



Highlights of [GAO-04-863](#), a report to congressional recipients

Why GAO Did This Study

Allegations of violations of employment discrimination and whistleblower protection laws against federal agencies can end up in federal court, at which point Department of Justice (DOJ) attorneys generally take over representation of the agency. Attorneys within Justice's Civil Division and U.S. Attorneys' Offices generally handle this type of litigation.

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR) requires agencies to repay the Department of the Treasury's Judgment Fund for discrimination and whistleblower protection settlements and judgments paid on their behalf. While the No FEAR Act does not require agencies to reimburse DOJ for costs incurred in defending them in cases covered under the act, it does require GAO to review how DOJ could ascertain the cost of representing agencies in each case and what the burden of performing this accounting would be. Based on this requirement, our report provides information on (1) the methods DOJ says it could use to account for the personnel and nonpersonnel costs that it incurs in handling cases covered under No FEAR on a per-case basis and how soon the Department expects it would be able to do so, and (2) how costly DOJ expects it would be to account for each case. We make no recommendations in this report.

www.gao.gov/cgi-bin/getrpt?GAO-04-863.

To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-9490 or stalcupg@gao.gov.

NO FEAR ACT

Methods the Justice Department Says It Could Use to Account for Its Costs Per Case under the Act

What GAO Found

The two DOJ offices that handle cases covered under No FEAR could start to account for these costs on a per-case basis by the beginning of fiscal year 2006 by changing their current systems and procedures. The Executive Office of United States Attorneys (EOUSA) provides accounting for the U.S. Attorneys, who handled the vast majority of employment discrimination cases for DOJ in fiscal year 2002. EOUSA officials said they could account for the per-case costs of cases covered under No FEAR beginning in fiscal year 2006 by using a modification of the way the office currently accounts for health care fraud cases as a group. One change necessary would be for U.S. Attorneys and their paralegals to begin to track their time by case, not by group, as they do now. EOUSA would also need to revise its calculation of nonpersonnel costs to allocate these costs to individual cases, instead of by group. The Civil Division could account for No FEAR cases on a per-case basis by the beginning of fiscal year 2005 in the same way it currently conducts per-case accounting for vaccine injury compensation cases. This would include identifying personnel costs by requiring Civil Division legal professionals to track their time for each No FEAR case on which they work and allocating nonpersonnel costs to each case using a formula for allocating these costs based on the relative amount of time that legal professionals work on No FEAR cases versus all other cases.

The changes needed for DOJ to begin accounting for costs it incurs in cases covered under No FEAR on a per-case basis would require both start-up and recurring costs. EOUSA says that per-case accounting for No FEAR cases would require about \$535,000 in start-up costs—mostly for labor to modify computer systems. Officials from EOUSA did not provide an estimate of their recurring costs, but said they would not be substantial because the cost calculations required for per-case accounting would be carried out electronically. Officials added, however, that many attorneys may not favor tracking their time by case because it could lead to an added emphasis on the number of cases being handled. Because the Civil Division is already performing per-case accounting for certain types of cases, and because this process could also be used for No FEAR cases, officials said accounting for per-case costs for No FEAR cases would not require substantial start-up costs. Officials from the Division said it would incur an annual cost of about 2 work weeks to perform the accounting. DOJ officials said that if appropriate features are included, a DOJ-wide financial management information system planned for EOUSA and the Civil Division by fiscal year 2008 could make it less costly for the department to account for costs of No FEAR cases on a per-case basis than the estimates they gave us. The costs that DOJ said it would incur to conduct per-case accounting for No FEAR cases—there is no plan to do so—are estimates and do not reflect the total cost to DOJ of billing and seeking reimbursement for these cases.