Obama submits proposed budget
Fiscal year 2015 appropriations process begins on Capitol Hill

The House and Senate Appropriations subcommittees have begun hearings on recommendations for funding the federal government in fiscal year 2015, including a $3.9 trillion budget proposal by President Obama.

The president’s budget, submitted to Congress March 4, is in line with the budget agreement approved by Congress last year and includes $1.014 trillion in discretionary funding. The president calls for an end to sequestration starting in 2016 and includes a supplemental budget request called Opportunity, Growth and Security that would provide $56 billion in additional domestic and defense spending derived from alternative spending cuts and tax increases.

Portions of the budget proposal of special interest to the ABA include additional discretionary funding in the Justice Department’s (DOJ) $27.4 billion budget proposal for the “Smart on Crime” initiative, which was launched in August 2013. The additional appropriation, a $122 million increase to $173 million, would fund targeted criminal justice efforts to reduce the prison population and initiatives supporting state and local reentry programs for those being released from prison. Also included in the DOJ proposal is $1.1 billion for initiatives to address gun violence, including $13 million to improve the criminal background check system for gun purchasers and $75 million for school security pilot programs.

The president proposes an increase to $440 million for the Legal Services Corporation, which is currently funded at $365 million. That amount includes $4.9 million for the new Pro Bono Innovation Fund, a competitive grant program established this year to support new and innovative projects promoting and enhancing pro bono initiatives throughout the country. The president is also seeking $1 million for the student loan repayment assistance for civil legal services lawyers.

For the federal judiciary, the president requests $6.7 billion in discretionary funding. This would be an increase over the current discretionary amount of $6.516 billion. Under the proposal, the Defender Services Program, which provides compensation to court-appointed attorneys representing indigent defendants in federal criminal cases, would receive an increase of $8.8 million to $1.053 billion.

The proposed budget also calls for comprehensive immigration reform and expresses support for S. 744, the immigration legislation passed by the Senate last June.

Another priority in the budget is funding to improve the Veterans Claims Intake Program at the Department of Veterans Affairs in an effort to improve the processing of claims and eliminate the current backlog of pending claims. The budget would provide $138.7 million for this program and also includes more than $7 billion for treatment of veterans suffering from mental health issues, including post-traumatic stress disorder.
## 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 (LSC).</strong> P.L. 113-76 (H.R. 3547), consolidated fiscal year 2014 appropriations legislation, included $365 million for the LSC, a $25 million increase in funding.</td>
<td>House passed H.R. 3547 on 1/15/14.</td>
<td>Senate passed H.R. 3547 on 1/16/14.</td>
<td>President signed P.L. 113-76 (H.R. 3547) on 1/17/14.</td>
<td>Supports an independent, well-funded LSC.</td>
</tr>
</tbody>
</table>
ABA cites growing concerns about solitary confinement

The ABA expressed concerns to a Senate subcommittee last month about the negative effects of solitary confinement on prisoners and emphasized that the impact on juveniles is especially pronounced.

The American Academy of Child and Adolescent Psychiatry advises that even short periods of isolation too often have serious long-term mental health impact on juveniles, a vulnerable age group, and the ABA maintains that segregation should be imposed in the most limited manner possible.

The ABA statement on solitary confinement, submitted by ABA Governmental Affairs Director Thomas M. Susman for a Feb. 24 hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, emphasizes the immense costs to the public, the prisoners, and the communities to which the vast majority of once-isolated prisoners will return. The hearing was scheduled a year and a half after the panel held its first hearing on the issue in 2012, and Susman urged the members to continue to investigate ways to restrict long-term solitary confinement to promote the safe, efficient and humane operation of prisons.

He pointed out that, since the first hearing, the Bureau of Prisons has been conducting a first-ever independent assessment of federal prisons’ solitary confinement policies. The assessment, overseen by the National Institute of Corrections, is identifying the best practices in both the federal and state systems, he said.

Susman said the testimony of witnesses who had been subjected to solitary confinement for extended periods of time is supported by various studies suggesting that isolation decreases brain activity and can provoke serious psychiatric harms, including severe depression, hallucination, withdrawal, panic attacks and paranoia. He added that some data suggest that prisoners who have spent long periods in isolation are more likely to reoffend, and many studies report that these prisoners have a more difficult time creating lasting social bonds that are necessary to reintegration into their communities.

The statement explained that the ABA Standards for Criminal Justice on the Treatment of Prisoners, updated in 2010, contain specific guidance on the use of prolonged isolation and apply to all prisoners in adult correctional facilities, including jails. The core ideal of the standards is that “segregated housing”...

Senate Judiciary Committee approves recidivism bill

The Senate Judiciary Committee approved another significant cost-savings criminal justice proposal March 6 when it reported a bill that would allow lower-risk inmates to participate in programs aimed at earlier transfer to pre-release custody arrangements such as house arrest and halfway houses.

S. 1675, a compromise bill developed by Sens. Sheldon Whitehouse (D-R.I.) and John Cornyn (R-Texas), garnered a 15-2 committee vote after several months of negotiation. The bill includes provisions from both the original S. 1675, sponsored by Whitehouse, and S. 1783, introduced by Cornyn.

While both of the earlier versions would have allowed the early release of prisoners after participation in anti-recidivism programs, the version approved by the committee includes the provisions from the Cornyn bill that would allow only transfers to another level of custody. The bill would direct the Justice Department to divide prisoners into three tiers depending on their recidivism risk; only those with low- or moderate-risk ratings would be allowed to participate in the programs. Possible programs include vocational training, educational activities, and substance abuse recovery efforts.

The committee’s action on S. 1695 followed approval Jan. 30 of S. 1410, a bipartisan bill sponsored by Sens. Richard J. Durbin (D-Ill.) and Mike Lee (R-Utah). That bill, known as the Smarter Sentencing Act, would reduce federal mandatory sentencing levels for certain drug offenders, apply the 2010 Fair Sentencing Act retroactively, and expand the federal safety valve to allow judges more discretion in determining sentences for non-violent drug offenders. The bill also would create, however, new mandatory minimum sentences for various abuse crimes, interstate domestic violence crimes, and provision of weapons to terrorists or aid in the development of weapons of mass destruction.

Durbin and Whitehouse indicated that they believe the two bills complement each other and could be combined for passage by the full Senate.

The ABA, which opposes mandatory minimum sentencing, supports provisions in S. 1410 that would reduce lengthy sentences for persons who committed non-violent offenses, but the association has not addressed the specific provisions in S. 1675.
ABA President Silkenat wrote to National Security Agency’s (NSA) Director General Keith B. Alexander and General Counsel Rajesh De on Feb. 20 to express the ABA’s concerns about alleged foreign government surveillance of American attorney communications with foreign clients and the potential harm this might cause to the attorney-client privilege.

The issue of foreign government surveillance and the attorney-client privilege came to the forefront amid press reports that the privileged communications of an American law firm representing a foreign government on trade issues had been intercepted by a foreign intelligence service and then shared with NSA.

Silkenat’s letter requested clarification on policies and practices NSA has adopted to protect the attorney-client privileged status of information that it collects or receives. The ABA also sought clarification on whether these policies and practices were followed in connection with the recent controversy.

In a March 10 response, Alexander said he appreciated the opportunity for NSA to clarify its procedures and emphasized the agency’s commitment to “the rule of law and the bedrock legal principle of attorney-client privilege.”

In his February letter, Silkenat wrote that the interception and sharing of attorney-client privileged communications by government agencies – or any third party – raises concerns, including “chilling the full and frank discussion between lawyer and client that is essential for effective legal representation.”

Whether or not the reports are true, Silkenat added, the ABA understands the importance of the role NSA plays in ensuring national security and wants to work with NSA on this issue.

“We would expect NSA to respect the privilege and take all appropriate steps to ensure that any such privileged information is not further disseminated to other agencies or any other third parties,” he said.

The NSA director assured Silkenat that any privileged attorney-client communications will be given “appropriate protection.” He clarified that NSA does not ask any foreign partner to conduct any intelligence activity on its behalf that the agency would not legally be able to do itself, including privileged signal intelligence activities that could implicate potentially communications.

He acknowledged that at times collection of privileged communications may occur incidentally, stressing that in such cases the important issue is how to provide appropriate protections for such information.

Alexander pointed to recently declassified procedures, put in place under Executive Order 12333 and the Foreign Intelligence Surveillance Act, requiring destruction of any information, including non-pertinent privileged communications, collected about U.S. persons. The privacy procedures must be approved by the attorney general and, at appropriate times, by the Foreign Intelligence Surveillance Court.

He clarified that any information containing privileged communications or concerning criminal or judicial proceedings must be reviewed by the NSA Office of General Counsel on a case-by-case basis prior to dissemination to determine if the communication in question is indeed privileged and, if so, how to proceed.

Alexander did not comment on the specific press reports mentioned in the ABA’s original letter but said that in the past the NSA Office of the General Counsel has “provided clear guidance on the appropriate steps to protect privileged information,” including “requesting that certain collection or reporting be limited; that intelligence reports be written so as to prevent or limit the inclusion of privileged material and to exclude U.S. identities; and that dissemination of such reports be limited and subject to appropriate warnings or restrictions on use.”

Silkenat issued a statement commending NSA’s response and expressing interest in a continued conversation on the subject.

“The American Bar Association appreciates the NSA’s expression of respect for the attorney-client privilege and looks forward to continuing a constructive dialogue with the NSA to ensure that American lawyers and their clients have confidence that their privileged communications are appropriately protected,” he said.

Last August, the ABA adopted policy urging the U.S. Government to work with other nations and organizations to develop legal mechanisms, norms, and policies to deter, prevent, and punish illegal intrusions into the computer system and networks utilized by lawyers and law firms, condemning these unlawful intrusions, and urging the government to examine and amend existing laws to fight such intrusions.

However, the association opposes any government actions that would erode the attorney-client privilege or the confidential relationship between a lawyer and his or her client.
ABA Legislative and Governmental Priorities for 2014

The ABA Board of Governors has approved the following Legislative and Governmental Priorities for the Second Session of the 113th Congress. The selection of the priorities is based on a survey of bar leaders and ABA members and a joint recommendation from the Standing Committee on Governmental Affairs and the Governmental Affairs Office.

Access to Legal Services

- Funding for the Legal Services Corporation
- Legal protection and assistance for members of the military, veterans, and family members
- Same level of insurance protection for Interest on Lawyers’ Trust Accounts at credit unions as that provided for banks

Campaign Finance and Election Law Reform

- Campaign finance reform to close loopholes in current law and provide for comprehensive and timely disclosure of all campaign contributions and expenditures

Criminal Justice System Improvements and Gun Violence Prevention

- Federal sentencing reform to reduce the number of non-violent offenders in the federal prison system and address explosive growth in prison population and costs.
- Reform of federal laws governing remedial prison-based programs aimed at reducing post-prison recidivism and reauthorization of and funding for the Second Chance Act providing resources to states to help people released from prison and jail overcome collateral consequences of conviction
- Funding for federal and state indigent defense programs
- Enactment of legislation and regulations to reduce gun violence

Elimination of Discrimination

- Enactment of Employment Non-Discrimination Act to prohibit discrimination based on sexual orientation and gender identity as well passage of other anti-discrimination legislation concerning veterans, gender equality and disability rights
- Enactment of legislation to enhance remedies under the Voting Rights Act of 1965

Immigration Reform

- Comprehensive immigration reform
- Access to legal representation and reform of the overburdened immigration court system
- Opposition to mandatory detention of individuals in removal proceedings and support for strengthening the detention standards and promulgating them into enforceable regulations

Independence of the Judiciary

- Prompt filling of judicial vacancies and reduction in vacancy rate
- Support for adequate judicial resources
- Enactment of legislation to permit interception of federal income tax refunds to collect past-due judicial debt owed to state courts

Independence of the Legal Profession

- Opposition to legislation requiring many law firms and other personal service businesses to use the accrual method of accounting and pay taxes on income before it is received
- Support for the attorney-client privilege and work product doctrine and opposition to federal government policies that erode those fundamental legal protections
- Opposition to legislation subjecting the legal profession to the anti-money laundering and suspicious activity reporting requirements of the Bank Secrecy Act

International Rule of Law

- Funding for domestic and international agencies and programs that promote the rule of law

National Security and Civil Liberties

- Congressional consideration of ABA-approved principles for cybersecurity legislation and support for policies to prevent unauthorized intrusions into the computer systems and networks utilized by lawyers and law firms
- Prosecution in Article III courts of Guantanamo detainees charged with criminal violations, unless the attorney general certifies otherwise, and due process with regard to the treatment and detention of suspected terrorists
ABA urges greater coordination for adult guardianship programs

In a comments submitted March 4 to the Department of Veterans Affairs (VA), the ABA cited the need for greater coordination between the VA fiduciary program and state courts that have jurisdiction over adult guardianships and conservatorships.

The ABA letter, which addressed a proposed rule on VA fiduciary activities, commended the VA generally for updating, reorganizing, and clarifying the regulations concerning fiduciary responsibilities and beneficiary rights, but also offered recommendations.

The comments cited a 2004 Government Accountability Office report that found a lack of coordination among state courts handling guardianship, the VA fiduciary program and the Social Security Administration (SSA) representative payee program. The report noted that federal agencies and courts were not systematically notifying other agencies or courts when they identified someone as incapacitated or when they discovered that a guardian or a representative payee was abusing the incapacitated person.

A second GAO report in 2011 found that gaps in information sharing continued to exist, and in 2013 the Elder Justice Coordinating Council highlighted the need to reduce financial exploitation by fiduciaries through enhanced oversight and collaboration among federal and state entities.

ABA policy adopted in August 2013 “urges courts with jurisdiction over adult guardianship and governmental agencies that administer representative payment program for benefits to collaborate with respect to information sharing, training, and education in order to protect vulnerable individuals with fiduciaries who make financial decisions on their behalf.”

The association’s comment letter listed examples of coordination that could readily be accomplished under several categories, including: establishing bars to serving as fiduciary; determining fiduciary non-financial responsibilities; sharing VA accounting with the courts; authorizing of fiduciary fees; protecting beneficiary funds; investigating misuse of funds; and establishing protocols for removing fiduciaries.

The comments also highlighted Managing Someone Else's Money, a publication recently developed by the ABA under contract with the Consumer Financial Protection Bureau that is a guide explaining the duties of SSA representative payees and VA fiduciaries.

ABA Day in Washington
April 8-10, 2014

Judicial Vacancies/Confirmations—113th Congress*
(as of 3/14/14)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</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>
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<td>44</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
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<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
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<td>53</td>
<td>59</td>
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</tbody>
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*Includes territorial judgeships
GUARDIANSHIP: The ABA expressed strong support recently for the guardianship provisions of LB 908, a bill pending in the Nebraska Legislature that would strengthen the support available to children and youth in foster care in the state. In a Jan. 28 letter to state Sen. Brad Ashford, chair of the Judiciary Committee, ABA Governmental Affairs Director Thomas M. Susman explained that the ABA adopted policy in 2010 urging states to implement provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, including provisions extending adoption and guardianship assistance for youth up to age 21. The Nebraska Legislature responded by enacting the Young Adult Voluntary Services and Support Act of 2013 (YAVSS), and LB 908 builds on the YAVSS framework by not only providing additional support to older youth, but also by addressing the needs of all children in care for whom guardianship is an appropriate permanency option. Section 8 of the bill, Susman said, articulates the distinction between a permanent guardianship as a permanent option for foster children and other forms of guardianship for children. “This comprehensive description of guardianship of adjudicated children will help ensure that all child welfare stakeholders – including courts, legal practitioners, Department of Health and Human Services personnel, caregivers, and youth – share a uniform understanding of the permanent option of guardianship and the related process involved,” he said. Susman emphasized that the ABA strongly supports “this legislative effort to help children remain connected to their families and kin by providing them a stable, permanent home and to support older youth as they transition into adulthood.”

SECOND CHANCE ACT: The ABA reiterated its support this month for S. 1690 and H.R. 3465, bills to reauthorize the Second Chance Act of 2008. “The ABA believes that reauthorization of the 2008 act is essential to continue its evidence-based and cost-effective support for programs that improve reentry from prisons, jails, and juvenile facilities and that serve to advance public safety,” ABA Governmental Affairs Director Thomas M. Susman wrote March 5 to the judiciary committees in the House and Senate. The bipartisan legislation would provide resources to state and local governments as well as community-based organizations to improve success rates for the more than 9 million people released from prison and jail each year. Most of these individuals face numerous challenges and are reincarcerated within three years of their release. Research confirms that comprehensive, coordinated services reduce recidivism by helping formerly incarcerated individuals find stable employment and housing. “By providing the resources needed to coordinate reentry services and policies at the state and local levels, these bills will ensure that the tax dollars spent on corrections do not simply fuel a revolving door in and out of prison,” Susman said.

RAPE PREVENTION: The Department of Homeland Security (DHS) issued final regulations Feb. 28 to implement standards to prevent, detect and respond to sexual abuse and assault in immigration detention facilities. The regulations will cover all immigration detention facilities overseen by Immigration and Customs Enforcement (ICE), including detention facilities contracted by DHS to hold immigration detainees. The regulations require the facilities to comply with standards established by the Prison Rape Elimination Act (PREA) of 2003 and are in line with those issued in May 2012 by the Department of Justice covering federal prisons and state correctional institutions that receive federal funds. The Violence Against Women Act reauthorization legislation enacted last year extended the application of PREA to all immigration detention facilities and required them to adopt the same standards that are in place at other federal facilities. The new DHS standards mandate that all of the facilities follow a zero tolerance policy for sexual abuse, require new training for staff, and provide for audits to be carried out every three years by an outside agency. The ABA, which has a long history of collaboration with ICE on development of immigration detention standards, released its own Civil Immigration Detention Standards in 2012 that incorporated PREA as a key protection for detainees. In comments submitted in February 2013 on the proposed regulations, the association called the regulations “a positive step toward better protecting vulnerable detainees from abuse” and made recommendations to ensure thorough protection at all facilities. A Government Accountability Office report issued in November 2013 found that ICE data on sexual abuse and assault allegations were not complete and recommended that DHS develop additional controls to ensure that all allegations are reported to ICE headquarters.

ABA Annual Meeting
Boston, Massachusetts
Aug. 7-12, 2014
Senate rejects Adegbile nomination for civil rights post

Prior to the Senate’s failure to invoke cloture March 5 on the nomination of Debo Adegbile to head the Justice Department Civil Rights Division, ABA President James R. Silkenat expressed alarm over the harsh criticism the nominee had received regarding the legal representation he provided to a death-sentenced prisoner.

The 47-52 vote, which failed to approve the motion to end debate and proceed to a vote on Adegbile’s nomination, reflected opposition to the nomination of Senate Republicans and seven Democrats. An eighth Democratic “no” vote came from Senate Majority Leader Harry Reid (D-Nev.), who changed his vote to preserve the option of bringing the nomination back up for a vote at a later date.

Many opponents based their opposition to Adegbile’s nomination on his work on the case of Mumia Abu-Jamal, who was convicted of the 1981 murder of Philadelphia police officer Daniel Faulkner. The NAACP Legal Defense Fund became involved in Abu-Jamal’s appeal in 2006 when Adegbile was director of litigation.

“A fundamental tenet of our justice system and our Constitution is that anyone who faces loss of liberty has a right to legal counsel. Lawyers have an ethical obligation to uphold that principle and provide zealous representation to people who otherwise would stand alone against the power and resources of the government – even to those accused or convicted of terrible crimes,” Silkenat wrote to the Senate Judiciary Committee prior to its 10-8 vote approving the nomination in February.

Silkenat cited the corollary principle in Rule 1.2(b) of the ABA Model Rules of Professional Conduct, which states that “a lawyer’s representation of a client does not constitute an endorsement of the client’s political, economic, social, or moral views of activities.”

“Adegbile’s work, like the work of ABA members who provide thousands of hours of pro bono legal services every year, is consistent with the finest traditions of this country’s legal profession and should be commended, not condemned,” he concluded.

Adegbile, called one of the nation’s leading civil rights lawyers by Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), was supported by the Leadership Conference on Civil and Human Rights and 83 other civil rights organizations as well as the Congressional Black Caucus, the National Organization of Black Law Enforcement Executives, and numerous current and former Justice Department officials, prosecutors and law enforcement officials.

Solitary confinement

continued from page 3

The use of solitary confinement for individuals, described ways their states and other states are reducing reliance on solitary confinement without sacrificing the safety of prison staff, other prisoners or the public. Subcommittee Chairman Richard J. Durbin (D-Ill.) called for an end to the use of solitary confinement for juveniles, pregnant women and individuals with serious and persistent mental illness, except in exceptional circumstances.