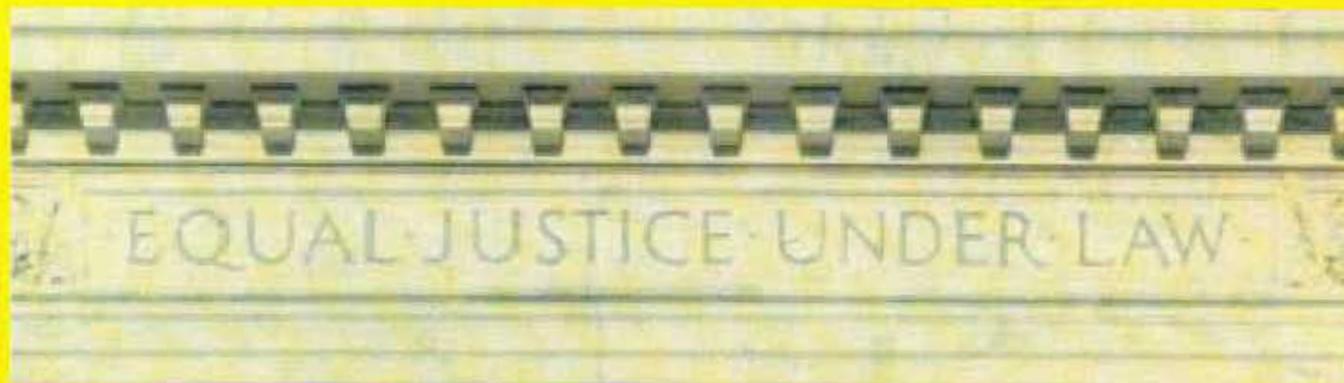


**The Judiciary**  
**Fiscal Year 2015**  
**Congressional Budget Justification**



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

*Defender Services*

**SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS**

Fiscal Year 2014 Appropriation	\$1,044,394,000
Fiscal Year 2015 Appropriation Request	\$1,053,158,000
Requested Increase from Fiscal Year 2014 Appropriation	\$8,764,000

**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 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, [~~\$1,044,394,000~~] *\$1,053,158,000*, to remain available until expended.

Total Fiscal Year 2015 Appropriation Required.....	2,720	1,053,158
Total Appropriation Increase, Fiscal Year 2014 to Fiscal Year 2015.....	2	8,764

**Financing the Fiscal Year 2015 Request:**

Total Appropriation Required.....	2,720	1,053,158
6.18 11. Anticipated carryforward from fiscal year 2014 into fiscal year 2015.....	-	25,000
Estimated Obligations, Fiscal Year 2015.....	2,720	1,078,158

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES**  
**DEFENDER SERVICES**  
Obligations by Activity  
(\$000)

Activity	FY 2013 Actual	FY 2014 Estimate	FY 2015 Request
<b>CJA Representations &amp; Related Expenses</b>	985,598	1,054,176	1,069,776
<b>Program Administration</b>	6,370	7,846	8,382
Total Obligations	991,968	1,062,022	1,078,158
Anticipated Financial Plan Savings	-	(25,000)	-
<b>Revised Obligations</b>	991,968	1,037,022	1,078,158
Unobligated Balance, Start of Year	(17,157)	(17,628)	(25,000)
Prior Year Recoveries	(6,384)	-	-
Unobligated Balance, End of Year <sup>1</sup>	17,628	25,000	-
<b>Available Appropriation</b>	986,055	1,044,394	1,053,158

<sup>1/</sup> FY 2013 includes a \$500,000 transfer from the Court of Appeals for the Federal Circuit

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

Obligations by Budget Object Class (\$000)

Description	FY 2013 Actual	FY 2014 Estimate	FY 2015 Request
1100 Personnel compensation	278,285	291,547	298,202
1200 Personnel benefits	86,131	91,837	93,021
1300 Benefits for former personnel	2,332	4,080	3,300
2100 Travel	6,696	9,248	9,705
2200 Transportation of Things	218	270	275
2310 Rental payments to GSA	39,630	41,025	41,722
2320 Rental payments to others	406	451	459
2300 Communications, utilities & misc.	5,403	7,134	7,255
2400 Printing and reproduction	96	140	142
2500 Other services	438,579	466,814	471,823
2600 Supplies and materials	1,484	2,106	2,142
3100 Equipment	7,445	11,256	11,447
4100 Grant Payments (to Community Defender Organizations)	125,263	136,114	138,664
Total Obligations	991,968	1,062,022	1,078,158
Anticipated Financial Plan Savings	-	(25,000)	-
<b>Revised Obligations</b>	<b>991,968</b>	<b>1,037,022</b>	<b>1,078,158</b>

**Full Time Equivalents (FTEs) by Activity**

	FY 2013 Actual	FY 2014 Estimate	FY 2015 Request
<b>CJA Representations &amp; Related Expenses<sup>1</sup></b>	<b>2,597</b>	<b>2,713</b>	<b>2,713</b>
<b>Program Administration<sup>2</sup></b>	<b>31</b>	<b>5</b>	<b>7</b>
<b>Total, FTEs</b>	<b>2,628</b>	<b>2,718</b>	<b>2,720</b>

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

<sup>2</sup> Under the Administrative Office restructuring, program administration staff (30 FTE) previously reported as direct FTE in the Defender Services account will be reported as reimbursable FTE in the Administrative Office account beginning in fiscal year 2014. The Defender Services account is still responsible for the financing of both salary and non-salary expenses related to these positions.

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

Relation of Obligations to Outlays (\$000)

	FY 2013 Actual	FY 2014 Estimate	FY 2015 Request	Difference
Total Obligations	991,968	1,037,022	1,078,158	41,136
Obligated balance, start of year	27,192	24,291	23,125	(1,166)
Obligated Balance, End of Year	(24,291)	(23,125)	(49,213)	(26,088)
Recoveries of prior year unpaid obligations	(2,363)	-	-	-
Less: Offsets	(3,517)			
<b>Net Outlays</b>	<b>988,989</b>	<b>1,038,188</b>	<b>1,052,070</b>	<b>13,882</b>

## GENERAL STATEMENT AND INFORMATION

Funds appropriated for the Defender Services account support the appointment of counsel and other services necessary to represent financially eligible defendants, which the judiciary is required to provide by the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other related statutes. Funds provide for the continuing education and training of those who furnish representational services under the CJA. The fiscal year 2015 request for appropriated funds is \$1,053.2 million, an increase of \$8.8 million (0.8 percent) over the fiscal year 2014 appropriation of \$1,044.4 million.

### MISSION AND GOALS OF THE DEFENDER SERVICES PROGRAM

The constitutional right to the assistance of counsel is a critical component of the criminal justice system. In *Gideon v. Wainwright*, 372 U.S. 335 (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 ensures that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services. By fulfilling its mission, the Defender Services program helps to: (a) maintain public confidence in the nation's commitment to equal justice under law; and (b) ensure the successful operation of the constitutionally-based adversary system of justice by which both federal criminal laws and federally guaranteed rights are enforced.

The four goals of the Defender Services program are to:

(1) timely provide counsel services to all eligible persons; (2) provide 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 assigned counsel so that the rights of individual defendants are safeguarded and enforced.

### TYPES OF COUNSEL:

#### Federal Defenders and Private Attorneys

The CJA authorizes the appointment of counsel, who are either attorneys employed by a federal defender organization (FDO) or private "panel" attorneys. 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). In the 91 (of 94) judicial districts served by an FDO, there is a critical need for qualified panel attorneys. 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 previously represented clients). In situations where federal defenders are unavailable due to FDO conflicts or workload demands, and in the districts not served by an FDO, private or "panel" attorneys must be appointed to represent all eligible individuals. Three districts (Georgia-Southern, Kentucky-Eastern, and Northern Mariana Islands) have no FDO. Every year Criminal Justice Act attorneys are appointed in over 200,000 cases where liberty, livelihood, and personal integrity are at stake.

### Federal Defender Organizations

The CJA authorizes two types of FDOs: (1) federal public defender organizations, which are part of the judiciary, and (2) community defender organizations, which are private, state-chartered, non-profit corporations funded by annual federal grants. An FDO may be established in any district (or combination of adjacent districts) in which at least 200 appointments are made annually. There are currently 81 FDOs authorized to serve 91 of the 94 judicial districts. For fiscal year 2015, the judiciary projects that federal defenders will be appointed in approximately 121,542 weighted cases.

FDOs are the flagships of federal criminal defense, delivering high-quality representation at reasonable costs while safeguarding the rights of individuals under the Constitution. They attract, train, and retain lawyers with skills comparable to those who prosecute criminal matters in U.S. attorney offices. Because of the expertise and efficiencies they have developed as law offices focused exclusively on federal criminal practice, FDOs provide cost-effective defense services, consistent with the best practices of the legal profession.

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

FDO staff reduce costs and 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, litigation support, and issues involving death penalty cases.

### Panel Attorneys

A “panel” attorney is a private lawyer who serves on a panel maintained by the district or appellate court and is assigned by the court to represent financially eligible defendants in accordance with the CJA. Nationally, over 90 percent of CJA panel attorneys are in small law firms (with six or fewer lawyers), and approximately 60 percent are sole practitioners. The CJA provides that these attorneys shall be reimbursed for their expenses and compensated at statutorily authorized hourly rates for their services. For fiscal year 2015, the judiciary projects that panel attorneys will be appointed in 90,900 unweighted cases.

## IMPACT OF SEQUESTRATION

Federal defenders and panel attorneys rely on adequate funding to fulfill their constitutional mandate to ensure that the Sixth Amendment rights of individual defendants (more than 200,000 case each year) are safeguarded and enforced. However, budget cuts and sequestration reductions in fiscal year 2013, temporary reductions to the panel attorney hourly rate, and 22 days of suspended voucher payments, followed by continued funding uncertainty, have had a severe and negative systemic impact on the ability of all attorneys appointed under the CJA to meet these constitutional obligations. For decades, the federal courts have come to rely upon readily available and well-qualified CJA panel attorneys and federal defenders who have the training, resources, and experience necessary to provide high-quality representation in federal criminal cases.

Due to the fiscal year 2013 sequestration, this reliance has been jeopardized. Widespread furloughs and layoffs in fiscal year 2013 caused an unprecedented loss of experienced federal defender staff and, in some offices, created an untenable conflict in having to choose between hiring a needed expert in a case and furloughing defender staff. A temporary emergency rate cut of \$15 per hour for panel attorneys (from \$178 per hour to \$163 per hour for capital representations and from \$125 per hour to \$110 per hour for non-capital representations), followed by weeks of deferrals and the warning that there could be more deferrals, have resulted in experienced private attorneys leaving the CJA panel or declining appointments. Reductions in the fiscal year 2013 national training budget for substantive legal training for both defenders and panel attorneys have drastically decreased training on the substantive legal knowledge and skills necessary for criminal defense practice: 18 fiscal year 2013 training programs were cancelled, 7 of the 9 authorized federal defender staff core training programs were not held, 5 of 13 non-capital events open to panel attorneys and federal defender staff were cancelled, and 6 of 13 death penalty training initiatives were not implemented. Because of the fiscal year 2013 cancellations, nearly 2,000 FDO staff and CJA practitioners did not receive training who otherwise would have.

The hardships in the courts and in FDOs were emphasized in testimony given in July 2013 before the Senate Judiciary Committee's Subcommittee on Bankruptcy and the Courts at a hearing entitled, "Sequestering Justice: How the Budget Crisis is Undermining Our Courts." At the hearing, Judge Julia S. Gibbons, Chair of the Judicial Conference's Budget Committee testified, "Flat funding at sequestration levels would ... irreparably damage the system that is a hallmark of our liberty

around the world." Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia, testified that FDOs were "a model of quality and efficiency," but that due to sequestration, FDOs were "cutting ourselves to the bone," and "[i]f action is not taken immediately to save the program, the federal defender system will be devastated."

#### Impact of FY 2014 Enacted Funding Level and FY 2015 Requested Levels on Defender Services

##### FDOs

The fiscal year 2014 enacted level and the fiscal year 2015 request level will enable the FPDOs and CDOs to back-fill lost positions and maintain staff at pre-sequestration levels. This restoration of staff should ease the stress on the defender services program and continue the standard of high quality representations that is expected. Specifically, the fiscal 2014-enacted and fiscal year 2015 requested funding levels would permit FDOs to accept appointment in high-threat trials; the restoration of expert services funding; appropriate case-related travel; the cyclical replacement of information technology equipment and software; promotions and assistant federal defender salary increases; and limited tenant alterations. In addition, to the extent that the Department of Justice's financial outlook has improved, the possibility exists that additional caseload may be anticipated in the near future.

##### Panel

The fiscal year 2014 enacted level provided sufficient funding to pay for the fiscal year 2013 panel attorney payment deferrals, lift the temporary panel attorney rate reductions beginning March 1, 2014 and provides, consistent with the one percent Employment

Cost Index (ECI) increase for federal employees effective on January 13, 2014, a cost-of-living adjustment to panel attorney non-capital and capital hourly rates. As a result, for work performed on or after March 1, 2014, panel attorney hourly rates will increase to \$126 for non-capital representations and \$180 for capital representations. The fiscal year 2015 request for panel attorney payments fully funds the projected representations, as well as avoids any deferrals from fiscal year 2015. This request would also support an hourly rate increase consistent with the fiscal year 2015 one percent ECI assumed for federal employees.

#### Training

Three fiscal year 2014 training programs were cancelled as a result of fiscal year 2014 budgetary uncertainty. The final appropriation allows for the implementation of all other authorized training programs. However, as a result of the delay in enacting the appropriation, and concerns about its final level, the number of fiscal year 2014 Defender Services training initiatives will be 12 fewer than in fiscal year 2012. It is hoped that, in fiscal year 2015, it will be possible to fund all authorized Defender Services training programs as well as FDO-supported local programs for both FDO staff and panel members.

### COST CONTAINMENT INITIATIVES

#### Cost-Effective Services

The Defender Services program has engaged in extensive efforts to contain costs and practice fiscal responsibility, without compromising its constitutionally mandated mission to ensure that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense

services. There is strong awareness of the budget challenges facing our nation and the need to continue cost-containment measures in every aspect of the Defender Services program.

Key cost-containment initiatives include, but are not limited to: (1) promoting the use of case budgeting to control expenditures in capital and other high-cost CJA panel attorney representations; (2) applying FDO case weights to assist in projecting FDO resource requirements nationally and evaluating individual FDO requests for additional resources; (3) supporting distance learning initiatives to optimize the training opportunities accessible to CJA attorneys with the limited funds available for this purpose; and (4) continue to develop and implement an electronic CJA voucher system. The defender services program is also continuing other strategies, in collaboration with the Department of Justice (DOJ), to reduce the costs of federal defender and panel attorney representations associated with matters of discovery and DOJ's death penalty declination process.

#### Case Budgeting of CJA Panel Attorney Representations

Since 2007, Defender Services has funded Case-Budgeting Attorneys (CBAs) in the Second, Sixth, and Ninth Circuits to identify cost drivers, monitor case expenditures, assist district and appellate judges and CJA panel attorneys with individual case budgets and cost issues, assist courts in reviewing vouchers in complex cases to help ensure the reasonableness of the claims, and coordinate case budgeting and other CJA cost-containment efforts in high-cost representations.

In fiscal year 2013, the 2.6 percent of panel attorney representations eligible for budgeting (all capital cases and non-

capital representations exceeding \$30,000) accounted for approximately 31.0 percent (\$130.1 million) of the annual expenditures for all panel attorney representations.

The Federal Judicial Center (FJC) conducted an evaluation of the Case Budgeting project to discern its impact on case management and cost control. The FJC's December 2010 evaluation report found that the CBAs accomplished the goal of containing costs, while achieving a high-quality defense, by enhancing management of and accountability over high-cost cases. The FJC report also found that the savings from the program exceeded its costs.

The judiciary continues to promote the nationwide use of case-budgeting techniques for these representations in order to help ensure that, in all capital and other high-cost panel attorney cases, the expenses of representation are anticipated, substantiated, monitored, and, where appropriate, limited before they are incurred.

At its March 2011 session, the Judicial Conference approved the utilization of circuit CBA positions, the continued Defender Services-account funding for the three current CBAs, and an incremental expansion in the number of positions. The fiscal year 2015 request includes funding to support the annualization of 4 case budgeting positions (2 FTE) added in fiscal year 2014. The cost of those positions is anticipated to be offset by savings in panel attorney representation expenditures.

#### FDO Resource Management using Case Weights

Several factors, including the number and type of cases, and case- and district-specific complexities, determine the funding

an FDO requires to provide effective CJA representation. Starting in fiscal year 2012, the judiciary implemented a budget methodology utilizing the weighted case analysis developed by the RAND Corporation.

RAND's case-weighting system is based on average FDO attorney time expended to complete each case type in comparison to the national average for all case types. RAND concluded that the weights could be used to help evaluate workload changes for a particular organization from year to year and noted that weighted caseloads offer a better tool for identifying new resource requirements than do raw case numbers.

Beginning in fiscal year 2014, the judiciary used a new method for formulating the FDO portion of the Defender Services congressional budget justification. This method relies on case-weight measures for determining staffing and funding needs. This approach promotes an empirically-based model that more accurately reflects the requirements of the FDOs. In June of 2013, the judiciary contracted with RAND to update the FDO case weights.

#### FDO Work Measurement Study

In fiscal year 2013, the Administrative Office began the process of conducting a work measurement study of FDOs. This study will be used in the creation of a workload staffing formula or formulas for the FDO portion of the Defender Services budget request. These formulas will be similar to the ones used for developing staffing levels across other judiciary accounts. The formulas are currently scheduled to be delivered to the Judicial

Resources Committee of the Judicial Conference in June 2015 for use in the fiscal year 2016 financial plan and the fiscal year 2017 budget request.

#### Distance Learning

The Defender Services program continues to develop and produce distance learning programs. Beginning in October 2010, substantive criminal defense video training sessions have been made available to CJA practitioners, expanding the reach of the programs without the necessity of additional live training events. Each year, between 1,000 and 2,000 practitioners access the videos. Beginning in July 2013, Defender Services began presenting monthly webinars, which are recorded for later use. Approximately 3,500 practitioners per year will view either the live or recorded webinars. 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 video training sessions and webinars as part of their efforts to train panel attorneys locally, so that they can obtain more training, more often.

#### Discovery Costs

As the data associated with individual CJA representations expands in size and complexity year after year, CJA attorneys—both FDO staff and panel attorneys—require new tools to help them organize, review, and manage the large amounts and variety of information provided by the prosecution as discovery material. Paper documents must be scanned, and analog recordings digitized. This is especially necessary for cases with hundreds of thousands or millions of pages of information. Evidence encompasses not only discovery

materials produced by the government, but those gathered by third parties and the defense. Federal defenders and panel attorneys must have sufficient litigation resources, including national support staff, to meet the challenge presented by DOJ's litigation support capabilities. The judiciary foresees that the number of discovery-intensive cases will continue to grow.

Three major initiatives are in place to address this issue,

1) A collaborative effort between representatives of the judiciary and staff from the DOJ reached fruition with the creation of "Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases," which was released in February 2012. The recommendations are designed to facilitate a more predictable, cost-effective, and efficient management of electronic discovery, and a reduction in the number of disputes relating to ESI, by encouraging early discussion of electronic discovery issues through "meet and confers" between the prosecution and defense; the exchange of data in standard or reasonably useable formats; and resolution of disputes without the necessity of court involvement, where possible.

For example, in one case, 34 defendants were charged with racketeering involving the MS-13 street gang. The discovery provided to defense counsel by the U.S. Attorney's Office contained over 10,000 hours of wiretapping conversations in a foreign language, but included no index, no chronology, no organization, no identifying information as to which defendant the tape pertained to or where and when the recordings were made. As a result, 34 defense attorneys faced the daunting task of translating and reviewing over 10,000 hours of taped wire

interceptions to determine which conversations pertained to his or her client. With a more collaborative effort between the judiciary and the DOJ, situations like these, and the associated increased costs, can be avoided in the future. The judiciary has continued to work with the DOJ by doing joint and separate training on the protocol, and continuing discussions on implementation and potential modification of the protocol.

2) Contracts with three coordinating discovery attorneys (CDAs) to advise panel attorneys and defender offices on cost-effective ways to manage large volumes of documents in the most complex cases, while providing a high quality of representation to the client. As of October 2013, the CDAs have been appointed in more than approximately 41 cases, and because nearly all of the cases are multi-defendant cases, are providing services to over 600 CJA attorneys nationally.

3) The procurement of a number of 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 while, with some of the software, avoiding the higher cost alternative of purchasing software in multiple cases year after year.

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

The judiciary has long engaged in efforts urging DOJ to streamline its “fast-track” procedures for evaluating and making decisions *not* to seek the death penalty as a cost-containment measure in cases where it is highly unlikely that DOJ will ultimately seek the death penalty. In the vast majority of death-

eligible cases, the local U.S. attorney does not recommend, and the Attorney General does not authorize, seeking the death penalty. However, unless and until DOJ 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 and the judiciary is obligated to bear the substantial cost of the statutorily required two capital qualified defense counsel – compensated at the higher capital rate – who must undertake the intensive, time-consuming work required to attempt to persuade the government not to seek the death penalty, and 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.

CJA Guideline 670 (jointly developed with DOJ staff and approved by the Judicial Conference in September 2007) is intended to promote cost savings by having DOJ decide earlier in the process when it will *not* seek the death penalty. The guideline encourages courts to set reasonable deadlines for stages of the death penalty authorization process (subject to extension for good cause).

In July 2011, DOJ published a revised death penalty authorization protocol. The revised protocol re-emphasizes pre-indictment determinations of whether to seek the death penalty, which could lead to a decrease in the number of death-eligible indictments. The judiciary had hoped that the revised protocol would adopt a more de-centralized process, deferring to local U.S. Attorneys’ recommendations against seeking the death penalty or in favor of a negotiated non-capital disposition, which

would save a significant amount of money. The subject was discussed with senior DOJ representatives, who expressed support for continuing DOJ collaboration with judiciary/Defender Services representatives to find more effective ways to streamline DOJ's *non-death* decision-making process.

#### Electronic Panel Attorney Voucher Management

In the summer of 2013, an initial functional comparison was conducted of the eCJA Voucher Payment System (VPS) and eVoucher, a voucher processing system developed by the district court in Nevada. The comparison showed that eVoucher met more of the necessary functional requirements than eCJA VPS. Based on the results of the functional comparison, the Administrative Office issued a stop work order to the contractors developing eCJA VPS and began a formal assessment of the two projects. The eVoucher system will accomplish the same goals and requirements placed on the eCJA VPS project at a lower cost to completion. The eVoucher system will improve quality control of panel attorney payment vouchers as well as decrease the time and overall cost associated with processing payment vouchers. In 2014, a plan will be developed to address implementation and further development.

#### PANEL ATTORNEY RATES

In fiscal year 2010, Congress approved a \$125 maximum hourly rate at which panel attorneys may be compensated in non-capital cases, which is \$17 below the fiscal year 2015 statutory maximum rate of \$142 (the statute provides for inflationary adjustments to the rate, subject to the availability of funds).

Congress also approved fiscal year 2010 funding to compensate panel attorneys at the maximum rate of \$178 per hour for work performed in capital cases. Both fiscal year 2010 funding increases became effective for work performed on or after January 1, 2010.

The CJA authorizes the Judicial Conference to implement annual cost-of-living adjustments (COLAs) for panel attorney rates. If COLAs had been provided annually as authorized by the statute, the non-capital rate would reach \$142 per hour in fiscal year 2015 and the capital rate would rise to \$181 per hour. Like the rest of the federal government, no cost-of-living adjustments or other increases have been funded for either the non-capital or capital hourly rates since fiscal year 2010. The judiciary did not pursue efforts to secure the full statutorily authorized non-capital hourly rate for fiscal year 2012, fiscal year 2013, or fiscal year 2014. Due to the dire fiscal circumstances predicted for the judiciary and the federal government overall, the judiciary deferred – for the third consecutive year – requesting the full statutorily authorized non-capital rate for fiscal year 2014.

While the judiciary firmly believes that the full statutory rate of \$142 is justified for fiscal year 2015, it recognizes the fiscal pressures Congress faces. Consequently, the judiciary has again deferred – for the fourth consecutive year – seeking the full statutorily authorized non-capital rate for fiscal year 2015. However, the judiciary is requesting one-year COLAs to increase the non-capital rate by \$1 to an estimated \$127, and raise the capital rate by \$1 to an estimated \$181 per hour. The CJA hourly panel attorney rates are meant to cover both

overhead (approximately \$70 per hour as of January 2009 for non-capital work) and a fair hourly fee. After deducting overhead, panel attorneys average \$55 per hour before taxes (at the \$125 rate). This has been reduced to a mere \$40 per hour during the temporary emergency rate reduction period, which exacerbates the financial hardships panel attorneys endure to work on CJA cases.

#### **JUSTIFICATION OF CHANGES**

The fiscal year 2015 request for appropriated funds is \$1,053.2 million, an increase of \$8.8 million (0.8 percent) over the fiscal year 2014 appropriation of \$1,044.4 million.

#### **ADJUSTMENTS TO BASE**

The following narrative provides information and justification for each of the adjustments to base for this account.

#### **A. PAY AND BENEFIT ADJUSTMENTS**

##### ***1. Annualization of January 2014 pay adjustments***

##### **a. Federal pay adjustment**

**Requested Increase: \$1,088,000**

Federal pay rates increased by 1.0 percent in January 2014. The requested increase provides for the cost of three months (from October 2014 to December 2014) of the 2014 pay increase in fiscal year 2015.

##### **b. Panel attorney capital ECI rate adjustment**

**Requested Increase: \$323,000**

The requested funding annualizes the fiscal year 2014 panel attorney capital rate cost-of-living increase of 1.0 percent (from \$178 per hour to \$180 per hour). A rate increase to the capital hourly rate, effective on March 1, 2014, is expected to have four months of costs in fiscal year 2014. The requested increase annualizes this rate increase for the first eight months of fiscal year 2015. Based on a lag time of three months, only four months in fiscal year 2014 will be effected by this rate change.

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

**Requested Increase: \$2,682,000**

The requested increase annualizes the fiscal year 2014 panel attorney non-capital rate increase (from \$125 per hour to \$126 per hour). A rate increase to the non-capital hourly rate, effective on March 1, 2014, is expected to have only a minimal impact on fiscal year 2014 costs. The requested increase provides for the remaining cost of eleven months not included in the fiscal year 2014 base. Based on a lag time of six months, only one month in fiscal year 2014 will be effected by this rate change.

*2. Proposed January 2015 pay adjustments*

**a. Federal pay adjustment**

**Requested Increase: \$3,260,000**

As of January 2014, the Office of Management and Budget is projecting that federal pay rates will increase by 1.0 percent beginning on or after January 1, 2015. The requested increase provides for the cost of nine months of the anticipated pay increase in fiscal year 2015 (from January 2015 to September 2015).

**b. Panel attorney capital ECI rate adjustment**

**Requested Increase: \$120,000**

The requested funding would increase the capital panel attorney hourly rate by an assumed ECI adjustment of 1.0 percent. This would increase the hourly rate from an estimated \$180 per hour to \$181 per hour, effective January 1, 2015. 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 fiscal year 2015.

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

**Requested Increase: \$368,000**

The requested funding would increase the non-capital panel attorney hourly rate by an assumed ECI adjustment of 1.0 percent. This would increase the hourly rate from an estimated \$126 to \$127, effective January 1, 2015. 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 fiscal year 2015.

*3. Promotions and within-grade increases*

**Requested Increase: \$3,260,000**

The requested increase provides for promotions and within-grade increases for FDO personnel. The salary plan for federal defender personnel provides for periodic within-grade increases for staff who achieve at least satisfactory performance ratings.

*4. Health benefits increase*

**Requested Increase: \$1,109,000**

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by 3.7 percent in January 2014 and 4.0 percent in January 2015. The requested increase annualizes the 2014 premium increase.

and includes a nine-month provision for the anticipated fiscal year 2015 premium increase and other changes.

**5. FICA increase**

**Requested Increase: \$274,000**

Funds are requested to provide for the base adjustment in employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax. The salary cap for OASDI increased to \$113,700 in January 2013, and increased to \$117,000 in January 2014. The requested amount is needed to pay the agency contribution.

**B. OTHER ADJUSTMENTS**

**6. General inflationary adjustments**

**Requested Increase: \$2,442,000**

Consistent with guidance from the Office of Management and Budget, \$2.4 million is required to fund inflationary increases of 1.7 percent for operating expenses such as travel, utilities, contractual services, supplies and materials, and furniture and equipment.

**7. Inflationary increases in space rental costs**

**Requested Increase: \$1,210,000**

FDOs are located in both courthouses and private commercial office space. The amount requested funds inflationary increases of 2.4 percent for current space in fiscal year 2015.

**8. Decrease in appropriation needed to maintain current services**

**Requested Decrease: (\$7,372,000)**

The judiciary has been able to reduce requirements for appropriated funds through the use of unobligated no-year funds carried forward from prior fiscal years. In fiscal year 2014, \$17.6 million in balances from fiscal year 2013 was available to finance fiscal year 2014 requirements. In fiscal year 2015, the judiciary expects \$25.0 million in non-appropriated funds to be available, an increase of \$7.4 million from fiscal year 2014. Therefore, a \$7.4 million reduction in appropriations is requested.

**9. Annualization of four circuit CJA case-budgeting attorney positions**

**Requested Increase: \$403,000**

**FTE: 2**

The requested increase would annualize the costs of four case budgeting attorney positions in fiscal year 2015. Currently,

there are three case budgeting attorneys - one in each of the original pilot circuits (Second, Sixth and Ninth), and four positions are projected to be hired in fiscal year 2014. This request annualizes the four positions in fiscal year 2015.

*10. Savings from four new circuit CJA case-budgeting attorney positions*

**Requested Decrease: (\$403,000)**

The annualization of the four new case-budgeting attorney positions will create an offsetting savings of \$403,000 in panel attorney requirements.

**FINANCING THE FISCAL YEAR 2015 REQUEST**

*11. Anticipated carryforward from fiscal year 2014 into fiscal year 2015*

**Estimated funds available: \$25,000,000**

The judiciary projects \$25.0 million will be available through anticipated savings to carry forward from fiscal year 2014 into fiscal year 2015 and offset the fiscal year 2015 appropriation request for the defender services program. Savings are related to the expectation of unobligated FDO funds due to severely reduced FDO staffing levels. The judiciary will advise appropriations subcommittee staffs of changes to this estimate.