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Washington, DC 20548

Accessible Version

July 14, 2025

The Honorable Ted Cruz  
Chairman  
The Honorable Maria Cantwell  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Sam Graves  
Chairman  
The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

The Honorable Ted Budd  
United States Senate

### **FAA Enforcement: Waivers of Rights to Recover Attorney's Fees in Settlements**

In the United States, parties in litigation are generally responsible for their own legal expenses regardless of whether they win or lose the case. The Equal Access to Justice Act (EAJA) is an exception to this general rule in that it allows individuals in covered proceedings to which the federal government is a party to recover their attorney's fees and expenses, under certain circumstances.<sup>1</sup> EAJA was enacted in part to help prevent the expense involved in seeking review of, or defending against, unreasonable government actions from deterring certain individuals from doing so. To be eligible to recover attorney's fees, individuals must have prevailed over the federal government and met other requirements.

The Federal Aviation Administration (FAA) has required individuals who hold FAA-issued certificates to waive their rights to recover attorney's fees and expenses under EAJA as a condition of settling enforcement actions FAA has taken against them. FAA issues certificates that allow their holders to perform certain aviation-related roles, such as pilots or mechanics. FAA can and sometimes must take legal enforcement actions against certificate holders who may have violated certain statutes, regulations, or FAA orders.

Section 340 of the FAA Reauthorization Act of 2024 includes a provision for us to examine FAA's use of waivers of rights to seek attorney's fees under EAJA as a condition of settlement of certain legal enforcement actions against pilots, flight engineers, mechanics, and repair

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<sup>1</sup>See Pub. L. No. 96-481, tit. II, 94 Stat. 2325 (1980) (primarily codified as amended at 5 U.S.C. § 504; 28 U.S.C. § 2412).

technicians (or individuals acting in those capacities).<sup>2</sup> This report provides information on FAA's use of waivers in settlement agreements from fiscal years 2019 through 2023; legal and industry views on FAA's use of these waivers and FAA's perspective on these views; and a comparison of FAA's use of waivers with the practices of selected other agencies.

On May 7, 2025, and May 12, 2025, we provided briefings to your staff on our preliminary observations concerning FAA's use of waivers of rights to recover attorney's fees in settlements. This report provides a final version of the briefing slides.

## Summary of Findings

FAA's Use of Waivers of Attorney's Fees: FAA uses waivers of rights to recover attorney's fees and other expenses as a condition of entering into every agreement settling an enforcement action against a pilot, mechanic, repair technician, or flight engineer, according to FAA officials. They said that FAA requires these fee waivers to ensure that the individual cannot bring any additional claims against FAA with respect to the proceeding at issue once a case is settled and to avoid spending staff resources on frivolous EAJA applications.<sup>3</sup>

According to FAA data, from fiscal years 2019 through 2023, 230 certificate actions against pilots, mechanics, repair technicians, or flight engineers were settled after they reached the point in the enforcement process at which the certificate holder could potentially have qualified for an EAJA award in the absence of a waiver.<sup>4</sup> However, it is unknown how many individuals in these cases would have been able to recover fees if they had not signed a waiver. This is because individuals would also have to meet the requirements of EAJA, such as prevailing over FAA.

Legal and Industry Views on FAA's Use of Waivers and FAA's Response: Attorneys and organizations representing pilots and mechanics as well as law professors we spoke with identified drawbacks to FAA's use of waivers of rights to recover attorney's fees as a condition of settling all its enforcement cases. The drawbacks included that the waivers:

- may or do weaken the protections EAJA is intended to provide against agency overreach,
- may cause attorneys not to take the cases because they risk not getting paid without potential EAJA fees, and

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<sup>2</sup>See FAA Reauthorization Act of 2024, § 340, Pub. L. No. 118-63, 138 Stat. 1025, 1095 (2024). References to "attorney's fees" below include attorney's fees and other expenses recoverable under the Equal Access to Justice Act.

<sup>3</sup>According to FAA officials, as of March 2025, FAA had resolved five EAJA applications stemming from investigations initiated in fiscal years 2019 through 2023, of which three were denied and two were granted. These officials also said FAA paid about \$29,000 to resolve one of the granted applications and about \$35,000 to resolve the other application.

<sup>4</sup>During this period, FAA brought a total of about 2,200 certificate actions against these certificate holders. It also brought 142 civil penalty actions against those certificate holders, of which two settled after the point at which they could potentially have qualified for an EAJA award.

- may cause FAA to miss opportunities that EAJA awards could present to identify whether or how their enforcement process could be improved.

Interviewees also observed that there is a power imbalance between FAA and certificate holders. They explained that individuals might sign a settlement agreement with a waiver so they can return to work even if they do not believe the penalties or the government's position in the case were justified.

When asked to respond to these drawbacks, FAA officials said that:

- settlement agreements usually involve FAA prevailing,
- waivers can allow both sides to get a quicker and more satisfactory outcome, and
- FAA would be unwilling to enter into those settlements if they did not include a waiver out of concern that the settlements could be used to support an EAJA claim.

Further, according to FAA officials, waivers do not cause FAA to miss opportunities to improve its enforcement process because if significant litigation risk leads FAA to enter into a settlement withdrawing the case, FAA would already have identified a problem. An EAJA award would not provide any additional information, according to the officials.

FAA officials also reiterated that responding to EAJA claims can consume agency resources even when the claims are frivolous.

FAA's Practices in the Context of Selected Other Agencies' Use of Fee Waivers: Officials from the United States Coast Guard and the National Marine Fisheries Service, which also bring and settle enforcement actions against individuals, said that their agencies also typically use language in settlement agreements that would prevent the individuals from recovering attorney's fees under EAJA. The officials offered similar rationales for the use of this language to FAA's, such as ensuring that a settlement agreement resolves all matters associated with a case and avoiding the litigation of non-meritorious fee applications that can consume agency resources.

## Methodology

To inform the entirety of our work, we reviewed relevant statutes, regulations, case law, and legislative documents. These included EAJA; congressional committee reports accompanying bills enacted as EAJA; National Transportation Safety Board regulations implementing EAJA; FAA policies and orders regarding its enforcement action processes and settlement agreements; and federal court and agency administrative decisions from cases involving EAJA. We reviewed information from a database managed by the Administrative Conference of the United States that contains information on EAJA awards from across the government and the Conference's model rules for implementing EAJA, among other documents.<sup>5</sup> We also interviewed officials from the Conference and the Congressional Research Service who were knowledgeable about EAJA.

To describe how FAA uses waivers of rights to recover attorney's fees in settlement agreements, we interviewed officials from FAA's Aviation Litigation Division, which is

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<sup>5</sup>The Administrative Conference of the United States is an independent federal agency that identifies and promotes improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies perform essential government functions such as conducting regulatory programs.

responsible for taking enforcement actions against holders of FAA certificates. We reviewed FAA data for fiscal years 2019 through 2023—the most current data available at the time of our review—on the number and proportion of legal enforcement actions that resulted in a settlement agreement, a final decision, or other outcomes. We also reviewed data on the types of certificates involved in these enforcement actions. We reviewed a non-generalizable sample of six settlement agreements from cases initiated in fiscal years 2022 and 2023 out of about 270 such cases. The six agreements were selected to encompass a range of certificate types and enforcement actions.

In addition, we reviewed information from FAA’s Aviation Litigation Division on the number, amounts, and circumstances of EAJA payments FAA made during fiscal years 2019 through 2023. To determine the reliability of the data we reviewed documentation related to the database, interviewed FAA officials who were knowledgeable about the data, and reviewed the data for errors, missing data, or other flaws. We determined that the data were sufficiently reliable to provide contextual information about FAA’s enforcement program and its awards of attorney’s fees under EAJA.

To obtain legal and industry views on the implications of FAA’s use of waivers, we identified 16 individuals and organizations, including legal academics who have written about EAJA, organizations representing pilots and mechanics who hold FAA certificates, and aviation attorneys who represent individuals subject to FAA’s enforcement processes. We identified the legal academics through a review of academic and legal literature on EAJA and waivers of attorneys’ fees and our interviews. Of those individuals and organizations, eight told us they had no knowledge of or position on EAJA waivers, did not respond to our inquiry, or declined to meet with us. We interviewed the remaining eight individuals and organizations and analyzed their responses to identify common themes. The interviewees comprised four organizations representing pilots and mechanics, one attorney who represented pilots and mechanics in FAA enforcement proceedings, one attorney who represented both a pilots’ organization and individual pilots and mechanics, and two legal academics.<sup>6</sup> We interviewed officials from FAA’s Aviation Litigation Division to obtain their perspectives on the issues raised about FAA’s use of waivers by these individuals and organizations.

To obtain information on other agencies’ use of waivers of rights under EAJA, we interviewed officials from two other federal agencies that issue licenses or certifications to individuals—the United States Coast Guard and the National Marine Fisheries Service—on how those agencies use such waivers in their enforcement programs and their reasons for doing so. We also reviewed relevant statutes and regulations and the settlement policies each agency followed when reaching settlements with individuals.

We conducted this performance audit from July 2024 to July 2025 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>6</sup>These organizations included the Air Line Pilots Association, the Aeronautical Repair Station Association, the Aircraft Owners and Pilots Association, the Independent Pilots Association, and the Professional Aviation Maintenance Association.

## Agency Comments

We provided a draft of this report to the Departments of Commerce, Homeland Security, and Transportation for review and comment. The Department of Transportation provided technical comments, which we incorporated as appropriate. The Departments of Commerce and Homeland Security had no comments.

We are sending copies of this report to the appropriate congressional committees, the Secretaries of Commerce, Homeland Security, and Transportation, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at [collinsd@gao.gov](mailto:collinsd@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Heather Halliwell (Assistant Director), Tobias Gillett (Analyst in Charge), Melissa Bodeau, Caroline Christopher, Melanie Diemel, Jonathan Munetz, Mary-Catherine P. Overcash, and Alicia Wilson.

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Derrick Collins  
Director, Physical Infrastructure



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# **Waivers of Rights to Recover Attorney's Fees in FAA Settlement Agreements**

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***Briefings for Congressional Addressees***

**May 7 and May 12, 2025**

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Page 1

## Introduction

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- FAA can and sometimes must take legal enforcement actions against holders of its pilot, mechanic, and other certificates who may have violated certain statutes, regulations, or FAA orders.
- Under the Equal Access to Justice Act (EAJA), certificate holders who prevail over FAA in certain proceedings related to these enforcement actions may be entitled to recover their attorney's fees and other expenses, under certain circumstances.
- If one of these actions results in a settlement, FAA may include in the settlement agreement a waiver of the individual's right to recover those attorney's fees and expenses.

## Source of Work

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- The Federal Aviation Administration (FAA) Reauthorization Act of 2024 includes a provision for GAO to submit a report on FAA's use of waivers of the right to seek attorney's fees and other expenses under the Equal Access to Justice Act as a condition for the settlement of any proceedings to amend, modify, suspend, or revoke an airman certificate or to impose a civil penalty on holders of such certificates, or individuals acting in their capacities.<sup>1</sup>

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<sup>1</sup>See FAA Reauthorization Act of 2024, § 340, Pub. L. No. 118-63, 138 Stat. 1025, 1095 (2024). References to "attorney's fees" below include attorney's fees and other expenses recoverable under the Equal Access to Justice Act.



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## Summary

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- All settlement agreements FAA enters into with pilots, mechanics, repair technicians, and flight engineers contain a waiver of the individual's right to seek attorney's fees, according to FAA officials.
- FAA took about 2,200 certificate actions against these individuals during fiscal years 2019 through 2023. About 10 percent of those signed a settlement agreement and could potentially have qualified for EAJA fees if they had not waived their rights to the fees and if they met additional eligibility requirements.
- Stakeholders we spoke with identified drawbacks to FAA's use of these waivers as a condition of settling all of its enforcement cases, including that the waivers may or do weaken the protections EAJA is intended to provide against agency overreach.
- FAA officials said that they use the waivers to ensure that the individual cannot bring any additional claims against FAA with respect to the proceeding at issue and to avoid spending staff resources on frivolous EAJA applications.
- FAA's practice of requiring fee waivers is similar to some other federal agencies' practices. For example, U.S. Coast Guard and National Marine Fisheries Service officials said that they also use language in their settlement agreements requiring parties to pay their own fees and expenses for similar reasons.

## **Background**

## Equal Access to Justice Act (EAJA)



In the United States, parties in litigation are generally responsible for their own legal expenses, regardless of whether they win or lose the case, subject to certain exceptions.



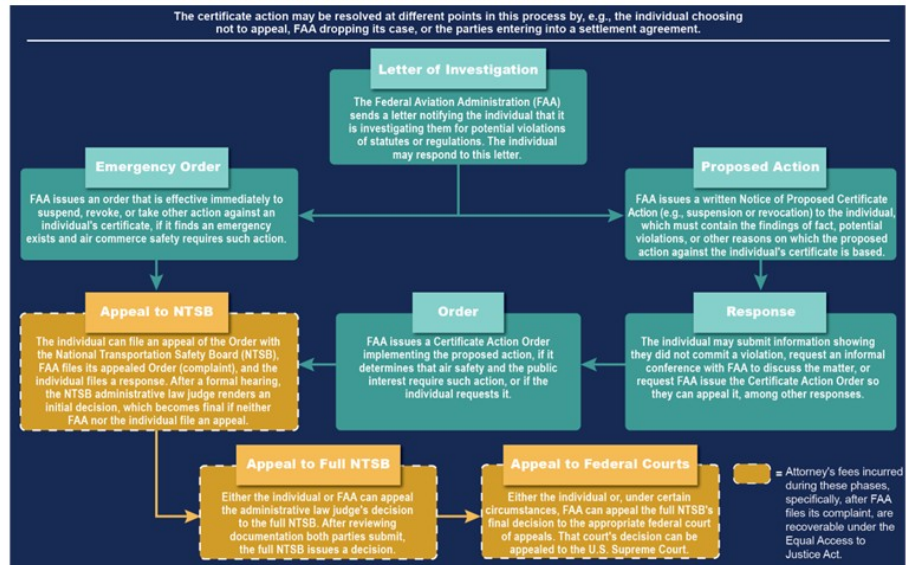
However, there are statutory exceptions for certain proceedings in which the federal government is a party, under which the government must pay the attorney's fees and other expenses of the prevailing party under certain circumstances.



EAJA is one such exception.<sup>2</sup> It applies to certain civil court and agency administrative proceedings, including those related to certain FAA enforcement actions.

<sup>2</sup>See Pub. L. No. 96-481, tit. II, 94 Stat. 2325 (1980) (primarily codified as amended at 5 U.S.C. § 504; 28 U.S.C. § 2412).

## General Overview of FAA's Certificate Action Proceedings



**Notes:**

Source: GAO analysis of relevant statutes, regulations, case law, and Federal Aviation Administration information. | GAO-25-107675

- (1) In certain cases where FAA has already communicated in writing with the individual, FAA does not send a letter of investigation before issuing an emergency order.
- (2) The National Transportation Safety Board (NTSB) hears appeals of these FAA enforcement actions. NTSB case law provides that only attorney's fees that were incurred after FAA has filed its complaint in response to the individual's appeal are recoverable under EAJA. An individual can apply for an EAJA award whenever the individual has prevailed in the proceeding, but no later than 30 days after the final resolution of the case.
- (3) FAA may also initiate proceedings to assess civil monetary penalties against individuals or pursue a civil court action for the court to impose civil penalties on those individuals, for violations of certain statutes or related FAA regulations and orders. The process for FAA to assess civil penalties against an individual is similar to the process for certificate actions. Whether the civil penalty must be assessed by FAA or imposed by the court depends on the civil penalty amount that FAA proposes and when the violation occurred in relation to the date of enactment of the FAA Reauthorization Act of 2024.

## **FAA's Use of Fee Waivers in Settlement Agreements**

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## Waivers in FAA's Settlement Agreements

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- According to FAA officials, every settlement agreement FAA enters into with individuals contains a waiver of the individual's right to seek attorney's fees.
- Per FAA Order 2150.3C, *FAA Compliance and Enforcement Program*, its settlement agreements contain waivers of recovering attorney's fees and other expenses, including under EAJA, as applicable and appropriate.
- GAO reviewed six settlement agreements for the selected cases initiated in fiscal years 2022 and 2023 and all contained waivers. These agreements consisted of three agreements each with pilots and mechanics. They comprised two agreements involving emergency certificate actions, two involving non-emergency certificate actions, and two involving civil penalties.





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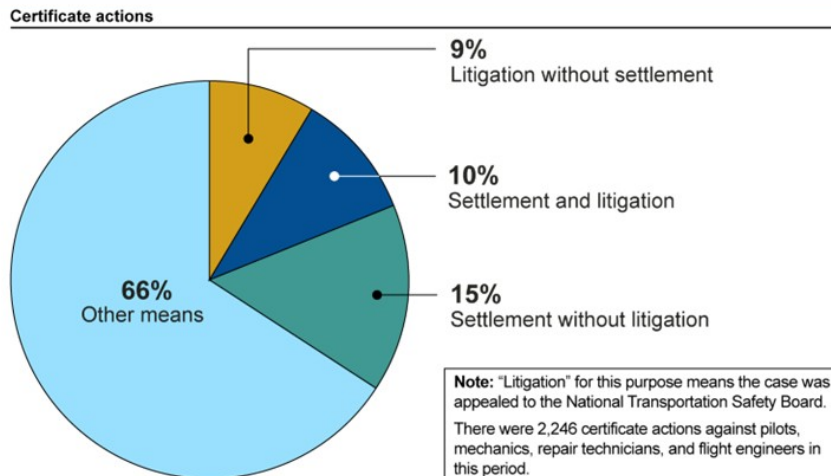
## FAA's Rationale for Its Use of EAJA Waivers as a Condition of Settlement

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- According to FAA officials, FAA requires the waiver of the right to seek attorney's fees as a condition of entering into settlement agreements to ensure that the individual cannot bring any additional claims against FAA with respect to the proceeding at issue once a case is settled and to avoid spending staff resources on frivolous EAJA applications.
- The requirements for an individual to file an application for EAJA fees are minimal, according to FAA officials: the individual must assert that they prevailed and FAA was not substantially justified, and they must provide documentation of their net worth and legal fees incurred.
- The burden of demonstrating that the individual did not prevail and FAA was substantially justified falls to FAA, even if the request for EAJA fees appears frivolous to FAA, according to FAA officials. They noted that they have one chance to respond to an application, so they must provide a comprehensive response, and such responses can consume a significant amount of FAA attorney time.



## Settlements and Other Resolutions of Certificate Actions, Fiscal Years 2019-2023



Source: GAO analysis of Federal Aviation Administration (FAA) data, fiscal years 2019-2023. | GAO-25-107675

**Notes:**

- (1) FAA also brought 142 civil penalty actions against pilots, mechanics, repair technicians, and flight engineers of which two settled after litigation began during this period.
- (2) According to FAA officials, individuals can hold more than one type of certificate. Some of these actions were against more than one certificate held by an individual.
- (3) "Other means" describes cases resolved through means other than settlement or litigation. For example, according to FAA officials, the individual may accept the penalty or FAA may drop the case, among other outcomes. However, the officials said that FAA does not have data on the number of cases resolved through these other means.



**Accessible Data for Settlements and Other Resolutions of Certificate Actions, Fiscal Years 2019-2023**

<b>Litigation Without Settlement</b>	<b>Settlement and Litigation</b>	<b>Settlement Without Litigation</b>	<b>Other means</b>
198	230	344	1474

Source: GAO analysis of Federal Aviation Administration (FAA) data, fiscal years 2019-2023. | GAO-25-107675

Note: "Litigation" for this purpose means the case was appealed to the National Transportation Safety Board.

There were 2,246 certificate actions against pilots, mechanics, repair technicians, and flight engineers in this period.



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## Settlements that Potentially Qualified for EAJA Fiscal Years 2019-2023

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- According to data provided by FAA, FAA brought roughly 2,200 certificate actions against pilots, mechanics, repair technicians, and flight engineers from fiscal years 2019-2023. About 80 percent of these actions involved pilots' certificates.
- Of the roughly 2,200 actions, 10 percent settled after litigation began. In these actions, the individual could have potentially qualified for an EAJA award, had they not waived their rights to seek attorney's fees under EAJA in the settlement agreement. It is unknown how many certificate holders would have been eligible to recover fees without the waiver. This is because individuals would also have to meet the requirements of EAJA, such as prevailing over FAA.
- The issue of what it means to prevail has been the subject of dispute in court cases and has been a basis for numerous appeals of EAJA awards and award denials.

**Legal and Industry Views  
on FAA's Use of EAJA  
Waivers and FAA's  
Perspective on Those  
Views**

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## Legal and Industry Views

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- We spoke to six attorneys and organizations representing pilots and mechanics, and two law professors knowledgeable about EAJA, who identified drawbacks to FAA's use of EAJA waivers in all settled cases.
  - Law professors and attorneys and organizations representing pilots and mechanics told us that waivers of the right to collect attorney's fees and expenses under EAJA may or do weaken the protections EAJA is intended to provide against agency overreach.
  - Law professors and an organization representing mechanics noted that EAJA waivers may cause attorneys not to take the cases because they risk not getting paid without potential EAJA fees.
  - A pilots' organization and a law professor noted that EAJA awards may call attention to issues with FAA's enforcement processes because an award would indicate that the agency was not substantially justified in its action. The waivers may therefore obscure instances that point to opportunities for FAA to identify whether or how their enforcement process could be improved.

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## Legal and Industry Views

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- Law professors and an attorney and organizations representing pilots and mechanics also provided the following views:
  - Certificate holders might sign a settlement agreement with a waiver even if they do not believe the penalties or the government's position in the case were justified so they can return to work. An aviation attorney added that certificate holders may also sign an agreement because they do not have the resources to defend themselves, even with the prospect of a limited EAJA recovery in future, or because they want more certainty about the outcome.
  - There is a power imbalance between certificate holders and FAA.
- Multiple other individuals and organizations we contacted either told us they had no knowledge of or position on EAJA waivers or did not respond to our inquiry. For example, five of ten organizations representing pilots and mechanics we contacted declined to participate, did not respond to requests for interviews, or did not have knowledge about EAJA waivers.

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## FAA Response to Legal and Industry Views

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- We asked FAA officials for their response to these views, and they provided the following observations:
  - Settlement agreements usually involve FAA prevailing, in that the individual is agreeing to a suspension, a revocation, or a civil penalty, and therefore the individual would not be eligible for an EAJA award in any case.
  - Waivers can allow both sides of litigation to get a satisfactory outcome. When FAA loses, a settlement agreement guarantees the individual an immediate victory, which is usually what they want the most. Moreover, in the absence of the settlement agreement, the litigation would continue, resulting in greater expense to both sides and a risk for the individual that they end up losing at a hearing.
  - FAA would be unwilling to enter into those settlements if they did not include a waiver out of concern that they could be used to support an EAJA claim. Responding to EAJA claims can consume agency resources even when the claims are frivolous.
  - Further, the waivers do not obscure possible opportunities to improve its enforcement process. If FAA determines that there is significant litigation risk and that leads FAA to enter into a settlement agreement withdrawing the case, FAA would already have identified a problem. An EAJA award would not provide any additional information.

**FAA's Practices in the Context  
of Selected Other Agencies'  
Use of Waivers**



## Coast Guard's Use of Waivers

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- The Coast Guard issues credentials to merchant mariners that are required for the mariners to serve as crew members on certain U.S. vessels. Similar to FAA, the Coast Guard can take actions to suspend or revoke merchant mariners' credentials and assess civil penalties against them.
- According to Coast Guard officials, the Coast Guard typically includes language in its settlement agreements requiring each party to pay its own fees and expenses, which has the same effect as a waiver of EAJA fees like those used by FAA. Similar to the FAA officials' rationale for using waivers, the Coast Guard officials also said that the Coast Guard seeks to resolve all matters connected to a case in the settlement agreement rather than leave the issue of attorney's fees to be resolved later.
- The officials noted that because the Coast Guard conducts extensive review before bringing suspension and revocation proceedings, the Coast Guard's position is almost always substantially justified.



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## National Marine Fisheries Service's Use of Waivers

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- The National Marine Fisheries Service (NMFS) enforces federal fisheries laws and issues permits for commercial fishing. Similar to FAA, NMFS can bring actions against permit holders to revoke or suspend a permit or assess civil penalties.
- According to NMFS officials:
  - It is most common for them to assess civil penalties, but occasionally they may suspend or revoke individuals' permits if there are recurring or severe violations.
  - Like FAA, NMFS's settlement agreements always include a waiver of the right to seek attorney's fees.
  - An individual settling an NMFS enforcement action before a hearing would not be eligible for EAJA fees because the individual would not have prevailed over NMFS in an adversary adjudication. The officials said that almost all of their cases settle before a hearing.
- Similar to FAA's rationale, NMFS told us it uses the waivers "to avoid the litigation of non-meritorious fee applications," which can require considerable agency resources.

## **Additional Information about EAJA and FAA's Enforcement Process**

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## Why EAJA Was Enacted

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- EAJA was enacted in 1980, in part to help prevent the expense involved in seeking review of or defending against unreasonable government actions from deterring certain individuals from doing so. Congress found that the federal government has greater resources and expertise than these individuals.
- Certain congressional committees stated that EAJA's requirements are generally intended to:
  - caution federal agencies to carefully evaluate their cases and not pursue weak or tenuous cases; and
  - at the same time, protect the federal government when it does not prevail but its case is nonetheless reasonable.<sup>3</sup>

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<sup>3</sup>These committees include the House Committee on the Judiciary. See H.R. Rep. No. 96-1418, at 14 (Sept. 26, 1980); Sen. Rep. No. 96-253, at 15 (June 21, 1979).

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## EAJA Award Requirements

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- The proceeding must be covered by EAJA. EAJA covers certain agency administrative proceedings (i.e., “adversary adjudications”) and civil court actions.
- To be eligible to receive an award of certain attorney’s fees and expenses, the individual must apply for an award and meet the criteria under EAJA. This includes that the individual must:
  - have prevailed over the federal government; and
  - have a net worth of no more than \$2 million at the time the proceeding was initiated.
- The court or adjudicating agency must award the eligible individual’s attorney’s fees and other expenses that the individual incurred in connection with the proceeding, unless:
  - The court or adjudicating agency finds that the position of the federal government was “substantially justified”; or
  - Special circumstances make an award unjust.

## FAA Certification and Enforcement Processes

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- FAA issues certificates that allow their holders to perform certain aviation-related roles, such as pilots or mechanics.
- FAA can and sometimes must take legal enforcement actions against certificate holders who may have violated certain statutes, regulations, or FAA orders.
- Legal enforcement actions include the assessment of civil monetary penalties and suspension or revocation of an individual's certificate.
- Certificate holders may respond in different ways to an action, depending on whether it is immediately effective or not.





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## Examples of Limitations on EAJA Awards in FAA Certificate Actions

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- According to NTSB case law, only attorneys' fees and other expenses that the individual incurs after FAA files its complaint with NTSB in response to the individual's appeal are recoverable under EAJA.<sup>4</sup>
  - For example, an individual cannot recover attorney's fees the individual incurred for legal representation in responding to a letter of investigation or notice of proposed certificate action, during an informal conference with FAA, or reaching a settlement prior to FAA filing its complaint with the NTSB.
- EAJA caps the rate for recoverable attorney's fees at \$125 per hour, subject to certain agency regulations increasing it based, for example, on cost of living.
- Other limitations include that the attorney's fees and other expenses must be "reasonable" to be recoverable under EAJA.

<sup>4</sup>The point at which attorney's fees incurred by the individual become recoverable under EAJA in FAA administrative civil penalty proceedings is the same.

## FAA Payment of EAJA Awards

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- According to FAA officials, as of March 2025, FAA had resolved five EAJA applications stemming from investigations initiated in fiscal years 2019 through 2023, of which three were denied and two were granted. These officials also said FAA paid about \$29,000 to resolve one of the granted applications and about \$35,000 to resolve the other application.
- For example, an NTSB administrative law judge ordered FAA to pay an EAJA award of about \$29,000 in a case against a certified flight instructor and pilot. The NTSB administrative law judge found that FAA was not substantially justified in charging the flight instructor for intentional falsification of a logbook because its investigation was deficient and thus FAA did not have sufficient evidence to pursue the case.

## **Scope and Methodology**



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## Scope and Methodology

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- Scope: FAA certificate actions and civil penalty actions against pilots, flight engineers, mechanics, and repair technicians, or individuals acting in their capacities.
- We reviewed relevant statutes, regulations, case law, and legislative documents; FAA policies and orders; and six settlement agreements from a sample of cases initiated in fiscal years 2022 and 2023, which were the most current years available at the time of our review. We selected a non-generalizable sample of six agreements out of around 270 such cases to encompass a range of certificate types and enforcement actions, including civil penalties and certificate actions.
- We analyzed fiscal year 2019-2023 data from FAA's database of enforcement actions. We found the data to be sufficiently reliable to provide contextual information about FAA's enforcement program.
- To obtain their views on FAA's use of waivers, we interviewed FAA officials, industry groups representing individuals subject to FAA's enforcement, law professors who had written about EAJA, and aviation lawyers.
- To compare FAA's waiver practices to other agencies', we identified two agencies—the U.S. Coast Guard and the National Marine Fisheries Service—that may take enforcement actions against individuals they license or permit, reviewed their settlement policies, and interviewed agency officials.
- We provided relevant portions of the briefing materials to the Department of Transportation, the Department of Commerce, and the Department of Homeland Security for review, and incorporated their comments as appropriate.