

# The Judgment Fund: Statutory and Legal Overview

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UNITED STATES  
DEPARTMENT OF  
THE TREASURY



# Agenda

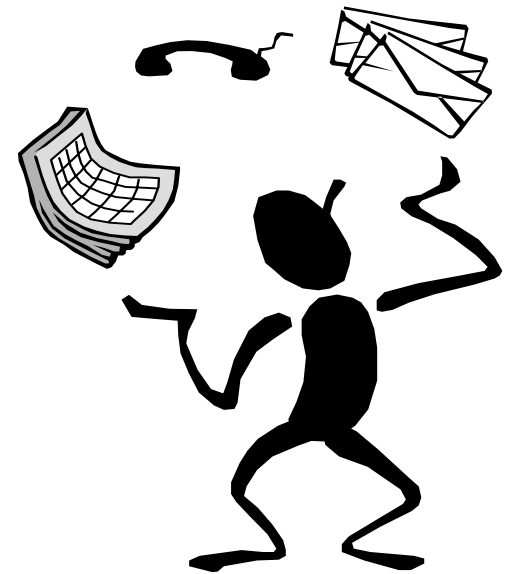
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- Overview
- Statutory Language
- Interest
- Attorney Fees
- Costs
- Reimbursements
  - CDA & No FEAR
- FOIA Change
- JFICS
- Offset
- Processing Information

# Judgment Fund

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- Permanent, Indefinite Appropriation
- Requires no further Congressional action
- Does not expire at the close of a fiscal year
- Unlimited amount available



# Purposes of Judgment Fund

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- Ease administrative burdens
- Decrease the time that elapsed between the award and payment of a judgment
- Decrease the cost of interest
- Codified at 31 U.S.C. § 1304





# 31 U.S.C. § 1304: Judgments, Awards, and Compromise Settlements




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Statutory authorization:

“Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interest and costs specified in the judgments or otherwise authorized by law when - ...”

# Criteria for Certifying Awards for Payment From the Judgment Fund

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1. Payment is not otherwise provided for; 
2. Payment is certified by the Secretary of the Treasury; and 
3. Authorized by statute - § 1304(a)(3). 



# 31 U.S.C. § 1304: Judgments, Awards, and Compromise Settlements

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# 31 U.S.C. § 1304: Judgments, Awards, and Compromise Settlements

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## Amounts --

Judgment Fund may not be used to pay judgment or settlements not involving money judgments. Examples:

- correct structural defects in a building;
- hire an equal opportunity expert.

# 31 U.S.C. § 1304: Judgments, Awards, and Compromise Settlements

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## Final --

- Action by court of last resort
- Parties decide not to seek further review
- Time to appeal expires
  - Exception: “irreducible minimum amount” - minimum amount that will be assessed is final and proper for payment.

# 31 U.S.C. § 1304: “not otherwise provided for ...”

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- Payment is otherwise provided for if some other appropriation or fund is legally available to satisfy the judgment.
- Actual funding level irrelevant.



# Judicial Awards or Settlements

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Judgment Fund pays litigative awards

- Principal
- Some attorney fees
- Allowable costs
- Allowable interest

as stated in judgment or settlement.

# Administrative Awards

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- Agency pays from its appropriations most administrative awards (main exception is FTCA awards > \$2,500). Examples:
  - Agency (e.g. Military Claims Act up to \$100k)
  - EEOC
  - MSPB
- Charge to fiscal year or years to which award is related. See 69 Comp. Gen. 40 (1989)

# Interest on Awards

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Has there been a waiver of sovereign immunity by?

- constitution
- express statutory authority  
(e.g. Title VII, 42 U.S.C. 2000e-16)
- contract

see Shaw v. Library of Congress, 478 U.S. 310 (1986)

# Interest on Appeals



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## **31 U.S.C. § 1304(b):**

- Interest is paid on district court awards pending an appeal by the government;
- Plaintiff must file a transcript of judgment with Treasury/FMS; and
- Interest is computed beginning from the date Treasury/FMS receives the transcript of judgment.

# Attorney Fees

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- Express statutory authority (fee shifting statutes)
- Equal Access to Justice Act, 28 U.S.C.
  - § 2412 (b) 
  - § 2412 (d) 

# Attorney Fees

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- Interim award of attorney fees
  - Trout v. Garrett, 891 F.2d 332 (1989), “irreducible minimum” approach
  
- FTCA maximum attorney fees
  - 20% for administrative awards
  - 25% for judicial awards

# Costs - 28 U.S.C. § 1920

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1. Fees of the clerk and marshal;
2. Fees of the court reporter for necessary stenographic transcripts;
3. Fees and disbursements for printing and witnesses;
4. Necessary document reproduction fees;
5. Docket fees under 28 U.S.C. § 1923; and
6. Compensation of court appointed experts and of interpreters.

# Reimbursements to the Judgment Fund - CDA

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## **Contract Disputes Act of 1978,**

41 U.S.C. §§ 601-613

- requires reimbursement to the Judgment Fund of Board of Contract Appeals awards as well as judicial awards.

# Reimbursements to the Judgment Fund - CDA

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41 U.S.C. § 612 (c ) **reimbursement:**

“payments made pursuant to subsections (a) and (b) **shall be reimbursed** to the fund ... by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.”

# Reimbursements to the Judgment Fund – No FEAR Act

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- Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 – No Fear Act, 5 U.S.C. § 2301 note; effective October 1, 2003
- OPM regulation covering reimbursement requirements – 5 CFR Part 724



# Reimbursements to the Judgment Fund – No FEAR Act

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## Bottom Line:

No FEAR requires certain agencies to reimburse the Judgment Fund for discrimination and whistleblower payments made to employees, former employees, or applicants for Federal employment.

# Agencies Covered by No FEAR

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Agencies covered by No Fear are defined in 5 U.S.C. § 105, and include:

- “Executive department, a Government corporation, and an independent establishment.”
- U.S. Postal Service
- Postal Rate Commission
- GAO

# Laws Covered By No FEAR

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Agencies reimburse the Judgment Fund for discrimination payments as set forth in:

- 5 U.S.C. § 2302 (b)(1) and (b)(8) or (b)(9)
  
- 5 U.S.C. § 2302 (d)
  
- Other cases brought under provisions of laws as specified by regulations – none so far.



# Laws Covered By No FEAR

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5 U.S.C. § 2302 specifies the following types of discrimination:

- Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Fair Labor Standards Act of 1938
- Rehabilitation Act of 1973, and
- Cases brought under any law that prohibits discrimination on the basis of marital status or political affiliation.



# Personnel Actions

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- No FEAR covers prohibited personnel actions against employees, former employees, or applicants for Federal employment.
- No FEAR does not apply to other types of discrimination.

# No FEAR Reimbursements

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Judgment Fund will pay award using normal payment process, however:

- Agency must identify a point of contact for reimbursement purposes;
- FMS will issue a reimbursement letter to the CFO and the individual POC within 15 days of the payment being issued.



# FOIA Change

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- Effective December 31, 2007, the Judgment Fund no longer pays attorney fee awards under the FOIA.
- Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), P.L. 110-175
- Agencies must now fund such awards.



# Processing Requests for Payment

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## FMS's Role

- Determine if award is proper for payment from the Judgment Fund.
- Ensure that the Judgment Fund is not used to pay obligations for which agencies receive appropriations.

# Processing Requests for Payment

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## Agency Submissions

- ❑ On-line submission or FMS forms must be used.
- ❑ Include reimbursement POC for CDA and No FEAR payments.
- ❑ Supplemental information may be attached.
- ❑ Necessary signatures must be included.



# Judgment Fund Transmittal

Date: August 3, 2006

Department of the Treasury  
Financial Management Service  
Judgment Fund Branch  
3700 East-West Highway, Room 6E15  
Hyattsville, Maryland 20782  
Telephone: (202) 874-6664

Claimant/Plaintiff Name: John Doe

Address: 123 Somewhere, Alexandria, VA 22310

Claimant/Plaintiff Counsel's Name: Ima Lawyer

Telephone Number: 703 - 567 - 1234

Name of Agency Subject to Claim: Department of the Army

E-mail Address (required for electronic payment confirmation): client@us.army.mil

Telephone Number: 703 - 123 - 4567

Brief Description of Facts Giving Rise to Claim: Non-selection based upon racial discrimination

**Check one if applicable:**

Contract Disputes Act

No FEAR Act

Firefighters Fund

Dear Sir or Madam:

I am an authorized representative of the United States in the above-captioned matter. As described in the enclosed documentation, I certify that all pertinent criteria required by law for the approval of this claim has been satisfied. If this is an administrative claim, the settlement was made with the United States in this matter and any portions of the agreement required to be paid from agency funds will be or have been paid from those funds. If this is a ~~litigative~~ claim, the award made in the enclosed judgment or settlement is payable by the United States and any portions of the award required to be paid from other parties or sources will be or have been paid from those parties or sources. The United States will not seek further judicial review of this award and I have obtained all approvals necessary for its referral for payment.

I believe that this award qualifies for payment pursuant to 31 U.S.C. § 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of **FMS Form 196: Judgment Fund Award Data Sheet**; **FMS Form 197: Judgment Fund Voucher for Payment**; the judgment or settlement agreement; and any other enclosures required by FMS. Unless payment by electronic funds transfer is indicated, please have the check sent to the check address provided on **FMS Form 197**.

*John Smith*

Submitting Agency Authorized Signature

AUSA John Smith

Name and Title (*print or type*)

John.smith@usdoj.gov

Submitting Agency E-mail Address (*required for electronic payment confirmation*)

12-345-67

Agency File Number

123 Federal Building

Street Address

FMS  
Form  
194

## Judgment Fund Award Data Sheet

ITEMIZATION OF AMOUNT PAYABLE FROM THE JUDGMENT FUND	AMOUNT TO BE PAID	CITATION TO LEGAL AUTHORITY
1. Principal	\$10,000.00	42 USC 1981a
2. Attorney Fees	\$3,000.00	42 USC 2000e-16(d), 2000e-5(k)
3. Costs	\$1,000.00	28 USC 2412(a)
4. Interest		42 USC 2000e-16(d)
Starting and Ending Dates for Interest Accrual	Start Date June 1, 2006	End Date until paid
5. Total Amount Payable from the Judgment Fund	\$14,000.00 plus interest	
<b>COMPLETE ONLY IF DEDUCTIONS ARE TO BE MADE FROM THE AMOUNT PAYABLE FROM THE JUDGMENT FUND *</b>		
6. Agency Name and Agency Location Code (A.L.C.) to Receive Offset	Amount to be Deducted	Reason(s) for Deduction(s) and Entity to Receive Deduction(s)
	a.	
	b.	
	c.	
7. Total Amount to be Deducted		
8. Net Amount Payable to Claimant		

FMS  
Form  
196

If amount for fees, costs, or interest was included in the principal amount (stated on line 1) as part of a "lump sum award," enter "INCLUDED ABOVE" on lines 2 through 4. Enter "NONE" for any of those items (principal, fees, costs, or interest) for which no amount was awarded/included.

1. Enter the principal amount payable (excluding attorney fees, costs, and interest) and cite the legal authority for that award (for instance, "FTCA, 28 U.S.C. 2672" or "5th Amendment Taking").
2. Enter attorney fees payable (if any) and cite legal authority for that award (for instance, "Freedom of Information Act, 5 U.S.C. 552(a)(4)(E)").
3. Enter the costs payable (if any) and cite legal authority for that award (for instance, "28 U.S.C. 2412(a)").
4. If the interest was calculated by the submitting agency, enter the total amount and cite the legal authority for that award (for instance, "Back Pay Act, 5 U.S.C. 5596(b)(2)"). If the Judgment Fund is to calculate the interest, list only the dates that interest accrual starts.
5. Total amounts shown in lines 1 through 4 and enter.
6. Enter any deductions specified in the judgment or settlement agreement, or debts to be setoff under 31 U.S.C. 3728. Indicate the reason for the deduction (for instance, "FTCA withholding" or "debt setoff pursuant to 31 U.S.C. 3728") and the payee agency's name and A.L.C. If this deduction is a "debt setoff" pursuant to 31 U.S.C. 3728, you must attach a copy of the judgment or the plaintiff's agreement to the debt setoff. Otherwise, FMS must seek the claimant's consent to the setoff and may only withhold from payment an amount sufficient to pay the debt plus the costs of litigation. Litigation will be required to effect the setoff if there is no judgment of debt or if the claimant declines consent to the setoff. If there are more than three deductions, attach additional copies of this form. If there are no deductions, enter "NONE."

\* Administrative debts that have been certified to the Secretary of the Treasury through the Treasury Offset Program will be setoff

Judgment Fund Voucher for Payment

- 1. **Total Amount:** 10,000.00
- 2. **Submitting Agency Contact Name:** John Smith  
Telephone Number: 202 - 622 - 2500
- 3. **Electronic Funds Transfer (EFT) Information:**
  - a) Payee Account Name: John Doe
  - b) American Banking Association (ABA) Routing Number (9 digits): 123456789
  - c) Payee Account Number: 987654
  - d) Checking:  Savings:
  - e) Financial Institution Name, City, State: USAA FSB, San Antonio, TX
- 4. **Interagency Payment System Information:**
  - a) Agency Name: \_\_\_\_\_
  - b) Agency Location Code (ALC) Number (8 digits): \_\_\_\_\_
  - c) Standard General Ledger (SGL) Number (4 digits): \_\_\_\_\_
  - d) Treasury Account Symbol (TAS): \_\_\_\_\_
- 5. **Mailing Address for Check:** (Payee name not to exceed 32 characters.)
  - a) Payee Name: \_\_\_\_\_
  - b) Payee Name: \_\_\_\_\_
  - c) Address Line 1: \_\_\_\_\_
  - d) Address Line 2: \_\_\_\_\_
  - e) City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
- 6. **Taxpayer Identification Number (s):**
  - a) 123-45-6789      b) \_\_\_\_\_
- 7. **Reimbursement Information for Contract Disputes Act (CDA), No FEAR Act, and Firefighters Fund:**
  - a) Agency Name: Department of the Army
  - b) Contact Name: Comptroller Jane
  - c) Contract Number (CDA cases): NA
  - d) Telephone Number: 703 - 567 - 4321
  - e) Address: Send me the Money Street
  - f) City: Rosslyn State: VA Zip Code: 22316
- 8. **If payment will be made in a foreign currency please provide the following information:**  
Country: \_\_\_\_\_ Currency: \_\_\_\_\_

**9. FOR USE BY JUDGMENT FUND BRANCH ONLY:**

Z Number: \_\_\_\_\_ J/D Number: \_\_\_\_\_ GLOWS Code/Agency: \_\_\_\_\_

\_\_\_\_\_  
Claim Analyst Signature and Date      Amount to Pay      Appropriation Code

\_\_\_\_\_  
Claim Reviewer Initials and Date

FMS  
Form  
197

## Judgment Fund Voucher for Payment

### 10. Acceptance by Claimants:

**NOTE: For use ONLY where the settlement is (i) for cash, (ii) in an amount that does not exceed \$200,000, and (iii) a court order approving the settlement is not warranted. For all other situations, a final judgment or a standard Department of Justice Stipulation For Compromise Settlement And Release must be attached.**

Each claimant/plaintiff and his/her guardians, heirs, executors, administrators, and assigns agree to and do accept this settlement in full settlement and satisfaction and release of any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, including without limitation any claims for fees, costs, expenses, survival, or wrongful death, arising from any and all known or unknown, foreseen or unforeseen bodily injuries, personal injuries, death, or damage to property, which they may have or hereafter acquire against the United States of America, its agents, servants, or employees, on account of the subject matter of the administrative claim or suit, or that relate or pertain to or arise from, directly or indirectly, the subject matter of the administrative claim or suit. Each claimant/plaintiff and his/her guardians, heirs, executors, administrators, and assigns further agree to reimburse, indemnify, and hold harmless the United States of America, its agents, servants, and employees, from and against any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, including without limitation claims for subrogation, indemnity, contribution, or lien of any kind, or for fees, costs, expenses, survival or wrongful death that relate or pertain to or arise from, directly or indirectly, any act or omission that relates to the subject matter of the administrative claim or suit.

(SIGN ORIGINAL ONLY)

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Claimant(s) sign above)

**11. AGENCY APPROVING OFFICIAL:** This claim has been fully examined in accordance with Statutory Citation \_\_\_\_\_ and approved in the amount of \$ \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FMS  
Form  
197 –  
optional



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### Important Announcement

The Judgment Fund Branch of the Financial Management Service (FMS), U.S. Department of the Treasury, has implemented the Judgment Fund Internet Claims System (JFICS). JFICS will allow users to submit claims online, track the status of claims from submission to payment and receive real-time status updates.

The Judgment Fund Branch plans to contact agencies and offices, starting with the most frequent Judgment Fund users, in order to coordinate user access to JFICS. This process is already underway. However, due to the large number of Judgment Fund users dispersed throughout the United States and its territories, we anticipate that it may take as much as 12-18 months to provide system access to all users. In the meantime, those without access to JFICS should continue to submit claims by mail

### Updates

Updated April 18, 2008



### Announcing new Judgment Fund Internet Claims System (JFICS)

**Who:** The Judgment Fund  
**What:** New system that enables users to submit and track claims online and receive real-time status updates  
**When:** Coming in 2008  
**Why:** The system will simplify the payment submission process and lower processing time

**Check website for more information or email**  
[JFICS.comments@fms.treas.gov](mailto:JFICS.comments@fms.treas.gov)

- [Judgment Fund Authorized User](#)

# Offsets – Two Methods

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- List on Form 196. Pursuant to 31 U.S.C. § 3728 – requires court order or plaintiff's consent.
- Treasury Offset Program (TOP). Pursuant to 31 U.S.C. § 3716 – agency has already provided plaintiff due process.

# Offsets – Attorney Fees

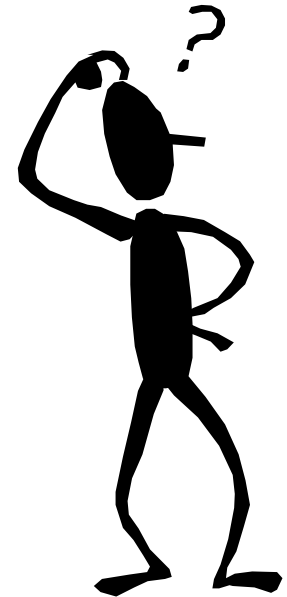
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- If the “prevailing party” is entitled to the attorney fee award, such as under EAJA, 28 U.S.C. § 2412, then the plaintiff’s SSN is listed for the attorney fee payment. If the plaintiff has a debt in TOP, the attorney fee award will be offset.
- Other examples: 26 U.S.C. § 7430, 42 U.S.C. § 1988

# Resources

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- ❑ 31 CFR Part 256
- ❑ Treasury Financial Manual, Part 6, Chapter 3100
- ❑ GAO's Principles of Federal Appropriations Law, Volume III, Chapter 14 ("The Red Book")
- ❑ Office of Legal Counsel opinions and the Comptroller General



# Contacts

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- Kevin McIntyre, Branch Manager
- General Inquiries: 202-874-6664
- Accounting Inquiries: Jennifer Fitzmaurice, Senior Staff Accountant: 202-874-8257
- Office of Chief Counsel:  
William Erle, Senior Counsel: 202-874-6975  
Jennifer Dickey, Senior Counsel: 202-874-6827

# Summary – Judgment Fund Pays:

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- Court awards and litigative settlements, including interest (if allowable), some attorney fees, and allowable costs.
- Most administrative tort awards.
- Some awards under authorities unique to defense agencies:
  - 10 U.S.C. §§ 2733 and 2734 (Military Claims Act)
  - 32 U.S.C. § 715 (National Guard Claims Act – non-combat torts)
- Agencies do not reimburse the Judgment Fund (except for CDA & No FEAR).

# The Judgment Fund

William Erle

Senior Counsel

Office of Chief Counsel

Financial Management Service

UNITED STATES  
DEPARTMENT OF  
THE TREASURY

