

# GAO Highlights

Highlights of [GAO-14-458T](#), a testimony before the Subcommittee on Conservation, Energy, and Forestry, Committee on Agriculture, House of Representatives

## Why GAO Did This Study

In the United States, parties involved in federal litigation generally pay their own attorney fees. There are many exceptions to this general rule where “fee-shifting” statutes authorize the award of attorney fees to a successful, or prevailing, party. Some of these provisions also apply to the federal government when it loses a case. In 1980, Congress passed EAJA to allow parties that prevail in cases against federal agencies to seek reimbursement from the federal government for attorney fees, where doing so was not previously authorized. Although all federal agencies are generally subject to, and make payments under, attorney fee provisions, some in Congress have expressed concerns about the use of taxpayer funds to make attorney fee payments with agencies’ limited funding. These concerns include that environmental organizations are using taxpayer dollars to fund lawsuits against the government, including against USDA.

This statement addresses the extent to which USDA had information available on attorney fee claims and payments made under EAJA and other fee-shifting statutes for fiscal years 2000 through 2010. This statement is based on GAO’s April 2012 report on USDA and the Department of Interior attorney fee claims and payments and selected updates conducted in March 2014. To conduct the updates, among other things, GAO reviewed Forest Service budget documents for fiscal years 2014 and 2105 and interviewed Forest Service officials.

View [GAO-14-458T](#). For more information, contact Eileen R. Larence at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov).

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## USDA LITIGATION

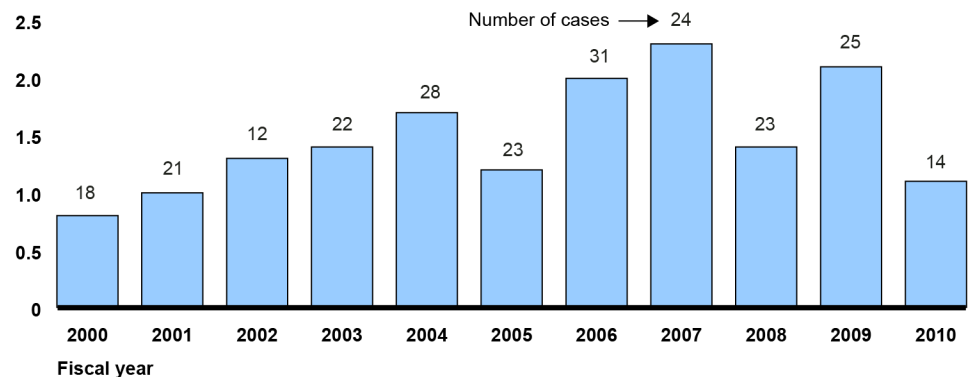
### Limited Data Available on USDA Attorney Fee Claims and Payments

## What GAO Found

In April 2012, GAO found that the Department of Agriculture (USDA) did not report any aggregated data on attorney fee claims and payments made under the Equal Access to Justice Act (EAJA) and other fee-shifting statutes for fiscal years 2000 through 2010, but USDA and other key departments involved—the Departments of the Treasury and Justice—maintained certain data on individual cases or payments in several internal agency databases. However, collectively, these data did not capture all claims and payments. USDA officials stated at the time that given the decentralized nature of the department and the absence of an external requirement to track or report on attorney fee information, the information was not centrally tracked and decisions about whether to track attorney fee data and the manner in which to do so were best handled at the agency level. Officials from 29 of the 33 USDA agencies GAO contacted for its April 2012 report stated that they did not track or could not readily provide GAO with this information. The remaining 4 USDA agencies had mechanisms to track information on attorney fees, were able to compile this information manually, or directed GAO to publicly available information sources. GAO found that the Forest Service was the only program agency within USDA that was able to provide certain attorney fee data across the 11-year period. GAO reported in April 2012 that about \$16.3 million in attorney fees and costs in 241 environmental cases from fiscal years 2000 through 2010 was awarded against or settled by the Forest Service (see fig. below).

**Attorney Fees and Costs Awarded against the Forest Service in Environmental Cases and Number of Cases, Fiscal Years 2000 through 2010**

Dollars (in millions)



Source: GAO analysis of Forest Service data.

Note: Forest Service data may include attorney fees authorized by underlying statutes, EAJA subsection (b), and EAJA subsection (d); as such, some funds may have been paid by the Judgment Fund, as opposed to agency appropriations.

However, the extent to which the 4 USDA agencies had attorney fee information available for the 11-year period varied. Given this limitation as well as others, such as inconsistent availability of payment data, GAO concluded that it was difficult to comprehensively determine the total number of claims filed for attorney fees, who received payments, in what amounts, and under what statutes. GAO did not make any recommendations in its April 2012 report.