**Deficit Reduction and Funding for the Federal Courts:**
**FY 2013 - FY 2019**

**THE BUDGET CONTROL ACT**
The Budget Control Act (BCA) of 2011 provided a blueprint to reduce the federal deficit by over $2 trillion by 2021. It imposed caps on discretionary programs to reduce the deficit by more than $900 billion and directed Congress to craft a bipartisan plan to achieve an additional $1.2 trillion in deficit reduction by 2021. The “super-committee” tasked with this assignment in 2011 failed to produce a plan. This triggered a fallback mechanism requiring across-the-board budget cuts in 2013, followed by reductions to the annual caps on discretionary spending as well as automatic cuts to selected entitlement programs in each year from 2014 through 2021.

**FISCAL YEAR 2013**

*FY 2013 Funding: Sequestration Reduces Funding by $350 Million*
FY 2013 sequestration, which reduced the budget of the judiciary by $350 million, had a devastating impact on federal court operations nationwide. Flat funding in FY 2011 and FY 2012, followed by sequestration, required the judiciary to downsize staff in the offices of clerks of courts and probation and pretrial services by 3,200 (nearly 15 percent) and in federal defender offices by 400 (11 percent). These staffing losses resulted in the slower processing of cases. In addition, funding for court security systems was cut by 30 percent, and court security officers were required to reduce their work hours. Two weeks of voucher payments to CJA panel attorneys had to be deferred until 2014 and funding for jurors ran out in August, requiring the courts to transfer funding from other accounts already facing shortfalls.

*For more information on sequestration and the courts, see the AO’s page on sequestration at:*
http://news.uscourts.gov/issues/sequestration

**FISCAL YEAR 2014**

*Rocky Road to FY 2014 Funding: Government Shutdown Produces Bipartisan Budget Act*
The failure of the House and Senate to agree on a stopgap continuing resolution to keep the government financed at FY 2013 levels through the fall led to a government shutdown on October 1, 2013 – the start of the 2014 fiscal year.

The judiciary, unlike most other federal entities, did not have to implement a shutdown plan because the Executive Committee of the Judicial Conference of the U.S. Courts authorized the use of funding from filing fees and long-term ("no-year") appropriations to keep the courts in operation, albeit in a reduced state of operations.
The 16-day government shutdown ended October 17 when President Obama signed a continuing resolution that funded the government through January 15, 2014, and instructed a conference committee to develop a bipartisan budget plan by December.

While keeping most of the government at its reduced FY 2013 levels, the continuing resolution provided an additional $51 million for the federal judiciary – $25 million for court operations and $26 million to pay court-appointed public defenders owed money for services rendered during the last two weeks of FY 2013.

The Bipartisan Budget Act of 2013 established new spending levels for both FY 2014 and FY 2015 that raised the discretionary caps imposed by the BCA 2011 to $1.012 trillion in FY 2014 and $1.014 trillion in FY 2015 with instructions that the extra funds were to be split evenly between defense and non-defense discretionary spending. The new FY 2014 cap provided an additional $45 billion in discretionary spending authority, an amount sufficient to enable the appropriators to restore some funding cuts and agree on a final spending measure for FY 2014.

Three and one-half months after the fiscal year started, the President was presented with and signed into law the Consolidated Appropriations Act of 2014, funding the federal government for the FY 2014 fiscal year.

**FY 2014 Funding: $6.516 Billion in Discretionary Funding**

The judiciary received a 5.1 percent ($316 million) increase in discretionary funding over its FY 2013 sequestered amount, which means that the judiciary is currently funded at its pre-sequestration level.

With regard to the judiciary’s three largest accounts:
- Salaries and Expenses account received $4.66 billion, 4.9 percent more than FY 2013;
- Defender Services account received $1.04 billion, a 5.9 percent increase; and
- Court Security account received $497.5 million, a 5.0 percent increase.

Throughout the budget process, congressional appropriators sent a clear message that the judiciary needs to be treated as a funding priority. The ABA commended these actions.

**Fiscal Year 2015**

**FY 2015 Request - $6.7 Billion in Discretionary Funding**

The judiciary’s original request, included in the President’s budget, sought $219 million – or 3.4 percent – over its FY 2014 funding level. This is not a very large increase, considering that the judiciary has operated with flat funding since 2010, except for FY 2013 when its funding was cut by $350 million as a result of mandatory sequestration.

**Congressional Activity**

As mentioned above, the Bipartisan Budget Act of 2013 established the top-line discretionary spending
limit for the federal government for FY 2015 at an amount that was $2 billion higher than FY 2014. It was hoped that setting the top-line spending limit prior to the start of the FY 2015 appropriations process would set a new tone, but the process fell victim to election-year politics and a continuing resolution once again was necessary to keep the government funded after October 1.

**House Appropriations.** H.R. 5016, the House Financial Services and General Government FY 2015 appropriations bill, was approved by the full committee and passed by the House in July. It would have provided $6.7 billion in discretionary spending for the judiciary, 2.5 percent above FY 2014 funding, but 1 percent less than originally requested.

**Senate Appropriations.** The counterpart Senate bill, which was approved by the Senate Appropriations Subcommittee on Financial Services and General Government and released only in draft, is very similar to the House version. It would have apportioned the money slightly differently and provided approximately $162 million more in overall funding. The full committee did not consider the bill.

Unlike the House, which passed seven of the 12 annual appropriations bills, the Senate failed to act on any of them.

**Continuing Resolutions.** Both chambers abandoned further work on individual appropriation bills after the August recess. In mid-September, the House and Senate passed HJ Res 124, a stop-gap measure to provide FY 2015 funding for the government from October 1 through December 11 at 2014 levels. Another short-term CR was adopted mid-December.

**Final FY 2015 Appropriation - $6.7 Billion**
The judiciary fared very well in the “Cromnibus,” final FY 2015 funding legislation signed into law December 16, 2014. The judiciary received $6.7 billion in discretionary appropriations, an increase of $182 million, or 2.8 percent above its FY 2014 funding level. The appropriation, which is essentially equal to the judiciary’s re-estimated funding request for the year, is “sufficient to enable the courts to operate effectively,” according to A.O. Director Judge Bates. Even though modest in size, the increased appropriation affirmed Congress’s recognition of its duty to provide adequate funding for the courts during deficit reduction.

**FISCAL YEAR 2016**

**Judiciary Request – $6.963 Billion**
The judiciary’s original request, which was included in the President’s budget request, proposed a budget that was $264.5 million – or 3.9 percent – over its FY 2015 funding level. Officials explained that seventy-nine percent of the requested increase was necessary for staff pay adjustments, inflation, and other adjustments to maintain current services. The other 21 percent ($56 million) would pay for program enhancements, including $26 million for a national information technology hosting initiative; $15 million to expand the use of best practices to reduce recidivism; $4.6 million to increase court security officers at courthouses; and funds to increase in the hourly rate for CJA panel attorneys by $6.00 to $134/hour and the daily juror attendance rate by $10.00 to $50/day.
House and Senate Appropriations Committee Activity

The House Appropriations Committee approved the Financial Services and General Government appropriations bill, which included $6.192 billion for the judiciary, in June but it never received a vote on the floor.

The Senate Appropriations Committee approved its Financial Services funding bill in July with $6.86 billion in discretionary funding for the U.S. Courts, $162.9 million, or two percent, more than FY 2015. Although $101.6 million lower than the judiciary’s original request, it was in line with the Judiciary’s revised estimate of its budgetary needs.

Budget Battles Rage throughout the Year Despite Progress on Individual Appropriations Bills

From the outset, party leaders held very different views over whether to adhere to budget caps mandated by the Budget Control Act of 2011 or try to craft another alternative deficit reduction plan, similar to the one struck in 2013 (PL 113-67) that would provide more money for both defense and domestic programs.

Absent a budget deal, the BCA would continue to control discretionary spending caps through 2021. In FY 2016, domestic discretionary spending under the BCA would be capped at $493 billion and defense discretionary spending would be capped at $523 billion. This would only increase discretionary spending by $3 billion over FY 2015.

Rather than working toward an alternative plan, Republicans focused on how to increase defense spending without violating the spending caps. The House’s budget proposal (H. Con. Res. 27), adopted March 26, 2015, by a vote of 228-199, adhered to the budget caps but increased defense spending by $38 billion without offsetting the amount by adding $38 billion to the Overseas Contingency Operations account. The Senate used to same strategy and adopted its own budget blueprint (S. Con. Res. 11) on a party-line vote the next day. A final Republican budget deal was worked out in May.

Democrats decried these actions and vowed to block consideration of any spending bill that used gimmickry to increase discretionary defense spending without violating the caps. The stand-off lasted throughout the summer. Staff-level negotiations started in earnest in September.

To avoid a government shutdown, Congress passed a 10-week continuing resolution (PL 114-53) on September 30, the last day of the fiscal year to keep the government open through December 11.

On October 26, 2015, congressional leaders and the White House reached an agreement (HR 1314) to raise discretionary spending caps by $80 billion over two years and suspend the debt limit until March 15, 2017. The cap increases – $50 billion in fiscal 2016 and $30 billion in fiscal 2017 – were split evenly between defense and nondefense accounts. The agreement also provides $73.5 billion for Overseas Contingency Operations in FY 2016 and the same amount in 2017. It was signed it into law on November 2.
Using the topline agreement as a framework, appropriators and congressional leaders spent the last weeks of the year negotiating final allocations for specific government agencies and programs. The talks resulted in a $1.15 trillion omnibus bill that was signed into law by the president on December 18 (P.L. 114-113).

The spending legislation was tied to a package of tax break extensions and included provisions reauthorizing the 9/11 first responders’ health care program and lifting a decades-old ban on crude oil exports. The budget cap increases were offset by a variety of spending cuts and revenue increases.

**Final FY 2016 Appropriation for the Judiciary - $6.78 billion**

The judiciary was funded at $6.78 billion in discretionary funding for FY 2016, a 1.2 percent increase – or $80 million greater – than its prior year’s appropriation. Judge Julia Gibbons expressed the appreciation of the courts, stating, “This is the third consecutive year that the Judiciary has received essentially full funding of its appropriations requirements. We appreciate that Congress has, since sequestration, treated the Judiciary as a top funding priority.” The bill includes a one-year extension of the authorizations for nine temporary district court judgeships. FY 2016 funding for the General Services Administration includes $948 million to fund construction costs of the top eight courthouse construction projects and partial funding for a ninth. Please click here for the AO’s article on FY 2016 funding for the courts.

**Fiscal Year 2017**

**FY 2017 Request: $6.99 Billion in Discretionary Funding**

The judiciary proposed a budget that was $214 million – or 3.2 percent – over its FY 2016 funding level.

**Budget Plan Angst**

House Speaker Ryan and Senate Majority Leader McConnell repeatedly called for a return to “regular order” and passage of all 12 individual spending bills for FY 2017. The likelihood of that happening fell apart when House Republicans squabbled over whether to honor the two-year budget deal (P.L.114-74) that raised discretionary caps by $80 billion over two years and suspended the debt limit until March 17, 2017. The cap increase – $50 billion in 2016 and $30 billion in 2017 – was split evenly between defense and nondefense accounts and translated into a total discretionary budget of $1.07 trillion for FY 2017 instead of $1.04 trillion, as originally mandated by the BCA.

The House Budget Committee, chaired by Rep. Tom Price (R-GA), reported a budget resolution (H. Con. Res. 125) to the House March 23 that would honor last year’s budget deal and promised Members an opportunity to vote on a separate package of $30 million in spending cuts over two years. It was met with tepid support. Republican defense hawks suggested adding a provision requiring all spending cuts to be made to the nondefense side of the budget. Other House conservatives indicated that they would support it if there were matching reductions in mandatory spending that were enacted before
the FY 2017 discretionary spending took effect. Neither plan provided a way forward, and there was no incentive to keep trying as the clock kept ticking: under a 1974 budget law, the House is allowed to consider appropriations bills on the floor even without a budget after May 15.

On the other side of the Capitol, Senate Budget Chairman Michael B. Enzi (R-WY) took advantage of a provision in the October budget deal that allowed him to forego adoption of a formal FY 2017 budget. On April 18, he released the spending top lines (known as 302(b) allocations) under last year’s budget agreement and gave Senate appropriators the go-ahead to craft spending bills that reflect the higher budget caps. (No such provision is available to the House.) In the end, the appropriators honored the spending caps for FY 2017 that were enacted in 2015.

Funding Bills Make Progress

While the Financial Services bill ignited funding controversies over numerous programs, congressional appropriators were in agreement over the need for a fully funded judiciary and expressed appreciation for the sincere and successful efforts undertaken by the courts to constrain growth and contain costs.

The House-passed Financial Services and General Government FY 2017 appropriations bill included $6.955 billion in discretionary funding for the federal courts, and the Senate bill, unanimously approved by the full Appropriations Committee, included $6.986 billion in discretionary funding for the courts, a three percent increase over current funding. Both bills also would extend 10 temporary district court judgeships for the year.

Unfortunately, Congress failed to pass the spending bill in time for the start of the new fiscal year. Instead, Congress passed a short-term CR to keep the government funded until December 9, 2016, and then left town until after the elections. When Congress returned, it passed another CR, thereby assuring that the new President and the new 115th Congress would have an opportunity to shape the final funding package for the fiscal year that was already underway.

Final FY 2017 Appropriation for the Judiciary -- $6.9 Billion

On May 5, 2017, President Trump signed into law the Consolidated Appropriations Act of 2017. It provided the federal judiciary with $6.9 billion in discretionary spending, a 2.2% increase ($149 million) above FY 2016 and marked the fourth consecutive year that the judiciary essentially received full funding.
**Fiscal Year 2018**

The judiciary requested $7.2 billion in discretionary appropriations.

A summary of the judiciary’s request is available [here](#).

On September 14, 2017, the House passed the FY 2018 Financial Services and General Government appropriations bill with $7.09 billion in discretionary funding for the judiciary, a 2.3 percent increase over FY 2017. The Senate Appropriations Committee passed its version of the bill on November 20 and included $7.19 billion for the judiciary, a 3.8 percent increase over FY 2017.

The House and Senate again wrangled over ways to circumvent the discretionary spending caps set by the BCA. This, along with disagreements over funding the Children’s Health Insurance Program and how to handle the “Dreamers” led to a three-day government shut down in January. The impasse was broken when Senate Democrats agreed to a spending bill that would fund the federal government through February 8, fund the Children’s Health Insurance Program for six years, and with assurance from Senate Majority Leader Mitch McConnell to negotiate some kind of immigration deal within that time period and put a bill on the floor for a vote.

A second funding gap occurred on February 9. Although the funding gap only lasted nine hours overnight, meaning government services were not interrupted, the event was widely referred to in the media as a second shutdown. It was resolved when President Trump signed the Bipartisan Budget Control Act of 2018, which included a continuing resolution lasting until March 23, 2018, and increased the spending caps imposed by the BCA for both defense and nondefense spending. The non-defense domestic discretionary spending cap was increased by $63 billion in FY 2018 and $68 billion in FY 2019. The agreement also included various other provisions, including suspension of the debt ceiling until March 1, 2019.

**Final FY 2018 Appropriation for the Judiciary -- $7.1 Billion**

On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act of 2018 that funds the judiciary at $7.1 billion for FY 2018. This is $184 million or 2.7% higher than the prior year’s funding level and $1 million more than the judiciary had asked for in its amended request to Congress. It once again demonstrated Congress’s commitment to provide the judiciary with adequate funding to carry out its statutory and constitutional duties.

**Fiscal Year 2019**

Unable to pass a comprehensive spending bill by the start of the 2019 fiscal year, Congress passed a
series of continuing resolutions to keep the government operating. While about half of the 12 appropriations bills were passed and signed into law, the remaining parts of the government, including the Federal Judiciary, were funded through a series of continuing resolutions through December 21, 2019. At that point, a partial government shutdown was triggered and continued to January 25. The Judiciary was able to continue to operate by using court fee balances and other "no-year" funds. The Administrative Office of the U.S. Courts (AO) estimated that federal courts could sustain funded operations through Jan. 31, 2019. The ability to operate that long was attributed to aggressive efforts to reduce expenditures. Courts and federal public defender offices delayed or deferred non-mission critical expenses, such as new hires, non-case related travel, and certain contracts. In addition, in response to requests by the Department of Justice, some federal courts have issued orders suspending or postponing civil cases in which the government is a party, and others have declined to do so.

If the Judiciary had run out of funds, it would have operated under the terms of the Anti-Deficiency Act, which permits mission critical work. This includes activities to support the exercise of the courts' constitutional powers under Article III, specifically the resolution of cases and related services. Each court would have had to determine the staff necessary to support its mission critical work. Once appropriations were finalized for FY 2019, the judiciary was funded at $7.26 billion, a 2.1% increase over the prior year’s funding.

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