

FEDERAL DEFENDER SERVICES TALKING POINTS¹

- The Constitution requires the government to provide a lawyer to defendants charged with a serious crime who cannot afford one. This is not a discretionary expense—it is a constitutional mandate.
- Ninety percent of defendants in federal court qualify for court-appointed counsel. Federal Defenders and private attorneys are appointed in more than 200,000 cases per year and require adequate funding to fulfill their constitutional obligations.
- For the past forty years, the Federal Defender program has consistently served as a model for quality and cost-effective representation. Surveys of judges, reviews by the General Accounting Office, and a private study by the Rand Corporation, among others, show that Federal Defenders operate efficiently and effectively while saving taxpayer dollars.

Sequestration Effects on Federal Defenders

- Budget cuts have created an unprecedented financial crisis adversely affecting Federal Defenders' ability to uphold the Sixth Amendment right to counsel. Unless Congress acts, the Federal Defender program will be irreparably damaged.
- In FY 2014, Federal Defenders face a 10% cut to their budgets, while CJA panel attorneys face long delays in payments and a \$15 per hour cut to their rates. These cuts come on top of substantial losses already suffered in FY 2013, including a 10% reduction in needed funding and 17,600 furlough days.
- Federal Defender budgets have always been lean and, even in the best years, are a fraction of the federal prosecutors' budget. Yet, while Federal Defenders are suffering furloughs, layoffs, and resource shortages due to sequestration,² the Justice Department has avoided furloughs and maintained or increased its prosecutions. The entire Defender Services Account (when fully funded) is just over \$1 billion, which is less than 4% of the \$27.6 billion allocated to the Department of Justice in FY 2013.
- The adversarial process at the heart of our judicial system functions properly only if both sides are adequately funded. Without balanced, vigorously litigated cases, wrongful convictions may become more common, creating a threat to public safety by imprisoning the innocent and allowing the guilty to avoid punishment. Ironically, these and other mistakes will create greater expenses in the long run through retrials, appeals, and unlawful-detention proceedings.
- An underfunded Federal Defender program will increase costs to the taxpayer. Furloughs and layoffs have already caused delays in hearings and trials, requiring defendants to spend more time in costly pretrial detention facilities. In FY 2014, if Defenders are forced to litigate against fully-funded prosecutors while operating at 10% below needed funding, they will have to continue shifting cases to private counsel at higher costs.
- Democratic Senator Chris Coons and Republican Senator Jeff Sessions have jointly noted that “the high overall quality of representation provided by the federal defender offices helps ensure speedy, just resolution of criminal cases. Quality representation not only promotes the rule of law and safeguards constitutional rights, it also saves money by reducing pre-trial and post-trial incarceration costs.”³

¹ Updated September 11, 2013.

² Approximately 80% of FDO budgets are expended on personnel, with another 10% obligated for rent and overhead costs. The final 10% covers all other costs, which includes experts, investigatory expenses, interpreters, transcripts, and other essential case-related expenses. Because of this, the only way Defenders can reduce expenses is by cutting needed personnel.

³ Letter to the Judicial Conference of the United States (Aug. 5, 2013).

Support for a Fully-Funded Federal Defender Program

- Adequate funding for the Federal Defender community is not a divisive issue. All stakeholders in the criminal justice system—including 87 current chief judges of federal districts, more than 40 former federal judges and prosecutors, the National Association of Assistant U.S. Attorneys, Attorney General Eric Holder, and numerous members of Congress on both sides of the aisle—have expressed their unqualified support for a fully-funded Federal Defender program.

Needed Funding for FY 2014

- Last month, the Executive Committee of the Judicial Conference of the United States adopted emergency measures to limit the impact of budget cuts on the Federal Defender program. Specifically, the Executive Committee committed to the deferral of CJA panel payments for up to four weeks at the end of FY 2014, which would create a deficit of \$36 million dollars in FY 2015. The Executive Committee also temporarily reduced CJA panel hourly rates by \$15 per hour. Unless quickly reversed, these cuts will further erode the quality of indigent defense in federal courts.
- On September 10, 2013, the House of Representatives Appropriations Committee introduced draft legislation for a Continuing Resolution to fund the government through December 15, 2013, which authorizes funding for the Defender Services Account in the amount of \$1.012 billion, including a \$26 million stopgap anomaly.⁴ This anomaly is essential to avoid depletion of the account during a short-term Continuing Resolution and to permit the Judiciary to meet its obligations. It will not, however, address the substantial shortfall in the Defender Services Account in FY 2014.
- Even with the Executive Committee's emergency measures and the \$26 million anomaly for the short-term Continuing Resolution, Federal Defenders face a 10% cut to necessary funding in FY 2014.
- To ensure adequate funding for the entire Defender Services Account—including sufficient funding for the Federal Defenders, the elimination of deferrals for CJA panel attorneys, and the restoration of panel rates—a further anomaly increasing funding to the level of the Senate mark of \$1.098 billion is necessary at the time Congress considers a full-year Continuing Resolution.

⁴ See H.J. Res. 59 (Sept. 10, 2013).