

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

*Defender Services*

**SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS**

<b>Fiscal Year 2020 Enacted Appropriation</b>	<b>1,234,574,000</b>
<b>Fiscal Year 2021 Appropriation Request</b>	<b>1,316,240,000</b>
<b>Requested Increase from Fiscal Year 2020 Enacted Appropriation</b>	<b>\$81,666,000</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 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, [~~1,234,574,000~~]*1,316,240,000*, to remain available until expended.

(P.L. 116-93 - Financial Services and General Government Appropriations Act, 2020)

**SUMMARY OF REQUEST  
DEFENDER SERVICES  
FISCAL YEAR 2021  
(Dollar amounts in thousands)**

**Fiscal Year 2021 Resource Requirements:**

<u>Page</u>	<u>FTE</u>	<u>Amount</u>
<b>Fiscal Year 2020 Assumed Obligations .....</b>	<b>3,070</b>	<b>1,267,474</b>
Less encumbered carryforward from FY 2019 into FY 2020 .....	-	(2,800)
<b>Fiscal Year 2020 Assumed Obligations Excluding Encumbered Carryforward .....</b>		<b>1,264,674</b>
Less assumed unencumbered available carryforward from FY 2019 into FY 2020 .....	-	(30,100)
<b>Fiscal Year 2020 Enacted Appropriation .....</b>	<b>3,070</b>	<b>1,234,574</b>

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

**A. PERSONNEL RELATED**

***Pay and Benefit Adjustments***

	1. Proposed January 2021 pay adjustments		
5.23	a. Federal pay adjustment (1.0% for nine months) .....	-	3,663
5.24	b. Panel attorney capital rate adjustment (from \$195 per hour to \$197 per hour, effective January 1, 2021) .....	-	215
	c. Panel attorney non-capital rate adjustment (from \$152 per hour to \$154 per hour, effective January 1, 2021) .....	-	652
5.24	2. Annualization of January 2020 pay adjustments		
	a. Federal pay adjustment (3.1% for three months) .....	-	3,653
	b. Panel attorney capital rate adjustment (from \$190 per hour to \$195 per hour) .....	-	496
5.25	c. Panel attorney non-capital rate adjustment (from \$148 per hour to \$152 per hour) .....	-	8,897
5.25	3. Promotions and within-grade increases .....	-	3,664
5.25	4. Benefits increases		
	a. Health benefits .....	-	1,373
	b. FICA adjustment .....	-	496
	c. FERS adjustment .....	-	5,762
5.26	5. One less compensable day .....	-	(1,891)

**B. Other Adjustments**

***General Inflationary Adjustments***

5.26	6. Inflationary increases for contracts, services, supplies, and equipment .....	-	6,329
5.26	7. Inflationary increase in GSA space rental costs .....	-	1,208

***Workload and Financing Adjustments***

5.26	8. Change in projected panel attorney workload .....	-	7,732
5.26	9. Annualization of FY 2020 positions .....	23	5,681

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
5.27	10. Increase in appropriation needed to maintain FY 2020 requirements due to a decrease in carryover funding .....	-	100
	<b>Subtotal, Adjustments to Base to maintain current services .....</b>	<b>23</b>	<b>48,030</b>
	<b>Total Current Services Appropriation Required .....</b>	<b>3,092</b>	<b>1,282,604</b>
 <b><u>C. Program Increases:</u></b>			
5.27	11. Change in positions for projected workload		
	a. Implementation of the FDO staffing formula .....	96	23,882
	b. CJA panel management positions .....	5	1,275
	c. National positions .....	3	409
5.28	12. Non-capital panel attorney above-inflation hourly rate increase (\$154 per hour to \$155 per hour) .....	-	326
5.28	13. Reimbursable positions .....	-	599
5.29	14. FDO staffing reserve .....	12	2,500
5.29	15. Information technology requirements .....	-	3,835
5.29	16. Litigation support/training and software .....	-	810
	<b>Subtotal, program increases .....</b>	<b>116</b>	<b>33,636</b>
	<b>Total Fiscal Year 2021 Appropriation Required .....</b>	<b>3,208</b>	<b>1,316,240</b>
	<b>Total Appropriation Increase, Fiscal Year 2020 to Fiscal Year 2021 .....</b>	<b>139</b>	<b>81,666</b>
 <b><u>D. Financing the Fiscal Year 2021 Request:</u></b>			
	<b>Total Appropriation Required .....</b>	<b>3,208</b>	<b>1,316,240</b>
5.30	17. Anticipated carryforward from FY 2020 and prior years into FY 2021 .....	-	30,000
	<b>Estimated Obligations, Fiscal Year 2021 .....</b>	<b>3,208</b>	<b>1,346,240</b>

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

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

Activity	FY 2019 Actual	FY 2020 Assumed	FY 2021 Request
CJA Representation & Related Expenses Obligations	1,167,443	1,252,416	1,330,089
Program Administration Obligations	9,750	15,058	16,151
<b>Direct Obligations</b>	<b>1,177,193</b>	<b>1,267,474</b>	<b>1,346,240</b>
Unencumbered Unobligated Balance, Start of Year	(42,720)	(30,100)	(30,000)
Encumbered Unobligated Balance, Start of Year	(1,288)	(2,800)	
Total Unobligated Balance, Start of Year:	(44,008)	(32,900)	(30,000)
Deposits and Other Adjustments:			
Prior Year Recoveries	(15,553)	(15,000)	
Anticipated Financial Plan Savings		(15,000)	
Unobligated Balance, End of Year:	32,900	30,000	
Less Offsetting Collections	(82)		
<b>Appropriation</b>	<b>1,150,450</b>	<b>1,234,574</b>	<b>1,316,240</b>

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

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

Description		FY 2019 Actual	FY 2020 Assumed	FY 2021 Request
11	Personnel compensation	353,743	375,616	400,009
12	Personnel benefits	117,339	129,539	142,461
13	Benefits for former personnel	483	545	565
21	Travel	14,459	15,264	16,541
22	Transportation of things	292	303	329
23	Rent, communications and utilities			
	<i>Rental payments to GSA</i>	41,251	44,310	46,981
	<i>Rental payments to others</i>	405	448	464
	<i>Communications utilities &amp; misc. charges</i>	9,267	10,063	10,882
24	Printing and reproduction	69	110	116
25	Other services	460,243	497,427	518,550
26	Supplies and materials	1,693	1,778	1,928
31	Equipment	15,674	17,158	22,988
41	Grant payments	162,275	174,913	184,426
<b>Direct Obligations</b>		<b>1,177,193</b>	<b>1,267,474</b>	<b>1,346,240</b>

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

Activity	FY 2019 Actual	FY 2020 Assumed	FY 2021 Request
CJA Representation & Related Expenses Obligations <sup>1/</sup>	3,011	3,059	3,197
Program Administration Obligations	10	11	11
<b>Total FTE</b>	<b>3,021</b>	<b>3,070</b>	<b>3,208</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 2019 Actual</b>	<b>FY 2020 Assumed</b>	<b>FY 2021 Request</b>
Direct obligations	1,177,193	1,267,474	1,346,240
Obligated balance, start of year	65,372	71,080	80,000
Recoveries of prior year unpaid obligations	(11,102)	(10,000)	(10,000)
Change in uncollected payments	55	0	0
Obligated balance, end of year	<u>(71,080)</u>	<u>(80,000)</u>	<u>(55,000)</u>
<b>Total Outlays</b>	<b>1,160,438</b>	<b>1,248,554</b>	<b>1,361,240</b>
Less Offsets	<u>(4,587)</u>	<u>(5,000)</u>	<u>(5,000)</u>
Net Outlays	1,155,851	1,243,554	1,356,240

## **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 one of the foundations 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:

- provide timely counsel services to all eligible persons;
- provide appointed counsel services consistent with the best practices of the legal profession;
- provide cost-effective services; and
- protect the independence of the defense function performed by assigned 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) 2021 appropriation request of \$1,316.2 million will

enable FDOs to accept appointments; retain necessary expert services; undertake case-related travel; support the cyclical replacement of information technology equipment and software; and meet space-related requirements.

The FY 2021 request will support:

- additional FDO staffing to support 98 percent of the staffing formula requirements (caseload adjusted);
- additional CJA panel management positions;
- additional national position increases for litigation support and information technology;
- a \$1 above-inflation increase to the panel attorney non-capital hourly rate to achieve the statutory maximum;
- additional reimbursable staff in the Defender Services Office (DSO) of the Administrative Office of the U.S. Courts (AO);
- a small FDO FTE/funding reserve to provide additional resources to FDOs in response to unexpected caseload increases;
- information technology requirements (including server replacement and cybersecurity tools); and
- litigation support training and software.

### **TYPES OF COUNSEL**

The CJA authorizes the appointment of counsel, who are either (1) attorneys employed by an FDO or (2) private attorneys retained 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 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. (Georgia-Southern and Kentucky-Eastern meet the requisite number of appointments but do not have an FDO. Northern Mariana Islands does not meet the requisite number of appointments.)

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. Attorneys' offices. 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 make optimal use of 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 in accordance with 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).

Panel attorneys are utilized primarily for three 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 previously 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. (As noted above, three districts do not have an FDO.)

Nationally, almost 90 percent of CJA panel attorneys are in small law firms (with five or fewer lawyers), and approximately 60 percent are solo practitioners. The CJA provides that these attorneys shall be reimbursed for their expenses and compensated for their services at authorized hourly rates.

## CJA CASELOAD AND WORKLOAD TRENDS

Attorneys appointed under the CJA (attorneys employed by FDOs 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 serious federal crimes.

CJA workload is based on FDO caseload<sup>1</sup> and the number of CJA panel attorney representations. As shown in the chart below, FDO weighted representations<sup>2</sup> have increased significantly between 2015 and 2019. During this time period, there were notable increases in capital prosecution, assault, racketeering, immigration, and sex offense cases. The high workload in 2019 is expected to continue. To determine FDO staffing requirements in this FY 2021 budget request, a five-year statistical average is used that includes 2016 – 2020 data.

<b>FDO Weighted Representations*</b>						
<b>Workload Factor</b>	<b>2015 Actual</b>	<b>2016 Actual</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Projected</b>
FDO Weighted Representations	121,060	128,767	131,024	142,750	152,496	154,300
Year-to-Year Change		6.4%	1.8%	8.9%	6.8%	1.2%

\*Statistical data is for a 12-month period through March 31 of each year.

<sup>1</sup>FDO workload forecasts, as with all other judiciary workload projections, are prepared by the Administrative Office of the U.S. Courts' Judiciary Data and Analysis Office.

<sup>2</sup> Since FY 2016, the Defender Services program has used a comprehensive set of staffing formulas to determine FDO staffing requirements. These staffing formulas, developed using the same procedures used for all other judiciary staffing formulas, establish a fair, equitable, and rigorous basis for calculating and allocating FDO staffing. The judiciary uses a weighted caseload methodology for the federal defender portion of the Defender Services appropriation request to account for the complexity and resource intensity of FDO caseload. This methodology more precisely determines FDO staffing requirements. Instead of using raw, or unweighted case numbers, the formula uses a five-statistical-year average of FDO weighted representations to calculate the number of positions for each office. Using a five-statistical-year average provides a measure of protection against volatility in caseload.

From 2018 to 2019 (the most recent year there is data), much of the increase in FDO weighted representations can be attributed to an increase in immigration cases.<sup>3</sup> From 2018 to 2019, illegal entry representations increased by 237.7 percent and illegal re-entry representations increased by 24.8 percent. The chart below demonstrates that there were also substantial weighted representation increases in the weapons and criminal-other categories.

<b>Major Types of FDO Weighted Representations*</b>			
<b>Case Group</b>	<b>2018</b>	<b>2019</b>	<b>Percent Change</b>
Immigration – Illegal Entry	729	2,462	237.7%
Immigration – Illegal Re-Entry	15,639	19,510	24.8%
Weapons	17,969	18,780	4.5%
Criminal-Other	42,908	48,792	13.7%

\*Statistical data is for a 12-month period through March 31 of each year.

The “Criminal-Other” case group includes a wide range of case types, such as homicide, racketeering, money laundering, and arson. One of the largest increases occurred in “criminal forfeiture” representations tied to Department of Justice (DOJ) activity related to forfeiture of assets that the Government alleges are criminal or drug-related.

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<sup>3</sup> See U.S. Department of Justice, “Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019” (Oct. 17, 2019) available at <https://www.justice.gov/opa/pr/departments-justice-prosecuted-record-breaking-number-immigration-related-cases-fiscal-year>.

Just as FDOs have seen increasing workload, panel attorney representations have recently increased. As shown below, panel attorney representations<sup>4</sup> increased significantly from 2018 to 2019 (15.5% from 77,130 to 89,079 representations) and are projected to continue to increase in FYs 2020 and 2021. To determine panel attorney requirements in this FY 2021 budget request, 2021 projected workload is used. The FY 2021 requirements support the 92,800 panel attorney representations in FY 2021.

<b>Panel Attorney Representations*</b>							
<b>Workload Factor</b>	<b>2015 Actual</b>	<b>2016 Actual</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Projected</b>	<b>2021 Projected</b>
Panel Attorney Representations	81,240	80,043	79,352	77,130	89,079	90,900	92,800
Year-to-Year Change		-1.5%	-0.9%	-2.8%	15.5%	2.0%	2.1%

\*Statistical data is for a 12-month period through March 31 of each year.

CJA workload – both for FDO and panel attorneys – is expected to remain at high levels in the future due to the Department of Justice’s prosecution policies and priorities. The Department of Justice has repeatedly made public pronouncements to this effect.<sup>5</sup>

In addition, there is no reason to foresee changes in DOJ policy or court decisions will reduce FDO and panel caseloads in the near term. To the contrary, the number of federal capital prosecution cases is increasing substantially and is expected to continue to grow. FDO pending representations in federal capital prosecution cases increased over 20% from 90 cases in FY 2018 to 109 cases in FY 2019. Additionally, panel attorney payments for federal capital prosecution cases increased 42% in one year from \$28.6 million in FY 2018 to \$40.6 million in FY 2019. Furthermore, on July 25, 2019, DOJ announced the resumption of federal executions for the

<sup>4</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 upon a count of one for each case.

<sup>5</sup> For example, the Attorney General stated in October 2018, “President Donald Trump is a law-and-order President—and this is a law-and-order administration...The Department of Justice is breaking law enforcement records and doing so by significant margins.” U.S. Department of Justice, “Justice Department Smashes Records for Violent Crime, Gun Crime, Illegal Immigration Prosecutions, Increases Drug and White Collar Prosecutions” (Oct. 17, 2018), available at <https://www.justice.gov/opa/pr/justice-department-smashes-records-violent-crime-gun-crime-illegal-immigration-prosecutions>.

first time in over 16 years, which means additional workload related to litigation surrounding the new federal lethal injection execution protocol.<sup>6</sup>

On April 6, 2018, the Attorney General directed all federal prosecutors along the Southwest border to adopt a zero-tolerance policy for all offenses referred by the Department of Homeland Security (DHS) for criminal prosecution under 8 U.S.C. § 1325(a), which prohibits illegal entry and attempted illegal entry into the United States by a noncitizen. The heightened rate of prosecutions for criminal immigration offenses has resulted in a significant workload increase for the Defender Services program, particularly for the offices and panel attorneys practicing in the border districts of Texas-Western, Texas-Southern, California-Southern, New Mexico, and Arizona.

There are also other potential reasons that CJA caseload could further increase in the future. Texas and Arizona have applications for “opt-in” certification pending before the U.S. Attorney General, and additional states are expected to apply. “Opt-in” would accelerate federal judicial review of state-imposed death sentences, which would significantly increase workload and could seriously impact future Defender Services funding requirements. The FY 2021 budget request does not specifically include resources associated with “opt in” implementation because the Arizona and Texas applications remain pending and it is unknown when they will be decided.

Proposition 66 is a California ballot initiative approved in 2016 that seeks to eliminate long delays between imposition and effectuation of California death sentences by speeding up state-court review of capital judgements. It continues to impact the resource needs of the Defender Services program, most notably in the Central District of California, where the majority of the state’s death penalty cases arise. Accordingly, that FDO continues to see an increase in workload due to implementation of Prop 66.

In general, changes in technology, prosecution tactics and priorities, legislation, sentencing policy, and case law all add to the challenge of providing representation to eligible individuals in federal courts. CJA attorneys must respond to changing priorities in federal law enforcement such as the heightened immigration enforcement, the opioid crisis, and violent crimes initiatives. While providing representation in these complex matters, CJA attorneys also must be able to respond rapidly to changes in law and practice.

The Defender Services program must be responsive to changes in law—such as those resulting from Supreme Court decisions, changes in the U.S. Sentencing Guidelines and statutory changes. These changes in law are becoming more common and are likely to

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<sup>6</sup> U.S. Department of Justice Press Release, July 25, 2019, available at <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>.

result in new causes of action for defenders and panel attorneys. For example, the First Step Act (enacted in December 2018), and the recent Supreme Court decisions in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), *Davis v. United States*, 139 S. Ct. 2319 (2019), and *United States v. Haymond*, 139 S. Ct. 2369 (2019), may lead to an increase in representations not fully anticipated in current workload projections.

Increasing workload has a significant impact on the FY 2021 budget request. To determine FDO staffing requirements, the judiciary uses a staffing formula that examines a five-year average of FDO weighted representations. For the FY 2021 FDO staffing requirements included in this budget request, actual weighted caseload data from 2016 through 2019 and projected 2020 weighted caseload was used. This FY 2021 budget submission requests an additional 237 FDO positions. (See page 5.27 for more details about this increase).

Requirements for panel attorneys are directly attributable to expected FY 2021 caseload. Since the judiciary projects panel attorney requirements to increase in FY 2021, there is an increase of \$7.7 million for projected panel payments in FY 2021. (See page 5.26 for more details.)

Further, because of the significant increase in CJA caseload and the possible substantial increase in workload created by Opt-in and other changes in law and practice, the FY 2021 request includes a \$2.5 million FDO staffing reserve to provide the Defender Services' program with more flexibility to quickly allocate resources to FDOs responding to these pressures. (See page 5.29 for more details.)

### **FISCAL YEAR 2020 APPROPRIATIONS**

The judiciary built the FY 2021 budget request for the Defender Services appropriation on the FY 2020 enacted appropriation, which is \$1,234.6 million. This amount maintains current services in FY 2020 and allows for hiring an additional 60 positions, including 53 FDO staffing formula positions, three FDO national positions related to information technology, and four reimbursable positions during FY 2020.

Any changes to FY 2021 requirements due to the final congressionally-approved FY 2020 financial plan will be included in the judiciary's re-estimates of its FY 2021 budget request.

For bill language, the judiciary used the language from P.L. 116-93, Financial Services and General Government Appropriations Act, 2020.

## **SIGNIFICANT ISSUES FOR FISCAL YEAR 2021**

### ***FDO Staffing Formulas***

For several decades, the judiciary has employed a process of work measurement studies to develop statistically sound staffing formulas to estimate the number of employees required to accomplish its mission. In September 2015, the Judicial Conference approved the first formulas for calculating FDO staffing requirements for use beginning in FY 2016. The FY 2020 report language from the House appropriations committee (H. Rpt. 116-122) states that “the Committee is pleased with the progress the judiciary is making toward implementing the Federal Defender Organization staffing formula. The formula reflects needed staff increases based on weighted case averages over the last five years.”

For FY 2021, the judiciary is seeking 237 new positions associated with implementation of the Judicial Conference approved staffing formulas. This additional investment will allow FDOs to reach 98 percent of the approved formula levels, as adjusted for workload requirements.

### ***Other Critical Positions***

*CJA Panel Management Positions:* This request includes a total of 13 additional panel management positions. Panel management positions are important as they ensure that the CJA panel is effectively and efficiently managed in districts where that function is held by the FDO. In some districts, this function is held by the FDO, while in others, it is the responsibility of the clerk of the district court. The precise requirements for panel management positions are determined by the Judicial Conference approved district court clerk’s staffing formula. The refresh of that formula revealed that a total of 27 FDO panel management positions are necessary. Currently, the Defender Services program has funding for 14 panel management positions.

*National Positions:* This FY 2021 request includes national positions related to information technology and litigation support. More specifically, this request includes three national positions to support information technology needs, and two national positions for litigation support. National positions are part of the total FDO staffing level but are not part of the FDO staffing formula. Regarding the information technology positions, these positions will ensure Defender Services information technology systems are mission capable and functioning at a standard that meets or surpasses judiciary standards. Further, they will aid the Defender Services program’s managed security operations center (MSOC) capability, which will provide central IT security monitoring capability. Regarding litigation support, this request provides funding for two additional paralegal positions for the national litigation support

team (NLST). These positions are necessary to (1) assist panel attorneys and FDO staff with electronic discovery project management and technical assistance; (2) provide limited direct case assistance with the initial organization of large volumes of electronic discovery in complex CJA cases; (3) assist in the management of NLST contracts and procurement; (4) allow NLST staff to provide additional critical in-person trainings; and (5) provide better management of coordinating discovery attorneys (CDAs).

*Reimbursable Positions for the Defender Services Office:* The FY 2021 request includes a total of eight additional reimbursable positions. These reimbursable positions would be funded by the Defender Services appropriation, be part of the AO's Defender Services Office, and the funding would be reimbursed to the AO account. Three of these positions are for program operations, one is for training, and four are needed for other operational, training, and support roles. These positions will support higher workload demands associated with financial transactions, data management, program operations, training, and implementing CJA-related policies approved by the Judicial Conference.

#### ***Non-Capital Hourly Rate for Panel Attorneys***

As explained above, the Defender Services program is organized as a hybrid system of FDOs and panel attorneys drawn from the private criminal defense bars of the 94 federal districts. The approximately 14,000 attorneys currently serving on CJA panels constitute a critical component of the program, accepting appointments in conflict situations, and providing a strong connection to the private bar and the communities where they practice.

As a result of inflationary adjustments, the non-capital hourly rate increased from \$148 to \$152 per hour for work performed on or after January 1, 2020. This is only \$1 short of the projected statutorily authorized non-capital hourly rate. The Defender Services program and the panel attorney community are grateful for this inflationary increase. The judiciary is seeking a \$1 per hour above-inflation increase in the FY 2021 appropriation request to achieve the statutory maximum.

The judiciary is cognizant of pressures on the Congress to manage or reduce the federal budget and is appreciative of the significant increases to the non-capital hourly rate that Congress has provided in recent years. Reaching the statutorily authorized non-capital hourly rate will show that the contributions of private panel attorneys are valued, which will continue to improve the availability and quality of panel attorney representation and increase the number of qualified and experienced private attorneys willing to accept appointment in CJA cases. A meaningful public defense system, and compliance with the constitutionally - and statutorily - mandated

right to the effective assistance of counsel, cannot function without qualified and experienced panel attorneys willing to provide representation.

### *Update on CJA Review Study*

In April 2015, Chief Justice John G. Roberts, Jr., established the Ad Hoc Committee to Review the Criminal Justice Act (CJA Committee) to conduct a comprehensive and impartial review, consistent with Judicial Conference policy, of the administration and operation of the CJA program. In November 2017, the CJA Committee submitted its findings and recommendations to the Judicial Conference. The CJA Committee recommended establishing an independent Federal Defender Commission within the judicial branch, but outside the oversight of the Judicial Conference, with sole authority to set policy and practices related to the provision of federal defense. Recognizing that the creation of an independent commission would require an act of Congress and could not be implemented immediately, the Committee also made 35 interim recommendations designed to give the defender program more authority and autonomy within the current structure. The full text of the Committee's findings and recommendations may be found online. See [https://www.uscourts.gov/sites/default/files/2017\\_report\\_of\\_the\\_ad\\_hoc\\_committee\\_to\\_review\\_the\\_criminal\\_justice\\_act-revised\\_2811.9.17.29\\_0.pdf](https://www.uscourts.gov/sites/default/files/2017_report_of_the_ad_hoc_committee_to_review_the_criminal_justice_act-revised_2811.9.17.29_0.pdf)

At its September 2018 and March 2019 sessions, the Judicial Conference approved 29 of the 35 interim recommendations, with some modifications. The interim recommendations approved by the Judicial Conference include, but are not limited to, providing additional training opportunities, encouraging the establishment of Capital Habeas Units, increasing staff and funding for litigation support activities, and adequately funding and staffing the National Information Technology Operations and Application Development Branch within the Defender Services program. In response to these recommendations, the judiciary immediately began implementing the Judicial Conference's recommendations.

With respect to the CJA Committee's final recommendation to create an independent Federal Defender Commission, the Executive Committee of the Judicial Conference requested that the Defender Services Committee, with the assistance of the Federal Judicial Center, assess the judiciary's implementation of the adopted interim recommendations and the degree to which those actions have addressed concerns identified by the CJA Committee's report. Such an assessment will provide useful information for any study of final recommendations and will help identify areas in which the judiciary can promote further implementation of the interim recommendations.

## **COST CONTAINMENT INITIATIVES**

The judiciary has implemented various cost-containment initiatives across the Defender Services program without compromising its constitutional mandate. Funding decisions are made with a keen awareness of the budget challenges facing the 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) supporting distance learning initiatives to optimize the accessibility of CJA panel attorney training opportunities;
- (3) improving DOJ procedures for making decisions not to seek the death penalty in death-eligible cases; and
- (4) identifying more cost-effective means of handling increasingly large and complex discovery in CJA representations.

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

Defender Services funding supports eleven case-budgeting attorney positions. These attorneys are assigned to federal judicial circuits across the country and work to identify cost drivers, monitor case expenditures, assist the courts and CJA panel attorneys with individual case budgeting and voucher review, and promote representation consistent with the best practices of the legal profession. The case-budgeting attorneys focus their attention on “high-cost” representations, defined as all capital cases and those non-capital representations where it can be anticipated that there will be more than 300 attorney hours or total expenditures are expected to exceed 300 times the prevailing non-capital hourly rate, rounded up to the nearest thousand, for an individual defendant. To address these high-cost cases, the judiciary continues to promote the nationwide use of case budgeting techniques 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. Case-budgeting attorneys funded by Defender Services currently serve the following ten of the 12 circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh/Eighth (shared position), Ninth (two positions), and Tenth.

### ***Distance Learning***

The Defender Services program continues to develop and produce distance learning as part of its robust training program. Since October 2010, substantive criminal defense video training sessions have been made available to CJA practitioners, including CJA panel attorneys and defender staff, expanding the reach of the programs without the necessity of additional live training events. At this time, more than 64 training sessions presented at national and local programs over the last several years may be viewed by FDO

staff and panel attorneys through the Training Division's website, [www.fd.org](http://www.fd.org). Each year, between 1,000 and 2,000 practitioners access the videos. Since 2013, the Training Division has also presented 31 webinars, most of which included two live presentations. Each live webinar had between 60 and 200 registrants. The actual number of participants viewing the webinars is likely much higher because many FDOs hold a viewing for a large group, with only one person registering. The FY 2019 webinars provided quality training on a variety of criminal defense topics including the First Step Act, Compassionate Release, and Implicit Bias.

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. New in FY 2019 were pre-recorded podcasts on several relevant topics for CJA practitioners. Five podcasts were recorded and made available to CJA practitioners on [www.fd.org](http://www.fd.org). Approximately 600 CJA practitioners accessed and played these podcasts in FY 2019.

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

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. In the vast majority of death-eligible cases, the local U.S. Attorney does not recommend, and the U.S. Attorney General does not authorize, seeking the death penalty. In FY 2019, the U.S. Attorney General reviewed approximately 243 cases of defendants indicted with death-eligible offenses and decided whether or not each case would proceed as a capital case. Of these 243 cases, only eleven defendants (5 percent of the total) were approved to proceed as a death penalty case.

Until DOJ notifies counsel and the court that it does *not* intend to seek the death penalty for an 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 hourly capital panel attorney rate of \$195 – 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.

Steps toward improvement include:

- The *Guide to Judiciary Policy*, Volume 7A, Chapter 6, Section 670 (Scheduling of Federal Death Penalty Case Authorization to Control Costs), which was jointly developed with DOJ staff, 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 April 2014, DOJ revised its death penalty authorization protocol to require U.S. Attorneys to submit all potential capital cases to DOJ for review *before* indictment, absent extenuating circumstances. The extent of cost savings to the Defender Services program depends upon the level of implementation and compliance with the revised protocol at both the local and national levels. At the June 2018 Defender Services Committee meeting, the Deputy Attorney General expressed support for continuing DOJ collaboration with DSO representatives on this issue.

### ***Discovery Costs***

Each year, the data associated with individual CJA representations expands in size and complexity. CJA attorneys—both FDO staff and panel attorneys—require new tools and strategies to help them organize, review, and manage the large amounts and variety of information provided by the prosecution as discovery material. There are a number of 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. Evidence encompasses not only discovery materials produced by the government, but those gathered by third parties and the defense.

Federal defenders and panel attorneys require sufficient 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 can include electronic stored information (ESI, or e-discovery) extracted from client computers and mobile devices. Law enforcement officers review social media sites, like Facebook, Instagram, and 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 of information, in a recent racketeering fraud case, the government provided “rolling” discovery (more than 30 productions) totaling more than 6,500,000 documents including word processing, spreadsheets, text, PowerPoints, PDFs, images, emails and audio video files. Though an exact page count is not known, if one assumes a technology support industry average of three to five pages per file, this equates to 19.5 million to 32.5 million pages of discovery. The judiciary anticipates the number of discovery-intensive cases will continue to grow.

Three major initiatives are in place to address this issue:

- (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. In 2012, the working group produced “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.” This comprehensive, national guidance is 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. In 2017, the Judicial Conference Advisory Committee on Criminal Rules recommended that the Committee on Rules of Practice and Procedure approve Rule 16.1, a new rule to address large e-discovery cases. On September 13, 2018, the Judicial Conference approved Rule 16.1 in its current form, and absent congressional action, Rule 16.1 became effective on December 1, 2019. The accompanying Committee Note to Rule 16.1 states that counsel should be familiar with best practices and lists as an example of best practices the “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.” In addition, two separate JETWG subcommittees published a pocket guide on criminal electronic discovery as a supplement to the federal judiciary’s bench book and released a set of best practices for providing incarcerated clients with access to e-discovery.
- (2) Contracts with five national coordinating discovery attorneys are in place to advise panel attorneys and defender offices on cost-effective ways to manage large volumes of documents in the most complex cases to increase the quality of representation. As of November 2019, these five attorneys have been appointed in approximately 80 currently active cases, and because nearly all the cases have multiple defendants, these five attorneys are able to provide services to over 800 panel attorneys and assistant federal defenders nationally.

- (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 in multiple individual cases year after year.

## JUSTIFICATION OF CHANGES

The FY 2021 request for the Defender Services account is \$1,316.2 million, an increase of \$81.7 million, or 6.6 percent, over the enacted FY 2020 appropriations level of \$1,234.6 million.

The request will fund adjustments to base and staffing increases to the FDO program to support 98 percent of the staffing formula requirements (caseload adjusted), panel management positions, national positions, and AO reimbursable staff. This additional staffing allows the judiciary to support higher workload demands and implement CJA-related policies approved by the Judicial Conference.

This request also funds a \$1 above-inflation increase in the non-capital panel attorney hourly rate, information technology requirements for cyclical server replacements and a cybersecurity tool, and litigation support training and software.

## ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

### A. PERSONNEL RELATED

#### *Pay and Benefit Adjustments*

#### 1. Proposed January 2021 pay adjustments

##### a. Federal pay adjustment

#### **Requested Increase: \$3,663,000**

The judiciary is assuming federal pay rates will increase by 1.0 percent in January 2021. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2021, from January 2021 to September 2021. (If the pay adjustment included in the President's FY 2021 budget request is different than 1.0 percent, the judiciary will revise this line item in its FY 2021 budget re-estimate.)

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$215,000**

The requested funding would increase the capital panel attorney hourly rate by an assumed cost-of-living increase of 1.0 percent. This would increase the hourly rate from \$195 per hour to an estimated \$197 per hour, effective January 1, 2021. 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 2021.

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

**Requested Increase: \$652,000**

The requested funding would increase the non-capital panel attorney hourly rate by an assumed cost-of-living increase of 1.0 percent. This would increase the hourly rate from an \$152 per hour to an estimated \$154 per hour, effective January 1, 2021. 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 2021.

**2. Annualization of January 2020 pay adjustments**

**a. Federal pay adjustment**

**Requested Increase: \$3,653,000**

The requested increase provides for the annualized costs of the 2020 pay adjustment for Employment Cost Index (ECI) and locality pay adjustments. Based on the FY 2020 enacted appropriations bill, federal pay rates increased by an average of 3.1 percent, effective as of January 2020. The requested increase provides for the cost of three months (from October 2020 to December 2020) of the enacted 2020 pay increase in FY 2021.

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$496,000**

The requested funding annualizes the enacted FY 2020 panel attorney capital rate cost-of-living increase from \$190 to \$195 per hour. The increase to the capital hourly rate is expected to impact six months of costs in FY 2020. The requested increase annualizes this rate increase for the first six months of FY 2021.

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

**Requested Increase: \$8,897,000**

The requested increase annualizes the enacted FY 2020 panel attorney non-capital cost-of-living rate increase from \$148 to \$152 per hour. An increase to the non-capital hourly rate impacts three months of costs in FY 2020. The requested increase annualizes this for the first nine months of FY 2021.

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

**Requested Increase: \$3,664,000**

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: \$1,373,000**

Based on information from the Office of Personnel Management, agency health benefit premium contributions are projected to increase by an average of 3.2 percent both in January 2020 and January 2021. The requested increase annualizes the 2020 premium increase and includes a nine-month provision for an estimated 3.2 percent increase anticipated in FY 2021.

**b. FICA adjustment**

**Requested Increase: \$496,000**

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 2020. The salary cap for OASDI increased from \$132,900 to \$137,700 in January 2020. The requested amount is needed to pay the agency contribution in FY 2021.

**c. FERS adjustment**

**Requested Increase: \$5,762,000**

Consistent with guidance from the Office of Management and Budget (OMB), funds are requested for an increase in the agency contribution rate to Federal Employees Retirement System (FERS) plans for FY 2021. For most employees, the agency contribution rate will increase from 16.0 percent to 17.3 percent. Any FERS increase is in accordance with revised estimates of the cost of providing benefits by the Board of Actuaries of the Civil Service Retirement and Disability System.

**5. One less compensable day**

**Requested Decrease: (\$1,891,000)**

There is one less compensable day in FY 2021 than in FY 2020. The requested amount decreases personnel compensation and benefits associated with one less compensable day for biweekly paid employees.

**B. OTHER ADJUSTMENTS**

*General Inflationary Adjustments*

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

**Requested Increase: \$6,329,000**

Consistent with guidance from the OMB, this request of \$6,329,000 is required to fund inflationary increases of 2.0 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, and furniture and equipment.

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

**Requested Increase: \$1,208,000**

This request represents a 2.0 percent inflationary increase and adjustments in the cost of GSA space rental charges for FY 2021.

*Workload and Financing Adjustments*

**8. Changes in projected panel attorney workload**

**Requested Increase: \$7,732,000**

The requested increase is due to a projected change in panel attorney caseload. Panel attorney representations are projected to increase from 90,900 in FY 2020 to 92,800 in FY 2021. Historically, panel attorney caseload has proved difficult to predict. Thus, caseload projections and requirements will be re-assessed as more information becomes available.

**9. Annualization of FY 2020 Positions**

**Requested Increase: \$5,681,000**

**FTE: 23**

This requested adjustment funds the annualization for the assumed 60 positions expected to be hired in FY 2020, including 42 FPDO positions (21 FTE), 11 CDO positions, three national positions (2 FTE) in the Defender Services Office's National Information Technology Operations and Application Development Branch, and funding for four reimbursable positions to support the Defender Services Office.

**10. Increase in appropriation needed to maintain FY 2020 requirements due to a decrease in carryover funding**

**Requested Increase: \$100,000**

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 2020, \$30.1 million in balances from FY 2019 will be used to finance the FY 2020 requirements. In developing the FY 2021 request, the judiciary expects \$30 million to carry forward from FY 2020 into FY 2021 and be available to finance FY 2021 requirements. Because the judiciary anticipates having \$100,000 less in carryforward funding available in FY 2021, it requests \$100,000 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 as FY 2020 funds are executed.

**C. PROGRAM INCREASES**

**11. Additional Positions for projected workload**

**a. Implementation of the FDO staffing formula**

**Requested Increase: \$23,882,000 FTE: 96**

The requested increase supports the continued implementation of the FDO staffing formulas in FY 2021. This increase would provide FDOs with funds to support 98 percent of the projected

Judicial Conference-approved staffing formulas in FY 2021. This request is for 237 additional FDO staff funded for six months (193 positions/96 FTE for FPDOs and 44 CDO positions). This increase in staffing is critical because of the increasing workload described on pages 5.10-5.14.

**b. CJA panel management positions**

**Requested Increase: \$1,275,000 FTE: 5**

The requested increase is for 13 additional CJA panel management positions (ten positions/5 FTE for FPDOs and three positions for CDOs). These positions are necessary for FDOs to administer the CJA panel effectively and efficiently in districts where that responsibility is held by the FDO.

**c. National positions**

**Requested Increase: \$409,000 FTE: 3**

The requested increase supports five new national positions (3 FTE), of which three positions (2 FTE) are related to information technology (IT) and two positions (1 FTE) are related to litigation support. IT positions will address both cybersecurity needs by establishing a security incident response team, and non-cybersecurity requirements by ensuring defender IT systems are mission-capable at or above judiciary standards while also containing costs and avoiding unnecessary duplication of efforts.

Two of the requested positions are paralegal positions for the national litigation support team. These positions are necessary

to provide panel attorneys and FDOs with project management and technical assistance with electronic discovery and digital evidence. Furthermore, these positions will provide critical in-person trainings and help manage the work of coordinating discovery attorneys.

**12. Non-capital panel attorney above-inflation hourly rate increase**

**Requested Increase: \$326,000**

The requested funding is to support an increase to the assumed statutorily authorized maximum hourly rate of \$155 for non-capital cases in FY 2021. The current hourly rate is \$152, and the inflation-adjusted 2021 rate is projected to be \$154. This request for a \$1 above-inflation increase would enable non-capital representations to be paid at the assumed statutorily-authorized level (\$155 per hour).

The request assumes a January 2021 implementation date and a three-month impact on FY 2021 non-capital panel attorney costs. The annual cost of a \$1 increase in FY 2022 is \$2.6 million.

Reaching the statutorily authorized non-capital hourly rate will show that the contributions of private panel attorneys are valued, which will continue to improve the availability and quality of panel attorney representation and increase the number of qualified and experienced private attorneys willing to accept appointment in CJA cases.

**13. Reimbursable positions**

**Requested Increase: \$599,000**

The requested increase supports eight additional positions at the AO funded by the Defender Services appropriation. Three of these positions are for program operations in the Defender Services Office. The positions are requested to improve management oversight of the Defender Services program, address the growth and changing scope of program reviews, ensure data quality, and support a robust training program.

One of the requested positions is in the Training Division, which is necessary to maintain efficiencies in the administration of the Defender Services training program as well as to support federal defender staff and panel attorneys in effective representation of their clients.

Four of the positions requested are necessary to address higher workload demands associated with financial transactions, data management, program operation, training, and implementing CJA-related policies approved by the Judicial Conference.

#### **14. FDO Staffing Reserve**

**Requested Increase: \$2,500,000**

**FTE: 12**

The requested reserve will provide the Defender Services program with more flexibility to quickly allocate additional resources to FDOs in response to significant caseload pressures, such as substantial surges in workload due to changes in law and practice. Any additive FTEs allocated to address caseload surges would be temporary and only approved for one fiscal year. FDOs would need to submit new requests in a subsequent fiscal year if the caseload need still exists. Any portion of the reserve that remains unspent at the end of a fiscal year will be carried forward into the next fiscal year and used to offset requirements in that year's budget request.

#### **15. Information technology requirements**

**Requested Increase: \$3,835,000**

This request has two components. First, \$1.9 million is requested for the cyclical replacement of the FDO server infrastructure used to support national programs and services. The current servers were last replaced in FY 2015 and the current life cycle for this infrastructure is five years (based on recommended industry and judiciary practices). Cyclical replacement of the server infrastructure improves information technology asset management practices by ensuring server capacity is available to support existing and new initiatives. Further, without cyclical replacement, there is a risk that

vendors will stop supporting the infrastructure which would put judiciary data at risk.

Second, \$1.935 million is being requested for a national log management tool that will help monitor and identify malicious activity on the FDO network. This tool provides a comprehensive view of IT security throughout the organization. Without detailed log management tools, it is difficult to understand the scope of an intrusion and the data impact. This tool would improve FDO information security practices.

#### **16. Litigation Support/Training and Software**

**Requested Increase: \$810,000**

This requested increase would provide training on mobile forensics, electronic discovery, and social media capture tools. This request is part of a national litigation support strategy to maintain a technology infrastructure and execute an education plan on litigation support tools and services. In addition, electronic discovery is now present in almost every type of representation, and therefore needs to be a part of most training programs.

**D. FINANCING THE FISCAL YEAR 2021 REQUEST**

**17. Anticipated carryforward from FY 2020 and prior years into FY 2021**

**Estimated funds available: \$30,000,000**

The judiciary projects \$30 million will be available through anticipated carryforward from FY 2020 and prior years into FY 2021 to offset the FY 2021 appropriation request for the Defender Services program. The judiciary will advise appropriations subcommittee staff of any changes to this estimate as FY 2020 funds are executed.