



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE THOMAS F. HOGAN
Director

WASHINGTON, D.C. 20544

March 5, 2013

Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

The Administrative Office of the United States Courts (AO) recently received several requests for information about how the Judiciary is preparing to handle the impact of funding sequestration. The Judiciary's efforts to address this budgetary emergency have been extensive, involving countless hours spent by judges, and court and AO staff working to determine how best to withstand the severe cuts while still continuing to perform core constitutional duties. As background, following months of information gathering and planning, the Executive Committee met on December 19, 2012, to consider proposed actions to deal with the impact of sequestration on the federal courts. With enactment of the American Taxpayer Relief Act of 2012 and the subsequent delay in the effective date of sequestration, from January 2 to March 1, 2013, the Executive Committee met again on February 7, 2013, to finalize actions based on updated sequestration calculations for the Judiciary.

We consider the emergency measures approved by the Executive Committee (discussed below) to be one-time only. They cannot be sustained beyond fiscal year 2013 and will be difficult and painful to implement. The Judiciary cannot continue to operate at such drastically reduced funding levels without seriously compromising the constitutional mission of the federal courts. This is especially true if those funding levels continue into fiscal year 2014 and beyond. We are hopeful that Congress and the Administration will ultimately reach agreement on alternative deficit reduction measures that render the current sequestration cuts unnecessary.

The Executive Committee approved a number of emergency measures that applied primarily to the non-salary parts of the Judiciary budget. Because of our decentralized budget and management system for the courts, the planning is primarily done on the local

level. The goal of the emergency measures was to minimize the impact of sequestration on court staff by providing maximum flexibility to court managers. This was only partially successful. The sequestration cuts that went into effect March 1, 2013, total nearly \$350 million for the Federal Judiciary. Fiscal year 2013 court allotments on a national level would have declined by 14.6 percent below fiscal year 2012 allotments. Instead, after applying the emergency measures, court allotments have declined by 10.4 percent below fiscal year 2012 allotments. While this is a marked improvement, the allotments, after sequestration and implementation of the emergency measures, could still result in up to 2,000 on-board employees being laid off or thousands of employees facing furloughs for one day each pay period (a 10 percent pay cut). These sequestration staffing losses would come on top of the almost 9 percent decline in staff (over 1,800 probation officers and clerks' office staff) that has already been experienced in the courts since July 2011.

These budget reductions to the Judiciary will have serious implications for the administration of justice and the rule of law. Public safety will be impacted because there will be fewer probation officers to supervise criminal offenders released in our communities. Funding for drug testing and mental health treatment will be cut 20 percent. Delays in the processing of civil and bankruptcy cases could threaten economic recovery. There will be a 30 percent cut in funding for court security systems and equipment and court security officers will be required to work reduced hours, thus creating security vulnerabilities throughout the federal court system. In our defender services program, federal defender attorney staffing levels will decline, which could compromise the integrity of the defender function and delay payments to private attorneys appointed under the Criminal Justice Act for nearly three weeks in September. Sequestration will also require deep cuts in our information technology programs on which we depend for our daily case processing and on which we have successfully relied in past years to achieve efficiencies and limit growth in our budget.

I have enclosed for your information a description of guidance regarding sequestration given to federal courts nationwide in late February. While some of it is technical in nature, our guidance provides important information for the courts on funding levels under sequestration as well as practices for managing payroll and personnel activities under sequestration. As the enclosed description indicates, decisions about court closures, furloughing staff or other adverse personnel actions, managing court operations at lower funding levels, and salary policies under sequestration, reside with each court unit. Allowing individual court units to set their own funding priorities under sequestration is consistent with the decentralized structure of the federal court system and

Honorable Charles E. Grassley

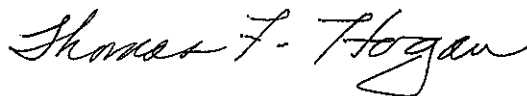
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long established Judiciary budget execution policies. I have, however, urged courts to delay implementation of any involuntary personnel actions, such as furloughs or terminations, until April when we hope to have a clearer picture of full-year funding for fiscal year 2013.

I hope this letter is responsive to your letter of February 27, 2013, and has provided you with insight into the actions we are taking to address sequestration as well as the devastating impact the cuts will have on the administration of justice in this country.

This letter is being provided in similar form to the chairman and ranking minority member of the House and Senate Judiciary Committees and to the chairman and ranking minority member of the House and Senate Appropriations Committees and their relevant subcommittees. If you require any additional information, please contact our Office of Legislative Affairs at 202-502-1700.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Hogan". The signature is written in dark ink and is positioned above the printed name and title.

Thomas F. Hogan
Director

Enclosure

Description of Sequestration Implementation Guidance for the Federal Judiciary

February 2013

The following describes the effects of the impending sequestration of Judiciary funds under the Budget Control Act of 2011 and the steps the Judiciary will likely need to take in the event that sequestration occurs as scheduled on March 1, 2013.

Outlook for Sequestration

It is becoming increasingly likely that Congress and the Administration will be unable to come to an agreement to prevent sequestration from occurring. Based on current estimates, sequestration would reduce available appropriations Judiciary-wide by approximately \$332 million (approximately 5 percent) below current funding levels. It is still possible that sequestration might be in place only for a short period of time. Congress and the Administration are expected to work during the month of March on legislation to fund the federal government for the rest of fiscal year 2013, after the current continuing resolution expires on March 27, 2013. Whether that ultimately will result in an agreement to replace sequestration, and at what funding level, is unknown. Even if sequestration in its present form is eliminated, funding for the Judiciary could still be reduced below fiscal year 2012 levels.

Emergency Measures Approved by the Executive Committee

The Executive Committee has been working throughout the fall and winter to develop emergency measures in the event that sequestration occurs. Many of these measures are temporary, one-time reductions that cannot be repeated if future funding levels decline. Judge Julia Smith Gibbons, chair of the Judicial Conference's Committee on the Budget, and Administrative Office Director Thomas F. Hogan are scheduled to testify on the Judiciary's fiscal year 2014 budget request before our House Appropriations Subcommittee on March 20, 2013. They plan to inform the Subcommittee of the negative impact that these measures will have on the Judiciary and reiterate that they are not sustainable in future years. If Congress ultimately provides a final appropriation that differs from the sequestration level, the Executive Committee would be asked to approve revised final financial plans and additional final allotments would be issued based on those revised plans, as appropriate. Attached is a complete list of the emergency measures.

Sequestration Allotments

If sequestration occurs on March 1, the emergency measures approved by the Executive Committee will be implemented. These measures will apply significant reductions below the current interim financial plans to nearly all areas of the Judiciary's budget. The Administrative Office (AO) Budget Division, working with various other AO offices, will be issuing revised allocations and full-year allotments to the courts and Federal Defender Offices (FDOs) based on

the approved emergency measures. These full-year allotments should be available to the courts and FDOs by March 8, 2013. The allotments will take into account what has already been issued under the current interim financial plans – thus they will represent the total funding that a court unit or FDO would receive if sequestration remained in place unchanged for the balance of the fiscal year.

Overall, fiscal year 2013 funding for court allotments on a ***national*** basis would be approximately 10.4 percent below fiscal year 2012 *allotment* levels. Under sequestration, local court salary allotments will be reduced by a total of 14 percent below full-year requirements and non-salary allotments will be reduced by 20 percent (for bankruptcy courts, salary allotments will be reduced by 12 percent below requirements and non-salary allotments will be reduced by 34 percent).

Decisions about closing courts, furloughing staff or other adverse personnel actions, how to manage court operations within these lower funding levels, and rewarding employees with step increases, promotions or cash awards, will remain with local court units. In addition, funds deposited by the courts into the Capital Investment Fund remain available for courts to utilize consistent with current program guidelines. Capital Investment Funds are now available for use upon request.

Guidance for Managing Payroll and Personnel

As noted previously, decisions about court operations within these lower funding levels, especially those dealing with court employees, remain with local court units. *If a court unit has payroll flexibility under the current interim financial plan but would be in a payroll deficit situation after sequestration, the AO strongly advises court units to delay the implementation of any involuntary personnel actions, such as furloughs or terminations, until April.* If we know our final fiscal year 2013 appropriations level by then we will learn whether it will be reduced by the current sequestration levels or some alternative funding levels. Any furloughs that may be imposed cannot be “undone.” However, if a court unit has a payroll deficit under the interim plan, its situation will be made worse by sequestration, and the unit may wish to take some steps now to mitigate its problem.

Unlike the Executive Branch, the Judiciary is not required to give a certain number of days notice to employees being furloughed, but an advance notice of at least two weeks is recommended. If court unit leaders are planning to take steps to downsize and/or furlough and have questions, they should contact the appropriate program office at the AO, as well as the Advisory Services Branch of the Office of Human Resources, for specific advice and guidance before implementing any plans they may have.

Coordination with Department of Justice

The Administrative Office is working closely at the national level with the Department of Justice (DOJ) to coordinate sequestration impacts. Some DOJ components reportedly face furloughs beginning in April 2013, which could impact court operations and security. It is uncertain at this time how exactly sequestration will impact the U.S. Attorneys and DOJ's litigating divisions. The U.S. Marshals Service has announced a 14-day furlough for its employees, so it is imperative that the courts work closely with their U.S. Marshal to ensure adequate security. The AO encourages each court to also reach out to other local DOJ contacts (U.S. Attorney, U.S. Trustee, Federal Detention Trustee, Bureau of Prisons) and also federal defender organizations to coordinate activities that impact court operations, such as filing deadlines, court schedules, and operating hours.

These are, of course, very uncertain and difficult times. Please be assured that the AO will continue to impress upon Congress the devastating impact of sequestration on the courts. The AO will also continue to maximize the resources Congress provides to us, as well as assist the courts wherever possible as they carry out the essential work of the Judiciary.

Description of Judiciary Budget Sequestration Emergency Measures

As approved on February 7, 2013

On December 19, 2012, the Executive Committee of the Judicial Conference approved a package of emergency measures to be implemented in the event that budgetary sequestration is imposed on the Judiciary pursuant to the Budget Control Act of 2011. Responding to intervening legislation that reduced the extent to which Judiciary spending would have to be curtailed under sequestration, the Executive Committee, on February 7, 2013, revised the emergency measures to scale back or eliminate certain spending cuts that had previously been approved. As modified, the emergency sequestration measures may be summarized as follows:

Salaries and Expenses Account – \$242 million shortfall below the FY 2013 interim financial plan

1. Reduce funding/spending by approximately \$67 million below the interim financial plan in “must-pay” budget categories as follows:

- Defer for the balance of FY 2013–
 - ✓ use of FY 2013 funding (excluding prior year carryforward) for Circuit Rent Budget program Component B funding previously allocated, provided that construction of chambers for replacement judges may, in emergency circumstances (determined in consultation with the Committee on Space and Facilities), be funded from the Director’s reserve. These funds are used by courts for less than prospectus level construction projects, approved by the Committee on Space and Facilities.
 - ✓ all use of Component C funds previously allocated for this year, as well as Component C funds carried forward from FY 2012 into FY 2013. These funds are used by circuit judicial councils to allow courts to expand into new space or to re-purpose or re-stack existing space;
 - ✓ use of the General Authorization for Training for judges and chambers staff occurring on or after March 1, 2013;
 - ✓ issuing any additional Second Chance Act allotments; and,
 - ✓ dedicated funding for claims paid by the Administrative Office (AO) Office of General Counsel and use the Director’s reserve to fund these claims as needed (at the same time increasing that reserve as a precaution if this or any other anticipated savings does not come to fruition).
- Based upon recent analysis of actual usage, reduce Networkx telecommunications appropriated funding by 10 percent, and proportionately increase the amount of these costs to be paid appropriately from Electronic Public Access (EPA) program receipts.

- Reduce FY 2013 funding (pro-rating savings for the remaining seven months of the fiscal year) of –
 - ✓ background investigations by approximately 50 percent;
 - ✓ law enforcement allotments by 20 percent below requirements, and permit these funds (along with Second Chance Act funds) to be reprogrammed;
 - ✓ the Probation and Pretrial Services Training Academy by approximately 23 percent;
 - ✓ the Court Operations Support Center by 10 percent;
 - ✓ the Central Violations Bureau by 10 percent;
 - ✓ the cyclical audit program by approximately 25 percent;
 - Shift the funding of staff support costs for the AO's Investment Services and Compliance Office to the discretionary side of the budget, and reduce it by 10 percent.
 - Reduce travel costs by eliminating exceptions (except with AO Director approval) for chambers staff and other court employees who accompany individual judges on official travel (approved on or after March 1, 2013) above the regular GSA allowance for subsistence expenses.
- 2. Reduce funding/spending by approximately \$28 million below the interim financial plan in discretionary budget categories held centrally at the AO on behalf of the courts as follows:**
- Defer funding of–
 - ✓ the centrally held share of the costs of circuit judicial conferences for FY 2013;
 - ✓ the balance of National Training Spending Plan discretionary training planned for FY 2013 (Note: this does not include retirement training, training for newly confirmed judges, or internal controls implementation training);
 - ✓ the balance of Federal Judiciary Television Network/video production services funding for FY 2013; and
 - ✓ information technology (IT) initiatives that are not critical to IT infrastructure for the courts or the AO, and do not directly impact daily

court operations;

- Reduce all other centrally held Judiciary Information Technology Fund (JITF) funding by an additional 5 percent to an overall 15 percent reduction below requirements.
 - Reduce all other centrally held S&E appropriated funding by an additional 10 percent to an overall 20 percent reduction below requirements.
3. **Repurpose approximately \$54 million in available carryforward balances not included in the interim financial plan to the FY 2013 financial plan from the following sources:**
- available fee recoveries (deobligations) from FY 2007; and
 - other additional unencumbered carryforward, identified in the Judiciary's FY 2014 budget request, originally planned to offset the FY 2014 budget request.
4. **Reduce/adjust funding by \$93 million below the interim financial plan for discretionary court allotments as follows:**
- Reduce court salary allotment funding by approximately 4 additional percentage points below *requirements* (to 14 percent below requirements for all court units except bankruptcy clerks offices, and to 12 percent below requirements for bankruptcy clerks offices). As stated previously, individual court units continue to have discretion to determine the requisite additional spending cuts/actions (such as furloughs or terminations) needed to manage within the reduced allotments. There is no requirement to furlough chambers staff or to close courts on a nationwide basis.
 - Reduce discretionary court non-salary formula allotment funding by an additional 10 percent below the interim financial plan, to an overall 20 percent below *requirements*. The 34 percent reduction in non-salary allotment requirements to bankruptcy clerks offices would not be changed. The 80 percent reduction to cyclical facilities maintenance requirements contained in the interim financial plan would not be changed. No additional funds for law books would be provided.
 - Based upon recent analysis of actual usage, fund a portion of FY 2013 local area network operational costs, including upgrades and infrastructure support, by appropriately utilizing EPA receipts rather than court IT infrastructure allotments funded by appropriated funds.

Defender Services Account – \$53 million shortfall below the FY 2013 interim financial plan

1. Apply recently identified additional unencumbered carryforward not included in the interim financial plan to the FY 2013 financial plan.

2. Reduce non-salary federal defender organization (FDO) allotments by reducing certain non-salary FDO requirements by 25 percent below the interim financial plan.
3. Reduce funding for training by 50 percent below the interim financial plan.
4. Defer payment of Criminal Justice Act (CJA) panel attorney vouchers for approximately 14 days at the end of FY 2013 into FY 2014.
5. Reduce FDO salary allotments by approximately 4 percent below the interim financial plan, leaving individual FDOs to determine the requisite additional spending cuts/actions needed to manage within the reduced allotments.

Court Security Account – \$26 million shortfall below the FY 2013 interim financial plan

1. Repurpose recently identified prior-year carryforward balances not included in the interim financial plan from the Court Security no-year account and from the JITF (a portion of the funds deposited from the Court Security account to fund the Facility Access Card project).
2. Reduce court security officer (CSO) work hours by 25 hours per officer (from 1,958 hours per CSO per year to 1,933).
3. Reduce funding of security systems and equipment by approximately 30 percent below the interim financial plan to reach the sequestration reduction target.

Additional, unanticipated prior-year funds recently returned from the U.S. Marshals Service (not already assumed to finance the FY 2013 interim plan) will be applied at the direction of the Committee on Judicial Security, with advance notice to the Executive Committee, to offset the above-described reductions in the Court Security account.

Fees of Jurors and Commissioners Account – \$3 million shortfall below the FY 2013 interim financial plan

Absent alternatives, civil jury trials may have to be suspended under sequestration for approximately four weeks beginning in September 2013. If needed, repurpose some of the prior-year carryforward funds already assumed to finance the FY 2014 budget request for this account, or transfer funds from balances in other Judiciary accounts.