



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

HONORABLE THOMAS F. HOGAN  
*Secretary*

May 14, 2013

Honorable Sylvia Mathews Burwell  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Burwell:

We write on behalf of the Judicial Conference of the United States to inform the Administration of the Judiciary's decision to seek \$72.9 million in fiscal year 2013 emergency supplemental appropriations to address critical needs resulting from sequestration cuts. The supplemental request includes \$31.5 million for the Courts Salaries and Expenses account, and \$41.4 million for the Defender Services account. In accordance with 31 U.S.C. 1107, we respectfully request that the President transmit the Judiciary's supplemental requirements to Congress promptly and without change. A detailed summary of this supplemental request is included in Enclosure 1. A funding table and the proposed legislative language are included in Enclosure 2.

Final enacted appropriations for fiscal year 2013, after sequestration cuts are applied, reduce Judiciary funding overall by nearly \$350 million below fiscal year 2012 discretionary appropriations. Emergency measures have been implemented throughout the federal court system to address the drastically reduced funding levels under sequestration, but the federal courts do not have the flexibility to absorb such a large cut. The impacts of sequestration are compounded by the fact that 100 percent of the cuts must be absorbed with only six months remaining in the fiscal year. Unlike some Executive Branch entities, the Judiciary has little flexibility to move funds between appropriation accounts to lessen the effects of sequestration. There are no lower-priority programs to reduce in order to transfer funds to other Judiciary accounts.

Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 allows for statutory spending caps to be exceeded under certain conditions, including if Congress and the President designate funding as an emergency requirement. The Judiciary is confronting

Honorable Sylvia Mathews Burwell  
Page 2

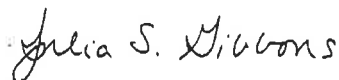
an unprecedented fiscal crisis that could seriously compromise the Constitutional mission of the United States courts. We believe our supplemental request meets the threshold for receiving an emergency designation.

The Judiciary's emergency actions to date do not constitute a solution to the budget crisis facing the federal courts as a result of sequestration. Instead, these actions represent a conscientious effort to mitigate the adverse impact of sequestration on court operations in an attempt to ensure continued access to justice for the citizens of this country. However, sequestration cuts have created an unprecedented financial crisis that is impacting all facets of federal court operations.

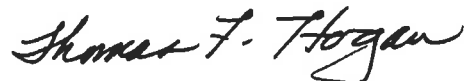
Finally, we note that Executive Branch agencies with criminal justice responsibilities have had the flexibility and resources to address their fiscal year 2013 sequestration cuts. As a result, these agencies – which directly impact the workload of the Judiciary – have been able to avoid furloughs. While the Judiciary has the authority to transfer funds between appropriation accounts, it does not have the available funding flexibility needed to do so. Instead, we must ask Congress to approve a supplemental appropriation.

Please feel free to contact us if you have any questions regarding this supplemental appropriations request.

Sincerely,



Julia S. Gibbons  
Chair, Judicial Conference  
Committee on the Budget



Thomas F. Hogan  
Secretary, Judicial Conference  
of the United States

2 Enclosures

**SUMMARY OF JUDICIARY FISCAL YEAR 2013  
EMERGENCY SUPPLEMENTAL REQUEST**

**COURTS SALARIES AND EXPENSES**

The Courts Salaries and Expenses account funds the bulk of federal court operations including the operations of the appellate, district, and bankruptcy courts, and probation and pretrial services offices. This account was cut \$239 million below fiscal year 2012 levels under sequestration. Given the decentralized nature of the federal court system, individual courts will decide how to absorb the majority of cuts required by sequestration. To mitigate the impact of sequestration on employees, the courts have slashed non-salary budgets but even with these reductions, on a national level, up to 1,000 court employees could be laid off over the remainder of the fiscal year and thousands of employees face furloughs. These staffing losses will come on top of the nearly 2,200 probation and pretrial services officers and clerks' office staff the courts have already lost since the end of July 2011, a 10 percent loss of staff. Cuts to clerks' office staffing will result in the slower processing of civil and bankruptcy cases which will impact individuals, small businesses, and corporations seeking to resolve disputes in the federal courts.

Sequestration cuts will also impact public safety. Our probation and pretrial services officers are federal law enforcement officers that supervise defendants awaiting trial and offenders on post-conviction release. Cuts to officer staffing levels mean less deterrence, detection, and response to possible resumed criminal activity by federal defendants and offenders in the community. In addition, 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.

Of the \$31.5 million in fiscal year 2013 supplemental funding requested for Courts Salaries and Expenses, \$18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees. The remaining \$13.0 million will restore half of the sequestration cuts to drug testing, substance abuse, and mental health treatment services for defendants awaiting trial and offenders released from prison. Timely diagnosis and treatment of drug and mental health conditions is critical to defendants/offenders successfully completing their terms of release and ensuring community safety.

## DEFENDER SERVICES

The Judiciary's Defender Services program provides financially eligible federal defendants with defense counsel and related services that, under the Sixth Amendment and the Criminal Justice Act, the government must fund in order to prosecute cases. Program costs are essentially comprised of compensation to federal defender organization (FDO) staff, payments to private "panel" attorneys, case related expenses (expert witnesses, interpreters, investigations, etc.), space rent, and other fixed costs. Consequently, the primary options for absorbing the \$52 million sequestration cut are reducing FDO staffing levels and/or deferring payments to private panel attorneys. Reducing FDO staff results in appointments being shifted to panel attorneys thus increasing those costs, and deferring panel attorney payments into fiscal year 2014 only adds to fiscal year 2014 appropriations requirements. Absent supplemental funding, the Judiciary will need to suspend payments to private panel attorneys for the last 15 business days (3 weeks) of the fiscal year, and FDOs will need to further reduce costs through staffing cuts and by furloughing employees for a national average of approximately 15 days for the remainder of the fiscal year.

We are aware that the U.S. Department of Justice is not furloughing staff so we anticipate the pace at which criminal cases requiring appointment of defense counsel will continue unabated, while resources in the Defender Services program are diminishing. Between October 2012 and April 2013, FDOs downsized by 113 employees and other employees were furloughed. Further FDO cuts and the anticipated suspension of panel attorney payments will create the real possibility that panel attorneys may decline to accept Criminal Justice Act appointments in cases that otherwise would have been represented by FDOs. Delays in the cases moving forward may result in violations of constitutional and statutory speedy trial mandates resulting in criminal cases being dismissed.

Of the \$41.4 million in supplemental funding requested for Defender Services, \$27.7 million is required to avoid deferring payments to private attorneys for the last 15 business days (3 weeks) of the fiscal year. To address staffing losses, \$8.7 million is needed to avoid further staffing cuts and furloughs in FDOs during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 FDO employees. The remaining \$5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb without the need for supplemental funding.

**Federal Judiciary**  
**FY 2013 Supplemental Appropriations Request**  
 (\$000)

Appropriation Account	FY 2012	FY 2013					FY 2013
	FY 2012 Enacted Approp.	FY 2013 Full Year CR (P.L. 113-6) <sup>1</sup>	FY 2013 Sequestration Cut <sup>2</sup>	FY 2013 Available Appropriation	FY 2013 Supplemental Request	FY 2013 Revised Appropriation	
U.S. Supreme Court							
Salaries & Expenses	74,819	74,684	(3,653)	71,030	-	71,030	
Care of Building and Grounds	8,159	8,143	(410)	7,732	-	7,732	
U. S. Court of Appeals for the Federal Circuit	32,511	32,462	(1,509)	30,953	-	30,953	
U. S. Court of International Trade	21,447	21,405	(992)	20,412	-	20,412	
<i>Courts of Appeals, District Courts &amp; Other Judicial Services (CADCOJS)</i>							
Salaries & Expenses	5,015,000	5,015,955	(239,114)	4,776,841	31,500	4,808,341	
<i>Vaccine Injury Fund</i>	5,000	4,990	-	4,990	-	4,990	
<b>Total</b>	5,020,000	5,020,945	(239,114)	4,781,831	31,500	4,813,331	
Defender Services	1,031,000	1,037,920	(51,865)	986,055	41,400	1,027,455	
Fees of Jurors & Commissioners	51,908	51,804	(2,611)	49,193	-	49,193	
Court Security	500,000	499,000	(25,153)	473,847	-	473,847	
<i>Subtotal, CADCOJS</i>	6,602,908	6,609,670	(318,744)	6,290,926	72,900	6,363,826	
Administrative Office	82,909	82,743	(4,171)	78,572	-	78,572	
Federal Judicial Center	27,000	26,946	(1,358)	25,588	-	25,588	
Judicial Retirement Funds (mandatory)	103,768	125,464	-	125,464	-	125,464	
U.S. Sentencing Commission	16,500	16,467	(830)	15,637	-	15,637	
<b>Total, The Judiciary</b>	6,970,021	6,997,983	(331,668)	6,666,314	72,900	6,739,214	

Sequestration to Judiciary Fees: (13,974)

Total Judiciary Sequestration: (345,642)

<sup>1</sup> Reflects Judiciary appropriations included in the FY 2013 full year CR (P.L. 113-6) as well as the reduction associated with the 0.2 percent across-the-board rescission.

<sup>2</sup> Reflects sequestration cuts calculated by the Office of Management and Budget on March 1, 2013.

**FEDERAL JUDICIARY  
FY 2013 SUPPLEMENTAL APPROPRIATIONS REQUEST**

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

**SALARIES AND EXPENSES**

Bill Language

*For an additional amount for 'Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses,' \$31,500,000, for emergency expenses of the courts for the fiscal year ending September 30, 2013, including amounts necessary to minimize staffing reductions and furloughs, and for drug testing, drug treatment, and mental health treatment services of offenders and defendants in the probation and pretrial services program. Provided, That the amount provided herein is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.*

Justification

- \$18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees.
- \$13.0 million will restore half of the sequestration cuts to drug testing, substance abuse, and mental health treatment services for defendants awaiting trial and offenders released from prison. Timely diagnosis and treatment of drug and mental health conditions is critical to defendants/offenders successfully completing their terms of release and ensuring community safety.

## DEFENDER SERVICES

### Bill Language

*For an additional amount for 'Courts of Appeals, District Courts, and Other Judicial Services, Defender Services,' \$41,400,000, for emergency expenses related to the representation of defendants under the Criminal Justice Act for the fiscal year ending September 30, 2013, including amounts necessary to minimize staffing reductions and furloughs in federal defender organizations, for the compensation and reimbursement of panel attorneys and experts, and for representation costs associated with high-threat trials. Provided, That the amount provided herein is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.*

### Justification

- \$27.7 million is required to avoid deferring payments to private attorneys representing indigent defendants under the Criminal Justice Act for the last 15 business days (3 weeks) of the fiscal year. Without additional funding, sequestration cuts will necessitate that these expenses shift to fiscal year 2014. These costs were not included in the Judiciary's fiscal year 2014 budget request to Congress.
- \$8.7 million will avoid further staffing cuts through layoffs, buyouts and early outs, and furloughs in federal defender organizations during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 federal defender organization employees.
- The remaining \$5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb without the need for supplemental funding.