

§ 256.30

pursuant to 26 U.S.C. 6331, then FMS will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then FMS must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then FMS will set off the debt. If the debtor does not consent, then FMS will withhold from payment an amount equal to the debt. FMS also may withhold an amount sufficient to pay the cost of litigating the debt to judgment. FMS then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, FMS will set off the debt. If the suit is unsuccessful, FMS will pay the withheld amount with interest accruing from the date when payment would have been made.

Subpart D—Interest and Litigation Costs

§ 256.30 When does the Judgment Fund pay interest?

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e-16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).

§ 256.31 How does FMS compute interest on payments?

FMS computes interest according to the terms of the statute that waives sovereign immunity for interest to be awarded against the Federal government. The statute that allows interest must be cited on the appropriate Judgment Fund form.

31 CFR Ch. II (7-1-10 Edition)

§ 256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?

31 U.S.C. 1304(b) specifies that a "transcript of the judgment" must be filed with the Secretary of the Treasury. This means that a copy of the judgment must be filed with the Judgment Fund Branch for interest to accrue on a judgment of a federal district court, the Court of Appeals for the Federal Circuit, or the United States Court of Federal Claims. By practice, the successful plaintiff files a copy of the judgment. Whoever submits the judgment should include a cover letter explaining that it is being submitted to preserve interest rights under 31 U.S.C. 1304. A copy of the judgment and cover letter must be sent to the Financial Management Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at <http://www.fms.treas.gov/judgefund>.

§ 256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?

Interest is computed from the date that FMS receives the copy of the judgment until the date preceding the appellate court's affirmative ruling. If the United States files a Notice of Appeal which it later withdraws, interest is paid on the award through the date before the withdrawal of the Notice of Appeal.

§ 256.34 Does the Judgment Fund pay all litigation costs?

FMS certifies for payment only those costs that are enumerated in the cost statute, 28 U.S.C. 1920, or as set forth under a statute that specifically governs payment of the award.

Subpart E—Reimbursements to the Judgment Fund

§ 256.40 When must an agency reimburse the Judgment Fund?

Agencies are required to reimburse the Judgment Fund for payments made pursuant to the Contract Disputes Act (CDA), 41 U.S.C. 612, and payments made pursuant to the Notification and