

VA Office of Inspector General

OFFICE OF AUDITS AND EVALUATIONS



Department of Veterans Affairs

*Review of
VA's Reimbursements
to the Treasury
Judgment Fund*

November 28, 2017
17-00833-05

ACRONYMS

CDA	Contract Disputes Act of 1978
CFR	Code of Federal Regulations
OIG	Office of Inspector General
U.S.C.	United States Code
VA	Department of Veterans Affairs

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EXECUTIVE SUMMARY

Why We Did This Audit

In the House Report (H. Rept. 114-497) to accompany the House of Representatives, Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017 (H.R. 4974), the Committee on Appropriations requested the OIG review VA's reimbursement of the Department of the Treasury's Judgment Fund relating to the payment of contractors for major medical construction projects to settle claims arising from contract disputes.

What We Found

VA did not reimburse the Treasury Judgment Fund in accordance with Title 31 Code of Federal Regulations (CFR) §256.40.¹ From October 1, 2011 through September 30, 2016, Treasury used the Judgment Fund to pay 23 claims related to 10 major medical facility construction projects totaling \$247,748,686, with an average payment delinquency of 221 days. Of this amount, \$226,328,422 remained unpaid as of January 31, 2017.

VA has been delinquent in reimbursing the Judgment Fund because VA has not been requesting sufficient funding for the reimbursement of Contract Disputes Act of 1978 (CDA) claims. Despite having an overdue balance of more than \$226 million, VA's FY 2017 congressional submission requested funding of only \$9 million to reimburse the Judgment Fund for the payment of claims. According to VA's Acting Deputy Assistant Secretary for Budget, replacing judgment funds was considered a lower priority than other requirements that support veterans' access and safety. Without the needed funding, the Deputy Chief Financial Officer could not follow Federal regulations and VA policies, which require claims be reimbursed promptly or a reimbursement plan be established. By not reimbursing the Judgment Fund timely, VA has continued to maintain significant liabilities not covered by budgetary resources. VA will require significant future funding to satisfy the outstanding claims.

What We Recommended

We recommended the Acting Assistant Secretary for Management and Acting Chief Financial Officer establish procedures to ensure VA reimburses the Treasury Judgment Fund within 45 business days of receipt of demands for reimbursement, or establish appropriate payment plans for CDA claims.

¹ 31 CFR §256.40 - *When must an agency reimburse the Judgment Fund?*

Agency Comments

The Acting Assistant Secretary for Management concurred with the intent of the recommendation and reported VA will update policy to reflect the requirements contained in Treasury Policy, and 31 CFR §256.40 and §256.41². The Acting Assistant Secretary's planned corrective action is acceptable. The Acting Assistant Secretary's full response is included in Appendix C.



LARRY M. REINKEMEYER
Assistant Inspector General
for Audits and Evaluations

² 31 CFR §256.41 – *When is reimbursement due for CDA and No FEAR payments?*

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INTRODUCTION

Objective

In the House Report (H. Rept. 114-497) to accompany the House of Representatives Military Construction, Veterans Affairs, and Related Agencies Appropriations Bill, 2017 (H.R. 4974), Congress requested the OIG review VA's reimbursement to the Department of the Treasury (Treasury) Judgment Fund for payment to contractors relating to major medical construction project disputes. Our objective was to identify VA's total required reimbursements to the Judgment Fund, the construction projects for which the settlements were required, and whether VA has fully and timely reimbursed the Judgment Fund for all VA claims paid by the fund from October 1, 2011 through September 30, 2016.

U.S. Department of the Treasury Judgment Fund

Congress established the Judgment Fund in 1956. The Judgment Fund is a permanent, indefinite appropriation used to pay judgments and settlements on behalf of Federal agencies not otherwise provided for by other appropriations. Treasury's Judgment Fund Section administers the Judgment Fund, which is only accessible to pay claims when certain statutory requirements are met.³ The Judgment Fund is intended to eliminate the procedural burdens involved in obtaining an appropriation from Congress to pay a particular judgment. It was also intended to result in prompter payments, reducing the amount of interest (where allowed by law) that accrued against the United States between the issuance of a judgment and payment of an award. In accordance with Title 31 Code of Federal Regulations (CFR) §256.40, VA is required to reimburse the Judgment Fund for payments made pursuant to the Contract Disputes Act of 1978 (CDA) (Title 41 United States Code (U.S.C.) §7108). Prior to passage of the CDA, Congress did not require agencies to reimburse the Judgment Fund.

Contract Disputes Act of 1978

Congress passed the CDA to establish administrative and judicial procedures for settling claims relating to Government contracts. In certain situations Federal agencies may access the Judgment Fund to pay CDA claims, such as those related to construction or the alteration, repair, or maintenance of real property. The Judgment Fund must be reimbursed by the agency whose appropriations were used for the contract out of which the dispute arose.⁴ When Treasury makes demands for reimbursement, agencies have up to 45 business days to repay the Judgment Fund or arrange a payment plan for reimbursement.

³ 31 U.S.C. §1304 – *Judgments, Awards, and Compromise Settlements*.

⁴ 41 U.S.C. §7108, (c) – *Reimbursement*.

**Major Medical
Facility Dispute
Process**

A “major medical facility project”⁵ (major construction), is a “project for the construction, alteration, or acquisition of a medical facility involving a total expenditure of more than” \$10 million. The VA Office of Construction & Facilities Management is responsible for the planning, design, and construction of construction projects greater than \$10 million.

The major construction dispute process commences with the filing of a claim by a contractor in writing to the contracting officer managing the relevant contract.⁶ If the parties cannot resolve the dispute by agreement, the contracting officer must issue a final written decision that includes “...a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made.”⁷ The contractor may thereafter file an appeal with the Civilian Board of Contract Appeals or bring a lawsuit in the U.S. Court of Federal Claims.⁸

If the Civilian Board of Contract Appeals rules in favor of the contractor, a VA representative submits the required documentation to the Treasury’s Bureau of Fiscal Services Judgment Fund Section, which processes payments made from the Judgment Fund. For judgments of the U.S. Court of Federal Claims, the Department of Justice submits the required documentation to the Judgment Fund Section for payment and advises the Judgment Fund Section as to the amount that should be apportioned to VA. The losing party may appeal decisions of the U.S. Court of Federal Claims and the Civilian Board of Contract Appeals to the U.S. Court of Appeals for the Federal Circuit.

Treasury makes disbursements from the Judgment Fund when statutory requirements regarding the finality of the judgment and other requirements are satisfied, per 31 U.S.C. §1304.

⁵ 38 U.S.C. §8104, (a) (3) (A) - *Congressional approval of certain medical facility acquisitions.*

⁶ Federal Acquisition Regulation - Part 33, *Protests, Disputes, and Appeals*, 33.206, *Initiation of a Claim.*

⁷ VA Acquisition Regulation - Part 833, *Protests, Disputes, and Appeals, Subpart 833.211, Contracting officer’s decision.*

⁸ Federal Acquisition Regulation - Part 33, *Protests, Disputes, and Appeals*, 33.211, *Contracting officer’s decision*, a(4).

RESULTS AND RECOMMENDATIONS

Finding VA Failed To Fully and Timely Reimburse the Treasury Judgment Fund

VA failed to reimburse the Treasury Judgment Fund for major construction claims as required. From October 1, 2011 through September 30, 2016, Treasury used the Judgment Fund to pay 23 claims related to 10 major construction projects. The payments made on VA's behalf totaled \$247,748,686, but VA reimbursed the Judgment Fund only \$21,420,264. The average delinquency for all 23 claims was 221 days. As of January 31, 2017, 11 of the claims remained unpaid with an overdue balance of \$226,328,422.

VA was delinquent in reimbursing the Judgment Fund because VA did not request sufficient funding for the reimbursement of CDA claims. Despite having an overdue balance of more than \$226 million, VA's 2017 congressional submission requested funding of only \$9 million to reimburse the Judgment Fund for the payment of CDA claims. VA was aware that it needed more funds to satisfy its reimbursement obligation but, according to VA's Acting Deputy Assistant Secretary for Budget, the replacement of judgment funds was considered a lower priority than other needs. Without such funding, the Deputy Chief Financial Officer could not follow Federal regulations and VA policies, which require claims be reimbursed promptly or a reimbursement plan be established. By not reimbursing the Judgment Fund timely, VA has continued to maintain significant liabilities not covered by its budget. VA will require additional funding to satisfy all reimbursement obligations remaining as of January 31, 2017.

Criteria

Federal regulations, 31 CFR §256.40 and §256.41, require VA to reimburse the Judgment Fund for payments made pursuant to the CDA.⁹ In addition, the *Treasury Financial Manual*¹⁰ states, "Upon receipt of a reimbursement notice in a Contract Disputes Act case, an agency has 45 business days to repay the Judgment Fund or contact the Judgment Fund Branch to make written arrangements for reimbursement."

VA's Judgment Fund Reimbursement policy states the Office of the Deputy Chief Financial Officer receives the Treasury request for reimbursement and provides VA's plan for reimbursement. This policy also states VA will reimburse the Judgment Fund for CDA claim payments and will adhere to

⁹ 41 U.S.C. §7108 - *Payment of claims.*

¹⁰ Volume 1, Part 6, Section 3135.10, dated April 1, 2009, *Contract Disputes Act, Agencies' Reimbursement Obligations.*

the regulatory time frame established for submitting such reimbursements. VA is to use proper appropriated funds or request supplemental appropriations to reimburse the Judgment Fund, if necessary.

Required Reimbursements

From October 1, 2011 through September 30, 2016, the Judgment Fund paid \$247,748,686 on behalf of VA for major construction claims related to 10 major construction projects, with an average delinquency of 221 days. As of January 31, 2017, VA still owed the Judgment Fund \$226,328,422 from Treasury reimbursement requests. VA did not establish repayment plans to reimburse the Judgment Fund, as required. According to VA, Treasury had not made any follow-up collection requests for reimbursement to the Judgment Fund.

Examples of substantial delinquencies in VA repayments to Treasury include:

Example 1

The Judgment Fund made a payment related to the new construction of the VA Orlando Medical Center totaling \$31,806,708 in July 2015. VA's reimbursement to Treasury was overdue 340 days, as of January 31, 2017.

Example 2

The Judgment Fund made a payment related to the new construction of the VA Denver Medical Center totaling \$4,447,028 in March 2015. VA's reimbursement to Treasury was overdue 411 days, as of January 31, 2017.

Appendix A describes the 23 payments made by the Judgment Fund during the review period to settle VA major construction claims.

Limited Funds Requested To Reimburse the Judgment Fund

Between 2012 and 2017, VA only included about \$28.9 million in its budget requests to reimburse the Judgment Fund. Of that amount, VA used \$21,420,264 to reimburse the Judgment Fund for major construction claims and used the remainder for other types of claims. VA's Acting Deputy Assistant Secretary for Budget reported to us that because of budget constraints, "...emphasis was on Department facility requirements that support veteran access and safety while replacement of judgment funds was a lower priority."

Although VA is not assessed interest by Treasury on outstanding balances that are overdue to the Judgment Fund, VA has continued to maintain significant liabilities not covered by budgetary resources. VA requires significant funding to satisfy the outstanding claims.

Conclusion

VA failed to fully and timely reimburse the Judgment Fund as required. From October 1, 2011 through September 30, 2016, Treasury paid claims from the Judgment Fund totaling \$247,748,686 on VA's behalf. The average delinquency on these claims of 221 days is well beyond the required 45 business days. VA reimbursed the Judgment Fund \$21,420,264, leaving a

balance due of \$226,328,422 as of January 31, 2017. VA failed to pay these claims timely because it failed to request and obtain sufficient funds from Congress. By not reimbursing the Judgment Fund timely, VA has continued to maintain significant liabilities not covered by its budget.

Recommendation

We recommended the Acting Assistant Secretary for Management and Acting Chief Financial Officer establish procedures to ensure VA reimburses the Treasury Judgment Fund within 45 business days of receipt of requests for reimbursement or establishes appropriate payment plans for claims paid pursuant to applicable law.

Management Comments

The Acting Assistant Secretary for Management, who was also serving as the Acting Chief Financial Officer, concurred with the intent of the recommendation. He reported VA will update policy to establish procedures ensuring that VA reimburses the Treasury Judgment Fund or establishes appropriate repayment plans for claims paid. The policy will be updated to reflect the requirements contained in Treasury Policy, and 31 CFR §256.40 and §256.41. The expected completion date for this policy update is June 2018.

OIG Response

The Acting Assistant Secretary's corrective action plan is responsive to the intent of the recommendation. We will monitor implementation of the planned action and will close the recommendation when we receive sufficient evidence demonstrating progress in addressing the recommendation.

Appendix A Payments Made From Treasury on Behalf of VA

Table 1 shows payments of claims made by Treasury from the Judgment Fund from October 1, 2011 through September 30, 2016; the outstanding amount as of January 31, 2017; and the number of days the repayment was delinquent.

Table 1. Payments of Claims Made From Treasury's Judgment Fund on Behalf of VA

Major Construction Project Number	VAMC Project Location	Amount Paid by Treasury for VA	Amount Reimbursed by VA to Treasury	Outstanding Amount as of January 31, 2017	Number of Days Delinquent
101-846	Baltimore, MD	\$ 650,000	\$ 650,000	\$ -	82
516-005	Bay Pines, FL	343,601	343,601	-	141
516-005	Bay Pines, FL	15,800,000	-	15,800,000	210
516-005	Bay Pines, FL	150,000	150,000	-	28
546-088	Miami, FL	1,475,653	1,475,653	-	-
554-501	Denver, CO	4,447,028	4,447,028	-	411
554-501	Denver, CO	24,751	-	24,751	383
554-501	Denver, CO	30,462	30,462	-	377
593-202	Las Vegas, NV	3,050,000	-	3,050,000	257
640-403	Menlo Park, CA	5,972,000	4,949,693	1,022,307	363
640-613	Palo Alto, CA	398,433	398,433	-	154
640-613	Palo Alto, CA	906,626	906,626	-	139
646-500	Pittsburgh, PA	205,000	205,000	-	37
662-401	San Francisco, CA	150,000	150,000.00	-	-
673-950	Orlando, FL	31,806,708	-	31,806,708	340
673-950	Orlando, FL	7,864,204	-	7,864,204	340
673-950	Orlando, FL	3,114,633	-	3,114,633	340
673-950	Orlando, FL	58,841,787	-	58,841,787	340
673-950	Orlando, FL	16,898,833	-	16,898,833	340
673-950	Orlando, FL	6,288,768	6,288,768	-	180
673-950	Orlando, FL	41,283,668	-	41,283,668	312
673-950	Orlando, FL	46,621,531	-	46,621,531	312
673-950	Orlando, FL	1,425,000	1,425,000	-	5
Total		\$247,748,686	\$21,420,264	\$226,328,422	Average: 221 Days

Source: Treasury and VA data

Appendix B Scope and Methodology

Scope

We conducted our review from January through September 2017. Our review included 23 Major Medical Facility Construction claims related to 10 projects and totaling \$247,748,686, paid on behalf of VA from the Treasury Judgment Fund during the period of October 1, 2011 through September 30, 2016.

Methodology

We assessed VA's total required reimbursements to the Judgment Fund, the construction projects for which the settlements were requested, and whether VA has fully reimbursed the Judgment Fund for all VA claims paid through the Fund for major construction projects for the scope period.

To achieve our objective, we performed the following:

- We reviewed Federal law and VA policy detailing the payment and reimbursement of Judgment Fund claims.
- We obtained information on all VA-related claim payments made by the Treasury Judgment Fund Section on behalf of VA from October 1, 2011 through September 30, 2016. There were 49 claims, with payments totaling \$271,128,842. Of these, 23 were for major construction projects.
- We determined that the 23 contract dispute claim payments, totaling \$247,748,686 and made on behalf of VA from the Judgment Fund, pertained to major construction projects. We reviewed supporting documentation, such as contracts, to determine the nature of the originating contract.
- We obtained supporting documents to determine the location of the construction projects that resulted in a disputed contract claim.
- We compared the date VA received the reimbursement request to the date VA made the reimbursement. We calculated the number of days late or days outstanding as of January 31, 2017 for each of the 23 claim payments.

Fraud Assessment

The review team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The review team exercised due diligence in staying alert to any fraud indicators by taking actions such as soliciting the OIG's Office of Investigations for indicators. We did not identify any instances of fraud during this review.

Data Reliability

We used computer-processed data from Treasury's Oracle accounting system to address our review objective. We assessed whether our data were complete by comparing requested claim payments to the data provided. We also generated a report from the Judgment Fund Internet Claims System, using the same search criteria and found that it agreed with the Oracle accounting system. We compared the reimbursement amounts recorded in

Treasury's Oracle accounting system to VA's accounting records and found no exceptions. We also selected 10 claim payments and tested the accuracy of the accounting system data by comparing them to the U.S. Court of Federal Claims settlement agreement or to the related Civilian Board of Contract Appeals case. We did not identify any material differences. Our testing of the data disclosed that they were sufficiently reliable for the purpose of this review.

**Government
Standards**

We conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix C Management Comments

Department of Veterans Affairs Memorandum

Date: October 13, 2017

From: Acting Assistant Secretary for Management and Acting CFO

Subj: DRAFT Report, Review of VA's Reimbursements to the Treasury Judgment Fund (Project Number 2017-00833-BA-0049)

To: Assistant Inspector General for Audits and Evaluation (52)

1. The Office of Management submits this memo in response to the OIG's Review of VA's Reimbursements to the Treasury Judgment Fund.

2. Finding: VA failed to fully and timely reimburse the Treasury Judgment Fund.

Recommendation: IG recommended, the Acting Assistant Secretary for Management and Acting Chief Financial Officer establish procedures to ensure VA reimburses the Treasury Judgment Fund within 45 days of receipt of demands for reimbursement or establishes appropriate payment plans for claims paid pursuant to applicable law.

3. The Office of Management concurs with the finding and the intent of the recommendation. VA will update Volume III, Chapter 11 -- Reimbursements to Judgment Fund, to establish procedures ensuring that VA reimburses the Treasury Judgment Fund or establishes appropriate repayment plans for claims paid. The policy will be updated to reflect the requirements contained in Treasury Policy, and 31 CFR § 256.40 and 256.41. The targeted completion date for this policy update is June 2018.

4. If you have any questions, please contact Mr. Ronald Hallameyer, Acting Associate Deputy Assistant Secretary for Financial Policy, at (202) 461-6486.

(original signed by:)

EDWARD J MURRAY

For accessibility, the format of the original memo in this appendix has been modified to fit in this document, to comply with Section 508 of the Americans with Disabilities Act.

Appendix D **OIG Contact and Staff Acknowledgments**

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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Acknowledgments	Murray Leigh, Director Tesia Basso Zachary Beres Nathan Fong D. Stephen Nose Athenia Rosolowski
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Appendix E Report Distribution

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