



Federal Bar Association

August 9, 2017

TO: Federal Bar Association

FROM: West Allen, Chair, Government Relations Committee
Bruce Moyer, Counsel for Government Relations

SUBJ: Update on Government Relations and Public Policy Developments

Congress is enjoying its traditional August recess and will return on September 5 to a set of legislative-must-do's before September 30 that include raising the debt ceiling, passing a budget resolution, and funding the government into the next fiscal year. Meanwhile, the Trump White House continues to quietly move ahead at a relatively fast pace to fill a historic number of vacancies on the federal bench.

Judicial Vacancies

The Federal Judiciary [website](#) reported 138 Article III vacancies, as of August 7.

	Current Vacancies	Nominees Pending
Courts of Appeal	19	7
District Courts	111	22
US Ct of International Trade	2	0
US Ct of Federal Claims	<u>6</u>	<u>2</u>
Total	138	31

Fifty-five of the vacancies are considered “judicial emergencies” by the Judicial Conference, the policy-making body of the Federal Judiciary.

A little more than six months into his presidency, President Donald Trump has won confirmation of a Supreme Court justice, three federal appeals judges and one district judge, outpacing his two most recent predecessors combined, the [Washington Times](#) reported. Those confirmations include: Associate Justice Neil M. Gorsuch, Amul Roger Thapar (Sixth Circuit), John Kenneth Bush (Sixth Circuit), Kevin Christopher Newsom (Eleventh Circuit) and David C. Nye (Idaho District).

President Trump has nominated 31 judicial nominees – far more than President Obama at this point and roughly equal to the pace of President Bush.

"This will be the single most important legacy of the Trump administration," Democratic Sen. Chris Coons of Delaware, a member of the Senate Judiciary Committee, told [Business Insider](#). "They will quickly be able to put judges on circuit courts all over the country, district courts all over the country, that will, given their youth and conservatism, will have a significant impact on the shape and trajectory of American law for decades." Coons attributed the historically high number of vacancies to "unprecedented obstruction by the Republican majority in the Senate in the latter years of the Obama administration" that led to many of these vacancies remaining unfilled.

FY 2018 Funding for the Federal Courts

A trio of Congressional must-do's await attention when Congress returns on September 5: passage of a FY 2018 budget resolution, approval of government funding package; and lifting the debt ceiling to avoid a catastrophic default. Despite Republican control of both chambers of Congress and the White House, accomplishment of all three tasks will be a daunting task for House and Senate GOP leaders, due especially to divisions among GOP House Members.

The most likely scenario in September is that a coalition of Republican leaders, Republican moderates and Democrats will craft an omnibus appropriations bill that extends government funding for three months and raises the debt ceiling.

The budget resolution is crucial to paving the way for Congressional clearance of tax reform legislation through a procedural tool called reconciliation that requires only 51 votes in the Senate for approval.

Earlier this summer, a favorable funding package for the federal courts was approved by the House Financial Services and General Government (FSGG) Appropriations Subcommittee. The package provides \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House level is \$100 million below the Judiciary's re-estimated FY 2018 request, with the majority of the reduction in the courts' Salaries and Expenses account. The House full appropriations committee has not scheduled markup of the measure, nor has the Senate FSGG subcommittee announced its markup.

The House bill includes one-year extensions for five temporary district judgeships and seven temporary bankruptcy judgeships. The district judgeships are in Kansas, Missouri-Eastern, Alabama-Northern, California-Central and North Carolina-Western. The bankruptcy judgeships are in Delaware (2), Florida-Southern (2), Michigan-Eastern, Puerto Rico and Virginia-Eastern.

The Federal Bar Association on June 29, 2017 sent the attached correspondence to the Senate FSGG subcommittee in support of the Federal Judiciary's funding request.

FBA Opposition to Federal Employee Budget Cuts

The Federal Bar Association has communicated its concerns to Congress over proposed FY 2018 budget cuts aimed at the compensation of current and former employees of the federal government, including federal attorneys. The Trump Administration earlier this spring proposed massive budget cuts in the retirement and health benefits of federal employees and retirees. More recently, the House Budget Committee drafted a budget resolution that, if approved by Congress, would require \$32 billion in cuts federal employee/retiree benefits.

In an August 4 letter to the House panel with jurisdiction over the proposed cuts – the Oversight and Government Reform Committee, FBA Executive Director Stacy King and Government Relations Committee Chairman wrote, “Reductions in the retirement benefits of federal employees, including federal attorneys, are a slippery slope that can compromise the government’s capacity to attract and retain the expert legal talent it desperately needs. We urge the Committee to find other ways that do not reduce or erode the current pay and benefit structure of the federal workforce in its satisfaction of the FY 2018 budget instructions.” The letter is attached.

2018 Issues Agenda

The Government Relations Committee earlier this spring received five nominations to the 2018 Issues Agenda. On June 23, 2017, the Board of Directors approved the recommendation of the GRC that none of the nominations be added at this time to the Issues Agenda for various reasons, including the need for further due diligence.

Attachments



Federal Bar Association

June 30, 2017

The Honorable Shelley Capito
Chairman
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

The Honorable Chris Coons
Ranking Member
Appropriations Subcommittee on
Financial Services and General Government
United States Senate
Washington, DC 20510

Re: FY 2018 Funding for the Federal Judiciary

Dear Chairman Capito and Ranking Member Coons:

We write to express our strong support for the funding request of the Federal Judiciary for Fiscal Year 2018. We urge the Subcommittee to make these funds available to assure the Federal courts are able to fulfill their constitutional and statutory responsibilities as a co-equal branch of government.

Our Association's national membership of nearly 20,000 attorneys represents a core constituency of the Federal court system. Attorneys who practice in our federal courts look to Congress to assure that our court system is adequately funded to efficiently dispense justice. Attorneys and their clients, whether plaintiffs or defendants, turn to the courts with an expectation that disputes will be fairly and promptly heard.

The Judiciary's FY 2018 request of \$7.2 billion in discretionary appropriations will maintain current services across the Judiciary, and enable further investment in cybersecurity measures and other important program initiatives to support judicial operations. The House Financial Services and General Government Subcommittee on June 29 approved its FY 2018 Appropriations measure, providing the Judiciary with \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House bill also includes one-year extensions for eight temporary district judgeships and seven temporary bankruptcy judgeships.

We are deeply appreciative of your Subcommittee's past support for the Federal Judiciary's funding needs. We ask your Subcommittee to take into account the commendable actions taken by the Judiciary to contain costs and implement more efficient ways to administer justice. Members of the Federal Bar are committed to doing everything we can to provide support for the Judiciary's efforts to administer justice and serve as a good steward of taxpayer resources.

Thank you for your consideration of our comments.

Sincerely yours,



Stacy King
Executive Director



W. West Allen
Chair, Government Relations Committee

cc: Members of the Senate Appropriations Subcommittee on Financial Services and General
Government
The Honorable Julia S. Gibbons, Chair, Judicial Conference Committee on the
Budget
The Honorable James Duff, Director, Administrative Office of the U.S. Courts



Federal Bar Association

August 4, 2017

The Honorable Trey Gowdy
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Re: FY 2018 Budget Instructions

Dear Chairman Gowdy and Ranking Member Cummings:

As you and your HOCR colleagues consider the FY 2018 budget instructions received from the House Budget Committee, we urge you to reject any budget cuts aimed at the compensation of current and former employees of the federal government.

The Federal Bar Association is the foremost professional association of lawyers in the private bar and federal service who practice and serve the law in the federal courts and the Executive Branch. Our membership includes over 3,000 federal attorneys responsible for an impressive range of litigation and advisory legal services in departments and agencies across the federal government. They assure the defense of our borders, the protection of our war fighters, the health of our economy, the safety of our food and water and the preservation of public safety. In short, these federal litigators and attorney advisors perform essential services necessary to assuring that our nation operates within the bounds of the law, that the interests of the United States are defended, and that justice is preserved for every American.

In pragmatic terms, the retention of key legal talent throughout the federal government is critical to assuring that taxpayer dollars are never wasted and always spent prudently. The retention of key legal talent helps to assure that our government upholds its laws and that the liberties of all Americans are protected. Reductions in the retirement benefits of federal employees, including federal attorneys, are a slippery slope that can compromise the government's capacity to attract and retain the expert legal talent it desperately needs. We urge the Committee to find other ways that do not reduce or erode the current pay and benefit structure of the federal workforce in its satisfaction of the FY 2018 budget instructions.

As you know, the federal workforce since 2010 has contributed \$182 billion towards deficit reduction through a three-year pay freeze, reduced pay increases, unpaid furlough days due to sequestration, and two increases in retirement contributions for new hires. These are substantial contributions. Federal employees and retirees should not be asked to sacrifice more. The federal government should not break its promise to upstanding federal employees and retirees who have based their career and retirement plans on long-standing promised benefit arrangements.

We are mindful of the deficit situation and the need for Congress to prevent federal spending from spiraling out of control. At the same time, we urge you to keep federal employees and retirees out of the crosshairs of further spending reductions. Thank you for your consideration of these comments.

Sincerely yours,



Stacy King
Executive Director



W. West Allen
Chair, Government Relations Committee

cc: Members of the House Oversight and Government Reform Committee