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## Congress's Authority to Restrict Monetary Civil Settlements

When a court orders the federal government to pay damages, when the Department of Justice (DOJ) agrees on behalf of the United States to pay a monetary settlement, or when a federal agency agrees through an administrative process to pay more than \$2,500 to resolve tort claims against the United States, the Department of the Treasury (Treasury) typically remits payment without congressional oversight or action. In this manner, billions of dollars are transferred each year from the public fisc to private coffers.

Today's system of automatic payment arose in the middle of the twentieth century. Before then, Congress played a more hands-on role in reviewing and approving payment of monetary claims against the federal government. This In Focus discusses Congress's historical role, the reasons why Congress moved from its hands-on approach, and options for Congress should it want to restrict payments to those seeking monetary compensation from the federal government.

### Congressional Claims Resolution

The Constitution's Appropriations Clause states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." The Supreme Court has repeatedly interpreted this "straightforward and explicit command" to require anyone seeking money from the United States—including court-ordered damages—to identify a statutory appropriation that authorizes payment. As a general rule, an agency's operating appropriations cannot be used to pay judgments against the federal government unless Congress provides otherwise.

Until the mid-nineteenth century, Congress exercised its plenary power of the purse by reserving for itself the power to review nearly all monetary claims against the United States either directly or on appeal from an administrative tribunal. Under this system, aggrieved parties would petition Congress for compensation, and if Congress chose to grant relief, it would provide for a claim-specific appropriation.

This legislative claims-review process was well established at the time of founding, but over the nation's first half-century it grew increasingly unworkable. The number of petitions to Congress for monetary relief increased sixfold from the early 1790s to the 1830s, when former President and then-Representative John Quincy Adams lamented that the review of private claims was consuming half of Congress's time. Even then, Congress did not act promptly on many petitions, and it ultimately granted relief to only about 6 percent of petitioners, often after years-long delays. Critics also charged that the small minority of petitioners who managed to secure relief from Congress sometimes

succeeded because of their political connections, not the merits of their claims. All of this prompted calls for reform.

### Judicial Claims Resolution

The Civil War brought matters to a head. In his 1861 Annual Message to Congress, President Lincoln observed that "the attention of Congress will be more than usually engaged . . . with great national questions," and he urged Congress to delegate to an impartial adjudicative body the time-consuming task of resolving monetary claims against the United States. Congress responded in 1863 by authorizing the Court of Claims—predecessor of the Court of Federal Claims and the U.S Court of Appeals for the Federal Circuit—to resolve contract claims against the United States. Subsequent statutes expanded the Court of Claims' jurisdiction to include most non-tort claims against federal agencies. Separately, the Federal Tort Claims Act (FTCA) authorized certain tort claimants to seek monetary compensation from federal agencies for negligent or wrongful acts of federal employees, and, upon denial of those claims by the agencies, to sue the United States in federal district court.

Until the 1950s, monetary judgments against the United States were reported each year to Congress, which usually made a separate appropriation to satisfy the previous year's judgments. In theory, this allowed Congress to withhold payment for judgments with which it disagreed. In practice, Congress almost never used this power. According to a 1933 study, Congress appropriated funds to satisfy all but 15 judgments over the preceding 70 years. Retaining the rarely exercised authority to withhold payment also entailed costs: The time spent reviewing monetary judgments consumed legislative resources, deferred relief for meritorious claimants, and left the United States liable for post-judgment interest.

### The Judgment Fund

In 1956, Congress changed course. That year, it created the Judgment Fund, a permanent, indefinite appropriation for payment of judgments of \$100,000 or less, subject to certain limitations, including that "payment is not otherwise provided for" through another appropriation. In 1961, Congress authorized payment from the Judgment Fund of "compromise settlements" by the Attorney General "in a manner similar to judgments in like cases." In 1977, Congress eliminated the \$100,000 cap on payments from the Judgment Fund and authorized payment of all FTCA claims above \$2,500. In 1978, it authorized payment from the Judgment Fund for judgments and settlements under several additional statutes that had previously required payment from other appropriations.

In its current form, the Judgment Fund pays out billions of dollars each year. Treasury provides Congress with annual reports on payments from the Judgment Fund, makes certain payment data available on a rolling basis, and reviews all claims to ensure that they satisfy the Judgment Fund's statutory requirement, but there is no other claim-specific review of Judgment Fund requests, most of which are submitted to Treasury by DOJ.

## Options for Restricting Payments

The current process of reviewing and paying claims against the federal government reflects Congress's evolving policy judgment. Thus, if Congress sought to assert greater control in this area, it would have many options for doing so.

### Restrictions on the Use of Appropriations

Congress could, for example, exercise its appropriations power by restricting the use of federal funds to pay some settlements or judgments. Congress employed this approach in the Civil War's aftermath, prohibiting payment of certain claims against the United States brought by "any person who promoted, encouraged, or in any manner sustained the late rebellion." The Supreme Court subsequently upheld that law against constitutional challenge, describing the restriction on appropriated funds as "entirely within the competency of Congress" to issue.

More recent Congresses have considered, but not enacted, similar restrictions. For instance, one proposed bill would have barred the use of appropriated funds—including the Judgment Fund—to pay "any legal settlement" to "any individual" who unlawfully entered the United States in violation of 8 U.S.C. § 1325(a) "if the claims giving rise to such settlement are based solely on the lawful detention of such individual as part of a family unit after entry" at specified locations during a specified period. Another proposed bill would have restricted any payment "to a state sponsor of terrorism, as defined in section 1605A(h) of title 28." A third proposed bill would have prohibited payment of "any compromise settlement in connection with any proceeding brought against the Government under" the Patient Protection and Affordable Care Act's risk-corridors program.

Rather than restricting payment completely, Congress could instead require agencies to pay certain settlements or judgments using their operating appropriations. Proponents of this approach contend that it creates financial incentives for agencies to avoid or minimize liability. The Contract Disputes Act and Notification and Federal Employee Antidiscrimination and Retaliation Act employ this agency-pays model by requiring federal agencies to reimburse the Judgment Fund for the payment of certain claims.

### Restrictions on Settlement Authority

Alternatively, Congress could directly restrict DOJ's authority to pursue certain settlements. According to DOJ's Office of Legal Counsel, the Attorney General's authority to settle cases flows from her statutory authority to supervise certain litigation and is therefore subject to limitations contained in other statutes. Thus, just as Congress could legislatively prohibit payments to certain claimants, so it could prohibit DOJ from settling specified

cases in the first instance, or it could set caps or floors on settlement amounts. Congress could do this by enacting legislation that expressly limits the Attorney General's settlement discretion (as in 8 U.S.C. § 1253(c)(1)(C) and 31 U.S.C. § 3724(a)) or by prohibiting DOJ from using appropriated funds to pursue certain matters (as in Title V, Section 531 of the Consolidated Appropriations Act of 2024 (P.L. 118-122)).

### Restrictions on Suits

Rather than restrict payments or settlement authority, Congress could effectively foreclose suits that might ultimately give rise to certain settlements or judgments. To this end, Congress could strip federal courts of jurisdiction to hear certain cases, as it did in statutes such as the Gun Lake Trust Land Reaffirmation Act. Congress could also pass new substantive laws that effectively decide pending legal disputes, as it did in Section 318(b)(6)(A) of the Department of the Interior and Related Agencies Appropriations Act of 1990.

Both of these approaches may raise separation of powers questions because they impact the exercise of "[t]he judicial power" that the Constitution vests in the judicial branch. That said, the Constitution gives Congress the authority to create lower federal courts, to make "exceptions" to the Supreme Court's appellate jurisdiction, and to pass substantive laws that courts must apply. The Supreme Court has repeatedly concluded that these enumerated powers—together with Congress's unenumerated power to waive the federal government's sovereign immunity from suit—allow Congress to control how the judiciary resolves at least some cases.

The scope of that authority has long been the subject of scholarly debate and remains uncertain today, but the Supreme Court has articulated two limitations. First, while Congress can enact or amend laws in ways that influence the outcome of pending litigation, it may not tell federal courts to rule on the merits in specific cases and must allow courts to apply the laws to the facts of given cases. So, for example, in the hypothetical case of *Smith v. Jones*, Congress cannot pass a law simply declaring that "Smith wins"—even if it could bring about that result through a generally applicable statute. Second, while Congress can pass laws that govern pending and future litigation, it cannot reopen a court's final judgment.

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- CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Michael D. Contino and Andreas Kuersten (2023)

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