President Obama signs omnibus fiscal year 2016 appropriations package

President Obama signed a $1.15 trillion fiscal year 2016 appropriations package Dec. 18 that includes increased funding for several ABA-supported programs, including the Legal Services Corporation (LSC) and the federal judiciary.

H.R. 2029, which will fund the government through Sept. 30, 2016, is the result of months of negotiations as members weighed numerous controversial riders that, among other things, would have defunded Planned Parenthood, limited environmental and financial regulations, and blocked the entry of refugees from Syria and Iraq into the country.

During the negotiations, ABA President Paulette Brown urged Congress not to incorporate proposals to delay or halt U.S. resettlement of Syrian, Iraqi or Muslim refugees. “The United States has long been a global leader in offering protection to the world’s most vulnerable populations,” Brown wrote to House and Senate leaders Dec. 11. “Denying protection to Syrian and Iraqi refugees would be contrary to this nation’s foundational values as well as to deeply rooted U.S. and international law principles prohibiting discrimination on the basis of national origin, race, or religion,” she said.

While the final version of the legislation does not include the contentious provisions, the new law does have provisions to lift the ban on crude oil exports and toughen visa requirements. In addition, the negotiators included the provisions of cybersecurity legislation that had been passed by the House and Senate to encourage information sharing (See article, page 5).

Obama had signaled that he would sign the legislation because it appeared to meet three conditions: lifts defense and domestic spending caps; does not include the controversial policy riders; and invests in both national security and economic growth. “The omnibus makes critical investments in education, basic research, and job training that will strengthen the middle class, while giving our men and women in uniform the tools and resources they need to keep us safe,” according to the White House.

Some of the major provisions of interest to the ABA are:

LSC. The LSC will be funded at $385 million – a $10 million increase over fiscal year 2015 appropriations. Of that amount, $352 million is for 14 basic field programs and required audits, $5 million is for the Office of Inspector General, $19 million is for management and grants oversight, $4 million is for client self-help and information technology, $4 million is for the Pro Bono Innovation Fund, and $1 million is for student loan repayment assistance. The legislation continues to restrict the use of funds by LSC grantees for certain activities, including participation in political activities, lobbying, criminal cases, and abortion-related litigation.
### LEGISLATIVE ISSUE

**Criminal Justice.** S. 2123 would reform the sentencing and corrections systems. H.R. 3731 would reform the nation’s sentencing system. H.R. 4002 would establish a mens rea default standard. S. 1169 and H.R. 2728 would reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA). S. 255 and H.R. 540 would amend the federal criminal code regarding civil asset forfeiture. S. 1513 would reauthorize the Second Chance Act.

**House**
- Judiciary subcommittee held a hearing on civil asset forfeiture on 2/11/15.
- Judiciary Committee held a listening session on criminal justice reform on 6/25/15.
- Judiciary Committee approved H.R. 3731 and H.R. 4002 on 11/18/15.

**Senate**
- Judiciary Committee held a hearing on civil asset forfeiture on 4/15/15.
- Judiciary Committee approved S. 1169 on 7/23/15.
- Judiciary Committee held a hearing on S. 2123 on 10/19/15 and approved the bill on 10/22/15.

**Final**
- Supports federal sentencing reform to address explosive growth in prison population and costs. Supports JJDPA and Second Chance Act reauthorization. Supports funding for federal and state indigent defense programs. Supports certain civil asset forfeiture reforms.

**Federal Courts.** H.R. 2029, omnibus fiscal year 2016 appropriations legislation, includes $6.78 billion for the federal judiciary.

**House**

**Senate**

**Final**
- President signed H.R. 2029 on 12/18/15.

**ABA Position**
- Supports adequate judicial resources and opposes efforts to infringe on separation of powers or undermine the judiciary. See page 3.

**Immigration.** The president announced 11/20/14 that he would take executive action to provide temporary deportation protection for up to five million undocumented immigrants. A federal district court in Texas issued a temporary injunction blocking implementation. An appeals court panel denied the administration’s request for a stay. The government has appealed the decision to the Supreme Court. In another case, a federal district judge in California ordered the government to release children and parents from immigration detention.

**House**
- Judiciary Committee held hearings on immigration issues on 4/14/15, 4/29/15, and 10/7/15.

**Senate**

**Final**
- Supports comprehensive immigration reform that promotes legal immigration based on family reunification and employment skills and a path to legal status for much of the undocumented population currently residing in the United States. Opposes detention except where individual presents a threat to national security or public safety.

**Legal Services Corporation (LSC).** H.R. 2029, omnibus fiscal year 2016 appropriations legislation, includes $385 million for LSC.

**House**
- Appropriations Committee approved $300 million for LSC on 5/20/15.

**Senate**
- Appropriations Committee held a hearing on 3/27/15.
- Appropriations Committee approved $385 million for LSC on 6/11/15.

**Final**
- President signed H.R. 2029 on 12/18/15.

**ABA Position**
- Supports an independent, well-funded LSC. See front page.
The 2015 amendments to the Federal Rules of Civil Procedure went into effect Dec. 1, making the most significant changes to discovery and case management in more than a decade. The amendments – designed to promote the just, speedy and inexpensive resolution of civil suits – were drafted by the Judicial Conference Advisory Committee on Rules of Practice and Procedure and approved by the Judicial Conference and the Supreme Court. They were then cleared when Congress took no action to reject, modify or defer implementation. The four-year drafting process included conferences, evaluation of empirical research, surveys of lawyers and judges, more than 2,300 written comments, and public hearings.

The changes seek to reduce litigation costs and delays by encouraging early case management by judges, increased cooperation among the parties, and the proportional use of discovery based on the needs of the case.

Specifically, the rules now place a stronger emphasis on proportionality and require that discovery should take into account the issues at stake, amount in controversy, parties’ access to information, resources of the parties, and whether the burden of producing the information outweighs its benefits. The changes also require the court to limit the scope of discovery in certain circumstances and to allow courts to specify allocation of expenses concerning discovery of information from any party or person.

Other amendments shorten deadlines in early case management and clarify the sanctions for failure to preserve electronically stored information that should have been saved in anticipation or conduct of litigation.

To explain these and other rule changes in the amendments package, the ABA Section of Litigation and the Duke Law Center for Judicial Studies are conducting a “Civil Rules Amendments Roadshow” that is stopping in 13 cities around the country.

The roadshow features a panel of judges and litigators in each city who discuss the rules and how to apply them to actual cases. The moderators for the panel discussions, which last three hours, are Judge Lee H. Rosenthal of the U.S. District Court for the Southern District of Texas and past chair of the Judicial Conference Advisory Committee on Rules of Practice and Procedure, and Steven S. Gensler, professor and associate dean at the University of Oklahoma College of Law in Norman and a past member of the Judicial Conference Advisory Committee on Civil Rules.

The goal of the 13-city tour is to further the understanding of the case-management techniques that will help courts realize the amendments’ full potential to make discovery more targeted, less expensive, and more effective in achieving justice.

The roadshow has already presented its program in the cities of New York, Philadelphia, Newark, St. Louis, Atlanta, Chicago and Washington, D.C. Upcoming dates and locations are: Los Angeles (Jan. 27), San Francisco (Jan. 28), Phoenix (March 3), Denver (March 4), Dallas (March 31), and Miami (April 1).
Senate passes justice and mental health bill

The Senate passed a bill Dec. 10 that would improve access to mental health services for those in the criminal justice system who need treatment.

S. 993, sponsored by Sen. Al Franken (D-Minn.) and a bipartisan group of more than 30 cosponsors, would authorize $18 million each year for four years to support efforts to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, veterans treatment services, mental health treatment, and substance abuse systems.

“The United States has five percent of the world’s population, but 25 percent of the world’s prison population,” Franken pointed out, explaining that the United States in large part has criminalized mental illness “using the justice system as a substitute for a fully functioning mental health system.”

“My bill bolsters federal support for mental health services — including special support for veterans who need help — and provides critical training to law enforcement,” he explained.

Grants in the bill to correctional facilities would help to identify and screen inmates who need mental health and substance abuse treatment and to develop post-release transition plans that coordinate services and public benefits for those inmates. Employees would be trained to handle inmates with mental health disorders or co-occurring mental health and substance abuse disorders.

Up to 28 percent of the funds may go toward establishing and expanding veterans treatment courts, which involve collaboration among criminal justice, veterans, and mental health and substance abuse agencies to provide qualified veterans with intensive judicial supervision and case management, treatment services, and alternatives to incarceration. Other services provided by the treatment courts include housing, transportation, job training, education and assistance obtaining benefits. In addition to veterans treatment court programs, the bill would fund peer-to-peer services to help veterans obtain treatment recovery, stabilization or rehabilitation.

Funds also may be used to provide services, including legal assistance, to mentally ill veterans who have been incarcerated, and for training programs for law enforcement and other professionals on how to identify and respond to incidents involving such veterans.

The ABA, which supports the veteran treatment court provisions, has long recognized the special challenges faced by those experiencing mental health issues or related difficulties in the justice system.
The omnibus fiscal year 2016 appropriations package has been enacted – and with it, some new language on cybersecurity and information sharing supported by the ABA.

The cybersecurity provisions in the package, H.R. 2029, were drawn from S. 754, the Cybersecurity Information Sharing Act of 2015 (CISA), passed by the Senate on Oct. 27, and two House bills, H.R. 1560 and H.R. 1731, passed by the House in April.

The legislation encourages information sharing between private companies and the government and provides liability protection for companies that share cyber threat data with the government.

The provisions also require the Departments of Homeland Security, Defense, and Justice, and the Director of National Intelligence to create measures to share cyber threat information with governments, entities, and agencies that are affected.

House Intelligence Committee Chairman Devin Nunes (R-Calif.) said the cybersecurity and intelligence provisions in the omnibus bill are “vital for protecting America’s digital networks and for implementing the necessary funding, authorizations, and oversight for the intelligence community.”

The ABA offered Senate leaders the association’s perspective on comprehensive cybersecurity reform in June and provided five guiding principles for members of Congress to consider as they developed cybersecurity legislation.

“The ABA has long recognized that we must make it a priority to prevent unauthorized intrusions into the computer systems and networks utilized by lawyers and law firms, and we recently adopted policy calling upon all private sector organizations to maintain appropriate cybersecurity measures,” ABA Governmental Affairs Director Thomas M. Susman wrote June 1 to Senate Majority Leader Mitch McConnell (R-Ky.) and Senate Minority Leader Harry Reid (D-Nev.).

The ABA principles recognize that:

• robust information sharing and collaboration is needed between government agencies and private industry to manage global cyber risks;
• public and private frameworks are essential to successfully protect United States assets, infrastructure and economic interests from cyber attacks;
• legal and policy environments must be modernized to stay ahead of, or at least keep pace with, technological advancement;
• privacy and civil liberties must remain a priority when developing cybersecurity law and policy; and
• training, education and workforce development of government and corporate leadership, technical operators and lawyers requires adequate investment and resources in cybersecurity to be successful.

Cybersecurity provisions included in omnibus package

Immigration. The law increases funding for immigration courts by $76 million for a total of $427 million to provide for 55 additional immigration judge teams. A total of $695 million is provided to house, process and transport up to 58,000 unaccompanied children and families with children. Included in the total $5.832 billion for Immigration and Customs Enforcement is $1.9 billion to support investigations in several areas, including human trafficking and smuggling, child exploitation, commercial fraud and intellectual property rights enforcement, gangs, cybercrimes and terrorism.

Veterans. Veterans homeless programs are funded at $1.4 billion, and $2.7 billion is included for processing of the backlog of veterans benefits claims.

Securities and Exchange Commission (SEC). The SEC receives $1.605 billion, which is $105 million more than the commission was appropriated in fiscal year 2015.
Senate confirms 11 judicial nominees during First Session

When the Senate adjourned Dec. 18 at the end of the First Session of the 114th Congress, senators had confirmed 11 judicial nominees, leaving 31 pending nominations and the federal judiciary with more than 60 vacancies.

Before adjourning, the Senate did agree to vote on the nomination of L. Felipe Restrepo, of Pennsylvania, for a seat on the Court of Appeals for the Third Circuit early next year on Jan. 11. Restrepo has been waiting for a floor vote since July 9, when his nomination was approved by the Senate Judiciary Committee by a voice vote.

The Senate also reached an agreement to consider the following four nominations early next year: Wilhelmina Marie Wright, of Minnesota, to be United States District Judge for the District of Minnesota; John Michael Vazquez, of New Jersey, to be United States District Judge for the District of New Jersey; Rebecca Goodgame Ebinger, of Iowa, to be United States District Judge for the Southern District of Iowa; and Leonard Terry Strand, of South Dakota, to be United States District Judge for the Northern District of Iowa.

ABA President Paulette Brown urged Senate leaders earlier this month to schedule confirmation votes before year’s end on the 15 judicial nominees who had been waiting for action by the full Senate following unanimous voice vote approval by the committee. “Even though we appreciate the Senate’s full agenda and the short amount of time remaining in this session, we urge you to give every pending nominee a floor vote before you leave for your recess,” Brown wrote to Senate Majority Leader Mitch McConnell (R-Ky.) and Minority Leader Harry Reid (D-Nev.) on Dec. 2. Brown emphasized that nine of the pending nominees would fill vacancies that have been declared “judicial emergencies” by the Administrative Office of the U.S. Courts. In courts with judicial emergencies, there are too few judges to handle their workload effectively and deliver timely justice. In some of those courts, litigants have to put their businesses or private lives on hold indefinitely while waiting for their day in court, she explained.

“Regardless of how one views confirmation data comparisons among recent presidents or the fact that the vacancy rate has not reached crisis proportions, our courts are unfortunately worse off today than they were at the start of this Congress,” Brown said, pointing out that there are 22 more vacancies (with three more in the pipeline this month) and more than twice the number of judicial emergencies today than there were in January.

“We know from the daily experience of our more than 400,000 members that vacancies must be filled promptly so that courts have the resources to deliver timely, impartial justice,” she said.

### Judicial Vacancies/Confirmations—114th Congress* (as of 12/21/15)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<tr>
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<td>Court of International Trade (9 judgeships)</td>
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*Includes territorial judgeships
MANDATORY ACCRUAL ACCOUNTING FOR LAW FIRMS: The ABA Governmental Affairs Office, the Law Practice Division, and the Center for Professional Development presented a webinar Dec. 14 entitled “Mandatory Accrual Accounting for Law Firms: Tax Reform or Impending Storm?” The webinar was part of ABA Free CLE Series, a monthly program offering ABA members free continuing legal education credits. More than 1,600 individuals participated in the live webinar, which focused on draft tax reform legislation in Congress that would require many law firms and other types of professional services firms to use the accrual method of accounting rather than the traditional cash receipts and disbursements method. If the proposal were enacted, the affected firms would be forced to pay taxes on income long before it is actually received. The experts on the webinar panel were: David Gaulin, National Law Firm Services Practice Leader for PricewaterhouseCoopers (PwC); Gary M. Poghanian, National Tax Leader for PwC’s Law Firm Services Practice; and R. Larson Frisby, Associate Director of the ABA Governmental Affairs Office. During the program, the panel covered the following topics: the basics of the modified cash method of accounting and why most law firms use it; the tax implications of mandatory accrual accounting, including current tax liability on accrual-based (“phantom”) income; how the proposal would adversely affect law firms and clients; current developments in Congress and what the ABA and others are doing to fight the legislation; and how law firms can participate in the advocacy efforts. Although the ABA supports simplification of the tax laws, the association opposes any proposed legislation, regulations, or other governmental measures that would require law firms and other personal service businesses that now compute taxable income on the cash receipts and disbursements method of accounting to convert to the accrual method of accounting. The presentation slides and other materials discussed during the webinar and additional information and resources regarding the mandatory accrual accounting proposals are available on the Governmental Affairs Office’s website.

ADVANCE CARE PLANNING: The ABA commended Sen. Richard Blumenthal (D-Conn.) Dec. 9 for his work on the “Compassionate Care Act of 2015,” pending legislation that he plans to introduce shortly to enhance advance care planning. In a letter to Blumenthal, ABA Governmental Affairs Director Thomas M. Susman said that, for over two decades, the ABA has supported enactment of such legislation. “Health care providers cannot know and honor patients’ values and wishes unless care planning conversations take place on a recurring basis and providers have the skills needed to engage patients in a meaningful way,” he wrote. “The legislation would enhance public and professional education in advance care planning, provide financial support for programs such as Physician Orders for Life Sustaining Treatment, and implement studies on the feasibility of a national uniform policy on advance directives, including development of a national registry. In related action at the federal level, a new rule issued in October by the Centers for Medicare and Medicaid Services authorizes reimbursement beginning Jan. 1 to physicians and other health care professionals who provide advance care planning services – an action supported by the ABA.

The ABA, which submitted letters for the records of two of the hearings, is urging Congress to give tribes more authority to exercise criminal jurisdiction as recommended by two government reports: the Indian Law and Order Commission’s “A Roadmap for Making Native America Safer” and “Ending Violence So Children Can Thrive,” from the Attorney General’s Advisory Committee on American Indian/Alaskan Native Children Exposed to Violence. ■
President signs education reform bill that includes attention to homeless and foster children

Legislation signed Dec. 10 by President Obama replaces the 2007 No Child Left Behind Act and includes provisions supported by the ABA to address the special needs of homeless and foster children in the education system.

P.L. 114-95 (S. 1177) helps promote school stability and success for students in foster care by including provisions supported by the ABA that were in the Senate version of the legislation:

- ensuring students can remain in their same school when they enter foster care and change foster care placements, unless it is not in their best interest;
- enrolling students in foster care immediately in a new school when a school change is necessary without the typically required records;
- facilitating the prompt transfer of records when a child in foster care enters a new school;
- requiring school districts and child welfare agencies to have reciprocal points of contact for students in foster care, and both systems have a point of contact for them at the state level;
- requiring local education and child welfare agencies to collaborate to develop and implement a plan for transportation when needed to keep students in foster care in their school of origin; and
- improving the collection of data, particularly high school graduation rates, on the success of children in foster care to keep abreast of their progress.

Additional provisions require state and local education agencies to ensure that their plans under the act promote identification, enrollment, attendance and school stability for youth experiencing homelessness and require local education agencies to reserve a portion of their education funding to support homeless children.

The ABA maintains that the improvements in the law will help prevent students in foster care and homeless students from needlessly changing schools, will keep them from falling further behind in their education with each move, and prevent overburdening of school systems serving both of these groups.

In correspondence to Franken during the 113th Congress, ABA Governmental Affairs Director Thomas M. Susman emphasized that involvement in the justice system can disqualify veterans from the benefits they need to accomplish a successful transition from military service to a productive role in society. “When these federal benefits are lost, justice-involved veterans must rely on the availability of community services that are often at capacity or that are scarce due to shrinking municipal budgets,” he explained.

“Veterans treatment courts, when properly implemented, can provide more intensive court and correctional supervision than existing court models, tapping into military culture and tools like peer-to-peer counseling to make lasting personal connections,” he said.

The legislation is now ready for consideration in the House, where an identical bill, H.R. 1854, has been introduced by Rep. Doug Collins (R-Ga.) and 70 cosponsors.

The monthly Washington Letter reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association’s legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html © 2015 American Bar Association. All rights reserved. Please address correspondence to:

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