

## PART 256—OBTAINING PAYMENTS FROM THE JUDGMENT FUND AND UNDER PRIVATE RELIEF BILLS

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AUTHORITY: 31 U.S.C. 1304, 3728; 41 U.S.C. 612; 5 U.S.C. 2301 note.

SOURCE: 71 FR 60849, Oct. 17, 2006, unless otherwise noted.

### Subpart A—General Information

#### § 256.0 What does this part cover?

This part applies to payments made by the U.S. Department of the Treasury (Treasury) pursuant to the Judgment Fund statute, 31 U.S.C. 1304.

#### § 256.1 What is Treasury's role in paying awards and settlements from the Judgment Fund?

(a) The Judgment Fund is a permanent, indefinite appropriation which is available to pay many judicially and administratively ordered monetary awards against the United States. In addition, amounts owed under compromise agreements negotiated by the U.S. Department of Justice in settlement of claims arising under actual or imminent litigation are normally paid from the Judgment Fund, if a judgment on the merits would be payable from the Judgment Fund. Treasury's Bureau of the Fiscal Service (Fiscal Service) certifies payments from the Judgment Fund when the following four tests have been met:

- (1) Awards or settlements are final;
- (2) Awards or settlements are monetary;
- (3) One of the authorities specified in 31 U.S.C. 1304(a)(3) provides for payment of the award or settlement; and
- (4) Payment may not legally be made from any other source of funds.

(b) Additionally, Fiscal Service requires that requests for payment identify the statute that forms the basis of the underlying claim. The award or settlement must comply with the statutory and regulatory requirements that authorize the award or settlement. For example, interest is payable on Judgment Fund awards only if there is an express statutory provision, contractual agreement or constitutional waiver of sovereign immunity authorizing the assessment of interest against the United States. Also, a tort under the Federal Tort Claims Act (FTCA) is payable from the Judgment Fund only when the award amount exceeds \$2,500 (for administrative awards) and is in compliance with the regulatory requirements at 28 CFR part 14.

**§ 256.2 Where can I find more information about, and forms for, Judgment Fund payments?**

Detailed information related to Judgment Fund payments, including copies of all forms, can be found in the Treasury Financial Manual (TFM), Volume I, Part 6, Chapter 3100. The TFM is available on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>. Contact information for the Judgment Fund Branch is also available on the Web site.

**Subpart B—Requesting Payments**

**§ 256.10 Who may request payment from the Judgment Fund?**

(a) *Court judgments and settlements of litigation.* The Department of Justice must normally submit the request for payment from the Judgment Fund. Agencies that have independent litigating authority may submit a request for payment themselves if the Department of Justice is not responsible for the case.

(b) *Administrative awards.* The program agency that is authorized to approve the award must submit the request for payment.

**§ 256.11 How do agencies request payments?**

Agencies must submit requests for payments from the Judgment Fund on Fiscal Service's Judgment Fund payment request forms or by using other

approved methods as provided for on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>. Fiscal Service provides forms and detailed information about Judgment Fund payments in the TFM, Volume I, Part 6, Chapter 3100. The TFM is also available on the Judgment Fund Web site. The submitting agency must complete and sign all required Judgment Fund forms and must attach all required supporting documents.

**§ 256.12 What supporting documentation must agencies submit to Fiscal Service when requesting a payment from the Judgment Fund?**

(a) *All payments.* The submitting agency must submit a copy of the judgment or settlement agreement, as applicable, in addition to the request for payment from the Judgment Fund. The request for payment must be on the appropriate Judgment Fund payment request forms.

(b) *Awards to minors.* For awards to claimants that are minors, the submitting agency must include in its submission to Fiscal Service documentation establishing that the payee, if different from the claimant, is legally authorized to act on behalf of the claimant. Documentation of court approvals (Federal, State, or foreign) that are legally required for payment must be submitted along with the request for payment from the Judgment Fund. State law typically specifies when money awards to minors require the appointment of a guardian. Agencies must list the appropriate controlling state law citation on the payment request forms.

(c) *Awards of costs.* For awards of costs, the submitting agency must include a copy of the "bill of costs" or the Court's order awarding costs. Only those items expressly enumerated under the cost statute, 28 U.S.C. 1920, or other governing statute specific to the award, are payable from the Judgment Fund.

(d) *Payments to multiple claimants/payees in a single award.* For awards where multiple payees are to receive separate payments, the submitting agency must complete separate Judgment Fund Vouchers for Payment for each payee. When there are multiple claimants in

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an administrative tort matter, each claimant's award must independently exceed the mandatory \$2,500 threshold in order for payment to be made from the Judgment Fund. A claimant's threshold can be satisfied by combining amounts awarded for personal and property damage under the FTCA.

(e) *Awards of back pay.* For awards of back pay where the judgment does not specifically state the principal amounts to be paid and withholdings to be made, the submitting agency must include a spreadsheet indicating precisely which amounts are allocable to net pay, deductions, and interest.

### **§ 256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?**

Yes, agencies must include a valid TIN on all requests for payments, unless the situation meets one of the exceptions listed in the Fiscal Service TIN Policy, which may be found on the Fiscal Service Web site at: <http://www.fiscal.treasury.gov/tinpolicy/regulations.html>. For an individual, the TIN is the Social Security Number. For a business, the TIN is the Employer Identification Number issued by IRS. The TIN provided must be for the party entitled to the payment, whether or not that party is the payee. Failure to include a required TIN results in an incomplete request for payment.

### **§ 256.14 What happens if I submit an incomplete request for payment?**

Fiscal Service may return, without action, any request for payment that is incomplete. If a request for payment is returned for lack of necessary information, the submitting agency may resubmit the request for payment once all the required information is available.

## **Subpart C—Debt Collection**

### **§ 256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?**

The submitting agency must identify on the appropriate Judgment Fund form any known debt owed to the United States that Fiscal Service is expected to collect by setoff against the

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award. Such a debt will be offset pursuant to the provisions of 31 U.S.C. 3728.

### **§ 256.21 Are Judgment Fund payments offset to collect administrative debts?**

Yes, separate and apart from its role as administrator of the Judgment Fund, Fiscal Service, in its capacity as disbursing official for the executive branch, offsets Judgment Fund payments to collect delinquent, nontax Federal debts through the Treasury Offset Program (TOP). This rule applies only to the setoff of Judgment Fund payments prior to payment certification, pursuant to 31 U.S.C. 3728, and not to disbursing official offsets pursuant to other authorities. (See 31 CFR 285.5 for requirements for disbursing official offset of past-due delinquent, nontax debts pursuant to the authority set forth in 31 U.S.C. 3716.)

### **§ 256.22 How does Fiscal Service set off an award under 31 U.S.C. 3728?**

The setoff statute establishes a two-step process to collect debts that are owed to the United States. If an agency notifies Fiscal Service of a debt for which a court has issued a judgment against a debtor in favor of the United States, or for which the IRS has issued a tax levy pursuant to 26 U.S.C. 6331, then Fiscal Service will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then Fiscal Service must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then Fiscal Service will set off the debt. If the debtor does not consent, then Fiscal Service will withhold from payment an amount equal to the debt. Fiscal Service also may withhold an amount sufficient to pay the cost of litigating the debt to judgment. Fiscal Service 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, Fiscal Service will set off the debt. If the suit is unsuccessful, Fiscal Service 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 Fiscal Service compute interest on payments?

Fiscal Service 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.

#### § 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 Bureau of the Fiscal Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at <http://www.fiscal.treasury.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 Fiscal Service 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?

Fiscal Service 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 Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR), 5 U.S.C. 2301 note. The TFM, available on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>, contains more information about how Fiscal Service bills agencies and collects such reimbursements.

#### § 256.41 When is reimbursement due for CDA and No FEAR payments?

Reimbursement for a CDA or No FEAR payment should be made promptly upon notification from Fiscal Service of the amount due. If the agency is unable to timely reimburse Fiscal Service, the agency must contact Fiscal Service to establish a reimbursement plan. Under Office of Personnel Management (OPM) regulations, No FEAR reimbursements or payment reimbursement plans must be made within 45 days of the request for reimbursement. See 5 CFR part 724. Agencies that do not meet this requirement will be listed on Fiscal Service’s public Web site.

**Subpart F—Additional Provisions****§ 256.50 How does Fiscal Service process back pay awards?**

The submitting agency may request one of two methods to process back pay awards.

(a) One method has three parts. The first part is a payment of net back pay (and interest if authorized), which is sent to the plaintiff or to the plaintiff's attorney, as directed by the submitting agency. The second part is a payment to the agency of deductions from the net back pay. The third part is a payment of attorney fees, which is sent directly to the attorney.

(b) Under the second method, Fiscal Service pays the entire back pay award to the agency out of whose actions the claim arose. The agency then issues amounts representing back pay (and interest if authorized) to the plaintiff and retains amounts representing deductions. Fiscal Service pays the attorney fees directly to the attorney.

[71 FR 60849, Oct. 17, 2006; 71 FR 62050, Oct. 20, 2006]

**§ 256.51 Does Fiscal Service report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?**

No, Fiscal Service does not report Judgment Fund payments as potential taxable income to the IRS. Fiscal Service does not have sufficient information about the payment to determine if a Form 1099 must be issued or to prepare such a form when required. To the extent any Form 1099 needs to be issued, it is the responsibility of the agency submitting the payment request to do so.

**§ 256.52 How does Fiscal Service issue a payment?**

Pursuant to 31 CFR part 208, Judgment Fund payments are to be made by electronic funds transfer (EFT). Fiscal Service will issue an electronic payment to the payee's account as specified on the appropriate Judgment Fund form. If a submitting agency determines that a waiver (in accordance with 31 CFR part 208) to the requirement for payment by EFT is appropriate, Fiscal Service will issue a payment by check. The Voucher for Pay-

ment must direct payment to the payee designated in the judgment or settlement agreement.

**§ 256.53 How does the submitting agency know when payment is made?**

Fiscal Service will e-mail the agency contact when payment is disbursed, if the agency contact has provided an email address on the appropriate Judgment Fund form. Also, Fiscal Service maintains an on-line payment status system that the submitting agency can access to determine the status of a payment. The payment reporting system can be accessed from the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>.

**§ 256.54 What happens if Fiscal Service denies a request for payment?**

Fiscal Service must deny any request for payment that fails to satisfy the requirements of 31 U.S.C. 1304. The submitting agency may request reconsideration of a payment denial. The submitting agency must provide an explanation of how the request for payment meets the four tests contained in section 256.1 of this part. If applicable, requests for reconsideration must contain a reference to the agency's program authority and include specific funding provisions that pertain to the program activity that resulted in the claim. If, upon reconsideration, Fiscal Service determines that payment from the Judgment Fund is appropriate, and the agency has already made payment to the plaintiff or claimant, Fiscal Service will reimburse the agency from the Judgment Fund.

**Subpart G—Private Relief Bills****§ 256.60 How do I get paid for a Private Relief Bill?**

You may apply for payment by sending a request letter along with supporting documentation, to include a copy of the private relief act and proof of your identity, to the address specified on the Fiscal Service Web site at <http://www.fiscal.treasury.gov/privaterelief>.

**PART 270 [RESERVED]**