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Conservation, Energy, and Forestry,
Committee on Agriculture, House of
Representatives

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USDA LITIGATION

Limited Data Available on USDA Attorney Fee Claims and Payments

Statement of Eileen R. Larence, Director, Homeland
Security and Justice

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.

March 2014

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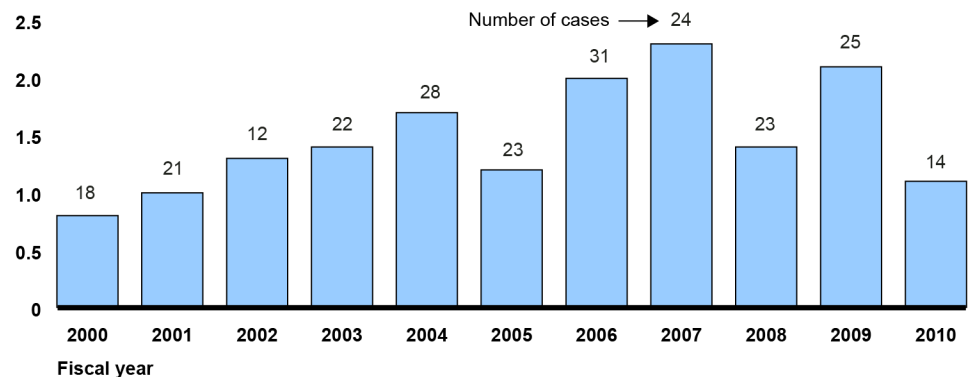
Limited Data Available on USDA Attorney Fee Claims and Payments

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.

Chairman Thompson, Ranking Member Walz, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on attorney fee claims and payments resulting from litigation involving the Department of Agriculture (USDA) and, in particular, the Forest Service. In the United States, parties involved in federal litigation generally pay their own attorney fees. There are many exceptions to this general rule where 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 the Equal Access to Justice Act (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.¹ The premise of EAJA was to help ensure that decisions to contest governmental actions are based on the merits and not the cost of litigation, and, in enacting the law, Congress found that because of the greater resources and expertise of the federal government, the standard for an award of fees against it should be different from the standard governing an award against a private litigant, in certain situations. 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, particularly against the USDA, the Department of the Interior (Interior), and the Environmental Protection Agency (EPA).²

My testimony today 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 2010.³ This

¹Pub. L. No. 96-481, tit. II, 94 Stat. 2321, 2325 (1980) (codified as amended at 5 U.S.C. § 504; 28 U.S.C. § 2412).

²See for example, GAO, *Private Attorneys: Selected Attorneys' Fee Awards Against Nine Federal Agencies in 1993 and 1994*, [GAO/GGD-96-18](#) (Washington, D.C.: Oct. 31, 1995), and *Equal Access to Justice Act: Its Use in Selected Agencies*, [GAO/HEHS-98-58R](#) (Washington, D.C.: Jan. 14, 1998).

³A "fee-shifting" statute allows for the payment of attorney fees by a losing party to a prevailing party.

statement is based on our April 2012 report on USDA Interior attorney fee claims and payments made under EAJA and other fee-shifting statutes and selected updates conducted in March 2014.⁴ To conduct the updates, including assessing the reliability of the updated Forest Service data, we reviewed the Forest Service’s fiscal years 2014 and 2015 budget justifications to obtain fiscal year 2011 through 2013 EAJA data and interviewed Forest Service officials to confirm that the Forest Service continues to use the same methods to track attorney fee payments that we reported in April 2012. In addition, we reviewed an August 2011 GAO report on environmental litigation involving EPA.⁵ Information about the scope and methodology of the prior GAO reports is included in the April 2012 and August 2011 reports. We conducted this work in accordance with all sections of GAO’s Quality Assurance Framework that were relevant to our objective. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

Background

USDA has a broad and far-reaching mission—including improving farm economies and the nation’s nutrition, enhancing agriculture trade, and protecting the nation’s natural resource base and environment—and the department may face the prospect of litigation over its regulations and other actions. As with other federal agencies, where USDA is engaged in judicial litigation—cases brought in a court, including those that are settled—as a plaintiff or a defendant, the Department of Justice (DOJ) generally provides legal representation,⁶ and USDA provides technical

⁴GAO, *Limited Data Available on USDA and Interior Attorney Fee Claims and Payments*, [GAO-12-417R](#) (Washington, D.C.: Apr. 12, 2012).

⁵GAO, *Environmental Litigation: Cases against EPA and Associated Costs over Time*, [GAO-11-650](#) (Washington, D.C.: Aug. 1, 2011).

⁶According to DOJ officials, three divisions litigate on behalf of USDA: (1) the Environment and Natural Resources Division handles most of the work on environmental litigation cases; (2) the Civil Division handles a broad range of litigation, including commercial, personnel, torts, and consumer protection litigation; and (3) the Executive Office for United States Attorneys liaises with DOJ and the 94 U.S. Attorneys Offices that represent the United States in civil and criminal matters across the nation and its territories. The cases that the Attorneys’ Offices handle overlap in some areas of law with those of the other two divisions.

and subject matter expertise and assists with the case, such as by drafting documents for DOJ to file and conducting research.⁷

The types of actions that involve USDA are varied. For example, lawsuits may involve challenges to certain agency actions—such as under provisions of the Endangered Species Act, which permits parties to file challenges to government actions affecting threatened and endangered species, or under the National Environmental Policy Act, which requires federal agencies to prepare a statement identifying the environmental effects of major actions they are proposing or ones for which third parties seek federal approval or funding and that significantly affect the environment. Cases may involve other statutes, such as title VII of the Civil Rights Act, which prohibits discrimination in employment. Additionally, the Administrative Procedure Act authorizes challenges to certain agency actions that are considered final actions, such as rulemakings and decisions on permit applications.

With respect to the payment of attorney fees, in the context of judicial cases, the law generally provides for three ways that prevailing parties can be eligible for the payment of attorney fees by the federal government.⁸ First, many statutes contain provisions authorizing the award of attorney fees from a losing party to a prevailing party; many of these provisions apply to the federal government. Second, where there is a fee-shifting statute that allows for the payment of attorney fees by a losing party to a prevailing party but is not independently applicable to the federal government, EAJA provides that the government is liable for reasonable attorney fees to the same extent as a private party (i.e., claims paid under EAJA subsection (b)).⁹ Under these first two ways,

⁷The default rule is that DOJ is responsible for all litigation on behalf of the United States and its administrative agencies. 28 U.S.C. §§ 516, 519; 5 U.S.C. § 3106. There are agencies, however, that have independent litigation authority.

⁸Under 28 U.S.C. § 2414, except as otherwise provided by law, compromise settlements of claims referred to the DOJ for defense of imminent litigation or suits against the United States or its agencies, shall be settled and paid in a manner similar to judgments. Thus, when DOJ settles cases on behalf of a federal agency, out-of-court and court-approved settlements may provide for payment of attorney fees and costs, depending on the underlying claims.

⁹This provision provides that the United States is liable for such fees and expenses to the same extent that any other party would be liable under the common law or the terms of any statute that specifically provides for such an award. 28 U.S.C. § 2412(b).

when a party prevails in litigation against the government and is awarded attorney fees under court order or settlement,¹⁰ the amounts generally are paid from the Department of the Treasury's (Treasury) Judgment Fund (a permanent, indefinite appropriation that pays judgments against federal agencies that are not otherwise provided for by other appropriations).¹¹ Third, EAJA provides that in any civil action where there is no fee-shifting statute, prevailing parties generally shall be awarded attorney fees when the government cannot prove that its action was substantially justified (i.e., claims paid under EAJA subsection (d)).¹² These awards or settlements are paid from the losing agency's appropriation.

In adversary administrative adjudications—generally, proceedings that are brought in a special agency forum, rather than in a court, and in which the government position is represented—a separate provision of EAJA applies. Specifically, EAJA provides that in adversary adjudications, the government is liable to a prevailing party for reasonable attorney fees when the government cannot prove that its action was substantially justified.¹³ When such fees are awarded or agreed to in a settlement, they are generally paid from the agency's appropriated funds.¹⁴

In this statement, we refer to attorney fees anytime fees were paid, regardless of the source of law authorizing the payment—independently

¹⁰For purposes of this statement, we use “awarded” to reflect attorney fees that are awarded by administrative or court decision as well as those provided in settlements.

¹¹31 U.S.C. § 1304. Regarding payments of attorney fees under the statutory fee-shifting provisions independently applicable to the federal government, these are generally paid from the Judgment Fund unless the statute at issue provides otherwise. Regarding EAJA subsection (b) payments, an exception is that where a court finds an agency acted in bad faith, the payment cannot be made from the Judgment Fund.

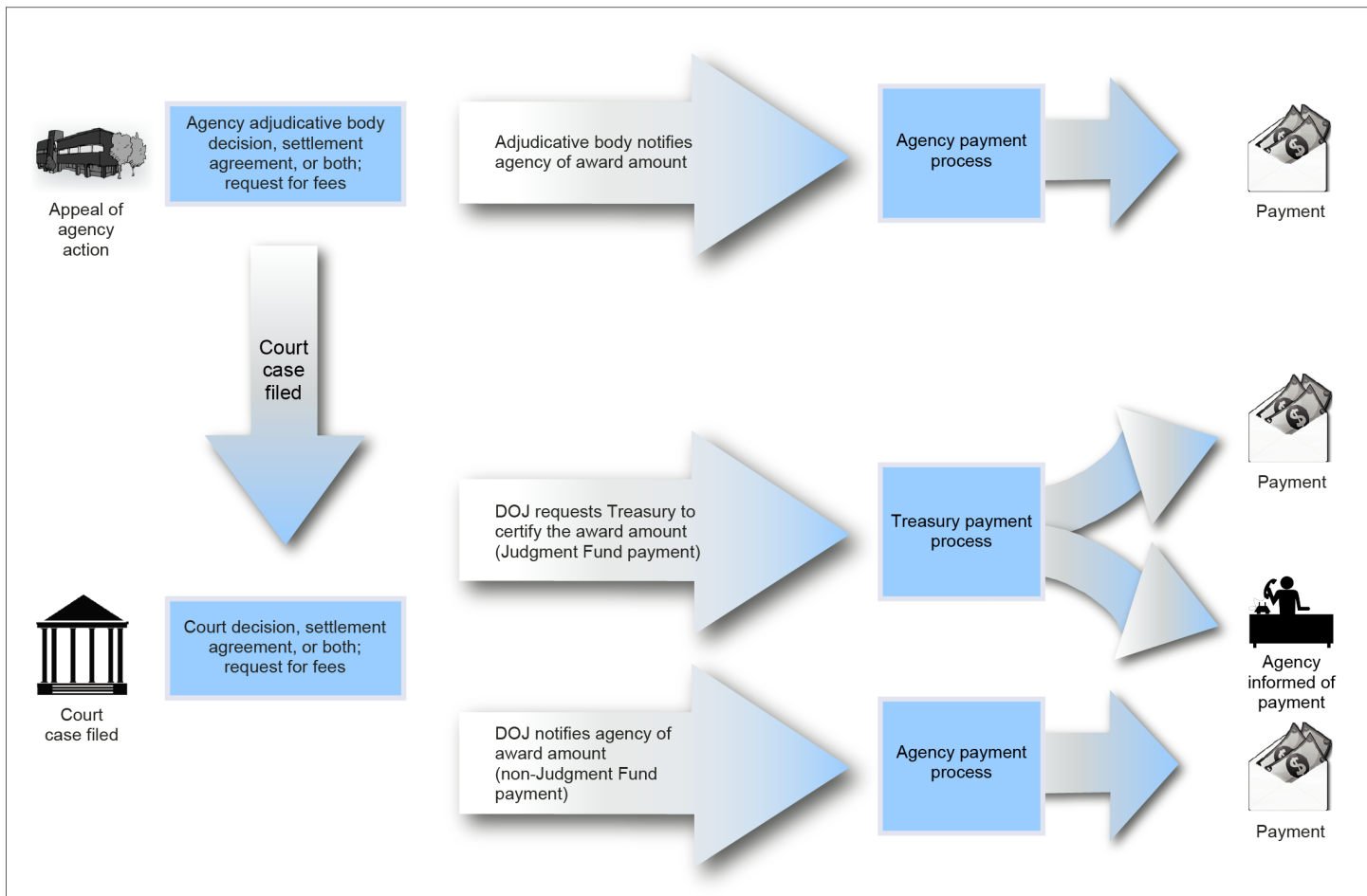
¹²In these cases, EAJA limits the prevailing plaintiff's eligibility to receive payment by defining (at the time the lawsuit is filed) an eligible party as either an individual with a net worth of \$2 million or below or a business owner or any partnership, corporation, association, local government, or organization with a net worth of \$7 million or below and 500 or fewer employees. However, tax-exempt nonprofit organizations and certain agriculture cooperative associations are considered eligible parties regardless of net worth.

¹³5 U.S.C. § 504(a), (b)(1)(C).

¹⁴Certain statutes, such as the Small Claims Act, 31 U.S.C. § 3723(c), and Federal Tort Claims Act, 28 U.S.C. § 2672, authorize the payment of administrative claims from the Judgment Fund. However, in our April 2012 report, we did not identify any attorney fee payments that were paid under these statutes.

applicable statutory fee-shifting provisions, EAJA subsections (b) or (d), or EAJA's adversarial adjudication provisions—and whether awarded by a court or administrative forum or provided in a settlement. The payment process differs, however, based on the statute involved and whether the award was made at the administrative level or through the courts, as shown in figure 1.

Figure 1: Typical Process for Administrative and Judicial Cases Resulting in Attorney Fee Payments



Source: GAO analysis of DOJ, Treasury, USDA, and Interior information.

Note: According to the Department of Agriculture, in some instances fees are paid initially out of the Judgment Fund but ultimately out of agency appropriations through a reimbursement to the Judgment Fund.

Most USDA Agencies Did Not Have Readily Available Attorney Fee Information

In April 2012, we found that USDA did not report any aggregated data on attorney fee claims and payments made under EAJA and other fee-shifting statutes for fiscal years 2000 through 2010, but USDA and other key departments involved—Treasury and DOJ—maintained certain data on individual cases or payments in several internal agency databases.¹⁵ 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.¹⁶

Accordingly, for our April 2012 report, we contacted 33 agencies within USDA to obtain their available attorney fee information.¹⁷ In response, officials from 29 of the 33 USDA agencies told us that they did not track or could not readily provide us with this information. These officials generally stated that this is because their agencies deal with few or no attorney fee cases, the payment amounts are minimal, another agency within the department tracked this, or the agency did not need this information for internal management purposes. For example, an Acting Director in the USDA Farm Service Agency stated that because so few cases are filed against the agency, there is little value in tracking the data. We reported that the remaining 4 USDA agencies we contacted either had mechanisms to track information on attorney fees, or were able to compile this information manually using hard copy files, or directed us to publicly available sources where we could obtain the information. These four agencies were: (1) the National Appeals Division (NAD), an agency that conducts hearings of administrative appeals of adverse actions by certain USDA agencies; (2) the Office of Assistant Secretary for Civil Rights (OASCR) an agency that adjudicates employee discrimination

¹⁵[GAO-12-417R](#).

¹⁶From 1981 through 1995, EAJA provided for governmentwide reporting on claims paid under EAJA in the form of two annual reports to Congress. In 1995, EAJA reporting requirements were repealed. Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, §§ 1091, 3003, 109 Stat. 707, 722, 734. The financial management system for USDA includes information on litigation costs. However, the information in the system does not isolate attorney fees and costs from damages (i.e., payments awarded to prevailing parties as a result of the case, which are not related to attorney fees or costs).

¹⁷USDA agencies and offices are referred to as agencies for purposes of this statement.

complaints; (3) USDA's Office of Administrative Law Judges (OALJ);¹⁸ and (4) the Forest Service, which is responsible for managing its lands for various purposes—including recreation, grazing, and timber harvesting—while ensuring that such activities do not impair the lands' long-term productivity. In our April 2012 report, we identified one program agency at USDA—the Forest Service—that maintained attorney fee data. The Forest Service maintained the data in two different information sources: (1) a spreadsheet that tracked the amounts of attorney fees and costs awarded or settled, among other items, for environmental litigation, including cases filed under the National Environmental Policy Act, the National Forest Management Act, and the Endangered Species Act; and (2) a separate accounting code in the USDA financial database.¹⁹ We discuss these two sources in further detail below. We reported that the attorney information maintained by these four agencies varied with respect to the time frame for which data were available, whether the agency had information on the amount awarded versus the amount paid, and the statutes under which the cases were brought, among other information.

Further, in April 2012, we reported that given the differences in attorney fee information available across the 4 USDA agencies and the limitations identified below, it was difficult to comprehensively determine (1) the total number of claims filed for attorney fees, (2) who received payments, (3) in what amounts, and (4) under which statutes. Specifically, we found:

- **The total number of claims filed for attorney fees could not be determined.** Two USDA agencies—NAD and OALJ—that provided information on attorney fee data did not maintain data about claims for attorney fees that were filed but denied. As a result, we concluded that the number of claims filed may be understated for these agencies.
- **Information on who received the payment was not always recorded.** Payment of attorney fees may be made to one or more parties or directly to the attorney. Agencies that had information on attorney fees sometimes identified a particular party in the case, as opposed to everyone who received payments. For example, we

¹⁸OALJ directed us to publicly available sources on cases.

¹⁹This is USDA's budget object classification code 4236.

reported that the Forest Service spreadsheet listed 241 cases with attorney fees all of which identified the first-named party in the case, but 46 cases did not identify the payee. Given that attorney fees may be paid to the first named party, to other parties in the case, or to attorneys, we concluded that the first named party may not reliably identify who actually received the attorney fee payment.²⁰

- **Data on actual attorney fee payments made were not consistently available.** We also reported that 2 of the 4 agencies—NAD and OALJ—provided information on award or settlement amounts rather than attorney fee payment amounts.²¹ Amounts awarded reflect the attorney fee award included in a decision or settlement, and amounts paid reflect the actual amount the agency paid. According to DOJ officials at the time, award or settlement amounts may differ from payment amounts because award amounts may increase because of added interest expense before payment is disbursed. Moreover, DOJ and agency officials stated that award or settlement amounts may increase or decrease as a result of subsequent legal proceedings (e.g., a prevailing party could appeal the award amount, and an appeal could change the amount the agency ultimately paid). In addition, decisions and settlement agreements may not separate attorney fees and costs from damages, a fact that prevents agencies and Treasury from knowing exactly how much was allocated for each purpose.²² We concluded that in these instances, the attorney fee amounts cannot be determined.
- **Statutes under which the case was brought were not always recorded.** Last, we found that the Forest Service did not track

²⁰For example, for our April 2012 report, we reviewed 32 attorney fee and cost payments within the Forest Service's financial database. For 22 of the 32 payments, the payee did not match the first named party identified in the Forest Service spreadsheet. We could not make a determination for 2 payments because the data did not include sufficient information. Another payment was excluded from the analysis because it pertained to an administrative case. In the remaining 7 payments, the payee and party matched.

²¹The Forest Service spreadsheet data included award, not payment, amounts. However, the Forest Service also began capturing EAJA attorney fee payment data in the USDA financial database in fiscal year 2009. OASCR maintained data on both award or settlement amounts and attorney fee payments during fiscal years 2005 through 2010.

²²Damages are a distinct type of monetary award from attorney fees or costs. Some cases are resolved by settlements or decisions that provide for damages and attorney fees and costs as one lump sum.

information on the statutes underlying the award or payment because the Forest Service financial database does not have a statute field, and according to the official who collected the spreadsheet data, he did not research statute information because of time constraints. However, the Forest Service official estimated that between two-thirds and three-quarters of the Forest Service natural resource cases involve challenges under the National Environmental Policy Act, the National Forest Management Act, the Endangered Species Act, or a combination of these acts.

In our April 2012 report, we found that the Forest Service was the only program agency that was able to provide us with attorney fee data across the 11-year period and gathered information on attorney fees and cost awards associated with cases from three sources—Forest Service regional officials, a Forest Service-commissioned university study, and publicly available court documents. Forest Service officials maintained this information in a spreadsheet that tracked the amounts of attorney fees and costs awarded or settled, among other items, for environmental litigation, including cases filed under the National Environmental Policy Act, National Forest Management Act, and Endangered Species Act. Forest Service officials told us at the time that they undertook the effort to compile information on cases resulting in attorney fee and cost awards to provide internal guidance to Forest Service management. For example, we reported that the information on attorney fee and cost awards helped the agency make informed decisions on whether proposed fees in ongoing cases were reasonable in light of recent cases involving similar challenges. We also reported on several limitations of the data that were identified by the official who developed the spreadsheet. Specifically:

- The list of cases was not intended to be a definitive list of all attorney fee and cost payments and the payments should be considered in totality rather than case by case.
- The data include only environmental cases. Accordingly, nonenvironmental cases, such as those brought under the Freedom of Information Act (FOIA), Equal Employment Opportunity Act, and other civil rights statutes, were not included.

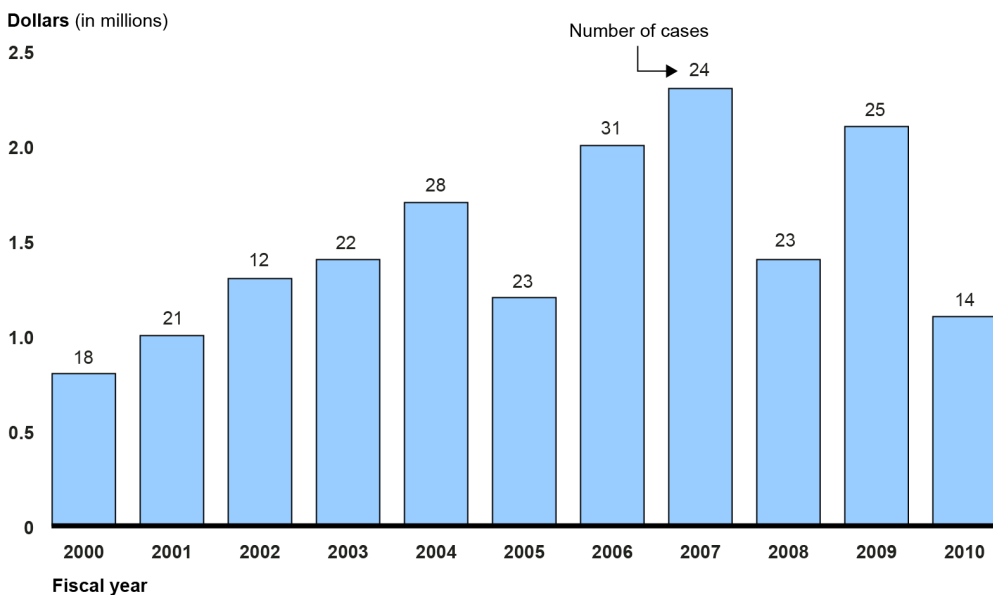
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- Not all of the attorney fees and costs included in the spreadsheet were paid from Forest Service appropriations, as Treasury may have paid some of the attorney fees and costs from its Judgment Fund.²³
 - In some instances, award or settlement amounts may be overstated. Specifically, court documents Forest Service officials reviewed to compile the data do not always break out award amounts to be paid by separate defendants. For example, if a party sued the Forest Service and Interior's U.S. Fish and Wildlife Service and prevailed, both agencies might need to pay attorney fees and costs if they lost, but the court might not specify the amount each agency is to pay. In these instances, the data assumed the Forest Service paid the total amount.

Using the Forest Service's spreadsheet data, we reported 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.²⁴ Figure 2 shows the amounts of attorney fees awarded and number of cases at the Forest Service by fiscal year.

²³Although the Judgment Fund database generally identifies portions of a payment attributed to attorney fees, costs, and other categories, in conducting our review for the April 2012 report, we could not match the Forest Service spreadsheet data with the Judgment Fund in order to isolate attorney fees because the data sets did not have a common identifier. Additionally, the Forest Service spreadsheet did not include the source of the attorney fee payments.

²⁴Unless otherwise noted, all figures reported in this statement are in constant 2010 dollars.

Figure 2: Attorney Fees and Costs Awarded against the Forest Service in Environmental Cases and Number of Cases, Fiscal Years 2000 through 2010



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.

Figure 2 shows that the greatest number of cases was concluded in fiscal year 2006 (31 cases), and the awards against the Forest Service were greatest in 2007 (\$2.3 million). Additionally, we reported that the awards ranged from \$350 to about \$500,000, and that larger awards may skew the data for the year in which the Forest Service made those awards or settlements. For example, in 2010, one payment accounted for over \$400,000 of the \$1.1 million (about 36 percent) in total awards.

Our April 2012 report found that in March 2009, the Forest Service began tracking EAJA payments under a separate accounting code in the USDA financial database, in addition to the Excel spreadsheet. These data show that the Forest Service paid about \$2.3 million in 32 cases from March 2009 through September 2010.²⁵ In April 2013, the Forest Service

²⁵Most payments (29 of 32) in the Forest Service financial database were also included with the 241 cases in the spreadsheet.

publicly reported information on the agency's EAJA attorney fee payments.²⁶ Specifically, in its fiscal year 2014 budget justification, the Forest Service reported that it had 15 EAJA cases in fiscal year 2011 (awarding about \$1.5 million) and 11 cases in 2012 (awarding about \$565,000). According to the Forest Service's fiscal year 2015 budget justification, the agency had 18 EAJA cases in 2013, awarding about \$1.6 million.

In April 2012, we also reported that Treasury maintains certain data on some USDA cases involving attorney fee payments. In judicial cases where payments from the Judgment Fund are authorized, DOJ officials submit the payment information to Treasury using standardized forms, and Treasury processes the payment and typically informs relevant agencies when it releases the payment to the payee. Specifically, we found that Treasury made 187 payments totaling \$16.9 million on behalf of USDA from March 2001 through September 30, 2010. These payments were most frequently made in connection with litigation brought under the Equal Credit Opportunity Act, Title VII of the Civil Rights Act of 1964, FOIA, or the Endangered Species Act, as shown in table 1. Treasury made 88 of the 187 payments as a result of a class action lawsuit on behalf of black farmers alleging discrimination.²⁷

²⁶The Forest Service began publicly reporting EAJA attorney fee payments in response to the House report accompanying the Department of the Interior, the Environmental Protection Agency, and Related Agencies appropriations bill for fiscal year 2012, which directed Forest Service, Interior bureaus, and EPA to provide to the House and Senate Committees on Appropriations and the public specific information related to attorney fee payments made under EAJA. H.R. Rep. No. 112-151, at 8-9 (2011). See also H.R. Rep. 112-331, at 1046 (2011) (Conf. Rep.).

²⁷ See *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), aff'd 206 F.3d 1212 (D.C. Cir. 2000); see also, *Congressional Research Service, The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers* (2011).

Table 1: Statute under Which Case Was Brought, Amount Paid, and Number of Payments Paid by Treasury from the Judgment Fund on Behalf of USDA, March 2001 through September 2010

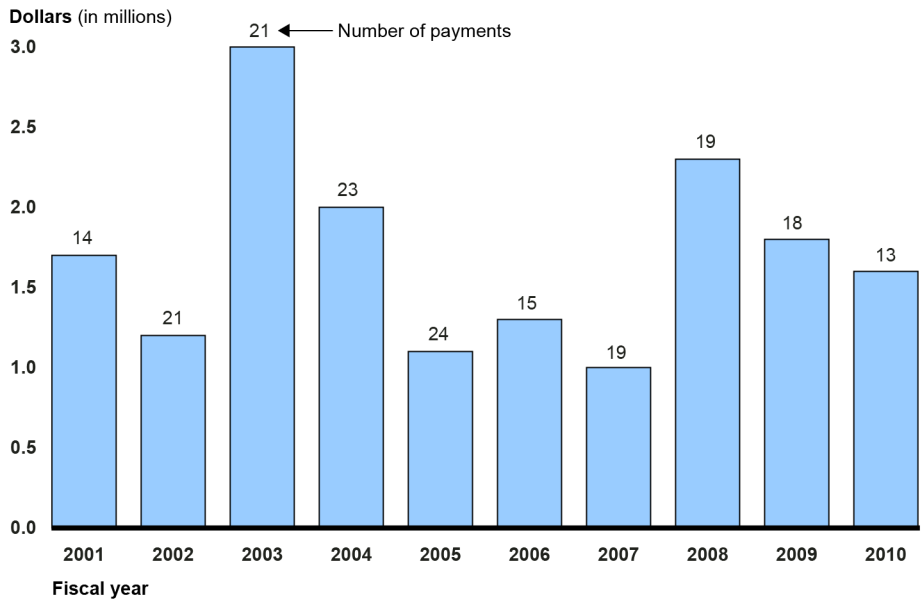
Statute under which case was brought^a	Attorney fees and costs	Number of payments
Equal Credit Opportunity Act, 15 U.S.C. § 1691e	\$9,190,168	92
Civil Rights Act Title VII, 42 U.S.C. § 2000e-16	4,444,604	39
Endangered Species Act, 16 U.S.C. § 1540	1,628,215	16
Freedom of Information Act, 5 U.S.C. § 552	449,614	21
Clean Water Act, 33 U.S.C. § 1365	366,992	5
Tucker Act (inverse condemnation & other claims), 28 U.S.C. § 1491	343,687	1
Fair Labor Standards Act, 29 U.S.C. § 216	282,093	1
Payments for which statute could not be determined	93,909	6
Rehabilitation Act (disability discrimination), 29 U.S.C. §§ 791, 794a	51,934	2
Bandelier National Monument Administrative Improvement and Watershed Protection Act of 1998, 16 U.S.C. § 698v-2, 40 U.S.C. § 3114	50,000	1
Tucker Act, 28 U.S.C. § 1346	12,154	1
Back Pay Act, 5 U.S.C. § 5596	6,429	1
Privacy Act, 5 U.S.C. § 552a	6,170	1
Total	\$16,925,969	187

Source: GAO analysis of Treasury data.

^aStatutes are as reported in Treasury's Judgment Fund Internet Claims System. For payments associated with inverse condemnation claims (an action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings), statutes are as identified in publicly accessible court records.

In April 2012, we also reported on the amount and number of payments Treasury made on behalf of USDA, by fiscal year, as shown in figure 3.

Figure 3: USDA Attorney Fees Paid and Number of Payments from Treasury's Judgment Fund, Fiscal Years 2001 through 2010



Source: GAO analysis of Treasury data.

Specifically, figure 3 shows that Treasury made the greatest number of payments on behalf of USDA in fiscal year 2005 (24 payments) and Treasury paid the highest amount of attorney fees and costs on behalf of USDA in 2003 (\$3 million). We found that the payments ranged from about \$175 to about \$1.1 million, and that larger payments may skew the data for the year in which Treasury made those payments. For example, in 2008, one payment totaling about \$1.1 million accounted for about half of the \$2.3 million in total payments. Further, 11 of the 13 fiscal year 2010 cases were payments stemming from a class action lawsuit filed by black farmers and made up about \$1.5 million of the \$1.6 million in payments for that year.²⁸

In addition, we found in April 2012 that DOJ maintains certain data on some USDA cases involving attorney fee payments, but DOJ's data are not readily retrievable or complete. In particular, DOJ has internal agency databases that capture information on individual court cases, but officials

²⁸*Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999).

stated at the time that these databases do not reliably capture attorney fees and costs.²⁹ For example, we reported that DOJ officials said that their databases were designed for internal management purposes and not for agency-wide statistical tracking. Over time, some EAJA data have been entered into the databases; however, the agency does not have a mechanism for determining what percentage of total EAJA awards is in the database or if the data were entered consistently. According to a senior DOJ official, DOJ is not required to enter EAJA award data into its database. We concluded that because DOJ handled tens of thousands of cases over the 11-year period on behalf of USDA, we could not readily or systematically review all of the case files for our April 2012 review to determine the attorney fee awards.

Litigation costs are broader than attorney fees; they may include damages awarded to the prevailing party, personnel hours that USDA program staff and attorneys spent, and DOJ attorney costs. Our April 2012 report on USDA attorney fee payments did not address the extent to which USDA and DOJ are capturing these broader costs because we focused specifically on attorney fee claims and payments. However, through the course of our review, we found that some information on these broader costs is available. For example, we reported that USDA has an accounting code in its financial database for tracking the costs of litigation. This code (4230) captures information on litigation costs, including attorney fees awards, damages and other costs.³⁰ Like USDA's code that captures attorney fee payment information described earlier (4236), this code does not differentiate the statute under which agencies made such payments. In March 2014, Forest Service officials confirmed that the agency is using these codes and also stated that the agency does not track other litigation costs, such as the cost or time associated with the support provided to DOJ in preparation for litigation, because the litigation specialists who assist DOJ with these cases are salaried employees. In addition, in August 2011, we reported that DOJ maintains some data on the number of hours attorneys devote to environmental

²⁹Specifically, DOJ officials said at the time that they are not in the best position to collect and report information on attorney fees and costs because they are often not aware of administrative cases.

³⁰Other costs includes court costs, such as filing fees and reporting fees, and attorney expenses, such as the cost for expert witnesses, telephone, postage, travel, copying, and computer research.

litigation defending EPA.³¹ Specifically, the Environment and Natural Resources Division's case management system contains information on the number of hours the division's attorneys spent working on environmental litigation defending EPA. However, we reported that the U.S. Attorneys' Office's database does not contain information on attorney hours worked by case, which meant that in our prior report on EPA litigation, we could not determine the time these attorneys spent on each case.

Chairman Thompson, Ranking Member Walz, and members of the subcommittee, this completes my prepared statement. I would be happy to respond to any questions you may have at this time.

Contacts and Acknowledgments

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³¹[GAO-11-650](#).

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