Two-year budget agreement restores $63 billion in sequestration cuts

A two-year bipartisan budget agreement reached this month for fiscal years 2014 and 2015 would restore $63 billion in sequestration cuts, increase discretionary spending caps, and provide $23 billion in deficit reduction.

The agreement would alter amounts set by the Budget Control Act of 2011, which required automatic across-the-board cuts – known as sequestration – to discretionary spending in January 2013 and required Congress to figure out how to reduce discretionary spending by $109 billion a year for the next eight years to achieve $1.2 trillion in deficit reduction by the year 2021. The mandated across-the-board cuts in fiscal year 2013 required non-defense discretionary programs, including the federal judiciary, to reduce spending by five percent.

The bipartisan agreement reached this month resulted from negotiations required by P.L. 113-46, legislation that ended a two-week government shutdown in October that occurred when Congress could not agree on a temporary funding measure while it continued to work on an omnibus funding measure for fiscal year 2014. The law set a Dec. 13 deadline for a conference committee to develop a bipartisan budget plan. Normally, the annual appropriations-setting process starts with adoption of a budget plan.

House Budget Committee Chairman Paul Ryan (R-Wis.) and Senate Budget Committee Chairman Patty Murray (D-Wash.) led the negotiations, which mark the first time in four years that a budget compromise was reached that is expected to receive the approval of both the House and Senate. The House overwhelmingly passed the legislation, H.J. Res. 59, by a vote of 332-94, and the Senate was expected to clear the measure before the holiday recess.

The $45 billion increase in the Budget Control Act’s discretionary cap for fiscal year 2014 would be divided evenly between defense and non-defense spending, and House and Senate Appropriations Committees face a Jan. 15, 2014, deadline for deciding funding amounts for the remainder of the fiscal year. The cap increase for fiscal year 2015 is set at $18 billion. Under the agreement, the cap increases would be offset in several ways, including a decrease in cost-of-living adjustments for certain military retirees, increased air passenger fees, and increased retirement contributions by future federal employees.

President Obama expressed support for the Ryan-Murray plan. “This agreement replaces a portion of the across-the-board spending cuts known as ‘the sequester’ that have harmed students, seniors, and middle-class families and served as a mindless drag on our economy over the last year,” he said. Although the agreement does not include everything he would have liked, the president said “that’s the nature of compromise” and called it a “good first step.”
### LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gun Violence.</strong> S. 150 and H.R. 437 would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. S. 54 and H.R. 452 seek to combat the practices of straw purchasing and illegal trafficking of firearms. S. 374 would strengthen background checks. S. 649, a comprehensive bill, includes numerous gun violence prevention provisions.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>Judiciary Committee held hearings and approved S. 54 on 3/7/13; S, 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subc. held a hearing on 2/12/13. Senate began consideration of S. 649 on 4/8/13.</td>
<td></td>
<td>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</td>
</tr>
<tr>
<td><strong>Legal Services Corporation.</strong> President recommended $430 million in LSC funding for fiscal year 2014. P.L. 113-49 (H.R. 2775) continues LSC funding through 1/15/14 at the fiscal year 2013 sequestration level of $358 million.</td>
<td>Approps Cmte. approved $300 million in fiscal year 2014 funding for LSC on 7/10/13.</td>
<td>Approps Cmte. approved $430 million in fiscal year 2014 funding for LSC on 7/18/13.</td>
<td>President signed P.L. 113-49 (H.R. 2775) on 10/17/13.</td>
<td>Supports an independent, well-funded LSC.</td>
</tr>
</tbody>
</table>
Senate passes bill to help homeless veterans

The Senate passed an ABA-supported bill last month that would expand the definition of homeless veterans to include those fleeing domestic violence and would authorize the Department of Veterans Affairs (VA) to develop partnerships with public and private entities to provide legal services to homeless veterans and those at risk of homelessness.

S. 287, passed by unanimous consent Nov. 6, would bring the definition of homeless veterans eligible for VA assistance in line with the definition used by the Department of Housing and Urban Development (HUD).

The current definition used by the VA defines a homeless veteran as one who meets the criteria of lacking a fixed, regular and adequate place to sleep at night; has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation; lives in a transitional housing setting; resides in a location not meant for human habitation; will imminently lose his or her housing; or has experienced persistent housing instability.

The HUD definition includes additional language that includes “any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking or other dangerous or life-threatening conditions in the individual’s or family’s current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.”

“It is unacceptable to deprive veterans of benefits – especially services that are designed to help them when they are at their most vulnerable,” said bill sponsor Sen. Mark Begich (D-Alaska), who noted that Alaska has the highest number of veterans per capita and alarmingly high rates of domestic violence. The expansion of the definition is expected primarily to assist women veterans, according to the Congressional Budget Office.

The legal services provisions in the bill are in response to the VA’s fiscal year 2011 CHALENG report, which revealed that legal assistance ranked among the top four unmet needs identified by homeless veterans for the last four years. The provisions would authorize the VA to enter into public and private partnerships that would fund a portion of the legal services provided to homeless veterans or those at risk of homelessness.

The bill would require the VA to ensure that the partnerships are distributed evenly across the country, including rural and tribal areas.

According to the committee report on S. 287, the committee intends that the VA partner with legal services providers and housing providers that offer legal services in an effort to develop networks of pro bono legal assistance providers and improve the outcomes of the legal services provided.

Other provisions in the bill would increase per diem payments for transitional housing that becomes permanent housing and would authorize per diem payments for care for dependents of homeless veterans.

ABA supports measure to restore honor to those affected by Don’t Ask Don’t Tell policy

ABA President James R. Silkenat expressed the ABA’s support last month for H.R. 2839, a bill to restore honor to veterans who were discharged due solely to their sexual orientation but did not receive an “honorable” characterization of service.

These veterans, according to Silkenat, have an “undeserved blemish” on their service records that can create significant obstacles to seeking employment and prevent them from receiving the same benefits that are received by veterans who received “honorable” characterizations of service.

It has been two years since repeal of the Don’t Ask Don’t Tell (DADT) policy that banned openly gay individuals from serving in the military, but there are “thousands of veterans who are still experiencing the consequences of that policy and its even more oppressive predecessors,” Silkenat emphasized in a Nov. 21 letter to Reps. Joe Wilson (R-S.C.), chairman, and Susan Davis (D-Calif.), ranking member, of the House Armed Services Subcommittee on Military Personnel.

The legislation would provide veterans who were discharged due solely to their sexual orientation an opportunity to request that their characterization of service be upgraded. The bill also would ensure that any indication of sexual orientation will be removed from the records of servicemembers who received “honorable” discharges.

“By providing an opportunity for servicemembers affected by DADT to request an upgrade to their discharge characterizations, the legislation would alleviate some of the consequences that continue to plague these veterans,” Silkenat said. “Moreover,” he said, “amending discharge records to remove mention of any servicemember’s sexual orientation will lessen the possibility of servicemembers being discriminated against when they would otherwise be able to keep their sexual orientation private.”

see “Don’t Ask Don’t Tell,” page 8
Agreement reached on FY 2014 defense authorization

A fiscal year 2014 defense authorization agreement reached this month by the Armed Services Committees in the House and Senate includes language supported by the ABA’s policy regarding child custody cases involving a parent who is a member of the military.

The agreement, which passed by the House Dec. 12 by a 350-69 vote under suspension of the rules as an amendment to H.R. 3304, includes some provisions from separate defense authorization bills passed by the House and approved by the Senate Armed Services Committee earlier this year. The House passed its bill, H.R. 1960, in June; the Senate failed to invoke cloture on its bill, S. 1197, in November. The new agreement, which is expected to clear the Senate before the holiday recess, would authorize $632.8 billion for the military and defense-related programs.

The child custody language expresses the sense of Congress that state courts should not consider military deployment as the sole factor in determining child custody in state court proceedings involving a parent who is a member of the armed forces. The agreement did not include provisions opposed by the ABA that have been part of the past six House versions of proposed defense authorization legislation. Those provisions would have amended Title II of the Servicemembers’ Civil Relief Act (SCRA) to require a court that has issued a temporary custody order based solely on the deployment or anticipated deployment of a servicemember to reinstate, upon return of the servicemember, the custody order that was in effect immediately preceding the temporary order unless it is not in the best interest of the child.

The ABA opposes the provisions because the association maintains that they would open the federal courthouse doors to military child custody cases and unnecessarily create uncertainty and extraordinary expense for military members and their families. In correspondence last year to Congress, then ABA President Wm. T. (Bill) Robinson III explained that each attempt to seek federal jurisdiction in a custody case, such as appealing the application of the law, would delay final resolution by months and potentially create a changing body of law affecting custody laws in every state.

Calling the federal proposal an “unwarranted intrusion in matters best reserved to the states,” Robinson said that more than 40 states have enacted legal protections in military child custody cases and that the SCRA currently provides military parents protections in harmony with state laws without federal legislation. In addition, the Uniform Law Commission is urging approval of a comprehensive package of state protections even in states that have existing protections.

In another area of concern to the ABA, the agreement does not include provisions supported by the association that would have allowed Guantanamo Bay detainees to be transferred to the United States for trial in federal court.

The ABA urged the Senate last month to retain Guantanamo transfers provisions that were part of S. 1197. The provisions, which survived attempts to remove them from the bill during debate last month on the Senate floor, would have amended the blanket restriction in effect since 2010 that forecloses civilian court prosecutions of Guantanamo detainees by prohibiting the use of Department of Defense (DoD) funds to transfer detainees to the United States for any purpose. The provisions would have allowed the secretary of Defense to waive the prohibition if certain conditions were met.

In a Nov. 18 letter to all senators, ABA President James R. Silkenat emphasized that “the federal courts are well equipped to handle terrorism trials no matter how complex” and that “it is in our national interest to permit determinations regarding the best venue to prosecuting alleged terrorists detained at Guantanamo Bay to be made on a case-by-case basis.”

The agreement does include provisions allowing the secretary of Defense to authorize transfers of detainees to foreign countries if a Periodic Review Board determined that the detainee is no longer a threat to U.S. security or if the transfer has been ordered by a court.

In addition, the secretary would be allowed to authorize other Guantanamo transfers overseas after determining that a transfer would be in the national security interests of the United States and that steps have been taken to mitigate the risk that a detainee would re-engage in terrorist activities.

Other major provisions in the bill include more than 30 provisions to reform the way the military handles sexual assault cases, including providing special victims’ counselors – specially trained lawyers in each of the services – to provide legal assistance to victims of sex-related offenses.
House focuses on abusive patent litigation

The House passed legislation Dec. 5 that seeks to reduce abusive litigation practices in patent cases, but the ABA is urging Congress to address the issue instead through the Rules Enabling Act, a rulemaking process that has served the justice system well for almost 80 years.

H.R. 3309, passed by a 325-91 vote, includes proposed changes in the Patent Code as codified in Title 35 of the U.S. Code and other provisions of federal law. The proposed changes are directed toward practices by litigants that have come to be identified as “patent assertion entities” or “patent trolls,” entities that acquire and hold patents not for commercial exploitation but primarily, if not solely, to sue for monetary relief or extortionist settlements.

“The ABA agrees that changes in court procedures relating to pleadings, disclosure of real parties in interest, joinder of parties, and discovery can improve the administration of justice in our nation’s federal courts, including in patent cases,” ABA Governmental Affairs Director Thomas M. Susman wrote in a Nov. 14 letter to House Judiciary Committee Chairman Robert W. Goodlatte (R-Va.) and Ranking Member John Conyers Jr. (D-Mich.).

He added, however, that the ABA opposes enactment of H.R. 3309 and urges further revision of the legislation to achieve these objectives.

Under the Rules Enabling Act, the Judicial Conference of the United States drafts proposed rules and amendments, makes them available for public comment, and submits them to the U.S. Supreme Court after Judicial Conference approval. The Supreme Court submits the proposals to Congress, which retains the final authority to reject, modify or defer any rule or amendment before it takes effect.

H.R. 3309 circumvents the Rules Enabling Act in two ways: direct legislative enactment of rules of procedures and case management; and statutory direction to the Judicial Conference or the Supreme Court to develop particular rules and procedures specified in the bill for patent cases.

“By mandating particular rules of procedures applicable only to patent cases, the legislation calls for the same issues to be governed by different rules in patent cases than in all other civil cases,” Susman wrote.

“This unhealthy precedent could prompt calls to Congress to provide special rules of procedure for still other areas of the law, leading to the balkanization in the administration of justice — precisely the result that the Rules Enabling Act process was designed by Congress to avoid,” he said.

Susman noted that the ABA supports the “commendable” objectives of the bill to make it more difficult for ill-founded patent suits to succeed and to make it easier to identify and dispose of those suits more promptly and less expensively.

The legislation, however, may have the unintended result of creating more delay and expense, he said.

Following House passage of H.R. 3309, Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) announced that his committee will hold a Dec. 17 hearing on the issue. Leahy and Sen. Mike Lee (R-Utah) have introduced S. 1720, a bill to address the patent issues through Federal Trade Commission enforcement rather than through changes in court rules.

Save the Date!

ABA Day in Washington
April 8-10, 2014

For more details, go to the ABA Day page on the Governmental Affairs Office website.
President signs bill to continue global HIV/AIDS effort

New law reauthorizes President’s Emergency Plan for AIDS Relief

President Barack Obama marked World AIDS Day Dec. 2 by signing a bill to reauthorize and extend programs to continue the global fight against HIV/AIDS and announcing that $100 million would be redirected toward AIDS research at the National Institutes of Health.

P. L. 113-56 (S. 1545), the PEPFAR (President’s Emergency Plan for AIDS Relief) Stewardship and Oversight Act, includes provisions enhancing communication and coordination among the various agencies involved and extending reporting requirements on cost per patient and funding requirements for treatments for vulnerable children. The law also modernizes the PEPFAR program’s annual report to better reflect the program’s move away from strictly U.S. support and toward greater partner-country involvement in respective recovery and prevention efforts.

In a statement on the signing of the law, Senate Foreign Relations Committee Ranking Member Bob Corker (R-Tenn.), who cosponsored the legislation with Committee Chairman Robert Menendez (D-NJ.), praised the program.

“PEPFAR has saved millions of lives in the global fight against HIV/AIDS, so with this legislation now signed into law, we will be able to reinforce those gains as the program transitions from an emergency U.S.-led effort to one in which recipient countries increasingly sustain the program themselves,” he said.

President George W. Bush originally proposed PEPFAR, which was enacted in 2003 and reauthorized in 2008. Since its inception, millions have received services such as testing, counseling, and antiretroviral treatment, and it is the “single most successful program to date to address the HIV/AIDS epidemic in Africa and the largest commitment by any nation to combat a single disease internationally,” according to Corker’s office.

President Obama said in his public statement on Dec. 2 that two years ago he set a goal of helping 6 million of those infected receive treatment. This year, he said, this goal was not only met, but surpassed – at a total of 6.7 million people.

The president thanked those who have worked towards eliminating and preventing HIV/AIDS. He noted that the fight is not yet over, but emphasized that significant progress has been made.

“With testing and access to the right treatment, the disease that was once a death sentence now comes with a good chance at a healthy and productive life,” he said, “and that’s an extraordinary achievement.”

The ABA has adopted numerous policies, developed primarily through the ABA AIDS Coordinating Committee established in 1987, supporting efforts to eradicate HIV/AIDS across the globe as well as to provide services and treatment to those with the disease.

Judicial Vacancies/Confirmations—113th Congress* (as of 12/16/13)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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</thead>
<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
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<td>0</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
<td>77</td>
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<td>31</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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</tr>
<tr>
<td>Totals</td>
<td>93</td>
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*Includes territorial judgeships
OVER-CRIMINALIZATION: The ABA is urging the House Judiciary Committee to reauthorize its bipartisan Task Force on Over-Criminalization for another six months so that the panel can continue to provide a forum for a constructive conversation on the problems of over-criminalization in the federal criminal justice system. The task force was established in May for a six-month period to examine the system and make recommendations. In a Dec. 3 letter to committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers Jr. (D-Mich.), ABA Governmental Affairs Director Thomas M. Susman expressed ABA support for the task force’s early focus on assessing the scope of the problem, the erosion of mens rea requirements, and regulatory solutions. “We believe that a consensus on more careful use of criminal sanctions is emerging from this focus – a consensus that acknowledges that robust enforcement of regulatory laws must be maintained where criminal punishment is not appropriate,” he said. Susman explained that additional time will give the task force the opportunity to more closely examine more issues, including the problem of federalization of state criminal law, overuse of mandatory minimum sentencing, the proliferation of collateral consequences of conviction, and the related need to overhaul the federal criminal code. Testifying at the first task force hearing in June, William N. Shepherd, then chair of the ABA Criminal Justice Section, said that “over-criminalization and over-federalization lessen the value of important existing legislation by flooding the landscape with duplicative and overlapping statutes that make it impossible for the lay person to understand what is criminal and what is not.”

RULE 11 SANCTIONS: The ABA last month reiterated its strong opposition to H.R. 2655, a bill passed by the House Nov. 14 that would change Rule 11 of the Federal Rules of Civil Procedure to reinstate provisions to require, rather than permit, the imposition of monetary sanctions against lawyers for filing non-meritorious lawsuits. The mandatory sanctions provisions, originally adopted in 1983, were rescinded in 1993 because they were shown to increase non-meritorious lawsuit filings rather than reduce them. The current Rule 11, adopted in 1993, provides for discretionary imposition of sanctions and includes a “safe harbor” provision that allows parties and their attorneys to avoid Rule 11 sanctions by withdrawing frivolous claims within 21 days after a motion for sanctions is served. In a Nov. 12 letter to all members of the House, ABA Governmental Affairs Director Thomas M. Susman explained that the ABA opposes H.R. 2655 for three main reasons: the bill would circumvent the Rules Enabling Act, a rigorous, multi-step process for amending the Federal Rules of Civil Procedure; there is no demonstrated evidence that the existing Rule 11 needs to be amended; and the measure ignores the lessons learned from 10 years of experience under the 1983 mandatory version of the rule. “While we do not believe that Rule 11 requires amendment, we respect that some members of Congress are deeply concerned that frivolous lawsuits are adversely affecting the administration of justice and believe that their concerns and proposed solutions deserve a full and robust examination, which was not undertaken prior to introduction of H.R. 2655,” Susman said.

NUTRITION: The ABA urged the House-Senate conference committee considering H.R. 2642, farm legislation, to accept the Senate provision regarding the Supplemental Nutrition Assistance Program (SNAP). The program, formerly known as food stamps, provides food and nutrition assistance to low-income households, and 75 percent of those participating in the program are in families with children. The program already experienced $5 billion in cuts in November when funding expired under an economic stimulus package enacted in 2009. The Senate-passed version of the farm bill would cut an additional $4 billion over 10 years from SNAP funding, much less than the $39 billion cut included in the House version for the same period. “We understand that difficult fiscal choices must be made as Congress works to reach balanced federal spending policy,” ABA Governmental Affairs Director Thomas M. Susman wrote to conferees Dec. 4. “We are concerned, nonetheless, that proposed reductions to SNAP will result in failure to support millions of American families and children in maintaining the basic necessity of adequate food and nutrition,” he said. Conferees announced this month that a final agreement would not be reached this year on reauthorizing farm programs, most of which expired Sept. 30 of this year. As a result, the House passed a bill, H.R. 3695, on Dec. 12 to extend the programs through Jan. 31, 2014. The Senate is not planning to take up the bill, expecting instead to consider the conference report on the farm legislation in early January.
ABA expresses support for smarter sentencing

The ABA urged the Senate Judiciary Committee this month to include the provisions of S. 1410, the Smarter Sentencing Act, in any criminal justice reform package approved by the committee.

In a Dec. 9 letter to the committee, ABA Governmental Affairs Director Thomas M. Susman emphasized that the bill, sponsored by Sens. Dick Durbin (D-Ill.) and Mike Lee (R-Utah), “will address some of the causes for the unsustainable and unnecessary growth in the federal prison population by helping to reduce lengthy sentences for certain persons convicted of nonviolent offenses.”

Susman pointed out that the federal prison population has increased by an alarming rate of 790 percent since 1980 and that research by the Urban Institute found that increases in expected time served, specifically for drug offenses, contributed to half of the prison population growth between 1998 and 2010. He said the Urban Institute reported in November 2013 that the bill, if enacted, could save taxpayers more than $3 billion over 10 years.

Major provisions in S. 1410 would do the following: expand the existing federal safety valve that allows a judge to sentence below a mandatory minimum in appropriate cases; reduce mandatory minimums for drug offenses; and apply the Fair Sentencing Act of 2010, which reduced the sentencing disparity between crack and powder cocaine offenses, to those currently serving sentences for drug offenses.

The committee is planning to mark up a group of criminal justice bills shortly. In addition to S. 1410, the bills pending before the committee include S. 619, the Justice Safety Valve Act sponsored by Sen. Rand Paul (R-Ky.) and Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.); S. 1675, the Recidivism Reduction and Public Safety Act of 2013 sponsored by Sens. Sheldon Whitehouse (D-R.I.) and Rob Portman (R-Ohio); and S. 1783, the Federal Prison Reform Act sponsored by Sen. John Cornyn (R-Texas); committee ranking member Charles E. Grassley (R-Iowa) and Sen. Orrin G. Hatch (R-Utah).

Don’t Ask Don’t Tell
continued from page 3

Silkenat highlighted the ABA’s long tradition of actively opposing discrimination, including the association’s opposition to enactment of DADT in 1993 because the policy established a form of discrimination not based on the character of the servicemember’s contribution to the national defense.

The association approved policy in 2010 supporting repeal of DADT, maintaining that there was “no sufficient reason to deprive lesbian, gay or bisexual men and women of the opportunity to serve our country.”