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MEMORANDUM

To: All Federal Public/Community Defenders

From: Steven G. Asin 

RE: FY 2013 ESTIMATED FULL-YEAR ALLOTMENTS
(ACTION REQUESTED)

It is virtually certain that the Congress will *not* fund the Defender Services program at a higher level in Fiscal Year (FY) 2013 than is assumed in the program's current interim spending plan. Even after taking into account projected attrition and continued enforcement of the current hiring freeze for the rest of FY 2013, the funding available to FDOs under the interim plan is less than is required to fund projected year-end FDO staff-on-board, nor would it be enough to fund each organization's Committee on Defender Services (DSC)-approved budget.

Consequently, whether your organization will need to furlough employees or take other measures to reduce your FY 2013 personnel costs is not an abstract question or one that you can delay answering. Today we will be sending you our estimate of what your full-year FY 2013 allotment would be if the total available FY 2013 funding is as high as the amount set forth in the interim spending plan. However, there is absolutely no guarantee that funding at the interim plan level will be available for the full fiscal year. If sequestration goes into effect in March, we anticipate that a revised Defender Services spending plan would provide significantly less funding for FDOs than what is available under the current interim plan. Even if Congress were to replace sequestration with a

full-year appropriation, it is very possible that it would be less than what was appropriated in FY 2012 and insufficient to fund FDOs at the interim plan level. Further guidance will be provided as it becomes available.

Each of you is responsible for developing a plan for addressing your organization's shortfall. Both ODS's Program Operations and Assessment Branch and its Legal and Policy Branch will be emailing you today documents and JNet links that we hope will help you identify and address policy and operational issues implicated by some of the cost-reduction measures that you may need to consider. In addition, the ODS Training Branch, working closely with defenders and the Training Expert Panel, is surveying federal defenders about the extent to which the funding situation will impact your willingness and ability to have members of your staff attend or serve as faculty for Defender Services-funded training programs.

This memorandum, along with the other materials ODS is providing to you, focuses on the need for you to develop spending plans that bring your costs into line with the amount of funding you are expected to receive. It is, of course, no less important for you to address the impact of budget shortfalls on your staff's ability to represent clients. You will have the opportunity to discuss this and other important questions during the Baltimore conference next week. We hope that these face-to-face discussions will encourage an ongoing dialogue.

We look forward to seeing you in Baltimore.

Attachment

FY 2013 Allotments

By the time you read this, you should have received a separate email transmitting your organization's *estimated* FY 2013 full-year allotment. Please consider that allotment in light of the following discussion of the assumptions and methodologies employed in calculating them. Note, however, that we are not able to provide your actual full-year allotment at this time because, like almost all of the rest of the federal government, the judiciary is being funded by a continuing resolution that expires on March 27, and the possibility of a sequester on March 1 still remains.

The estimated allotments were derived by making an across-the-board cut to each FDO's Committee on Defender Services (DSC)-approved budget to bring the sum of all FDO budget allotments into alignment with the amount allocated to FDOs in the FY 2013 interim spending plan. For your information, the amount allocated for panel attorney payments is also less than the latest projections indicate will be required to avoid a payment suspension.

While we cannot allot your full-year funding at this time, we will be allotting additional funds, probably this week, to maintain operations at least through the remainder of the current continuing resolution period.

Although Congress has not acted on an FY 2013 funding bill, our best information is that we will receive less than what is necessary to sustain the current FDO staff on board. Even under a strict hiring freeze, we project that there could be an overall FDO shortfall of as much as \$12 million. As described below, the impact on each organization will vary.

In September 2012, the DSC approved FY 2013 FDO budgets based on the case weights system developed by the RAND Corporation. Subsequently, with the input and concurrence of the federal defender members of the Defender Services Advisory Group (DSAG) and DSC Chair Judge Catherine Blake, **the projected full-year allotments for traditional units were calculated by applying an approximate 5 percent across-the-board cut to each organization's DSC-approved budget.** Because capital habeas and national project units do not use the RAND case weights, **their estimated full-year allotments were calculated by applying a 1.5 percent cut to the staff on board funding.**¹ (You can find your "DSC-Approved" and "Staff on Board" budget amounts on your organization's FY 2013 Budget Chart.)

¹The CHU and national project staff on board levels from which cuts were made were based on payroll data as of January 13, 2013 for FPDOs and December 2013 for CDOs.

Below is an illustration of how the cuts might impact two hypothetical FDOs that both have FY 2013 DSC-approved budgets of \$1.6 million to fund 10 FTEs.

FDO *Alpha*'s FY 2013 DSC-approved budget included an additional two FTEs and \$320,000 (\$160,000 per FTE), for a total of 10 FTEs and \$1.6 million. The initial allotment for this organization, based on eight staff on board (as of July 29, 2012), was \$1.28 million, and the staffing level has remained at eight. A 5 percent cut from the DSC-approved budget would result in a full-year allotment of \$1.52 million, or \$80,000 less than the approved amount, but \$240,000 more than the initial allotment. This organization could be able to hire additional staff, but cannot exceed the additional \$240,000 in doing so.²

FDO *Beta*'s FY 2013 budget situation was exactly the same as *Alpha*'s, except that the organization filled the two new FTEs by the beginning of the fiscal year. With 10 staff on board, *Beta* would be on track to spend \$1.6 million, and would need to manage a shortfall of \$80,000. This organization might have to take actions to reduce salary costs to address the \$80,000 shortfall. While it might seem otherwise, both organizations are in fact receiving the same amount of resources for the fiscal year.

ODS will maintain a reserve for managing emergency circumstances. In order to maximize allotments, this reserve will be small. In general, an emergency would be defined as a funding shortfall that would cause an organization to cease operations or be unable to meet the exigent demands of a particular case.

The estimated allotment amounts result in approximately 86 organizations, which for these purposes include CHUs and national project units, being provided with less funding than is needed for staff on board as of the most recent available payroll.

The application of across the board reductions to each organization's DSC-approved budget recognizes that you are in the best position to decide how to make adjustments within your own offices to accomplish the mission of client representation. Each of you will need to develop a financial strategy while keeping in mind that the full-year allotments are estimates, and a number of factors could increase or decrease the available funding. These could include a final spending bill that provides more or less money, a sequester, reprogramming of funds from other Defender Services accounts, an ODS recalculation of the size of the shortfall, the availability of carryforward funds from prior fiscal years, and the possibility of either a shortfall or a surplus in the panel attorney account.

Your organization's assigned budget analyst (or the Program Budget Branch duty day person) is ready to assist you in reviewing your budget situation, and is a good resource for evaluating strategies and making calculations. Staff from all branches will be attending at least

²ODS approval is required for all hires.

part of the Baltimore federal defender and panel attorney conference, and we encourage you to come to the conference prepared to discuss your specific situation.