

October 3, 2013

## **Sequestration and FY 2014 Talking Points**

### **Sequestration and the Federal Judiciary**

- Sequestration reduced Judiciary funding overall by nearly \$350 million. The impact on the Judiciary is compounded by the fact that the Judiciary has no control over its workload. The courts must react to the cases which it receives from the Executive Branch, individuals and businesses, and overall, that workload has not declined.
- Sequestration places unprecedented pressure on the federal Judiciary's administration of justice. Its impact on the operation of the federal courts has been devastating.
- To mitigate the impact of sequestration on employees, the courts have slashed non-salary budgets (training, information technology, supplies and equipment), which was possible for one fiscal year, but cannot be sustained into future years. Even with these reductions, on a national level, court staffing levels are down nearly 2,700 staff since July 2011, a 12 percent decline. This includes nearly 1,200 staff the courts have lost so far in FY 2013 (through September 22, 2013).
- Cuts in staffing are resulting in the slower processing of civil and bankruptcy cases. Delays in cases will harm individuals, small businesses, and corporations.
- Sequestration has reduced funding for probation and pretrial officer staffing throughout the courts, which means less deterrence, detection, and response to possible resumed criminal activity by federal defendants and offenders in the community. In addition, law enforcement funding to support GPS and other electronic monitoring of potentially dangerous defendants and offenders has been cut 20 percent. Equivalent cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety.
- Sequestration has resulted in a 30 percent cut in funding for court security systems and equipment and court security officers are being required to work reduced hours, thus creating security vulnerabilities throughout the federal court system. A high level of security for judges, prosecutors, defense counsel, jurors and litigants entering our courthouses must be maintained.

### **Impact of Sequestration on Representation of Persons Accused of a Federal Crime**

- The Defender Services program received a \$52 million sequestration cut. Sequestration threatens the ability of the Judiciary to fulfill a fundamental right guaranteed to all individuals under the Sixth Amendment and the Criminal Justice Act: the right to court-appointed counsel for persons accused of a federal crime who lack the financial resources to afford an attorney.

- Federal defender organizations across the country have been hard hit by sequestration. Over 157,000 hours of furloughs (19,700 days) were imposed in federal public defender organizations through August 2013. Nearly 300 federal defender organization employees have left the payroll between October 2012 and August 2013, an 8 percent loss of staff.
- Cuts to the Defender Services account, which limit the time and resources attorneys have to represent their clients, are resulting in delays in prosecutions in even the most serious criminal cases, and increased burdens on the federal courts' dockets. Ultimately, the cuts could result in unnecessary appeals, wrongful convictions, and the dismissal of cases where the unavailability of counsel results in excessive, unconstitutional, and illegal delays.

### **FY 2014 Judiciary Funding**

- Congress is currently considering a short-term Continuing Resolution (CR) into mid-November or mid-December. The Judiciary's most serious shortfall during the CR period is in the Defender Services program. As a result of sequestration cuts, beginning September 17, 2013, payments to private panel attorneys providing defense representation services to Criminal Justice Act-eligible defendants have been suspended and payments will continue to be suspended during the government shutdown. The House and Senate versions of the CR (H.J. Res. 59) include a \$26 million funding anomaly needed for this account to pay these deferred vouchers and to ensure new vouchers submitted can be paid during the CR period. *The \$26 million anomaly does not address full-year funding needs for the Defender Services account nor any other Judiciary account.*
- **Looking ahead to full-year funding for FY 2014, the Judiciary has re-estimated its appropriations needs and requires a total funding level of \$7.084 billion for FY 2014 in order to perform its Constitutional and statutory responsibilities.** The Judiciary cannot continue to operate in FY 2014 at a hard freeze at sequestration funding levels. Following are the full-year funding needs for the Judiciary's largest accounts.
- **Courts' Salaries and Expenses. FY 2014 full-year funding requirements for the Courts' Salaries and Expenses account are \$5.051 billion.** If this account were to receive flat funding in FY 2014, operating budgets for court units nationwide would drop 3 percent, after covering must pay expenses (such as judges and chambers compensation, court staff benefits, rent to GSA, national information technology costs, and postage). This would result in an estimated loss of 1,000 additional employees through the end of FY 2014. This staffing loss would come on top of the nearly 2,700 staff (12 percent) the courts have already lost since July 2011.
- A staffing contraction of this magnitude would result in sharply reduced supervision and treatment services for convicted felons released from prison; a severe backlog in processing of civil and bankruptcy cases; a drastic reduction in public hours in clerks' offices; and cancellation or significant delays in the implementation of critical information technology applications.
- **Court Security. FY 2014 full-year funding requirements for the Court Security account are \$498 million.** Flat funding for Court Security in FY 2014 would result in a \$23 million

funding shortfall. This would necessitate further reductions in security systems and equipment countermeasures requested by the U.S. Marshals Service to provide adequate protection for the courts. Additional cuts would also be required in contract guard services provided to the courts by the USMS. Cuts of this scale would create severe security vulnerabilities throughout the federal court system by impairing the USMS's ability to provide adequate security for judges, jurors, litigants, court personnel, and the public.

- Defender Services. **FY 2014 full-year funding requirements for the Defender Services account are \$1.087 billion.** In August 2013, the Executive Committee of the Judicial Conference determined that the impending budget shortfall in the Defender Services account – based on a hard freeze funding scenario for FY 2014 at the current sequestration level – constituted an emergency requiring immediate action on behalf of the Judicial Conference to preserve the court-appointed criminal defense function performed in the federal Judiciary.
- The Executive Committee committed to providing funding to federal defender offices in FY 2014 sufficient to maintain nationally FY 2013 end-of-year on-board staffing levels. Absent additional funding from Congress, this objective will be achieved by deferring up to four weeks of panel attorney payments into FY 2015, and by temporarily reducing panel attorney hourly rates by \$15 per hour for capital and non-capital work performed from September 1, 2013 through September 30, 2014.
- These steps diminish the size and quality of the available pool of qualified attorneys and cause hardships for those private attorneys still willing to be appointed to CJA cases but are necessary to avoid permanent damage to the federal defender program and the constitutionally mandated right to counsel. The Judiciary will continue to stress to Congress the need to provide sufficient funding for this account.
- It is critical that Congress provide sufficient funding to the federal courts so that we can perform our constitutional and statutory responsibilities.