

GAO

United States General Accounting Office

Report to the Chairman, Subcommittee
on Employment and Housing,
Committee on Government Operations,
House of Representatives

September 1989

DISCRIMINATION COMPLAINTS

Payments to Employees by Federal Agencies and the Judgement Fund



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Relations.**

546536

Human Resources Division

B-236714

September 25, 1989

The Honorable Tom Lantos
Chairman, Subcommittee on Employment and Housing
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

In your November 24, 1988, letter, you asked that we determine the costs of resolving federal employees' discrimination complaints. Federal employees are protected against discrimination by several laws, including the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act, and the Civil Rights Act of 1964. When federal employees believe they have been discriminated against because of age, race, color, sex, national origin, religion, or handicap, they may seek relief through administrative procedures.

In resolving discrimination complaints, a variety of corrective actions may provide relief. These include retroactive and nonretroactive hiring or promotion, modification or cancellation of disciplinary action, reinstatement, reassignment, or changes in working conditions. On occasion, agencies provide back pay or other types of monetary relief to resolve discrimination cases, although this is the exception. Money that a complainant receives beyond his or her normal salary would be considered monetary relief; for example, back pay in connection with a retroactive promotion. But the new, higher salary would not be considered monetary relief.

When a complaint is resolved by administrative procedures, and the corrective action includes monetary relief, the funds are paid from the agency's appropriation. When monetary relief is provided after a suit has been filed in court, payment generally comes from the Judgment Fund (31 U.S.C. 1304), a permanent indefinite appropriation used to pay certain claims against the federal government.

**Objectives, Scope, and
Methodology**

Our objectives were to determine (1) whether data on agency and Judgment Fund payments are compiled and (2) the magnitude of these payments. We were also asked to determine whether policies on settling discrimination complaints differ among agencies. Determining whether agencies settle discrimination complaints too readily or too slowly and whether monetary payments made to settle complaints are too large or too small would require independent assessments of the merits of each

case. As agreed with your office, we did not attempt such assessments. However, we did discuss settlement policies with equal employment opportunity officials.

Because no central source of complete, reliable data exists in the federal government on payments made by agencies to resolve discrimination complaints, the scope of our work was limited to three federal agencies: the Securities and Exchange Commission (SEC), with 2,100 full-time, permanent employees; the Department of Labor, with 18,000 employees; and the Department of Agriculture, with 89,000 employees. The Subcommittee suggested that we review SEC and Agriculture because of recent publicity concerning payments made in discrimination complaint cases; we selected Labor to have a mix of agencies of different sizes. Because these agencies are not a scientifically chosen sample, the results cannot be generalized to all government agencies. They are indicative, however, of the extent to which federal agencies develop information on the costs of resolving discrimination complaints. Our inquiry concerned only payments made by the federal government to complainants or their attorneys as a result of settlements between complainants and agencies,¹ agency decisions (with or without Equal Employment Opportunity Commission [EEOC] involvement), and court awards. We did not examine the indirect costs of administrative procedures or of agencies' defending themselves in discrimination cases.

At each of the three agencies we reviewed, there was no central source of data from which we could obtain information about all payments made in discrimination cases. At each agency, we spoke with officials in the equal employment opportunity (EEO) office, the finance office, and the general counsel's office to obtain information about recordkeeping and payments. At EEO offices, we obtained information on settlements and agency decisions; at finance offices, information concerning recordkeeping for payments from agency funds; and at general counsels' offices, information about court cases arising from discrimination complaints.

At each agency, the primary source of data on payments was form 462, "Annual Statistical Report on Discrimination Complaints," which each agency is required to submit to EEOC annually (see app. I). At SEC, we

¹A settlement is any formal or informal agreement between the complainant and the federal agency that resolves the complaint to the satisfaction of both parties.

obtained some information missing from the form 462 through interviews with finance and legal staff. We also discussed with EEOC officials payments for discrimination complaints and sources of payment data.

The Treasury Department, the Justice Department, and GAO share responsibility for administration of the Judgement Fund. Treasury obtains the appropriation and disburses payments. Justice certifies that judgements are final and payments should be made from the Judgement Fund.² GAO must certify as proper all payments to be made out of the fund before Treasury may make the payments. For this report, we extracted from our records data on Judgement Fund payments in discrimination cases.

We conducted our review between January and July 1989 in accordance with generally accepted government auditing standards.

Background on Resolution of Discrimination Complaints

Federal employees who believe they have been discriminated against must seek relief through administrative complaint procedures before filing a civil suit. These administrative procedures include informal counseling and conciliation efforts and formal complaint processing. The complainant and the agency may resolve a discrimination complaint through mutual agreement at any time, before or after a formal complaint has been filed, and before or after a civil suit has been filed.

To initiate the administrative procedures, an employee speaks with an EEO counselor in the agency. The counselor will informally inquire into the alleged discrimination and seek to resolve the problem. If the problem is not resolved informally, the employee may file a formal complaint with the agency EEO office. An investigator will conduct a formal inquiry and provide a copy of the investigative file to both the complainant and the agency. At this point, the EEO office will again seek an informal resolution. If the parties do not settle, the EEO office will notify the complainant of the agency's proposed disposition of the case.

After this, the employee may request a hearing by EEOC. If the employee does so, an EEOC administrative judge reviews the file and determines whether further investigation is necessary. If so, EEOC remands the complaint to the agency. Otherwise, the administrative judge conducts a

²In most cases, the Justice Department or the U.S. attorney represents federal agencies in court. In those cases in which an agency has the authority to represent itself, the agency may request payment from the Judgement Fund.

hearing and sends a recommended decision to the agency. If EEOC does not send a recommended decision within 180 days, the complainant may file suit. The head of the agency makes a final decision, accepting, modifying, or rejecting the EEOC recommendation. The agency transmits its decision and, if applicable, a copy of the EEOC recommendation to the complainant.

If dissatisfied, the complainant may appeal to the EEOC Office of Review and Appeals (ORA) or file a civil suit in district court. If the case is appealed, ORA will render a decision, which the agency generally must accept. If dissatisfied with the ORA decision, the complainant may file a civil suit in district court. In addition, the complainant has the option of filing a civil suit at other points in the process. If the agency does not make a decision within 180 calendar days after a formal complaint has been filed, the complainant may file a civil suit. The complainant may also file suit, without first asking for EEOC review, after the agency renders a decision. When a complainant files a suit, the administrative procedures for the complaint end, and the agency considers the administrative case to be closed.

Whether a complainant files suit in district court has a bearing on the source of funds for any monetary payment. If a decision in favor of the complainant is rendered through administrative procedures (or if a settlement is reached), funds to pay any monetary relief come from the agency's appropriation. If, however, a judgment is rendered by the district court or a settlement is reached after a civil suit has been filed, funds for monetary relief generally are paid from the Judgement Fund, rather than from the agency's appropriation.

Results in Brief

When discrimination cases result in monetary relief for complainants, the funds come either from the agency's appropriation or from the Judgement Fund, depending on the stage of processing of the case. No complete, reliable central data source exists in the federal government on payments made by agencies in discrimination cases. Each agency compiles and maintains data on payments, but none of the three agencies we reviewed had overall cost figures for both administrative and court cases. In addition, the quality of payment data gathered by the agencies varied. Although EEOC collects annual payment data on discrimination complaints from agencies, the data are not complete or reliable. EEOC does not publish the data in its annual reports or otherwise use these data.

Payments Made From Agency Appropriations

When a case is resolved in favor of the complainant through administrative procedures (without the complainant's filing a civil suit), any monetary payment comes from the agency's appropriation. The amounts paid in the last 2 fiscal years by the three agencies we surveyed are shown in table 1.

Table 1: Payments by Three Agencies in Discrimination Cases (Fiscal Years 1987 and 1988)

Agency	Fiscal year			
	1987		1988	
	Payments	Cases	Payments	Cases
Agriculture	\$805,957	50	\$340,855	82
Labor	243,991	7	49,829	3
SEC	40,000 ^a	1	147,477 ^b	2

Note: Data are based on EEOC form 462. In some cases, we clarified or supplemented the information on the forms through interviews with agency officials.

^aOnly \$6,356 is shown on SEC's form 462 for fiscal year 1987. According to SEC legal staff, however, in fiscal year 1987, one case was settled, and it provided for a lump-sum payment of \$40,000 for back pay and attorney's fees.

^bSEC's form 462 for fiscal year 1988 was filled out improperly. The amount shown was obtained during interviews with SEC's legal staff and represents one large settlement, \$145,000; this amount was paid by SEC, but it might have been eligible for Judgement Fund payment if SEC had requested it. The remainder, \$2,477, is for 6 weeks' gross back pay paid by SEC in another case.

Payments Made From Judgement Fund

When a case goes beyond administrative procedures—to court—any resulting monetary relief is generally paid from the Judgement Fund. In fiscal year 1987, the Judgement Fund paid a total of \$6.5 million for 144 discrimination complaint cases across the federal government. In fiscal year 1988, the total was \$12 million for 156 cases. Amounts paid from the Judgement Fund in cases at the three agencies we studied are shown in table 2.

Table 2: Payments From Judgement Fund for Discrimination Cases Involving Three Agencies (Fiscal Years 1987 and 1988)

Agency	Fiscal year			
	1987		1988	
	Payments	Cases	Payments	Cases
Agriculture	\$192,912	8	\$170,566	6
Labor	200,882	5	244,471	4
SEC	0	0	0 ^a	0

Note: Data are based on the dates payments were made rather than on the dates the cases were resolved.

^aOne major SEC case was settled in fiscal year 1988, but payment from the Judgement Fund was not made until fiscal year 1989. Payments were made for gross back pay totaling \$52,572, for interest totaling \$40,866, and for attorney's fees totaling \$95,000. In this case, in addition to back pay, interest, and attorney's fees, the settlement provided that SEC would hire an independent investigator to determine disciplinary action against SEC officials; this cost SEC approximately \$100,000. The settlement further provided that an outside law firm would conduct an EEO review; this cost SEC between \$350,000 and \$400,000.

We found no patterns in monetary payments by federal agencies for the periods we reviewed. Total payments made in any given fiscal year depend on both the amounts awarded in the specific cases and the number of cases.

Accuracy of Payment Data

Data reported on administrative resolutions may not be accurate. According to EEOC, agencies do not always report accurate payment data; in some cases, they develop rough estimates of payments. Agency EEO offices are charged with submitting form 462 to EEOC, but EEO offices sometimes rely on other components to provide information about payments. Several components within each agency may be concerned with discrimination cases, and each of them may be interested in different information. To illustrate, EEO offices are primarily interested in records of administrative case closures; general counsels' offices, in court cases; and finance offices, in records of payments from agency appropriations. These various components may not communicate with one another about the results of their actions to close discrimination cases.

Each of the agencies compiled data on discrimination payments differently. At Labor, the EEO office has a centralized tracking system to monitor discrimination complaint cases as they move through processing. Based on our limited review, it appeared that this tracking system allows Labor's EEO office to generate relatively complete and accurate reports on the disposition of administrative cases and the dollar amounts of payments made through administrative procedures. At Agriculture, a much larger agency with many more field offices, the headquarters EEO office relies on reports submitted by EEO offices throughout

the nation. As a result, the data may not be consistently reported. According to an Agriculture EEO office official, these field office data are not verified by headquarters. At SEC, the EEO office relies on the finance office to provide data on payments.

None of the three agencies we reviewed had overall cost figures for both administrative and court cases because they all closed discrimination complaint cases after administrative procedures were completed. None systematically tracked cases that went to court.

EEOC Collects Data Annually

EEOC's Federal Sector Programs staff annually collects data on discrimination complaints from all federal agencies through the form 462. The form covers types of discrimination complaints, caseloads, case processing, disposition of cases, processing time, and relief granted, including monetary relief. The form covers all cases resolved through administrative procedures, that is, resolved without a civil suit. EEOC does not compile, analyze, or publish the data on monetary payments it collects from federal agencies.

EEOC Concentrates on Caseload Data

In recent years, EEOC has been concerned about agency backlogs of discrimination complaints and about excessive time to complete administrative procedures. These concerns have been reflected in EEOC's attempts to improve agency reporting of caseload data and information on administrative procedures. To improve reporting, EEOC (1) has reduced the burden on federal agencies, changing the reporting requirement from semiannual to annual; (2) has assigned staff to review reports for completeness and internal consistency and to resolve any discrepancies with the agencies; and (3) is revising form 462 to make it easier to complete. Less data on monetary payments, however, will be requested on the revised form.

EEOC has little confidence in the payment data reported by agencies. EEOC officials stated that these data are incomplete in that agencies sometimes report the number of cases resolved through settlements and decisions, but not the dollar amounts of monetary relief.

EEO Offices Emphasize Timeliness

Timely resolution of discrimination complaints is a primary concern of agency EEO offices. Whether payments are made to complainants and, if so, the dollar amounts are of secondary interest. Moreover, agency officials told us that because EEOC does not use or publish monetary relief

data, agency EEO offices put little effort into reporting payment data. Some agency EEO offices do not track payment data as they do case processing data. Instead, these EEO offices rely on the offices involved in discrimination cases to report any payments to the EEO offices. Further, the three EEO offices we surveyed stop tracking discrimination complaint cases after the administrative procedures are completed, that is, when the complainant files suit. Therefore, the EEO offices have no systematic way of knowing whether monetary payments are ordered by the courts.

Some Payment Data Are Not Readily Available

The total paid in court cases and administrative cases is not known. Some payments are not reported on form 462 or included in Judgement Fund records.

If a case goes beyond administrative procedures—to court—monetary awards are generally paid from the Judgement Fund. However, Judgement Fund records are an incomplete source of information because, in practice, not all court-ordered payments are paid from the fund. When agencies make payments in court cases, those payments would not be included on form 462, nor would they be recorded in Judgement Fund records.

In addition, even though review by EEOC's Office of Review and Appeals is part of administrative procedures, payments made to resolve cases appealed to ORA are not included on form 462. These payments amounted to \$1.6 million in fiscal year 1987 and \$2.4 million in fiscal year 1988.

Further, finance offices may not be able to provide data on these payments. They do not systematically track payments in discrimination cases. Records of discrimination case payments may be kept in a file with other types of payments, possibly requiring laborious manual searches to determine which payments related to discrimination cases and which had already been reported on form 462.

Other Information

Agency officials told us that they generally try to resolve discrimination complaints quickly, at the earliest possible stage. As a result, many employee concerns about potential discrimination are settled during the counseling stage (see p. 3).

Summary data on caseload, case resolutions, and monetary payments for the three agencies we surveyed are shown in tables 3 and 4.

Table 3: Discrimination Complaints at Three Agencies (Fiscal Year 1988)

	Agencies		
	Agriculture	Labor	SEC
Full-time, permanent employees	88,986	17,535	2,093
Counseled	1,332	215	18
Formal complaints filed	277	163	9
Closures:	369	73	4
Settlements	179	27	2
Agency decisions:	89	16	2
Finding discrimination	9	0	0
Finding no discrimination	80	16	2
Cases closed with corrective action	190	27	3
Cases closed with back pay awards	82	3	2
Back pay awarded	\$295,335	\$42,315	\$114,977
Attorney's fees and costs awarded	\$45,520	\$7,514	\$32,500
Total payments, cases decided within agency	\$340,855	\$49,829	\$147,477
Total Judgement Fund payments	\$170,566	\$244,471	0

Note: Total closures may exceed number of complaints filed because not every complaint is resolved in the same year it is filed.

Table 4: Discrimination Complaints at Three Agencies (Fiscal Year 1987)

	Agencies		
	Agriculture	Labor	SEC
Full-time, permanent employees	95,000	18,509	2,023
Counseled	1,469	185	65
Formal complaints filed	332	109	6
Closures:	363	79	7
Settlements	198	30	1
Agency decisions:	68	17	4
Finding discrimination	6	0	0
Finding no discrimination	62	17	4
Cases closed with corrective action	204	30	2
Cases closed with back pay awards	50	7	^a
Back pay awarded	\$515,325	\$221,648	^a
Attorney's fees and costs awarded	\$290,632	\$22,343	^a
Total payments, cases decided within agency	\$805,957	\$243,991	\$40,000
Total Judgement Fund payments	\$192,912	\$200,882	0

Note: Total closures may exceed number of complaints filed because not every complaint is resolved in the same year it is filed.

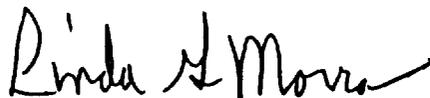
^aAccording to SEC legal staff, the total for back pay and attorney's fees awarded in fiscal year 1987 was \$40,000 for one case, but further details were not available.

We discussed the matters presented in this report with officials from SEC, Labor, Agriculture, and EEOC, and considered their comments in preparing this document.

Unless its contents are announced earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Chairmen of SEC and EEOC, the Secretaries of Agriculture and Labor, and other interested parties, and will make copies available to others on request.

The major contributors to this report are included in appendix II.

Sincerely yours,



Linda G. Morra
Director, Select Congressional Studies

EEOC Form 462: "Annual Statistical Report on Discrimination Complaints"

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
ANNUAL STATISTICAL REPORT ON DISCRIMINATION COMPLAINTS

AGENCY OR DEPARTMENT

REPORTING PERIOD
FISCAL YEAR 19 ____

IRC NUMBER
0288-EEO-AN

This report is due on or before the last day of October to:

Equal Employment Opportunity Commission
Federal Sector Programs
2401 E Street, NW., Room 422
Washington, D.C. 20507

PART I. INTAKE

- A. Total number of individuals counseled this reporting period
- B. Total number of formal complaints filed this reporting period
- C. Summary chart of counselling and formal complaints filed by bases and issue(s):

BASES OF DISCRIMINATION ALLEGED		ISSUE(S) ALLEGED																						
		APPOINTMENT ASSIGNMENT OF DUTIES	AWARDS	CONVERSION TO FULL-TIME	DUTY HOURS	EXAMINATION TEST	HARASSMENT (NON-SEXUAL)	PAY/INCLUDING OVERTIME	PROMOTION	REASSIGNMENT	REINSTATEMENT	REPRISAL	RETIREMENT	SUSPENSION	SEXUAL HARASSMENT	TERMINATION	TIME AND ATTENDANCE	TRAINING	WORKING CONDITIONS	MERIT PAY	NON-MERIT PAY	OTHER	EVALUATION APPRAISAL	
RACE OR COLOR	BLACK	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
	WHITE	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
	OTHER	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
RELIGION		NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
SEX	FEMALE	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
	MALE	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
NATIONAL ORIGIN	HISPANIC	NO. COUNSELED																						
		NO. COMPLAINTS FILED																						
	OTHER	NO. COUNSELED																						
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		NO. COMPLAINTS FILED																						
REPRISAL		NO. COUNSELED																						
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EEOC FORM 462 JUL 84

PREVIOUS EDITION OF THIS FORM IS OBSOLETE AND MUST NOT BE USED

**Appendix I
EEOC Form 462: "Annual Statistical Report
on Discrimination Complaints"**

PART II. FORMAL COMPLAINT CLOSURES			PART IV. CASES CLOSED WITH CORRECTIVE ACTION																																																																																																												
A. Types of Closures	NUMBER OF COMPLAINTS CLOSED THIS REPORTING PERIOD	AVERAGE NO. DAYS FROM FILING TO CLOSURE	A. Total number of cases closed with corrective action this reporting period _____		B. Total number of cases closed with backpay awarded this reporting period _____																																																																																																										
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A. Recommended decisions received this reporting period _____																																																																																																															
B. Number recommended decisions received and pending agency action this reporting period _____																																																																																																															
C. Types of Agency Actions Taken This Reporting Period		NUMBER OF AGENCY ACTIONS TAKEN THIS REPORTING PERIOD																																																																																																													
1. Finding Discrimination	accepted as agency decision																																																																																																														
	modified by agency																																																																																																														
	rejected by agency																																																																																																														
2. Finding No Discrimination	accepted as agency decision																																																																																																														
	modified by agency																																																																																																														
	rejected by agency																																																																																																														
TYPED NAME AND TITLE OF PREPARER		TELEPHONE NO.																																																																																																													

**Appendix I
EEOC Form 462: "Annual Statistical Report
on Discrimination Complaints"**

PART V. GENERAL INFORMATION		PART VI. STATUS OF ACTIVE COMPLAINTS ON HAND		
	NUMBER		NUMBER	AVERAGE NO. OF DAYS IN PROCESS FROM FILING DATE
1. Total complaints on hand beginning of this reporting period		1. Pending acceptance/rejection		
2. Total complaints on hand end of reporting period		2. Pending assignment to investigator		
3. Complaints investigated this reporting period		3. Pending completion of investigation		
4. Number EEO Counselors (Full-time)		4. Pending proposed disposition		
5. Number EEO Counselors (Collateral Duty)		5. Pending complainant's response to Proposed Disposition		
6. Number EEO Investigators (Full-time)		6. Pending receipt of recommended decision from complaint examiner		
7. Number EEO Investigators (Collateral Duty)		7. Pending agency decision		
8. Total number of full-time permanent agency employees				

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