



BUREAU OF THE  
**Fiscal Service**  
U.S. DEPARTMENT OF THE TREASURY

## CHECKS AND BALANCES: THE JUDGMENT FUND

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# The Origins and History of the Judgment Fund

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- Established by Congress in **1956** to expedite the payment of judgments less than \$100,000 against the United States by eliminating the need for specific congressional appropriations.
- Expanded in **1961** to cover compromise settlements as well as judgments in state and foreign courts. Further expanded in **1977** to cover judgments and settlements in excess of \$100,000.
- Originally administered by GAO until **1996** when Congress transferred the certification of Judgment Fund payments from GAO to the Financial Management Service (now the Bureau of the Fiscal Service) at the Department of the Treasury.

# What is the Judgment Fund?

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- A **permanent, indefinite appropriation** available to pay:
  - Many judicially and administratively ordered monetary awards against the United States
  - Amounts owed under compromise agreements negotiated by the Department of Justice in settlement of claims arising from actual or imminent litigation, if a judgment on the merits would have been payable from the Judgment Fund
- The statutory authority for the Judgment Fund is **31 U.S.C. 1304**
- Treasury regulations for the Judgment Fund are at **31 CFR Part 256**

# What are the criteria for payment from the Judgment Fund?

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1. Awards or settlements are **final**;
2. Awards or settlements are **monetary**;
3. Payment of the award or settlement is authorized in **31 U.S.C. 1304(a)(3)**; and
4. Payment may **not** legally be made from **any other source of funds**

## Not otherwise provided for?

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- 31 U.S.C. 1304(a)(1) states that the Judgment Fund is available when “payment is **not otherwise provided for.**”
- Payment is otherwise provided for if some other appropriation or fund is legally available to satisfy the judgment or settlement.
- The key is **legal availability**, not actual funding status.
- There is only **one** proper source of funds in any given case.
- Example: Equal Access to Justice Act (EAJA) (28 U.S.C. 2412). Contrast attorney fees under EAJA(b) and EAJA(d).

# EAJA: Not otherwise provided for?

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## Equal Access to Justice Act (EAJA) (28 U.S.C. 2412)

- The Judgment Fund is available to pay attorney fees awarded under 28 U.S.C. 2412(b) because they are not otherwise provided for.
- The Judgment Fund is **not** available to pay attorney fees awarded under 28 U.S.C. 2412(d) because they are otherwise provided for as a matter of law.
  - See 28 U.S.C. 2412(d)(4) which provides that “[f]ees and expenses awarded under this subsection to a party **shall be paid by any agency over which the party prevails** from any funds made available to the agency by appropriation or otherwise.”

# Claims **NOT** payable from the Judgment Fund

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- Awards by most administrative tribunals (e.g. MSBP). But note that awards from Boards of Contract Appeals are payable. (See 31 U.S.C. 1304(a)(3)(C))
- Administrative awards of \$2,500 or less on claims under the Federal Tort Claims Act (28 U.S.C. 2672)
- Administrative awards of \$100,000 or less under the Military Claims Act (10 U.S.C. 2733)
- Judgments against Government Corporations, and judgments related to a business-type program conducted by “sue and be sued” agencies
- Judgments against the United States Postal Service
- Judgments against nonappropriated fund instrumentalities (NAFIs) except for contract claims against the military exchanges (See 31 U.S.C. 1304(c))
- Punitive damages awards or criminal or civil contempt sanctions intended to punish or compel compliance

# Costs and Attorney Fees

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- The Judgment Fund is available to pay certain costs to the prevailing party in cases against the United States. See 28 U.S.C. 2412(a)
  - **Only** categories of costs enumerated in 28 U.S.C. 1920 are payable.
  - Costs on appeal also payable
  
- The Judgment Fund is generally available to pay attorney fees if the award is final and not otherwise provided for
  - EAJA(b) attorney fees payable; EAJA(d) attorney fees not payable
  - **No** separate award of attorney fees under the FTCA (attorney fees paid from the principal amount; subject to maximum percentage cap)



# Interest

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- The right to recover interest from the United States **requires a waiver of sovereign immunity** separate from a general waiver of immunity to suit
- If there is a waiver of sovereign immunity for interest, the Judgment Fund is available to pay (assuming the award is final and not otherwise provided for)
- The waiver of sovereign immunity for interest may be found in the same statute authorizing the substantive claim **or** a separate statute
- Example of a statute providing a general waiver of immunity to suit and a waiver of sovereign immunity for interest: the **Contract Disputes Act** (41 U.S.C. 7101 et seq.)
- Example of a statute providing a standalone waiver of sovereign immunity for interest: **31 U.S.C. 1304(b)** - but **beware** procedural hurdles!
- Note that 28 U.S.C. 1961 does **not** provide a waiver of sovereign immunity

# How to submit a claim to the Judgment Fund

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- The claim is submitted by the submitting agency (usually DOJ, but sometimes the responsible agency) and must be submitted electronically using the **Judgment Fund Internet Claims System (JFICS)**.
- Supporting document required - either a judgment/order **or** a settlement agreement **or** a signed Form 197, page 2 release (for claims of \$200,000 or less)
- Must identify the **party entitled to payment (PEP)**. This is the party legally entitled to the payment. Note that this is almost always the plaintiff and not the plaintiff's attorney (even for attorney fee awards).
- Must provide a **taxpayer identification number (TIN)** for each PEP. For individuals, the TIN will be an SSN.
- Must identify the **payee**. This is the person/entity to whom Treasury will direct the payment. Can be anyone. Must providing banking information for the payee (or mailing address for payment by check). TIN is not needed.

# Types of Payments

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- The Judgment Fund can make payments by the following methods:
  - **ACH (preferred method)**
  - Check (no longer a preferred method)
  - Fedwire® (extremely expensive to process so only cost-effective for very large payments; JF payment amount must be at least \$100,000)
  - Intra-Governmental Payment and Collection (IPAC) (for intra-government transfers to another federal government agency)
- The Judgment Fund can make ACH and check payments in either **USD or (most) foreign currencies.**

# Collection of Delinquent Debt

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- The government can take all or part of most federal payments in order to collect debts owed to the government.
- A Judgment Fund payment can be taken to collect a debt the party legally entitled to payment (PEP) owes the government.
- A Judgment Fund payment may be taken for a payment due to the government via “offset” or “setoff.”
- **Offset:** Centralized Administrative Offset via the **Treasury Offset Program (TOP)**
- **Setoff:** 31 U.S.C. 3728

# Administrative Offset Using TOP

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- The statutory authority for administrative offset of federal payments (including Judgment Fund payments) is **31 U.S.C. 3716**.
- Judgment Fund payments are run through TOP. TOP will intercept all or part of a Judgment Fund payment if the name and TIN for the Judgment Fund PEP match the name and TIN of a debtor in TOP who owes a delinquent debt to the federal government or is delinquent on certain state debts.
  - This is why we require a TIN for every PEP.
- Offset of Judgment Fund payments via TOP is **mandatory**
- Judgment Fund payments are frequently offset.

# Setoff Against Judgment

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- The statutory authority for setoff against judgment is **28 U.S.C. 3728**.
- Setoff pursuant to 31 U.S.C. 3728 is mandatory but requires that either:
  - A federal judgment or tax levy has been entered against the debtor/Judgment Fund PEP, or
  - The debtor/Judgment Fund PEP consents to the setoff.
- Most common scenario: the Judgment Fund PEP owes a prior restitution obligation to the United States and the parties to the litigation giving rise to the Judgment Fund payment submission agree that a portion of the award in the plaintiff's favor will be used to satisfy the restitution obligation.
- If you think that setoff against judgment may apply in your case, contact us as soon as possible (**before you finalize a settlement agreement** and before submitting the claim in JFICS).

# Reimbursement

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- **General Rule:** Responsible agencies have no obligation to reimburse the Judgment Fund for payments made on their behalf.
- **Three exceptions** where agencies are required to reimburse the Judgment Fund:
  - Payments under the **Contract Disputes Act** (41 U.S.C. 7101 et seq.)
  - Payments subject to the **NO FEAR Act** (5 U.S.C. 2301 note)
  - Contract payments to **military exchanges** pursuant to 31 U.S.C. 1304(c)

# Transparency Reporting

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- 31 U.S.C. 1304 was amended in 2019 to require Treasury to make publicly available certain details about each Judgment Fund payment. See 31 U.S.C. 1304(d).
- Treasury publishes this information every two weeks on the Judgment Fund's public website: [www.fiscal.treasury.gov/judgment-fund](http://www.fiscal.treasury.gov/judgment-fund)
- Treasury publishes payment details (responsible agency; submitting agency; name of plaintiff; name of plaintiff's attorney; amount paid including principal, interest, attorney fees, and costs; statutory citation) unless prohibited by law (e.g. the Privacy Act) or court order.



# Contact Us (Any time!)

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