

AUTHORIZING A COST OF LIVING ADJUSTMENT IN THE
PAY OF ADMINISTRATIVE LAW JUDGES

OCTOBER 18, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government
Reform, submitted the following

REPORT

[To accompany H.R. 915]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 915) to authorize a cost of living adjustment in the pay of administrative law judges, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PAY OF ADMINISTRATIVE LAW JUDGES.

Section 5372(b) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting “(A)” after “(1)” and by striking all after the first sentence and inserting the following:

“(B) Within level AL-3, there shall be 6 rates of basic pay, designated as AL-3, rates A through F, respectively. Level AL-2 and level AL-1 shall each have 1 rate of basic pay.

“(C) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule, and the rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.”;

(2) in paragraph (3)(A), by striking “upon” each time it appears and inserting “at the beginning of the next pay period following”; and

(3) by adding at the end the following:

“(4) Subject to paragraph (1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic pay for administrative law judges shall be adjusted by an amount determined by the President to be appropriate.”

I. SHORT SUMMARY OF LEGISLATION

H.R. 915 would amend 5 U.S.C. §5372 to change the method for adjusting the basic pay of the more than 1,300 administrative law judges (ALJ) employed by the Federal Government. It gives the President the same authority to provide annual pay adjustments to ALJs that he now has with respect to the Senior Executive Service (SES).

II. BACKGROUND AND NEED FOR THE LEGISLATION

ALJ pay levels have not kept pace with other Federal employees. The basic pay of ALJs has been raised only three times since 1991: by 3.5% in 1992, by 3.2% in 1993, and by 2.3% in 1998. In contrast, employees under the General Schedule have received annual increases in basic pay, and the President has adjusted SES pay in most of those years. Like the SES, ALJs have received locality pay increases during this period. Nevertheless, because their pay has been linked to Executive Level IV, ALJ pay increases have lagged significantly behind most Federal employees and senior executives.

Many have expressed concern that this pay disparity will deter many qualified attorneys from becoming ALJs. H.R. 915 will help to address this problem because the President will have the authority to adjust the pay of all ALJs whose pay is below the rate for Executive Level IV.

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

The Committee held no legislative hearings on H.R. 915. Rep. George W. Gekas introduced this bill on March 2, 1999. On the same date, H.R. 915 was erroneously referred to the Committee on the Judiciary rather than this Committee. On May 27, 1999, Judiciary’s Subcommittee on Commercial and Administrative Law held a hearing on H.R. 915 and marked it up. By voice vote, that subcommittee favorably reported the bill to the full Judiciary Committee. On June 10, 1999, by unanimous consent, the House discharged the Judiciary Committee from further consideration and re-referred H.R. 915 to the Committee on Government Reform. The Committee on Government Reform referred the measure on July 14, 1999 to the Subcommittee on the Civil Service, which marked up the bill and forwarded it to the full Government Reform Committee on July 27, 1999.

The Committee on Government Reform marked up the bill on September 30, 1999. Rep. John L. Mica offered an amendment to clarify congressional intent, which was adopted by voice vote. By voice votes, the Committee adopted H.R. 915, as amended, and ordered it favorably reported to the House of Representatives.

IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

Although the Committee held no legislative hearings on H.R. 915, it relied upon the record developed in the hearing held by the Commercial and Administrative Law Subcommittee of the Committee on the Judiciary. The witnesses at this hearing were Henry Romero, Associate Director for Workforce Compensation and Performance, Office of Personnel Management; Judith A. Dowd, President of the Federal Administrative Law Judges Conference; and Ronald G. Bernoski, President, Association of Administrative Law Judges. The latter two witnesses submitted a joint statement.

Mr. Romero noted that the law currently fixes each ALJ pay level and step as a percentage of level IV of the Executive Schedule, which covers such top government officials as Assistant Secretaries of cabinet departments and members of regulatory boards and commissions. The problem with this arrangement, he testified, is that ALJs cannot receive increases in basic pay while Executive Schedule pay remains unchanged. According to his testimony, the basic pay of ALJs has been raised only three times since 1991: by 3.5% in 1992, by 3.2% in 1993, and by 2.3% in 1998. Like the SES, ALJs have received locality pay increases during this period, but net pay increases for ALJs, he pointed out, have lagged significantly behind most Federal employees and senior executives.

Administrative Law Judges Bernoski and Dowd summarized the history of ALJ compensation, pointing out that ALJs were under the General Schedule until their current pay system was established by the Federal Employee Pay Comparability Act of 1990. Before the new system was adopted, they testified, ALJs were paid at the GS-15 and GS-16 rates, but because ALJ pay increases have lagged, the first three steps of the ALJ pay scale are now lower than the maximum rate for GS-15. They also testified that pensions for administrative law judges are adversely affected by these pay lags.

They also contended that better qualified attorneys will not compete to become ALJs because of the lower pay. Federal attorneys at the GS-15 level, they argue, will be reluctant because they would find their pay soon falling behind their former colleagues. In addition, they argue that attorneys in private practice will be even more severely impacted because they must start at the bottom of the pay scale. In contrast, Federal attorneys are entitled to move laterally into the ALJ pay schedule at a comparable salary. This will, in their view, frustrate the congressional intent of selecting attorneys with a wide variety of legal experience in order to avoid domination of the adjudicative process by an "agency culture."

ALJs Bernoski and Dowd also testified that administrative law judges are more comparable to the career employees in the General Schedule and the Senior Executive Service than political appointees covered by the Executive Schedule.

V. EXPLANATION OF THE BILL AS REPORTED: SECTION-BY-SECTION

Section 1. This section reforms the process for setting the pay of administrative law judges. The bill retains the current grade and step structure. However, rather than tie each grade and step to fixed percentages of Executive Level IV, it only sets minimum and maximum pay. The highest level (AL-1) is set at Executive Level IV, and the lowest rate of pay in grade AL-3 is set at 65% of Executive Level IV. The President is authorized to adjust the basic pay of ALJs below the cap when employees under the General Schedule receive an annual adjustment in basic pay under 5 U.S.C. § 5303.

VI. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from Committee oversight activities are incorporated in the bill and this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 13, 1999.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 915, a bill to authorize a cost-of-living adjustment in the pay of administrative law judges.

If you wish further detail on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Keith.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 915—A bill to authorize a cost-of-living adjustment in the pay of administrative law judges

H.R. 915 would change the laws affecting the pay of Administrative Law Judges (ALJs). CBO estimates that implementing H.R. 915 could increase discretionary spending by \$3 million to \$6 million a year. Any increases, however, would depend on future Congressional action with regard to cost-of-living adjustments (COLAs). Because H.R. 915 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 915 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no effect on the budgets of state, local, or tribal governments.

The bill would establish maximum and minimum salaries for ALJs and would authorize the President to adjust pay rates within that range. Based on information from the Office of Management and Budget, CBO expects that the President would modify the method of calculating ALJ salaries to allow for cost-of-living adjustments, but the basic pay schedule would remain unchanged.

H.R. 915 would link COLAs for most ALJs to changes in the Senior Executive Service (SES) instead of changes to the Executive Schedule. Currently, ALJs receive COLAs from appropriated funds only when the Congress approves such increases for the Executive Schedule. In the past five years, the Congress approved COLAs for the Executive Schedule only once. In contrast, the SES has received pay adjustments in four of the past five years. Enacting the provision could increase discretionary spending, depending on future actions of the Congress regarding COLAs. For example, H.R. 915 would result in higher salary costs for ALJs if future COLAs are not granted for Executive Schedule positions but are provided for the SES. For each year in which this occurs, we estimate a cost of \$3 million to \$6 million for that year and subsequent years, assuming appropriation of the necessary amounts.

The CBO contact for this estimate is Lanette J. Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1 and 18 of Article I, Sec. 8 of the Constitution grant Congress the power to enact this law.

X. COMMITTEE RECOMMENDATION

On September 30, 1999, a quorum being present, the Committee ordered the bill, as amended, favorably reported by voice vote.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1; SECTION 102(b)(3)

The bill affects only the pay of administrative law judges, all of which are employed in the executive branch. Therefore, H.R. 915 does not apply to the legislative branch.

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4; SECTION 423

H.R. 915 does not impose any Federal mandates on state, local, or tribal governments, or the private sector, and it does not preempt any state or local law.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that H.R. 915 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 5372 OF TITLE 5, UNITED STATES CODE

§ 5372. Administrative law judges

(a) * * *

(b)(1)(A) There shall be 3 levels of basic pay for administrative law judges (designated as AL-1, 2, and 3, respectively), and each such judge shall be paid at 1 of those levels, in accordance with the provisions of this section. **【**The rates of basic pay for those levels shall be as follows:

【 AL-3, rate A	65 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-3, rate B	70 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-3, rate C	75 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-3, rate D	80 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-3, rate E	85 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-3, rate F	90 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-2	95 percent of the rate of basic pay for level IV of the Executive Schedule.
AL-1	The rate of basic pay for level IV of the Executive Schedule. 】

(B) Within level AL-3, there shall be 6 rates of basic pay, designated as AL-3, rates A through F, respectively. Level AL-2 and level AL-1 shall each have 1 rate of basic pay.

(C) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule, and the rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

* * * * *

(3)(A) Upon appointment to a position in AL-3, an administrative law judge shall be paid at rate A of AL-3, and shall be advanced successively to rates B, C, and D of that level **【**upon**】** *at the beginning of the next pay period following completion of 52 weeks of service in the next lower rate, and to rates E and F of that level **【**upon**】** at the beginning of the next pay period following completion of 104 weeks or service in the next lower rate.*

* * * * *

(4) Subject to paragraph (1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic

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pay for administrative law judges shall be adjusted by an amount determined by the President to be appropriate.

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