

Public Law 99-578  
99th Congress

An Act

To amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States.

Oct. 28, 1986

[S. 209]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. CONTRACTS FOR CERTAIN LEGAL SERVICES.

Section 3718 of title 31, United States Code, is amended—

- (1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f), respectively;
- (2) in subsection (d), as redesignated by paragraph (1), by inserting “or (b)” after “subsection (a)”;
- (3) in subsection (e), as redesignated by paragraph (1)—
  - (A) by striking out “(b)” and inserting in lieu thereof “(d)”;
  - (B) by inserting “or (b)” after “(a)”;
- (4) by inserting after subsection (a) the following new subsections:

“(b)(1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. If the Attorney General makes a contract for legal services to be furnished in any judicial district of the United States under the first sentence of this paragraph, the Attorney General shall use his best efforts to obtain, from among attorneys regularly engaged in the private practice of law in such district, at least four such contracts for legal services with private individuals or firms in such district. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following).

Claims.

“(B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and economically disadvantaged individuals, so as to enable each agency to comply with paragraph (3).

Disadvantaged persons.

Claims.

"(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

Claims.  
Disadvantaged  
persons.

"(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals. For purposes of this paragraph—

15 USC 637.

"(A) the term 'law firm owned and controlled by socially and economically disadvantaged individuals' means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 6376(d)(3)(C) (i) and (ii)) and regulations issued under those clauses; and

"(B) 'socially and economically disadvantaged individuals' shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act.

"(4) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

"(5) A contract made with a private counsel under paragraph (1) of this subsection shall include—

Claims.

"(A) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government;

"(B) a provision stating that the head of the executive or legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

Reports.  
Claims.

"(C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

Ante, p. 768.

"(6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered to be a debt collector for the purposes of such Act.

Claims.

"(7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought.

Reports.  
Claims.

"(c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to

the Department of Justice for collection. Each such report shall include a list, by agency, of—

“(1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report;

“(2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and

“(3) the total number and amount of those claims referred for legal services to private counsel under subsection (b)—

“(A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report;

“(B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

“(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred.”.

#### SEC. 2. REPORT BY ATTORNEY GENERAL.

Not later than 180 days after the date of the enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by section 1 of this Act).

31 USC 3718  
note.

#### SEC. 3. PILOT PROGRAM.

The Attorney General shall carry out subsections (b) and (c) of section 3718 of title 31, United States Code (as added by section 1 of this Act), through a pilot program in each of at least 5 and not more than 10 judicial districts selected by the Attorney General.

31 USC 3718  
note.

#### SEC. 4. REGULATIONS.

The Attorney General shall issue regulations to carry out this Act and the amendments made by section 1 of this Act. The Attorney General shall submit the regulations to the Congress at least 60 days before they become effective.

31 USC 3718  
note.

#### SEC. 5. TERMINATION.

This Act and the amendments made by section 1 of this Act shall be in effect for a period of three years, beginning on the date on which regulations become effective under section 4.

31 USC 3718  
note.

#### SEC. 6. AUDIT BY COMPTROLLER GENERAL.

(a) **CONTENTS OF AUDIT.**—The Comptroller General of the United States shall, at the end of the 3-year period referred to in section 5, conduct an audit of the actions of the Attorney General under subsection (b) of section 3718 of title 31, United States Code (as added by section 1 of this Act), under the pilot program referred to in section 3. The Comptroller General shall determine the extent of the competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain private counsel in accordance with the provisions of such

31 USC 3718  
note.

subsection, and the results of the debt collection efforts of private counsel retained under such contracts.

(b) **REPORT TO CONGRESS.**—After completing the audit under subsection (a), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.

Approved October 28, 1986.

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**LEGISLATIVE HISTORY—S. 209 (H.R. 5541):**

**HOUSE REPORTS:** No. 99-909 accompanying H.R. 5541 (Comm. on the Judiciary).

**SENATE REPORTS:** No. 99-256 (Comm. on Governmental Affairs).

**CONGRESSIONAL RECORD,** Vol. 132 (1986):

Mar. 19, considered and passed Senate.

Sept. 29, H.R. 5541 considered and passed House; proceedings vacated and S. 209, amended, passed in lieu.

Oct. 8, Senate concurred in House amendment.

**WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS,** Vol. 22 (1986):

Oct. 28, Presidential statement.