



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

March 28, 2008

**S. 1638**

**Federal Judicial Salary Restoration Act of 2007**

*As ordered reported by Senate Committee on the Judiciary on January 31, 2008*

**SUMMARY**

S. 1638 would increase the salaries and change certain retirement benefits for some judges and justices of the United States. The bill also would allow those judges and justices to receive annual cost-of-living adjustments (COLAs) without further Congressional approval and would increase the compensation paid to Chapter 7 bankruptcy trustees.

CBO estimates that enacting S. 1638 would increase direct spending by \$1.9 billion over the 2009-2018 period. The bill also would increase revenues by \$321 million over the 2009-2018 period. In addition, CBO estimates that implementing S. 1638 would result in additional discretionary spending of \$166 million over the 2009-2013 period and \$418 million over the next 10 years, assuming appropriation of the necessary amounts.

S. 1638 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

**ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of S. 1638 is shown in the following table. The costs of this legislation fall within budget functions 600 (income security) and 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009- 2013	2009- 2018
<b>CHANGES IN DIRECT SPENDING</b>												
Salary Increase and COLA for Article III and Bankruptcy Judges												
Estimated Budget Authority	90	102	113	124	135	147	160	172	184	198	564	1,425
Estimated Outlays	86	101	112	123	134	146	158	171	183	197	556	1,411
Judicial Retirement Benefits												
Estimated Budget Authority	1	1	2	3	5	6	7	9	11	14	12	59
Estimated Outlays	1	1	2	3	5	6	7	9	11	14	12	59
Additional Compensation for Bankruptcy Trustees												
Estimated Budget Authority	40	40	40	40	40	40	40	40	40	40	200	400
Estimated Outlays	40	40	40	40	40	40	40	40	40	40	200	400
Total Changes												
Estimated Budget Authority	131	143	155	167	180	193	207	221	235	252	776	1,884
Estimated Outlays	127	142	154	166	179	192	205	220	234	251	768	1,870
<b>CHANGES IN REVENUES</b>												
Judiciary Filing Fees												
Estimated Revenues	25	30	30	30	30	30	30	30	30	30	145	295
Retirement Contributions												
Estimated Revenues	2	2	2	2	3	3	3	3	3	3	11	26
Total Changes in Revenues	27	32	32	32	33	33	33	33	33	33	156	321
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>												
Salary Increases and COLA for Magistrate and CFC Judges												
Estimated Authorization Level	27	30	33	37	40	43	47	50	54	58	167	419
Estimated Outlays	26	30	33	37	40	43	47	50	54	58	166	418

Notes: COLA = Cost-of-living adjustment; CFC = Court of Federal Claims; \* = less than \$500,000.

## BASIS OF ESTIMATE

CBO estimates that enacting S. 1638 would increase direct spending, revenues, and spending subject to appropriation, as discussed in the following sections. For this estimate, CBO assumes that the number of vacant judgeships and the number of senior judges would not

significantly change over the 10-year period. CBO also assumes that the bill will be enacted by the beginning of fiscal year 2009.

## **Direct Spending**

CBO estimates that enacting S. 1638 would increase direct spending by nearly \$1.9 billion over the 2009-2018 period for salary increases, cost-of-living adjustments, and additional retirement benefits for judges appointed under Article III of the Constitution and bankruptcy judges, as well as additional compensation for Chapter 7 bankruptcy trustees.

**Salary Increase and COLA for Judges Appointed Under Article III of the Constitution and Bankruptcy Judges.** Salaries and benefits of Article III and bankruptcy judges are provided annually without the need for discretionary appropriations. Increases in such compensation thus would increase direct spending. In 2007, total compensation paid to those judges totaled \$313 million. (CBO estimates that \$282 million of that amount was for salaries.)

S. 1638 would increase the current salaries of Article III judges, including the Chief Justice and associate justices of the Supreme Court, judges of the circuit and district courts, and judges on the Court of International Trade, by approximately 29 percent. Under current law, bankruptcy judges' pay is set at 92 percent of district judges' pay; thus, bankruptcy judges also would receive a salary increase of nearly 29 percent under the bill. Based on information from the Administrative Office of the United States Courts (AOUSC), CBO estimates that increased spending on salaries and benefits would total about \$80 million annually, beginning in 2009.

In addition, the bill would allow those judges and justices to receive an annual COLA without further Congressional approval. The bill also would change the way such COLAs are calculated to match adjustments made to the General Schedule under the Federal Employees Pay Comparability Act. Using CBO's forecast for the employment cost index, we estimate that annual COLAs would range from 2.5 percent to 3.0 percent over the next 10 years.

Together, CBO estimates that salary increases and annual COLAs for Article III and bankruptcy judges would increase direct spending by \$556 million over the 2009-2013 period and by \$1.4 billion over the 2009-2018 period.

**Judicial Retirement Benefits.** The salary increase provided under S. 1638 would result in increased retirement benefits for both active and senior Article III judges, bankruptcy judges, and certain surviving spouses. S. 1638 also would change the retirement rules for Article III

judges who are not yet eligible for retirement benefits (active judges). In total, CBO estimates that enacting the bill would increase direct spending for retirement benefits by \$59 million over the 2009-2018 period.

The increase in pay under S. 1638 would automatically increase retirement benefits for Article III judges and bankruptcy judges because their retirement benefits are based on the most recent salary at retirement. In order to receive increased retirement benefits based on the higher pay, S. 1638 would require active judges to continue working past age 65—to age 67—and would require an additional four years of service at all retirement ages.

CBO expects that all judges who are currently eligible to retire or who will become eligible over the next 10 years would delay retirement to receive that increased benefit. (Retirement eligibility for those currently eligible to retire and for all bankruptcy judges would remain unchanged.) Thus, based on information from the AOUSC and the actuarial valuation for the plan, CBO estimates that raising the salaries of those judges and justices and changing the eligibility for active judges would increase direct spending by \$20 million over the 2009-2018 period.

All judges and justices can elect to participate in a retirement plan that provides survivor benefits. Those benefits are based on the average salary or retirement benefits of the judges or justices prior to death. Under the bill, survivors of active Article III judges would be able to receive a death benefit based on the judges' higher salary if the judge dies prior to reaching the higher age and meeting the length-of-service criteria. Based on information from the actuarial valuation for the plan, CBO expects that 60 percent of judges would participate in the plan that provides survivor benefits. We estimate that raising the salaries of those judges would increase direct spending for survivor benefits by \$39 million over the 2009-2018 period.

**Additional Compensation for Bankruptcy Trustees:** The bill also would increase the amount paid to private trustees to administer Chapter 7 bankruptcy cases. Under current law, each debtor filing for Chapter 7 bankruptcy pays a \$15 fee, which is disbursed to the private trustee; the receipt or expenditure of that fee is not recorded on the federal budget. Under the bill, the payment to the private trustees would increase to \$75, but individual debtors would be prohibited from paying more than a \$15 fee. CBO assumes that the judiciary would be required to pay the increase in the trustee's compensation.

To generate the necessary funding, CBO assumes that the judiciary would collect additional miscellaneous court filing fees which may be spent without further appropriations. Our estimate of increases in such fees, which are treated as revenues, is described in the following section. CBO estimates that additional compensation for the private trustees would total \$40 million a year through 2018, based on projections of the number of Chapter 7 bankruptcy

filings. Thus, we estimate that increasing compensation for Chapter 7 bankruptcy trustees would increase direct spending by \$400 million over the 2009-2018 period.

## **Revenues**

CBO estimates that enacting S. 1638 would increase revenues by \$321 million over the 2009-2018 period. That amount includes additional judiciary filing fees and increased retirement contributions.

**Judiciary Filing Fees.** CBO assumes that, under the bill, the judiciary would be required to collect additional court filing fees to pay for the proposed increase in trustees' compensation. Such fees are treated as revenues and have totaled between \$190 million and \$275 million annually over the last five years. CBO estimates that revenues from additional filing fees would total \$295 million over the 2009-2018 period. That amount is net of reductions in payroll and income taxes.

**Retirement Contributions.** Under current law, all participants in the plan that pays benefits to survivors are required to contribute 2.2 percent of their pay prior to retirement and 3.5 percent of their earnings after retirement. Bankruptcy judges are required to contribute 1 percent of their pay to participate in the Judicial Officers' Retirement Plan. Such contributions are treated as revenues in the budget. Thus, CBO estimates that the increase in pay under S. 1638 would increase revenues by \$26 million over the 2009-2018 period.

## **Spending Subject to Appropriation**

CBO estimates that implementing S. 1638 would increase federal spending by \$166 million over the 2009-2013 period and \$418 million over the next 10 years to provide a salary increase and annual COLAs for Court of Federal Claims (CFC) and magistrate judges, assuming appropriation of the necessary amounts. Under current law, the salary of CFC judges is equal to that of district judges, while the salary of magistrate judges is 92 percent of district judges' pay. Accordingly, both CFC and magistrate judges would receive a salary increase of about 29 percent and an annual COLA under the bill. Current salaries for the judges affected by this provision total about \$80 million annually.

## **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

S. 1638 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

## **PREVIOUS CBO ESTIMATE**

On February 1, 2008, CBO transmitted a cost estimate for H.R. 3753, the Federal Judicial Salary Restoration Act of 2007, as ordered reported by the House Committee on the Judiciary on December 12, 2007. CBO's estimates of direct spending and revenues related to judicial pay and retirement are identical for both bills over the 2009-2018 period. H.R. 3753 would not increase the compensation paid to Chapter 7 bankruptcy trustees.

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