fees. Nothing in this bill is intended to preclude consideration of such "special circumstances" to reduce the amount of fee awards against the government.

Finally, nothing in this bill is intended to overturn cases such as Christianburg Garment Co. v. Equal Employment Opportunity Commission, 434 U.S. 412, 421 (1978), where plaintiffs were required to pay the defendant's attorneys' fees because the plaintiffs' claim was found to be "frivolous, unreasonable or without foundation, even though not brought in subjective bad faith."

Subsection (c) provides that, whenever a monetary judgment is awarded against the United States, or against a state or local government, the judgment shall be reduced (but not more than 25%) by the amount of attorneys' fees allowed in the proceeding. The rationale for this offset is not to reduce the attorneys' compensation, but to provide that a prevailing party should pay part of its legal expenses from any monetary award

recovered in a judicial or agency proceeding. This provision would not apply to attorneys' fee awards under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1) and 28 U.S.C. § 2412(d)(1)(A) & (d)(3), where fee awards are available only where the government's position was not substantially justified. It also would not apply to awards in cases brought for recovery of disputed tax payments under 26 U.S.C. § 7430, in order to avoid inconsistent adjudications under the Internal Revenue Code. 16/ Finally, the provision would not apply where the reduction otherwise would result in undue hardship to the party in the circumstances of the case. This last exception is not intended to be routinely used, but in circumstances where a reduction of the judgment recovered by the party would clearly be unjust.

The 25% reduction in monetary awards to be applied toward attorneys' fees is similar to the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2678, and section 206 of the Social Security Act, 42 U.S.C. § 406, which provide for compensation of attorneys from any monetary awards recovered by the parties.

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16/ Inconsistent adjudications could result because the tax laws permit taxpayers who contest many government tax claims either: (1) to pay the contested taxes and sue for a refund in a district court or in the Claims Court, or (2) to bring suit, without payment, in the Tax Court. A taxpayer who sued in the District or Claims Court and won would receive a monetary award. Presumably, 25% of this amount would otherwise be applied to reduce any attorneys' fees award. However, a taxpayer who sued in the Tax Court and won would not receive a monetary award but, instead, simply a determination that no liability existed. Thus, the 25% reduction would hinge entirely upon the taxpayer's choice of forum, an anomalous result that would otherwise channel many more cases to the already overburdened Tax Court.

Criminal Justice Act Fees

Subsection (d) would amend the Criminal Justice Act, 18 U.S.C. § 3006A(d), to double the compensation rates for defense attorneys in criminal proceedings. The Act's current maximum compensation rates -- which were last amended in 1970 -- of \$30 per hour for time expended in court and \$20 per hour for time expended out of court would be increased to \$60 and \$40, respectively. The Act would also double the maximum total compensation to \$2,000 per attorney for felony cases, \$800 per attorney for misdemeanor cases, and \$500 per attorney for post-trial and probation revocation proceedings. The difference in the maximum hourly rate for Criminal Justice Act attorneys and attorneys in civil fee-shifting cases is appropriate because Criminal Justice Act attorneys, unlike those in fee-shifting cases, are compensated whether they win or not.

The bill also would delete the provision in 18 U.S.C. § 3006A(d)(1) that authorizes, as an alternative to the stated hourly rates, compensation at "such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district." The intent of the bill is to create a maximum hourly rate for all attorneys who represent parties under the Criminal Justice Act. <sup>17/</sup> However, the rates established in § 3006A are maximums, and the Judicial Council of

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<sup>17/</sup> It should be noted that fee schedules set by bar associations have been held to violate the antitrust laws. Goldfarb v. Virginia State Bar Ass'n, 421 U.S. 773 (1975).

the Circuit may, where appropriate, set a lower rate of compensation, consistent with guidance from the Judicial Conference of the United States.

#### Section 7 -- Timely Applications and Procedures

Subsection (a) establishes a jurisdictional requirement that a party seeking an award of attorneys' fees and related expenses submit an application for such award within 30 days of a final decision on the merits by a court or the entry of a final disposition by an administrative officer. A final decision on the merits is defined as the entry of judgment under the Federal Rules of Civil Procedure, and includes a dismissal of the suit and a dismissal pursuant to a settlement agreement. Parties may not be awarded attorneys' fees and related expenses or costs by an administrative officer after the 30 day time limit.

This requirement is consistent with the jurisdictional time for filing fee applications pursuant to the Equal Access to Justice Act, and is responsive to the Supreme Court's recent observation that courts can adopt procedural rules setting reasonable time limits for applications for attorneys' fee awards. White v. New Hampshire Department of Employment Security, 455 U.S. 445 (1982). <sup>18/</sup> Subsection (a) also requires

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<sup>18/</sup> As noted by the Supreme Court in White, courts currently differ with respect to the time in which attorneys' fees awards must be sought. Id., 455 U.S. at 450 n.9. Before White, some courts allowed only 10 days from the time of entry of judgment for filing of fee applications under Fed. R. Civ. P. 59(e); other circuits have imposed no time constraints. The Eighth Circuit

the party seeking an award to submit such information as may be required by the court or administrative officer.

Subsection (b) directs courts and agencies to provide guidance to parties regarding the information required to be filed. Courts and agencies should, at the least, require submission of the following information: a statement of the basis of the claim for attorneys' fees; a statement that attorneys' fees are awardable under applicable law; a statement of the amount sought; a copy of any written fee agreement; and an itemized accounting of the hours expended and the specific tasks performed by the attorney in the proceedings. 19/ Further, courts and administrative officers should require the submission of information to assist them in making the findings under section 6(b) of this bill, with respect to the reduction of awards of attorneys' fees. Subsection (b) further requires courts and agencies to establish procedures regarding the timing of applications for attorneys' fees and supporting information, and the timing of judicial and agency rulings on these applications. 20/

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has recommended a rule for filing attorneys' fee requests within 21 days after entry of judgment. See Obin v. District 9, Int'l Ass'n of Machinists, 651 F.2d 574, 583 (8th Cir. 1981).

19/ A requirement for this type of information is consistent with the District of Columbia Circuit's ruling in National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319 (D.C. Cir. 1982), which required detailed documentation by a party seeking an award of attorneys' fees.

20/ For example, in some cases fee applications can be resolved immediately following a decision on the merits in the proceeding in order to permit a simultaneous appeal of the merits and of the fee award. This would prevent piecemeal appeals, and might be



To ensure that courts are consistent in issuing requirements for submission of information for fee applications, the bill anticipates that the Judicial Conference of the United States would prescribe guidelines for courts to follow in establishing these requirements. These guidelines would not supersede any requirements for submission of information required by law in conjunction with attorneys' fees applications. The bill also anticipates that agencies, when establishing requirements for submission of information in conjunction with fee applications, will follow the guidelines established by the courts.

Section 7(b) requires that these guidelines provide that attorneys' fees may be awarded only upon final judgments. The meaning of final judgment, including dismissals and so-called "interim awards" in the circumstances outlined by the Supreme Court in Hanrahan v. Hampton, supra, are discussed in connection with section 5(1) of the bill.

#### Section 8 -- Mootness and Settlement Defenses

Under existing law, a party will be held to be a prevailing party and entitled to recover attorneys' fees and

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appropriate where no disagreement existed over the calculation of the award or where the determination required complete familiarity with the record. See White, supra, 455 U.S. at 454. In other cases, however, it might be preferable to defer attorneys' fees issues until all appeals on the merits have been completed and a final judgment has been entered. This might be appropriate in cases where the determination of attorneys' fees is difficult and likely to consume more time than the appeal on the merits.

related expenses or costs even if the claim has been mooted, if it is found that the suit was a "catalyst" for the change of policy that rendered the claim moot. See, e.g., Maher v. Gagne, 448 U.S. 122, 129-30 (1980). Subsection (a) would codify the standard by which pending litigation is determined to have been such a catalyst by requiring that the litigation be a "material factor" in the policy change. This is the standard that is currently being applied by most courts. See, e.g., Morrison v. Ayooob, 627 F.2d 669 (3d Cir. 1980), cert. denied, 449 U.S. 1102 (1981). This provision would ensure that courts do not place undue emphasis on chronology -- that is, the fact that the plaintiff's case was pending when the government changed the policy that mooted the suit. Under this provision, governments would be encouraged to carry out planned policy reforms without fear of incurring liability for fees in pending suits, but would still be liable for attorneys' fees unless the government could prove that the suit actually was not a "material factor" in the policy change.

Subsection (b) would deny awards of attorneys' fees and related expenses for services performed after a written offer of settlement by the United States, or by state or local governments, if the party refuses the offer but is ultimately able to do no better when the case goes to trial. This would provide an incentive to governments to make reasonable settlement offers, and encourage parties to give serious consideration to

such offers. 21/ This provision would not apply, if, at the time the settlement offer was made, the party's refusal to accept the offer was reasonable. The ten-day requirement and other procedural provisions of Rule 68 of the Federal Rules of Civil Procedure should provide guidance to courts and administrative officers in determining whether the failure of the party to accept the offer was reasonable.

#### Section 9 -- Comptroller General Report

Section 9 requires the Comptroller General of the United States to submit an annual report to the President and the

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21/ Current federal fee-shifting statutes often provide little incentive for parties to settle cases early in the litigation. With respect to cases under 42 U.S.C. § 1988, see Fioretti and Convery, Attorney's Fees Under The Civil Rights Act -- A Time for Change, 16 J. Mar. L. Rev. 261, 277-78 (1983):

"Aside from the 'prevailing party' issue, the present application of § 1988 results in a lack of incentive for plaintiff's attorneys to enter into pretrial settlements. The more hours the attorney spends on the case, the higher his potential fee award. The motivation then is not to settle, but to proceed to trial, where the hourly rates are even higher.

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"Nor is such a result in the plaintiff's best interests. The purpose of the Civil Rights Act as a whole is to protect those who have suffered a constitutional tort. It naturally follows that if an early settlement is possible, the plaintiff, the protected party under the Act, should be compensated swiftly. However, a plaintiff's attorney, who during the early phase of the litigation has spent relatively few hours in preparation, may lack incentive to settle until compensable hours have reached a significant level. Thus, the overriding goal of the Civil Rights Act is thwarted and litigation is encouraged. The already crowded courts are further congested, so that the taxpayer suffers as well."

Congress on the amount of attorneys' fees and related expenses or costs awarded against the United States or against state and local governments under federal fee-shifting statutes in judicial and administrative proceedings. To assist the Comptroller General, courts and agencies should provide whatever information is needed. In preparing this report, the Comptroller General should use the reports prepared under the Equal Access to Justice Act by the Director of the Administrative Office of the United States Courts and the Chairman of the Administrative Conference of the United States, respectively, under 28 U.S.C. § 2412(d)(5) and 5 U.S.C. § 504(e).

#### Section 10 -- Effective Date

Section 10 applies the provisions of the bill to any award of attorneys' fees and related expenses incurred subsequent to the enactment of the bill. Further, the provisions of the bill apply to actions commenced prior to enactment, but only for attorneys' fees and related expenses incurred after that date.