

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES**

***Defender Services***

**SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS**

<b>Fiscal Year 2024 Assumed Appropriation</b>	<b>\$1,411,116,000</b>
<b>Fiscal Year 2025 Appropriation Request</b>	<b>\$1,690,024,000</b>
<b>Requested Increase from Fiscal Year 2024 Assumed Appropriation</b>	<b>\$278,908,000</b>

**APPROPRIATION LANGUAGE**

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES**

**DEFENDER SERVICES**

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under 18 U.S.C. § 3006A and 18 U.S.C. § 3599, and for the compensation and reimbursement of expenses of persons furnishing investigative, expert, and other services for such representations as authorized by law; the compensation (in accordance with the maximums under 18 U.S.C. § 3006A) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of expenses of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. § 1875(d)(1); the compensation and reimbursement of expenses of attorneys appointed under 18 U.S.C. § 983(b)(1) in connection with certain judicial civil forfeiture proceedings; the compensation and reimbursement of travel expenses of guardians ad litem appointed under 18 U.S.C. § 4100(b); and for necessary training and general administrative expenses, [\$1,411,116,000]\$1,690,024,000, to remain available until expended.

(H.R. 4664 and S. 2309 - Financial Services and General Government appropriations bill, 2024, updated to reflect the judiciary's fiscal year 2024 assumed appropriation)

**SUMMARY OF REQUEST  
DEFENDER SERVICES  
FISCAL YEAR 2025  
(Dollar amounts in thousands)**

**Fiscal Year 2025 Resource Requirements:**

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
	<b>Fiscal Year 2024 Assumed Obligations .....</b>	<b>3,369</b>	<b>1,499,172</b>
	Less encumbered carryforward from FY 2023 into FY 2024 .....	-	(3,990)
	<b>Fiscal Year 2024 Assumed Obligations Excluding Encumbered Carryforward .....</b>	<b>3,369</b>	<b>1,495,182</b>
	<b>Less:</b>		
	Unencumbered available carryforward from FY 2023 into FY 2024 .....	-	(84,066)
	<b>Fiscal Year 2024 Assumed Appropriation .....</b>	<b>3,369</b>	<b>1,411,116</b>

**Adjustments to Base to Maintain Current Services:**

**A. PERSONNEL**

***Pay and Benefit Adjustments***

5.27	1. Proposed 2025 pay adjustments		
	a. Federal pay adjustment (2.0% for nine months) .....	-	9,138
	b. Panel attorney capital rate adjustment (from \$220 per hour to \$223 per hour, effective January 1, 2025) .....	-	320
	c. Panel attorney non-capital rate adjustment (from \$172 per hour to \$175 per hour, effective January 1, 2025) .....	-	923
5.28	2. Annualization of 2024 pay adjustments		
	a. Federal pay adjustment (5.2% for three months) .....	-	7,918
	b. Panel attorney capital rate adjustment (from \$210 per hour to \$220 per hour) .....	-	1,077
	c. Panel attorney non-capital rate adjustment (from \$164 per hour to \$172 per hour) .....	-	16,702
5.29	3. Promotions and within-grade increases .....	-	4,569
5.29	4. Benefits increases		
	a. Health benefits .....	-	3,193
	b. FICA adjustment .....	-	791

**B. OTHER ADJUSTMENTS**

***General Inflationary Adjustments***

5.30	5. Inflationary increases for contracts, services, supplies, and equipment .....	-	8,741
5.30	6. Inflationary increase in GSA space rental costs .....	-	1,346

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
	<b><i>Workload and Financing Adjustments</i></b>		
5.30	7. Change in projected panel attorney requirements		
	a. Change in projected panel attorney workload .....	-	14,045
	b. Restoration of FY 2024 panel attorney payment base .....	-	40,275
	c. Panel attorney deferred payments from FY 2024 .....	-	40,275
5.31	8. Increase in appropriation needed to maintain FY 2024 requirements due to a decrease in carryover funding .....	-	64,066
	<b>Subtotal, Adjustments to Base to maintain current services .....</b>	<b>-</b>	<b>213,379</b>
	<b>Total Current Services Appropriation Required .....</b>	<b>3,369</b>	<b>1,624,495</b>

**C. PROGRAM CHANGES:**

5.32	9. Change in positions for projected workload		
	a. FDO staffing formula changes .....	76	25,805
	b. National position .....	0.5	121
5.32	10. Information Technology (IT), cybersecurity, and IT modernization requirements .....		
	a. Multi-year plan requirements .....	-	12,777
	b. Other requirements .....	-	5,241
5.33	11. Transcript rate increase .....	-	1,320
5.33	12. Coordinating discovery attorney contract .....	-	730
5.33	13. Major physical infrastructure requirements .....	-	16,750
5.34	14. Additional fellowship program costs .....	-	236
5.34	15. Training operations .....	-	2,233
5.34	16. Reimbursable positions .....	-	316
	<b>Subtotal, Program changes .....</b>	<b>77</b>	<b>65,529</b>
	<b>Total Fiscal Year 2025 Appropriation Required .....</b>	<b>3,446</b>	<b>1,690,024</b>
	<b>Total Appropriation Increase, Fiscal Year 2024 Assumed to Fiscal Year 2025 .....</b>	<b>77</b>	<b>278,908</b>

**D. FINANCING THE FISCAL YEAR 2025 REQUEST:**

	<b>Total Appropriation Required .....</b>	<b>3,446</b>	<b>1,690,024</b>
5.35	17. Anticipated carryforward from FY 2024 and prior years into FY 2025 .....	-	20,000
	<b>Estimated Obligations, Fiscal Year 2025 .....</b>	<b>3,446</b>	<b>1,710,024</b>

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES  
DEFENDER SERVICES**

**Obligations by Activity (\$000)**

Activity	FY 2023 Actual	FY 2024 Assumed	FY 2025 Request
CJA Representation & Related Expenses Obligations	1,418,621	1,478,134	1,685,771
Program Administration Obligations	17,917	21,038	24,253
<b>Direct Obligations</b>	<b>1,436,538</b>	<b>1,499,172</b>	<b>1,710,024</b>
Unencumbered Unobligated Balance, Start of Year	(110,830)	(84,066)	(20,000)
Encumbered Unobligated Balance, Start of Year	(13,476)	(3,990)	0
Total Unobligated Balance, Start of Year:	(124,306)	(88,056)	(20,000)
Deposits and Other Adjustments:			
Prior Year Recoveries	(17,609)	(8,000)	0
Anticipated Financial Plan Savings	0	(12,000)	0
Unobligated Balance, End of Year:	88,056	20,000	0
Less Offsetting Collections	0	0	0
<b>Appropriation</b>	<b>1,382,680</b>	<b>1,411,116</b>	<b>1,690,024</b>

**Obligations by Budget Object Class (\$000)**

Description	FY 2023 Actual	FY 2024 Assumed	FY 2025 Request
11.1 Full-time permanent	424,876	460,554	484,568
11.3 Other than full-time permanent	8,446	10,259	10,664
11.5 Other personnel compensation	627	710	772
11.9 Personnel compensation subtotal	433,949	471,523	496,004
12.1 Personnel benefits	162,788	173,897	183,303
13.0 Benefits for former personnel	791	908	1,103
21.0 Travel	14,699	16,059	17,378
22.0 Transportation of things	280	424	440
23.1 Rental payments to GSA	49,584	52,112	54,772
23.2 Rental payments to others	722	1,184	1,209
23.3 Communications, utilities, and miscellaneous charges	19,470	15,764	16,680
24.0 Printing and reproduction	71	134	140
25.0 Other Services	520,031	521,017	671,023
26.0 Supplies and materials	1,833	2,162	2,256
31.0 Equipment	32,252	31,977	38,432
41.0 Grant payments	200,068	212,011	227,284
42.0 Insurance claims and indemnities	0	0	0
<b>Direct Obligations</b>	<b>1,436,538</b>	<b>1,499,172</b>	<b>1,710,024</b>

**Full-time Equivalents (FTE) by Activity**

Activity	FY 2023 Actual	FY 2024 Assumed	FY 2025 Request
CJA Representation & Related Expenses <sup>1</sup>	3,287	3,358	3,435
Program Administration	10	11	11
<b>Total FTE</b>	<b>3,297</b>	<b>3,369</b>	<b>3,446</b>

<sup>1</sup> The FTE listed are attributable to Federal Public Defender Organization staff.

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES  
DEFENDER SERVICES  
Relation of Obligations to Outlays (\$000)**

	<b>FY 2023 Actual</b>	<b>FY 2024 Assumed</b>	<b>FY 2025 Request</b>
Direct obligations	1,436,538	1,499,172	1,710,024
Obligated balance, start of year	95,431	105,783	128,455
Recoveries of prior year unpaid obligations	(17,609)	(8,000)	(8,000)
Change in uncollected payments	0	0	0
Obligated balance, end of year	(105,783)	(128,455)	(143,979)
<b>Total Outlays</b>	<b>1,408,577</b>	<b>1,468,500</b>	<b>1,686,500</b>
Less Offsets	(2,076)	(5,000)	(5,000)
<b>Net Outlays</b>	<b>1,406,501</b>	<b>1,463,500</b>	<b>1,681,500</b>

## GENERAL STATEMENT AND INFORMATION

The right to effective assistance of counsel for persons financially unable to obtain adequate representation is constitutionally mandated. It is a critical component of the criminal justice system and a foundation of liberty in America. The Defender Services appropriation supports the appointment of counsel and other related services required to be provided under the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other statutes. It also provides for the continuing education and training of persons who furnish representational services under the CJA.

The constitutional right to the assistance of counsel is a cornerstone of the criminal justice system. In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), the United States Supreme Court wrote: “The right of one charged with [a] crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” The mission of the Defender Services program is to ensure that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services.

The goals of the Defender Services program are to:

1. provide timely counsel services to all eligible persons;
2. provide appointed counsel services consistent with the best practices of the legal profession;
3. provide cost-effective services; and
4. protect the independence of the defense function performed by appointed counsel so that the rights of individual defendants are safeguarded and enforced.

By fulfilling its mission, the Defender Services program helps to:

- ensure the successful operation of the constitutionally based adversarial system of justice by which both federal criminal laws and federally guaranteed rights are enforced; and
- maintain public confidence in the nation’s commitment to equal justice under law.

The Defender Services account funds the operations of federal defender organizations (FDOs), payments to private attorneys appointed under the CJA, and program administration costs. The fiscal year (FY) 2025 appropriation request of \$1,690.0 million will enable FDOs and private attorneys to accept CJA appointments; retain necessary expert services; and undertake case-related travel.

The FY 2025 request will support:

- 238 additional FDO staffing formula positions (the equivalent of 95% of full formula requirements under the most recent federal defender staffing formulas);
- major physical infrastructure requirements;
- information technology (IT) requirements, including cybersecurity and IT infrastructure modernization;
- additional training;
- transcript rate increases;
- an additional coordinating discovery attorney contract;
- additional fellowship program costs; and
- three additional reimbursable positions (Administrative Office (AO) positions funded through the Defender Services appropriation).

### **TYPES OF COUNSEL**

The CJA authorizes the appointment of counsel, who are:

- attorneys employed by an FDO, or
- private attorneys appointed to represent clients (these private attorneys are known as “panel attorneys”). Each is described below.

#### ***Federal Defender Organizations***

The CJA authorizes two types of FDOs:

- federal public defender organizations (FPDOs), which are part of the judiciary; and
- community defender organizations (CDOs), which are private, state-chartered, non-profit corporations funded by annual federal judiciary grants.

An FDO (whether an FPDO or a CDO) may be established in any district (or combination of districts) in which at least 200 CJA appointments are made annually. There are 82 FDOs authorized to serve 92 of the 94 judicial districts. Until recently, the District of the Northern Mariana Islands was one of three districts not served by an FDO (the remaining two are the Eastern District of Kentucky

and the Southern District of Georgia who meet the requisite number of appointments but have chosen not to establish an FDO). On August 23, 2023, the Ninth Circuit Judicial Council approved amended CJA plans for the District of Guam and the District of the Northern Mariana Islands (NMI).<sup>1</sup> Both plans recognize the establishment of a combined-district FPDO serving both districts and managed by one federal public defender.<sup>2</sup>

FDOs are the flagship of federal criminal defense, delivering high-quality representation at reasonable costs while safeguarding the rights of individuals under the Constitution. They recruit, train, and retain lawyers with skills comparable to those who prosecute criminal matters in U.S. Attorney's Offices (USAOs). Because of their expertise and efficiencies, FDOs provide cost-effective defense services consistent with the best practices of the legal profession.

FDO attorneys are available for appointment on short notice, ensuring that the rights of the accused are protected and that court operations are not disrupted. FDOs also optimize national resources by sharing their expertise and best practices with other FDOs and panel attorneys.

FDO staff improve the overall quality of CJA representation within the districts they serve by providing expert advice, training, and other assistance to panel attorneys in complex legal and technical areas, such as sentencing, mitigation, litigation support, and cases involving death penalty issues.

### ***Panel Attorneys***

A panel attorney is a private lawyer who serves on a panel of qualified counsel maintained by the district or appellate court and is appointed by the court to represent eligible individuals under the CJA. The CJA specifies that in all judicial districts (including those served by an FDO), private attorneys shall be appointed “in a substantial proportion of the cases.” 18 U.S.C. § 3006A(a)(3).

<sup>1</sup>The amended CJA plans are in effect and the Guam FPDO is available to take NMI cases and assist NMI panel attorneys. The Administrative Office plans to submit Congressional notification for the establishment of the combined-district FPDO and the opening of the physical office in Saipan in the spring of 2024. The Defender Services Committee will then approve a budget for the district. Both of these actions will be completed before a physical office is opened on the Island of Saipan in the Northern Mariana Islands.

<sup>2</sup>The CJA provides that when a district, such as the District of the Northern Mariana Islands, does not meet the statutorily required 200 or more persons needing appointment each year, two adjacent districts may aggregate the number of persons required to be represented to establish eligibility for an FDO to serve both areas. *See* 18 U.S.C. § 3006A(g)(1).

Panel attorneys are also utilized for three primary reasons.

- (1) Ethical standards prohibit appointing FDOs in conflict-of-interest situations (*e.g.*, an FDO is precluded from representing more than one defendant in a multi-defendant case and is disqualified from accepting a new appointment that may present a conflict with the interests of represented clients).
- (2) The workload demands in some FDOs periodically limit the ability of that FDO to accept new representations and maintain professional ethical standards.
- (3) The district is not served by an FDO.

The CJA provides these attorneys shall be reimbursed for their expenses and compensated for their services at authorized hourly rates. There are many factors which influence panel attorney representation costs, such as the increased complexity of federal cases, electronic discovery (e-discovery), and high rates of pretrial detention.

### **CJA CASELOAD AND WORKLOAD TRENDS**

Attorneys appointed under the CJA (FDO and private panel attorneys) provide constitutionally required defense services in a wide variety of complex criminal cases, such as international and domestic terrorism; cybercrime; child exploitation and obscenity; complex fraud cases (health care, identity theft, public corruption, and bank and investment fraud); environmental crimes; drug cases; immigration matters; human trafficking; and all other federal crimes.

To determine FY 2025 FDO staffing requirements, a three-year statistical average is used that includes actual caseload data from 2022 and 2023 and projected caseload for 2024.<sup>3</sup> As shown in the following chart, FDO weighted representations<sup>4</sup> increased significantly between statistical years<sup>5</sup> (SYs) 2017 and 2019 and remained at a high level in 2020. Caseload totals briefly fell off historical trends

<sup>3</sup>FDO workload forecasts, as with all other judiciary workload projections, are prepared by the AO's' Judiciary Data and Analysis Office.

<sup>4</sup>Since FY 2016, the Defender Services program has used a comprehensive set of staffing formulas to determine FDO staffing requirements. Instead of using raw, or unweighted case numbers, the formula uses a three-statistical-year average of FDO weighted representations to calculate the number of positions for each office. The FDO staffing formulas were revised for FY 2024 as part of a periodic review. For a discussion on FDO's refreshed staffing formulas, see Updated FDO Staffing Formulas on pages 5.15 – 5.16.

<sup>5</sup>An FDO statistical year runs from April 1 through March 31, with most months taking place in the preceding calendar year. For example, statistical year 2020 ran from April 1, 2019, through March 31, 2020.

because of the COVID-19 pandemic, captured in the significantly lower weighted representation count in statistical year (SY) 2021.<sup>6</sup> However, data for 2022 and 2023 suggest a new equilibrium that is also captured in the forecasted totals for 2024.

<b>FDO Weighted Representations by Statistical Year</b>									
<b>Workload Factor</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Actual</b>	<b>2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Actual</b>	<b>2024 Projected</b>	<b>2025 Projected</b>
FDO Weighted Representations – Non-capital	131,024	142,750	152,496	151,025	116,721	130,062	127,152	129,350	136,400
FDO Weighted Representations – Capital Prosecution	2,752	2,101	1,174	1,019	663	1,019	918	1,000	1,000
Total FDO Weighted Representations	133,776	144,851	153,670	152,044	117,384	131,081	128,070	130,350	137,400
Year-to-Year Change		8.3%	6.1%	-1.1%	-22.8%	11.7%	-2.3%	1.8%	5.4%

Changes in technology, legislation, sentencing policy, and case law all add to the challenge of providing representation to eligible individuals in federal courts. The Defender Services program must respond to changes in case law, such as those resulting from Supreme Court decisions, changes in the U.S. Sentencing Guidelines, statutory changes, and federal law enforcement priority initiatives such as the ongoing opioid crisis, violent crimes, and pandemic fraud.

A specific example of how federal law enforcement priorities impact resource requirements in the Defender Services program is the cases stemming from the events of January 6, 2021, at the United States Capitol, which resulted in the largest federal prosecution in the nation’s history, both in the number of defendants prosecuted and the volume of the evidence. There are defendants in every federal circuit and from over 40 states. The United States Attorney’s Office for the District of Columbia reports that more than 1,140 individuals across the nation have faced criminal charges, ranging from trespass and theft to assault on a federal law enforcement officer and conspiracy.<sup>7</sup> The Federal Public Defender for the District of Columbia reports that most of the defendants have relied on FDOs or CJA panel attorneys for their defense.

<sup>6</sup>The COVID-related nationwide shutdowns coincide very closely with the start of statistical year 2021 (The final month of SY 2020 was March 2020, when many closures took place).

<sup>7</sup>U.S. Department of Justice. *Capitol Breach Cases*. [District of Columbia | Capitol Breach Cases | United States Department of Justice](#) Accessed January 31, 2024.

The prosecutions continue to involve an unprecedented volume of electronically stored information (ESI), including thousands of hours of surveillance and body-worn camera footage, data from hundreds of smartphones and social media as well as from overlapping layers of law enforcement investigations. Individuals who have been charged from these events have been arrested all over the United States, and many are being represented by their local FDOs or CJA panels before and even after their transfer to the U.S. District Court for the District of Columbia. There are far too many cases for the District of Columbia FDO and local panel to support so the lawyers appointed in the locations where the defendants were arrested frequently will continue to provide representation. More than half of the defendants charged thus far have resolved their cases; however, more than 370 cases (both single and multidefendant) are still pending. These cases will likely be similarly geographically dispersed and continue to require resources from CJA counsel from around the country in 2024 and beyond.

In 2023, the United States Sentencing Commission (USSC) submitted amendments to the federal sentencing guidelines, including Amendment 821, which took effect on November 1, 2023. Amendment 821 affects a client's Criminal History by giving retroactive effect to Part A and subpart 1 of Part B. In its July 2023 [Impact Analysis](#), the USSC estimated that retroactive application could have a meaningful impact for over 18,700 individuals who are incarcerated and will have a lower sentencing range. Additional individuals may also require counsel, and nearly all potentially eligible individuals are incarcerated and qualify for appointed counsel. Historically, FDOs have litigated the vast majority of retroactive sentencing guidelines cases, opening thousands of cases in the respective statistical years, and creating increases in the national totals for those years. In response to these recent amendments, in November and December 2023, FDOs opened approximately 6,000 Sentencing Guidelines Retroactivity (SGR) cases, and thousands more are expected in the coming months. Many districts have standing orders appointing FDOs to all such cases. These new SGR cases, together with the January 6<sup>th</sup> cases, are illustrative of how the Defender Services program is reactive to the prosecutorial initiatives and changes in legislation and/or sentencing guidelines, which can require substantial FDO staff time and resources.

Federal defender organizations nationwide face significant challenges in managing existing caseloads. With the inflow of new SGR cases and the continued representation required for data intensive, complex cases such as the January 6<sup>th</sup> cases driven by the well-equipped USAOs and other investigative agencies, FDOs will need to redirect limited resources absent additional support. As a result, the quality of representation for those most in need will be at risk. Given these challenges, it is imperative that the Defender Services program be funded at the requested level.

The chart below summarizes the number of panel attorney representations in which panel attorneys were or are projected to be paid.<sup>8</sup> Like the FDOs, panel attorney representations were increasing before SY 2021 but decreased due to the COVID-19 pandemic. The slowdown in prosecutions related to COVID-19, combined with a decline in immigration prosecutions, resulted in a decrease in the number of panel attorney representations in the years following 2020. To determine FY 2025 panel attorney requirements, SY 2025 projected workload was used (70,100 representations).

<b>Panel Attorney Representations by Statistical Year</b>									
<b>Workload Factor</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Actual</b>	<b>2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Actual</b>	<b>2024 Projected</b>	<b>2025 Projected</b>
Panel Attorney Representations	79,352	77,130	89,079	93,189	64,326	62,866	62,970	67,900	70,100
Year-to-Year Change		-2.8%	15.5%	4.6%	-31.0%	-2.3%	0.2%	7.8%	3.2%

The following chart reflects panel attorney representations and payments by fiscal year. Panel attorney payments increased by \$27.2 million (6.6 percent) from \$414.2 million in FY 2022 to \$441.4 million in FY 2023. Total panel attorney representations increased by 2,471 (4.1 percent) from 60,739 in FY 2022 to 63,210 in FY 2023.

It is informative to compare changes in payments to changes in representations. Most offense types remained relatively stable from FY 2022 to 2023 except for immigration cases which increased by 2,990 (44.2 percent). This change largely explains the overall FY 2023 representations increase.

In FY 2023, the \$27.2 million increase in panel attorney payments is mostly due to immigration (total representations increased by 2,990, and costs by \$6.0 million) and the change in the cost per representation for several other major non-capital case categories:

<sup>8</sup>CJA Panel representations are based on vouchers paid during the 12-month period. If no voucher was paid, no representation is counted. The judiciary relies on a forecast of unweighted representations for estimating the panel attorney portion of the appropriation request. This projection is based on one representation for each case, regardless of the case type.

drugs and weapons each increased by approximately \$800 (from \$7,900 to \$8,700 for drugs and from \$7,700 to \$8,500 for weapons) and fraud increased by \$1,700 (from \$10,700 to \$12,400).

<b>Offense Type</b>	<b>FY 2022 Reps</b>	<b>FY 2022 Payments (\$ in millions)</b>	<b>FY 2023 Reps</b>	<b>FY 2023 Payments (\$ in millions)</b>
Capital Prosecutions	647	\$40.0	594	\$38.3
Drugs	18,119	\$143.5	17,534	\$153.9
Immigration	6,761	\$18.6	9,751	\$24.6
Fraud	2,777	\$29.6	2,833	\$35.4
Weapons	4,784	\$36.4	4,702	\$40.0
Capital Habeas	284	\$12.2	280	\$12.2
Appeals	4,184	\$28.0	4,334	\$29.5
Criminal-Other	23,183	\$105.9	23,182	\$107.5
<b>Total</b>	<b>60,739</b>	<b>\$414.2</b>	<b>63,210</b>	<b>\$441.4</b>

In accordance with the anticipated employment cost index (ECI) increase, FY 2025 panel attorney hourly non-capital and capital rates are projected to increase from \$172 to \$175 and \$220 to \$223, respectively.

### **FISCAL YEAR 2024 APPROPRIATIONS**

The judiciary built the FY 2025 budget request for the Defender Services appropriation on the FY 2024 assumed House mark, which is \$1,411.1 million. For bill language, the judiciary used the language from H.R. 4664 and S. 2309 - Financial Services and General Government appropriations bill, 2024, which are identical, as the closest approximation of the eventual enacted FY 2024 appropriations language, updated with the assumed level as described above.

The assumed FY 2024 Defender Services funding level is \$94.7 million below the judiciary’s FY 2024 appeal (\$1,505.8 million). The following FY 2024 requirements are assumed not funded: \$40.4 million in FDO staffing (assumes 92.5% of the new staffing formula is funded), \$40.3 million in panel attorney payments that have been deferred to FY 2025, \$11.5 million in information technology and cybersecurity needs, \$2.2 million in training enhancements, and \$0.3 million for three Defender Services Office reimbursable positions.

## SIGNIFICANT ISSUES FOR FISCAL YEAR 2025

### *Impact of No-Year Funds and Carryforward Balance on the FY 2025 Request*

The judiciary has been able to reduce its Defender Services appropriation request using unobligated no-year funds carried forward in this account from prior fiscal years. In FY 2024, \$84.1 million in prior year unobligated balances were used to finance the FY 2024 requirements. This level of carryforward into FY 2024 was greater than first projected due in large part to the emergency cost-savings measures the judiciary initiated in July 2023 in response to low FY 2024 congressional marks from both the House and Senate appropriations committees. While helpful to supporting FY 2024 requirements, this larger carryforward must be replaced by appropriated funds in FY 2025 in order to sustain the obligations that were supported by one-time carryforward funds in FY 2024. This necessity to address the changing carryforward level is a major driver behind this account's proposed 19.8 percent appropriation increase from FY 2024 into FY 2025.

The judiciary is very appreciative of the Congress's support of the Defender Services' program, in particular its understanding of the impact carryforward has on the need for appropriated funds from one year to the next.

In developing the FY 2025 request, the judiciary assumes \$20 million will carry forward from FY 2024 and prior years into FY 2025 and be available to finance FY 2025 requirements. Because the judiciary anticipates having less in carryforward funding available in FY 2025, it is imperative that \$64.1 million in funding to substitute direct appropriations for base expenses previously funded from carryforward balances be restored.

Without adequate funding, the Defender Services program could face catastrophic layoffs, unpaid furloughs, or panel attorney payment deferments that could seriously damage the federal criminal system and the clients served. The judiciary will advise appropriations subcommittee staff of any changes to this estimate.

### *Updated FDO Staffing Formulas*

In March 2023, a work measurement study was completed that identified issues with the existing estimation of FDO staffing requirements and recommended important updates. By September 2023, the FDO staffing formulas were updated to estimate staffing

requirements more accurately in budget requests, support containment of costs, and ensure an equitable distribution of resources among the judiciary's different offices and locations.

The new FDO staffing formulas incorporate several improvements such as:

- use of a consistent timeframe for workload drivers across formulas (three-statistical-year average);
- use of a new module to calculate panel management requirements for FDOs with those responsibilities; and
- use of a new module to calculate organizational and IT support requirements separately from operational/legal work.

Additionally, for offices that would otherwise grow or shrink by more than a threshold amount of staffing due to the new formulas, the new formulas will be phased in over FYs 2024 and 2025. Finally, the Northern and Eastern Districts of Oklahoma are currently excluded from the new formulas due to the unique workload conditions in those two districts resulting from the Supreme Court's 2020 decision in *McGirt v. Oklahoma*.

Using the newly implemented formulas, the FY 2025 budget requests 238 additional FDO positions. Of the 238 positions, 237 are formula generated positions (176 are for FPDOs and 61 are for CDOs). This represents 95% of full formula requirements as calculated by the updated formulas. In addition, there is one new national position based on the National Information Technology Operations and Applications Development (NITOAD) branch formula. These staffing increases are needed to ensure that federal defender organizations meet their constitutional mandate to provide effective assistance of counsel under the Sixth Amendment.

### ***Major Physical Infrastructure Requirements***

All FDOs must obtain the AO's Defender Services Office (DSO) approval to acquire office space. In addition, FPDOs must also obtain approval for space from their respective circuit judicial council. After the FPDO obtains approval from the DSO and the appropriate circuit judicial council, the process to obtain the approved space begins. FPDOs are required to use the General Services Administration (GSA) as their leasing agent for all space procurements. GSA conducts a competitive process to select space, negotiates terms with the lessor and is party to the rental contract. Two large FPDOs have leases expiring within the near-term budget window (Los Angeles, CA and Las Vegas, NV). GSA initiates work on lease renewals three years prior to expiration of current leases.

Due to building management and infrastructure issues, it is anticipated that both FPDOs will move to new buildings during the lease procurement process. The Ninth Circuit Assistant Circuit Executive for Space and Facilities and GSA are assisting with the planning

for these projects. GSA is currently in the process of assigning staff to work on these projects. Once assigned, formal project initiation will begin including verifying the requirements; then project execution will begin.

When moving to new space, a significant portion of the expense to configure or build out the space must be paid to GSA via a reimbursable work authorization (RWA) before GSA will sign a lease with a property owner. The FY 2025 request includes \$16.8 million for half of the current GSA estimated costs for two major projects. The RWA requirements in this request are estimates; the actual amount will not be known until finalized by GSA. The funding created by this request will then be used in future fiscal years to fund the remainder of these two projects and establish a base amount for future build-out projects.

Additional information about both projects is provided below:

### **Central District of California – Los Angeles, CA**

The Los Angeles staff for the FPDO in the Central District of California are currently housed in two separate buildings located across the street from each other, four blocks from the United States courthouse. FPDO management has reported multiple issues with the current buildings that appear to be related to the age of the structures and lack of maintenance and upkeep by building management, including major HVAC issues, window leaks, and plumbing issues.

The two leases are due to expire in December of 2026 and April of 2027. Together the two buildings house 189 staff. Workload projections for FY 2024 estimate a need for 226 staff. Leases for the current two buildings cover a total of 66,981 useable square feet (USF). The new space procurement will be reduced to 57,558 USF, with plans to make use of modern efficiencies and workplace changes, including reduced space for the office library and paper files storage. GSA will attempt to find space for the entire staff in a single building.

After amortizing the maximum amount of build-out costs allowed, GSA estimates a total RWA of \$21.1 million for build-out of the interior office space once a new location has been identified. This is based on a rough order of magnitude estimate that GSA uses prior to selection of the exact building.

### **District of Nevada – Las Vegas, NV**

FPDO management has reported multiple building issues including long term elevator outages, building leaks, and lack of support from the lessor. GSA has sent multiple lease deficiency letters to the lessor, but problems remain.

The Las Vegas lease for the FPDO in the District of Nevada is due to expire in August of 2025. A short extension will likely be needed to facilitate a lease procurement. The Las Vegas FPDO location currently has 114 staff. The current lease for the FPDO space is 40,353 USF. The new space procurement will be reduced slightly to 39,618 USF by making use of modern efficiencies and workplace changes. After amortizing the maximum amount of build-out costs allowed, GSA is estimating a total RWA of \$12.4 million for build-out of the interior office space once a new location has been identified. This is based on a rough order of magnitude estimate that GSA uses prior to selection of the exact building.

***Information Technology, Cybersecurity, and IT Modernization Requirements***

Consistent with the rest of the judiciary, the Defender Services program is implementing a multi-year initiative for comprehensive system modernization and IT services and security improvements. This plan, which covers FYs 2022-2027, has been submitted to Congress and the resources associated with each year of the plan are included in the judiciary’s annual budget requests.

***Multi-year Plan Requirements (\$12.8 million)***

As shown in the chart below, this request assumes that there is \$12.5 million in the FY 2024 base for ongoing costs associated with IT multi-year infrastructure requirements and requests an additional \$12.8 million in FY 2025, for a total of \$25.3 million.

**Defender Services, Multi-year Infrastructure Plan Requirements, \$25.3 million (\$ in millions)**

<b>Base Funding</b>	<b>Dollars (\$)</b>	<b>FY 2025 Request</b>	<b>Dollars (\$)</b>	<b>Total in FY 2025 Request</b>
<b>FY 2022 Approved</b>	<b>\$4.5</b>	<b>FY 2024 (assumed not funded)</b>	<b>\$9.9</b>	
<b>FY 2023 Approved</b>	<b>\$8.0</b>	<b>FY 2025 New Request</b>	<b>\$2.9</b>	
<b>FY 2025 Base</b>	<b>\$12.5</b>	<b>FY 2025 Additional Request</b>	<b>\$12.8</b>	<b>\$25.3</b>

*FY 2025 Portion of the Multi-year Plan (\$2.85 million)*

\$2.85 million is requested to fund the Defender Services' FY 2025 portion of the judiciary's cybersecurity and IT modernization plan, including \$1.40 million for web contract support to continue to implement and maintain the two-phase design and implementation SharePoint<sup>9</sup> plan. SharePoint sites allow for collaboration between FDO groups and other judiciary entities (e.g., among assistant federal defenders, paralegals, investigators, computer systems administrators, and DSO and other AO staff).

In addition, this request includes \$1.31 million to expand the contract for managed security services for FDOs which will enable the current managed security operations center (SOC) to provide 24/7 monitoring of additional portions of the network, including cloud security logs, and \$0.14 million for a commercial public key infrastructure<sup>10</sup> to improve judiciary network security by enabling FDO users to positively identify the security of FDO applications.

*FY 2024 Multi-year Plan Requirements Assumed Unfunded (\$9.9 million)*

The \$9.9 million FY 2024 multi-year plan requirements assumed unfunded will support critical requirements in several areas (\$4.6 million for the Defender Wide Area Network (DWAN), \$4.6 million for data security, and \$0.7 million for a security controls assessment). The request includes \$4.6 million to modernize the current DWAN infrastructure including virtual private network (VPN) remote access used by FDO staff. Of this \$4.6 million, \$3.3 million will allow Defender Services to engage industry experts to help design and implement a modern DWAN structure which will serve as a foundation for improved security controls. Additionally, the modern network will improve connectivity to FDO cloud services, such as Office 365, by establishing a private connection which can be used to limit access from the public internet. This will help security teams to better identify connections from legitimate FDO sources and monitor for suspicious activity. The request also includes \$0.8 million to improve the current secure remote access solution used by FDO staff and extend it to FDO cloud resources. Ensuring a secure, encrypted connection to both the DWAN and FDO cloud data will help protect the confidentiality and integrity of sensitive information. Lastly, \$0.5 million will be used to renew software and support licensing for all firewall security devices used by every FDO office. These firewall devices provide insight to and control of network traffic traversing the DWAN.

<sup>9</sup>SharePoint is a web-based collaborative platform that integrates with Microsoft 365. It is primarily a document management and storage system.

<sup>10</sup>A public key infrastructure is a system for the creation, storage, and distribution of digital certificates which are used to verify that a particular public key belongs to a certain entity.

The request also includes \$4.6 million for data security management and improvement, including \$2.5 million to allow Defender Services to seek a new backup solution--to replace a backup solution purchased in 2010--that can better protect sensitive data from security threats such as ransomware. The remaining \$2.1 million requested will help Defender Services upgrade its server and database software systems. The current version of the database software has memory limitations which are quickly being approached as the amount of FDO data grows. Upgrading to the enterprise editions of the software will remove these limitations and ensure proper security logs for analysis and review.

Finally, the request includes \$0.7 million to engage outside security experts to assess the security controls currently implemented and recommend any changes or remediations based on the findings. This evaluation will include both the internal network and national FDO cloud applications, such as Office 365. As the FDOs move more services and data to the cloud, it is critical that the security controls configured on cloud services are consistent with judiciary standards and practices.

#### ***Other IT Requirements (\$5.2 million)***

A total of \$5.2 million is requested for other IT requirements beyond the scope of the multi-year cybersecurity and modernization plan. Of this total, \$3.7 million is a new request, and the remaining \$1.5 million is the FY 2024 amount assumed unfunded.

#### ***FY 2025 Other IT Requirements (\$3.7 million)***

Of the \$3.7 million, \$0.5 million is for a contract to improve the availability and reporting on Defender Services programmatic data using the judiciary's Enterprise Data Warehouse (EDW). The project has successfully integrated multiple systems and enabled better tracking of FDO spending, staffing and financial projections. Funding is requested to support ongoing operations and maintenance, and continued development and enhancements.

In addition, \$3.2 million for other IT projects includes:

- \$0.5 million for automated optical character reader (OCR) processing software, courtroom presentation software and digital forensic tools;
- \$0.3 million for an update of the RAND corporation studies to develop and analyze FDO case weights;
- \$0.7 million for cybersecurity projects related to cloud storage backup;
- \$0.7 million for national log and event management tools;

- \$0.5 million to support a contract to allow for a secure, private FDO connection to cloud services when transferring electronic discovery through cloud file storage services over unsecure public internet connections; and
- \$0.5 million is for software and services to maintain knowledge on emerging technology research to promote best practices regarding implementation of new technologies, and for additional costs for the computer-assisted legal research (CALR) contract renewal.

*FY 2024 Other IT Requirements Assumed Unfunded (\$1.5 million)*

This \$1.5 million increase includes:

- \$1.0 million for the Defender Services Data Management System which is used to collect and integrate data from multiple sources into a single database for various uses;
- \$0.3 million for a secondary investigative database tool for FDOs to verify and cross-check LexisNexis Accurint information, which would result in more comprehensive and accurate investigations;
- \$0.1 million for a body-worn camera footage management system, which would provide software and hosting services comparable to the Department of Justice (DOJ), and would assist FDOs in sorting, reviewing, and tagging video files while reviewing these voluminous recordings; and
- \$0.1 million for contract management requirements.

## COST CONTAINMENT INITIATIVES

The judiciary has implemented various cost-containment initiatives across the Defender Services program to reduce costs, where appropriate, without compromising its constitutional mandate. Funding decisions balance a keen awareness of the federal budget challenges, the need for continuous assessment of existing and potential cost-containment measures across the Defender Services program, and the dedication to supporting effective representation by FDOs and CJA panel attorneys. Key cost-containment initiatives include, but are not limited to:

- promoting the use of case budgeting to control expenditures in capital and other high-cost CJA panel attorney representations;
- identifying more cost-effective means of handling increasingly large and complex discovery in CJA representations;
- improving DOJ procedures related to death-eligible cases;
- providing robust distance learning; and
- coordinating with other judiciary and DOJ components regarding remote detention of pretrial detainees.

### *Case Budgeting of CJA Panel Attorney Representations*

Defender Services funding continues to support 11 circuit case-budgeting attorney positions. These attorneys are assigned to federal judicial circuits across the country and identify cost drivers, monitor case expenditures, assist the courts and CJA panel attorneys with individual case budgeting and voucher review, and, in line with the Defender Services program's goals, promote representation consistent with the best practices of the legal profession.

### *Discovery Costs*

Each year, the data associated with individual CJA representations expands in size and complexity. There are several critical issues defense counsel must address to adequately manage and review e-discovery, including the large volume of information, the variety of sources from a multitude of digital devices and locations, proprietary formats, hidden information such as metadata and embedded data, and software and hardware limitations.

Federal defenders and panel attorneys require litigation resources, including national staff, to meet the challenge presented by DOJ's e-discovery and litigation support capabilities. Even in "simple," single defendant prosecutions, discovery includes ESI or e-discovery extracted from client mobile devices and computers. Law enforcement officers review social media sites, like Facebook, Instagram, and X (formerly known as Twitter), to capture possible incriminating materials. Video discovery is common and may

include months of pole-camera recordings, business security videos, and hours of concealed camera footage. Additional discovery may include data from cell phone wiretaps, body wires, and GPS tracking devices.

To illustrate the volume and complexity of information in a recent multidefendant case, 40 people were charged with murder, drug trafficking, money laundering and wire fraud. The U.S. attorney prosecuting the case provided rolling discovery of 27 separate productions over the course of two years. The discovery totaled over 9 terabytes of data, with over 550,000 files in the e-discovery review database created for the defense teams. Over a hundred of those files each consisted of 10,000 plus page documents. Besides the voluminous number of investigative reports, grand jury materials, witness interviews, and search warrant pleadings, the discovery also included forensic images and reports from 80 digital devices seized by law enforcement, totaling 8.1 terabytes.

Three major initiatives are in place to address e-discovery issues:

- (1) The DOJ/AO Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) addresses various issues related to e-discovery and discovery production between the prosecution and the attorneys for defendants charged in federal criminal cases. Members from this group are currently working on an update to the Criminal eDiscovery: A Pocket Guide for Judges. In addition, Defender Services program's NLST have worked with DOJ to improve discovery management in federal cases. The most recent example is the efforts to coordinate with DOJ to manage the voluminous discovery associated with the January 6, 2021, breach of the U.S. Capitol mentioned previously.
- (2) Contracts with five national coordinating discovery attorneys (CDAs) are in place to advise panel attorneys and defender organizations on cost-effective ways to manage large volumes of documents in the most complex cases to increase the quality of representation. As of October 2023, CDAs had been appointed by federal courts to assist CJA counsel in over 122 active cases in more than 47 districts, with at least one case in each circuit. Because most of these cases are large, multi-defendant prosecutions, CDAs are providing services to over 1,300 CJA clients.
- (3) The Defender Services program has procured national licenses for software applications and tools to allow for the more efficient capture, organization, analysis, review, and management of case-related electronic data by CJA panel attorneys and FDO staff, thereby generally avoiding the higher cost alternative of purchasing software for multiple individual cases year after year.

### ***Improvement in DOJ Procedures for Making Decisions Not to Seek the Death Penalty in Death-Eligible Cases***

Federal death penalty litigation remains active and federal prosecutors continue to file new cases in which the death penalty may be sought. During the first 32 months of the Biden Administration, federal capital trial resource counsel identified 219 *new* death-eligible case filings, compared to 324 *new* death-eligible case filings in the first 32 months of the Trump Administration. As of October 30, 2023, five individuals remained authorized<sup>11</sup> for a federal capital prosecution and were pending trial or resentencing, and resource counsel identified approximately 177 other individuals who could face a federal capital prosecution, including:

- 106 defendants with death-eligible indictments awaiting a decision by the Attorney General regarding whether a capital prosecution will be authorized;
- 26 defendants pending superseding indictments in which capital charges could be filed; and
- 45 Bureau of Prisons (BOP) homicides in which capital charges could be filed.

The judiciary continues to urge DOJ to streamline its procedures for evaluating and making decisions *not* to seek the death penalty in cases where the government can quickly conclude that the death penalty is inappropriate. Until DOJ formally notifies counsel and the court that it does not intend to seek the death penalty for a death-eligible defendant, which can take years to determine, defense counsel must assume that the death penalty will be pursued. Pending DOJ's decision, the judiciary is obligated to bear the substantial cost of the statutorily-required two capital-qualified defense counsel – compensated at the higher capital panel attorney hourly rate of \$220, as of January 1, 2024– who must undertake the intensive, time-consuming work required to attempt to persuade the government not to seek the death penalty, as well as prepare for a capital trial and sentencing proceeding. An early decision by the Attorney General *not* to seek the death penalty could achieve significant cost savings for the Defender Services program, DOJ, and the courts.

DOJ has made some modifications to its Death Penalty Authorization Protocol to streamline and accelerate the process by which DOJ makes a formal determination that the death penalty will *not* be sought in cases where the local U.S. attorney recommends against seeking the death penalty, as well as other changes. The Defender Services program will continue to collaborate with DOJ and support these and other efforts that could reduce costs in federal capital prosecution cases.

<sup>11</sup>For any federal death-eligible case to proceed as a death penalty case, the U.S. Attorney General must decide whether to seek the death penalty. After a case is approved by the Attorney General to proceed as a capital case, it is considered “authorized.”

### ***Distance Learning***

While webinars are an important way to offer timely, interactive training on rapidly evolving areas of the law and have long-been part of DSO's Training Division's portfolio, during the COVID-19 pandemic the Training Division increased the frequency of live webinars, presenting 26 in FY 2020, 23 in FY 2021, 16 in FY 2022, and 11 in FY 2023 which were viewed by 3,658 virtual attendees. The FY 2023 webinars provided quality training on a variety of criminal defense topics including attorney client ethics, Federal Evidence, Opinion Testimony, Pretrial Detention, updated Second Amendment claims after *Bruen*, and the Judiciary Sentencing Information (JSIN) Pilot Program.

Along with other training materials, 208 training videos are available for on-demand viewing through the Training Division's website ([www.fd.org](http://www.fd.org)), which is accessible to CJA panel attorneys and federal defender staff. The training made available through distance learning provides an additional resource to improve the quality of representation provided by CJA counsel and enables live training programs to have a greater impact nationally. For example, FDOs are using the webinars as part of their local panel attorney training, which increases the availability of training without incurring additional costs. Though virtual programming cannot replace the in-person and hands-on training experience, it is a useful tool that will continue to be a prominent part of the Training Division's portfolio.

Federal defender staff also have access to the Judiciary Online University (JOU). FDO personnel accessed the JOU approximately 858 times in FY 2017, 1,488 times in FY 2018, 815 times in FY 2019, 1,246 times in FY 2020, 1,055 times in FY 2021, 901 times in FY 2022, and 1,162 times in FY 2023. In addition, DSO staff use distance-learning formats to provide contemporaneous, interactive training to FDO personnel on new management systems and requirements (e.g., implementation of case weights, budget preparation, monthly status reports, and timekeeping programs) and workforce management options.

### ***Remote Detention Working Group***

A joint AO/DOJ Remote Detention Working Group (RDWG) was established to enhance the lines of communication between the judiciary and components of the DOJ, including the United States Marshals Service (USMS) and the BOP, around problems created by the remote pretrial detention of individuals charged with federal criminal offenses. Housing individuals detained pretrial at significant distances from defense counsel and federal courthouses has substantial operational and cost implications for the Defender Services program.

Additionally, remote pretrial detention raises fundamental concerns about the quality of representation provided under the CJA because often defense counsel is unable to meet and effectively communicate with their clients when facilities have inadequate confidential meeting spaces, telephone lines, video-technology, or means for reviewing e-discovery. Remote pretrial detention also results in increased costs for the Defender Services program when CJA counsel and members of the defense team must spend substantial time travelling long distances to meet with clients. While the use of remote technologies can be a supplemental tool for defense counsel, in-person client meetings remain the standard of practice necessary for effective representation under the CJA.

## JUSTIFICATION OF CHANGES

The FY 2025 request for the Defender Services account is \$1,690.0 million, an increase of \$278.9 million, or 19.8 percent, over the FY 2024 assumed appropriations level of \$1,411.1 million. Of the \$278.9 million increase, \$64.1 million (23.0 percent) is needed to maintain FY 2024 requirements due to a projected decrease in carryforward funding.

The request will fund adjustments to base and staffing for the FDO program to support 238 additional staffing formula positions (95% of full requirements). This staffing allows the judiciary to support workload demands and implement CJA-related policies approved by the Judicial Conference.

This request also funds major physical infrastructure projects, transcript rate increases, an additional coordinating discovery attorney contract, training, additional fellowship program costs, reimbursable positions, and information technology requirements, including cybersecurity and IT infrastructure modernization for the Defender Services program.

## ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

### A. PERSONNEL

#### *Pay and Benefit Adjustments*

#### 1. Proposed 2025 pay adjustments

##### a. Federal pay adjustment

#### **Requested Increase: \$9,138,000**

Consistent with guidance from the Office of Management and Budget, the judiciary is assuming federal pay rates will increase in January 2025 by 2.0 percent, of which 1.5 percent is for an across-the-board increase and 0.5 percent is for a locality increase. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2025, from January 2025 to September 2025. (If the pay adjustment included in the President's FY 2025 budget request is different from this 2.0 percent guidance, the judiciary will revise this line item in its FY 2025 budget re-estimate.)

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$320,000**

The requested funding would increase the capital panel attorney hourly rate by an assumed employment cost index (ECI) increase of 1.5 percent. (Panel attorneys do not receive locality pay.) This would increase the hourly rate from \$220 per hour to an estimated \$223 per hour, effective January 1, 2025. There is a time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of six months of the rate increase in FY 2025. (If the ECI pay adjustment included in the President’s FY 2025 budget request is different from this 1.5 percent guidance, the judiciary will revise this line item in its FY 2025 budget re-estimate.)

**c. Panel attorney non-capital rate adjustment**

**Requested Increase: \$923,000**

The requested funding would increase the non-capital panel attorney hourly rate by an assumed ECI increase of 1.5 percent. (Panel attorneys do not receive locality pay). This would

increase the hourly rate from \$172 per hour to an estimated \$175 per hour, effective January 1, 2025. There is a time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of three months of the adjustment in FY 2025. (If the ECI pay adjustment included in the President’s FY 2025 budget request is different from this 1.5 percent guidance, the judiciary will revise this line item in its FY 2025 budget re-estimate.)

**2. Annualization of 2024 pay adjustments**

**a. Federal pay adjustment**

**Requested Increase: \$7,918,000**

The requested increase provides for the annualized costs of the 2024 pay adjustment of 5.2 percent, associated with ECI and locality pay, effective as of January 2024. The requested increase provides for the cost of three months (from October 2024 to December 2024) of the 2024 pay increase in FY 2025.

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$1,077,000**

The requested funding annualizes the FY 2024 panel attorney capital ECI rate increase from \$210 to \$220 per hour. An increase to the capital hourly rate impacts six months of costs in FY 2024. The requested increase annualizes this rate increase for the first six months of FY 2025.

**c. Panel attorney non-capital rate adjustment**

**Requested Increase: \$16,702,000**

The requested increase annualizes the FY 2024 panel attorney non-capital ECI rate increase from \$164 to \$172 per hour. An increase to the non-capital hourly rate impacts three months of costs in FY 2024. The requested increase annualizes this rate increase for the first nine months of FY 2025.

**3. Promotions and within-grade increases**

**Requested Increase: \$4,569,000**

The requested increase provides for promotions and within-grade increases for personnel. The FDO salary plans provide

for periodic within-grade increases for staff who receive at least a satisfactory performance rating.

**4. Benefits increases**

**a. Health benefits**

**Requested Increase: \$3,193,000**

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by an average of 5.0 percent both in January 2024 and January 2025. The requested increase annualizes the 2024 premium increase and includes a nine-month provision for the increase anticipated for FY 2025.

**b. FICA adjustment**

**Requested Increase: \$791,000**

Based on information from the Social Security Administration, employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax will increase in 2024. The salary cap for OASDI increased from \$160,200 to \$168,600 in January 2024. The requested amount is needed to pay the agency's contribution in FY 2025.

**B. OTHER ADJUSTMENTS**

*General Inflationary Adjustments*

**5. Inflationary increases for contracts, services, supplies, and equipment**

**Requested Increase: \$8,741,000**

Consistent with guidance from the Office of Management and Budget, this request of \$8,741,000 is required to fund inflationary increases of 2.2 percent for operating expenses such as travel, communications, contractual services, supplies and materials, and furniture and equipment.

**6. Inflationary increase in GSA space rental costs**

**Requested Increase: \$1,346,000**

The request represents a 2.0 percent inflationary increase and adjustments in the cost of GSA space rental charges for space for FY 2025.

*Workload and Financing Adjustments*

**7. Change in projected panel attorney requirements**

**a. Change in projected panel attorney workload**

**Requested Increase: \$14,045,000**

The projected increase is due to a projected change in panel attorney caseload. Panel attorney representations are projected to increase from 67,900 in SY 2024 to 70,100 in SY 2025. Caseload and panel attorney payments are subject to variation due to prosecutorial priorities and case complexities. As the projected caseload and payment trends change, the judiciary will advise the appropriations subcommittee staff of any changes to this estimate in the FY 2025 budget re-estimate process.

**b. Restoration of FY 2024 panel attorney payment base**

**Requested Increase: \$40,275,000**

The FY 2024 assumed funding level (obligations) provides \$433.8 million for panel attorney payments, which is \$40.3 million below FY 2024 requirements. The projected workload for FY 2025 requires the FY 2024 base funding to be restored to meet panel attorney requirements in FY 2025.

**c. Panel attorney deferred payments from FY 2024**

**Requested Increase: \$40,275,000**

The FY 2024 assumed funding level (obligations) estimates a panel attorney payment shortfall in the amount of \$40.3 million. This shortfall would cause the judiciary to defer panel attorney payments for approximately one month at the end of FY 2024. The amount requested will allow the judiciary to make the deferred payments from FY 2024 in FY 2025 without causing an adverse impact to the amount needed in FY 2025 for panel attorney payments.

**8. Increase in appropriation needed to maintain FY 2024 requirements due to a decrease in carryover funding**

**Requested Increase: \$64,066,000**

The judiciary has been able to reduce its Defender Services appropriation request using unobligated no-year funds carried forward in this account from prior fiscal years. In FY 2024, \$84.1 million in prior year unobligated balances was used to finance the FY 2024 requirements. In developing the FY 2025 request, the judiciary assumes \$20 million from FY 2024 will carry forward into FY 2025 to finance FY 2025 requirements. Because the judiciary anticipates having less carryforward funding available, it requests \$64.1 million in funding to substitute direct appropriations for base expenses previously funded from carryforward balances. The judiciary will advise appropriations subcommittee staff of any changes to this estimate.

**C. PROGRAM CHANGES**

**9. Change in positions for projected workload**

**a. FDO staffing formula changes FTE: 76**

**Requested Increase: \$25,805,000**

The requested increase supports the continued implementation of the revised FDO staffing formula that was approved by the Judicial Conference in September 2023. The request is for 237 additional FDO staff for six months. The increase will restore positions assumed lost in FY 2024 and will allow for additional staffing to address critical workload requirements up to 95% of the current staffing formula. Additional information on the FDO staffing formulas is on pages 5.15 – 5.16.

**b. National position FTE: 0.5**

**Requested Increase: \$121,000**

The requested increase supports one information technology (IT) staffing formula position. The major workload driver of the IT staffing formula is the total number of FDO FTE. The IT position will help to address cybersecurity and other IT

requirements by ensuring defender IT systems are mission-capable at or above judiciary standards.

**10. Information Technology (IT), cybersecurity, and IT modernization requirements**

**a. Multi-year plan requirements**

**Requested Increase: \$12,777,000**

This \$12.8 million increase will support the judiciary’s multi-year cyber-security and IT modernization plan. Of this increase, \$9.9 million is the FY 2024 portion that is assumed not funded, and the remaining \$2.9 million would address additional FY 2025 requirements. Additional information on this information technology multi-year plan is on pages 5.18 – 5.20.

**b. Other requirements**

**Requested Increase: \$5,241,000**

The requested increase will support \$3.7 million of other FY 2025 information technology requirements, and \$1.5 million of FY 2024 requirements that are assumed not funded. Additional

information on the other information technology requirements is on pages 5.20 – 5.21.

### **11. Transcript rate increase**

#### **Requested Increase: \$1,320,000**

In September 2022, the Judicial Conference approved an increase to the judiciary’s transcript fee rates (approximately 20 percent) to enable the courts to retain and recruit qualified court reporters. This would fund the impact this rate increase is expected to have on the Defender Services program.

### **12. Coordinating discovery attorney contract**

#### **Requested Increase: \$730,000**

Coordinating discovery attorneys work with defense counsel on cases in which there are numerous defendants, voluminous discovery, or complicated electronic discovery issues. This contract funding would address the increased demand for these types of services and improve the defense team’s efficiency and effectiveness in reviewing discovery.

### **13. Major physical infrastructure requirements**

#### **Requested Increase: \$16,750,000**

Two large FDOs have leases expiring soon (Los Angeles, CA and Las Vegas, NV) and due to building management and infrastructure issues, such as plumbing and HVAC problems and Americans with Disabilities Act violations, it is anticipated that both will move to new buildings. When moving to new space, a significant portion of the expense to reconfigure the space must be paid prior to the lease award.

The total cost of these two projects is projected to be at least \$33.5 million (\$21.1 million for Los Angeles; \$12.4 million for Las Vegas). The funding in this request, in addition to funding generally available each fiscal year within existing funds, would be used to fund the Los Angeles or the Las Vegas infrastructure requirements. The base funding created by this request will then be used in future fiscal years to fund any additional costs of these specific projects and regularly occurring build-out projects each fiscal year.

Pages 5.16 - 5.18 provides more details about these projects.

#### **14. Additional fellowship program costs**

**Requested Increase: \$236,000**

The requested funds for the fellowship program would provide additional substantive training for the fellows, recruitment software, evaluation assistance, and operational costs.

#### **15. Training operations**

**Requested Increase: \$2,233,000**

This request is a requirement from FY 2024 that is assumed unfunded. It will support the following three initiatives:

1. 21<sup>st</sup> Century Training Operations (\$852,000)
2. Training Post-COVID (\$758,000)
3. Additional Training Requirements (\$623,000)

The 21<sup>st</sup> Century training operations includes funding for an updated Event Management System which would provide full-service on-site attendee management. In addition, two other programs would be utilized: Learning Management System (to support the administration, documentation, tracking, reporting, automation and delivery of educational courses and training

programs to manage all its electronic learning) and a real-time polling/survey platform.

Additional resources are also needed to meet the demand for hybrid (in-person and virtual) training in the post-pandemic world.

This request will also support expanded training programs on case management, mental health, representing clients with intellectual disabilities, and provide FDO budget, procurement, and financial training materials.

#### **16. Reimbursable positions**

**Requested Increase: \$316,000**

This request supports three additional positions at the AO's Defender Services Office funded by the Defender Services appropriation that are assumed unfunded in FY 2024. These positions will support program reviews and budgetary/financial operations support to federal defenders and their staff in the areas of audit preparation, financial management, internal controls, procurement, and accountable officer liability.

**D. FINANCING THE FISCAL YEAR 2025 REQUEST**

**17. Anticipated carryforward from FY 2024 and prior years into FY 2025**

**Estimated funds available: \$20,000,000**

The judiciary projects \$20 million will be available through anticipated carryforward from FY 2024 and prior years into FY 2025 to offset the FY 2025 appropriation request for the Defender Services program. The judiciary will advise the appropriations subcommittee staff of any changes to this estimate.