

TAMMY SCANLAN,

Appellant,

v.

DENIS McDONOUGH,
in his capacity as
Secretary of Veterans Affairs,

Appellee.

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TAMMY SCANLAN,

Appellant,

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DENIS McDONOUGH,
in his capacity as
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Appellee.

The Appellant, Tammy Scanlan (“Ms. Scanlan”), respectfully applies pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), for an award of reasonable attorneys’ fees and expenses in the amount of **\$11,549.57**.

STATEMENT OF FACTS

1

military veteran Michael Scanlan. On April 21, 2021, Ms. Scanlan timely filed a Notice of Appeal with this Court. At the time, she was proceeding *pro se*.

Ms. Scanlan elected to participate in the Court's Rule 33 Pilot Program being facilitated by the Veterans Consortium Pro Bono Program ("TVC"). TVC contacted me regarding the possibility of representing Ms. Scanlan pro bono in her briefing conference proceedings, and I agreed. I entered a limited appearance on September 3, 2021, and on the same date the Court issued an Order to file Ms. Scanlan's brief within sixty days. This Order was prelude to, on September 9, 2021, the Court issuing an Order scheduling the appeal's telephonic briefing conference. The Court rescheduled the briefing conference to October 28, 2021; and, pursuant to the Court's Orders, Ms. Scanlan through counsel prepared a Rule 33 Summary of the Issues addressing the errors committed by the Board in the decision on appeal. Ms. Scanlan, through counsel, served the Summary of Issues on counsel for the Secretary and the Court's Central Legal Staff on October 14, 2021.

On October 28, 2021, the Rule 33 staff conference proceeded as scheduled. The parties were unable at that time to reach an agreement in principle as to an amicable resolution of the appeal. With my limited appearance under the Rule 33 Pilot Program coming to a close, I agreed to represent Ms. Scanlan throughout the remainder of the appeal. On November 4, 2021, I filed a "full" notice of appearance as lead counsel and a copy of our retainer agreement.

On January 13, 2022, Ms. Scanlan through counsel filed her initial brief in this appeal. In that 30-page brief, which addressed multiple issues of statutory interpretation that would warrant a three-judge panel's review, Ms. Scanlan set forth several reasons why the Board prejudicially erred in denying additional reimbursement. The Secretary once again elected to

defend the appeal, filing a U.S. Vet. App. Rule 28(b) brief on April 28, 2022. On June 27, 2022, Ms. Scanlan through counsel filed her reply brief.

On July 7, 2022, the Secretary filed this appeal's Record of Proceedings, which Ms. Scanlan through counsel reviewed the same day for legibility and completeness. On December 22, 2022, the Court submitted the appeal to a three-judge panel.

On January 9, 2023, my colleague Katy S. Clemens entered an appearance as co-counsel. We intended for her to handle this appeal's oral argument for Ms. Scanlan, should the Court order it. The Court issued an Order on January 10, 2023, that it would schedule oral argument as the business of the Court permits. After the Court scheduled oral argument, the Secretary designated new lead counsel. The parties then re-engaged discussions for an amicable resolution of the appeal. On March 29, 2023, the parties filed a joint motion for partial remand ("JMPR").

In the JMPR, the parties agreed that the part of the Board's decision that granted entitlement to additional accrued benefits in the amount of \$1,380.00, was a favorable finding that this Court could not disturb. The parties further agreed that the Board prejudicially erred in denying additional accrued benefits beyond that amount. Ms. Scanlan had previously been before this Court, and that appeal had resulted in a joint motion for partial remand in which the parties there agreed that remand was warranted because the Board decision there on appeal had "failed to review the entirety of the expenses itemized in Appellant's September 2016 VA Form 21-534EZ." In this appeal, which Ms. Scanlan took from the decision that the Board issued on remand from that prior appeal, the parties agreed that the Board "erred by failing to substantially comply with the terms of the Court's prior remand order as required by *Stegall v.*

West, 11 Vet.App. 268 (1998).” JMPR at 2. The Board “acknowledged the contention on Appellant’s VA Form 21-534EZ that reimbursement of additional accrued benefits was warranted because she provided 24-hour care to the Veteran, including helping him with activities of daily living such as bathing and showering, shaving, feeding, and providing transportation to doctor’s appointments for a little over 2 years.” JMPR at 2–3. The Board erred, they agreed, by finding conclusorily and without sufficiently addressing Ms. Scanlan’s primary assertion, that she supposedly “failed to identify, itemize, or provide evidence of any specific expenditures born[e] by her in the course of her care for the Veteran.” JMPR at 3. “The Board did not adequately address whether those caregiving services are reimbursable expenses incident to the Veteran’s last sickness, as required by the September 2020 JMPR.” JMPR at 3. “In this regard, the parties” agreed to note, “pursuant to *Helmick v. McDonough*, 34 Vet.App. 141, 143 (2021), the phrase ‘bore the expense’ of las sickness in 38 U.S.C. § 5121(a)(6) and 38 C.F.R. § 3.1000(a)(5) means something broader than ‘paid.’” JMPR at 3. The parties also agreed to recite the Board’s obligation to address on remand “the arguments presented in Appellant’s Initial Brief and Reply Brief that were filed in this appeal,” JMPR at 4, and to associate a copy of those briefs with the record. JMPR at 6.

On April 10, 2023, the Court granted the JMPR. It ordered the matter remanded for action consistent with the terms of the JMPR. The Order also was the mandate of the Court, and it instructed that any application pursuant to the EAJA for an award of attorney fees and other expenses be submitted for filing within the next 30 days. Ms. Scanlan now files this Application within that 30-day period.

ARGUMENT

“The EAJA is a fee-shifting statute that allows a party who prevails in a civil action brought ... against the government to recover attorney’s fees and costs.” *Davis v. Nicholson*, 475 F.3d 1360, 1363 (Fed. Cir. 2007). Through it, Congress has instructed that:

a court shall award to a prevailing party ... fees and other expenses ... incurred by that party in any ... proceedings for judicial review of agency action, brought ... against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A).

As controlling precedent holds, “[t]he essential objective of the EAJA [is] to ensure that persons will not be deterred from seeking review of, or defending against, unjustified governmental action because of the expense involved in the vindication of their rights” *Kelly v. Nicholson*, 463 F.3d 1349, 1353 (Fed. Cir. 2006) (quoting *Johnson v. Gonzales*, 416 F.3d 205, 208 (3d Cir. 2005) (alteration and omission in *Kelly*)); accord *Ravin v. Wilkie*, 31 Vet. App. 104, 107 (2019) (en banc) (“EAJA’s purpose is to ensure that those trying to vindicate their rights against wrongful government action can obtain adequate representation.”). “Removing such deterrents is imperative in the veterans benefits context, which is intended to be uniquely pro-claimant” *Kelly*, 463 F.3d at 1353 (citing *Hodge v. West*, 155 F.3d 1356, 1362–63 (Fed. Cir. 1998) and *Collaro v. West*, 136 F.3d 1304, 1309–10 (Fed. Cir. 1998)). Indeed, as the Federal Circuit has underscored, “EAJA is a vital complement to this system designed to aid veterans, because it helps to ensure that they will seek an appeal when the VA has failed in its duty to aid them or has otherwise erroneously denied them the benefits that they have earned.” *Id.*

It is against this backdrop that Ms. Scanlan respectfully submits that she satisfies all of the EAJA's requirements for the Court to grant the award of EAJA fees and expenses that she seeks in this case.

I. Ms. Scanlan Is a Prevailing Party Within Congress' Intent for the EAJA.

"A party seeking EAJA fees must submit a timely application that includes... a showing that the applicant is a prevailing party" *Blue v. Wilkie*, 30 Vet. App. 61, 65 (2018). To obtain "prevailing party" status, an appellant need only to have obtained success "on any significant issue in litigation which achieved some of the benefit ... sought in bringing the suit." *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993) (quoting *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791–92 (1989)).

Here, the Court vacated the Board's denial on the basis of the Secretary's concession that the Board erred, failing to satisfy its well-established *Stegall* duties. The Court order vacating the Board's denial, and remanding, thus plainly was predicated on administrative error and creates the "material alteration of the legal relationship of the parties" necessary to permit an award of attorney's fees. *See, e.g., Zuberi v. Nicholson*, 19 Vet. App. 541, 544 (2006) (collecting additional authorities). Ms. Scanlan is a prevailing party.

II. Ms. Scanlan Satisfies the EAJA's Eligibility Requirements for an EAJA Award.

As an officer of the Court, the undersigned counsel hereby states that Ms. Scanlan's net worth did not exceed \$2,000,000 at the time this civil action was filed, nor did Ms. Scanlan own any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7,000,000 and which had more than 500 employees. *See Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996). In addition,

Ms. Scanlan submitted a Declaration of Financial Hardship, which was accepted for filing by the Court. *See Owens v. Brown*, 10 Vet. App. 65, 67 (1997). Ms. Scanlan thus is a party eligible to receive an award of reasonable fees and expenses. *See* 28 U.S.C. § 2412(d)(2)(B).

III. The Secretary's Position Was Not Substantially Justified.

The Secretary can defeat this Application only by demonstrating that the government's position was substantially justified. *See Brewer v. Am. Battle Monument Comm'n*, 814 F.2d 1564, 1566–67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The Supreme Court has held that for the position of the government to be substantially justified, it must have a “reasonable basis both in law and fact.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *accord Beta Sys. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989).

In this case, the Secretary's administrative position and litigation position through the appeal's briefing was not substantially justified. As described more fully in the Statement of Facts above, the Court vacated the Board denial on appeal and remanded based on the Board's errors, which the Secretary conceded, in failing to satisfy its *Stegall* duties. The prejudicial Board error had no reasonable basis in fact or law.

IV. The Attorneys' Fees and Expenses for Which Ms. Scanlan Seeks an EAJA Award Are Reasonable.

An itemized statement of the services rendered and the reasonable fees and expenses for which Ms. Scanlan seeks compensation is attached to this application as Exhibit A. Included with Exhibit A is a certification that lead counsel has “(1) reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all counsel and (2) considered and eliminated all time that is excessive or redundant.” *Baldrige v. Nicholson*, 19 Vet. App. 227, 240 (2005).¹

¹ A rate in excess of \$125 per hour for Ms. Scanlan's counsel in this case is justified based on the increase in the cost of living since the EAJA was amended in March 1996. *See* 28 U.S.C. § 2412(d)(2)(A)(ii). For attorney John D. Niles, the \$125 attorney fee rate, adjusted for inflation for the Washington Metropolitan Area from which Mr. Niles and Ms. Clemens provided all of their legal services for this appeal, was \$226.23 in January 2022, the month in which the Initial Brief was filed and the approximate midpoint of this appeal. *See* Bureau of Labor Statistics Data, CPI-U, Washington-Arlington-Alexandria, DC-VA-MD-WV Area (Exhibit B). This rate was calculated by using the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area adjusted for inflation between March 1996 (158.4) and January 2022 (286.678). Exhibit B; *Mannino v. West*, 12 Vet. App. 242 (1999).

The market rates for Ms. Scanlan's counsel exceeded the requested rates per hour during the relevant time period. *See Covington v. District of Columbia*, 839 F. Supp. 894, 904–05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995); USAO Attorney's Fees Matrix, 2015-2021 (Exhibit C) (“The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Nw. Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore ... area.”); *see also Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008). The prevailing market rate for the work done by paralegals in the Washington-Arlington-Alexandria, DC-VA-MD-WV area was at least \$180.00 from June 1, 2020, to the present. *See* Ex. C. The CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area, in January 2022 was 286.678 *See* Ex. B. The CPI-U for the South Region, encompassing Mrs. Hiers's location in the Gulfport, MS, area, in the same month, January 2022, was 271.634. *See* Exhibit D. The product of \$180.00 and the ratio of 271.634 to 286.678 equals \$170.55.

FEES

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Fee Amount</u>
John D. Niles (2008 law graduate)	\$226.23	49.5	\$11,198.39
Katy S. Clemens (2006 law graduate)	\$226.23	1.1	\$248.85
Karen Hiers (paralegal)	\$170.55	0.6	\$102.33
TOTAL			\$11,549.57

EXPENSES

Ms. Scanlan does not claim reimbursement under the EAJA for any expenses incurred in connection with this appeal.

CONCLUSION

Wherefore, Ms. Scanlan respectfully requests that the Court award attorneys' fees in the total amount of **\$11,549.57**.

May 8, 2023

Respectfully submitted,

/s/ John D. Niles

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Counsel for Appellant

EXHIBIT A

**Staff Hours for Tammy Scanlan
Vet. App. No. 21-2827**

Date	Time	Summary
09/03/2021	1.6	<u>Staff: John Niles</u> Correspond with The Veterans Consortium regarding Rule 33 Pilot Project placement (0.2); analyze Board of Veterans' Appeals ("Board") decision and draft summary of issues to raise on appeal (1.0); correspond with Ms. Scanlan regarding same (0.3). File limited Notice of Appearance (0.1).
09/03/2021	0.3	<u>Staff: Karen Hiers</u> Prepare file for appeal and prepare Record Before the Agency ("RBA") for Mr. Niles's review (0.3).
09/09/2021	0.1	<u>Staff: John Niles</u> Analyze Order setting Rule 33 briefing conference for time during which I possess an existing, unavoidable conflict (oral argument in another court), and email Central Legal Staff and Office of General Counsel ("OGC") attorney regarding rescheduling of conference.
09/10/2021	0.2	<u>Staff: John Niles</u> Prepare motion to reschedule briefing conference (0.2).
10/11/2021	2.5	<u>Staff: John Niles</u> Analyze pages 1,114 through 1,448 of 1,448-page Record Before the Agency ("RBA") for facts and issues pertinent to Rule 33 Summary of the Issues ("SOI") (2.5).
10/12/2021	3.0	<u>Staff: John Niles</u> Analyze pages 1 through 1,113 of RBA for facts and issues pertinent to SOI (3.0).
10/14/2021	2.8	<u>Staff: John Niles</u> Draft Rule 33 Summary of the Issues ("SOI") (2.2). Prepare RBA excerpts to accompany SOI (0.2). Email VA's counsel and Central Legal Staff regarding SOI (0.1). Draft certificate of service (0.1). Correspond with client regarding settlement authority (0.2).
10/28/2021	0.7	<u>Staff: John Niles</u> Prepare to and participate in Rule 33 conference (0.3). Follow up with Ms. Scanlan regarding Rule 33 conference outcome, offer of representation for the remainder of the appeal, and next steps (0.4).
10/28/2021	0.3	<u>Staff: Karen Hiers</u> Prepare and mail to Ms. Scanlan a retainer agreement, and prepare full Notice of Appearance for Mr. Niles (0.3).
11/04/2021	0.1	<u>Staff: John Niles</u> Finalize and file retainer agreement and Notice of Appearance (0.1).
11/24/2021	0.0	<u>Staff: John Niles</u> Correspond with OGC regarding and prepare motion for extension to file Initial Brief [0.3 hours eliminated in billing judgment] .

**Staff Hours for Tammy Scanlan
Vet. App. No. 21-2827**

Date	Time	Summary
01/10/2022	7.6	<u>Staff: John Niles</u> Begin to draft Initial Brief: <ul style="list-style-type: none"> • Statement of the Issues (0.8) • Statement of the Case (0.8) • Statement of Facts (through Mr. Scanlan's passing) (3.0) • Statement of Facts (through Board decision on appeal) (3.0)
01/11/2022	3.8	<u>Staff: John Niles</u> Continue to draft Initial Brief: <ul style="list-style-type: none"> • Argument, Part I, updating similar material from prior briefing (1.0) • Argument, Part II, statutory and regulatory issues likely warranting panel review, Board error (1.5); error's prejudice (1.3)
01/12/2022	6.6	<u>Staff: John Niles</u> Continue to draft Initial Brief: <ul style="list-style-type: none"> • Argument, Part III, Board error (1.2); error's prejudice, to point regarding 38 U.S.C. § 5121A(b) (3.0); error's prejudice, from § 5121A(b) to end (1.5). • Conclusion (0.1) • Summary of the Argument (0.8)
01/13/2022	3.2	<u>Staff: John Niles</u> Draft inserts to increase brief's persuasive value (1.7). Draft Table of Authorities and finalize brief, including Table of Contents (1.5).
05/11/2022	0.0	<u>Staff: John Niles</u> Correspond with OGC regarding and prepare motion for extension to file Reply Brief [0.2 hours eliminated in billing judgment] .
06/26/2022	8.0	<u>Staff: John Niles</u> Analyze Secretary's Brief and outline Reply Brief (1.5). Draft Reply Brief: <ul style="list-style-type: none"> • Preliminary Statement (0.5). • Argument, Part I, through dictionary definitions, to include researching the Secretary's cited dictionary (3.0) [additional 0.5 hours eliminated in billing judgment]. • Argument, Part I, from there to end (3.0) [additional 1.0 hours eliminated in billing judgment].
06/27/2022	4.5	<u>Staff: John Niles</u> Continue to draft Reply Brief: <ul style="list-style-type: none"> • Argument, Part II (3.0). • Conclusion (0.1). • Table of Authorities (0.7). Draft inserts (0.5) and finalize and file brief (0.2).

**Staff Hours for Tammy Scanlan
Vet. App. No. 21-2827**

Date	Time	Summary
07/07/2023	0.4	<u>Staff: John Niles</u> Analyze Record of Proceedings and determine that no dispute is necessary (0.4).
01/03/2023	0.1	<u>Staff: John Niles</u> Correspond with Ms. Scanlan regarding panel order, likely oral argument, and Katy S. Clemens joining the representation. Confer with Ms. Clemens regarding appeal (0.1).
01/03/2023	0.1	<u>Staff: Katy S. Clemens</u> Correspond with Mr. Niles regarding <i>Scanlan</i> appeal and upcoming oral argument (0.1).
01/09/2023	0.2	<u>Staff: Katy S. Clemens</u> Begin to review case; prepare Notice of Appearance (0.2).
01/27/2023	0.1	<u>Staff: Katy S. Clemens</u> Teleconference with Ms. Scanlan regarding case status (0.1).
02/01/2023	0.0	<u>Staff: Katy S. Clemens</u> Draft email to Ms. Scanlan regarding questions concerning case [0.1 hours eliminated in billing judgment] .
02/28/2023	0.6	<u>Staff: Katy S. Clemens</u> Teleconference with Mr. Niles regarding oral argument preparation and rough outline (0.6).
02/28/2023	0.3	<u>Staff: John Niles</u> Prepare for teleconference with Ms. Clemens regarding oral argument preparation, including to compile rough outline (0.3); teleconference with Ms. Clemens regarding same [0.6 hours eliminated in billing judgment] .
03/02/2023	0.1	<u>Staff: Katy S. Clemens</u> Email Mr. Niles regarding research projects for oral argument (0.1).
03/23/2023	0.2	<u>Staff: John Niles</u> Analyze and respond to email from new OGC attorney regarding meeting to discuss case, interpret same as overture regarding possible incoming JMPR, follow up to request pause of all work pending further word (0.2).
03/23/2023	0.0	<u>Staff: Katy S. Clemens</u> Correspond with Mr. Niles regarding possible incoming JMPR offer [0.1 hours eliminated in billing judgment] .
03/24/2023	1.1	<u>Staff: John Niles</u> Prepare to and participate in teleconference with OGC attorney regarding exploration of JMPR (0.7); follow up with client and Ms. Clemens regarding same (0.4).
03/24/2023	0.0	<u>Staff: Katy S. Clemens</u> Review draft JMPR [0.3 hours eliminated in billing judgment] .

**Staff Hours for Tammy Scanlan
Vet. App. No. 21-2827**

Date	Time	Summary
03/25/2023	0.5	<u>Staff: John Niles</u> Analyze draft JMPR and propose revisions to same (0.5)
03/28/2023	0.1	<u>Staff: John Niles</u> Re-review draft JMPR [0.2 hours eliminated in billing judgment]; correspond with OGC regarding same (0.1).
03/29/2023	0.2	<u>Staff: John Niles</u> Review revised draft JMPR and correspond with OGC regarding review and acceptance of revisions; finalize JMPR (0.2).
05/08/2023	1.9	<u>Staff: John Niles</u> Draft Equal Access to Justice Act application, including attachments and to eliminate hours in the exercise of billing judgment (1.9).

CERTIFICATION

As lead counsel for Ms. Scanlan in this Court action, I have reviewed the combined billing statement attached as Exhibit A. I am satisfied that it accurately reflects the work performed by all counsel and staff and that I have considered and eliminated all time that is excessive or redundant.

May 8, 2023

Respectfully submitted,

/s/ John D. Niles
John D. Niles
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Counsel for Appellant

EXHIBIT B



Databases, Tables & Calculators by Subject

Change Output Options: From: 1996 ▼ To: 2022 ▼ 

☐ include graphs ☐ include annual averages

[More Formatting Options](#) 

Data extracted on: February 11, 2022 (2:15:33 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS35ASA0

Not Seasonally Adjusted

Series Title: All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted

Area: Washington-Arlington-Alexandria, DC-VA-MD-WV

Item: All items

Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733		267.287		268.788		268.700		267.157	265.954	268.359
2021	270.535		272.347		275.822		279.099		280.933		284.240		277.728	273.603	281.852
2022	286.678														

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EXHIBIT C

USAO ATTORNEY'S FEES MATRIX — 2015-2021

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). *See Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. *See Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").

EXHIBIT D

Databases, Tables & Calculators by Subject

Change Output Options: From: 1996 ▼ To: 2022 ▼  ☐ include graphs ☐ include annual averages [More Formatting Options](#) 

Data extracted on: February 11, 2022 (2:18:25 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUUR0300SA0
Not Seasonally Adjusted
Series Title: All items in South urban, all urban consumers, not seasonally adjusted
Area: South
Item: All items
Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	151.1	151.5	152.4	153.2	153.5	154.0	154.0	154.1	154.5	154.9	155.1	155.1	153.6	152.6	154.6
1997	155.7	156.1	156.5	156.7	156.6	157.0	157.0	157.1	157.5	157.8	157.8	157.3	156.9	156.4	157.4
1998	157.6	157.8	158.2	158.5	158.8	159.1	159.3	159.5	159.5	159.8	159.6	159.6	158.9	158.3	159.6
1999	159.9	160.0	160.6	161.5	161.6	161.7	162.2	162.6	163.2	163.6	163.5	163.6	162.0	160.9	163.1
2000	164.1	164.8	166.5	166.7	166.7	167.5	168.0	168.0	168.5	168.5	168.6	168.4	167.2	166.1	168.3
2001	169.3	170.2	170.6	171.4	171.7	172.2	171.6	171.5	172.2	171.7	171.0	170.3	171.1	170.9	171.4
2002	170.6	171.0	172.1	173.1	173.2	173.5	173.6	173.8	174.2	174.9	174.9	174.6	173.3	172.3	174.3
2003	175.1	176.4	177.5	177.4	176.8	177.2	177.3	177.9	178.3	178.1	177.5	177.5	177.3	176.7	177.8
2004	178.2	179.1	180.1	180.9	182.0	182.9	182.6	182.6	182.8	183.7	183.7	183.3	181.8	180.5	183.1
2005	183.6	184.7	185.9	187.3	187.3	187.8	188.5	189.4	192.0	192.5	190.7	190.1	188.3	186.1	190.5
2006	191.5	191.8	192.8	194.7	195.5	196.3	197.0	197.1	195.8	194.7	194.3	194.8	194.7	193.8	195.6
2007	195.021	195.950	197.904	199.618	200.804	201.675	201.571	201.041	201.697	202.155	203.437	203.457	200.361	198.495	202.226
2008	204.510	205.060	206.676	208.085	210.006	212.324	213.304	212.387	212.650	210.108	205.559	203.501	208.681	207.777	209.585
2009	204.288	205.343	206.001	206.657	207.265	209.343	208.819	209.000	208.912	209.292	209.738	209.476	207.845	206.483	209.206
2010	210.056	210.020	211.216	211.528	211.423	211.232	210.988	211.308	211.775	212.026	211.996	212.488	211.338	210.913	211.764
2011	213.589	214.735	217.214	218.820	219.820	219.318	219.682	220.471	220.371	219.969	219.961	219.469	218.618	217.249	219.987
2012	220.497	221.802	223.314	224.275	223.356	223.004	222.667	223.919	225.052	224.504	223.404	223.109	223.242	222.708	223.776
2013	223.933	225.874	226.628	226.202	226.289	227.148	227.548	227.837	227.876	227.420	226.811	227.082	226.721	226.012	227.429
2014	227.673	228.664	230.095	231.346	231.762	232.269	232.013	231.611	231.762	231.131	229.845	228.451	230.552	230.302	230.802
2015	226.855	227.944	229.337	229.957	230.886	232.026	231.719	231.260	230.913	230.860	230.422	229.581	230.147	229.501	230.793
2016	229.469	229.646	230.977	231.975	232.906	233.838	233.292	233.561	234.069	234.337	234.029	234.204	232.692	231.469	233.915
2017	235.492	236.052	236.154	236.728	236.774	237.346	236.942	237.892	239.649	239.067	238.861	238.512	237.456	236.424	238.487
2018	239.772	241.123	241.595	242.486	243.279	243.770	243.776	243.605	243.640	244.163	243.484	242.150	242.737	242.004	243.470
2019	242.547	243.856	245.554	246.847	246.667	246.515	247.250	246.953	246.891	247.423	247.385	247.289	246.265	245.331	247.199
2020	248.005	248.412	248.136	246.254	245.696	247.223	248.619	249.639	250.193	250.542	250.255	250.693	248.639	247.288	249.990
2021	252.067	253.386	255.319	257.207	259.343	261.668	263.013	263.728	264.593	267.160	268.360	269.263	261.259	256.498	266.020
2022	271.634														

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