



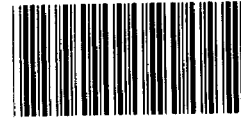
United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-253476

May 25, 1993

The Honorable John Glenn
Chairman, Committee on Governmental
Affairs
United States Senate



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Dear Mr. Chairman:

On April 5, 1993, the Committee asked us to help it prepare for an upcoming hearing on S. 404. This bill would amend certain statutes to improve the government's effectiveness in reviewing employment discrimination complaints of federal employees. Specifically, we were asked to update cost information we reported in Discrimination Complaints: Payments to Employees by Federal Agencies and the Judgement Fund¹ (GAO/HRD-89-141, Sept. 25, 1989). This letter provides information on payments made to federal employees and their attorneys in fiscal years 1989 through 1992.

RESULTS IN BRIEF

Although exact numbers were not readily available, at least \$47.9 million was paid by federal agencies and the Judgement Fund to federal employees and their attorneys over the 4 fiscal years.² Much of this amount was back pay to employees. However, at least \$19.8 million was paid to employees' attorneys.

¹A permanent indefinite appropriation used to pay certain settlements and judgements against the federal government (31 U.S.C. 1304).

²There are further monetary costs. Cabinet-level civilian departments and certain Department of Defense agencies estimated their fiscal year 1991 dollar costs for discrimination complaint counseling and for investigating and processing formal discrimination complaints at about \$139 million. See Federal Workforce: Agencies' Estimated Costs for Counseling and Processing Discrimination Complaints (GAO/GGD-92-64FS, Mar. 26, 1992).

BACKGROUND

When a federal employee's discrimination complaint is resolved by administrative procedures, and the corrective action includes monetary relief, the funds are paid from the agency's appropriation. When a suit is filed in court, any resulting monetary relief is generally paid from the Judgement Fund. Our September 1989 report provided data on payments made by several agencies and from the Judgement Fund in fiscal years 1987 and 1988.

PAYMENTS AGENCIES MADE

To update data on agency payments, we used the Equal Employment Opportunity Commission's (EEOC) annual reports on equal employment opportunity complaints and appeals in the federal government. The reports included data submitted by agencies with 100 or more employees.

As table 1 shows, agencies reported awarding at least \$24.4 million in back pay and attorney fees and costs in fiscal years 1989 through 1991. Fiscal year 1991 is the latest year covered by EEOC's most recent discrimination complaint report.

Table 1: Monetary Awards Made by Agencies in Discrimination Complaint Cases, Fiscal Years 1989 Through 1991

Dollars in millions

Fiscal year	Amount awarded by agencies	
	Back pay	Attorney fees/costs
1989	\$3.3 ^a	\$2.9
1990	8.0	2.5
1991	4.4	3.3
Total	\$15.7	\$8.7

Note: Dollar values are rounded.

^aWe computed this amount. EEOC did not publish a back pay amount for fiscal year 1989 because one or more large agencies that could significantly affect the governmentwide total did not report back pay. We arrived at \$3.3 million by adding the amounts that were reported.

In our September 1989 report, we cautioned about the accuracy and completeness of agency payment data. EEOC checks the complaint data agencies report annually for obvious errors, such as items not adding to totals. Essentially, however, the agencies are responsible for the accuracy and completeness of the data. We did not verify the data agencies submitted to EEOC.

JUDGEMENT FUND PAYMENTS

The Department of the Treasury, the Department of Justice, and GAO share responsibility for administration of the Judgement Fund. We must certify as proper all payments to be made out of the fund before Treasury can make the payments. For this update, we extracted from our records data on Judgement Fund payments in discrimination cases.

As table 2 shows, \$23.5 million was paid from the Judgement Fund from fiscal year 1989 through fiscal year 1992 for discrimination complaint cases. This amount includes back pay and attorney fees. Attorney fees and costs may or may not be specifically identified in the payment, depending on the wording of the settlement or judgement. Almost half of the \$23.5 million was specifically identified as attorney fees and costs.

Table 2: Payments Made From the Judgement Fund for Discrimination Complaint Cases, Fiscal years 1989 through 1992

Dollars in millions

Fiscal year	Total payments	Payments for attorney fees/costs
1989	\$3.2	\$1.8
1990	6.2	3.4
1991	5.7	1.9
1992	8.4	4.0
Total	\$23.5	\$11.1

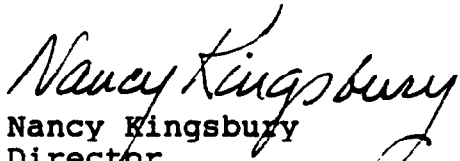
Note: Dollar values are rounded.

The Judgement Fund file contains different categories of discrimination cases, and each category has its own identifying code. One of the categories is "government employee," and we

attempted to extract data on only these cases.³ However, for fiscal year 1989 and perhaps part of fiscal year 1990, the current categories were not in use and all discrimination cases were identified by the same code.⁴ As a result, the payments made in fiscal year 1989, and perhaps 1990, may include payments made to nongovernment employees and their attorneys. If so, these other payments may be relatively small. The nongovernment employee cases accounted for about 3 percent of all payments in fiscal year 1992 (about \$265,000) and about 9 percent of all payments (about \$541,000) in fiscal year 1991.

Please call me on (202) 512-5074 if you have any questions about this information.

Sincerely yours,


Nancy Kingsbury
Director
Federal Human Resource Management
Issues

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³The other categories were payments made to private employers and "other." When EEOC sues a private employer for discrimination and loses the suit, the government may have to pay the employer's attorney fees and costs. Judgement Fund payments to private employers are for this purpose.

⁴The new codes were implemented in fiscal year 1990, but exactly when is uncertain.