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Report to the Congress

Subject: *The Judgment Fund: Status of Reimbursements Required by the No FEAR Act and Contract Disputes Act*

The Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002¹ has, since October 1, 2003, required federal agencies to reimburse the Judgment Fund for payments made to claimants to cover judgments, awards, and settlements in equal employment opportunity (EEO) and whistleblower cases. As we previously reported in 2004, the reimbursement provision of the No FEAR Act was intended to make agencies more accountable for their violations of employment discrimination and whistleblower protection laws brought against the agencies.² Similarly, the Contract Disputes Act of 1978 (CDA) also has, since March 1, 1979, required agencies to reimburse the Judgment Fund for payments to claimants in cases involving federal contract disputes.³ The No FEAR Act mandated that we conduct a study of the payments, reimbursements, and effects of the reimbursement provisions of both No FEAR Act and CDA cases.⁴

In 1956, Congress established the Judgment Fund, which is a permanent, indefinite appropriation to pay judgments against federal agencies that are not otherwise provided for by other appropriations.⁵ In 1961, legislation was enacted allowing the Judgment Fund to pay, among other things, Department of Justice (DOJ) settlements of ongoing or imminent lawsuits against federal agencies.⁶ The Judgment Fund is intended to allow for prompt payment of settlements and awards to claimants, thereby reducing the assessment of interest against federal agencies (where allowed by law) during the period between the rendering and payment of such settlements and awards. The Judgment Fund makes such payments upon certification that a

¹Pub. L. No 107-174, § 201, 166 Stat. 566, 568 (May 15, 2002). See 5 U.S.C. § 2301 note.

²GAO, *No FEAR Act: Methods the Justice Department Says It Could Use to Account for Its Costs Per Cases under the Act*, GAO-04-863 (Washington, D.C.: July 22, 2004); GAO, *Judgment Fund: Treasury's Estimates of Claim Payment Processing Costs under the No FEAR Act and Contract Disputes Act*, GAO-04-481 (Washington, D.C.: Apr. 28, 2004).

³Pub. L. No. 95-563, § 13, 92 Stat. 2383, 2389 (Nov. 1, 1978) (codified, as amended, at 41 U.S.C. § 612).

⁴For purposes of this report, the term "payment" refers to disbursements from the Judgment Fund on behalf of a federal agency to a claimant for monies owed. The term "reimbursement" refers to federal agencies' repayment to the Judgment Fund for amounts disbursed on their behalf.

⁵Act of July 27, 1956, ch. 748, § 1302, 70 Stat. 694, (codified as amended at 31 U.S.C. § 1304).

⁶Pub. L. No. 87-187, § 2, 75 Stat. 415 (Aug. 30, 1961). Subsequent amendments expanded the scope of payments from the Judgment Fund to include certain administrative awards and awards by agency boards of contract appeals.

court has handed down an award or that a settlement has been reached. The Judgment Fund is currently managed by the Department of the Treasury's Financial Management Service (FMS).⁷

In response to the mandate, the objectives of our review, for both No FEAR Act and CDA cases, were to:

1. determine in how many cases payments were made from the Judgment Fund for judgments, settlements, or awards resulting from (a) EEO and whistleblower protection complaints after the No FEAR Act became effective, and (b) contract disputes;
2. determine in how many cases and to what extent agencies made reimbursements to the Judgment Fund and how long reimbursements took; and
3. obtain agency official and stakeholder views of the effects of the requirement to reimburse the Judgment Fund on operations, appropriations, employee relations and other human capital matters, and settlement practices at federal agencies.

To address the first and second objectives, we obtained and analyzed data from FMS on Judgment Fund payments made in fiscal years 2002 through 2006 and agency reimbursements made in fiscal years 2002 through March 31, 2007. We also discussed Judgment Fund payment and reimbursement policies and procedures with FMS officials and reviewed relevant regulations, policies, and guidance. To address our third objective, we interviewed officials at seven federal agencies. Four of these agencies—the Army Corps of Engineers (Army Corps), the Department of the Interior (Interior), the General Services Administration (GSA), and the Office of Personnel Management (OPM)—had the largest unpaid obligations for CDA cases, according to FMS records. The remaining three agencies—the Department of Agriculture (USDA), the Department of Veterans Affairs (VA), and DOJ—had a large number of No FEAR Act cases. In addition, we interviewed staff from the Office of Management and Budget (OMB) to discuss the budgeting process for dealing with the agency reimbursement requirements related to the Judgment Fund. We held discussions with DOJ officials responsible for representing federal agencies in EEO and contract disputes litigation. We also spoke with officials from OPM and the Equal Employment Opportunity Commission (EEOC) for their perspectives as leadership agencies responsible for oversight of EEO and diversity programs in federal agencies. OPM and EEOC are among the designated recipients of No FEAR Act Section 203 reports, which agencies are to file annually to provide information on, among other things, the impact of No FEAR reimbursement obligations on agency budgets. Finally, we reviewed the available Section 203 reports for agencies that had incurred No FEAR reimbursement obligations to the Judgment Fund. Enclosure I contains details of our objectives, scope, and methodology. We conducted this performance audit from July 2006 to February 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for

⁷Section 211 of Pub. L. No. 104-53 (Nov. 19, 1995) transferred GAO's authority over the certification of payments from the Judgment Fund to the Office of Management and Budget, which delegated this function to FMS.

our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

From fiscal year 2004, when the No FEAR Act took effect, through fiscal year 2006, the Judgment Fund paid \$45.1 million to claimants for settlements, awards, and other costs involving 625 No FEAR cases at 36 federal agencies. Of this amount, federal agencies had repaid \$44.9 million, or 99 percent, as of March 31, 2007. These No FEAR agency reimbursements were made, on average, 4.8 months after the original Judgment Fund payment.

For fiscal years 2002 through 2006, the Judgment Fund paid approximately \$1 billion for 475 cases under CDA on behalf of 30 federal agencies. Of this amount, federal agencies had repaid \$510 million, or about 50 percent, as of March 31, 2007. Agencies completed these full CDA reimbursements, on average, 9.6 months after the original Judgment Fund payment. Our work, including interviews with agency officials, indicates that several factors, including the much greater amounts involved, and agencies' lack of success in obtaining funds through the appropriations process, may be contributing to the difference in reimbursement rates for No FEAR cases compared to CDA cases. Also, one agency, which according to FMS owes a substantial amount to the Judgment Fund, claims that it does not have the authority to pay the unreimbursed balance that FMS attributes to it.

In May 2007, after we discussed collection management with FMS officials, FMS drafted a new strategy, based in part on an internal assessment of its approach to successfully obtaining No FEAR Act reimbursements from agencies, to encourage agency reimbursements for CDA obligations, such as direct discussions with agency chief financial officers (CFOs). During our exit conference with FMS in November 2007, FMS officials told us that FMS is implementing its new collection strategy, which principally involves working with relevant agencies and ensuring that it has complete information about the status of each agency with regard to CDA reimbursement obligations. The new FMS strategy could increase transparency regarding federal agencies' obligations to reimburse the Judgment Fund and aid congressional decision making with regard to any appropriations for relevant agencies if it also included notification to Congress of the amounts owed by individual agencies related to CDA cases.

Officials at the seven departments and agencies we visited told us that the reimbursement provisions of the No FEAR Act have not had a substantial impact on the operations or budgets of their respective agencies, or on any awards and settlements made. Available reports filed under Section 203 of the No FEAR Act by federal agencies that had to pay reimbursements in No FEAR cases also indicated that the reimbursements to the Judgment Fund had minimal effect on their budgets. A DOJ official who manages EEO/whistleblower litigation for federal agencies told us that the reimbursement requirements under No FEAR have had little or no effect on whether such litigation is settled or pursued in the courts. Also, DOJ officials who manage contract disputes litigation for federal agencies told us that the CDA

reimbursement requirements have had no effect on agencies' preferences or actions in settling litigation, or on DOJ decisions in such situations.

As FMS implements its collection strategy, we are recommending that the Commissioner of FMS notify Congress on a periodic basis of the amounts owed the Judgment Fund by each federal department and agency for all CDA obligations. We provided the Commissioner of FMS and the Attorney General with a draft of this report for their review and comment. In its written comments, FMS said that requiring that it report to Congress on unpaid reimbursements by agencies would not increase transparency regarding these unpaid balances. Rather, according to FMS, it would simply create a duplicate reporting requirement because such information is already available to Congress and others on the FMS Web site. FMS further suggested that instead, agencies could report their individual outstanding balances to Congress and OMB on a periodic basis. We believe, however, that Congress's needs can best be served in this matter by receiving all relevant information from a single source on a periodic basis, rather than having to seek out this information on a Web site or receive it piecemeal from individual agencies. DOJ provided technical comments via e-mail, which we incorporated where appropriate, but did not otherwise comment on the report or our recommendations.

Background

The types of cases covered by the No FEAR Act include employment discrimination cases brought under various federal antidiscrimination statutes and whistleblower protection cases. Under the No FEAR Act, federal agencies are permitted to make reimbursement of the Judgment Fund using any funds available for operating expenses of the agency, except those funds available for the enforcement of any federal law.⁸ The No FEAR Act expressed the sense of Congress that agencies are expected to reimburse the Judgment Fund within a reasonable time.⁹

For CDA cases, the Judgment Fund makes payment when a contractor for an executive agency receives a judgment from a court or an award from a contract appeals board regarding a contract dispute, or agrees on a settlement with the agency. Under CDA, reimbursement of the Judgment Fund is to be made by the agency whose appropriations were used for the contract "out of available funds or by obtaining additional appropriations for such purposes." In the context of CDA, available funds are those appropriations available for an agency's procurement activities current at the time of award or judgment or that are subsequently available. If the agency has insufficient funds available for reimbursement, the CDA anticipates that the agency will seek additional appropriations.¹⁰ In enacting this provision, Congress intended to remove incentives agencies had to resist settlements and force disputes into court, while making them fully accountable for the costs of judgments.

⁸Pub. L. No. 107-174, § 201(b).

⁹Pub. L. No. 107-174, § 102(6)(A).

¹⁰See 63 Comp. Gen. 308 (1984).

Federal Agencies Have Made Nearly Full and Timely Reimbursements for No FEAR Cases

From fiscal year 2004, when the provisions of the No FEAR Act requiring reimbursement of the Judgment Fund by federal agencies went into effect, through fiscal year 2006, the Judgment Fund paid \$45.1 million in settlements, awards, and other costs in EEO cases. The average No FEAR Act payment was \$72,064, and payments ranged from less than \$1,000 to just over \$1 million, with a median payment of \$27,250. As shown in table 1, these payments were for 625 cases at 36 agencies. (Enclosure II provides information on the number of No FEAR cases and the associated amount of payments from the Judgment Fund for all applicable agencies during the 3-year period we reviewed.)

Table 1: No FEAR Act: Number of Cases and Amount of Payments from Judgment Fund (Fiscal Years 2004 through 2006)

	Judgment Fund payment year 2004	Judgment Fund payment year 2005	Judgment Fund payment year 2006	Total
Number of cases with payments ^{a, b}	181	242	202	625
Number of agencies	25	28	31	36 ^c
Payments made (in millions)	\$11.6	\$17.6	\$15.8	\$45.1
Average payment per case	\$64,159	\$73,923	\$78,086	\$72,064
Median payment per case	\$25,000	\$29,760	\$29,500	\$27,250

Source: GAO analysis of FMS data.

^aA case can have payments to one or more claimants.

^bCases could be initiated in a year prior to which payments were made from the Judgment Fund.

^cTotal number of agencies is a count of unique agencies that had a case in fiscal years 2004 through 2006.

Of the \$45.1 million paid to claimants by the Judgment Fund for No FEAR cases from fiscal year 2004, when the No FEAR Act came into effect, through fiscal year 2006, agencies had fully reimbursed approximately \$44.9 million as of March 31, 2007. As shown in table 2, for these 3 years, No FEAR reimbursements were made, on average, 4.8 months after the original Judgment Fund payment, with a range of less than 1 month to 34 months. The average length of time required for agencies to fully reimburse the Judgment Fund decreased from 7.5 months in fiscal year 2004 to 2.9 months in fiscal year 2006. (Enclosure II provides additional information on the average length of time to reimburse the Judgment Fund for No FEAR cases for all applicable agencies during the 3-year period we reviewed.)

Table 2: Average Length of Time for Agencies to Fully Reimburse the Judgment Fund for No FEAR Payments in Fiscal Years 2004 through 2006

	2004	2005	2006	Total
Number of cases with payments	181	241	201	623 ^a
Average length of time to fully reimburse Judgment Fund (in months) ^b	7.5	4.4	2.9	4.8

Source: GAO analysis of FMS data.

Note: Our analysis included data on reimbursements to the Judgment Fund through March 31, 2007.

^a As of March 31, 2007, two payments made by the Judgment Fund had not been reimbursed: one in fiscal year 2005 and one in fiscal year 2006.

^b Changes across years in the average (mean) length of time to reimburse the Judgment Fund are comparable because virtually all cases with payments in each year were reimbursed.

Officials at FMS and the agencies we visited cited three factors that they believe have contributed to the nearly full reimbursement rate for No FEAR Act cases.

- The amount of payment involved is relatively small compared to overall agency budgets.
- Agencies are aware that the No FEAR regulations require FMS to post on its Web site the names of agencies that have not reimbursed the Judgment Fund for No FEAR Act cases.
- FMS has pursued a proactive strategy in seeking reimbursement of Judgment Fund payments related to the No FEAR Act, including sending initial notification letters on amounts owed, and, if necessary, making subsequent personal contacts with agencies' CFO offices.

During our review, we asked officials at the agencies we visited about the source of funds they used to reimburse the Judgment Fund for payments in No FEAR cases. Agency officials told us that reimbursements came from available agency operating funds. In several agencies, payment amounts were drawn internally from the appropriation account of the component where the case originated.

Reimbursement Rates for CDA Cases Are Significantly Lower than for No FEAR Cases

From fiscal year 2002 through 2006, the Judgment Fund paid just over \$1 billion in awards, settlements, and other costs in cases under CDA. As shown in table 3, these payments are related to 475 cases at 27 departments and agencies. The average CDA payment from the Judgment Fund was \$2.1 million, and payments ranged from less than \$1,000 to about \$99 million, while the median payment was \$302,486. (Enclosure III provides information on the number of CDA cases and the associated amount of payments from the Judgment Fund for all applicable agencies during the 5-year period we reviewed.)

Table 3: CDA: Number of Cases and Amount of Payments from Judgment Fund in Fiscal Years 2002 through 2006

Judgment Fund payment years						
	2002	2003	2004	2005	2006	Total
Number of cases with payments ^{a, b}	127	107	79	79	83	475
Number of departments and agencies ^c	13	18	16	17	16	27
Payments made by Judgment Fund (in millions)	\$243.6	\$376.6	\$125.7	\$188.5	\$82.0	\$1,016
Average payment per case (in millions)	\$1.9	\$3.5	\$1.6	\$2.4	\$.99	\$2.1
Median payment per case (in thousands)	\$265,714	\$345,000	\$360,000	\$380,925	\$286,667	\$302,486

Source: GAO analysis of FMS data.

Note: Our analysis included data on reimbursements to the Judgment Fund through March 31, 2007.

^a A case can have payments to one or more claimants.

^b Cases could be initiated several years before payments were made from the Judgment Fund.

^c Total number of agencies is a count of unique agencies that had a case in fiscal years 2002 through 2006.

Of the approximately \$1 billion paid by the Judgment Fund for the 475 CDA cases from fiscal years 2002 through 2006, agencies had fully reimbursed just over \$500 million, or about half this amount owed, as of March 31, 2007. During that time period, agencies also partially reimbursed just under \$10 million for cases that still had remaining balances for a total reimbursement of about \$510 million. Agencies made no payments at all towards 179 cases with a remaining total balance of just over \$495 million. As shown in table 4, these CDA reimbursements were made in full, on average, 9.6 months after the original Judgment Fund payment, with a range of less than 1 month to 60 months. (Enclosure II provides additional information on the average length of time to reimburse the Judgment Fund for CDA cases for all applicable agencies during the 5-year period we reviewed.)

Table 4: Average Length of Time for Agencies to Fully Reimburse the Judgment Fund for CDA Case Payments in Fiscal Years 2002 through 2006

Judgment Fund payment years						
	2002	2003	2004	2005	2006	Total
Number of cases with payments from Judgment Fund	127	107	79	79	83	475
Number of cases fully reimbursed by agencies ^a	86	71	53	36	37	283
Percentage of cases fully reimbursed by agencies	68	66	67	46	45	60
Average length of time to fully reimburse Judgment Fund (in months) ^b	14.0	10.6	8.6	5.3	3.2	9.6

Source: GAO analysis of FMS data.

Note: Our analysis included data on reimbursements to the Judgment Fund through March 31, 2007.

^aChanges across years in the number of reimbursed cases to the Judgment Fund are not comparable because the percentage of cases that were fully reimbursed is much smaller in 2005 and 2006 than in earlier years. If, and when, cases are fully reimbursed in future years, the averages will increase.

^bChanges across years in the average (mean) length of time to reimburse the Judgment Fund are not comparable because the percentage of cases that were fully reimbursed is much smaller in 2005 and 2006 than in earlier years. Reimbursement may not occur in the same year in which payment is made. If, and when, payments are fully reimbursed in future years, the averages will increase.

Compared to No FEAR cases, reimbursements from agencies for CDA cases have taken longer and cover only about half the amounts owed. The difference in reimbursement rates, compared to the nearly full reimbursement of No FEAR cases, may be due to the larger magnitude of CDA payments and to agencies' lack of success in obtaining funds through the appropriation process to reimburse the Judgment Fund. Table 5 shows the amount of payments from, and the level of reimbursements to, the Judgment Fund for CDA cases during the 5-year period of our review.

Table 5: Dollar Amount of Payments Made by Judgment Fund and Reimbursements by Agencies for CDA Cases Owed for Payments in Fiscal Years 2002 through 2006

	Judgment Fund payment years					Total
	2002	2003	2004	2005	2006	
Payments made by Judgment Fund (in millions)	\$243.6	\$376.6	\$125.7	\$188.5	\$82.0	\$1,016
Total dollars reimbursed by departments and agencies to Judgment Fund (in millions)	\$99.6	\$278.5	\$57.7	\$52.4	\$22.4	\$510.7
Percentage of payments reimbursed by departments and agencies ^a	40.9	74.0	45.9	27.8	27.4	50.2

Source: GAO analysis of FMS data.

Note: Our analysis included data on reimbursements to the Judgment Fund through March 31, 2007.

^aThe percentages shown above represent the extent to which agencies have reimbursed the Judgment Fund for payments in CDA cases. Reimbursement may not occur in the same year in which payment is made. If, and when, cases are fully reimbursed in future years, the percentages will increase.

FMS has limited authority to obtain CDA reimbursements and is not authorized by statute to take any collection action against agencies. We spoke with officials from the four agencies that, according to FMS records, owe the most in CDA reimbursements—OPM, GSA, Interior, and Army Corps—to discuss their agencies’ unpaid CDA reimbursements and the reasons why the agencies had not fully reimbursed the Judgment Fund. Our work, including interviews with agency officials, indicates that several factors, including the much greater amounts involved, may be contributing to the difference in reimbursement rates for No FEAR cases compared to CDA cases. Agency officials also pointed out that there are restrictions on which funds can be used for repayment for certain CDA cases, such as when contracts are funded by specific line-item appropriations.¹¹ Officials at three agencies—GSA, Interior, and Army Corps—also told us that their agencies had not reimbursed the Judgment Fund because the agencies did not have sufficient funds available. Officials from these agencies told us, and OMB staff agreed, that on one or more occasions these agencies have sought additional funds with which to reimburse the Judgment Fund but have not always received additional appropriations for this purpose, either because OMB chose not to include the request in the President’s budget or because Congress did not appropriate the requested funds. Officials at the fourth agency, OPM, told us that OPM does not believe it has the authority to reimburse the Judgment Fund for an unreimbursed balance of \$253 million for several cases involving the Federal Employee Health Benefits (FEHB) program from 1986 to 1994.¹² In its May 2007 strategy document for collection of amounts owed in

¹¹In individual instances, agencies may request advance decisions from the Comptroller General with regard to the availability of funds for purposes of reimbursing the Judgment Fund. See, 63 Comp. Gen. 308.

¹²As administrator of the FEHB program, OPM was involved in litigation against the U.S. government in which certain FEHB carriers sought relief for alleged underpayments of premiums incurred by employing agencies. According to OPM, these lawsuits came about because several carriers were not receiving the appropriate dollar amount of premiums based on the number of employees enrolled in their insurance programs. OPM officials explained that while OPM enters into contracts with the

CDA cases, FMS said it planned to have further discussions with OPM concerning resolution of this matter.

We spoke with selected OMB program examiners who are familiar with the administration of the Judgment Fund and who review those agencies owing the largest amounts to the Judgment Fund for CDA cases. According to OMB staff, program examiners for each agency decide whether and how a request for an appropriation to cover a CDA reimbursement should be handled when OMB receives it. Moreover, the OMB staff said that agencies are generally doing well with regard to making CDA reimbursements to the Judgment Fund, and that with a few exceptions the situation is much improved compared to 10 years ago.

According to FMS officials, prior to this year, FMS approached CDA reimbursement obligations by sending an initial letter after each Judgment Fund payment to the agency concerned requesting reimbursement, and thereafter sending a quarterly notice to each agency that owed reimbursements requesting confirmation of outstanding balances. Following the start of our review, and after we discussed collection practices with FMS officials, FMS conducted an internal assessment of the No FEAR Act repayment process and identified measures within that process that might be used to encourage agencies to reimburse their obligations and improve the repayment rate for CDA cases. The resulting strategy, which FMS adopted in May 2007, includes a number of actions to encourage agency reimbursements for unpaid CDA obligations. As discussed below, some of these actions have been taken and other actions are planned.

- FMS recently reinstated its practice of sending a series of billing letters for unpaid CDA case amounts to agency CFOs, similar to the letters sent for No FEAR Act outstanding balances. FMS first sends a letter to the debtor agency seeking reimbursement for payments when payment is made from the Judgment Fund. If the agency fails to contact FMS within 30 business days of this letter, a follow-up letter is to be sent. If the agency fails to respond within 60 business days of the initial contact letter, FMS will send a letter to the agency's CFO, who then has 30 business days to contact FMS.
- As called for in the strategy, the FMS Commissioner and Deputy Commissioner have visited with various agencies' CFOs and discussed, among other topics, the matter of CDA reimbursement obligations. FMS officials have also engaged in numerous telephone conversations and e-mail exchanges with agency CFO representatives to increase responsiveness for agencies' amounts owed.
- FMS has asked agencies with CDA reimbursement obligations to notify FMS when they request funding during the budget formulation process to be

FEHB carriers, the premium payments it forwards to the carriers originate from employing agency funds and that in OPM's view, it would be improper to use its own funds to reimburse the Judgment Fund for payments made in settlement of these cases. OPM officials further stated that an effort to attribute amounts paid out of the Judgment Fund to each employing agency was deemed impracticable given the expected difficulty in producing accurate premium payment calculations, which factored into the government's underlying decision to settle these cases.

earmarked for repayment of outstanding CDA balances.

- FMS will continue to expand its efforts to emphasize to agencies their CDA obligations by highlighting and explaining the CDA billing and reimbursement process in meetings, forums, on the Judgment Fund Web site, and in publications.
- Part of FMS's planned strategy is to continue to post on the Judgment Fund public Web site all outstanding receivable balances by agency for unreimbursed CDA payments. Currently, FMS posts these outstanding balances on a quarterly basis and provides agencies 30 days from the end of the quarter to respond to FMS regarding the accuracy of the amounts recorded.

During our exit conference with FMS officials in November 2007, FMS officials told us that although FMS typically reports at least annually to OMB on the amounts owed by individual agencies for CDA reimbursement obligations, FMS does not notify Congress of this information nor does the FMS collection strategy call for doing so. Reporting to Congress on the amounts owed by individual agencies for CDA cases would increase transparency regarding federal agencies' obligations to reimburse the Judgment Fund and aid congressional decision making with regard to any appropriations for relevant agencies.

Agency Officials Indicated that No FEAR and CDA Reimbursement Requirements Have Not Had a Substantial Impact on Agency Operations or Settlement Practices

We asked officials at the departments and agencies we visited about the effect of the No FEAR reimbursement requirements on their EEO programs, in particular whether the requirements changed their approach to EEO complaints, or on their decisions about whether to settle complaints administratively or in court. Officials in several departments or agencies told us that although the reimbursement requirements have led to changes in internal EEO training and guidance, with emphasis being placed on their enhanced financial liability for an EEO violation, there had been little or no effect on operations, appropriations, and employee relations and other human capital matters, no change in how complaints were handled, and no impact on the decision making as to whether or not to settle a complaint or court case.

Officials at the departments and agencies also told us that there had been no instance in which reimbursement of the Judgment Fund for a payment in a case under the No FEAR Act necessitated an adjustment in the agency's budget. For the 36 departments or agencies that reimbursed the Judgment Fund for payments in EEO cases from fiscal years 2004 through 2006, we reviewed 22 agencies' annual Section 203 reports.¹³

¹³Section 203(a) of the No FEAR Act requires that each federal agency send an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, several congressional committees, the Equal Employment Opportunity Commission, and the Attorney General. These reports must contain data on the number of cases in which an agency was alleged to have discriminated; the disposition of each of these cases; the amount of money paid out of the Judgment Fund in connection with these cases; the number of employees disciplined for discrimination,

Under Section 203 of the No FEAR Act, departments and agencies are required to, among other things, report annually on any adjustment (to the extent the adjustment can be ascertained) made in the budget of the agency to comply with the requirement for reimbursement of the Judgment Fund in EEO or whistleblower cases. As part of this Section 203 report, agencies are also required to analyze discrimination data and report trends, causal factors, and planned improvements in complaint handling and EEO programs.¹⁴ Our review of agencies' Section 203 reports, specifically focused on the effect of the reimbursement requirement on operations, showed that there was a minimal impact, if any, due to reimbursements to the Judgment Fund and that there was no need for any adjustment to their budgets in order to comply with the No FEAR Act. However, an official from one department, Interior, reported that dollars that would otherwise have gone into mission needs were instead used to reimburse the Judgment Fund. Also, in its Section 203 report for fiscal year 2006, the Department of Transportation (DOT) stated that DOT's Federal Aviation Administration created object classification codes¹⁵ to track the financial impact of EEO settlements and findings of discrimination at the administrative stage.

We also discussed the effect of the Judgment Fund reimbursement requirements on No FEAR litigation strategy with an official of the Office of the U.S. Attorney for the District of Columbia, which represents federal agencies in EEO court cases. The official told us that, as far as he and his staff were aware, although some agencies have historically been more likely to settle cases than have other agencies, the reimbursement requirements under No FEAR have had little or no effect on agencies' preferences or actions in this regard. The official added that the reimbursement requirement also has had no effect on his or his staff's decisions regarding litigation strategy and settlement practices.

To obtain views on the effect of CDA reimbursement requirements on litigation regarding CDA cases, we spoke with officials of DOJ's Civil Division, which represents federal agencies in CDA cases and other types of civil litigation. These officials told us that the CDA reimbursement requirements had no effect on agencies' preferences or actions in settling litigation, or on the Civil Division's decisions in such situations.

Conclusions

retaliation, or harassment; and a detailed description of the policy implemented by the agency to take appropriate disciplinary actions against any federal employee who (1) discriminated against any individual, or (2) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the discrimination or whistleblower laws cited in the act. Agencies are also required to analyze these data and report trends, causal factors, and planned improvements in complaint handling and EEO programs.

¹⁴Agencies with which we had discussions on this matter reported that they were conducting the mandatory No FEAR Act training required under Section 202 of the act regarding the rights and remedies applicable to federal employees, but this did not specifically relate to the effect of the reimbursement requirement.

¹⁵An object classification code is a uniform classification identifying the obligations of the federal government by the types of goods or services purchased (such as personnel compensation, supplies and materials, and equipment) without regard to the agency involved or the purpose of the programs for which they are used.

Although CDA and No FEAR cases deal with different types of civil actions against federal agencies, these cases share a common requirement that agencies reimburse the Judgment Fund for payments for judgments, awards, settlements, or other costs in such civil actions. An examination of compliance with the reimbursement requirements of these acts shows a significant difference in repayment rates. Although agencies have made nearly all reimbursements to the Judgment Fund for No FEAR cases since the requirement began in 2002, some agencies have not fully reimbursed the Judgment Fund for CDA cases. Overall, as of March 31, 2007, only about half of the CDA amounts owed to the Judgment Fund for payments made from fiscal years 2002 through 2006 had been reimbursed. The difference in reimbursement rates between EEO cases under No FEAR and CDA can be influenced by a number of factors, including that CDA cases involve much larger payments and subsequent reimbursements than do No FEAR cases.

FMS is taking steps towards implementing its new CDA collection strategy adopted in May 2007, focused on a continued effort to work with agencies and ensure that it has complete information about the status of each agency with regard to CDA reimbursement obligations. However, the strategy does not provide for reporting to Congress the amounts owed by individual departments and agencies for CDA reimbursement obligations. The new FMS strategy could increase transparency regarding federal agencies' obligations to reimburse the Judgment Fund and aid congressional oversight and decision making if it also included notification to Congress of the amounts owed by individual agencies related to CDA cases.

Recommendation for Executive Action

We recommend that the Commissioner of FMS notify Congress on a periodic basis of the amounts owed the Judgment Fund by each federal department and agency for all CDA obligations.

Agency Comments

We provided the Commissioner of FMS and the Attorney General with a draft of this report for their review and comment. In its written comments, FMS said that, while it understood the impetus for our recommendation, requiring that FMS report to Congress on unpaid reimbursements by agencies, as we recommend, would not improve transparency but would simply create a duplicate reporting requirement because such information is already available to Congress and others on the FMS Web site. FMS also said that if the goal is to increase transparency, it would make more sense for agencies to report their individual outstanding balance to Congress and OMB on a periodic basis. We believe, however, that Congress's needs can best be served in this matter by receiving all relevant information from a single source on a periodic basis (for example, annually), rather than having to seek out the information on a Web site or receive it piecemeal from individual agencies. FMS's comments are reprinted in enclosure III. DOJ provided technical comments via e-mail, which we incorporated where appropriate, but did not otherwise comment on the report or our recommendations.

We are sending copies of this report to the Attorney General and congressional recipients as mandated in the No FEAR Act. We will also make copies available to others upon request. This report will also be available to others at no charge on the GAO website at www.gao.gov.

If you have any questions concerning this report, please contact me at (202) 512-6806 or stalcupg@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report included Anthony P. Lofaro and K. Scott Derrick, Assistant Directors, Steven J. Berke, Carole J. Cimitile, William P. McKelligott, Gregory H. Wilmoth, Mitchell B. Karpman, Christine Chi San, and Karin K. Fangman.

A handwritten signature in black ink that reads "George H. Stalcup". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

George H. Stalcup
Director, Strategic Issues

List of Addressees

The Honorable Robert C. Byrd
President Pro Tempore
United States Senate

The Honorable Nancy Pelosi
Speaker
House of Representatives

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Daniel K. Akaka
Chairman
The Honorable George V. Voinovich
Ranking Member
Subcommittee on Oversight of Government Management, the Federal Workforce, and
the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Tom Davis
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Danny K. Davis
Chairman
The Honorable Kenny E. Marchant
Ranking Member
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Committee on Oversight and Government Reform
House of Representatives

The Honorable John Conyers
Chairman
The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Michael B. Mukasey
Attorney General
Department of Justice

Enclosure I

Objectives, Scope, and Methodology

Our objectives were to (1) determine in how many cases payments were made from the Judgment Fund for judgments, settlements, or awards resulting from (a) equal employment opportunity (EEO) and whistleblower protection complaints after the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act became effective, and (b) contract disputes; (2) determine in how many cases and to what extent agencies made reimbursement to the Judgment Fund and how long reimbursement took; and (3) obtain agency official and stakeholder views of the effects of the requirement to reimburse the Judgment Fund for EEO/whistleblower and Contract Disputes Act (CDA) cases on operations, appropriations, employee relations and other human capital matters, and settlement practices at federal agencies.

Our primary method for addressing the first and second objectives was to obtain and analyze data on Judgment Fund payments, and agency reimbursements, from the Financial Management Service (FMS). We screened the data for duplicate records, anomalies, and inconsistencies within and between payment and reimbursement data and reconciled the corrected data with FMS. After correcting the data based on the reconciliation process, we found the data to be sufficiently reliable for our purposes to answer the first and second objectives. Our analyses included only payments to the Judgment Fund made in fiscal years 2004 through 2006 for No FEAR cases and in fiscal years 2002 through 2006 for CDA cases. FMS subsequently gave us data covering the period from October 1, 2006, through March 31, 2007; we did not analyze payments made during this period, but we did include in our analysis reimbursements made during this period if they were for payments made from fiscal 2002 through 2006. If a case had payments both before fiscal year 2002 and in or after fiscal year 2002, then we analyzed only the payments in or after fiscal year 2002. We used the fiscal year in which the last payment for a No FEAR or CDA case was made to assign the case to a fiscal year. For cases where payments for a case occurred in more than 1 fiscal year, the case was assigned to the fiscal year in which the last payment for the case was made. Similarly, we calculated the average length of time to fully reimburse the Judgment Fund by finding the difference between the date of the last payment made for a case and the last reimbursement made to the Judgment Fund. For the few cases where we could not reconcile the discrepancy between the agency responsible for the claim and the agency that reimbursed FMS for the claim, we included these amounts in the summary tabulations but not in the agency-by-agency tabulations. In addition, we discussed Judgment Fund payment and reimbursement procedures with FMS officials and reviewed relevant regulations, policies, and guidance.

To address our third objective, we interviewed officials at seven federal agencies. We selected the four agencies that, according to FMS records, had the largest current unpaid reimbursement amounts for CDA cases as of September 30, 2006: the Army Corps of Engineers, the Department of the Interior, the General Services Administration, and the Office of Personnel Management (OPM). We also selected three agencies that had a large number of No FEAR Act cases: the Department of Agriculture, the Department of Veterans Affairs, and the Department of Justice (DOJ). The agency officials we held discussions with included staff of the general

counsel's office, the EEO office, the human capital office, the budget office, and the office of the Chief Financial Officer.

In addition, we interviewed staff from the Office of Management and Budget to discuss the budgeting process for dealing with the agency reimbursement requirement. We also held discussions with DOJ officials responsible for representing federal agencies in EEO and contract disputes litigation, and with officials of OPM and the Equal Employment Opportunity Commission, the leadership agencies primarily responsible for oversight of EEO and diversity programs in federal agencies. We also reviewed available reports filed by federal agencies under Section 203 of the No FEAR Act to gather any information on the impact of No FEAR reimbursements on department or agency budgets. Of the 36 departments or agencies that were obligated to reimburse the Judgment Fund for payments from fiscal years 2004 through 2006, we were able to obtain copies of the Section 203 reports for 22 departments or agencies, primarily from congressional sources mandated to receive these reports under the No FEAR Act. (Enclosure II shows for which agencies we obtained and reviewed the Section 203 reports).

We conducted this performance audit from July 2006 to February 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Enclosure II

**Table 6: No FEAR Act: Number of Cases and Dollar Volume for Judgment Fund Payments Fully Reimbursed by Agencies
(as of March 31, 2007 for fiscal years 2004 to 2006)^a**

Department/agency	Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Totals	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Agency for International Development	1	\$5,000			1	\$308,485	2	\$313,485
Agriculture*	14	1,221,163	17	1,731,644	17	694,128	48	3,646,935
Air Force	5	62,733	10	2,483,879	11	534,822	26	3,081,434
Army	6	208,500	12	606,550	13	1,200,826	31	2,015,876
Army Corps of Engineers	3	45,750	3	944,264	3	241,276	9	1,231,290
Broadcasting Board of Governors					1	2,000	1	2,000
Commerce*			4	144,482	1	270,000	5	414,482
Court Services and Offender Supervision					1	16,000	1	16,000
Defense Commissary Agency	1	8,500			6	134,750	7	143,250
Defense Logistics Agency	1	140,000	2	55,000			3	195,000
Energy*	1	187,965	2	50,000	4	110,330	7	348,295
Environmental Protection Agency*	2	16,300	6	245,674	1	318,000	9	579,974
Export-Import Bank			1	50,000			1	50,000
Federal Communications Commission*					1	15,000	1	15,000
General Services Administration*	4	652,117	1	50,000	2	95,000	7	797,117
Government Accountability Office*	1	150,000					1	150,000
Health and Human Services*	4	323,330	4	38,781	3	82,500	11	444,611
Homeland Security*	21	1,639,162	28	1,839,007	23	2,673,130	72	6,151,299
Housing and Urban Development*	2	350,000	2	63,000	1	2,500	5	415,500
Interior*	4	248,778	10	220,241	11	883,471	25	1,352,490
Justice*	17	890,328	26	2,353,976	14	1,052,749	57	4,297,053
Labor*	3	55,000	3	152,261	5	235,000	11	442,261
National Aeronautics and Space Administration	1	135,000	3	175,500	2	77,500	6	388,000
National Archives and Records Administration*					1	3,000	1	3,000
Navy	19	1,225,936	16	777,000	15	859,022	50	2,861,958
National Labor Relations Board			1	55,000	1	9,000	2	64,000
Nuclear Regulatory Commission			1	50,000			1	50,000
Office of Government Ethics			1	1,750			1	1,750
Office of the Secretary of Defense	6	193,500	7	610,469	2	53,000	15	856,969
Office of Personnel Management*					1	12,500	1	12,500

Enclosure II

Department/agency	Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Totals	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Small Business Administration*	3	635,716	2	513,517	2	67,700	7	1,216,933
Social Security Administration	15	484,954	7	242,708	2	41,700	24	769,362
State*			2	18,000	3	333,504	5	351,504
Treasury*	9	556,995	19	739,100	8	1,577,100	36	2,873,135
Transportation*	9	413,198	14	2,057,355	9	1,023,295	32	3,493,849
Veterans Affairs	23	1,362,007	33	1,070,293	33	2,354,183	89	4,786,483
Total	181	11,612,694	241	17,350,452	201	15,841,472	623	44,804,617

Source: GAO analysis of FMS data.

* Indicates Section 203 report reviewed by GAO.

^a Case can have payments to one or more claimants.

Note: As of March 31, 2007, two payments made by the Judgment Fund during fiscal year 2004 through fiscal year 2006 had not been reimbursed: a payment of \$197,139 made on behalf of the Department of the Treasury during fiscal year 2005, and a payment of \$10,000 made on behalf of the Department of Homeland Security during fiscal year 2006.

Enclosure II

Table 7: No FEAR Act: Average Length of Time to Reimburse the Judgment Fund for Cases Fully Reimbursed (as of March 31, 2007 for fiscal years 2004 to 2006)

Department/agency	Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Totals	
	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months
Agency of International Development	1	3.0			1	2.0	2	2.5
Agriculture	14	11.1	17	3.9	17	3.8	48	6.0
Air Force	5	8.2	10	3.6	11	1.6	26	3.7
Army	6	11.5	12	6.8	13	1.9	31	5.7
Army Corps of Engineers	3	6.0	3	9.7	3	5.0	9	6.9
Broadcasting Board of Governors					1	1.0	1	1.0
Commerce			4	2.0	1	1.0	5	1.8
Court Services and Offender Supervision					1	3.0	1	3.0
Defense Commissary Agency	1	2.0			6	2.0	7	2.0
Defense Logistics Agency	1	7.0	2	3.5			3	4.7
Energy	1	2.0	2	2.0	4	2.3	7	2.1
Environmental Protection Agency	2	16.5	6	5.8	1	1.0	9	7.7
Export-Import Bank			1	3.0			1	3.0
Federal Communications Commission					1	3.0	1	3.0
General Services Administration	4	2.3	1	1.0	2	2.5	7	2.1
Government Accountability Office	1	12.0					1	12.0
Health and Human Services	4	8.8	4	5.5	3	4.0	11	6.3
Homeland Security	21	9.5	28	7.3	23	5.1	72	6.1
Housing and Urban Development	2	3.0	2	2.0	1	1.0	5	2.2
Interior	4	7.8	10	2.4	11	2.0	25	3.1
Justice	17	6.9	26	3.6	14	1.4	57	4.0
Labor	3	3.0	3	1.7	5	2.0	11	2.2
National Aeronautics and Space Administration	1	4.0	3	4.7	2	1.0	6	3.3
National Archives and Records Administration					1	2.0	1	2.0
Navy	19	5.9	16	3.9	15	3.4	50	4.5
National Labor Relations Board			1	<1	1	2.0	2	1.0
Nuclear Regulatory Commission			1	13.0			1	13.0

Enclosure II

Department/agency	Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Totals	
	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months
Office of Government Ethics			1	2.0			1	2.0
Office of the Secretary of Defense	6	6.2	7	4.4	2	3.0	15	4.9
Office of Personnel Management					1	2.0	1	2.0
Small Business Administration	3	4.3	2	2.5	2	1.0	7	2.9
Social Security Administration	15	3.0	7	1.7	2	0.5	24	2.4
State			2	11.0	3	4.0	5	6.8
Treasury	9	3.7	19	3.2	8	0.9	36	2.8
Transportation	9	7.8	14	6.1	9	2.6	32	5.6
Veterans Affairs	23	9.7	23	5.1	33	4.5	89	6.0
Total	181	7.5	241	4.4	201	2.9	623	4.8

Source: GAO analysis of FMS data.

Enclosure II

**Table 8: CDA: Number of Cases and Dollar Volume for Judgment Fund Payments Fully Reimbursed by Agencies
(as of March 31, 2007 for fiscal years 2002 to 2006)^a**

Department/agency	Judgment Fund payment year 2002		Judgment Fund payment year 2003		Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Agriculture	5	\$9,791,197	3	\$285,384	3	\$759,897	1	\$840,000	1	\$3,100	13	\$11,679,579
Air Force	20	10,619,580	16	43,247,224	9	7,003,363	7	11,189,533	7	2,407,323	59	74,467,024
Army	4	9,362,963	4	91,784,409	6	11,937,527	3	19,012,936	4	2,864,353	21	134,962,188
Army Corps of Engineers	1	275,000	1	1,541,285	1	149,991	1	1,250,000			4	3,216,275
Commerce					1	100,000	3	654,055			4	754,055
Commodity Futures Trading Commission							1	64,225			1	64,225
Defense	5	10,969,467			2	136,360	1	5,219,933	1	150,000	9	16,475,760
Education			1	10,500							1	10,500
Energy			2	99,105,000	1	15,137,572			1	151	4	114,242,723
Environmental Protection Agency					2	176,200	1	172,854			3	349,054
General Services Administration	3	242,841	5	617,559	1	32,371	2	3,305,321	3	515,000	14	4,713,092
Health and Human Services	2	2,101,160	1	87,000	1	1,900,000			1	300,000	5	4,388,160
Homeland Security			2	237,771	1	1,085,374	2	76,189	3	5,703,366	8	7,102,700
Interior	1	3,339,282	1	1,984,690							2	5,323,972
Justice			2	1,729,806			1	302,486	1	120,000	4	2,152,292
National Aeronautics and Space Administration	1	22,761							4	6,578,988	5	6,601,749
National Archives and Records Administration							1	7,500			1	7,500
Navy	31	45,289,115	13	17,541,979	13	2,233,765	6	5,727,321	7	742,738	70	71,534,918
Small Business Administration			1	67,950			1	2,300,000	1	438,895	3	2,806,845
State			3	6,702,698	1	4,000,000					4	10,702,698
Transportation	1	1,272,599	1	250,000					2	229,894	4	1,752,493
Treasury					1	105,184					1	105,184
Veterans Affairs	12	6,344,725	14	4,300,295	8	3,016,889	5	624,828	1	590,000	40	14,876,737

Enclosure II

Department/agency	Judgment Fund payment year 2002		Judgment Fund payment year 2003		Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Split reimbursements among multiple agencies ^b			1	2,931,990	2	9,628,942					3	12,560,932
Total excluding split reimbursements	86	99,630,691	70	269,493,550	51	47,774,493	36	50,747,180	37	20,643,808	280	488,289,722
Total including split reimbursements	86	99,630,691	71	272,425,540	53	57,403,435	36	50,747,180	37	20,643,808	283	500,850,654

Source: GAO analysis of FMS data.

^a Agency reimbursement amount not necessarily made in same year as Judgment Fund payment year.

^b Split reimbursements occur when an agency reimburses for the same case in multiple payments.

Enclosure II

Table 9: CDA: Number of Cases and Dollar Volume Where No Agency Reimbursements Have Been Made (as of March 31, 2007 for fiscal years 2002 to 2006)

Department/agency	Judgment Fund payment year 2002		Judgment Fund payment year 2003		Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Agriculture	2	\$302,000	5	\$2,610,842	6	\$3,305,262	3	\$2,388,179	4	\$3,764,503	20	12,370,787
Air Force							1	2,999,941			1	2,999,941
Army	8	1,788,952	10	6,432,031	3	1,290,078	5	2,770,400	7	7,681,049	33	19,962,511
Army Corps	2	39,824,919			2	1,272,578	5	9,893,129	4	2,751,165	13	53,741,791
Defense							1	7,600,000			1	7,600,000
Environmental Protection Agency					1	22,000,000					1	22,000,000
Homeland Security									1	2,000	1	2,000
General Services Administration	12	37,700,172	8	39,606,318	10	21,442,006	13	19,437,702	5	4,523,284	48	122,709,482
Health and Human Services	1	34,000	1	4,137,593			2	12,938,093	3	10,604,763	7	27,714,449
Housing and Urban Development							1	187,000			1	187,000
Interior	12	51,792,184	5	31,784,511	1	550,827	1	2,491,770	3	425,614	22	87,044,907
Labor									1	90,000	1	90,000
Navy							2	6,332,500	2	3,073,507	4	9,406,007
Office of Personnel Management	1	8,104,788	1	7,294,846	1	5,042,511	4	50,135,108	1	5,000,000	8	75,577,252
State							1	665,000			1	665,000
Transportation									1	450,000	1	450,000
U.S. Virgin Islands Department of Health			1	179,311							1	179,311
Veterans Affairs	3	4,436,976	1	3,450,000	1	7,309,078	1	18,000,000	1	19,198,192	15	52,394,247
Total	41	143,983,992	32	95,495,452	25	62,212,340	40	135,838,823	41	57,564,077	179	495,094,684

Source: GAO analysis of FMS data.

Enclosure II

**Table 10: CDA: Number of Cases and Dollar Volume of Amounts Partially Paid to Reimburse Judgment Fund
(as of March 31, 2007 for fiscal years 2003 to 2006)^a**

Department/agency	Judgment Fund payment year 2003		Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Army	1	\$478,328							1	\$478,328
Army Corps of Engineers			1	261,957			1	19,559	2	281,516
General Services Administration	1	5,098,624							1	5,098,624
Interior					1	1,500,000			1	1,500,000
Navy	2	518,185			1	59,839	3	1,749,872	6	2,327,896
Veterans Affairs					1	117,032			1	117,032
Split reimbursement ^b							1	28,000	1	28,000
Total excluding split reimbursements	4	6,095,138	1	261,957	3	1,676,871	4	1,769,431	12	9,803,397
Total including split reimbursements	4	6,095,138	1	261,957	3	1,676,871	5	1,797,431	13	9,831,397

Source: GAO analysis of FMS data.

^aNote that there were no partial reimbursements made to Judgment Fund during fiscal year 2002.

^bSplit reimbursements occur when an agency reimburses for the same case in multiple payments.

Enclosure II

Table 11: CDA: Number of Cases and Average Length of Time to Reimburse the Judgment Fund for Cases Fully Reimbursed (as of March 31, 2007 for fiscal years 2002 to 2006)^a

Department/agency	Judgment Fund payment year 2002		Judgment Fund payment year 2003		Judgment Fund payment year 2004		Judgment Fund payment year 2005		Judgment Fund payment year 2006		Total	
	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months	Cases	Average time in months
Agriculture	5	25.8	3	16	3	7.3	1	12	1	1	13	16.3
Air Force	20	9.6	16	9.9	9	8.1	7	3.6	7	2	59	7.8
Army	4	4.3	4	7.8	6	7.8	3	11.7	4	5	21	7.1
Army Corps of Engineers	1	8	1	30	1	5	1	5			4	12
Commerce					1	1	3	2			4	1.8
Commodity Futures Trading Commission							1	2			1	2
Defense	5	8.8			2	5	1	1	1	1	9	6.2
Education			1	10							1	10
Energy			2	22.5	1	2			1	1	4	12
Environmental Protection Agency					2	1	1	1			3	1
General Services Administration	3	4.7	5	4.8	1	1	2	3	3	4.7	14	4.2
Health and Human Services	2	27.5	1	23	1	5			1	3	5	17.2
Homeland Security			2	5.5	1	2	2	12.5	3	4	8	6.3
Interior	1	25	1	<1							2	12.5
Justice			2	1			1	1	1	1	4	1
National Aeronautics and Space Administration	1	6							4	3	5	3.6
National Archives and Records Administration							1	2			1	2
Navy	31	12.3	13	12.1	13	11	6	7.3	7	3.6	70	10.7
Small Business Administration			1	3			1	10	1	8	3	7
State			3	15.3	1	9					4	13.8
Transportation	1	4	1	30					2	1	4	9
Treasury					1	1					1	1
Veterans Affairs	12	27.6	14	9.1	8	14.4	5	3.4	1	4	40	14.9
Total Reimbursed	86	14	71	10.6	53	8.6	36	5.3	37	3.2	283	9.6

Source: GAO analysis of FMS data.

^aTable does not include averages for partial reimbursement. Average length of time to fully reimburse the Judgment Fund will increase as partially reimbursed cases are fully paid.

Comments from the Financial Management Service

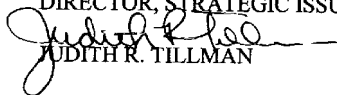


DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

February 13, 2008

MEMORANDUM FOR GEORGE H. STALCUP
DIRECTOR, STRATEGIC ISSUES

FROM:


JUDITH R. TILLMAN

SUBJECT:

The Judgment Fund: Status of Reimbursements Required by the
No FEAR Act and Contract Disputes Act

Thank you for the opportunity to comment on the draft audit report entitled "The Judgment Fund: Status of Reimbursements Required by the No FEAR Act and Contract Disputes Act."

We appreciate the Government Accountability Office's (GAO's) review of agencies' reimbursement rates under the No FEAR Act and the Contract Disputes Act (CDA), and we found GAO's graphic presentations of the payment data in Tables 1 and 3 of its report to be particularly valuable. These tables illustrate that the magnitude of CDA payments in comparison to No FEAR Act payments is significant. For example, average payment amounts in No FEAR Act cases are reported in the thousands of dollars, whereas the average amounts in CDA cases are presented in the millions of dollars. Also, for all the years reported, the median CDA payment is more than ten times the median No FEAR Act payment.

The report concludes that a notification from FMS to Congress of the amounts agencies owe under the CDA would increase transparency and perhaps improve agencies' reimbursement rates under the CDA. We understand the impetus for this recommendation because FMS has periodically heard from agencies that they are unable to satisfy their CDA obligations due to their lack of success in obtaining supplemental appropriations. We do not believe however, that a notification from FMS to Congress of the amounts agencies owe under the CDA will increase the transparency of agencies' funding status or in any way ameliorate these situations. We say this because the information GAO would like FMS to report to Congress is already publicly available and has been for years. FMS currently reports, and updates quarterly, the outstanding CDA amounts owed by federal agencies on the FMS public website. This information is available to Congress, all federal agencies, the Office of Management and Budget (OMB), other decision makers, and any member of the public who visits the public website. A periodic notification of this same information from FMS to Congress would not lead to any greater transparency, but would merely result in a duplicate reporting requirement. More to the point, a periodic notification to Congress of information that is available on a public website would provide members of Congress no new information to assist them in making decisions about agencies' appropriations.

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If the aim of this recommendation is to increase transparency and to assist decision makers in the appropriations process, then it would make more sense for federal agencies to report their individual outstanding CDA balances to Congress and OMB on a periodic basis. Agencies are in a far better position than FMS to explain to Congress and OMB their outstanding CDA balances and to provide additional information that might assist Congress and OMB during the budget justification process and when assessing agency requests for supplemental appropriations to reimburse the Judgment Fund.

Again, FMS appreciates the opportunity to comment on this draft report. Thank you for your consideration of our comments.

cc: Kenneth E. Carfine

(450517)

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