

**District of Columbia Courts  
FY 2013 Budget Justification  
Defender Services**

As required by the Constitution and statute, the District of Columbia Courts appoint and compensate attorneys to represent persons who are financially unable to obtain representation under three Defender Services programs. The Criminal Justice Act (CJA) program provides court-appointed attorneys to indigent persons who are charged with criminal offenses.<sup>1</sup> The Counsel for Child Abuse and Neglect (CCAN) program provides the assistance of a court-appointed attorney in family proceedings in adoptions, where child abuse or neglect is alleged, or where the termination of the parent-child relationship is under consideration and the parent, guardian, or custodian of the child is indigent.<sup>2</sup> The Guardianship program provides for compensation to service providers in guardianship and protective proceedings for incapacitated adults.<sup>3</sup> In addition to legal representation, these programs provide indigent persons access to services such as: transcripts of court proceedings; expert witness testimony; foreign and sign language interpretation; investigations; and genetic testing.

Defender Services attorneys and service providers submit vouchers to the D.C. Courts' Budget and Finance Division detailing the time and expenses involved in working on a case. Following administrative review and approval by the judge or magistrate judge presiding over the case, the voucher is processed for payment by the General Services Administration (GSA), which issues checks from the Defender Services appropriation.

**Estimating FY 2013 Resource Requirements**

In its required reports and filings with the Office of Management and Budget and Congress, the Courts have historically recognized Defender Services obligations at the time of payment (outlays), maintaining a carryover balance from year to year to cover those vouchers that had been issued in prior years (at the time an attorney was appointed to a case) but not yet submitted and paid. In contrast, however, generally accepted accounting principles required that the Courts disclose the value of these outstanding vouchers, or liability, on their annual financial statements. This outstanding liability was calculated by multiplying the total number of vouchers in each case type by the computed average cost paid by case type.

Predicting program obligations has historically been difficult because attorneys submit claims for reimbursement only after the conclusion of a case, which may be years after their appointment to a case. Previous studies completed in 2000 by independent accountants found that it took 7 years from the time of attorney appointment to a case for all vouchers to be submitted to the Court for payment. As such, the Courts budget submissions since FY 2000 have included a projection of the value of issued vouchers as a liability ("obligations") each fiscal year over and above projected outlays. Although the stated dollar value of the obligations had not been formally posted into the financial system of record in the past, these projected obligations became the basis of each budgetary request for resources, which has also included a narrative on

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<sup>1</sup> See D.C. Code §11-2601 *et seq.*

<sup>2</sup> See D.C. Code §16-2304.

<sup>3</sup> See D.C. Code §21-2060.

accrued and unpaid liabilities. Due to enhanced program management, operational changes (such as the establishment of guideline vouchers), administrative efficiencies and business process reengineering in recent years, the time between appointment to a case and payment of the voucher has been drastically reduced. As such, nearly all vouchers are now paid within 3 years of from the time of attorney appointment to a case, thereby reducing the previously identified liability stream.

Upon consideration of the foregoing, the Courts contracted an independent accounting firm during FY 2009 to assist in the 1) analysis of the current liability stream of the Defender Services programs; 2) development of a sound methodology to recognize program obligations (e.g. accounting treatment of vouchers issued under the programs); and 3) projection of future resource requirements. The goal of these activities is to better align the outstanding liability of the Defender Services programs reflected on annual financial statements with Federally required (monthly, quarterly, and annual) reports and filings and with budget submissions.

The accounting firm has given its recommendations, which include—

- 1) the obligation of vouchers upon issuance instead of upon submission for payment; and
- 2) the formal recognition of outstanding vouchers from prior years (i.e., the financial liability) by obligating them (through a one-time journal entry) at the beginning of FY 2010.

The firm's recommendations are based in large part on a decision issued by the Comptroller General – *50 Comp. Gen. 589 (1971)*, which notes that “[i]t is clear that from the time of the attorney’s appointment a contractual obligation exists on the part of the Government to pay the reasonable costs of the representation, and that the subsequent court review of the voucher is only for the purpose of determining that the actual costs claimed to have been incurred were necessarily incurred and are in fact reasonable.”

These findings are compelling. The Courts began to adopt these recommendations during FY 2010, by creating a formal obligation in the financial system to recognize prior years’ outstanding vouchers. This action converted the liabilities in the account (currently carried in the financial system as an unobligated balance) into obligations. This action also reduced the large unobligated carryover balance in the account, which increased steeply in FY 2008 and FY 2009, when hourly rate increases were fully funded but not in effect at the start of those fiscal years. FY 2011 marked the first full year that the Courts routinely accrued and posted voucher obligations (representing vouchers issued but not paid) to the financial system of record.

Given the administrative efficiencies and business process re-engineering that have been realized, the Courts’ capability to project future resource requirements has been greatly enhanced. Moreover, implementation of the current methodology has provided a more systematic process for ensuring sufficient funding for prior years’ obligations. As such, the Courts have been able to determine that sufficient funding has been reserved for obligations from prior years, enabling the Courts to reduce its projected need for funding in future years.

### **FY 2013 Request**

The Courts request **\$50,000,000** for Defender Services in FY 2013, representing a 10% reduction from the FY 2012 level of \$55,000,000.

In fiscal 2008, Congress financed an hourly rate increase for attorneys to \$80 per hour and in FY 2009, legislation was enacted to increase the hourly rate to \$90. It is anticipated that the full impact of the latest hourly rate increase will be realized during FY 2012.