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## United States Senate

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February 25, 2013

### Via Electronic Transmission

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

Dear Attorney General Holder:

The Budget Control Act of 2011<sup>1</sup>, as subsequently amended by the American Taxpayer Relief Act of 2012<sup>2</sup>, requires that on March 1, 2013, each non-exempt discretionary spending account shall be reduced to avoid breaching discretionary spending limits determined by the Act.<sup>3</sup> In real terms, this sequestration means each federal agency and Department that is not-exempted shall reduce its budget so as not to violate the required spending caps. As the sequestration deadline is fast approaching, I write today to seek further clarification on the impact sequestration will have the Department of Justice's (Department's) budget for FY2013.

On January 14, 2013, Deputy Director for Management Jeffrey Zients of the Office of Management and Budget (OMB) issued a memorandum for the heads of all Departments and Agencies (hereinafter OMB Memo) regarding planning for uncertainty in FY 2013.<sup>4</sup> That memorandum laid out a series of guiding principles for preparing plans for sequester. Specifically, the memorandum recommends: (1) using flexibility to reduce operational risks and impacts on the agency's core mission, (2) identifying and addressing operational challenges that could have a negative impact on the agency's mission or impact life, safety, or health concerns, (3) identifying the appropriate means to reduce workforce costs, (4) reviewing grants and contracts to determine where cost savings may be achieved, (5) utilizing flexibility such as reprogramming and transfer authority, and (6) maintaining adherence to the requirements in the Worker Adjustment and Retraining Notification (WARN) Act.<sup>5</sup> The OMB Memo also instructed all agencies to work with OMB prior to taking any budget action in advance of sequester and required each agency to "submit draft contingency plans for operating under sequestration for review."<sup>6</sup>

In your letter to the Chairwoman of the Senate Committee on Appropriations dated February 1, 2013, you detailed that under sequester the Department faces approximately a \$1.6 billion

<sup>1</sup> Pub. L. No. 112-25, 125 Stat. 240 (2011).

<sup>2</sup> Pub. L. No. 112-240, 126 Stat. 2313 (2012).

<sup>3</sup> Budget Control Act of 2011, Pub. L. No. 112-25, § 251, 125 Stat. 240, 241 (2011).

<sup>4</sup> Memorandum from Jeffrey D. Zients, Deputy Director for Management, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Jan. 14, 2013) (on file with the Senate Judiciary Committee).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 3.

reduction from the current funding level.<sup>7</sup> This adds up to approximately 5% of the \$27.1 billion the Department requested in the FY2013 budget. Your letter also details that the cuts are the equivalent of losing “1,000 federal agents to combat violent crime, pursue financial crimes, help secure the Southwest Border, and ensure national security, as well as 1,300 correctional officers to maintain the safe and secure confinement of inmates in federal prisons.”<sup>8</sup> More specifically, your letter breaks down the sequester cuts by agency noting the FBI will need to cut \$550 million, ATF \$60 million, U.S. Marshals Service \$60 million, Civil Division \$14 million, U.S. Attorneys \$100 million, and Executive Office of Immigration Review \$15 million. However, you letter failed to indicate the impact sequester would have on a number of other components within the Department, namely the National Security Division, Criminal Division, Civil Rights Division, and the Office of Justice Programs—among many others.

Aside from the significant amount of “sky is falling” rhetoric, perhaps the most concerning portion of your letter to Chairwoman Mikulski was the portion dealing with your concerns with the impact sequester would have on the Bureau of Prisons (BOP). Your letter indicates that sequester will require a cut of \$338 million from the BOP requiring over 36,000 staff furloughs. However, the letter also indicates that this cut will “slow the ongoing activations of new prisons that have completed construction during the last few years (FCI Berlin, NH, and FCI Aliceville, AL). BOP would not begin the FY 2013 planned activations of FCI Hazelton, WV, or USP Yazoo City, MS. BOP would still incur costs to secure and maintain these prisons, along with the prison in Thomson, IL.”<sup>9</sup> However, nowhere in the letter does it discuss your decision to purchase the prison in Thomson, IL during FY 2013 for \$165 million, utilizing funds in the non-appropriated Asset Forfeiture Fund, despite the fact that these other facilities were already built and simply required funds to activate and staff the prisons. As a result, notwithstanding sequester, had the Department not purchased the Thomson facility for \$165 million from the Asset Forfeiture Fund, funds would have been available to open at least one of these four additional facilities. Instead, the Department now faces sequester holding four potentially operational prisons, and a fifth, Thomson, that requires tens of millions of dollars in renovations.

Against this backdrop of selective information provided to Congress regarding the true impact these budget cuts will have on the Department, I ask that you provide responses to the following questions and requests for information regarding the many unanswered questions about the impact sequester will have on the Department that were not addressed in your letter to Chairwoman Mikulski:

- (1) Provide a copy of all draft contingency plans for operating under sequester developed pursuant to the January 14, 2013, OMB Memo and/or those submitted to OMB for review.

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<sup>7</sup> Letter from Eric H. Holder, Jr., Attorney General, United States Department of Justice, to Senator Barbara Mikulski, Chairwoman, Committee on Appropriations, United States Senate (Feb. 1, 2013) (on file with the Senate Judiciary Committee).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3.

- (2) In the September 2012 report to Congress pursuant to the Sequestration Transparency Act of 2012, P.L. 112-155,<sup>10</sup> OMB indicated that the sequester would cut \$2 million from the budget of the National Drug Intelligence Center (NDIC), despite the fact that the NDIC was closed on June 15, 2012. To better understand any other inaccuracies that may be in the September 2012 report, provide a list of discrepancies, if any, in the September 2012 OMB report related to any Department accounts discussed.
- (3) What accounts, if any, at the Department have been designated as part of the “security” category of discretionary appropriations associated with agency budgets for the intelligence community management account?
- (4) Had the Department had the \$165 million it paid for the Thomson, IL prison, in terms of staffing and operations, which of the four prisons could have been activated utilizing \$165 million?
- (5) Your letter to Chairwoman Mikulski indicates significant cuts to law enforcement working on matters preventing and prosecuting violent crime that could impact “life, safety, or health concerns” as defined by the OMB Memo. How do you reconcile these potential sources of savings despite the clear language in the OMB Memo stating that agencies should “adhere to the following guiding principles, to the extent practicable and appropriate”?
- (6) Your letter did not provide specific reductions as allocated to the Criminal Division, Civil Rights Division, Antitrust Division, National Security Division, Office of Justice Programs, Community Oriented Policing Services (COPS), Office of Violence Against Women (OVW), Office of the Solicitor General, Office of Legal Counsel, Justice Management Division, and the Drug Enforcement Administration, among others. As such, I ask that you provide a breakdown of pending reductions for all Department entities and offices.
- (7) Non-appropriated funds, such as the 3% fund, Asset Forfeiture Fund, HCFAC Fund, and others, account for a significant portion of the Department’s budget. What impact, if any, will sequester have on these accounts and the individuals hired and funded by these accounts?
- (8) Your letter indicates that “discretionary and flexible programs, such as grants, will likely be required to ‘donate’ via transfer authority to components facing serious life safety or security issues, such as BOP” under sequester.<sup>11</sup> Yet, your letter provides no details as to which grants and flexible programs will be required to “donate” to other life safety critical mission elements. Provide a detailed list of cuts the Department intends to apply to grants and how those grants will be impacted. Additionally, provide a reason those grants which are required to “donate” resources were not specifically detailed in your February 1, 2013, letter to Chairman Mikulski.
- (9) Missing from your letter was a detailed analysis of whether the Department has continued a hiring freeze since the passage of the Budget Control Act of 2011. I ask that you provide a detailed list of the number of individuals hired by the Department since the passage of the Budget Control Act. Further, provide a breakdown of the number of individuals hired since January 1, 2013.

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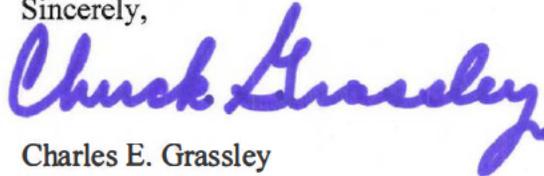
<sup>10</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB REPORT PURSUANT TO THE SEQUESTRATION TRANSPARENCY ACT OF 2012 (2012), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/stareport.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf).

<sup>11</sup> *Id.* at 5.

- (10) What impact, if any, will sequester have on conference spending by the Department? Will there be a blanket prohibition on conferences in lieu of furloughs? If not, why not?
- (11) Between FY2007-FY2011, non-mission travel on aircraft operated by the Department constituted 697 flights totaling more than \$11.4 million. The vast majority of this travel by Department executives was on executive jets operated by the Department—including over 60% of the flight hours on two Gulfstream V's operated by the Department. What impact, if any, will sequester have on executive travel via executive jets operated by the Department? Given the OMB Memo recommendation to “use any available flexibility to reduce operational risks and minimize impacts on the agency’s core mission,” will the Department eliminate or significantly curtail non-mission travel on executive jets operated by the Department? If not why not? If not, what steps will the Department be taking to reduce non-mission travel on executive jets operated by the Department? Provide any cost analysis of savings sought through a reduction in travel in light of sequester.
- (12) What impact, if any, will sequester have on the use of Department vehicles by employees for commuting to and from work given the pending budget shortfalls?

Given the end of the week deadline for sequester, I ask that you provide this information as soon as possible, but no later than March 6, 2013, [REDACTED]. In the event your response requires transmitting classified information, please contact my staff to make the proper arrangements with the Office of Senate Security.

Sincerely,



Charles E. Grassley  
Ranking Member

Cc: The Honorable Patrick Leahy  
Chairman