

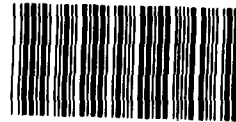
GAO

Fact Sheet for the Chairman,
Government Information, Justice,
and Agriculture Subcommittee
Committee on Government Operations
House of Representatives

October 1992

PRIVATE ATTORNEYS

Information on the Federal Government's Use of Private Attorneys



148036

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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-249160

October 20, 1992

The Honorable Bob Wise
Chairman, Government Information,
Justice, and Agriculture Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This fact sheet responds to your request for information on the federal government's use of private attorneys. As agreed, we surveyed 179 federal entities in the three branches to obtain the information requested on contracted legal services and on attorneys' fees awarded to prevailing parties in actions against the Federal government. Specifically, for contracted legal services, we obtained information on the authorities agencies cite to contract for legal services, number of contracts awarded, reasons for contracting, amounts paid, contracted legal services, and fees paid for the services. For attorneys' fees awarded to prevailing parties, we obtained information on the statutes that authorize awards of attorneys' fees to prevailing parties, number of awards, amounts paid to prevailing parties, and source of funds used to pay prevailing parties. We also obtained information on related studies.

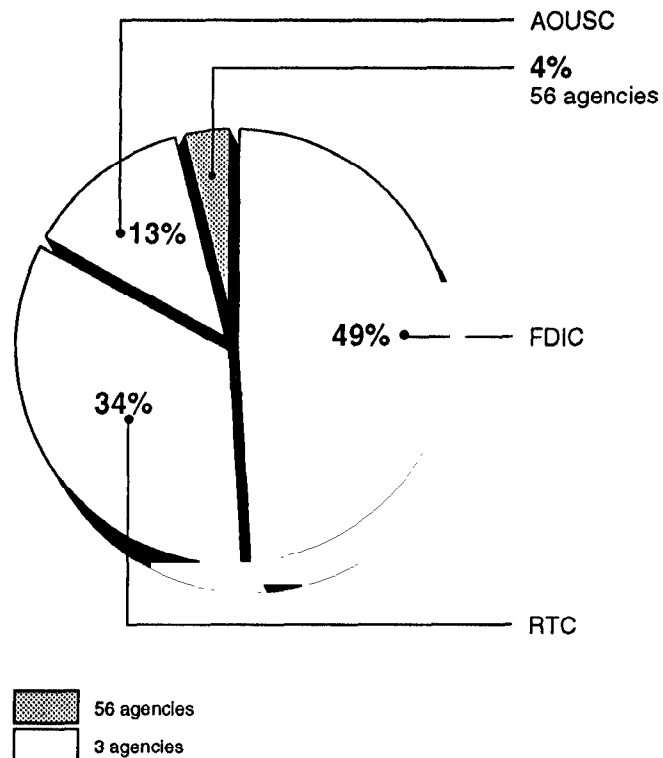
RESULTS

Overall, during fiscal year 1991, the federal government paid over \$600 million in aggregate for both contracted legal services and attorneys' fees awarded to prevailing parties.

Fifty-nine agencies reported awarding 4,567 contracts and paying \$587 million for legal services during fiscal year 1991. Appendix III shows the number of contracts awarded and the amounts paid by each of these agencies. The largest users of contracted legal services were the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC), followed by the Administrative Office of the United States Courts' (AOUSC) appointments of private attorneys under the

Criminal Justice Act. As shown in figure 1, these agencies accounted for 96 percent of the total amount paid. The remaining 56 agencies paid 4 percent.

Figure 1: Three Agencies Accounted for 96 Percent of Contracted Legal Services Paid in Fiscal Year 1991



NOTE: Information provided by agencies. (See app. III.)

In addition, during fiscal year 1991, 38 agencies reported paying about \$26 million in attorneys' fees awarded to prevailing parties.

CONTRACTED LEGAL SERVICES

Contracted legal services involve the use of private attorneys for any legal services obtained through contracts, in which an attorney-client relationship is established.

Authority to contract

A total of 123 of the 147 agencies providing information we were able to use to make an assessment reported that they had authority to contract for legal services. (See app. I.) The Department of Justice generally represents the Government in litigation. However, some agencies are authorized to contract for legal services in litigation and other matters. The authority to contract for private attorneys can be either explicitly stated or implied in the laws relevant to the individual agency, or it can be delegated from the Department of Justice.¹ Appendix II lists the specific authorities cited by the agencies. About one-half of the agencies with authority to contract for private attorneys did not use contracted legal services during fiscal year 1991.

Reasons for contracting

The reasons given by the agencies for using private attorneys varied. (See app. IV.) The most prevalent reason cited for awarding the contracts in fiscal year 1991 was insufficiency of agency staff. Other reasons included the following; (1) need for expertise/specialized needs, (2) the use of private attorneys was determined to be more economical than using or increasing agency staff, (3) contracted legal services were mandated by legislation, (4) local court rules required the use of private attorneys, and (5) emergencies dictated the use of such services.

Types of contracted services and fees paid

The \$587 million paid in fiscal year 1991 was for the following types of services: (1) government contract law; (2) representation of federal employees sued individually as a result of performing official duties; (3) insolvency and debt collection; (4) real estate and landlord tenant law; (5) international law; (6) labor and employment law; (7) patent, trademark, and copyright law; (8) representation of indigents in

¹With regard to the availability of appropriated funds to pay attorneys' fees, see GAO/OGC-91-5 Appropriations Law - Vol. I, Chap.4.

criminal cases; and (9) other services. (See app. V.) Not all the agencies reported data to us in a way which would allow segregation of payments by types of service.

For those we were able to segregate, the range of fees for the contracted services paid for in fiscal year 1991 varied widely among the agencies. Included among the fees paid were hourly, contingency, and flat fees. See appendix V for the range and types of fees paid.

PRIVATE ATTORNEYS' FEES TO PREVAILING PARTIES

In addition to contracted legal services, some statutes authorize the award of attorneys' fees to a prevailing party in connection with certain administrative or judicial proceedings in which the prevailing party brought action against, or defended against, the federal government.

Federal statutes that authorize awards of attorneys fees

Generally speaking, the Federal government may not be assessed attorneys' fees unless such awards are expressly authorized by law. The Library of Congress' Congressional Research Service (CRS) has previously reported on awards of attorneys' fees by federal courts and federal agencies. The CRS report sets forth the language of federal statutes that authorize attorneys' fees, applicable statutory limitations on attorneys' fees, and other related subjects. The report was updated in August 1991 (CRS 91-584 A). Appendix VI is the CRS listing, which we did not verify, of the federal statutes that authorize awards of attorneys' fees.

Number of awards

During fiscal year 1991, 2,200 awards of attorneys' fees were made against 38 federal agencies. (See app. VII.)

Amounts paid for awards of attorneys' fees and source of funds

During fiscal year 1991, about \$26 million in attorneys' fees were paid to prevailing parties. About seventy percent of the payments resulted from judicial proceedings, and the remaining resulted from administrative proceedings. (See app. VIII.)

As a general rule, except where otherwise provided by law, agency appropriations may not be used to pay for money judgments against the United States. This rule applies to awards of attorneys' fees as well. For this reason, many judgments are paid from the Judgment Fund, a permanent, indefinite appropriation which is jointly controlled by GAO, the Department of Justice, and the

Department of the Treasury. However, many of the laws which authorize the award of attorneys' fees against the government also specify that payment of those awards shall come from agency appropriations, rather than the Judgment Fund. In fact, over 85 percent of the fiscal year 1991 payments were made from agency appropriated funds. The remaining payments were from the permanent Judgment Fund or other sources. (See app. IX.)

OTHER STUDIES RELATING TO PRIVATE ATTORNEYS

The Administrative Conference of the United States completed a survey in 1987 of the use of private attorneys by government agencies. The Conference does research and develops recommendations for improvements in the procedures by which federal agencies administer regulatory, benefit, and other government programs. As part of that survey, the Conference reviewed the process employed by agencies in deciding whether to retain outside counsel and the question of whether a fixed cap on hourly fees to be paid to private attorneys hired by agencies was advisable. It concluded that a governmentwide limitation was inadvisable because it might prevent the government from obtaining high quality legal services. The Conference also recommended a process that should be employed in retaining outside counsel, including the ethical considerations involved. (See app. X for the Conference's recommendation.)

The Judicial Improvements Act of 1990, Public Law No. 101-650, as amended, requires the Judicial Conference of the United States, the policy-making body of the federal judiciary, to assess the effectiveness of the Federal defender program under the Criminal Justice Act of 1964, as amended. The Judicial Conference is required to transmit a report of its study to the Committees on the Judiciary of the Senate and the House of Representatives by March 31, 1993, that includes: (1) any recommendations for legislation that the Judicial Conference finds appropriate, (2) a proposed formula for the compensation of Federal defender program counsel that includes an amount to cover reasonable overhead and reasonable hourly fees, and (3) a discussion of any procedural or operational changes that the Judicial Conference finds appropriate for implementation by the courts of the United States.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to provide the Subcommittee with requested information on the use of private attorneys by the federal government for fiscal year 1991, the latest year for which complete data were available. The Subcommittee requested information on (1) contracted legal services and (2) attorneys'

fees awarded to prevailing parties in all three branches of government, including the circumstances under which the use of private attorneys is authorized or permitted, and the total amounts and the range of fees that are paid to contracted private attorneys.

We developed a questionnaire to obtain the requested information and pretested it with four federal agencies. A technical review of the questionnaire was provided by the Administrative Conference of the United States. This assured us that the questions were interpreted correctly and that respondents could provide the requested information.

We mailed the questionnaire (see app. XI) to the heads of 179 agencies in the legislative, judicial, and executive branches on November 5, 1991. We included departments, agencies, independent establishments, government corporations; boards, committees, and commissions; and quasi-official agencies (see app. XII). We did followups in January 1992. Although we received responses for all entities, we did not receive requested data from all respondents. There were several different reasons cited for not providing the requested data, such as: the entity no longer existed, the entity did not consider itself a federal agency, national security was involved, or the data involved a consolidated response. (See app. I notes.)

We requested a consolidated response from each agency covering all its various components. All information in this fact sheet was officially reported to us by each individual agency. We did not verify the data provided by the agencies.

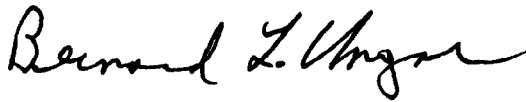
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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of the letter. At that time, we will send copies to other congressional committees and each of the agencies identified in this fact sheet. We will also send copies to interested parties and make copies available upon request.

B-249160

Please contact me at (202) 275-5074 if you or your staff have any questions concerning this fact sheet. Major contributors to this fact sheet are listed in appendix XIII.

Sincerely yours,

A handwritten signature in cursive script, reading "Bernard L. Ungar".

Bernard L. Ungar
Director, Federal Human Resource
Management Issues

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AGENCIES WHICH REPORTED AUTHORITY TO CONTRACT FOR LEGAL SERVICES

Agency	Authorization		
	Yes	No	No data
LEGISLATIVE AGENCIES			
Architect of the Capitol	X		
Congressional Budget Office		X	
General Accounting Office	X		
Government Printing Office	X		
Library of Congress	X		
Office of Technology Assessment	X		
Copyright Royalty Tribunal	X		
JUDICIAL AGENCIES			
Administrative Office of the United States Courts	X		
Federal Judicial Center		X	
The Supreme Court of the United States	X		
United States Court of Military Appeals		X	
United States Claims Court		X	
Temporary Emergency Court of Appeals			X
United States Tax Court	X		
United States Court of Appeals for the Federal Circuit	X		
United States Court of International Trade		X	
EXECUTIVE OFFICE OF THE PRESIDENT			
The White House Office			X
Council of Economic Advisers			X
Council on Environmental Quality		X	
National Critical Materials Council			X

Agency	Authorization		
	Yes	No	No data
National Security Council			X
National Space Council		X	
Office of Administration		X	
Office of Management and Budget	X		
Office of National Drug Control Policy	X		
Office of Policy Development			X
Office of Science and Technology Policy			X
Office of the U.S. Trade Representative	X		
Office of the Vice President	X		
CABINET DEPARTMENTS			
U.S. Department of Agriculture	X		
U.S. Department of Commerce	X		
U.S. Department of Defense	X		
U.S. Department of Education	X		
U.S. Department of Energy	X		
U.S. Department of Health and Human Services	X		
U.S. Department of Housing and Urban Development	X		
U.S. Department of the Interior	X		
U.S. Department of Justice	X		
U.S. Department of Labor	X		
U.S. Department of State	X		
U.S. Department of Transportation	X		
U.S. Department of the Treasury	X		
U.S. Department of Veterans Affairs	X		
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS			

Agency	Authorization		
	Yes	No	No data
ACTION	X		
Administrative Conference of the United States	X		
African Development Foundation	X		
Central Intelligence Agency			X
Commission on the Bicentennial of the U.S. Constitution	X		
Commission on Civil Rights		X	
Commodity Futures Trading Commission	X		
Consumer Product Safety Commission	X		
Defense Nuclear Facilities Safety Board	X		
Environmental Protection Agency	X		
Equal Employment Opportunity Commission	X		
Export-Import Bank of the United States	X		
Farm Credit Administration	X		
Federal Communications Commission	X		
Federal Deposit Insurance Corporation	X		
Federal Election Commission	X		
Federal Emergency Management Agency	X		
Federal Housing Finance Board	X		
Federal Labor Relations Authority	X		
Federal Maritime Commission	X		
Federal Mediation and Conciliation Service	X		
Federal Mine Safety and Health Review Commission	X		
Federal Reserve System	X		
Federal Retirement Thrift Investment Board	X		
Federal Trade Commission	X		

Agency	Authorization		
	Yes	No	No data
General Services Administration	X		
Inter-American Foundation	X		
Interstate Commerce Commission	X		
Merit Systems Protection Board	X		
Office of Special Counsel		X	
National Aeronautics and Space Administration	X		
National Archives and Records Administration	X		
National Capital Planning Commission	X		
National Credit Union Administration	X		
National Endowment for the Arts		X	
National Labor Relations Board		X	
National Mediation Board			X
National Railroad Passenger Corporation (Amtrak)			X
National Science Foundation	X		
National Transportation Safety Board	X		
Nuclear Regulatory Commission	X		
Occupational Safety and Health Review Commission	X		
Comptroller of the Currency	X		
Office of Government Ethics	X		
Office of Independent Counsel	X		
Office of Personnel Management	X		
Office of the United States Nuclear Waste Negotiator	X		
Panama Canal Commission	X		
Peace Corps	X		

Agency	Authorization		
	Yes	No	No data
Pennsylvania Avenue Development Corporation	X		
Pension Benefit Guaranty Corporation	X		
Postal Rate Commission	X		
Railroad Retirement Board	X		
Resolution Trust Corporation	X		
Oversight Board of the Resolution Trust Corporation	X		
Securities and Exchange Commission	X		
Selective Service System	X		
Small Business Administration	X		
Tennessee Valley Authority	X		
United States Arms Control and Disarmament Agency	X		
United States Information Agency	X		
Agency for International Development	X		
United States International Trade Commission			X
United States Postal Service	X		
BOARDS, COMMITTEES, AND COMMISSIONS			
Advisory Commission on Intergovernmental Relations	X		
Advisory Committee on Federal Pay			X
Federal Employees Pay Council		X	
Advisory Council on Historic Preservation	X		
American Battle Monuments Commission		X	
Appalachian Regional Commission	X		
Architectural and Transportation Barriers Compliance Board	X		
Arctic Research Commission	X		

Agency	Authorization		
	Yes	No	No data
Barry Goldwater Scholarship and Excellence in Education Foundation	X		
Board for International Broadcasting	X		
Christopher Columbus Quincentenary Jubilee Commission	X		
Citizens' Stamp Advisory Committee		X	
Commission for the Preservation of America's Heritage Abroad	X		
Commission of Fine Arts			X
Commission on Agricultural Workers	X		
Commission on the Ukraine Famine			X
Commission on Security and Cooperation in Europe			X
Commission on Minority Business Development			X
Committee for Purchase from the Blind and other Severely Handicapped		X	
Coordinating Council on Juvenile Justice and Delinquency Prevention			X
Corporation for Public Broadcasting			X
Delaware River Basin Commission	X		
Endangered Species Committee	X		
Federal Financial Institutions Examination Council		X	
Federal Financing Bank			X
Federal Laboratory Consortium for Technology Transfer		X	
Harry S. Truman Scholarship Foundation	X		
Illinois and Michigan Canal National Heritage Corridor Commission	X		
Institute of American Indian and Alaska Native Culture and Arts Development	X		

Agency	Authorization		
	Yes	No	No data
Interagency Council on the Homeless	X		
International Cultural and Trade Center Commission	X		
Interstate Commission on the Potomac River Basin	X		
James Madison Memorial Fellowship Foundation	X		
Japan-United States Friendship Commission	X		
John C. Stennis Center for Public Service Development	X		
Mailers' Technical Advisory Committee		X	
Marine Mammal Commission	X		
Martin Luther King, Jr. Federal Holiday Commission	X		
Migratory Bird Conservation Commission		X	
National Afro-American History and Culture Commission		X	
National Commission on Acquired Immune Deficiency Syndrome		X	
National Commission on Libraries and Information Science	X		
National Commission on Migrant Education	X		
National Communications System			X
National Council on Disability	X		
National Commission on Children			X
National Historical Publications and Records Commission			X
National Institute of Building Sciences			X
National Occupational Information Coordinating Committee		X	
National Park Foundation			X

Agency	Authorization		
	Yes	No	No data
Neighborhood Reinvestment Corporation	X		
Nuclear Waste Technical Review Board	X		
Office of the Federal Inspector, Alaska Natural Gas Transportation System			X
Office of Navajo and Hopi Indian Relocation	x		
Overseas Private Investment Corporation	X		
Pacific Northwest Electric Power and Conservation Planning Council	X		
Permanent Committee for the Oliver Wendell Holmes Devise			X
Physician Payment Review Commission	X		
Presidential Commission on Catastrophic Nuclear Accidents			X
President's Commission on Executive Exchange		X	
President's Committee on Employment of People with Disabilities			X
Prospective Payment Assessment Commission	X		
Regulatory Information Service Center			X
Susquehanna River Basin Commission	X		
The Points of Light Foundation			X
U.S. Trade and Development Program	X		
United States Holocaust Memorial Council			X
United States Sentencing Commission	X		
QUASI-OFFICIAL AGENCIES			
Legal Services Corporation	X		
Smithsonian Institution	X		

Agency	Authorization		
	Yes	No	No data
State Justice Institute			X
United States Institute of Peace	X		
TOTAL	123	24	32

NOTES: Some entities did not include data on authority to contract for legal services in the completed Data Collection Instrument, or did not complete the survey, for various reasons, as follows:

The Temporary Emergency Court of Appeals did not complete the survey because it considered it not relevant to the court in that it does not utilize private attorneys in any capacity.

The EXECUTIVE OFFICE OF THE PRESIDENT Office of Administration said it had no authority to contract for legal services. The Executive Office of the President includes the White House Office, Council of Economic Advisors, and Office of Policy Development, which did not provide individual responses. The Executive Office of the President also includes the National Critical Materials Council and the Office of Science and Technology Policy, whose consolidated response said private attorneys have not been engaged nor is there intention to employ private attorneys in the future; the National Security Council, which said it has been unable to identify any occasions when it retained outside counsel and has never had occasion to determine what authority it would have to retain such counsel; and the Office of the Vice President, which said it provides legal services to the National Space Council.

The Department of Defense said that there will not be a separate response from the National Communications System in that it is included in the consolidated Department of Defense response. The consolidated response includes input from the Defense Information Systems Agency, formerly the Defense Communications Agency. The Defense Information Systems Agency becomes the National Communications System operations in a crisis situation.

The Central Intelligence Agency said it was not possible to provide the requested information because it raises security concerns related to intelligence activities.

The National Mediation Board said that the authority to contract for legal services is an unresolved issue.

APPENDIX I

APPENDIX I

The National Railroad Passenger Corporation (Amtrak) said that it is operated and managed as a for profit corporation and is not an agency, instrumentality or establishment of the Federal Government, and therefore views itself as outside of the intended sweep of the survey.

The Comptroller of the Currency response is also included in the Department of the Treasury consolidated response.

The United States International Trade Commission said that since it has not had occasion to retain private counsel, it has not determined its authority to do so.

The Advisory Committee on Federal Pay has been terminated.

The Federal Employees Pay Council has been terminated.

The Commission of Fine Arts said that it does not use the services of private sector attorneys and has no anticipation of doing so in the future.

The Commission on the Ukraine Famine has gone out of business.

The Commission on Security and Cooperation in Europe did not include data on authority to contract for legal services in the completed survey.

The Commission on Minority Business Development said it does not use private attorneys and is thus unable to participate in the survey.

The Coordinating Council on Juvenile Justice and Delinquency Prevention is included in the Office of Justice Programs in the composite Department of Justice response.

The Corporation for Public Broadcasting said that it is not an agency or establishment of the United States Government and did not complete the survey.

The Federal Financing Bank is included in the Department of the Treasury consolidated response.

The National Commission on Children said that it does not use the services of private attorneys and returned the survey with no responses because it has no information on the subject.

The National Historical Publications and Records Commission is included in the National Archives and Records Administration response.

APPENDIX I

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The National Institute of Building Sciences said that it is not a federal agency and did not respond to the survey.

The National Park Foundation said it is not a federal agency and did not return the survey.

The Office of the Federal Inspector, Alaska Natural Gas Transportation System, said that the authority to contract for legal services is an issue that has not been examined.

The Permanent Committee for the Oliver Wendell Holmes Devise is an administrative committee chaired by the Librarian of Congress in the Library of Congress.

The Presidential Commission on Catastrophic Nuclear Accidents has gone out of business.

The President's Committee on Employment of People with Disabilities said it has not used and is not using private attorneys.

The Regulatory Information Service Center is included in the General Services Administration consolidated response.

The Points of Light Foundation said that it is a private organization and determined that the survey did not apply to them.

The United States Holocaust Memorial Council said that it does not use federal appropriated funds to employ or contract for legal services for purposes of responding to the survey.

The State Justice Institute said that it did not have occasion to use private attorneys and submitted a negative response to the survey.

AGENCIES' LISTING OF AUTHORITIES TO CONTRACT FOR LEGAL SERVICES

Agency	Authority
LEGISLATIVE AGENCIES	
Architect of the Capitol	Explicitly stated in 41 U.S.C. § 6a-2
General Accounting Office	Explicitly stated in P.L. 100-545; 31 U.S.C. § 711(2) and 31 U.S.C. § 731(e)
Government Printing Office	Implied by 44 U.S.C. § 301 and 44 U.S.C. § 311
Library of Congress	Implied by 2 U.S.C. § 136 and 2 U.S.C. § 166(h)(2)
Office of Technology Assessment	Implied by P.L. 92-484, Section 6
Copyright Royalty Tribunal	Implied by 17 U.S.C. § 805(b)
JUDICIAL AGENCIES	
Administrative Office of the United States Courts	Explicitly stated in 28 U.S.C. § 2073(a)(2) and 28 U.S.C. § 604(a)(10)(c)
The Supreme Court of the United States	Explicitly stated in 28 U.S.C. § 672(c)(7) and U.S. Supreme Court Rule 39.6
United States Tax Court	Explicitly stated in 26 U.S.C. § 7475
United States Court of Appeals for the Federal Circuit	Implied by Public Law No citation provided
EXECUTIVE OFFICE OF THE PRESIDENT	
Office of Management and Budget	Explicitly stated in 31 U.S.C. § 521
Office of National Drug Control Policy	Implied by P.L. 100-690 (21 U.S.C. § 1502 (d)(4))

Agency	Authority
Office of the U.S. Trade Representative	Explicitly stated in the 1992 Appropriation Act, P.L. 102-140; the Trade Act of 1974, 19 U.S.C. § 2171, P.L. 93-618, as amended; and 5 U.S.C. § 3109
Office of the Vice President	Explicitly stated in 3 U.S.C. § 106
CABINET DEPARTMENTS	
U.S. Department of Agriculture	Explicitly stated in 42 U.S.C. § 1480(d)(1), and 7 U.S.C. § 3318, Inspector General Act of 1978 (P.L. 95-452)
U.S. Department of Commerce	Implied by 5 U.S.C. § 3109
U.S. Department of Defense	Explicitly stated in 5 U.S.C. § 3109 and 10 U.S.C. § 1037. Implied by 10 U.S.C. § 113, 10 U.S.C. § 2331, 10 U.S.C. § 2304 and 5 U.S.C. § 301; Authorizations and Appropriations for Operation and Maintenance
U.S. Department of Education	Implied by 20 U.S.C. § 3413 (c).
U.S. Department of Energy	Implied by Section 107(a) of the Energy Reorganization Act of 1974 (P.L. 93-438, as amended), and section 646(a) of the Department of Energy Organization Act (P.L. 95-91, as amended)

Agency	Authority
U.S. Department of Health and Human Services	Implicit authority to contract for necessary services
U.S. Department of Housing and Urban Development	Explicitly stated in 12 U.S.C. § 1702. Implied by 12 U.S.C. § 1721(g), 12 U.S.C. § 1723(a). Delegated from the Department of Justice. Other from 48 C.F.R. Subpart 1.6
U.S. Department of the Interior	Delegated from the Department of Justice for approval of title to lands acquired for Federal purposes
U.S. Department of Justice	Department-wide implied by appropriations act and 28 C.F.R. Sections 0.46 and 50.16. Asset forfeiture program explicitly stated in 28 U.S.C. § 524. Debt collection management explicitly stated in P.L. 99-578
U.S. Department of Labor	Implied by general authority for Executive Departments 5 U.S.C. chapter 3, and Departmental authority under 29 U.S.C. chapter 12
U.S. Department of State	Implied by Appropriation Act. Also 22 U.S.C. § 2698

Agency	Authority
U.S. Department of Transportation	Implied by 5 U.S.C. § 3109; Appropriations Act, 1991, P.L. 101-516, Section 304, 104 Stat. 2155 (1990); 33 U.S.C. § 984(a); 46 U.S.C. App. § 1117 and 49 U.S.C. § 323(b)
U.S. Department of the Treasury	Explicitly stated in Appropriations Act of 1992, Title 1, 31 U.S.C. § 301(f)(1), and 31 U.S.C. § 332(1). Implied by 12 U.S.C. § 481 and 482, 12 U.S.C. § 1464(d)(1), and 26 U.S.C. § 7801 and 7803. Delegated from Department of Justice and interagency agreement
U.S. Department of Veterans Affairs	Explicitly stated in 38 U.S.C. § 3730. Implied under 38 U.S.C. § 513. Delegated from Department of Justice
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS	
ACTION	Implied by Domestic Volunteer Service Act of 1973 and 5 U.S.C. § 3109 and 40 U.S.C. § 481(a)(1)
Administrative Conference of the United States	Explicitly stated in the Administrative Conference Act, 5 U.S.C. § 571
African Development Foundation	Implied by Section 506(a)(1) and (5) of the African Development Foundation Act, 22 U.S.C. § 290h-4(1)(1) and (5)

Agency	Authority
Commission on the Bicentennial of the U.S. Constitution	General authority to hire consultants under contract under P.L. 98-101 (Section 5(f))
Commodity Futures Trading Commission	Implied by 7 U.S.C. § 2 and 7 U.S.C. § 16b
Consumer Product Safety Commission	Implied by Section 27(g) Consumer Product Safety Act, P.L. 92-573, as amended (15 U.S.C. § 2076(g))
Defense Nuclear Facilities Safety Board	Implied by P.L. 100-456
Environmental Protection Agency	Inherent authority of Agency
Equal Employment Opportunity Commission	Explicitly stated in 29 C.F.R. 1613.218 and 1613.604
Export-Import Bank of the United States	Explicitly stated in Section 2(a)(1) of the Export-Import Bank Act of 1945, as amended.
Farm Credit Administration	Explicitly stated in 12 U.S.C. § 2244 and 12 U.S.C. § 2249
Federal Communications Commission	Explicitly stated in Appropriations Act of 1992. Implied by Communications Act of 1934, as amended
Federal Deposit Insurance Corporation	Implied by 12 U.S.C. § 1819(a)
Federal Election Commission	Explicitly stated in 2 U.S.C. § 437c(f)(4)(B)

Agency	Authority
Federal Emergency Management Agency	Explicitly stated in Robert T. Stafford Disaster Relief & Emergency Assistance Act; Federal Fire Prevention and Control Act; Earthquake Hazards Reduction Act of 1977; Services Contract Act of 1965; and Equal Access to Justice Act. Implied by National Flood Insurance Act of 1968; Urban Property Protection & Reinsurance Act of 1968; Federal Fire Prevention and Control Act; and Multihazard Research, Planning & Mitigation Act. Delegated from the Department of Justice
Federal Housing Finance Board	Explicitly stated in 12 U.S.C. § 1422b(a)(3) (Supp I 1989) and 41 U.S.C. § 5 (1988)
Federal Labor Relations Authority	Implied by Chapter 71 of Title 5 U.S.C. and Related Amendments
Federal Maritime Commission	Explicitly stated in P.L. 101-515; 5 U.S.C. § 3109
Federal Mediation and Conciliation Service	Implied by 29 U.S.C. § 172(b)
Federal Mine Safety and Health Review Commission	Implied by P.L. No. 95-164 Section 113(b)(2)

Agency	Authority
Federal Reserve System	Explicitly stated in Section 10 of the Federal Reserve Act (12 U.S.C. § 244). Implied by Section 11(1) of the Federal Reserve Act (12 U.S.C. § 248(1))
Federal Retirement Thrift Investment Board	Implied by 5 U.S.C. § 8474(c)
Federal Trade Commission	Implied by Federal Trade Commission Act (15 U.S.C. § 53 and 56); Appropriation Act (P.L. 101-515 Section 603); and 48 C.F.R. 1.601.
General Services Administration	Implied by Federal Property and Administrative Services Act of 1949, P.L. 152, 81st Congress, approved June 30, 1949; Sections 201(a)(3) and 208(b) (40 U.S.C. § 481(a)(3) and 40 U.S.C. § 758(b))
Inter-American Foundation	Explicitly stated in 22 U.S.C. § 290f
Interstate Commerce Commission	General statutory authority
Merit Systems Protection Board	Implied by 5 U.S.C. § 1204(i) and general procurement authority
National Aeronautics and Space Administration	Implied by the National Aeronautics and Space Act of 1958, as amended, and by 5 U.S.C. Appendix Section 6(a)(8) (Inspector General Act)
National Archives and Records Administration	Implied by 44 U.S.C. § 2105

Agency	Authority
National Capital Planning Commission	No data provided
National Credit Union Administration	Explicitly stated in 12 U.S.C. § 1766 and 12 U.S.C. § 1787. Implied by 12 U.S.C. § 1766 and 12 U.S.C. § 1789
National Science Foundation	Implied by 42 U.S.C. § 1870(b)
National Transportation Safety Board	Implied by 49 U.S.C. § 1441(b), 49 U.S.C. § 1902(c)(3) and 1903(b)(6)(C)
Nuclear Regulatory Commission	Implied by annual appropriation and authorization bills
Occupational Safety and Health Review Commission	Federal Acquisition Regulation 6.302-2
Comptroller of the Currency	Implied by 12 U.S.C. § 481 and 482, Authority to hire and compensate employees. Also included in the Department of the Treasury consolidated response
Office of Government Ethics	Implied by Title IV of the Ethics in Government Act of 1978, as amended
Office of Independent Counsel	Explicitly stated in 28 U.S.C. § 594(c)
Office of Personnel Management	Implied by 5 U.S.C. § 301 and 1103 for non-litigation services. Delegated from the Department of Justice for litigation on as-needed basis

Agency	Authority
Office of the United States Nuclear Waste Negotiator	Implied by P.L. 100-203 Section 408 (5)
Panama Canal Commission	Implied by the Panama Canal Act of 1979, P.L. 96-70, 93 Stat. 452
Peace Corps	Overseas only. The Peace Corps Act, as amended (P.L. 87-293) Section 5(L) (22 U.S.C. § 2504 (L)) and Section 10(i) (22 U.S.C. § 2509 (i))
Pennsylvania Avenue Development Corporation	Explicitly stated in 40 U.S.C. § 875(7)
Pension Benefit Guaranty Corporation	Explicitly stated in Employee Retirement Income Security Act, 29 U.S.C. § 1302
Postal Rate Commission	Implied by 39 U.S.C. § 3603 and 3604
Railroad Retirement Board	Implied by 45 U.S.C. § 361(c)
Resolution Trust Corporation	Explicitly stated in Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1421(b)(11)(A)(ii). Implied by Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1821(c)(2)(C); (c)(3)(C); (d)(2)(A) and (d)(2)(B)
Oversight Board of the Resolution Trust Corporation	Implied by 12 U.S.C. § 1441a
Securities and Exchange Commission	Explicitly stated in 5 U.S.C. § 3109 and 15 U.S.C. § 78d(b)(1)

Agency	Authority
Selective Service System	Implied by Military Selective Service Act, 50 U.S.C. app. 451 et seq.
Small Business Administration	Explicitly stated in 15 U.S.C. § 634(b)(7)
Tennessee Valley Authority	Explicitly stated in Tennessee Valley Authority Act, 16 U.S.C. Sections 831-831dd (1988)
United States Arms Control and Disarmament Agency	Explicitly stated in P.L. 87-297, as amended (22 U.S.C. § 2551, et seq.)
United States Information Agency	Explicitly stated in 22 U.S.C. § 2698 for authority abroad. Implied in P.L. when determined to be reasonable and necessary for carrying out mission
Agency for International Development	Explicitly stated in section 26 of the State Department Basic Authorities Act of 1956, 22 U.S.C. § 2698. Also in accordance with 5 U.S.C. § 3106 with concurrence of the Department of Justice
United States Postal Service	Explicitly stated in P.L. 91-375, 39 U.S.C. § 401(3) and (10), and 39 U.S.C. § 409(d)
BOARDS, COMMITTEES, AND COMMISSIONS	
Advisory Commission on Intergovernmental Relations	Implied by Public Law

Agency	Authority
Advisory Council on Historic Preservation	Implied by P.L. 89-665, as amended; National Historic Preservation Act of 1966, as amended; 16 U.S.C. § 470 et seq.
Appalachian Regional Commission	Independent statutory authority in 40 App U.S.C. § 106(7)
Architectural and Transportation Barriers Compliance Board	Implied by 29 U.S.C. § 792(f)
Arctic Research Commission	Implied by Arctic Research and Policy Act of 1984, P.L. 98-373
Barry Goldwater Scholarship and Excellence in Education Foundation	Implied by P.L. 99-661, Title XIV, Defense Authorization Act for FY 1987 (100 Stat. 4007, Nov. 14, 1986)
Board for International Broadcasting	Explicitly stated in 22 U.S.C. § 2698, as amended by P.L. 101-246, Section 303. Implied by 22 U.S.C. § 2873(a)(7)
Christopher Columbus Quincentenary Jubilee Commission	Implied by Public Law
Commission for the Preservation of America's Heritage Abroad	Explicitly stated in 16 U.S.C. § 469j(g)(3)
Commission on Agricultural Workers	Explicitly stated in P.L. 99-603, Section 304(h)
Delaware River Basin Commission	Delaware River Basin Compact
Endangered Species Committee	Delegated from the Department of Justice for approval of title to lands acquired for federal purposes

Agency	Authority
Harry S. Truman Scholarship Foundation	Would have to request permission from the Department of Justice
Illinois and Michigan Canal National Heritage Corridor Commission	Under terms of a grant from the Economic Development Administration, Department of Commerce
Institute of American Indian and Alaska Native Culture and Arts Development	Explicitly stated in P.L. 99-498, as amended
Interagency Council on the Homeless	Appropriations Acts
International Cultural and Trade Center Commission	Implied by P.L. 100-113, Section 7f(6)
Interstate Commission on the Potomac River Basin	Implied by P.L. 91-407
James Madison Memorial Fellowship Foundation	Implied by P.L. 99-591, Section 814(a)6
Japan-United States Friendship Commission	Implied by P.L. 94-118
John C. Stennis Center for Public Service Development	Implied by P.L. 100-458
Marine Mammal Commission	Explicitly stated in Marine Mammal Protection Act, Section 206, 16 U.S.C. § 1406
Martin Luther King, Jr. Federal Holiday Commission	Implied by the Martin Luther King, Jr. Federal Holiday Commission Act, as amended
National Commission on Libraries and Information Science	Implied by P.L. 91-345
National Commission on Migrant Education	Implied by P.L. 100-297

Agency	Authority
National Council on Disability	Implied by Rehabilitation Act of 1973, as amended, Section 403, (b)(1) of Title IV
Neighborhood Reinvestment Corporation	Explicitly stated in Neighborhood Reinvestment Corporation Act, 42 U.S.C. § 8101 et seq. (1978)
Nuclear Waste Technical Review Board	Implied by P.L. 100-203
Office of Navajo and Hopi Indian Relocation	Explicitly stated in 25 U.S.C. § 640d-11 (1),(2)
Overseas Private Investment Corporation	Explicitly stated in Foreign Assistance Act of 1961, as amended, Section 239(d) and 626
Pacific Northwest Electric Power and Conservation Planning Council	Implied by P.L. 96-501 Section 4(c)(10)(A)
Physician Payment Review Commission	Implied by P.L. 99-272
Prospective Payment Assessment Commission	Broad authority to contract as may be necessary implied by Public Law
Susquehanna River Basin Commission	Explicitly stated in P.L. 91-575 Section 15.1(b)(6)
U.S. Trade and Development Program	Implied by 22 U.S.C. § 2421
United States Sentencing Commission	Explicitly stated in 28 U.S.C. § 995(a)(23)
QUASI-OFFICIAL AGENCIES	
Legal Services Corporation	Explicitly stated in P.L. 93-355
Smithsonian Institution	Implied by 20 U.S.C. § 41 et seq.

Agency	Authority
United States Institute of Peace	Implied by the United States Institute of Peace Act, 22 U.S.C. § 4601-4611, as amended
TOTAL 123 AGENCIES	

NUMBER OF CONTRACTS AWARDED AND AMOUNTS PAID BY AGENCIES IN
FISCAL YEAR 1991

Agency	Number of contracts	Dollar amount paid
LEGISLATIVE AGENCIES		
Architect of the Capitol	0	\$51,465.09
General Accounting Office	2	78,129.53
JUDICIAL AGENCIES		
Administrative Office of the United States Courts	6	78,614,433.00
United States Tax Court	1	4,996.00
CABINET DEPARTMENTS		
U.S. Department of Agriculture	176	433,201.00
U.S. Department of Commerce	37	187,209.16
U.S. Department of Defense	382	795,484.87
U.S. Department of Energy	69	1,421,683.41
U.S. Department of Health and Human Services	2	1,417,868.00
U.S. Department of Housing and Urban Development	18	2,692,975.96
U.S. Department of the Interior	27	226,010.39
U.S. Department of Justice	95	3,978,074.02
U.S. Department of State	10	620,027.00
U.S. Department of Transportation	21	31,586.00
U.S. Department of the Treasury	8	853,026.94
U.S. Department of Veterans Affairs	203	1,890,206.00
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS		
Administrative Conference of the United States	12	75,000.00

Agency	Number of contracts	Dollar amount paid
African Development Foundation	2	11,617.00
Defense Nuclear Facilities Safety Board	2	58,790.00
Environmental Protection Agency	17	58,850.00
Equal Employment Opportunity Commission	9	15,745.93
Export-Import Bank of the United States	0	44,850.37
Farm Credit Administration	2	52,393.79
Federal Deposit Insurance Corporation	1,392	285,234,053.00
Federal Emergency Management Agency	1	2,318.99
Federal Housing Finance Board	4	167,506.00
Federal Maritime Commission	1	17,403.23
Federal Reserve System	4	21,236.19
Federal Trade Commission	4	45,900.00
General Services Administration	0	8,909.00
Merit Systems Protection Board	1	2,350.00
National Aeronautics and Space Administration	99	481,717.00
National Credit Union Administration	14	1,724,000.00
National Science Foundation	0	32,759.19
Occupational Safety and Health Review Commission	1	27,712.18
Peace Corps	26	16,061.77
Pennsylvania Avenue Development Corporation	0	207,348.09
Pension Benefit Guaranty Corporation	27	2,945,109.13

Agency	Number of contracts	Dollar amount paid
Resolution Trust Corporation	1,782	199,752,370.00
Securities and Exchange Commission	6	95,662.00
Tennessee Valley Authority	4	1,319,015.87
United States Information Agency	11	47,510.15
Agency for International Development	17	40,822.60
United States Postal Service	4	353,998.50
BOARDS, COMMITTEES, AND COMMISSIONS		
Appalachian Regional Commission	1	6,280.65
Board for International Broadcasting	1	0.00
Commission for the Preservation of America's Heritage Abroad	8	8,641.27
Commission on Agricultural Workers	1	1,827.99
Illinois and Michigan Canal National Heritage Corridor Commission	1	175.00
International Cultural and Trade Center Commission	1	33,533.53
National Commission on Migrant Education	1	5,938.85
Neighborhood Reinvestment Corporation	4	92,722.42
Office of Navajo and Hopi Indian Relocation	2	87,628.48
Overseas Private Investment Corporation	29	166,297.00
Pacific Northwest Electric Power and Conservation Planning Council	4	6,586.37
Susquehanna River Basin Commission	0	2,740.00

Agency	Number of contracts	Dollar amount paid
QUASI-OFFICIAL AGENCIES		
Legal Services Corporation	7	225,379.87
Smithsonian Institution	6	102,631.86
United States Institute of Peace	2	101,047.00
TOTAL 59 AGENCIES	4,567	\$586,998,816.64

NOTES: 0 means no contract awarded and 0.00 means no payment made in fiscal year 1991. Payments in fiscal year 1991 may be on contracts awarded in previous years or other arrangements.

The Administrative Office of the United States Courts response includes \$78,531,633.00 compensation of private attorneys for 37,388 cases under the Criminal Justice Act and \$82,800.00 in payments on 6 contracts to private attorneys for legal services.

The Department of Energy response only includes its Office of General Counsel. The Department said that its internal contract information inquiry for purposes of responding was not directed to departmental offices which do not typically become involved in legal matters.

The Department of Justice provided three separate responses of its activities related to the use of private attorneys. The Department said it manages two statutory programs, asset forfeiture and debt collection management, requiring routine and locality-based legal services being performed by private attorneys under contracts which are discrete from other Department-wide hiring and payment of private attorneys. The three responses were:

- A) Department-wide, 88 contracts and \$3,062,672.00 paid.
- B) Asset forfeiture, 7 contracts and \$126,662.02 paid.
- C) Debt collection management, 0 contracts and \$788,740.00 paid.

The Department of State said its consolidated contract information response did not include its Office of the Inspector General. The Department response provided domestic information, 2 contracts and \$610,252.00 paid, and overseas information, 8 contracts and \$9,775.00 paid.

The Department of Transportation said it did not have complete data for its Maritime Administration operations in its consolidated contract information response.

The Department of Veterans Affairs said that it has no central tracking of contracts awarded by its District Counsels to private attorneys, and that work was performed "under at least 203 contracts" during fiscal year 1991.

The Federal Deposit Insurance Corporation said that its consolidated contract information response did not include its Office of Inspector General, and, for purposes of responding to the survey, it considered that it "awarded" a contract to any outside counsel to which it made a payment for legal services in fiscal year 1991. It retains outside counsel through "Legal Services Agreements" under which specific engagements are made for particular matters.

The Federal Reserve System said that its consolidated contract information response did not include all its offices, only those divisions likely to have contracts and/or pay legal services.

The National Credit Union Administration assumed for purposes of the survey that retainer agreements are "contracts", and said that all figures are good faith reasonable estimates.

The Resolution Trust Corporation said that for purposes of responding to the survey, it considered that it "awarded" a contract to any outside counsel to which it made a payment for legal services in fiscal year 1991. It retains outside counsel through "Legal Services Agreements" under which specific engagements are made for particular matters.

The United States Information Agency said that its response to the survey should be treated as an approximation, and includes its domestic and overseas operations.

The Neighborhood Reinvestment Corporation completed the survey and notes that the enabling legislation states that it shall not be considered a department, agency, or instrumentality of the Federal Government.

REASONS FOR CONTRACTS AWARDED BY AGENCIES IN FISCAL YEAR 1991

Agency	Reasons
LEGISLATIVE AGENCIES	
General Accounting Office	Expertise/specialized needs
JUDICIAL AGENCIES	
Administrative Office of the United States Courts	Expertise/specialized needs Mandated by legislation
United States Tax Court	Expertise/specialized needs Insufficient agency staff More economical than staff
CABINET DEPARTMENTS	
U.S. Department of Agriculture	Expertise/specialized needs Accelerate procurement process
U.S. Department of Commerce	Expertise/specialized needs Arbitrators
U.S. Department of Defense	Insufficient agency staff Expertise/specialized needs More economical than staff Local court rules Mandated by legislation Emergency Desert Shield/Storm Need for foreign attorney
U.S. Department of Energy	Insufficient agency staff Expertise/specialized needs
U.S. Department of Health and Human Services	Expertise/specialized needs
U.S. Department of Housing and Urban Development	Insufficient agency staff Expertise/specialized needs More economical than staff Represent housing managers
U.S. Department of the Interior	Expertise/specialized needs More economical than staff Identify legislation

Agency	Reasons
U.S. Department of Justice	Expertise/specialized needs Conflict of interest Local court rules Mandated by legislation
U.S. Department of State	Expertise/specialized needs Local court rules
U.S. Department of Transportation	Expertise/specialized needs Ascertain facts expediently
U.S. Department of the Treasury	Expertise/specialized needs Conflict of interest
U.S. Department of Veterans Affairs	Insufficient agency staff Expertise/specialized needs More economical than staff
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS	
Administrative Conference of the United States	Expertise/specialized needs
African Development Foundation	Expertise/specialized needs
Defense Nuclear Facilities Safety Board	Expertise/specialized needs
Environmental Protection Agency	Expertise/specialized needs
Equal Employment Opportunity Commission	Mandated by legislation
Farm Credit Administration	Expertise/specialized needs
Federal Deposit Insurance Corporation	Insufficient agency staff Expertise/specialized needs
Federal Emergency Management Agency	Settle administrative matter
Federal Housing Finance Board	Emergency agency exigencies
Federal Maritime Commission	Expertise/specialized needs
Federal Reserve System	Expertise/specialized needs Conflict of interest Public member to serve panel

Agency	Reasons
Federal Trade Commission	Expertise/specialized needs
Merit Systems Protection Board	Insufficient agency staff More economical than staff
National Aeronautics and Space Administration	Insufficient agency staff Expertise/specialized needs More economical than staff
National Credit Union Administration	Expertise/specialized needs More economical than staff
Occupational Safety and Health Review Commission	More economical than staff
Peace Corps	Expertise/specialized needs
Pension Benefit Guaranty Corporation	Insufficient agency staff Expertise/specialized needs Local court rules
Resolution Trust Corporation	Insufficient agency staff Expertise/specialized needs More economical than staff
Securities and Exchange Commission	Expertise/specialized needs Foreign counsel assistance
Tennessee Valley Authority	Expertise/specialized needs
United States Information Agency	Expertise/specialized needs
Agency for International Development	Expertise/specialized needs
United States Postal Service	Expertise/specialized needs
BOARDS, COMMITTEES, AND COMMISSIONS	
Appalachian Regional Commission	Expertise/specialized needs Conflict of interest
Board for International Broadcasting	Interpret foreign laws
Commission for the Preservation of America's Heritage Abroad	Expertise/specialized needs

Agency	Reasons
Commission on Agricultural Workers	Expertise/specialized needs Conflict of interest
Illinois and Michigan Canal National Heritage Corridor Commission	Expertise/specialized needs
International Cultural and Trade Center Commission	Expertise/specialized needs
National Commission on Migrant Education	Expertise/specialized needs
Neighborhood Reinvestment Corporation	Expertise/specialized needs Conflict of interest Local court rule
Office of Navajo and Hopi Indian Relocation	Expertise/specialized needs
Overseas Private Investment Corporation	Expertise/specialized needs Emergency documentation
Pacific Northwest Electric Power and Conservation Planning Council	Expertise/specialized needs More economical than staff
QUASI-OFFICIAL AGENCIES	
Legal Services Corporation	Insufficient agency staff Expertise/specialized needs More economical than staff
Smithsonian Institution	Expertise/specialized needs
United States Institute of Peace	Expertise/specialized needs More economical than staff

CONTRACTED LEGAL SERVICES AND FEES PAID BY AGENCIES IN FISCAL YEAR 1991

Agency	Services	Fees
LEGISLATIVE AGENCIES		
Architect of the Capitol	Government contract law Real estate/landlord tenant law	\$150 per hour \$115 to \$215 per hour
General Accounting Office	Labor and employment law	\$50 to \$260 per hour
JUDICIAL AGENCIES		
Administrative Office of the United States Courts	Experts in procedural law Indigent/criminal counsel	\$25 per hour Compensation provided in law with statutory case limits: \$3,500 for felonies \$2,500 for appeals \$1,000 for misdemeanors \$750 for other cases
United States Tax Court	Disciplinary matters	\$100 per hour
CABINET DEPARTMENTS		
U.S. Department of Agriculture	Real estate/landlord tenant law Patent, trademark, copyright law	Negotiated flat fees: \$549 foreclosure \$349 sales deed \$229 property possession \$228 bankruptcy Standard fees: \$250 to \$350 search \$2,500 to \$3,000 patent application write-up
U.S. Department of Commerce	Labor and employment law Patent, trademark, copyright law Endangered Species Act Issues	Unknown Unknown \$34.43 to \$35.84 per hour
U.S. Department of Defense	Government contract law Real estate/landlord tenant law International law Labor and employment law Patent, trademark, copyright law Taxation Representation/foreign tribunals	Flat fee Flat fee \$170 to \$1,300 Flat fee \$170 to \$1,300 Retainers \$1,500 to \$2,500 Not available \$50 to \$75 per hour
U.S. Department of Energy	Insolvency and debt collection Real estate/landlord tenant law Labor and employment law Patent, trademark, copyright law Taxation Commercial law Geothermal loan guarantee Environmental litigation Railroad litigation	\$110 to \$220 per hour \$110 to \$220 per hour \$40 to \$220 per hour \$60 to \$250 per hour \$110 to \$220 per hour \$110 to \$220 per hour \$100 to \$225 per hour Not available \$115 per hour

Agency	Services	Fees
U.S. Department of Health and Human Services	Patent, trademark, copyright law	\$95 to \$200 per hour
U.S. Department of Housing and Urban Development	Insolvency and debt collection Real estate/landlord tenant law Represent project managers	\$110 to \$375 per hour \$90 to \$150 per hour \$80 to \$140 per hour
U.S. Department of the Interior	Real estate/landlord tenant law Patent, trademark, copyright law Protecting public lands	\$60 per hour No data No data
U.S. Department of Justice	Insolvency and debt collection Real estate/landlord tenant law Taxation Represent agency interest Represent federal employee sued International law	Contingency Not available Not available Not available \$50 to \$150 per hour \$150 to \$350 per hour
U.S. Department of State	International law Real estate/landlord tenant law Labor and employment law Pre-litigation liability	No data Retainer \$100 per hour Retainer \$180 per hour \$25 per hour
U.S. Department of Transportation	Government contract law Real estate/landlord tenant law Zoning Post damage assessments Risk management/personal injury	Not available \$98 to \$220 per hour \$250 per hour \$120 to \$175 per hour \$60 to \$140 per hour
U.S. Department of the Treasury	Government contract law Represent federal employee sued Real estate/landlord tenant law Labor and employment law Patent, trademark, copyright law Special Counsel litigation	\$200 per hour \$150 per hour \$125 to \$180 per hour \$120 to \$200 per hour Unknown Unknown
U.S. Department of Veterans Affairs	Insolvency and debt collection Real estate/landlord tenant law Mental Health Act	Flat fees \$40 to \$425 bankruptcy Flat fees \$150 to \$700 foreclosures \$40 to \$500 evictions \$70 to \$125 per hour in contested matters Flat fees
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS		
Administrative Conference of the United States	Consultants for research	No data
African Development Foundation	International law Assist in foreign jurisdiction	No data No data

APPENDIX V

APPENDIX V

Agency	Services	Fees
Defense Nuclear Facilities Safety Board	Legislative research	\$55 to \$57 per hour
Environmental Protection Agency	Patent, trademark, copyright law	\$50 to \$250 per hour
Equal Employment Opportunity Commission	Labor and employment law	Fee per case
Export-Import Bank of the United States	Government contract law Labor and employment law	\$110 to \$170 per hour Not available
Farm Credit Administration	Legislative interpretation Legal and financial analysis Special advisor	\$113 to \$284 per hour \$113 to \$284 per hour \$105 to \$250 per hour
Federal Deposit Insurance Corporation	Government contract law Represent federal employee sued Insolvency and debt collection Real estate/landlord tenant law International law Labor and employment law Patent, trademark, copyright law Taxation Professional liability Appellate litigation Defense of FDIC in its corporate capacity Resolution of failed/failing insured financial institutions	Legal Services Agreements Specific fee-hourly rates Not available (the above is applicable to all services unless otherwise indicated) NOTE: The FDIC stated that a new payment system was implemented in November 1991 so that record keeping can be more detailed. \$85 to \$250 per hour
Federal Emergency Management Agency	EEO Suit	Unknown
Federal Housing Finance Board	Bond finance issues Pension benefits issue Specialized legal services Federal Home Loan Bank issue	Firm fixed price \$85 to \$185 per hour \$85 to \$230 per hour \$90 to \$300 per hour
Federal Maritime Commission	Consulting services	\$125 per hour
Federal Reserve System	Labor and employment law Banking law	\$2,704 fee per case \$175 per hour
Federal Trade Commission	Insolvency and debt collection Patent, trademark, copyright law	\$95 to \$225 per hour \$300 per hour
General Services Administration	Land use counsel	\$115 to \$175 per hour
Merit Systems Protection Board	Digest relevant court decisions	\$50 per hour

Agency	Services	Fees
National Aeronautics and Space Administration	Patent, trademark, copyright law	\$50 to \$125 per hour
National Credit Union Administration	Insolvency and debt collection Real estate/landlord tenant law	\$75 to \$240 per hour \$75 to \$315 per hour
National Science Foundation	Labor and employment law	\$175 per hour
Occupational Safety and Health Review Commission	Develop Supreme Court brief	No data
Peace Corps	Real estate/landlord tenant law Labor and employment law Sexual/physical assaults advice Car accidents/claims advice	Flat fees Flat fees Flat fees \$40 to \$150 per hour
Pennsylvania Avenue Development Corporation	Government contract law	\$130 to \$290 per hour
Pension Benefit Guaranty Corporation	Insolvency and debt collection Real estate/landlord tenant law Lien filings	\$80 to \$395 per hour \$340 per hour Not hourly fee-lump sum
Resolution Trust Corporation	Government contract law Insolvency and debt collection Real estate/landlord tenant law Labor and employment law Patent, trademark, copyright law Taxation General legal services	Legal Services Agreements Specific fee-hourly rates Not available (the above is applicable to all services) NOTE: The RTC stated that it has developed a new system to provide reports, statistics, and trends regarding the use of outside counsel that is expected to be fully operational in 1992.
Securities and Exchange Commission	Real estate/landlord tenant law International law	\$60 to \$125 per hour \$50 to \$190 per hour
Tennessee Valley Authority	Patent, trademark, copyright law Taxation Nuclear licensing Environmental compliance	\$50 to \$75 per hour \$120 to \$275 per hour \$60 to \$225 per hour \$60 to \$230 per hour
United States Information Agency	Real estate/landlord tenant law International law Labor and employment law Consultation	Flat fee \$75 per hour Flat fee \$230 per hour Flat fee Flat fee

Agency	Services	Fees
Agency for International Development	Real estate/landlord tenant law Labor and employment law Advice on local law overseas Notarial services	\$40 to \$70 per hour No data No data No data
United States Postal Service	Real estate/landlord tenant law Labor and employment law Taxation	\$125 to \$410 per our \$160 to \$175 per hour Contingency fee
BOARDS, COMMITTEES, AND COMMISSIONS		
Appalachian Regional Commission	Labor and employment law	\$205 to \$275 per hour
Commission for the Preservation of America's Heritage Abroad	Government contract law International law Review of statutory authority	\$90 to \$135 per hour \$90 to \$135 per hour \$90 to \$135 per hour
Commission on Agricultural Workers	Government personnel law	No data
Illinois and Michigan Canal National Heritage Corridor Commission	Drawn up terms of a loan	\$100 per hour
International Cultural and Trade Center Commission	Government contract law Real estate/landlord tenant law Taxation Audit report and legal opinion Legislative drafts and bills	\$200 per hour \$210 per hour \$210 Per Hour \$125 to \$270 per hour \$125 to \$270 per hour
National Commission on Migrant Education	Legal review of report	Contract "NTE \$25,000"
Neighborhood Reinvestment Corporation	Labor and employment law Patent, trademark, copyright law Pension matters Nonprofit law	\$150 to \$210 per hour Flat fee retainer \$120 to \$160 per hour Flat fee retainer
Office of Navajo and Hopi Indian Relocation	Probate/estate law Administrative Hearing Officer	\$105 per hour \$57.50 to \$125 per hour
Overseas Private Investment Corporation	Insolvency and debt collection International law	No data No data
Pacific Northwest Electric Power and Conservation Planning Council	Labor and employment law Patent, trademark, copyright law Assist in rule making	\$120 per hour \$130 per hour \$15 per hour
Susquehanna River Basin Commission	Government contract law General Counsel	\$60 per hour \$60 per hour
QUASI-OFFICIAL AGENCIES		
Legal Services Corporation	Challenge to Corporation	\$75 to \$250 per hour

Agency	Services	Fees
Smithsonian Institution	Government contract law Represent federal employee sued Real estate/landlord tenant law International law Trust law	\$90 to \$260 per hour Flat fee \$200 per hour \$75 to \$290 per hour \$275 to \$300 per hour
United States Institute of Peace	Patent, trademark, copyright law All other legal services except litigation	\$200 per hour Flat payment

**CONGRESSIONAL RESEARCH SERVICES' COMPILATION OF FEDERAL STATUTES
THAT AUTHORIZE AWARDS OF ATTORNEYS' FEES**

Statutes
Ethics in Government Act of 1978 2 U.S.C. § 2881(d) (see also 28 U.S.C. § 593(f))
Federal Contested Elections Act 2 U.S.C. § 396
Equal Access to Justice Act 5 U.S.C. § 504(a)(1) 28 U.S.C. § 2412
Freedom of Information Act 5 U.S.C. § 552(a)(4)(E)
Privacy Act 5 U.S.C. § 552a(g)(2)(B) 5 U.S.C. § 552a(g)(3)(B) 5 U.S.C. § 552a(g)(4)
Government in the Sunshine Act 5 U.S.C. § 552b(i)
Administrative Dispute Resolution Act 5 U.S.C. § 590(g)
Whistleblower Protection Act of 1989 5 U.S.C. § 1221(g)(1) 5 U.S.C. § 1221(g)(2)
Civil Service Reform Act of 1978 5 U.S.C. § 5596(b)(1) 5 U.S.C. § 7701(g)
Commodity Exchange Act 7 U.S.C. § 18(c) 7 U.S.C. § 18(d) 7 U.S.C. § 18(e)
Packers and Stockyards Act 7 U.S.C. § 210(f)
Perishable Agricultural Commodities Act 7 U.S.C. § 499f(e) 7 U.S.C. § 499g(b) 7 U.S.C. § 499g(c)

Statutes	
Federal Crop Insurance Act of 1980	7 U.S.C. § 1507(c)
Animal Welfare Act	7 U.S.C. § 2157(d)
Agricultural Unfair Trade Practices	7 U.S.C. § 2305(a) 7 U.S.C. § 2305(c)
Plant Variety Act	7 U.S.C. § 2565
Immigration and Nationality Act	8 U.S.C. § 1324b(h) 8 U.S.C. § 1324b(i)(4)
National Defense Authorization Act for Fiscal Year 1991	10 U.S.C. § 2409a(c)(5)(C)
Bankruptcy Act	11 U.S.C. § 303(i) 11 U.S.C. § 330(a) 11 U.S.C. § 362(h) 11 U.S.C. § 363(n) 11 U.S.C. § 503(b) 11 U.S.C. § 506(b) 11 U.S.C. § 523(d)
Federal Home Loan Bank Act	12 U.S.C. § 1441a(c)(11)(B)
Home Owners' Loan Act	12 U.S.C. § 1464(d)(1)(B)(vii) 12 U.S.C. § 1464(q)(3)
Housing Act of 1959	12 U.S.C. § 1701q-1(f)
National Housing Act	12 U.S.C. § 1715k(h)(6) 12 U.S.C. § 1723i(e) 12 U.S.C. § 1735f-14(e) 12 U.S.C. § 1735f-15(f)
Federal Credit Union Act	12 U.S.C. § 1786(p)
Federal Deposit Insurance Act	12 U.S.C. § 1818(n)

Statutes	
Bank Holding Company Act	12 U.S.C. § 1844(f)
Bank Tying Act	12 U.S.C. § 1975
Farm Credit Amendments Act of 1985	12 U.S.C. § 2273
Real Estate Settlement Procedures Act	12 U.S.C. § 2605(f) 12 U.S.C. § 2607(d)(5)
Right to Financial Privacy Act of 1978	12 U.S.C. § 3417(a) 12 U.S.C. § 3418
Expedited Funds Availability Act	12 U.S.C. § 4010(a)
Financial Institutions Anti-Fraud Enforcement Act of 1990	12 U.S.C. § 4246 18 U.S.C. § 3059A(e)(2)
Clayton Act	15 U.S.C. § 15(a) 15 U.S.C. § 15(b)(1) 15 U.S.C. § 15c(a)(2) 15 U.S.C. § 15c(d)(2) 15 U.S.C. § 26 15 U.S.C. § 35(a) 15 U.S.C. § 36(a)
Federal Trade Commission Improvement Act	15 U.S.C. § 57a(h)(1)
Unfair Competition Act	15 U.S.C. § 72
Securities Act of 1933	15 U.S.C. § 77k(e)
Trust Indenture Act	15 U.S.C. § 77ooo(e) 15 U.S.C. § 77www(a)
Securities Exchange Act of 1934	15 U.S.C. § 78i(e) 15 U.S.C. § 78r(a) 15 U.S.C. § 78u(h)(8)

Statutes	
Securities Investor Protection Act	15 U.S.C. § 78eee(b)
Jewelers' Liability Act	15 U.S.C. § 298(b) 15 U.S.C. § 298(c) 15 U.S.C. § 298(d)
Lanham (Trademark) Act	15 U.S.C. § 1116(d)(11) 15 U.S.C. § 1117(a) 15 U.S.C. § 1117(b)
National Traffic and Motor Vehicle Safety Act of 1966	15 U.S.C. § 1400(b)
Truth in Lending Act	15 U.S.C. § 1640(a)
Fair Credit Billing Act	15 U.S.C. §§ 1666-1666j See 15 U.S.C. § 1640(a)
Consumer Leasing Act	15 U.S.C. § 1667b(a) (see also 15 U.S.C. § 1640(a))
Fair Credit Reporting Act	15 U.S.C. § 1681n 15 U.S.C. § 1681o
Equal Credit Opportunity Act	15 U.S.C. § 1691e(d)
Fair Debt Collection Practices Act	15 U.S.C. § 1692k(a)
Electronic Fund Transfer Act	15 U.S.C. § 1693m(a) 15 U.S.C. § 1693m(f)
Interstate Land Sales Full Disclosure Act	15 U.S.C. § 1709(c) 15 U.S.C. § 1717a(d)
Motor Vehicle Information and Cost Savings Act	15 U.S.C. § 1918(a) 15 U.S.C. § 1989(a) -- Odometer Requirements

Statutes	
Consumer Product Safety Act	15 U.S.C. § 2060(c) 15 U.S.C. § 2060(f) 15 U.S.C. § 2072(a) 15 U.S.C. § 2073
Hobby Protection Act	15 U.S.C. § 2102
Magnuson-Moss Warranty Act	15 U.S.C. § 2310(d)(2)
Toxic Substances Control Act	15 U.S.C. § 2605(c)(4)(A) 15 U.S.C. § 2618(d) 15 U.S.C. § 2619(c)(2) 15 U.S.C. § 2620(b)(4)(C) 15 U.S.C. § 2622(b)(2)(B)
Petroleum Marketing Practices Act	15 U.S.C. § 2805(d)(1) 15 U.S.C. § 2805(d)(3)
Condominium and Cooperative Abuse Relief Act of 1980	15 U.S.C. § 3608(d) 15 U.S.C. § 3611(d)
Export Trading Company Act of 1982	15 U.S.C. § 4016(b)(1) 15 U.S.C. § 4016(b)(4)
National Cooperative Research Act of 1984	15 U.S.C. § 4303(a) 15 U.S.C. § 4303(b) 15 U.S.C. § 4303(c) 15 U.S.C. § 4304(a) 15 U.S.C. § 4304(b)
Petroleum Overcharge Distribution and Restitution Act of 1986	15 U.S.C. § 4505(b)
National Historic Preservation Act	16 U.S.C. § 470w-4
Federal Power Act	16 U.S.C. § 825q-1(b)(2)
Fur Seal Act of 1966	16 U.S.C. § 1166(c)(13)

Statutes	
Endangered Species Act	16 U.S.C. § 1540(g)(4)
Public Utility Regulatory Policies Act of 1978	16 U.S.C. § 2632(a)
Alaska National Interest Lands Conservation Act	16 U.S.C. § 3117(a) 43 U.S.C. § 1631(c)(3)
Federal Cave Resources Protection Act of 1988	16 U.S.C. § 4307(c)
Copyright Act	17 U.S.C. § 505 17 U.S.C. § 511(b) 17 U.S.C. § 911(f) 17 U.S.C. § 911(g)(2)
Firearm Owners' Protection Act	18 U.S.C. § 924(d)(2)(A) 18 U.S.C. § 924(d)(2)(B) 18 U.S.C. § 924(d)(2)(D)
Major Fraud Act of 1988	18 U.S.C. § 1031(g)
Organized Crime Control Act of 1970	18 U.S.C. § 1964(c)
Child Abuse Victims' Rights Act of 1986	18 U.S.C. § 2255(a)
Antiterrorism Act of 1990	18 U.S.C. § 2333(e)
Wire Interception Act	18 U.S.C. § 2520(b)(3)
Electronic Communications Privacy Act of 1986	18 U.S.C. § 2707(b)(3)
Video Privacy Protection Act of 1988	18 U.S.C. § 2710(c)(2)(C)
Criminal Justice Act	18 U.S.C. § 3006A(d)
Authentication of Foreign Documents	18 U.S.C. § 3495

Statutes
Witness Security Reform Act of 1984 18 U.S.C. § 3524(d)(6)
Juvenile Delinquency 18 U.S.C. § 5034
Higher Education Act of 1965 20 U.S.C. § 1078(c)(6)(B)(i)
Individuals with Disabilities Education Act (formerly Education of the Handicapped Act) 20 U.S.C. § 1415(e)(4)(B)
Discrimination Based on Sex or Blindness (Title IX of Public Law 92-318) 20 U.S.C. §§ 1681 et seq. See 42 U.S.C. § 1988
Foreign Relations Authorization Act, Fiscal Year 1978 22 U.S.C. § 2692(a)
Foreign Service Act of 1980 22 U.S.C. § 4137(b)
Comprehensive Anti-Apartheid Act of 1986 22 U.S.C. § 5083(b)
Indian Arts and Crafts Act of 1990 25 U.S.C. § 305e(b)
Navajo and Hopi Indian Relocation Amendments Act of 1980 25 U.S.C. § 640d-27(a) 25 U.S.C. § 640d-27(b)
Internal Revenue Code 26 U.S.C. § 6110(f)(4)(A) 26 U.S.C. § 6110(i)(2) 26 U.S.C. § 6673(a) 26 U.S.C. § 6673(b) 26 U.S.C. § 7430(a) 26 U.S.C. § 9501(d) (see also 30 U.S.C. § 932(a))
Judicial Discipline and Removal Reform Act of 1990 28 U.S.C. § 372(c)(16)
Independent Counsel Reauthorization Act of 1987 28 U.S.C. § 593(f) (see also 5 U.S.C. § 288i(d))

Statutes	
Judicial Improvements and Access to Justice Act	28 U.S.C. § 655(e) (repealed effective Nov. 19, 1993)
Sentencing Reform Act of 1984	28 U.S.C. § 995(a)
Tucker Act	28 U.S.C. §§ 1346(a), 1491 See 42 U.S.C. § 4654
Parental Kidnapping Prevention Act of 1980	28 U.S.C. § 1738A note
Jury System Improvements Act of 1978	28 U.S.C. § 1875(d)(2)
Fees and Costs	28 U.S.C. § 1912 28 U.S.C. § 1927
Federal Debt Collection Procedures Act of 1990	28 U.S.C. § 3205(c)(6)
Federal Rules of Civil Procedure	Signing of Pleadings, Motions, and Other Papers; Sanctions 28 U.S.C. App. Rule 11
Pretrial Conferences; Scheduling, Management	28 U.S.C. App. Rule 16(f)
Signing of Discovery Requests, Responses, and Objections	28 U.S.C. App. Rule 26(g)
Failure to Attend or to Serve Subpoena	28 U.S.C. App. Rule 30(g)(1) 28 U.S.C. App. Rule 30(g)(2) 28 U.S.C. App. Rule 37 28 U.S.C. App. Rule 56(g) 28 U.S.C. App. Rule 68
Federal Rules of Appellate Procedure	28 U.S.C. App. Rule 38
Norris-LaGuardia Act	29 U.S.C. § 107(e)
Fair Labor Standards Act	29 U.S.C. § 216(b)

Statutes	
Labor-Management Reporting and Disclosure Act of 1959	
29 U.S.C. § 431(c)	
29 U.S.C. § 501(c)	
Age Discrimination in Employment Act of 1967	
29 U.S.C. § 626(b)	
Rehabilitation Act of 1973	
29 U.S.C. § 794a(b)	
Employee Retirement Income Security Act	
29 U.S.C. § 1132(g)	
29 U.S.C. § 1305(b)(1)	
29 U.S.C. § 1370(e)	
29 U.S.C. § 1401(a)(2)	
29 U.S.C. § 1451(e)	
Employee Polygraph Protection Act of 1988	
29 U.S.C. § 2005(c)(3)	
Worker Adjustment and Retraining Notification Act	
29 U.S.C. § 2104(a)(6)	
Federal Coal Mine Health and Safety Act of 1969	
30 U.S.C. § 815(c)(3)	
30 U.S.C. § 932(a) -- Black Lung Benefits Act	
(see also 26 U.S.C. § 9501(d)(7))	
30 U.S.C. § 938(c)	
Surface Mining Control and Reclamation Act	
30 U.S.C. § 1270(d)	
30 U.S.C. § 1270(f)	
30 U.S.C. § 1275(e)	
30 U.S.C. § 1293(c)	
Deep Seabed Hard Mineral Resources Act	
30 U.S.C. § 1427(c)	
General Accounting Office Act of 1980	
31 U.S.C. § 755(b)	
Competition in Contracting Act of 1984	
31 U.S.C. § 3554(c)(1)	
False Claims Amendments of 1986	
31 U.S.C. § 3730(d)(1)	
31 U.S.C. § 3730(d)(2)	
31 U.S.C. § 3730(d)(3)	
31 U.S.C. § 3730(g)	
31 U.S.C. § 3730(h)	

Statutes	
Longshore and Harbor Workers' Compensation Act	
33 U.S.C. § 928(a)	
33 U.S.C. § 928(b)	
33 U.S.C. § 933(e)(1)	
Water Pollution Prevention and Control Act	
33 U.S.C. § 1319(g)(9)	
33 U.S.C. § 1321(b)(6)(H)	
33 U.S.C. § 1365(d)	
33 U.S.C. § 1367(c)	
33 U.S.C. § 1369(b)(4)	
Marine Protection, Research, and Sanctuaries Act	
33 U.S.C. § 1415(g)(4)	
Deepwater Ports Act	
33 U.S.C. § 1515(d)	
Act to Prevent Pollution from Ships	
33 U.S.C. § 1910(d)	
Oil Pollution Act of 1990	
33 U.S.C. § 2715(b)	
Patent Infringement	
35 U.S.C. § 271(e)(4)	
35 U.S.C. § 285	
Amateur Sports Act of 1978	
36 U.S.C. § 380(a)	
Federal Property and Administrative Services Act of 1949	
40 U.S.C. § 759(f)(5)(C)	
Contract Disputes Act of 1978	
41 U.S.C. §§ 601 et seq.	
See 28 U.S.C. § 2412(d)(3)	
Safe Drinking Water Act	
42 U.S.C. § 300h-2(c)(7)	
42 U.S.C. § 300j-8(d)	
42 U.S.C. § 300j-9(i)(2)(B)(ii)	
National Childhood Vaccine Injury Act of 1986	
42 U.S.C. § 300aa-15(b)	
42 U.S.C. § 300aa-15(e)	
42 U.S.C. § 300aa-31(c)	

Statutes	
Social Security Act	
42 U.S.C. § 673(a)(6)(A)	
42 U.S.C. § 1320a-7a(c)(4)(G)	
Homeownership and Opportunity Through HOPE Act	
42 U.S.C. § 1437aaa-4(h)	
42 U.S.C. § 12875(e)	
42 U.S.C. § 12895(d)	
Voting Rights Act of 1965	
42 U.S.C. § 19731(e)	
Voting Accessibility for the Elderly and Handicapped Act	
42 U.S.C. § 1973ee-4(c)	
Civil Rights Acts	
42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986	
See 42 U.S.C. § 1988	
Civil Rights Attorney's Fees Awards Act of 1976	
42 U.S.C. § 1988	
Civil Rights of Institutionalized Persons Act	
42 U.S.C. § 1997a(b)	
42 U.S.C. § 1997c(d)	
Civil Rights Act of 1964, Title II	
42 U.S.C. § 2000a-3(b)	
Civil Rights Act of 1964, Title III	
42 U.S.C. § 2000b-1	
Civil Rights Act of 1964, Title VII	
42 U.S.C. § 2000e-5(k)	
Privacy Protection Act of 1980	
42 U.S.C. § 2000aa-6(f)	
Atomic Energy Act of 1954	
42 U.S.C. § 2184	
Legal Services Corporation Act	
42 U.S.C. § 2996e(f)	
Department of Housing and Urban Development Act	
42 U.S.C. § 3537a(c)(5)	
42 U.S.C. § 3537b(d)(6)	
42 U.S.C. § 3544	
42 U.S.C. § 3545(i)	

Statutes
Fair Housing Act 42 U.S.C. § 3612(p) 42 U.S.C. § 3613(c)(2) 42 U.S.C. § 3614(d)(2)
Omnibus Crime Control and Safe Streets Act of 1968 42 U.S.C. § 3789d(c)(4)(B)
National Flood Insurance Act of 1968 42 U.S.C. § 4081(c)
Uniform Relocation Assistance and Real Property Acquisition Policies Act 42 U.S.C. § 4654
Noise Control Act of 1972 42 U.S.C. § 4911(d)
National Manufactured Housing Construction and Safety Standards Act 42 U.S.C. § 5412(b)
Energy Reorganization Act of 1974 42 U.S.C. § 5851(b)(2)(B) 42 U.S.C. § 5851(e)(2)
Age Discrimination Act of 1975 42 U.S.C. § 6104(e)(1)
Energy Policy and Conservation Act 42 U.S.C. § 6305(d)
Solid Waste Disposal Act 42 U.S.C. § 6971(c) 42 U.S.C. § 6972(e)
Clean Air Act 42 U.S.C. § 7413(b) 42 U.S.C. § 7524(c)(6) 42 U.S.C. § 7604(d) 42 U.S.C. § 7607(f) 42 U.S.C. § 7622(b)(2)(B) 42 U.S.C. § 7622(e)(2)
Power Plant and Industrial Fuel Use Act 42 U.S.C. § 8435(d)
Ocean Thermal Energy Conservation Act of 1980 42 U.S.C. § 9124(d)

Statutes	
Comprehensive Environmental Response, Compensation, and Liability Act	
42 U.S.C. § 9606(b)(2)(E)	
42 U.S.C. § 9610(c)	
42 U.S.C. § 9612(c)(3)	
42 U.S.C. § 9622(h)(3)	
42 U.S.C. § 9659(f)	
42 U.S.C. § 11046(f)	
Health Care Quality Improvement Act of 1986	
42 U.S.C. § 11113	
International Child Abduction Remedies Act	
42 U.S.C. § 11607(b)(3)	
Americans with Disabilities Act	
42 U.S.C. § 12205	
Outer Continental Shelf Lands Act	
43 U.S.C. § 1349(a)(5)	
43 U.S.C. § 1349(b)(2)	
43 U.S.C. § 1845(e)	
Alaska Native Claims Settlement Act	
43 U.S.C. § 1619(b)	
Railway Labor Act	
45 U.S.C. § 153(p)	
Railroad Revitalization and Reform Act	
45 U.S.C. § 854(g)	
Commercial Instruments and Maritime Liens	
46 U.S.C. § 31304(b)	
46 U.S.C. § 31325(d)(3)	
Shipping Act, 1916	
46 U.S.C. App. § 829	
Merchant Marine Act of 1936	
46 U.S.C. App. § 1227	
Shipping Act of 1984	
46 U.S.C. App. § 1710(h)(2)	
Communications Act of 1934	
47 U.S.C. § 206	
47 U.S.C. § 407	

Statutes	
Cable Communications Policy Act of 1984	
47 U.S.C. § 553(c)(2)	
47 U.S.C. § 605(d)(3)(B)	
Alien Owners of Land	
48 U.S.C. § 1506	
Interstate Commerce Act	
49 U.S.C. § 11705(d)(3)	
49 U.S.C. § 11708(c)	
49 U.S.C. § 11710(b)	
49 U.S.C. § 11711(d)	
49 U.S.C. § 11711(e)	
Natural Gas Pipeline Safety Act	
49 U.S.C. App. § 1686(e)	
Hazardous Materials Transportation Uniform Safety Act of 1990	
49 U.S.C. App. §§ 1801 et seq.	
Hazardous Liquid Pipeline Safety Act of 1979	
49 U.S.C. App. § 2014(e)	
Surface Transportation Assistance Act of 1982	
49 U.S.C. App. § 2305(c)(2)(B)	
Foreign Intelligence Surveillance Act of 1978	
50 U.S.C. § 1810	

Source: CRS Report for Congress 91-584 A. Pages 61-108. Awards of Attorneys' Fees by Federal Courts and Federal Agencies. Henry Cohen, Legislative Attorney, American Law Division. November 29, 1989, updated August 5, 1991. Congressional Research Service. The Library of Congress.

AWARDS OF ATTORNEYS' FEES AND AMOUNTS PAID BY AGENCIES
IN FISCAL YEAR 1991

Agency	Number of awards	Dollar amount paid
LEGISLATIVE AGENCIES		
Government Printing Office	0	\$40,000.00
Library of Congress	3	28,705.03
CABINET DEPARTMENTS		
U.S. Department of Agriculture	16	317,507.24
U.S. Department of Commerce	16	165,419.90
U.S. Department of Defense	203	4,132,471.39
U.S. Department of Education	3	28,988.34
U.S. Department of Energy	4	175,921.29
U.S. Department of Health and Human Services	1,573	9,258,050.00
U.S. Department of Housing and Urban Development	19	657,033.16
U.S. Department of the Interior	23	408,476.60
U.S. Department of Justice	48	6,204,118.12
U.S. Department of Labor	17	141,391.60
U.S. Department of Transportation	23	1,144,280.00
U.S. Department of the Treasury	43	476,139.63
U.S. Department of Veterans Affairs	34	163,828.00
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS		
ACTION	1	3,499.06
Consumer Product Safety Commission	1	2,500.00
Equal Employment Opportunity Commission	2	15,349.00
Federal Communications Commission	1	0.00

Agency	Number of awards	Dollar amount paid
Federal Deposit Insurance Corporation	2	4,041.85
Federal Maritime Commission	1	3,500.00
General Services Administration	18	868,930.00
Interstate Commerce Commission	1	127,113.00
National Aeronautics and Space Administration	6	153,763.92
National Archives and Records Administration	0	13,500.00
National Labor Relations Board	17	61,791.00
National Mediation Board	1	0.00
Nuclear Regulatory Commission	1	12,100.00
Office of Personnel Management	0	5,400.00
Panama Canal Commission	1	6,422.00
Railroad Retirement Board	1	11,850.00
Securities and Exchange Commission	1	2,640.00
Selective Service System	2	28,843.00
Small Business Administration	4	89,229.34
Tennessee Valley Authority	2	7,050.00
United States Information Agency	2	2,000.00
United States Postal Service	106	965,437.19
BOARDS, COMMITTEES, AND COMMISSIONS		
Office of Navajo and Hopi Indian Relocation	4	17,582.50
TOTAL 38 AGENCIES	2,200	\$25,744,872.16

NOTES: 0 means no award made and 0.00 means no payment made in fiscal year 1991. Payments in fiscal year 1991 may be on awards from previous years or other arrangements.

ADMINISTRATIVE AND JUDICIAL AWARDS PAID BY AGENCIES IN FISCAL YEAR 1991

Agency	Administrative proceeding payments	Judicial proceeding payments	Total amounts paid
LEGISLATIVE AGENCIES			
Government Printing Office	\$40,000.00	\$0.00	\$40,000.00
Library of Congress	28,705.03	0.00	28,705.03
CABINET DEPARTMENTS			
U.S. Department of Agriculture	142,589.00	174,918.24	317,507.24
U.S. Department of Commerce	108,419.90	57,000.00	165,419.90
U.S. Department of Defense	3,414,526.21	717,945.18	4,132,471.39
U.S. Department of Education	25,988.34	3,000.00	28,988.34
U.S. Department of Energy	14,057.00	161,864.29	175,921.29
U.S. Department of Health and Human Services	982,962.00	8,275,088.00	9,258,050.00
U.S. Department of Housing and Urban Development	29,621.42	627,411.74	657,033.16
U.S. Department of the Interior	7,623.50	400,853.10	408,476.60
U.S. Department of Justice	80,000.00	6,124,118.12	6,204,118.12
U.S. Department of Labor	73,814.00	67,577.60	141,391.60
U.S. Department of Transportation	613,830.00	530,450.00	1,144,280.00
U.S. Department of the Treasury	68,422.39	266,887.00	476,139.63
U.S. Department of Veterans Affairs	115,175.00	48,653.00	163,828.00
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS			
ACTION	3,499.06	0.00	3,499.06
Consumer Product Safety Commission	2,500.00	0.00	2,500.00
Equal Employment Opportunity Commission	2,400.00	12,949.00	15,349.00
Federal Communications Commission	0.00	0.00	0.00
Federal Deposit Insurance Corporation	4,041.85	0.00	4,041.85
Federal Maritime Commission	3,500.00	0.00	3,500.00

Agency	Administrative proceeding payments	Judicial proceeding payments	Total amounts paid
General Services Administration	748,930.00	120,000.00	868,930.00
Interstate Commerce Commission	0.00	127,113.00	127,113.00
National Aeronautics and Space Administration	30,337.90	123,426.02	153,763.92
National Archives and Records Administration	13,500.00	0.00	13,500.00
National Labor Relations Board	0.00	61,791.00	61,791.00
National Mediation Board	0.00	0.00	0.00
Nuclear Regulatory Commission	0.00	12,100.00	12,100.00
Office of Personnel Management	5,400.00	0.00	5,400.00
Panama Canal Commission	6,422.00	0.00	6,422.00
Railroad Retirement Board	0.00	11,850.00	11,850.00
Securities and Exchange Commission	2,640.00	0.00	2,640.00
Selective Service System	28,843.00	0.00	28,843.00
Small Business Administration	14,229.34	75,000.00	89,229.34
Tennessee Valley Authority	7,050.00	0.00	7,050.00
United States Information Agency	2,000.00	0.00	2,000.00
United States Postal Service	631,864.10	333,573.09	965,437.19
BOARDS, COMMITTEES, AND COMMISSIONS			
Office of Navajo and Hopi Indian Relocation	0.00	17,582.50	17,582.50
TOTAL 38 AGENCIES	\$7,252,891.04	\$18,351,150.88	\$25,744,872.16

NOTES: Totals do not add up because the Department of the Treasury did not distinguish between Administrative and Judicial Proceedings for \$140,830.24 it reported.

The Federal Communications Commission and the National Mediation Board were parties to awards of attorneys' fees and made no payments in fiscal year 1991. (See app. VII.)

SOURCE OF FUNDS FOR PAYMENT OF AWARDS BY AGENCIES IN FISCAL YEAR 1991

Agency	Agency appropriated funds	Judgment Fund	Other source	Total amounts paid
LEGISLATIVE AGENCIES				
Government Printing Office	\$40,000.00	\$0.00	\$0.00	\$40,000.00
Library of Congress	28,705.03	0.00	0.00	28,705.03
CABINET DEPARTMENTS				
U.S. Department of Agriculture	252,507.24	0.00	65,000.00	317,507.24
U.S. Department of Commerce	165,419.90	0.00	0.00	165,419.90
U.S. Department of Defense	3,776,711.07	93,637.50	262,122.82	4,132,471.39
U.S. Department of Education	25,988.34	0.00	3,000.00	28,988.34
U.S. Department of Energy	152,057.00	23,864.29	0.00	175,921.29
U.S. Department of Health and Human Services	9,155,017.00	0.00	103,033.00	9,258,050.00
U.S. Department of Housing and Urban Development	656,783.16	250.00	0.00	657,033.16
U.S. Department of the Interior	7,623.50	400,853.10	0.00	408,476.60
U.S. Department of Justice	6,126,372.00	77,746.12	0.00	6,204,118.12
U.S. Department of Labor	141,391.60	0.00	0.00	141,391.60
U.S. Department of Transportation	613,830.00	530,450.00	0.00	1,144,280.00
U.S. Department of the Treasury	335,309.39	0.00	140,830.24	476,139.63
U.S. Department of Veterans Affairs	117,606.00	28,711.00	17,511.00	163,828.00

Agency	Agency appropriated funds	Judgment Fund	Other source	Total amounts paid
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS				
ACTION	3,499.06	0.00	0.00	3,499.06
Consumer Product Safety Commission	2,500.00	0.00	0.00	2,500.00
Equal Employment Opportunity Commission	15,349.00	0.00	0.00	15,349.00
Federal Communications Commission	0.00	0.00	0.00	0.00
Federal Deposit Insurance Corporation	0.00	0.00	4,041.85	4,041.85
Federal Maritime Commission	3,500.00	0.00	0.00	3,500.00
General Services Administration	236,860.00	632,070.00	0.00	868,930.00
Interstate Commerce Commission	127,113.00	0.00	0.00	127,113.00
National Aeronautics and Space Administration	153,763.92	0.00	0.00	153,763.92
National Archives and Records Administration	13,500.00	0.00	0.00	13,500.00
National Labor Relations Board	61,791.00	0.00	0.00	61,791.00
National Mediation Board	0.00	0.00	0.00	0.00
Nuclear Regulatory Commission	12,100.00	0.00	0.00	12,100.00
Office of Personnel Management	5,400.00	0.00	0.00	5,400.00
Panama Canal Commission	6,422.00	0.00	0.00	6,422.00
Railroad Retirement Board	11,850.00	0.00	0.00	11,850.00

APPENDIX IX

APPENDIX IX

Agency	Agency appropriated funds	Judgment Fund	Other source	Total amounts paid
Securities and Exchange Commission	2,640.00	0.00	0.00	2,640.00
Selective Service System	28,843.00	0.00	0.00	28,843.00
Small Business Administration	89,229.34	0.00	0.00	89,229.34
Tennessee Valley Authority	0.00	0.00	7,050.00	7,050.00
United States Information Agency	2,000.00	0.00	0.00	2,000.00
United States Postal Service	0.00	0.00	965,437.19	965,437.19
BOARDS, COMMITTEES, AND COMMISSIONS				
Office of Navajo and Hopi Indian Relocation	17,582.50	0.00	0.00	17,582.50
TOTAL 38 AGENCIES	\$22,389,264.05	\$1,787,582.01	\$1,568,026.10	\$25,744,872.16

NOTES: The Judgment Fund is a permanent, indefinite appropriation which is jointly controlled by GAO, the Department of Justice, and the Department of the Treasury.

The Federal Communications Commission and the National Mediation Board were parties to awards of attorneys' fees and made no payments in fiscal year 1991. (See app. VII and VIII.)

ADMINISTRATIVE CONFERENCE RECOMMENDATION 87-3:
AGENCY HIRING OF PRIVATE ATTORNEYS



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

1 CFR §305.87-3

OFFICE OF
THE CHAIRMAN

Recommendation 87-3

Agency Hiring of Private Attorneys

Adopted June 11, 1987

In 1985 the Federal Government employed over 20,000 lawyers in various positions. At the same time it spent millions of dollars to retain private attorneys to provide diverse legal services. The Federal Deposit Insurance Corporation (FDIC) and the Federal Home Loan Bank Board / Federal Savings and Loan Insurance Corporation (FHLBB) accounted for most of these expenditures. The attorney fees paid by the FDIC and the FHLBB have increased rapidly since 1982 and have been incurred primarily in their capacities as receivers or liquidators of failed financial institutions for which they have provided deposit insurance. In those cases, the legal fees and other expenses are borne by the estate of the failed bank.

However, many other federal agencies, including government corporations, utilize the services of private attorneys -- in some instances on a regular basis -- and the fees are usually paid from appropriated funds.

This recommendation results from a survey of the use of private attorneys by government agencies and consideration by the Conference of the process that should be employed in deciding whether to retain outside counsel, including the ethical concerns that may arise when outside counsel are retained. The recommendation applies to any agency that hires private attorneys to represent the agency or to provide it with legal advice, i.e., where an attorney-client relationship is established. The scope of the recommendation accordingly does not extend to instances where an agency hires an individual who may be an attorney but is clearly not being hired to act in that capacity. The scope may therefore exclude some

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persons who are hired to do independent research, arbitrators hired to decide personnel or other disputes, or persons hired to provide mediation or similar services in connection with negotiated rulemaking.¹

Retention of private attorneys for litigation, where lawfully authorized, is within the scope of this recommendation. Congress has generally vested the power to litigate in the Department of Justice, although several agencies have been granted independent litigating authority by statute. Unless an agency is granted such authority, the consent of the Department of Justice is required for another agency to retain outside counsel for those purposes (5 U.S.C. §3106).

While some elements of the recommendation may state principles that are relevant to obtaining the services of other professionals, the Conference has studied only the retention of private attorneys. The focus of this recommendation on attorneys recognizes the role of the lawyer in implementing and enforcing government policy and the ethical requirements that are peculiarly applicable to attorneys.

In the private sector, it is cost-effective both to employ a full-time legal staff and to contract out some legal assignments. Many corporations have focused attention on methods to ensure that the size of the in-house staff is optimal and that work is contracted out only when necessary or for certain categories of work. Corporations have developed guidelines, criteria, and procedures to control the cost and ensure the quality of legal services.

In the public sector, concern for cost-effectiveness, a multi-faceted goal which does not look at the factor of price in isolation, is also clearly appropriate. The Conference has considered whether there should be a fixed cap on hourly fees to be paid to private attorneys hired by agencies, and has concluded that a government-wide limitation is inadvisable because it may prevent the government from obtaining high quality legal services. In many cases, the aggregate cost of legal services does not depend on hourly rates alone, and all relevant facts should be considered in determining the economic efficiency of a proposed

¹ The Administrative Conference has not studied the appointment of independent counsel under the Ethics in Government Act, 28 U.S.C. §§591-598, and this recommendation does not address the selection of such counsel.

AGENCY HIRING OF PRIVATE ATTORNEYS

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contract for legal services. It may, however, be appropriate for individual agencies to limit hourly rates for certain types of services, if such limits are set at realistic levels. In hiring private counsel, agencies can also take into consideration the attorney's willingness to negotiate fees, seeking the most competitive fees available, while securing the skills and efficiency required.

Important additional considerations bear on the decision of the federal government to rely on outside counsel. An agency should be acutely aware of the need for control over the activities of outside counsel to ensure, among other things, that the constitutional vesting of governmental authority in "officers" of the United States is observed in fact. The need for close control may vary with the circumstances, but it must assume preeminent importance in litigation.

In procuring the services of attorneys, agencies must also scrupulously avoid favoritism, or the appearance of favoritism, which can erode public confidence in the integrity and fairness of the government. Competitive procedures, whether mandated by procurement statutes or imposed as a matter of agency policy, will reduce the prospect or appearance of favoritism and result in higher quality legal services and savings in cost. Depending on the circumstances, the requisite procedures may range from a public solicitation of formal proposals to informal telephone requests to several sources for information relating to qualifications, availability, and fees. Appropriate competitive procedures should consider both cost and the more subjective elements of professional skill and efficiency.

Attorneys performing work for the government must maintain the highest ethical standards. They should be particularly sensitive to questions of appearances and propriety. Neither the circumstances of their retention nor their conduct of their engagement should provide the slightest basis for loss of public confidence in the administration of justice or the integrity of the governmental process.

The hiring of outside counsel may raise important questions regarding conflicts between the interests of the government and others, which federal criminal law (18 U.S.C. §§ 202 et seq.), ethics rules applicable to federal employees, and codes of professional responsibility

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seek to guard against. The principal ethical problem for outside attorneys involves simultaneous representation of the agency and, in a separate matter, a private party whose interests are adverse to the agency or the related interests of another agency. An important additional question is presented when an attorney or firm appears before an agency in a non-adversarial role on behalf of one client while simultaneously acting as attorney for the agency in a different matter.

The government, like any client of a private attorney, may consent to representation of adverse interests by its outside counsel. Any such consent, however, should be fully informed. Accordingly, to afford full protection to the government and the public, every effort must be made to identify conflicts or potential conflicts before work is contracted out, and to assure that, during the course of the representation, previously unanticipated problems are immediately disclosed so that the agency may take appropriate action.

Retainer agreements should identify the "client" with specificity and address questions related to existing or potential adverse representations. In many instances, only the agency that retains the private attorney will have an interest in the subject matter of the engagement, and in those instances that agency should ordinarily be considered the "client." This would have the effect of allowing outside counsel to appear before, or represent interests adverse to, other Executive Branch agencies in unrelated matters. Where broader interests of the government may be implicated, the agency retaining outside counsel will need to take those interests into account when drafting the retainer agreement.

To assure that all of these concerns are taken into account, any agency that anticipates a need to hire private attorneys should prepare written public guidelines concerning when and how it will seek outside counsel. As an element of agency control and to avoid later misunderstandings, appropriate written instructions should be given to attorneys when they are retained. The FDIC, FHLBB, and the Department of Justice have developed documents for these purposes, and agencies drafting guidelines and instructions should refer to them as possible models. Agencies may also find useful models in the private sector for some elements of their guidelines.

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To respond to the concerns surrounding government use of outside counsel, agencies should prepare an annual public report listing basic information relating to legal service contracts awarded.

RECOMMENDATION

1. Scope of Recommendation

This recommendation applies to any agency that hires private attorneys to represent the agency or to provide it with legal advice, i.e., where an attorney-client relationship is established.

2. Use of In-House Government Attorneys

(a) Government agencies should continue to obtain most of the legal services that they need from government attorneys.

(b) When agencies cannot develop the necessary legal resources in-house, they should explore the possibility of utilizing the expertise found at other agencies of the government, on a temporary or short-term basis. The Office of Personnel Management should establish a procedure for sharing information among agencies on the kinds of legal resources available within the government.

3. Guidelines for Hiring Outside Counsel

Each agency that anticipates a need to hire private attorneys should prepare written public guidelines detailing: (a) the criteria for deciding whether or not to seek outside legal assistance, (b) the factors relevant to the choice of attorney or firm, (c) the procedures for procurement, (d) appropriate limitations on counsel's authority, (e) conflict of interest and other ethical considerations, (f) billing practices, and (g) procedures for review of fees.

4. The Decision to Hire Outside Counsel

When an agency is considering whether to hire outside counsel, the agency should first assure itself (a) that it is authorized by law to hire outside counsel for the particular matter, (b) that it can exercise sufficient control over the performance of the services to be

AGENCY HIRING OF PRIVATE ATTORNEYS

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obtained, and (c) that such employment is cost-effective. The price of the services should not, however, be the sole test of cost-effectiveness. Also of importance in assessing the benefit to be gained from the use of outside counsel are the quality of the services provided, the availability of necessary expertise within the agency, and the need for an outside independent perspective.

5. Competition

In obtaining outside counsel, the agency should employ appropriate competitive procedures to assure that the requisite quality of service is obtained at a reasonable price without the fact or appearance of favoritism. The Office of Federal Procurement Policy should review the existing provisions of the Federal Acquisition Regulation to ensure that legal services can be procured consistently with the objectives of this recommendation.

6. Control of Performance

The contracting agency should retain such control over the performance of outside counsel as is necessary to assure that the governmental and public interests at stake are fully protected. To facilitate control, the agency should at the outset provide the attorney with specific written instructions regarding the conduct of the professional representation. Control is particularly important where the outside counsel is engaged to represent an agency in litigation.

7. Public Reports

Each agency that hires outside counsel should prepare and maintain in the office of its chief legal officer an annual public report, listing for each occasion on which outside counsel has been retained: (a) the attorney or firm and the type of work involved, (b) the reasons for engaging outside counsel, (c) the competitive procedures used, if any, (d) the fee range or other basis for compensation, and (e) the actual fee paid. For cases involving small amounts, aggregate figures would be acceptable.

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8. Ethical Considerations

(a) An agency should require outside counsel whom it plans to hire to disclose fully and in writing all existing or potential conflicts of interest. The disclosure should include all matters that the attorney's firm has pending before, or reasonably expects to come before, that agency. The agency should then decide whether to proceed with the hiring in light of the information provided. If the attorney-client privilege or other rules prevent outside counsel from making full disclosure to the agency, then the outside counsel should not be employed. The agency's agreements with outside counsel should specifically identify the types of professional employment that cannot be undertaken because of the attorney's service to the agency.

(b) Federal agencies and such private attorneys as they retain should be mindful of the constraints imposed by statutes, regulations, executive orders, codes of professional conduct, and any applicable guidelines that pertain to conflict of interest and other potential ethical problems. ~~Such provisions and guidelines should be explicitly identified and~~ incorporated in the agency's contracts with outside counsel.²

(c) When an attorney retained by an agency is not a special government employee within the meaning of 18 U.S.C. §202(a), at a minimum those restrictions which apply to such employees should be adopted by the contract with the attorney unless they are clearly inappropriate. Such restrictions include rules of employee responsibilities and conduct contained, for example, in 5 CFR Part 735.³

(d) The Department of Justice and the Office of Government Ethics should provide guidance on the applicability of 18 U.S.C. §§203-208 to agency hiring of outside counsel. Subject to that guidance, agency guidelines should provide that, for purposes of disqualification based on prohibitions against simultaneous or sequential representation of

² The contract should indicate whether and to what extent outside counsel may take inconsistent positions on behalf of an agency and a private client.

³ See 5 CFR §§ 735.301-306, which prescribe ethics and conduct rules for special government employees. See, particularly, 5 CFR § 735.301, which advises agencies that appropriate ethics and conduct rules for regular employees, stated elsewhere in Part 735, may also be made applicable by regulation to special government employees.

opposing parties, different departments or independent agencies of the federal government should normally be considered to be different clients.⁴ The guidelines should also provide that, if more than one agency has a common interest in the matter, then the definition of "client" should include any such agency or agencies. The guidelines should also make clear that all lawyers in the firm, including all branch offices of the firm, are subject to the applicable restrictions on simultaneous or sequential representation, and that these restrictions apply not merely to litigation, but to all matters in which an attorney-client relationship has been established.⁵

(e) The guidelines should also address the varying circumstances in which an attorney may represent other clients in matters involving the agency. The guidelines should identify those situations that should be avoided.

(f) If a private attorney represents the same agency frequently, then their relationship should be considered as a continuing one. In such a situation, neither the attorney nor the attorney's firm should agree to represent another client in a matter involving the client agency without the agency's explicit consent, even if, at that time, the attorney is not representing or advising the agency on a specific matter.

9. Limitations on Hourly Rates

No government-wide limitation on hourly rates should be established for hiring of private counsel. It may be appropriate for agencies to set a fixed cap on hourly rates that they pay to private attorneys for routine legal tasks; a higher fee cap may be appropriate for unusual or complex legal work. Such limits, if adopted, should be set at realistic levels, in line with fees typically charged for similar services in the same locale, so that agencies hiring outside counsel will be able to obtain the needed degree of expertise.

⁴ This paragraph of the recommendation refers to "clients" solely for the purpose of determining disqualification. The implicit premise of the recommendation is that the Executive Branch is a unitary entity whose interests and legal positions are determined by the President or his delegates, including the Attorney General.

⁵ The Department of Justice should consider, in accordance with Recommendation 84-5, 1 CFR §305.84-5, whether to issue a regulation that explicitly preempts any state rule of attorney practice that is in conflict with its guidance.

Source: Recommendation of the Administrative Conference of the United States, 1 CFR §305.87-3

DATA COLLECTION INSTRUMENT USED FOR THE SURVEY

GAO

United States General Accounting Office
General Government Division

Survey of the Federal
Government's Use of
Private Attorneys

United States General Accounting Office



Survey of the Federal Government's Use of Private Attorneys

INTRODUCTION

The U.S. General Accounting Office has been requested by the House Committee on Government Operations, Subcommittee on Government Information, Justice, and Agriculture to review the use of private attorneys by the federal government.

As part of this review, we are requesting that federal departments/agencies provide fiscal year 1991 data regarding (1) the federal government's use of contracted private attorneys to provide legal services in FY91 and (2) FY91 attorneys' fees to prevailing parties in actions against the government. We are requesting a consolidated response from each department/agency (i.e., one response per department/agency covering its various offices). Include all components of your department/agency that have incurred such expenditures.

Please return this survey with a cover letter to:

Mr. Jim Campbell, Assistant Director
Federal Human Resource Management Issues
General Government Division, Room 3150
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

We would appreciate receiving your response within 45 calendar days. If the data cannot be made available within this time frame, please fax a status report to Jim Campbell advising when it will be made available. Our General Government Division fax number is (202) 275-3938.

Please contact Jim Campbell, Assistant Director, or Ernest Both, Senior Evaluator, General Government Division, on (202) 275-6511 if there are any questions.

Thank you for your cooperation and assistance.

* * * * *

Definition of Terms

Contracted Legal Services - involves the use of private attorneys for any legal services in which an attorney-client relationship is established, such as litigation, legal advice, mediation services, etc. which were obtained through contracts awarded or paid for in FY91.

Private Attorneys' Fees to Prevailing Parties - refers to FY91 awards and payments of legal fees to prevailing parties in actions against the federal government.

Many services are provided to the federal government by private attorneys. For the purposes of our review we have grouped such services under two categories. The first category, **CONTRACTED LEGAL SERVICES**, includes services provided directly under contracts, and involves the contracts awarded and the amounts paid for contracted services. The second category, **PRIVATE ATTORNEYS' FEES TO PREVAILING PARTIES**, involves the awards and the payments made for private attorneys as a result of prevailing cases (i.e., administrative or judicial proceedings). Please note that we are first asking for awards, and then payments, for each of these categories.

I. CONTRACTED LEGAL SERVICES

A. Authorization

1. Does your department/agency have the authority to contract for legal services? (Check one.)

1. ☐ Yes (Continue to Question 2.)

2. ☐ No (Skip to Question 3.)

2. Which of the following describes your department/agency's authority to contract for private attorneys? (Check and specify all that apply.)

1. ☐ Explicitly stated in Public Law or Act
(Please specify.) _____
2. ☐ Implied by Public Law or Act
(Please specify.) _____
3. ☐ Delegated from the Department of Justice
(Please specify.) _____
4. ☐ Other (Please specify.) _____

B. Contract Information

Information is requested on the number of contracts awarded in FY91 and, separately, on payments made on contracts in FY91, regardless of when the contracts were awarded.

Awards

3. In FY91, did your department/agency award any contracts to private attorneys for legal services? (Check one.)

1. ☐ Yes. If yes, enter the total number of contracts awarded. (Enter number.)

(Total number of contracts awarded)

2. ☐ No (Skip to Question 5.)

4. For your department/agency, please list the offices and the related number of contracts awarded in FY91 (see Question 3). (Note: The total should equal the number of contracts entered in Question 3. Use attachments if needed.)

Offices	Number of Contracts
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. TOTAL	_____

Payments

5. In FY91, did your department/agency make payments on contracts to private attorneys for legal services? (Check one.)

1. ☐ Yes. If yes, enter the total dollar amount paid. (Enter amount.)

\$ _____
(Total dollar amount paid)

2. ☐ No (Skip to Question 7.)

6. For your department/agency, please list the offices and the related dollar amounts paid in FY91 (see Question 5). (Note: The total should equal the dollar amount entered in Question 5. Use attachments if needed.)

Offices	Dollar Amounts
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. TOTAL	\$ _____

Consolidated information

7. Did your response to Questions 3 and 5 include input from all offices of your department/agency? (Check one.)
1. ☐ Yes (Skip to Question 9.)
2. ☐ No (Continue to Question 8.)
8. Please list any offices that were not included in your response to Questions 3 and 5 and explain why. (List and explain. Use attachments if needed.)

C. Department/Agency Historical Data

9. Is historical data for FY88, FY89, and FY90 readily available on the total number of contracts awarded and the dollar amounts paid in each year to private attorneys for legal services? (Check one box in each row. If not applicable, check "N/A.")

	Yes (1)	No (2)	Don't know (3)	N/A (4)
1. FY88				
2. FY89				
3. FY90				

If "No," "Don't know," or "N/A" to all years, skip to "NOTE" above Question 11. If "Yes" to any, continue to Question 10.

10. What were the total number of contracts awarded and the dollar amounts paid by your department/agency to private attorneys for legal services in FY88, FY89, FY90? (Enter amounts. If none, enter "0.")

	Number of Contracts Awarded	Dollar Amounts Paid
1. FY88	_____	\$ _____
2. FY89	_____	\$ _____
3. FY90	_____	\$ _____

NOTE: If no contracts were awarded (see Question 3) and no payments on contracts to private attorneys were made (see Question 5) by your department/agency in FY91, skip to Question 14. If "yes" to either Question 3 or 5, continue to Question 11.

D. Reasons for FY91 Awards and Services Stipulated in Contracts

11. Congress is interested in knowing the circumstances giving rise to the use of private attorneys. Please provide the following information on contracts awarded during FY91, considering only the primary reason(s) for awarding the contract(s) in your response. (Please use actual numbers if readily available; otherwise, use estimates and enter "EST." Attach additional pages if needed.)

In Column A, check the reasons giving rise to the use of private attorneys. (Check one box in each row.)

In Column B, enter the number of contracts your agency awarded to private attorneys for legal services during FY91 for each reason. (Note: The total should equal the number of contracts entered in Question 3.)

REASONS FOR CONTRACTS AWARDED IN FY 1991	COLUMN A		COLUMN B
	Reason for using private attorney(s)? (Check one.)		Number of contracts awarded during FY91 (See Question 3.)
	Yes (1)	No (2)	
1. Insufficiency of agency staff			
2. Need for expertise/specialized needs			
3. More economical than using or increasing agency staff			
4. To avoid conflict of interest			
5. Local court rules			
6. Mandated by legislation			
7. Emergency (Please explain.) _____			
8. Other (Please specify.) _____			
9. Other (Please specify.) _____			
10. Other (Please specify.) _____			
11. TOTAL NUMBER OF CONTRACTS AWARDED IN FY91			

12. For contracts awarded in FY91, please identify the types of services stipulated in these contracts. (Check one box in each row.)

TYPE OF SERVICE STIPULATED IN FY91 CONTRACTS	Service Stipulated?	
	Yes (1)	No (2)
1. Government contract law		
2. Representation of federal employee sued individually as a result of performing official duties		
3. Insolvency and debt collection (e.g., loan restructuring, collection suits, bankruptcy matters)		
4. Real estate/landlord tenant law (e.g., negotiating leases, evictions, title searches, foreclosures)		
5. International law (e.g., foreign trade agreements, appearances in foreign countries)		
6. Labor and employment law (e.g., Title VII, wrongful discharge, FLSA, collective bargaining)		
7. Patent, trademark, and copyright law		
8. Taxation (e.g., federal, state, local)		
9. Representation of indigents in criminal cases		
10. Representation of indigents in civil cases		
11. Other (Please specify.) _____		
12. Other (Please specify.) _____		

E. Private Attorneys Services and Related Payments and Fees in FY91

13. Please enter below the following information on the types of services provided under contracts for which payments were made in FY91 to private attorneys. (Please use actual amounts if readily available; otherwise, estimate and enter "EST." Attach additional pages if needed.)

In Column A, check the type of services for which payments were made in FY91 to private attorneys. (Check one box in each row.)

In Column B, enter the total dollar amount for each type of contracted legal service for which payment was made in FY91. (Enter amounts. Note: The total should equal the dollar amount paid entered in Question 5.)

In Column C, enter the range of hourly fees (i.e., lowest and highest) for contracted legal services for which payments were made in FY91. (If hourly fees do not apply, that is, if contingency, flat fees or other fees were used, please explain the basis for payment. If you have only one fee per hour, please enter amount under "Lowest" and "Highest.")

TYPE OF SERVICE PAID FOR IN FY91	COLUMN A		COLUMN B	COLUMN C	
	Service Paid for in FY91? (Check one.)		Dollar Amount Paid in FY91 for Contracted Service (See Question 5.)	Fee Per Hour (Enter Amounts.)	
	Yes (1)	No (2)		Lowest Fee (1)	Highest Fee (2)
1. Government contract law			\$	\$	\$
2. Representation of federal employee sued individually as a result of performing official duties			\$	\$	\$
3. Insolvency and debt collection (e.g., loan restructuring, collection suits, bankruptcy matters)			\$	\$	\$
4. Real estate/landlord tenant law (e.g., negotiating leases, evictions, title searches, foreclosures)			\$	\$	\$
5. International law (e.g., foreign trade agreements, appearances in foreign countries)			\$	\$	\$
6. Labor and employment law (e.g., Title VII, wrongful discharge, FLSA, collective bargaining)			\$	\$	\$
7. Patent, trademark, and copyright law			\$	\$	\$
8. Taxation (e.g., federal, state, local)			\$	\$	\$
9. Representation of indigents in criminal cases			\$	\$	\$
10. Representation of indigents in civil cases			\$	\$	\$
11. Other (Please specify.) _____			\$	\$	\$
12. Other (Please specify.) _____			\$	\$	\$
13. TOTAL AMOUNT PAID IN FY91 FOR CONTRACTED LEGAL SERVICES			\$		

APPENDIX XI

F. Other Use of Private Attorneys

14. Other than as already accounted for in this survey, have you used private attorneys on a temporary basis, such as a special government employee, during FY91? (Check one.)

1. ☐ Yes (Continue to Question 15.)
2. ☐ No (Skip to Part II, below.)

15. For FY91, please list the (1) services provided by these attorneys and (2) the dollar amounts paid. (Use attachments if needed.)

Services Provided	Dollar Amounts
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. TOTAL	\$ _____

II. PRIVATE ATTORNEYS' FEES TO PREVAILING PARTIES

Attorney fees may be awarded to a prevailing party in connection with administrative or judicial proceedings in which the prevailing party brought action against, or defended against, the federal government. Payments for these awards may take place in the year of the award or in subsequent years.

A. Awards

16. In FY91, was your department/agency a party to awards of attorneys' fees? (Check one.)

1. ☐ Yes (Continue to Question 17.)
2. ☐ No (Skip to Question 19.)

APPENDIX XI

17. During FY91, how many awards of attorneys' fees were made and what was the dollar amount in conjunction with (1) administrative proceedings or (2) judicial proceedings? (Enter numbers and amounts.)

Proceedings	Number of Awards of Attorneys' Fees	Dollar Amounts
1. Administrative	_____	\$ _____
2. Judicial	_____	\$ _____
3. TOTAL	_____	\$ _____

18. For your department/agency, please list the offices and the related number of awards and the dollar amounts of attorneys' fees (see Question 17). (Note: The total should equal the total number and amounts entered in Question 17. Use attachments, if needed.)

Offices	Number of Awards	Dollar Amounts
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____
4. _____	_____	\$ _____
5. TOTAL	_____	\$ _____

19. Did your response to Question 16 (and 17, if applicable) on awards of attorneys' fees include input from all offices of your department/agency? (Check one.)

1. ☐ Yes (Skip to Section B. Payments, next page.)
2. ☐ No (Continue to Question 20.)

20. Please list any offices that were not included in your response to Question 18, on awards of attorneys' fees, and explain why. (List and explain. Use attachments if needed.)

B. Payments

21. During FY91, did your department/agency make payments of private attorneys' fees to prevailing parties? (Check one.)

1. ☐ Yes (Continue to Question 22.)

2. ☐ No (Skip to Part III, next page.)

22. Please enter below the dollar amounts for attorneys' fees resulting from administrative and judicial proceedings paid during FY91 from the following sources: (1) agency appropriated funds, (2) the permanent judgment fund, and (3) any other source. In Column 4, enter totals. (Please use actual amounts if readily available; otherwise, use estimates and enter "EST.")

REASON FOR PAYMENTS	SOURCE OF FUNDS FOR PAYMENTS			TOTAL DOLLAR AMOUNTS PAID (4)
	Agency Appropriated Funds (1)	Permanent Judgment Fund (2)	Other Source (3)	
1. Administrative proceeding	\$	\$	\$	\$
2. Judicial proceeding	\$	\$	\$	\$
3. TOTAL AMOUNT PAID IN FY91 TO PREVAILING PARTIES FOR ATTORNEYS' FEES				\$

III. OTHER INFORMATION

A. Documentation Requested

23. Please attach any documentation, guidelines, or reports that cover the following areas and check which items are attached. (If no attachments, check Box 6.)

1. ☐ Legal authority to hire private attorneys especially for any particular matters
2. ☐ Statutory authority to conduct litigation
3. ☐ Circumstances that give rise to hiring private attorneys
4. ☐ Information stipulating when and how private attorneys will be hired, and the minimum or maximum fees allowed for services provided (if applicable)
5. ☐ Reports on the use of private attorneys, including benefits and/or results
6. ☐ No items attached

B. Agency Contact Person

24. Please enter the name, title, department/agency, and telephone number of a contact person with whom we might speak if we have any questions.

Name of contact

Title

Department/Agency

.....

Telephone number () _____
(Area code) Number

C. Other Comments

25. If you have any other comments you might like to make regarding your agency's use of private attorneys and/or payments of attorneys' fees, please use the space provided below.

Thank you for your cooperation.

GGD/MMS/11-91
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LISTING OF AGENCIES

Agency
LEGISLATIVE BRANCH
Architect of the Capitol
Congressional Budget Office
General Accounting Office
Government Printing Office
Library of Congress
Office of Technology Assessment
Copyright Royalty Tribunal
JUDICIAL BRANCH
Administrative Office of the United States Courts
Federal Judicial Center
The Supreme Court of the United States
United States Court of Military Appeals
United States Claims Court
Temporary Emergency Court of Appeals
United States Tax Court
United States Court of Appeals for the Federal Circuit
United States Court of International Trade
EXECUTIVE OFFICE OF THE PRESIDENT
The White House Office
Council of Economic Advisers
Council on Environmental Quality
National Critical Materials Council
National Security Council
National Space Council
Office of Administration

Agency
Office of Management and Budget
Office of National Drug Control Policy
Office of Policy Development
Office of Science and Technology Policy
Office of the U.S. Trade Representative
Office of the Vice President
CABINET DEPARTMENTS
U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Defense
U.S. Department of Education
U.S. Department of Energy
U.S. Department of Health and Human Services
U.S. Department of Housing and Urban Development
U.S. Department of the Interior
U.S. Department of Justice
U.S. Department of Labor
U.S. Department of State
U.S. Department of Transportation
U.S. Department of the Treasury
U.S. Department of Veterans Affairs
INDEPENDENT ESTABLISHMENTS AND GOVERNMENT CORPORATIONS
ACTION
Administrative Conference of the United States
African Development Foundation
Central Intelligence Agency
Commission on the Bicentennial of the U.S. Constitution
Commission on Civil Rights

Agency
Commodity Futures Trading Commission
Consumer Product Safety Commission
Defense Nuclear Facilities Safety Board
Environmental Protection Agency
Equal Employment Opportunity Commission
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Reserve System
Federal Retirement Thrift Investment Board
Federal Trade Commission
General Services Administration
Inter-American Foundation
Interstate Commerce Commission
Merit Systems Protection Board
Office of Special Counsel
National Aeronautics and Space Administration
National Archives and Records Administration
National Capital Planning Commission
National Credit Union Administration

Agency
National Endowment for the Arts
National Labor Relations Board
National Mediation Board
National Railroad Passenger Corporation (Amtrak)
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Comptroller of the Currency
Office of Government Ethics
Office of Independent Counsel
Office of Personnel Management
Office of the United States Nuclear Waste Negotiator
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Resolution Trust Corporation
Oversight Board of the Resolution Trust Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Tennessee Valley Authority
United States Arms Control and Disarmament Agency
United States Information Agency
Agency for International Development

Agency
United States International Trade Commission
United States Postal Service
BOARDS, COMMITTEES, AND COMMISSIONS
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
Federal Employees Pay Council
Advisory Council on Historic Preservation
American Battle Monuments Commission
Appalachian Regional Commission
Architectural and Transportation Barriers Compliance Board
Arctic Research Commission
Barry Goldwater Scholarship and Excellence in Education Foundation
Board for International Broadcasting
Christopher Columbus Quincentenary Jubilee Commission
Citizens' Stamp Advisory Committee
Commission for the Preservation of America's Heritage Abroad
Commission of Fine Arts
Commission on Agricultural Workers
Commission on the Ukraine Famine
Commission on Security and Cooperation in Europe
Commission on Minority Business Development
Committee for Purchase from the Blind and other Severely Handicapped
Coordinating Council on Juvenile Justice and Delinquency Prevention
Corporation for Public Broadcasting
Delaware River Basin Commission
Endangered Species Committee

Agency
Federal Financial Institutions Examination Council
Federal Financing Bank
Federal Laboratory Consortium for Technology Transfer
Harry S. Truman Scholarship Foundation
Illinois and Michigan Canal National Heritage Corridor Commission
Institute of American Indian and Alaska Native Culture and Arts Development
Interagency Council on the Homeless
International Cultural and Trade Center Commission
Interstate Commission on the Potomac River Basin
James Madison Memorial Fellowship Foundation
Japan-United States Friendship Commission
John C. Stennis Center for Public Service Development
Mailers' Technical Advisory Committee
Marine Mammal Commission
Martin Luther King, Jr. Federal Holiday Commission
Migratory Bird Conservation Commission
National Afro-American History and Culture Commission
National Commission on Acquired Immune Deficiency Syndrome
National Commission on Libraries and Information Science
National Commission on Migrant Education
National Communications System
National Council on Disability
National Commission on Children
National Historical Publications and Records Commission
National Institute of Building Sciences
National Occupational Information Coordinating Committee
National Park Foundation

Agency
Neighborhood Reinvestment Corporation
Nuclear Waste Technical Review Board
Office of the Federal Inspector, Alaska Natural Gas Transportation System
Office of Navajo and Hopi Indian Relocation
Overseas Private Investment Corporation
Pacific Northwest Electric Power and Conservation Planning Council
Permanent Committee for the Oliver Wendell Holmes Devise
Physician Payment Review Commission
Presidential Commission on Catastrophic Nuclear Accidents
President's Commission on Executive Exchange
President's Committee on Employment of People with Disabilities
Prospective Payment Assessment Commission
Regulatory Information Service Center
Susquehanna River Basin Commission
The Points of Light Foundation
U.S. Trade and Development Program
United States Holocaust Memorial Council
United States Sentencing Commission
QUASI-OFFICIAL AGENCIES
Legal Services Corporation
Smithsonian Institution
State Justice Institute
United States Institute of Peace
TOTAL OF 179 AGENCIES

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