

VA Financial Policies and Procedures  
Reimbursements to Judgment Fund

CHAPTER 11

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## 1101 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures related to the reimbursement of the Judgment Fund for payments made pursuant to the Contract Disputes Act (41 U.S.C. 612) and for payments made pursuant to the Notification and Federal Employees Antidiscrimination and Retaliation (No FEAR) Act of 2002 (5 U.S.C. 2301 note). The authority for payments from the Judgment Fund is 31 U.S.C. 1304, *Judgments, Awards and Compromise Settlements*. The Judgment Fund is a permanent, indefinite appropriation, which is available to pay certain judicially and administratively ordered monetary awards against the United States as well as amounts owed under compromise agreements negotiated by the U.S. Department of Justice (DOJ) in settlement of claims arising under actual or imminent litigation. The Department of the Treasury Financial Management Service (Treasury) is responsible for administering and certifying payments from the Judgment Fund.

Refer to VI, Chapter 20, *Judgment Fund*, for the activities associated with requesting and recording Judgment Fund liabilities<sup>1</sup>.

110101 REIMBURSEMENTS TO JUDGMENT FUND. In accordance with 31 C.F.R. 256.40, VA will promptly reimburse Treasury for Contract Disputes Act and No FEAR Act claims payments made from the Judgment Fund when notification has been received from Treasury.

110102 ACCOUNTING AND REPORTING REQUIREMENTS FOR REIMBURSEMENTS. VA will comply with uniform accounting procedures for both Contract Disputes Act and No FEAR Act claims, as established by Financial Accounting Standards Advisory Board (FASAB), Statement of Federal Financial Accounting Standard (SFFAS) No. 5, *Accounting for Liabilities of the Federal Government* and FASAB Interpretation No. 2: *Accounting for Treasury Judgment Fund Transactions: An Interpretation of SFFAS No.4 and SFFAS No. 5*.

## 1102 POLICIES

110201 REIMBURSEMENTS TO JUDGMENT FUND.

VA will reimburse the Judgment Fund for payments made on its behalf by Treasury for Contract Disputes Act and No FEAR Act claims and will adhere to the regulatory timeframes established for submitting such reimbursements. VA will use the proper appropriated funds available to finance both types of Judgment Fund reimbursements or request supplemental appropriations, when the proper appropriation is not available or not sufficient to cover the reimbursement. Refer to definitions 110613, Reimbursements for Contract Disputes Act Claims and 110614, Reimbursements for No

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<sup>1</sup> Refer to 31 C.F.R. 256 Obtaining Payments from the Judgment Fund and Under Private Relief Bills for detailed information.

FEAR Act Claims, for discussion of proper appropriated funds to use for reimbursements to the Judgment Fund. VA will comply with prescribed Treasury procedures for making these reimbursements.

#### 110202 ACCOUNTING AND REPORTING REQUIREMENTS FOR REIMBURSEMENTS.

VA will use the same accounting procedures for Contract Disputes Act and No FEAR Act claims, including the establishment of a contingent liability<sup>2</sup> until the claim has been settled or a judgment assessed against VA. VA will comply with the Office of Management and Budget's (OMB) financial reporting requirements and the Treasury's procedural guidance for accounting and reporting on intra-Governmental payable transactions<sup>3</sup>.

A. VA will recognize a contingent liability and an expense for the full amount of the expected loss associated with the claim prior to payment from the Judgment Fund. Once the claim is determined to be appropriately paid from the Judgment Fund, VA will reverse the contingent liability and establish an accounts payable.

B. VA will report intra-Governmental payables for the Judgment Fund claims on the financial statements together with proper disclosures.

C. VA will review the Judgment Fund payables quarterly and confirm the amounts with Treasury.

D. VA may not write off a payable unless authorized by Congress.

#### 1103 AUTHORITY AND REFERENCES

110301 [5 U.S.C. 2301 \(note\), Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002](#)

110302 [28 U.S.C. 2414, Payment of Judgments and Compromise Settlements](#)

110303 [28 U.S.C. 2517, Payment of Judgments](#)

110304 [28 U.S.C. 2672, Administrative Adjustment of Claims](#)

110305 [28 U.S.C. 2677, Compromise](#)

110306 [31 U.S.C. 1304, Judgments, Awards and Compromise Settlements](#)

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<sup>2</sup> Refer to Vol. VI Chapter 21, *Contingent Liabilities*, for detailed information on recognizing and recording contingent liabilities.

<sup>3</sup> Refer to Vol. VII, Chapter 5, *Intra-Governmental Activities and Reconciliation*, for additional information on Intra-Governmental transactions.

- 110307 31 U.S.C. 1553, Availability of Appropriation Accounts to Pay Obligations
- 110308 41 U.S.C. 612, Chapter 9, Contracts Disputes
- 110309 5 C.F.R. Part 724, Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002
- 110310 31 C.F.R. Part 256, Obtaining Payments from the Judgment Fund and Under Private Relief Bills
- 110311 48 C.F.R. 33.202, Federal Acquisition Regulation, Contract Disputes Act of 1978
- 110312 Financial Accounting Standards Advisory Board (FASAB), Statement of Federal Financial Accounting Standard (SFFAS) No. 5, Accounting for Liabilities of the Federal Government
- 110313 FASAB, Interpretation of Federal Financial Accounting Standards No. 2: Accounting for Treasury Judgment Fund Transactions: An Interpretation of SFFAS No. 4 and SFFAS No. 5
- 110314 OMB Circular A-136, Financial Reporting Requirements
- 110315 Department of the Treasury, Treasury Financial Manual (TFM) Volume I Part 6 Chapter 3100, Certifying Payments and Recording Corresponding Intra-Governmental Receivables in the Federal Government's Judgment Fund
- 110316 Department of the Treasury, Federal Intra-Governmental Transactions Accounting Policies Guide
- 110317 Department of the Treasury Managed Accounts
- 110318 Department of the Treasury, No FEAR Act Receivables
- 110319 Department of the Treasury, Contract Disputes Receivables
- 110320 Department of the Treasury, TFM Bulletin 2009-04, Volume I, Part 34, Yearend Closing
- 110321 Judgment Fund Web Site

#### **1104 ROLES AND RESPONSIBILITIES**

- 110401 In accordance with 31 U.S.C 1553(c)(1), the Secretary of VA, or his or her designee in the Office of the Secretary, would approve any obligation for an individual expired, fixed appropriation that would bring the total obligations for contract changes to

that appropriation to exceed \$4,000,000 in a fiscal year. Similar approval of an obligation to exceed \$25,000,000 may not be approved until certain additional congressional notification requirements and timelines have been met. See 31 U.S.C 1553(c)(2) for additional details.

110402 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. Specific responsibilities include the direction, management and provision of policy guidance and oversight of VA's financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

110403 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter. Each Administration's CFO is responsible for devising a cost allocation methodology outside of VA's financial accounting system for eventual allocation of any unfunded Judgment Fund Expense to their respective stations, services and product lines.

110404 The Office of Financial Policy (OFP) provides VA-wide financial policy and procedures guidance. Among its responsibilities, OFP develops, coordinates, issues, evaluates and reviews Departmental financial policies, systems and procedures for compliance with all financial laws and regulations. OFP calculates and posts transactions for the annual Judgment Fund liabilities and expenses.

110405 The Office of Financial Business Operations in the Office of Finance is responsible for reimbursing the Judgment Fund for payments made by Treasury arising from settlements or judgments for No FEAR Act claims.

110406 The Department of Justice (DOJ) processes the legal work for No FEAR Act claims.

110407 VA Office of General Counsel (OGC) reviews Treasury requests for reimbursements to the Judgment Fund for No FEAR Act claims. OGC handles all legal issues related to Contract Disputes Act claims, makes the request to Treasury for the associated Judgment Fund payments and responds to inquiries from organizations that need to reimburse the Judgment Fund.

## **1105 PROCEDURES**

110501 REIMBURSEMENTS TO JUDGMENT FUND. Per the requirements for submitting requests for payments from the Judgment Fund to Treasury, VA will provide a Point of Contact (POC) in OGC to answer questions on claims. The Office of the

Deputy Chief Financial Officer receives the Treasury request for reimbursement notification and provides status of VA's plan to reimburse the Judgment Fund.

A. **Contract Dispute Act Claims.** The payment of Contract Disputes Act claims to Treasury by Federal agencies is governed by 41 U.S.C. 612, which provides that awards made by Federal boards of contract appeals and judgments made by Federal courts will be paid from the Judgment Fund. Further, it provides that Contract Disputes Act payments made on behalf of Federal agencies (e.g., VA) by the Judgment Fund will be reimbursed to the Fund.

1. Per TFM Volume I 6-3100, Treasury is required to notify VA within 15 business days from the date of a Contract Disputes Act claim payment.

2. Upon receipt of the Treasury reimbursement notification to the Office of the Chief Financial Officer, VA has 45 days to either reimburse the Judgment Fund or to contact the Judgment Fund Branch to make an acceptable repayment arrangement. Any VA organization identified on the Contract Dispute Act claim is responsible for reimbursing the Judgment Fund for payments made by Treasury.

3. In addition, if VA becomes non-compliant by failing to reimburse or make timely arrangements for reimbursement, Treasury will identify VA as a non-responsive agency in any reports on Contract Disputes Act reimbursements requested or required by Congress.

B. **No FEAR Act Claims.** The No FEAR Act requires that Federal agencies reimburse the Judgment Fund for payments made in accordance with 28 U.S.C. 2414, 2517, 2672 or 2677.

1. Per TFM Volume I 6-3100, Treasury is required to notify VA within 30 business days from the date of a No Fear Act claim payment.

2. Pursuant to 5 C.F.R. Part 724.105, reimbursements for No FEAR Act claims, VA has 45 days to either reimburse the Judgment Fund or to contact the Judgment Fund Branch to make an acceptable repayment arrangement.

3. In addition, if VA becomes non-compliant by failing to reimburse or make timely arrangements for reimbursement, Treasury will post an annual report on the Treasury Web site of agencies which have failed to reimburse the Judgment Fund.

C. **Appropriations Available for Reimbursement.** VA will follow the procedures, prescribed in TFM Volume I 6-3100, to reimburse the Judgment Fund. VA will comply with the Treasury decision, in consultation with its Office of the Chief Counsel, which certifies whether a judgment, award or settlement is appropriate for payment and whether VA is responsible for reimbursing the fund.

VA will charge Contract Disputes Act and No FEAR Act reimbursements to expired appropriations that are the proper appropriated funds available to finance Judgment Fund reimbursements. Refer to definitions 110613, Reimbursements for Contract Disputes Act Claims and 110614, Reimbursements for No FEAR Act Claims, for discussion of proper appropriated funds to use for reimbursements to Judgment Fund.

1. If insufficient unobligated balances exist in this expired appropriation or the appropriation account has closed, VA may be able to charge the current appropriation available for the same purpose as authorized by 31 U.S.C. 1553.
2. If necessary, VA may need to obtain a special supplemental appropriation from Congress, as permitted by 41 U.S.C. 612. For this purpose, a specific line-item appropriation is not required. All that is needed is a lump-sum appropriation for VA's activities.
3. If more than one appropriation is involved in the monetary judgment, then the reimbursement is prorated against those appropriations. Any prorating between or among appropriations will be based on the nature of the claim and the basis of the monetary judgment in the particular case.

110502 ACCOUNTING AND REPORTING REQUIREMENTS FOR REIMBURSEMENTS. Federal Financial Accounting Standards, Interpretation No. 2, *Accounting for Treasury Judgment Fund Transactions: An Interpretation of Statement on Federal Financing Accounting Standards (SFFAS) No. 4 and SFFAS No. 5*, requires agencies to recognize a contingent liability and an expense when an unfavorable litigation outcome is probable and the amount can be estimated for both Contract Disputes Act and No FEAR Act claim payments. Refer to Volume VI, Chapter 20, Judgment Fund, for detailed accounting information related to the Judgment Fund.

A. Per TFM Volume 1 6-3100 Section 3140.20, when the Judgment Fund is determined to be the payment source for a Contract Disputes Act or No FEAR Act claim, VA will reverse the contingent liability and record an accounts payable to the Judgment Fund (Trading Partner "20"). Treasury will record an expense and a receivable. VA will maintain the payable in the accounting system until the Judgment Fund has been reimbursed in full.

B. VA will comply with OMB Circular A-136, *Financial Reporting Requirements*, by reporting its intra-Governmental payables for Contract Disputes Act and No FEAR Act claims on the financial statements, along with the appropriate footnotes. VA will distinguish between intra-Governmental liabilities not covered by budgetary resources from public liabilities not covered by budgetary resources<sup>4</sup>. VA will provide other information needed to understand the nature of liabilities not covered by budgetary resources.

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<sup>4</sup> Refer to Vol. VI, Chapter 2, *Intra-Governmental vs. Public Liabilities*, for additional information.

C. VA's OFP will review its account balances quarterly and confirm them with Treasury. OFP confirms its accounts payable and expense balances that correspond to Treasury's receivable balance.

1. Treasury posts outstanding receivables for both Contract Disputes Act and No FEAR Act payments on its Web site quarterly and sends VA a confirmation notice reflecting outstanding receivables and revenue. With the exception of the confirmation notice for the final quarter, VA has 30 calendar days from the end of the quarter to respond to Treasury regarding the accuracy of the amounts reported. With respect to the confirmation notice for the final quarter, VA will respond to the September 30<sup>th</sup> notice by October 24 of that year during the fiscal yearend closing process.

2. VA will provide Treasury with supporting documentation (e.g., Intra-Governmental Payment and Collection System transactions, canceled checks) for changes to the posted balances. This process facilitates the reconciliation and reporting of the intra-Governmental receivable/payable balances and improves the quality of reporting.

D. VA will not write off a Judgment Fund payable unless authorized by Congress. If a write off was pursued and authorized, the authority would also extend to Treasury to write off the corresponding intra-Governmental receivables. VA will remain liable for the full reimbursement amount of the Judgment Fund payment in accordance with both the Contract Disputes Act and No FEAR Act.

E. Representation Letters. As part of the end-of-year procedures during the fourth quarter of the fiscal year, VA's OGC will provide to VA's Chief Financial Officer (CFO) information which relays all matters to which VA is a party to litigation, to include various administrative proceedings, legal actions, claims brought against it and cases to be paid from the Judgment Fund against VA. For more information on these letters, refer to Volume VI, Chapter 21, *Contingent Liabilities*.

## 1106 DEFINITIONS

110601 Compromise. An offer and acceptance of a partial payment in settlement and full satisfaction of the offeror's indebtedness, as it exists at the time the offer is made. It is a final settlement, binding on the parties to the compromise, unless procured by fraud, misrepresentation of a material fact or mutual mistake of fact.

110602 Contingent Liability. A liability representing an amount that is recognized as a result of a past event where a future outflow or other sacrifice of resource is probable and measurable. A contingent liability should be disclosed in the notes to the financial statements if any of the conditions for liability recognition (probable and measurable) are not met and there is a reasonable possibility that a loss or additional loss may have been incurred. Disclosure will include the nature of the contingency and an estimate of the possible liability, an estimate of the range of the possible liability or a statement that such an estimate cannot be made.

110603 Contract Dispute Claims. The Federal Acquisition Regulation defines a “claim” as a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act.

110604 Disclosure. Reporting information in notes or narrative regarded as an integral part of the basic financial statements.

110605 Judgment Fund. A permanent, indefinite appropriation which is available to pay many judicially and administratively ordered monetary awards against the United States.

110606 Liability. The probable future outflow or other sacrifice of resources as a result of past transactions or events.

110607 Liabilities Not Covered By Budgetary Resources. Liabilities for which Congressional action is needed before budgetary resources are provided.

110608 Measurable. Reasonably estimable.

110609 No FEAR Act Claims. No FEAR Act cases include those brought before Federal courts under discrimination statutes and certain cases brought before the Merit Systems Protection Board (MSPB), including discrimination and whistleblower protection claims. These latter cases, however, typically result in either a settlement while the case is pending at MSPB or an award issued by MSPB, both of which are paid out of agency funds, not the Judgment Fund.

110610 Obligation. A legally binding agreement that will result in outlays, immediately or in the future. When you place an order, sign a contract, award a grant, purchase a service or take other actions that require the Government to make payments to the public or from one Government account to another, an obligation is incurred.

110611 Probable. That which may reasonably be expected or believed to be more likely than not on the basis of available evidence or logic, with the exception of pending or threatened litigation and unasserted claims. The probability of a future outflow or other sacrifice of resources is assessed on the basis of current facts and circumstances. These current facts and circumstances include the law that provides general authority for Federal entity operations and specific budget authority to fund programs.

110612 Recognize. The formal recording or incorporating of an item into VA’s financial statements as an asset, liability, revenue, expense, etc.

110613 Reimbursements for Contract Disputes Act Claims. These are reimbursements made by VA to the Judgment Fund pursuant to the Contract Disputes Act; funds to pay these reimbursements are derived initially from those appropriations financing the organizations (i.e., fixed appropriation account), wherever the Contract Disputes Act claim arose. If these funds are not available, then VA may use any current appropriation account available for the same purpose. VA may also seek a supplemental appropriation from Congress. See 31 U.S.C. 1553 for further guidance on the use of appropriations.

110614 Reimbursements for No FEAR Act Claims. These are reimbursements made by VA to the Judgment Fund pursuant to the No FEAR Act; funds to pay these reimbursements are derived initially from those appropriations financing the organizations (i.e., fixed appropriation account), wherever the No FEAR Act claim arose. If these funds are not available, then VA may use any current appropriation available for the same purpose. VA may also seek a supplemental appropriation from Congress. See 31 U.S.C. 1553 for further guidance on the use of appropriations.

110615 Representation Letter. This letter is the primary form of communication between VA's General Counsel, at the request of management and VA's auditor covering all litigation, claims and assessments pertaining to VA, including matters handled by VA Counsel or DOJ or any other outside legal counsel on behalf of VA. This letter is the auditor's primary means of corroborating the information furnished by management concerning the accuracy and completeness of litigation, claims and assessments.

### **1107 RESCISSIONS**

None required.

### **1108 QUESTIONS**

Questions concerning these financial policies and procedures should be directed as shown below:

|            |                                 |
|------------|---------------------------------|
| VHA        | VHA Accounting Policy (Outlook) |
| VBA        | VAVBAWAS/CO/FINREP (Outlook)    |
| All Others | OFP Accounting Policy (Outlook) |