



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

CHECKS AND BALANCES: THE JUDGMENT FUND

Rebecca Saltiel
Lela Anderson
Bureau of the Fiscal Service
Office of the Chief Counsel

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The Origins and History of the Judgment Fund

- 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?

- 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?

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?

- 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?

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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- 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

- **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

- 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
- 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!)

- **Rebecca Saltiel** (for legal questions)
 - Rebecca.Saltiel@fiscal.treasury.gov
 - (202) 874-6648

- **Lela Anderson** (for legal questions)
 - Lela.Anderson@fiscal.treasury.gov
 - (304) 480-8689

- **Sandra Bugby** (for operational questions)
 - Sandra.Bugby@fiscal.treasury.gov
 - (304) 480-6941