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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2012

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

JO ANN EMERSON, Missouri, *Chair*

RODNEY ALEXANDER, Louisiana
JO BONNER, Alabama
MARIO DIAZ-BALART, Florida
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PETER J. VISCLOSKY, Indiana
ED PASTOR, Arizona

NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mr. Dicks, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

JOHN MARTENS, WINNIE CHANG, KELLY SHEA, and ARIANA SARAR,
Subcommittee Staff

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U.S. Supreme Court	**141**
Office of Management and Budget, Government Accountability Office, and General Services Administration—Information Technology Oversight	**177**
Executive Office of the President	**321**

Printed for the use of the Committee on Appropriations

Part 6

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2012

WEDNESDAY, APRIL 6, 2011.

THE JUDICIARY

WITNESSES

HON. JULIA S. GIBBONS, JUDGE, SIXTH CIRCUIT COURT OF APPEALS, AND CHAIR, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

CHAIRWOMAN EMERSON'S OPENING STATEMENT

Mrs. EMERSON. Welcome. We are going to go ahead and start. I really want to thank you for being here today, Judge Gibbons and Mr. Duff. Unfortunately, we are having votes called right now. We are going to have three votes. Joe and I will do our opening statements, and we will do our best to see if we can get through at least one of yours. So thank you very much.

First, let me make a comment on behalf of the subcommittee expressing our deep condolences over the death of Judge Roll. What a terrible, terrible tragedy. He served Arizona and our Nation so well. I know that the loss of him is truly felt throughout the judicial system in a very, very sad, sad situation. But it is something that we take very seriously, and certainly we hold his family and friends in our thoughts and prayers, along with all of the rest of the victims of the senseless shooting in Tucson.

An independent judiciary that holds the trust and respect of all of our citizens and can resolve criminal, civil and bankruptcy disputes in a fair and expeditious manner is fundamental to our Nation. In addition, the judiciary's probation and pretrial service officers perform a critical public safety mission by supervising more than 200,000 offenders and defendants living in our communities. We will do our best to ensure that you have the resources needed to accomplish your important mission, especially since your criminal, bankruptcy, and probation workload is growing.

However, something I have to say to everybody who comes before our Subcommittee when we have a $14 trillion debt: It does compel us to reduce spending. And I am committed to reducing spending substantially throughout this budget process.

The judiciary's budget request proposes a discretionary spending increase of $424 million, or 6.6 percent above the fiscal year 2010 level. This is more than the Subcommittee and the Nation can afford right now. So I want to work with you, I want to work very

closely with our Ranking Member, and my good friend Joe Serrano, to identify savings in the Federal judiciary's costs while still providing the courts with the resources needed to fulfill your constitutional duties. I appreciate the important work that you do and look forward to your testimony.

Now let me recognize my very dear friend Joe Serrano.

RANKING MEMBER SERRANO'S OPENING STATEMENT

Mr. SERRANO. Thank you so much, Madam Chair.

I would like to associate myself with the chair's remarks regarding Judge Roll. By all accounts, he was an outstanding jurist, caring husband and a father; an active member of the Tucson community. His tragic loss is felt by all of us. We mean that sincerely. Please pass along again our heartfelt condolences to his family and to his colleagues.

I would also like to join with the chair in once again welcoming Judge Julia Gibbons and Director James Duff to the subcommittee. They have been here several times before, and they are going to keep doing it until they get it right. That is an old joke. I can't help myself. They have always done a wonderful job of addressing our many questions.

Yesterday we heard testimony from the General Services Administration, which, for the second year in a row, has not included any funding for new courthouse construction. It will be interesting to contrast the answers we heard from the GSA on this issue with any further information that you provide today. I suspect that there may be differences in the priorities of the Federal judiciary and that of the GSA, but I am sure we will get a chance to hear more about that.

Additionally, and I mention this at every hearing, I believe, that there are important questions we in Congress need to ask in order to understand the impact of a government shutdown on the Third Branch. For instance, if there is a government shutdown, what limitations are placed on judges; will access to the court system be restricted? It would be extremely troubling if a government shutdown doesn't just limit access to the executive branch, but to our Federal judicial system as well. The Federal judiciary plays a crucial role in our democratic system, and we must make certain that you have all the resources you need to ensure our Federal justice systems continues to set an example for the rest of the world.

I look forward to your testimony and welcome you again. And I apologize for the fact that we are interrupted. That is part of our job, to vote.

Mrs. EMERSON. Judge Gibbons, I would now like to recognize you. If you would be so kind as to keep your remarks to 5 minutes or less, we will have more time for questions.

JUDGE GIBBONS' OPENING STATEMENT

Judge GIBBONS. Chairwoman Emerson, Representative Serrano, and Members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals and Chair of the Judicial Conference Committee on the Budget. As you know, with me today is Jim Duff, Director of the Administrative Office of the Courts.

JUDGE JOHN M. ROLL

I thank you both for your remarks about Judge Roll. He was a fine judge and a fine man. And I use those terms in the way my mother would have used them, to mean the highest of compliments. There is a special poignancy to the way in which he died, as we are here today together, because he died trying to nurture the relationship between our two branches of government in speaking to his friend Congresswoman Giffords.

IMPACT OF FUNDING CUTS ON THE FEDERAL COURTS

I begin today by expressing our deep concern about the impacts on the judiciary of various proposals offered by some Members of Congress to shrink the size of the Federal Government through deep spending cuts. We have seen proposals to reduce spending to fiscal year 2008 levels and to fiscal year 2006 levels even. Such a budget-cutting approach may prove effective in some areas of Federal spending, but it would have a devastating impact on the Federal courts and the administration of justice.

Unlike many executive branch agencies, we do not have programs that we can cut in response to a budget shortfall. So deep funding cuts would not reduce the scope or volume of our work unless Congress also makes dramatic reductions in law enforcement programs. We do not have the discretion to decline or defer cases based on resource constraints. In fact, the opposite is true; we are required to adjudicate the cases that are brought to us regardless of staffing and resource levels in the courts.

Through new laws enacted and resources provided for law enforcement programs, Congress determines the jurisdiction and, to a large extent, the workload of the Federal courts. The President's policies carried out through the Department of Justice also play a role in our workload. Hundreds of new Federal laws have been enacted over the last 30 years that have significantly increased our jurisdiction. In turn, we have seen rapid workload growth, and our workload currently is at or near record levels in most filing categories.

CHIEF JUSTICE ROBERTS' FY 2011 FUNDING APPEAL

With this increase in workload in mind, I respectfully ask you to consider the March 18 letter from Chief Justice Roberts in which he asked Congress to provide a total fiscal year 2011 appropriation to the judiciary of $6.92 billion, which is slightly above the 2010 appropriation. This is the amount needed to maintain our current staffing levels and provides no additional court staff to meet growing workload needs.

FY 2012 BUDGET REQUEST

Turning to the details of our fiscal year 2012 request, we seek $7.3 billion in appropriations, which we have described as a 4.3 percent overall increase above the fiscal year 2011 assumed appropriations level. In the absence of a final appropriation, we assume the funding level included in the full-year CR passed by House in December 2010. The 6.6 percent figure used by Chairwoman Emerson is the 2012 increase over the 2010 enacted level. We listened

carefully, and we heard what you said about being unable to afford 6.6 percent, and I think you know that while we have a history of requesting what we think we need for the courts to fund the growing workload, we also have a history of working with the Subcommittee in recognizing what is possible.

Of the request before you, $258 million, or 86 percent, of the increase is for standard pay and nonpay inflationary adjustments and for adjustments to base reflecting increases in our space, information technology, defender services, and court security programs. The remaining $41 million is for new court support staff positions largely in probation and pretrial services offices and in bankruptcy clerks' offices, program improvements in our IT program, four new magistrate judges, and several smaller program enhancements. We are subject to the 2011 and 2012 freeze on Federal pay, so our request does not include a cost-of-living adjustment for judges or staff.

COST CONTAINMENT

Our request reflects our ongoing efforts to contain costs. We are in our seventh year of an intensive effort to reduce costs throughout the judiciary, and our cost-containment program is producing results. We have achieved the most significant cost savings to date in our space and facilities program, and GSA has been very cooperative with us in this area. My written statement includes more detail about cost containment, which continues to be a top priority for us.

STATEMENTS FOR THE HEARING RECORD

I ask that my entire statement be placed in the record, along with those referenced in my written statement. I will, of course, be happy to answer questions.

Mrs. EMERSON. Without objection, Judge Gibbons.

[The information follows:]

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

April 6, 2011

INTRODUCTION

Chairwoman Emerson, Representative Serrano, and members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2012. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my seventh appearance before an appropriations subcommittee on behalf of the federal Judiciary and my fifth appearance before the Financial Services and General Government panel. Appearing with me today is James C. Duff, the Director of the Administrative Office of the United States Courts. Director Duff also serves as Secretary to the U.S. Judicial Conference.

STATEMENTS FOR THE RECORD

In addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

FISCAL YEAR 2011 FUNDING

I appear before the Committee today to discuss fiscal year 2012 funding without final enacted fiscal year 2011 appropriations in place. In formulating the fiscal year 2012 budget request last Fall, the Judiciary assumed a fiscal year 2011 appropriations level based on the full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010.

We remain concerned about final fiscal year 2011 funding levels for the Judiciary. The Judiciary requires $75 million above a fiscal year 2010 hard freeze to support on-board court staffing levels and maintain current operations. If funded at a fiscal year 2010 hard freeze, the Judiciary will lose 200 on-board staff in clerks of court and probation and pretrial services offices, payments to private panel attorneys representing indigent defendants in our Defender Services program would have to be suspended for the last five weeks of the fiscal year, and

funding in our Court Security program would be insufficient to support minimum security requirements. We ask that Congress provide the funding needed to maintain base operations in the federal courts.

PROPOSALS TO SHRINK THE SIZE OF THE FEDERAL GOVERNMENT

All of us in the Third Branch are concerned about historic budget deficits and a growing national debt and we understand the need to rein in federal spending. This concern prompted the decision by the Judicial Conference to transmit a fiscal year 2012 budget that reflects the Judiciary's smallest requested percentage increase on record, an increase of 4.3 percent over the fiscal year 2011 assumed appropriations level.

As a step in addressing the budget deficit, the President's 2012 Budget proposes a five-year freeze on overall discretionary non-security spending. I would note, however, that the President has requested increases for the Department of Justice and the Department of Homeland Security that, if funded by Congress, will further increase the workload of the federal courts.

Chairwoman Emerson and Representative Serrano, we are very concerned about the impact on the Judiciary of various proposals being offered by some Members of Congress to shrink the size of the federal government through deep spending cuts. One proposal would reduce federal spending to fiscal year 2008 levels. Another would reduce spending to fiscal year 2006 levels. Such a budget cutting approach may prove effective in some areas of federal spending, but it would have a devastating impact on the federal court system and the administration of justice in this country. Unlike many Executive Branch entities, we do not have programs or grants that we can cut in response to a budget shortfall, so deep funding cuts would not reduce the scope or volume of our work unless dramatic reductions are made in law enforcement programs. We do not have the discretion to decline or defer cases based on resource constraints. In fact, the opposite is true – we are required to adjudicate the cases that are brought to us regardless of staffing and resource levels in the federal courts.

Through new laws enacted and resources provided for law enforcement programs, Congress and the President determine the jurisdiction and, to a large extent, the workload of the federal courts. Hundreds of new federal laws have been enacted over the last 30 years that have increased significantly the jurisdiction of the federal courts. This includes several major crime bills and significant changes to the bankruptcy code in 1978 and 2005. In turn, we have seen rapid workload growth over this period with criminal filings, criminal defendants, appellate filings, and probation workload all more than doubling since 1980. Over the same period, bankruptcy filings have more than quadrupled, pretrial services workload is up six-fold, and criminal defense representations in our Defender Services program is five times higher.

Over 80 percent of our costs are for salaries and space rent. A large funding shortfall would result in significant staffing losses in our clerks of court and probation and pretrial services offices nationwide. This was the case in 2004 when on-board court staffing levels were reduced by 1,350 people due to a funding shortfall – a loss equal to a full 6 percent of the courts' workforce. The impact of this staffing loss was delays in case processing, reduced levels of

probation supervision for felons released from prison, and a scaling back of services to the public. This is not a position in which we wish to find ourselves again.

I will close on this topic by asking that Congress take into account the impact of the legislative process and law enforcement on the jurisdiction and workload of the federal courts, and ensure that the Judiciary continues to have the resources required to perform its statutory duties and to address a growing workload.

STAFFING INCREASES AND THE JUDICIARY'S CASELOAD[1]

Our fiscal year 2012 budget request includes $21 million for an additional 257 court support staff FTE in probation and pretrial services offices (82 FTE), and bankruptcy (143 FTE) and district (35 FTE) clerks of court offices to address growing workload needs. (Staffing in appellate clerks' offices declines by 3 FTE in the Judiciary's request.) The greatest staffing need is in our bankruptcy clerks' offices which are handling significant increases in bankruptcy filings due to the economic downturn. I will discuss our bankruptcy workload in more detail in a moment.

As indicated in the caseload table in our fiscal year 2012 budget request, 2011 caseload projections are used to compute fiscal year 2012 staffing needs. This approach allows us to estimate better the number of clerks of court and probation and pretrial services staff needed to meet workload demands, thus enabling us to provide Congress with a more accurate picture of our appropriations needs for the upcoming fiscal year.

Overall, the Judiciary's workload is at or near record levels in most filing categories. Following is a discussion of the greatest workload challenges in the federal courts today: increasing bankruptcy case filings; workload on the Southwest Border; and workload in our probation and pretrial services offices.

BANKRUPTCY FILINGS REMAIN AT NEAR RECORD LEVELS

Although there have been signs of economic recovery, bankruptcy filings in the federal courts remain at near record levels. Our experience is that bankruptcy filings are a lagging indicator of the economic conditions in the country, so we often do not see a sharp growth in filings until an economic downturn is underway. Conversely, we do not see a decline in filings until after the economy begins to recover.

The recent growth in bankruptcy filings has been staggering: a 29 percent increase in 2008, a 35 percent increase in 2009, followed by a 20 percent increase in 2010 to 1,572,597 filings, the fourth highest filing year ever. Compounding the bankruptcy courts' workload are the additional duties and responsibilities created by enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005. The bulk of bankruptcy filings are Chapter 7

[1]Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2011 workload reflects the 12-month period from July 1, 2010 to June 30, 2011).

and Chapter 13 filings by individuals, but there have also been a large number of Chapter 11 business filings, some of which are very complex and labor intensive to resolve, such as Lehman Brothers, General Motors, Chrysler, and more recently Blockbuster video and film studio MGM.

We project bankruptcy filings will grow by 1 percent in 2011, a modest increase, but a 1 percent increase translates into 20,000 additional case filings for bankruptcy courts across the country. We attribute the slower projected growth in filings to lower consumer debt levels and an improved employment picture. Changes in consumer spending and higher unemployment, however, could result in another spike in bankruptcy filings.

WORKLOAD ON THE SOUTHWEST BORDER CONTINUES TO RISE

After several years of steady growth, our criminal workload nationally is projected to decline 2 percent, from 78,213 filings in 2010 – an all-time high – to 76,500 filings in 2011. Criminal case filings nationally grew 25 percent between 2000 and 2010 with immigration prosecutions in the five judicial districts along the Southwest Border fueling that growth. Immigration caseload now accounts for 36 percent of all criminal prosecutions nationwide and has surpassed drug and fraud prosecutions *combined*. These immigration prosecutions are separate from the immigration actions handled administratively by the Department of Homeland Security and Department of Justice.

The most startling statistic is that of the 78,213 total criminal case filings in 2010, 31,863 cases (41 percent) were prosecuted in the Southwest Border districts. In other words, five out of 94 federal judicial districts nationwide are handling 41 percent of all federal criminal cases. It is very clear that the additional annual and supplemental appropriations provided to the Department of Homeland Security and Department of Justice for zero tolerance border security initiatives, such as Operation Streamline, are resulting in additional criminal filings on the Southwest Border. We are grateful for the $20 million in emergency funding this Committee provided over the last two years. This one-time funding allowed us to address, in the short-term, our most urgent workload needs, particularly along the Southwest Border.

The President's 2012 Budget for the Executive Branch continues the expanded funding for immigration enforcement activities on the border and elsewhere, and it is important that Congress provide the resources needed for the federal courts to keep up with that workload. I would note that immigration cases are prosecuted throughout the country and are not limited to the Southwest Border. Although nearly three-quarters (20,682) of all criminal immigration cases are prosecuted along the Southwest Border, there were also nearly 7,500 immigration cases prosecuted in the remaining 89 federal district courts across the country.

PROTECTING THE PUBLIC

Few people are aware that the Judiciary employs 5,900 law enforcement officers who play an important role in ensuring public safety. These are our probation and pretrial services officers who supervise individuals in the community after they have been convicted of a crime as well as defendants awaiting trial. Workload in our probation and pretrial services programs

continues to grow. The number of convicted offenders under the supervision of federal probation officers hit a record 126,642 in 2010 and is expected to increase again in 2011 to 131,000 supervision cases. Pretrial supervision caseload also hit an all-time high in 2010 with 110,671 cases activated, and that caseload is projected to grow to 113,900 in 2011.

In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1988, 27 percent of the offenders under supervision had served time in prison. By 2010, the percentage had climbed to 82 percent. Offenders coming out of prison on supervised release generally have greater financial, employment, and family problems than when they committed their crimes. Another trend is the increase in the number of sex offenders under federal probation supervision. These cases represent the fastest growing segment of post-conviction supervision, growing nearly 30 percent from 2006 to 2010. Although sex offenders are a relatively low percentage of the total supervision population – about 5 percent – sex offenders require specialized supervision techniques and enhanced monitoring of their activities.

Our probation and pretrial services officers do a great job. They are highly educated – more than half have a master's degree or doctorate – and they average 10 years of community corrections experience. Not only do probation officers protect the community, they work hard to facilitate successful re-entry of offenders into society including assisting offenders with employment and housing needs. Successful re-entry into the community improves the likelihood that offenders will pay court-ordered fines and restitution to victims and become law-abiding, taxpaying citizens. But a probation officer's first priority is protecting the public. When an offender does not follow release conditions and there is a risk to the community, corrective steps are taken that may include probation revocation resulting in a return to prison.

Our officers produce positive results: a recent study found that 75 percent of persons supervised in the federal system remain arrest-free within the first three years of their supervision term. Comparative figures for state systems are significantly lower.

UPDATE ON JUDICIARY COST-CONTAINMENT INITIATIVES

The Judiciary is in its seventh year of a comprehensive cost-containment program for the federal courts. These efforts have positioned the courts to face the fiscal challenges of today without adversely impacting the delivery of justice. Given the current fiscal climate, we believe cost-containment today is perhaps more important than ever and we will continue our efforts to control costs. Even with our laser focus on controlling costs, however, we still require the resources needed to do our work. As Chief Justice John G. Roberts, Jr. said in his 2010 Year-End Report on the Federal Judiciary, ". . . the courts are committed to working closely with the President and Congress to shoulder our share of the burdens of reducing the federal deficit. We will strive to reduce costs where possible, but we ask in return that our coordinate branches of government continue to provide the financial resources that the courts must have to carry out their vital mission."

The Judiciary's biggest cost-containment success has been in limiting the growth in space rent costs. Through a number of process improvements and redesigns, our projected rent payments to GSA are nearly $400 million below the 2012 rent projection made prior to initiating our cost-containment efforts.

To control personnel costs, we have altered the salary progression policy for court staff and established performance management guidelines as a fair and reasonable means to limit future compensation costs. We estimate that our cost-containment measures will reduce compensation costs for Judiciary staff by a cumulative $300 million through fiscal year 2019.

The Judiciary has also taken steps to reduce its need for new staff. Beginning with the fiscal year 2012 budget submission to Congress, the number of additional court support staff requested will be based on a staffing formula that incorporates how the most efficient courts – as opposed to the average – perform similar work. This approach reduces the number of new court support staff in the request by over 900 positions, and reduced the Judiciary's fiscal year 2012 budget request by approximately $67 million on an annualized basis.

We are containing information technology costs without sacrificing the long-term benefits of investing in technology. New technology and improvements in the Judiciary's national data communications network have allowed for the consolidation of many of our computer servers at a single location without compromising the performance levels of several key applications resulting in savings and cost avoidances totaling $65 million through fiscal year 2012.

This summarizes our major accomplishments in the area of cost-containment. We will continue to keep the Committee updated on our efforts to control costs throughout the Judiciary.

FISCAL YEAR 2012 BUDGET REQUEST

For fiscal year 2012, the Judiciary is seeking $7.3 billion in appropriations, a 4.3 percent overall increase above the fiscal year 2011 assumed appropriations level. As I mentioned at the outset of my testimony, because final action on fiscal year 2011 appropriations bills was delayed, the Judiciary assumed a fiscal year 2011 appropriations level based on the full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010. The Judiciary will advise the Committee of its updated fiscal year 2012 appropriations requirements after final fiscal year 2011 appropriations have been enacted. I will summarize the 2012 requests for our three largest accounts.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. This account requires a 3.8 percent increase for fiscal year 2012. The request includes the court staffing increases I discussed earlier in my testimony, as well as increases for new magistrate judges and information technology improvements.

The Defender Services program, which provides criminal defense services to indigent defendants under the Criminal Justice Act, requires a 5.2 percent increase for fiscal year 2012 to handle 206,200 defense representations. I emphasize that final fiscal year 2011 funding for this account will have a direct impact on fiscal year 2012 appropriations needs. Fiscal year 2012 requirements will increase above the request level if 2011 funding for Defender Services is insufficient to make full year payments to panel attorneys, thus forcing those payments to be deferred and paid in fiscal year 2012. I also note that our 2012 request does not include any pay adjustments to the hourly rates paid to panel attorneys.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 5 percent increase for fiscal year 2012. The request will provide for additional court security officers, higher Federal Protective Service costs, and several initiatives that will improve security at federal courthouses across the country.

A summary of fiscal year 2012 adjustments to base and program increases, and appropriations requirements for each Judiciary account are included at Appendix A.

We believe the requested funding level represents the minimum amount required to meet our Constitutional and statutory responsibilities. We understand the fiscal constraints under which you are operating, but I reiterate the points I made earlier in my testimony that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does.

CONCLUSION

Chairwoman Emerson and Representative Serrano, I hope that my testimony today provides you with some insight into: the impact of funding cuts on the federal courts; how new laws, Administration priorities, and the weakened economy impact our workload; and our efforts to contain costs and become more efficient. I realize that fiscal year 2012 is going to be a very tight budget year as federal spending is more closely scrutinized. We are committed to containing costs and exploring new and better ways of conducting our judicial business. Our initiatives have significantly reduced the Judiciary's appropriations requirements without sacrificing the quality of justice. I know you agree that a strong, independent Judiciary is critical to our Nation. I urge you to provide the funding needed to enable us to maintain the high standards of the United States Judiciary.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Committee may have.

Appendix A

SUMMARY OF THE JUDICIARY'S FISCAL YEAR 2012 REQUEST

The Judiciary's fiscal year 2012 appropriation request totals $7,293,950,000, an increase of $299,318,000 (4.3 percent) over the fiscal year 2011 assumed appropriations levels.

Eighty-six percent ($258 million) of the increase requested for fiscal year 2012 funds the following base adjustments, which represent items for which little to no flexibility exists:

- Standard pay adjustments (step increases and promotions) for staff, and benefits increases for judges and staff. The Judiciary's request does not include funding for a January 2012 ECI or locality pay adjustment for judges or staff, consistent with the Administration's elimination of these adjustments for 2011 and 2012.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.
- An anticipated increase in the number of senior Article III judges and average number of filled Article III judgeships.
- Annualization of new staff expected to be hired in fiscal year 2011 (based on the fiscal year 2011 assumed appropriations level which reflects funding above a 2010 hard freeze).
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2012 versus the level available to finance the fiscal year 2011 financial plan.
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an inflationary increase in Federal Protective Service charges for court facilities.
- Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program which has allowed the courts to become more efficient and has moderated our funding requests for new staff to handle workload increases.
- Mandatory increases in contributions to the Judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers.
- Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective assistance of counsel. The CJA provides that the federal courts shall appoint counsel for those persons who are financially unable to pay for their defense.

After funding these adjustments to base, the remaining $41 million requested is for program enhancements. Of this amount:

- $21 million is for additional staff in clerks of court and probation and pretrial services to address fiscal year 2012 workload requirements (257 FTE).
- $14 million will provide for telecommunications and information technology enhancements.
- $2 million will fund four additional magistrate judges and associated staff (16 FTE).
- $1 million is requested for 12 additional police officers at the Supreme Court to staff new visitor entrances and a new command center (9 FTE), and new positions associated with care of the Supreme Court's building and grounds (1 FTE).
- $2 million will provide for necessary investments in court security, including a national contract for vehicle barrier maintenance at courthouses, a facial recognition pilot program, a pilot program to improve response times to duress alarms, and new Judiciary-funded positions at the U.S. Marshals Service (4 FTE).
- $1 million for education and training enhancements at the Federal Judicial Center (1 FTE), and for new positions at the Administrative Office of the U.S. Courts to support a new, nationwide Judiciary accounting system (1 FTE) and for an initiative to address Internet threats against judges (1 FTE).
- $0.3 million for start-up costs for opening one new federal defender organization in one of the three federal court districts (out of 94) not currently served by a federal defender organization. This would address the need to improve the quality of representation available to eligible defendants in the district.

Judiciary Appropriations
($000)

Appropriation Account	FY 2011 Assumed Appropriation[1]	FY 2012 Request	Change FY 2012 vs. FY 2011	% Change FY 2012 vs. FY 2011
U.S. Supreme Court				
Salaries & Expenses	$76,257	$75,551	($706)	-0.9%
Care of Building and Grounds	8,353	8,504	151	1.8%
Total	84,610	84,055	(555)	-0.7%
U.S. Court of Appeals for the Federal Circuit	34,125	35,139	1,014	3.0%
U.S. Court of International Trade	22,182	22,891	709	3.2%
Courts of Appeals, District Courts & Other Judicial Services				
Salaries & Expenses - Direct	5,042,168	5,236,166	193,998	
Vaccine Injury Trust Fund	4,785	5,011	226	
Total	5,046,953	5,241,177	194,224	3.8%
Defender Services	1,044,072	1,098,745	54,673	5.2%
Fees of Jurors & Commissioners	52,410	59,727	7,317	14.0%
Court Security	488,436	513,058	24,622	5.0%
Subtotal	6,631,871	6,912,707	280,836	4.2%
Administrative Office of the U.S. Courts	85,982	88,455	2,473	2.9%
Federal Judicial Center	28,087	29,029	942	3.4%
Judiciary Retirement Funds	90,361	103,768	13,406	14.8%
U.S. Sentencing Commission	17,414	17,906	492	2.8%
Direct	$6,989,847	$7,288,939	$299,092	
Vaccine Injury Trust Fund	$4,785	$5,011	$226	
Total	$6,994,632	$7,293,950	$299,318	4.3%

[1] For FY 2011, the assumed appropriations level is based on the funding for the Judiciary included in the FY 2011 full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010.

JULIA SMITH GIBBONS
United States Circuit Judge
970 Federal Building
Memphis, TN 38103

Judge Julia Smith Gibbons was appointed to the United States Court of Appeals for the Sixth Circuit in 2002. Prior to her appointment as circuit judge, she served as United States District Judge for the Western District of Tennessee from 1983 - 2002. She was Chief Judge of the district court from 1994-2000. Prior to becoming a federal district judge, Judge Gibbons served as judge of the Tennessee Circuit Court for the Fifteenth Judicial Circuit from 1981-83.

From 1979 to 1981 Judge Gibbons was Legal Advisor to Governor Alexander. She was in the private practice of law from 1976 to 1979 with the Memphis firm of Farris, Hancock, Gilman, Branan & Lanier. In 1975-76 she served as law clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit. She was admitted to the Tennessee bar in 1975.

Judge Gibbons received her J.D. degree from the University of Virginia School of Law. At Virginia she was elected to Order of the Coif and was a member of the Editorial Board of the Virginia Law Review. She received her B.A. magna cum laude from Vanderbilt University in 1972 and was elected to Phi Beta Kappa.

STATEMENT OF HON. BARBARA J. ROTHSTEIN, DIRECTOR

FEDERAL JUDICIAL CENTER

BEFORE THE SUBCOMMITTEE ON

FINANCIAL SERVICES AND GENERAL GOVERNMENT

OF THE COMMITTEE ON APPROPRIATIONS

OF THE HOUSE OF REPRESENTATIVES

April 6, 2011

Chairwoman Emerson, Representative Serrano, and members of the Committee, I am Barbara Rothstein. I have been the Center's director since 2003, and a United States District Judge since 1980. I am pleased to submit the Center's 2012 budget request on behalf of the Center's Board, which the Chief Justice chairs, and which approved this request. This marks my eighth year submitting the Center's budget request to the appropriations subcommittee overseeing the Judiciary's budget and my fifth year submitting it to the Subcommittee on Financial Services and General Government. I note this because, I am sad to say, this will be my last year doing so. Having completed my commitment to the Center, later this year I will step down. It has been a pleasure to work with the subcommittee and I thank you and your committee for the support you have shown the Center. The Center's Board is currently in the process of selecting a new director who will take the helm later this year and, I am certain, will not only see that the 2012 budget you provide is executed efficiently and as cost effectively as possible but will also submit to you next year, a fiscal year 2013 request as responsible and conservative as the Center's Board and I have tried to do this fiscal year 2012 and all during my tenure as director.

When preparing this statement, Congress had not yet completed action on the fiscal year 2011 appropriations. In formulating the fiscal year 2012 budget request, the Center, as with the Judiciary, assumed a fiscal year 2011 appropriations level based on the full-year continuing resolution (H.R. 3082)

passed by the House of Representatives on December 8, 2010. The Center, along with other Judiciary accounts will, if necessary, update our fiscal year 2012 requirements and request once the fiscal year appropriations are finalized.

Our fiscal year 2012 request is for $29,029,000, an increase of $942,000 (or 3.4%) above the assumed fiscal year appropriations level. The increase includes $276,000 for standard adjustments to base. The remaining $666,000 is for program increases, including $371,000 for needed education and training programs and $295,000 to enhance the Center's education and research related technology resources.

Before providing more detail on this request, let me provide you with a little background on the Center and its activities. I hope with this brief description to convey to you the vital contribution the Center makes to the effective and efficient functioning of the federal courts.

I. The Center's Contribution to the Courts

The Center's statutory mission is to further the development and adoption of improved judicial administration in the courts. We do this by providing objective, well-grounded empirical research and balanced, effective educational programs for the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Examples include determining the frequency and type of use of courtrooms and an ongoing study of offender reentry programs. Center research helps judges decide cases efficiently and fairly and it helps the judiciary and Congress make better-informed decisions about policies, procedures, and allocation of resources affecting the courts.

Center education programs are vital to judges and court staff. Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs help judges and attorneys who support them stay current in the law and teach judges about ways to handle heavy caseloads effectively.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them manage the business of the courts efficiently.

The Center delivers education through in-person programs, hard-copy publications, and an array of technologies, such as video, web-conferencing, teleconferencing, and the Internet and the courts' intranet. All these delivery means help us meet the diverse needs of a diverse population of judges, managers, and staff in a cost-effective way.

II. The Center Has Managed Its Appropriation Responsibly

Understanding the need for fiscal responsibility, the Center has made careful use of its appropriation each year. As I noted, we use a wide variety of cost-effective delivery tools to provide education and information to judges and staff efficiently. The various delivery tools we use have enabled us to reach a larger and larger audience for less money than we could with only one or two of these media. But new technology also requires up-to-date hardware and software and a highly professional staff with diverse skills in order to identify and take full advantage of these tools.

In-person programs remain a vital part of our education efforts. Here we economize in several ways. Most in-person staff training (and some judge education) is done by bringing faculty to the courts for local training. Most programs to which participants must travel are conducted in hotels in large cities where we can negotiate reasonable rates and take advantage of competitive airfares. We conduct smaller seminars in collaboration with several outstanding law schools, enabling us to avoid faculty and overhead costs.

We stretch our appropriation by working closely with our sister agencies, the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission. We regularly consult with them to avoid duplicative efforts, and we often provide them an opportunity to convey their information to the courts at Center-sponsored programs. They often utilize our specialized skills in education, training and research.

III. The Center's Fiscal Year 2012 Request

Our request for 2012 is modest—standard adjustments to our 2011 base, $371,000 for enhanced education and training programming and $295,000 for technology resources to support the Center's education and research functions.

Enhanced Education and Training Programming

The Center relies heavily on distance education technologies. The need for training continues to grow faster than the resources to meet it. Educating judges about new legal developments, ethical requirements, security concerns and effective case management practices is always necessary. Judges and court managers also seek additional education in effective management and use of technology.

The Center requests $150,000 to develop and conduct education and training programs for judges involved in the Congressionally mandated pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges; $115,000 to enhance education and training for judges on case management (including use of information technology), legal training for court staff attorneys, and for court executives and managers on effective leadership and management practices; and, $106,000 for two new Education Specialist positions (1 FTE) to help develop and conduct these and other important education and training programs

Education and Research Technology Resources

Staying current with technological advances in education and research is a constant challenge. The Center requests $295,000 to enhance education and research technology resources, including information technology licenses and contractor support for e-learning tools to enable users to have more effective access to Center online programs and services and to stay current with continuously evolving automation and video equipment necessary to expand distance learning and its delivery.

Thank you for your careful consideration of our request. I would be pleased to respond to any questions you may have.

STATEMENT OF THE UNITED STATES SENTENCING COMMISSION BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT COMMITTEE ON APPROPRIATIONS UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 6, 2011

Chairwoman Emerson, Ranking Member Serrano, and members of the Subcommittee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2012. The Commission's statutory mission, as set forth in the Sentencing Reform Act of 1984, continues to be both reaffirmed and significantly impacted by recent United States Supreme Court decisions regarding federal sentencing policy. Full funding of the Commission's fiscal year 2012 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The Commission is requesting $17,906,000 for fiscal year 2012, representing a 2.8 percent increase over its fiscal year 2011 assumed appropriation of $17,414,000. The Commission appreciates the serious budget constraints facing this country and the need for government agencies to allocate resources responsibly. The Commission's fiscal year 2012 request is narrow and seeks an increase over its fiscal year 2011 budget request only to account for inflationary increases and adjustments for personnel costs, and to maintain current services.

SUMMARY OF COMMISSION'S WORK

As set forth in more detail below, the Commission is extremely busy with significant responsibilities on its agenda. The Commission must respond to five significant directives from Congress, including permanent implementation of the Fair Sentencing Act of 2010. The statutory and guideline changes made by the Fair Sentencing Act did not just affect crack offenders but also significantly impacted the sentencing structure for federal drug offenders, who make up nearly 30 percent of the federal caseload annually. Permanent implementation of the Fair Sentencing Act, therefore, is an important aspect of the Commission's agenda. In addition, the Commission is in the process of completing three major reports on federal sentencing including a comprehensive report on the role of statutory mandatory minimum penalties, a detailed analysis of the state of federal sentencing in wake of the Supreme Court's many decisions on this subject, and an examination of child pornography offenses.

The Commission also continues to expand its data collection, analysis, and research functions. In addition to compiling information for its annual, quarterly, and district specific reports, the Commission's research staff are heavily engaged in analyses for the Commission's reports, as well as providing research assistance routinely to Congress. The Commission also is working on expanding the availability of its data to the public through advancements in its information technology. The Commission also is involved in a very robust training program throughout the country, which will necessarily expand as the Commission promulgates new

guidelines and amendments to existing federal sentencing guidelines consistent with the directives and other work it is currently undertaking.

JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the Commission include, but are not limited to: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government: the Legislative Branch that creates the law, the Executive Branch that enforces the law, and the Judicial Branch that interprets the law. The Commission synthesizes the concerns of the three branches in order to effectuate sound sentencing policy consistent with its statutory missions and the goals of sentencing as set forth in the Sentencing Reform Act of 1984. Consistent with the Supreme Court's decision in *United States v. Booker*,[1] which rendered the federal sentencing guidelines advisory and reaffirmed the Commission's role in federal sentencing, the Commission has continued its core mission to promulgate new guidelines and guideline amendments in response to congressional statutes and directives, and in response to information it receives from sentencing courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice system.

As discussed in more detail below, the Commission also continues to expand its data collection, analysis, and reporting efforts to provide real-time data about federal sentencing practices and trends. The Commission must continue to disseminate sentencing information in real-time and in a thorough manner to fulfill its statutory duties to monitor the operation of the federal sentencing guidelines and to advise Congress on federal sentencing policy. The Commission also continues to increase its efforts to provide specialized training on federal sentencing issues, including application of the federal sentencing guidelines, to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

Despite the ongoing impact of *Booker* and its progeny on the work of the Commission, and the increased demands for work-product and services, the Commission is not requesting program increases for fiscal year 2012. The Commission believes that it has been successful in maximizing its resources and appreciates the funding Congress has provided for the Commission's fulfillment of its statutory duties.

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[1] 543 U.S. 220 (2005).

SENTENCING POLICY DEVELOPMENT

The Commission continues to evaluate and refine federal sentencing policy as set forth in the sentencing guidelines. Currently, the Commission is completing its work with all three branches of the federal government on a permanent amendment to the sentencing guidelines implementing the Fair Sentencing Act of 2010. This landmark piece of legislation and the accompanying guidelines address the unwarranted disparity between crack cocaine and powder cocaine offenders, as well as sentences for all drug trafficking offenders.

The Commission currently is working on two major reports to Congress on aspects of federal sentencing. First, it is working on a response to a congressional directive that the Commission assess and report on federal mandatory minimum sentencing provisions, including any information the Commissions thinks would contribute to a thorough assessment of those provisions and how they relate to the federal sentencing system post-*Booker*. Second, the Commission also continues to evaluate the impact of *Booker* and subsequent case law on the federal sentencing system. The Commission anticipates releasing a detailed report that includes an assessment of, and possible guidelines amendments related to the incidence of and reasons for sentences that are outside the guideline range.

In addition to implementing the Fair Sentencing Act of 2010, Pub. L. 111–220, the Commission is working on sentencing guideline amendments that respond to congressional directives contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, the Patient Protection and Affordable Care Act, Pub. L. 111–148, and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111–195. The Commission also is working on amendments to the sentencing guidelines in response to a directive contained in the Secure and Responsible Drug Disposal Act of 2010, Pub. L. 111–273. The Commission also is undergoing a review and possible amendment of the sentencing guidelines covering firearms offenses, illegal re-entry, and failure to pay child support.

The Commission's work during the previous year resulted in the promulgation of sentencing guidelines and guidelines amendments to implement several pieces of legislation, including the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (division E of Pub. L. 111–84), the Fraud Enforcement and Recovery Act of 2009, Pub. L. 111–21, the Omnibus Public Land Management Act of 2009, Pub. L. 111–11, and the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111–3. The Commission also expanded the availability of alternatives to incarceration to certain low-level federal offenders, and provided more guidance to organizations on how to maintain an effective compliance and ethics program.

COLLECTING, ANALYZING AND REPORTING SENTENCING DATA

In fulfillment of its statutory duties related to collecting, analyzing and reporting federal sentencing statistics and trends, the Commission collects data about criminal cases sentenced

during the year.[2] During the past year, the Commission received over 386,000 documents from more than 83,000 original sentencings. To put this caseload into perspective, in fiscal year 1990, the Commission received documentation for 33,000 cases sentenced under the guidelines. Since March 2008, the Commission also has collected real-time data from the courts on over 24,000 motions filed for retroactive application of its 2007 crack cocaine amendment. The Commission continues to collect and regularly report real-time data on the retroactive application of its 2007 crack cocaine amendment.

The Commission collects and analyzes many pieces of information of interest and importance to the federal criminal justice community from the documents it receives from the courts. The Commission publishes these analyses in a variety of ways, including reporting them in its comprehensive Annual Report and Sourcebook of Federal Sentencing Statistics. It also disseminates key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time. The Commission disseminates its information in a variety of ways, including through its modernized website.

At the request of Congress, the Commission also provides specific analyses using real-time data of sentencing trends related to proposed and pending legislation. These assessments often are complex and time-sensitive, and require highly specialized Commission resources. In addition, the Commission responds to a number of more general data requests from Congress and entities such as the Congressional Research Service, the Congressional Budget Office, and the Government Accountability Office, on issues such as healthcare fraud, drugs, immigration, gangs, child sex offenses, and offenses affecting Native Americans. These requests are expected to continue in response to congressional work on crime legislation in the 112th Congress.

The Commission also responds to request for data analyses from federal judges. For example, the Commission provides to each chief district judge and each chief circuit judge a yearly analysis of the cases sentenced in the district or circuit with a comparison of the caseload and sentencing practices in that district or circuit to the nation as a whole. The Commission's ability to provide these analyses on demand and with real-time data provides a unique resource to judges.

The Commission's data collection, analysis and reporting requirements are impacted by the increasingly high volume of cases sentenced in the federal system annually; however, the Commission's modernization and refinement efforts have kept pace with demands placed on it. For example, in recent years, the Commission has reported to Congress on its development and implementation of an electronic document submission system that enables sentencing courts to submit documentation directly to the Commission electronically and can report that all 94 judicial districts now use this system.

In fiscal year 2009, the Commission began the next phase of its modernization effort, which is to advance the evolution of the document submission system to a web-based system.

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[2] *See* 28 U.S.C. § 994(w)(1), which requires the chief judge of each district court, within 30 days of entry of judgment to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

By the end of calendar year 2010, 53 districts were using the web-based system. The Commission expects more districts to begin using the system throughout fiscal year 2012.

The Commission also has worked over the past fiscal year to update its website, which re-launched in December 2010, and now provides improved and enhanced access to the Commission's work. Moreover, the Commission is in the process of automating data contained in its annual sourcebooks. Specifically, the Commission is developing an interactive website using information based on the tables from our Annual Sourcebook (for example, table 13, Average Sentence Length in Each Primary Offense Category) could be further refined by the user to provide average sentence length but also by circuit, district, race, gender, citizenship, and age.

The Commission greatly appreciates the funding it has received from Congress to undertake these modernization efforts and notes that full funding of the Commission's fiscal year 2012 budget request will ensure these systems continue to operate efficiently.

CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly provides short- and long-term guideline and sentencing related research and analyses for the Commission and the criminal justice community. The Commission routinely uses this research when considering proposed changes to the guidelines, and Commission research is routinely provided to other policymakers and members of the criminal justice community as part of their decision-making processes. In fiscal years 2010 and 2011, for example, the Commission published research reports on the use of supervised release in the federal criminal justice system, the calculation of certain criminal history points under the sentencing guidelines, demographic differences in federal sentencing practices and trends since the *Booker* decision, overviews of federal criminal cases in fiscal years 2008 and 2009, and additional information on data collection by the Commission. The Commission also continues its work on a recidivism study of crack cocaine offenders for whom courts have granted motions for retroactive application of the Commission's 2007 crack cocaine amendment, and other areas of importance to the federal criminal justice community.

TRAINING AND OUTREACH

As envisioned by Congress in the Sentencing Reform Act, the Commission maintains a very robust training and outreach program. The Commission fulfills this statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the sentencing guidelines, to federal judges, probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. The Commission continues to expand its training and outreach efforts, in large part as a result of *Booker* and subsequent Supreme Court cases. In fiscal year 2010, for example, the Commission conducted training programs in all twelve circuits and most of the 94 judicial districts. Commissioners and Commission staff also participated in other numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues.

For the past three years, the Commission has conducted an outreach program through which Commission staff visit district courts throughout the country to view sentencing proceedings conducted in the district. The program is intended to give Commission staff hands-on experience of sentencing proceedings about which the Commission collects data. The program also provides district court judges with the opportunity to provide direct feedback to the Commission about federal sentencing issues, including application of the guidelines.

In fiscal year 2012, the Commission plans to continue to provide training to the district and circuit courts on a number of federal sentencing issues, including recently promulgated guidelines and guideline amendments. The Commission also will be providing extensive training on the permanent amendment implementing the Fair Sentencing Act of 2010. In May 2011, the Commission will hold its annual national training program in San Diego, California that will include hundreds of participants. The Commission anticipates that these expanded efforts and increased requests for training will continue throughout fiscal year 2012.

SUMMARY

The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, in ensuring sound and just federal sentencing policy. Located in the judicial branch and composed of federal judges, individuals with varied experience in the federal criminal justice community, and *ex officio* representatives of the Executive Branch, the Commission is an expert, bi-partisan body that works collaboratively with all three branches of government on matters of federal sentencing policy.

The Commission appreciates the funding it has received from Congress to meet its ever-increasing needs. Full funding of the Commission's fiscal year 2012 request will ensure that the Commission continues to fulfill its statutory mission to develop federal sentencing guidelines, collect, analyze and report federal sentencing statistics and trends, conduct research on sentencing issues, and provide training to the criminal justice community. The Commission respectfully asks that Congress fully support the Commission's fiscal year 2012 appropriation request of $17,906,000 so that it can continue its statutory role as a leader in federal sentencing policy.

STATEMENT OF RANDALL R. RADER
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE SUBCOMMITTEE
ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

April 6, 2011

INTRODUCTION

Chairwoman Emerson, Representative Serrano, and members of the Committee, thank you for providing me the opportunity to submit this statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2012 budget request. This is the first time I am submitting a statement to you on behalf of the Court since I took over as Chief Judge of the Court on June 1, 2010.

The United States Court of Appeals for the Federal Circuit is located in Washington, D.C. It has exclusive nationwide jurisdiction over a large number of diverse subject areas. The Federal Circuit hears appeals in all patent cases, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Acts, veterans' cases, and many others. Additional subject areas have been added to the Court's jurisdiction almost yearly.

Appeals to the Federal Circuit come from the 94 Federal District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The Court also hears appeals from certain administrative agencies' decisions, including the United States Merit Systems Protection Board, the Boards of Contract Appeals, the Board of Patent Appeals and Interferences, and the Trademark Trial and Appeals Board. In addition, the Court reviews decisions of the United States International Trade Commission, the Office of Compliance, an independent agency in the legislative branch, and the Government Accountability Office Personnel Appeals Board.

Because it hears all of the patent appeals from District Courts, the United States Court of Appeals for the Federal Circuit's role in the commercial activity of the nation is critical. In short, the Court's decisions are extremely important to the operation of many American businesses. Without sufficient funding to maintain the Federal Circuit's current services, the corporate community and the national economy will be impaired significantly.

I recognize the challenging economic times in which we are all operating, and I appreciate the need throughout the government to reduce the deficit and contain spending. For this reason, I have limited the Court's funding request for fiscal year 2012 to the minimum amount necessary to maintain our current services. The fiscal year 2012 budget request for the Federal Circuit totals $35,139,000, a modest increase of $1,014,000 or 3.0% over the fiscal year 2011 assumed appropriation of $34,125,000. If the Court's fiscal year 2011 appropriation is frozen at the fiscal year 2010 level, I hope that Congress might make some legislative provision to estop GSA from levying our 2011 rent increases.

The Court is making no requests for program increases. We are only requesting funds that will provide for essential ongoing operations of the Court plus nondiscretionary increases in staff, rent, and inflationary adjustments. One hundred percent of the budget increase is to pay for these obligatory adjustments to the base to maintain current services. These adjustments include funds for the following:

1. For the salaries and benefits for staff for one new senior judge for six months;

2. For rent increases and adjustments including the annualization of a large, unexpected fiscal year 2011 rent increase associated with GSA leased space of the National Courts Building; and

3. For general inflationary increases as well as increases for health benefits, library services, and staff promotions and within-grade increases.

Each of these increases will be discussed in detail later. The small amount of additional funds we request will enable the Court to maintain its current level

of services. While the Court recognizes that lawmakers desire to cut back government spending, the Court also recognizes that the delivery of justice and support of the corporate community may suffer without these funds. The funds requested will help the Court to accomplish judiciary goals and achieve the Court's mission.

ADJUSTMENTS TO BASE

1. *The salaries and benefits for one law clerk and one secretary for a new senior judge total $128,000. The funding requires authorization for 1 additional FTE in fiscal year 2012.*

This increase enables the Court to hire staff for the new senior judge we expect in fiscal year 2012. In fiscal year 2010, two eligible judges took senior status. The Court anticipates an additional judge will take senior status in fiscal year 2011 and another is expected to opt for senior status in fiscal year 2012. Funding and FTE authorization for the staff for a new senior judge must be available in the Court's appropriation at the time that the judge opts to take senior status. It would simply not be acceptable to the new senior judge if we were unable to provide staffing for his/her new chambers because we did not have the funds to pay the staff or we had to let other staff go to free up the necessary FTEs.

2. *The annualization of fiscal year 2011 GSA rental cost increases and inflationary adjustments associated with all of the GSA space occupied by the Court total $585,000.*

A 2006 GSA space appraisal caused the monthly rent on the National Courts Building and courthouse complex to increase by $732,157 in fiscal year 2011. We were shocked by the rent increase when GSA presented it to us in June 2009. However, it was not clear to the Court at the time that the $677,335 increase for the rent for the National Courts Building was for only seven months and that an additional $483,810 would be required to annualize the increase in fiscal year 2012.

The Court has questioned GSA regarding the staggering annual rent increase of more than a million dollars, but has not been successful in

obtaining either a satisfactory, comprehensive explanation for the increase, or a reduction. It is disturbing to us that the total rent on the building would increase by $1,161,145 per year and that this substantial addition to the Court's operating costs is completely out of our control.

3. *Inflationary increases for health benefits, staff promotions and within-grade increases, library services and general inflationary adjustments during fiscal year 2012 total $301,000.*

These inflationary increases include contractually-mandated health benefits cost increases for current staff and increased costs for ongoing activities such as travel, postage, printing, supplies, library services, computer-assisted legal research services, and cyclical maintenance of facilities, furnishings, and equipment.

CONCLUSION

The United States Court of Appeals for the Federal Circuit truly appreciates the Committee's recognition of the Court's needs through the appropriations we have received in prior years. These enacted appropriations have provided the Court with adequate funding to support its most critical budget requirements. Our hope is that in fiscal year 2012 you will again provide the funds to help us maintain our current services and operate in an effective and efficient manner.

I give you my personal assurance that under my leadership and stewardship as Chief Judge the United States Court of Appeals for the Federal Circuit will continue to manage scrupulously our financial resources through sound fiscal, procurement and personnel practices.

Chairwoman Emerson, I would be pleased to provide any additional information that the Committee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you.

STATEMENT OF DONALD C. POGUE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee of
Financial Services and General Government
United States House of Representatives

April 6, 2011

Chairwoman Emerson, Representative Serrano, Members of the Committee:

Thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's budget request for Fiscal Year 2012 is $22,891,000. This represents an overall increase of $709,000 or 3.2 percent, over the Court's Fiscal Year 2011 assumed appropriation of $22,182,000. The increase reflects the necessary adjustments to base to maintain current services, fund essential on-going operations and initiatives, and provide for adjustments in pay, benefits, and other inflationary adjustments to base, including an increase in costs paid to the Federal Protective Service (FPS) for building basic and building-specific security surcharges and to the Court's internal security officers. The building-specific security surcharges provide for the Court's pro-rata share of upgrading, operating, and maintaining systems for the critical and necessary security of the Federal

Complex in lower Manhattan. Please do note that the Court will update the Subcommittee on its budgetary Fiscal Year request when the final Fiscal Year 2011 appropriation is enacted.

I would like to emphasize that the Court remains committed, as it has in the past, to an approach of conservatively managing its financial resources through sound fiscal, procurement and personnel practices. We believe in cost containment. To this end, in Fiscal Year 2010, due to the Court's very aggressive approach to contract management (reflecting cost savings from assertive contract negotiation techniques and strategic use of the Judiciary's extended procurement authority to enter into multi-year contracts), as well as the temporary existence of unfilled vacancies, the Court was able to transfer $775,000 to its Judiciary Information Technology Fund (JITF) to ensure the continuation of its long range technology plan. In Fiscal Year 2012, the Court will continue to utilize the additional procurement and contracting authorities granted by Congress to the Judiciary in order to realize additional savings.

In addition, as a matter of internal operating principles, the Court routinely engages in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding rent, security costs, equipment costs, technology, contractual obligations, and personnel. We are committed, for example, to cross-training staff to assure the best use of our resources. This is consistent with the Court's long standing policy to request only funds that are absolutely needed to carry out its judicial responsibilities. The Court will continue this commitment to seek funding only for increases in pay, benefits and other inflationary factors, and for essential on-going operations and initiatives of the Court.

Despite this tight-fisted approach, the Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriation and the Judiciary Information Technology Fund. These objectives provide access to the Court through the effective and efficient delivery of services and information to litigants, the bar, public, judges, and staff. As a national court, this access is critical in realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, and in the administration of justice.

It is important to note specifically that technology continues to be a critical component of the Court's commitment to service delivery to its varied constituencies. To this end, the Court continues to vigorously implement its information technology, cyclical maintenance, upgrade, and replacement programs to ensure that the Court has the infrastructure to support its technological and telecommunications needs for the next 10 years. In Fiscal Year 2010, the Court: (1) finalized the contract for the equipment, labor and installation of the Court's video conferencing system; (2) completed the purchase and installation of the updated core switch for the new video conferencing system, which we expect will produce significant savings, especially for lawyers and their clients, as a result of reducing the need to travel; (3) upgraded and enhanced the Court's infrastructure by replacing the core switch management device in the data center and reconfiguring all equipment closets; (4) purchased new laptops for judges and Clerk's Office managers; (5) continued its support of its upgraded data network and voice connections and Virtual Private Network System (VPN); (6) replaced computer desktop systems and a netware

server in accordance with the judiciary's cyclical replacement program; (7) purchased broadband service for the new judges' and managers' laptops to ensure secure internet connectivity when viewing Court files; (8) upgraded and supported existing software applications and purchased new software applications to ensure the continued operational efficiency of the Court. Additionally, in Fiscal Year 2010, the Court continued its cyclical upgrade, replacement and maintenance programs for equipment, furniture and building maintenance by: (1) refurbishing judges' office space in accordance with the Court's upgrade and replacement plan and (2) replacing broken office equipment in chambers and Clerk's Office areas.

In Fiscal Year 2011, the Court plans to expend funds to: (1) complete the installation and operation phases for the Court's upgraded video conferencing system, which is particularly relevant in light of the Court's nationwide jurisdiction; (2) replace computer desktop systems, including monitors, printers, laptops, and file servers in accordance with the judiciary's cyclical replacement program; (3) purchase a Virtualization server that will allow one server to host a copy of other servers; (4) continue its support of its upgraded data network and voice connections and Virtual Private Network System; (5) continue providing unlimited broadband services for laptops; (6) upgrade and support existing software applications, including all appropriate licenses; (7) purchase new software applications to ensure the continued operational efficiency of the Court; and (8) support Court equipment by continuing to purchase yearly maintenance agreements. Once again, the Court will continue to expand its developmental and educational programs for staff in the areas of job-related skills and technology. Additionally, the Court will support and implement its cyclical furniture replacement and Court facilities upgrade programs.

The Court remains committed in Fiscal Year 2012 to using its carryforward balances

in the Judiciary Information Technology Fund to continue its information technology initiatives and support the Court's short-term and long-term information technology needs. Additionally, the Court will continue its cyclical replacement and maintenance program for equipment, furniture and building maintenance. This program not only extends their useful life by ensuring the integrity of equipment and furnishings, but also maximizes the use and functionality of the internal space of the Courthouse. Moreover, the Fiscal Year 2012 request includes funds for the continued support and maintenance of the Court's upgraded security systems. Lastly, the Court will continue its efforts to address the educational needs of the bar and Court staff.

I would like to personally extend my deepest thanks and appreciation to Congress for recognizing the past needs of the Court by providing adequate funding to maintain current services. I am confident that Congress, in Fiscal Year 2012, will continue to observe the Court's efforts, as discussed above, to contain costs and expend funds in a conservative, cost-effective manner.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

HEARING RECESS

Mrs. EMERSON. I think if you all don't mind, let us take a brief recess while we go vote. We have got the three votes. Then we will begin again with Director Duff's statement and then questions.

So thank you all. I apologize.

Judge GIBBONS. We are at your disposal. We are appreciative of the opportunity to be here.

[Recess.]

Mrs. EMERSON. Director Duff, we would love to hear from you. And if you could keep your remarks to under 5 minutes, or close to, then we can spend more time on the questions. Thank you.

DIRECTOR DUFF'S OPENING STATEMENT

Mr. DUFF. Thank you. Good afternoon, Chairwoman Emerson, Representative Serrano, and Members of the Subcommittee. I am Jim Duff, Director of the Administrative Office of the U.S. Courts. It is a pleasure to appear before you today.

I also want to thank you both for expressing your condolences concerning the death of Judge John Roll. We will certainly pass them along to his family. He was a hero and will be greatly missed.

Since 1939, the Administrative Office of the U.S. Courts has provided a broad range of support to the Federal courts nationwide. We have evolved over the years to meet the changing needs of the judicial branch, but service to the courts has been and remains our basic mission.

FY 2012 BUDGET REQUEST

For fiscal year 2012, we are seeking an appropriation of $88.5 million for the Administrative Office of the Courts. The requested increase is primarily made up of base adjustments to maintain current operations. As Judge Gibbons noted earlier, however, this budget request was developed last fall based on assumptions at that time, and once we receive the final fiscal year 2011 appropriation, we will update our fiscal year 2012 request and provide that to the committee.

The fiscal year 2012 request also includes funding for the same three new positions to address high-priority program requirements that are critical to the operations of the courts that were requested in the fiscal year 2011 request. Specifically, two of the positions support a comprehensive modernization and consolidation of the judiciary's nationwide accounting system. It is a multiyear effort that will provide the judiciary with significant improvements in its accounting of appropriated funds.

The third position is requested to support an initiative to address judges' Internet security concerns, including Internet threats and the availability of judges' personal information on the Internet. This request, also originally in the fiscal year 2011 budget request, was the first request that we made to fund additional staff from the AO's appropriation in 6—and now 7—years. As I have said previously before, before the Subcommittee, I implemented a hiring freeze when I joined the Administrative Office of the Courts, a freeze for a couple of years. So we have not requested positions for now 7 years.

COURTHOUSE CONSTRUCTION

Before I close with these openings remarks, let me mention briefly something Congressman Serrano mentioned, and that is funding for courthouse construction. For the second year in a row, the President's budget for the General Services Administration does not request funding for new courthouse construction projects that reflect the priorities of the Third Branch, as detailed in the Judicial Conference's 5-Year Courthouse Construction Plan. For 2012, the judiciary's courthouse priorities are Los Angeles, California; Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California. Each one of these is critically needed to address major operational deficiencies at those locations. And I would like to include our 5-year plan in the official record.

[The information follows:]

Five-Year Courthouse Project Plan for FYs 2012 - FY 2016
As Approved by the Judicial Conference of the United States
September 14, 2010
(estimated dollars in millions)

FY 2012			Cost	Score	Estimated Net Annual Rent
1	Los Angeles, CA	Add'l. C	$142.0	85.0	$26.7
2	Mobile, AL*	Add'l. C	$140.3	59.8	$9.7
3	Nashville, TN	Add'l. S&D / C	$142.0	67.3	$6.4
4	Savannah, GA	Add'l. C	$95.5	61.3	$5.3
5	San Jose, CA	Add'l. S	$38.6	54.5	$14.6
			$558.4		**$62.7**

FY 2013			Cost	Score	Estimated Net Annual Rent
1	San Antonio, TX	Add'l. S&D / C	$112.0	61.3	$6.0
2	Charlotte, NC	C	$126.4	58.5	$4.9
3	Greenville, SC	C	$80.0	58.1	$4.4
4	Harrisburg, PA	C	$76.5	56.8	$3.2
5	San Jose, CA	D	$17.2	54.5	$14.6
			$412.1		**$33.1**

FY 2014			Cost	Score	Estimated Net Annual Rent
1	Norfolk, VA	C	$104.7	57.4	$6.1
2	Anniston, AL	Add'l. D / C	$41.0	57.1	$1.4
3	Toledo, OH	C	$109.3	54.4	$4.6
4	Greenbelt, MD	Add'l. C	$118.1	53.8	$7.9
			$373.1		**$20.0**

FY 2015			Cost	Score	Estimated Net Annual Rent
1	San Jose, CA	C	$223.9	54.5	$14.6
			$223.9		**$14.6**

FY 2016			Cost	Score	Estimated Net Annual Rent
1	Chattanooga, TN	S&D	$21.5	37.3	$6.8
2	Des Moines, IA	S&D	$30.0	35.3	$8.3
			$51.5		**$15.0**

S = Site; D = Design; C = Construction; Addl. = Additional

All cost estimates subject to final verification with GSA.

* NOTE: Congress provided $50.0 out of $190.3 million needed for Mobile, AL in December 2009.

I urge the Subbcommittee to consider the priorities of the Judical Conference with regard to courthouse construction projects and include funding in your 2012 bill for the five projects I just mentioned.

That concludes my oral remarks. I would be happy to answer questions and would like my full statement submitted for the record

Mrs. EMERSON. Thank you very much. Without objection, your full statement will be entered into the record.

Mr. DUFF. Thank you.

[The information follows:]

STATEMENT OF JAMES C. DUFF, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
APRIL 6, 2011

Introduction

Chairwoman Emerson, Representative Serrano, and members of the Committee, I am pleased to appear before you to present the Fiscal Year (FY) 2012 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the Judicial Branch.

First, I join Judge Gibbons in thanking you and your Committee for the support you have provided the Judiciary during this time of fiscal austerity.

The budget request before you was developed last fall based on assumptions at that time. Once we receive a final fiscal year 2011 appropriation, we will update our fiscal year 2012 request and provide that to the Committee. Also, to the extent we are able to identify unanticipated fee collections, additional carryover, and reduced requirements in the courts, we will advise the Committee and adjust our request accordingly. The Judiciary seeks only to obtain the funding necessary to meet its obligations and responsibilities to ensure the effective administration of justice.

Honorable John M. Roll

The Judiciary is still reeling from the violent death of one of our most dedicated public servants, Chief Judge John M. Roll, an exemplary and beloved judge, who was killed on January 8, 2011, in Tucson, Arizona, where one of your colleagues was seriously wounded. I hope Representative Giffords' recovery continues to progress well and that she will be back among you soon.

When we reflect on all of the Judiciary's accomplishments and challenges in 2010, I find it remarkable how Chief Judge Roll was involved in so many important administrative issues facing the Judiciary along the border – from workload and vacancies to courthouse construction needs and cost-containment efforts to Congressional outreach. It is all the more remarkable because of the caseload he and his colleagues carried in one of the busiest trial courts in the United States. For Chief Judge Roll, there were no days off. Among his accomplishments this past year, and with the approval of this Committee, he secured the construction of a much needed new courthouse in Yuma, Arizona – which Congress recently named in his honor – the ***John M. Roll United States Courthouse***. He will be greatly missed. Chairwoman Emerson and Representative Serrano, you have both been steadfast in your support of our efforts on the border and I would welcome any opportunity to accompany you on a trip to the Southwest border districts to see firsthand the overwhelming workload impacting these courts.

Facilities Planning and Capital Security

Last year a large part of my testimony concerned the Judiciary's efforts to strengthen the process for developing its long-range facilities plans – in essence, the process by which a project is placed on the *Five-Year Courthouse Project Plan*. This plan is a prioritized list of the Judiciary's most urgent courthouse construction needs. Following adoption of a cost-containment strategy by the Judicial Conference in 2004, a national moratorium on new courthouse construction was imposed in fiscal years 2005 and 2006.

During the moratorium, the Judiciary reevaluated its space planning policies and practices, and enhanced its budgetary controls. The Judicial Conference adopted changes to the *U.S. Courts Design Guide* that reduced the size of chambers space for judges and offices for court staff. The Conference also approved a courtroom sharing policy for senior judges and magistrate judges, and is currently developing policy for bankruptcy judges. In addition, the long-range facilities planning methodology was replaced with a new asset management planning (AMP) process. Application of the AMP process to the 33 proposed facilities that were subject to the moratorium enabled us to determine that about half of those courthouses could be adequately improved through a renovation or alteration project, instead of the more costly solution of new construction.

The AMP process significantly improved long-range planning with: (1) comprehensive physical and functional assessments of each courthouse throughout the country; (2) standardized planning assumptions; (3) strategies to address current and future space needs; (4) business rules that mandate first consideration of less costly real estate solutions; and (5) a method for establishing the order of precedence for which locations obtain major projects. The AMP process focuses on cost, and places a greater emphasis on the ability of an existing facility to accommodate additional space, rather than security or building condition, when determining whether to recommend a new courthouse or a renovation of that facility.

Chairwoman Emerson and Representative Serrano, the AMP process allows us to assess our space needs more accurately. We know that the Judiciary operates within some very old buildings. Many do not meet today's security standards, but oftentimes additional space is not needed. So a new building may not be required. We touched on this at last year's hearing. It is likely that fewer resources will be available for new construction and yet there are serious security and operational deficiencies in existing courthouses that need to be addressed. With that in mind, the Judicial Conference has endorsed the concept of a *Capital Security Program.*

The Judiciary has identified security deficiencies that exist in at least 10 courthouses nationwide. The cost to address these deficiencies per project ranges between $4 million and $17 million. Under our new AMP process, new buildings are not justified at these locations, yet a relatively small investment would allow us to make the security upgrades necessary to ensure the safety of judges, court staff and the public. The Judiciary would appreciate the Committee's support in establishing a new Special Emphasis Program, the *Capital Security Program*, within the General Services Administration's (GSA) Federal Buildings Fund which would set aside funds dedicated for this specific purpose, to address security deficiencies in existing courthouse buildings where physical, interior alterations are viable. The courts would work closely with GSA

and the U.S. Marshals Service evaluating these projects. This would be a small investment to make these buildings safe and secure again.

FY 2012 Courthouse Construction Request

With regard to courthouse construction, on September 14, 2010, the Judicial Conference of the United States approved a new *Five-Year Courthouse Project Plan for FYs 2012-2016*. The Plan sets the Judiciary's priorities for courthouse construction funding in each of those years. A copy of that plan is attached for your consideration in the coming fiscal year. The Judicial Conference is seeking $558.4 million in FY 2012 to address only the most pressing space requirements of the Judiciary. Those projects are located in Los Angeles, California; Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California.

As you know, funding for courthouse construction and major renovation and alteration projects is included in the GSA Federal Buildings Fund budget and not in the Judiciary's budget. In some years this has worked fine when the GSA budget request included funding for courthouse projects as recommended in the Judicial Conference-approved *Five-Year Courthouse Project Plan for FYs 2012-2016*. Unfortunately, that is not the case this year, nor was it the case last year either. The FY 2012 budget request for the GSA includes $840 million for Executive Branch new construction projects, but it does not include any funding for new courthouse construction. The absence of funding for any new courthouse construction in the President's FY 2012 budget request is problematic for the Judiciary, particularly if it translates into a lower allocation for your Committee. A lower allocation means that you will have greater difficulty securing the funding to support our request for the five construction projects proposed this year, all of which are critically needed to address major operational deficiencies at those locations.

As noted above, the Judiciary has taken strategic steps to improve its courthouse facilities planning with a focus on cost containment. This effort has been significant and has resulted in only the most important project recommendations going forward, and at a reduced cost. I urge you and your colleagues to consider the recommendations of the Judicial Conference with regard to courthouse project needs and include funding in your FY 2012 bill to the best of your ability.

Role of the AO

Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch, Congress, and the public.

The AO does not operate as a headquarters for the courts. Although the federal court system is decentralized, the AO provides administrative, legal, management, program, security, information technology, and other support services to all federal courts. It also provides support and staff counsel to the policy-making body of the Judiciary, the Judicial Conference of the United States, and its 25 committees, and helps implement Judicial Conference policies, as well as applicable federal statutes and regulations.

The AO is the focal point for communication and coordination within the Judiciary and with Congress, the Executive Branch, and the public on behalf of the Judiciary. Our lawyers, public administrators, financial managers, human resource specialists, systems engineers, analysts, architects, statisticians, security experts, and other staff provide professional services to administer Judiciary programs and meet the needs of judges and staff working in the federal courts nationwide. These services include, among many other things, for example:

Performing core central payroll, personnel, procurement and accounting functions;
Developing and executing the Judiciary's budget and guiding local court budget execution;
Collecting and analyzing statistics on court workload;
Auditing court financial operations;
Monitoring and reviewing program performance and use of resources;
Developing and implementing cost containment initiatives;
Developing and supporting automated systems and technologies throughout the courts, and managing public access systems;
Coordinating construction and management of court facilities with the GSA;
Monitoring U.S. Marshals Service implementation of the judicial facility security program;
Defining court resource needs through caseload forecasts and work measurement analyses;
Providing program leadership and support for federal courts, judges, circuit executives, clerks of court, probation and pretrial services officers, federal defenders, and other managers; and
Developing and conducting education and training programs on court administration, court operations, and information technology.

AO Task Force To Contain Costs

Although the AO has engaged in cost containment for several years, in January, I formed an agency-wide, cross-cutting task force with representatives from every directorate, to respond to the near-term budget forecast and fiscal challenges. I asked this team to approach this as an opportunity not only to curtail costs but also to continue to improve our service to the courts. Over the next several months, the group will develop recommendations for short-term cost-containment measures to get us through 2011, but the ultimate focus will be longer range actions affecting 2012 and beyond. This includes a thorough review of organizational, policy and process alternatives that will result in cost savings as well as improved efficiencies and effectiveness. For example, like the courts, we are examining whether certain administrative functions can be merged or streamlined.

AO Fiscal Year 2012 Budget Request

I next turn to the fiscal year 2012 appropriations request for the AO, which is $88,455,000. This represents an increase of $2,473,000 or 2.9 percent, over the fiscal year 2011 assumed

appropriation. The requested increase is primarily made up of base adjustments to maintain current operations. Specifically, $2.1 million of the requested increase is for salaries and benefit increases, as well as increased costs for recurring operational requirements. The budget request does, however, include an increase of $324,000 to fund three new positions to address high-priority court support functions critical to the operation of the courts. Madam Chairwoman, this is a re-request of the staffing increases we asked for this past year, which was also the first request to fund additional staff from the AO's appropriation in six years.

Two positions are requested to support the multi-year implementation of the Judiciary Integrated Financial Management System (JIFMS). JIFMS is the comprehensive modernization and consolidation of the Judiciary's current nationwide finance and accounting system. The two positions will be specifically used in developing the requirements, testing the software application, and performing the centralized Electronic Funds Transfer (EFT) function at the AO in compliance with the Department of the Treasury Government-wide Accounting (GWA) Initiative. GWA mandates that all government activities use EFT rather than paper checks for paying traveler and commercial vendor payment vouchers.

Once JIFMS is fully implemented, the Judiciary will recognize significant savings and out-year cost avoidance through the use of the centralized EFT process. Currently, all 94 courts issue paper checks to their vendors. This involves 94 separate courts maintaining a stock of treasury checks, safes for the storage of these checks, personnel at each court site to issue and account for checks issued, and upward reporting to the AO for consolidation to the Treasury for reporting purposes. Under the centralized EFT process, the AO will be the centralized office for all Judiciary disbursement payments made via EFT, thus significantly reducing the disbursement function currently performed by all 94 courts. In addition, instead of 94 separate upward reports and reconciliations performed by the courts and then consolidated and reconciled by AO staff for submission to the Treasury, the AO will assume the role of reconciling disbursements. This will in turn strengthen Judiciary internal controls, improve our financial accountability, and reduce workload in the courts.

At present, the AO is not staffed to handle these new EFT responsibilities. The two additional operating accountant positions requested will address this need.

One new position is requested to support an initiative to address judges' Internet security, including Internet threats and the availability of judges' personal information on the Internet. This initiative includes development and implementation of strategies and protocols to mitigate the misuse and abuse of judges' names as domain names on the Internet, where judges' security could be compromised.

In addition to the direct AO appropriation provided by this Committee, the AO receives a portion of Judiciary fee collections and carryover balances to offset appropriation requirements as approved by the Judicial Conference and the Congress. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security program, and defender services.

The FY 2012 request for the AO reimbursable program is also a re-request from FY 2011, specifically for 2 additional FTEs and 5 positions. Four new positions are requested to assist in the development of the next generation Case Management/Electronic Case Files (CM/ECF) system. CM/ECF is the core case management tool for judges and staff of clerks' offices. This next generation will incorporate new technologies and enhance functionality in the courts nationwide.

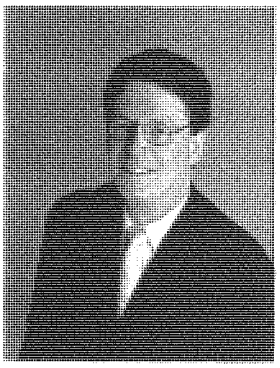
An additional reimbursable position is also requested again to support a new telecommunications program for the Judiciary which will result in increased productivity, cost savings, and cost avoidance. The Judiciary has awarded a new contract that will replace the existing Data Communications Network (DCN) and will provide the Judiciary opportunities to expand the current telecommunications services utilized by the courts. This network will allow the Judiciary to run voice, video, and data services over one network. The telecommunications program offered by the AO will provide the courts with centralized services supporting telephone services which will support telephone systems, video bridging, and data center hosting. The development, deployment and management of these additional services will be the responsibility of the AO staff and the workload associated with this effort will be substantial.

Conclusion

Madam Chairwoman, the AO's appropriation comprises less than two percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. courts. Today, I have shared with you a few examples of the diverse issues we handle and the types of services and support the AO provides. In addition to striving to perform its fundamental responsibilities in the most efficient and effective manner, the AO must look beyond the immediate day-to-day needs of the courts. It is our responsibility to anticipate and plan for changes in workload, workforce demographics, legislative mandates, resource limitations, and other trends and events so that we can serve the courts effectively in the future.

We recognize that fiscal year 2012 will be a very difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs in your bill.
I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary, as well as the effort the AO has undertaken to increase efficiencies and reshape its workforce.

This concludes my remarks and I would be pleased to answer any questions you may have regarding the AO and the Judiciary. Thank you.



JAMES C. DUFF

Director

Administrative Office of the United States Courts
One Columbus Circle NE
Washington, DC 20544

James C. Duff was appointed Director of the Administrative Office of the United States Courts on July 1, 2006, by the Chief Justice of the United States, John G. Roberts, Jr.

As Director of the federal court system, Mr. Duff oversees and coordinates an annual budget of $7 billion and 35,000 employees nationwide. He is Secretary to the Judicial Conference of the United States and as such provides staff support to all Conference committees. Mr. Duff is an ex officio member of the Executive Committee of the Judicial Conference. He serves on the Board of Directors of the Federal Judicial Center, is former chair of the Supreme Court Fellows Commission, and is a board member of the Supreme Court Historical Society. He has been an adjunct faculty member (Constitutional Law) at Georgetown University for ten years; served as counsel and secretary to The Freedom Forum, Inc., The Newseum, Inc., the First Amendment Center, Inc., and the Diversity Institute, Inc.; was legislative counsel to the Federal Judges Association; and served on the Lawyers Committee of the National Center for State Courts.

Prior to his appointment as Director of the Administrative Office, Mr. Duff was managing partner of the Washington office of the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz. From 1996 to 2000, he served as Administrative Assistant to Chief Justice William H. Rehnquist and was his liaison with Congress, the executive branch, and various state and federal organizations involved in the administration of justice. He also assisted the Chief Justice in his role as presiding officer of the presidential impeachment trial, as chair of the Judicial Conference, as chair of the Federal Judicial Center Board, and as Chancellor of the Smithsonian Institution.

Earlier in his career, Mr. Duff was a partner at Clifford & Warnke where he worked for twelve years until the firm merged in part with Howrey & Simon where he was a litigation partner for five years. He also worked in Chief Justice Warren E. Burger's chambers for four years while attending Georgetown Law Center. He is a member of the D.C. Bar and has practiced law for twenty-five years.

Mr. Duff earned his B.A. degree (*magna cum laude)*, Phi Beta Kappa, High Distinction in Honors Program, at the University of Kentucky in 1975, where he was a walk-on on the basketball team, and his J.D. degree at Georgetown University Law Center in Washington, D.C. in 1981. He also attended the University of Edinburgh, Scotland.

Mr. Duff is married to Kathleen Gallagher-Duff, a lawyer at Covington & Burling, and they have three children.

IMPACT OF FY 2008 FUNDING FOR FY 2012

Mrs. EMERSON. So we are talking about the budget and the need to address our country's unsustainable debt. As I said earlier, we are going to have to reduce spending of our Subcommittee and have been asked to try to reduce it to 2008 levels. But I must say, since 2008, the courts' workload has increased significantly in many areas, such as criminal and bankruptcy filings and supervision of offenders and defendants living in our communities. So I imagine it would be somewhat difficult for the judiciary to reduce its funding to 2008 levels.

With that said, could you all describe to me the impact on the judiciary if we did reduce your funding to fiscal 2008 levels?

Judge Gibbons.

Judge GIBBONS. Well, as you have referenced, this would be a very, very, very difficult situation for us. A hard freeze at the 2008 level for 2012 would require a reduction in current onboard staffing levels as of February 13 of this year of 7,872 positions, or 3,936 FTE. And you will recall that we have—in total, the judiciary has about 31,000 employees, and 22,000 of those are in clerks' offices and probation and pretrial services offices. Historically any cuts have been taken from among that 22,000, the remaining being judges and judges' personal staffs.

Funding for the courts would be 18.9 percent below the 2012 budget request level. We would see serious and longstanding problems for the courts in terms of supervision of convicted felons who have been released from prison, delays in case processing, and that has different impacts depending on what kinds of cases we are delaying. Obviously, if we are talking about bankruptcy cases, we are talking about sometimes an economic impact. If we are talking about criminal cases, we are talking about potentially having to dismiss indictments under the Speedy Trial Act if we cannot get those cases handled in a timely fashion. In civil cases we are talking about serious hardship to individuals and businesses if they cannot get their disputes timely resolved.

We are talking about a decline in service, reduction in clerks—the hours that clerks' offices are open; delays in improvements to our automation program, such as the updates to the Case Management/Electronic Filing System that we need to do. In the court security area there would be another very significant impact. We would have to eliminate 73 percent of our request for security systems and equipment. We would cut or lose approximately 685 court security officer positions, or 16 percent, of the current positions.

To give you a little bit of a feel for both the statistical side and the policy impact side, it would be a serious situation for us and for the public whom we serve.

Mrs. EMERSON. And I appreciate that, I really do. But let me also say that your requested 2012 levels are probably not feasible as well.

Judge GIBBONS. We understand.

IMPACT OF FY 2010 FUNDING FOR FY 2012

Mrs. EMERSON. It is interesting when you hear people come in, usually people would say, could we just have a marginal increase, and I notice that this year people are happy with flat funding.

What would happen to you all, or could you sustain a 2010 level?

Judge GIBBONS. Well, better. Let me just point out, one figure I gave you was not dependent on 2012 levels. But the first figure, the employee figure, the 7,000-plus positions was based on onboard staffing levels, not fiscal year 2012 request levels.

Here is what we look like at 2010 levels for 2012. About 552 positions would be lost, again, measured below current onboard staffing; the suspension of panel attorney payments for about 15 weeks—and, of course, that is all dependent on what might happen with respect to whether we would have to delay panel attorney payments in 2011; again, eliminating 73 percent of security equipment requests; 168 CSO positions, we feel. Some of the same impacts that I described from a policy standpoint, but, again, obviously, to a lesser extent.

BOWLES-SIMPSON COMMISSION

Mrs. EMERSON. Right. The Bowles-Simpson Commission proposed significant reductions in travel, printing and vehicle budgets. What are you doing to save money in those areas?

Judge GIBBONS. We spent about $111.7 million on travel in 2010, or 1.6 percent of total judiciary obligations. We spent $18.7 million on printing and reproduction. A lot of our travel is case-related; that is, supervision travel by probation and pretrial services officers going to the homes of offenders to determine the extent to which they are complying with the terms of supervision. And then we also have judges and to some extent their staffs who have to travel to various places of holding court that may not be the residence of the judge.

We have tried already to impose some limits on staff travel with judges for holding court, and we monitor very carefully the supervision-related travel. We have increased the use of video conferencing, and we have used various methods for training that do not require physically coming to the location. We have held our many national meetings at central locations that can be more economically reached. But I think that we can make some more modest improvements in this area.

EASTERN DISTRICT OF MISSOURI

Mrs. EMERSON. I know in the Eastern District of Missouri, for example, we have got judges coming down to the Southern Division courthouse, and then the Southern Division judge going up to St. Louis. So there is a lot of expense back and forth. And sometimes what happens is they perhaps will do the trial down in one spot, and then they will do the sentencing back up in St. Louis, which is over 100 miles away. Not only do you have the expense of the judge and the staff, but then there is that ripple effect upon the Marshals Service taking the prisoners up and back.

I do think that in some cases you can—realizing that you don't have to pay the Marshals bill, but it still adds up in the whole cost

of doing business—that there can be some more thought given to saving money just with regard to that kind of travel, because for one judge it could be $10,000 a year, $20,000 a year, and then it starts adding up. Once it is $10- here, $20- there, you start talking about real money.

Judge GIBBONS. Courts that have more than one place of holding court have to face and decide how they are going to allocate the cases, and it is a decision that statutorily is made by each court. And typically the court tries to value random assignment, which is Judicial Conference policy, but the courts take other things into account, too, such as geography and convenience. And it may be that in this era, travel costs will become something that courts should become more cognizant of as they work on how they are going to handle their cases.

JUDICIARY'S USE OF INFORMATION TECHNOLOGY

Mrs. EMERSON. Perhaps it is one of those easy things to fix—or easier things to fix. Certainly, I would rather save money on that side of things as opposed to having to furlough or lay off staff. So you can get your jobs done, there is more than one way to skin the cat here.

Let me ask you, and then I will yield to my colleague Mr. Serrano, how are you all in the judiciary using automation to reduce staffing levels in district, bankruptcy and appellate courts?

Judge GIBBONS. I can't tell you X project has saved us X amount of staff costs, but we have become very fully automated, and this has produced very significant savings for us. Our Case Management/Electronic Case Filing system has produced savings in docketing and in just the way we used to handle paper, which was pretty labor-intensive. We have made just great advances in the way probation officers receive the information they receive to supervise defendants. This really helps them in terms of having better information, but it has also enabled probation and pretrial services offices to dramatically reduce their support staff.

Jim referred to the new Judiciary Financial Management System, which is going to consolidate the accounting that is now carried out in 94 federal court districts. So we will be doing it on a national basis.

There are just many, many things that we have done, and I can't quantify it for you, but I think that we have—I think we have really done a good job within the judiciary. And going forward there are several other major projects we are working on that I could describe for you. But I think we have done well.

When you asked about printing costs, I didn't mention the extent to which our electronic noticing and the electronic filing—the extent to which that saved on printing costs. That is another kind of saving we have seen.

Mrs. EMERSON. And thank you for that.

Mr. Duff, do you have anything to add?

Mr. DUFF. I was going to add a lot of it is cost avoidance. We can attempt to quantify that.

Mrs. EMERSON. We are practicing a lot of medicine telephonically these days. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you so much. Thank you for your testimony.

Around here in Congress these days, things are getting a little confusing. The last time we enacted a bill was for fiscal year 2010. We are working on 2011 now, with H.R. 1 sitting out there, but yesterday we got the budget proposal from the majority party for 2012. So you have to keep up with the numbers, otherwise you could pass the wrong bill, and it will be 2 years into the future or something—or back.

So my question still is how does H.R. 1—at the end of the day, we don't know what is going to happen. Right now we got a message saying that things are getting closer. The Speaker and the leader in the Senate are getting closer. But everything could fall apart, and H.R. 1 eventually may be the tool.

Speaking about H.R. 1, how would it affect you? What would have to happen; how many people would you have to let go? How would it affect the caseload? Assume for a second that H.R. 1 becomes law.

Judge GIBBONS. H.R. 1 is not a good result for us either. It is $143 million below a fiscal year 2010 hard freeze level. The impact on the courts would be very significant. We would be affected in the various ways that I described for Chairwoman Emerson with respect to a hard freeze at 2008 levels for fiscal year 2012.

In terms of numbers, it is a little hard to say what the numbers would be because we would have to make some decisions about how to manage it. We have said we could lose up to 10 percent of our current onboard workforce in probation and pretrial services offices and clerks' offices. That is 10 percent of that 22,000 or so I talked about earlier. But we are a little careful in using that because we, for example, might decide that we wanted to furlough more people in order to terminate fewer people.

So in order to say that it is an absolute loss, we would not want to—I guess we wouldn't want to spread alarm in that way at this point. Nevertheless, that is the figure we are working with, although there would be decisions made as to how to manage the cut. We would have to stop payments to CJA attorneys, we think, for about 5 weeks of the fiscal year. That causes some real problems for us, not just because we are not paying the lawyers for work they have already done and because many of them are sole practitioners and those in small firms who really depend on the income, but also it affects their willingness to seek appointment in the future. So that would be a very serious outcome for us.

Mr. SERRANO. You would have to furlough people?

Judge GIBBONS. Pardon me?

Mr. SERRANO. You would have to let people go?

Judge GIBBONS. You mean employees?

Mr. SERRANO. Yes.

Judge GIBBONS. It would be very hard for me to see how we could avoid that.

Mr. SERRANO. Do you know how many?

Judge GIBBONS. As I said, we are using a figure of 10 percent, which would be roughly 2,200. But there is terminating, and then

there are things like buyouts, and there are things like furloughs. The Executive Committee of the Judicial Conference would have to figure out exactly how we were going to handle reductions at that level. But it would be very serious, and I would not anticipate that we would handle it without the loss of significant numbers of employees.

Mr. SERRANO. So you are saying at least 2,200 could be affected. I know everything is in flux.

Judge GIBBONS. I think affected, yes. Whether those people will all outright lose their jobs, I am not sure.

Mr. SERRANO. Mr. Duff.

Mr. DUFF. I agree. A lot of those decisions will occur at the local court level as to how they go about it. Those overall figures and numbers are what we are facing, probably.

CHIEF JUSTICE ROBERTS' FY 2011 FUNDING APPEAL

Mr. SERRANO. Right.

On March 18, Chief Justice Roberts sent a letter to Congress regarding fiscal year 2011 for the Federal judiciary. In his letter, the Chief Justice appeals for a funding level of $6.92 billion for the judiciary. Could you discuss the funding level request and what it will allow you to accomplish in 2011? Of course, half of 2011 is gone already.

Judge GIBBONS. The figure selected by the Chief Justice is $75 million above a hard freeze at 2010 levels. What that enables us to do and what it would enable the Congress to do, actually, is avoid deferring Criminal Justice Act panel attorney payments during the year, because if you defer payments during any part of 2011, of course, you have created a problem for 2012, because those attorneys—you are going to be paying back into 2011 obligations out of 2012 funds. And it would also give us a small amount of money for security systems and equipment that are critically needed, and it would enable us to maintain current on-board staff.

So it is $75 million above a 2010 hard freeze and would enable us to maintain current staff, not have to defer payment of CJA attorneys, and buy some much-needed security equipment.

FUNDING AND STAFFING LEVELS OVER THE LAST 10 YEARS

Mr. SERRANO. Obviously, all funding affects workload. So how has funding and staffing kept up with workload for the past 8, 10 years?

Judge GIBBONS. With your help, we think we have kept things fairly—we think we have kept fairly apace over the last several years. When I first became Chair of the Budget Committee, one of the big points we used in advocating our budget request was that our funding and our staffing had not kept up with our workload. But we appreciate very much the help you have given us in reaching a better place with respect to a correspondence between funding and workload.

Mr. DUFF. I agree. And thank you for the great support we have been getting.

The one area where we could use additional help along the way and in the past 10 years have been judgeships, in particular in areas of the country that are very overworked; border courts, for

example, where we need additional judges, frankly, to handle it. We have been shifting and doing intercircuit assignments to help ease the burdens in those courts. But that is the only area that I would mention additional need.

Mr. SERRANO. As I listen to you, I have a thought. Madam Chair, this morning the CJS subcommittee, Frank Wolf's Committee with Mr. Fattah, had the FBI Director there. We were talking about the increases they received over the years. And I know that there is a strong desire—and we have discussed this, you and I, both personally and publicly—to cut, cut, cut. And I understand the whole issue.

But I think what a lot of people miss is some of those increases over the last 10 years, or, to be exact, since September 11, were related to a crisis that this country was going through. So, yes, if you look at homeland security as an entity, it is through the roof. Not necessary? Of course, necessary. If you look at, for instance, security alone for Federal judges—and it obviously unfortunately doesn't work all the time, otherwise we wouldn't have made the statements we made of condolences—but the security at the courthouses have gone up.

And so much of that, the FBI received amounts of money that people would be upset about. But they were shifted, if you will, from following white-collar criminals and so on to following terrorists all over the world. I think in the deliberations of how we got into all this debt, if you will, no one takes into consideration that we were involved in three wars—one in Iraq, one in Afghanistan, and one at home trying to protect ourselves. That doesn't seem to play anywhere. A lot of that money was spent on that.

Mr. DUFF. Those are good points.

Judge GIBBONS. With regard to the courts in particular, a lot of the money—another area is the money spent on immigration enforcement, which, of course, has had a huge impact on our needs along the southwest border in particular.

Mr. SERRANO. Thank you.

WORKLOAD ON THE SOUTHWEST BORDER

Mrs. EMERSON. Thanks. And I don't disagree with you about all of the added security costs.

Speaking just of the southwest border, I understand that nearly 40 percent of the felony defendants are processed in the five districts along the border where the executive branch has implemented enhanced immigration and drug enforcement initiatives. So describe for us a little bit how this workload has impacted the five border district operations, including their need for probation officers, district court staff, public defenders, and secure facilities, and obviously not the least of which are judicial vacancies, because having a judge with 1,200 cases under his or her jurisdiction is pretty tough for one person to handle.

Judge GIBBONS. Well, the growth has been, as you know, phenomenal on the southwest border. We were very, very appreciative of the $20 million in supplemental funding we received to help with that and to help us keep apace. Nationally criminal filings grew 25 percent between 2000 and 2010, and that growth was fueled by what happened on the border. As you noted, now 41 percent of all

criminal cases are prosecuted in 5 of the 94 districts—those along the border. Criminal case filings in the District of Arizona in 2010 increased nearly 50 percent.

Efforts like Operation Streamline, which provides an expedited method of handling these prosecutions, drive workload not just in the court, but also in the pretrial services offices, where workload increased 14 percent. The workload has put a big strain on Federal defender organizations and panel attorneys. We have put additional magistrate judges there. The probation and pretrial staff has increased in the border States by 11.4 percent over this timeframe from 2008 compared to an increase of 3.3 percent for probation and pretrial services offices nationally. I am looking for my figure for the district courts and not finding the amount.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

Between October 2008 and September 2010, staffing in the federal district courts along the Southwest Border increased 4.6 percent compared to an increase of 1.8 percent in all district courts nationwide.

Mrs. EMERSON. Obviously, the pressure in this particular——

Judge GIBBONS. The pressure is across the board.

ALLOCATING RESOURCES TO THE SOUTHWEST BORDER

Mrs. EMERSON. In order to help meet the demand in the border district, do you reallocate existing resources in districts that have a smaller workload just to help assist those courts along the border?

Judge GIBBONS. Jim can address this in more detail because he is involved in what the Executive Committee does in adopting and executing the financial plan. But, yes, money is shifted around in terms of court allotments to send money to the areas of greatest need and not areas where the money is not so needed.

Mrs. EMERSON. Director.

Mr. DUFF. The only thing I would add is we also send judges to help in those districts that are overworked from districts where they are less burdened and have time available to volunteer in other overworked districts.

Judge GIBBONS. That has actually been a very, very significant thing for a number of years now with the border States. Senior judges from other parts of the country have gone there. They have helped out within those districts. But judges will go down, say, okay, I will take 100 sentencings for you, which is a big thing, or whatever it is. They have been assisted by their colleagues in places with less arduous caseloads.

COURTHOUSE SECURITY

Mrs. EMERSON. We need more judges, I guess.

Let us talk just for a minute about courthouse security. I know that you all operate many courthouses around the country that don't meet current security standards. So are you all working with the Marshals Service and GSA to identify all of those facilities that don't meet your security standards?

Mr. DUFF. We are. As we have mentioned before, because of recognition that courthouse construction is going to be more difficult

to obtain funding for, although the needs remain great on our priority list where we have asked for new construction of courthouses, we have lowered the scoring of security deficiencies in the formula—although it was always a part of new courthouse construction analysis—now having a security deficiency alone will not justify a new courthouse. We would encourage a similar priority list as we do with courthouse construction but have one just to address security needs.

Mrs. EMERSON. But how do you address them without building a completely new courthouse?

Mr. DUFF. Well, there are alterations and repairs in some instances to existing court facilities that are adequate to address the security concerns that we have, we found in many circumstances. So we are able to do for far less than we used to be able to do with regard to funding when we isolate the security need. It is a top priority.

Mrs. EMERSON. Let us just say hypothetically that a pot of funds would be available within the GSA for courthouse security purposes. Have you identified how much money you think would be needed for 2012?

Mr. DUFF. I don't know that we have a specific figure, overall figure, for the security needs there. We think a relatively small amount of between $4 million and $17 million per facility that we are asking for would be needed.

Mrs. EMERSON. What would be helpful for us is if you could clarify a little bit in a tighter way how much you think you would need.

Judge GIBBONS. I may be off. If so, the staff will tell me. I just misremembered something. But I believe at some point during the last budget cycle, we were asked to suggest a figure, and I think we suggested something in the neighborhood of $25 million in order to give us a small—to start on several of these facilities, see how it goes, and then obviously over a period of years we would try to address all the facilities.

Is that right?

Mr. DUFF. That is exactly right.

Mrs. EMERSON. All right. Well, why don't you go back and look at what—the past proposal and get that to us sooner rather than later, and let us just take a look. I am not saying that it is something that we can do, but certainly if you give us an opportunity to see what the needs are, and then GSA would just use those funds for that purpose, that might be a little helpful.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

Security concerns, such as the potential for prisoner escapes, threats to judges, weapons, bombs, and witness and jury intimidation, are inherent to courthouses and federal buildings. Over the years, the Judiciary has relied on major building projects to address these needs and more recently built replacement courthouses to meet modern security standards at locations where security and operational conditions were at their worst. However, with far too many aging buildings and competing real property needs, the General Services Administration's (GSA) Federal Buildings Fund (FBF) has been severly constrained, and the courts continue to operate in buildings with unsafe and high-risk conditions. Security deficiencies alone, however, do not always support the need for a new courthouse or a major renovation project.

Currently, there is no existing appropriation that specifically addresses courthouse security deficiencies unless they are part of a major repair and alteration

project or a new construction project. Especially during this time of constrained federal spending, the Judiciary recommends a specific sum of money to address deficiencies in existing buildings where physical security alterations are viable. The Judiciary suggests the Committee set aside a portion of funding within the GSA's FBF's Special Emphasis Program, to address security deficiencies in federal facilities housing the judiciary. The GSA and the judiciary would work collaboratively to assess the building conditions, viability of long-term use, and structural capacity for these stand-alone architectural solutions. Such solutions could include: building additional corridors, adding or reconfiguring elevators, building visual barriers, moving air-intakes, and enlarging security screening areas.

Types of Projects

Projects that would benefit from improvements to security will vary in size, location, and delivery method, and would likely range in cost from $4 million to $20 million. The Judiciary has compiled lists of locations with critical security deficiencies in existing courthouses and federal buildings that house the judiciary. Based on that data, the Judiciary, the United States Marshals Service, and the GSA would work together to identify and prioritize specific buildings where security deficiencies can be addressed with architectural solutions. The following is a list of projects that the proposed GSA Special Emphasis Fund "Capital Security Program" would support:

- Providing separate circulation (corridors) for the public, jurors, and/or judicial officers from prisoner movement;
- Reconfiguring existing elevators if a sufficient number of elevators exist, per code;
- Adding a new elevator either inside the building or on the exterior;
- Reconfiguring screening areas for the public and mail delivery to address crowded conditions and insufficient space for security equipment and personnel;
- Moving or securing air intakes to higher locations so that they are inaccessible from the public street level;
- Moving or securing air intakes to higher locations so that they are inaccessible from the public street level;
- Building visual barriers to separate judges' parking from prisoner unloading areas;
- Redesigning existing loading docks or vehicle sally ports to accommodate secure and efficient movement of prisoners for court proceedings.

Feasibility studies will be needed to assess existing building conditions and develop detailed cost estimates. Each location will have unique challenges such as historic elements, possible abatement issues (e.g., asbestos), code restrictions, possible relocation of staff and offices, and other building conditions which must be analyzed and planned as part of any improvements to existing buildings. In addition, the size of the building and the number of floors involved will affect the total cost of each type of security improvement.

Based on the Judiciary's analysis to date, as many as 45 buildings could benefit from this initiative to improve physical security in federal courthouses.

REDUCING SPACE COSTS

Speaking of GSA, your budget request proposes nearly a billion dollars for GSA rent, including funding for an additional 538,000 square feet of space. I know you are trying to reduce your space costs. This is really difficult as new courthouses—not on your new list—but as courthouses continue to come on line. But I think that in a GAO study, they found you were occupying what would be considered excess space. We need to figure out how to fix this. Tell me what you think the best means would be to reduce these space costs.

Mr. DUFF. We have gone about as best we can in reducing projected space needs, engaging in courtroom sharing where it makes sense, with senior judges, for example, with magistrate judges, and we have completed a recent study with regard to bankruptcy judges where courtroom sharing makes sense.

GAO STUDY ON COURTROOM UTILIZATION

You have mentioned the GAO study. We have taken a very hard look at that study, obviously, and find some very serious flaws in it. I will give you one example that is utilized in that study to say that we overbuilt courthouses, and that there are empty courtrooms in the new courthouses we built, and our projections were wrong.

In the GAO study they singled out the new courthouse in Fresno, California, as an example where they went out—it is a brand new courthouse, beautiful courthouse—and they find empty courtrooms there and say, well, we overbuilt, we overprojected. Well, the fact is the Fresno court is probably the most overworked court in the country. The average caseload per judge there is over 1,200 cases a year. Twelve hundred cases; a hundred cases a month per judge. It is an impossible workload. And so we requested new judgeships for that district in California for year after year after year, and we built—the new courthouse was built with GSA in anticipation that those judgeships would be filled to help with the overburdened court.

So the GAO study is, in our view, very flawed. But rather than get into a discussion about that study, we have taken very seriously the state of the budget and where we can save costs, save rent, reduce space needs. As I mentioned, we have done courtroom sharing as much as we possibly can. So that is one area where we are trying to save.

Mrs. EMERSON. So did you go back to the GAO and point all of these things out, and they come back to you and said what?

Mr. DUFF. Well, we didn't really get a very good response when we pointed out the shortcomings. We actually had a hearing on this, and I think our judges did a superb job of illustrating where the shortcomings in that study were. I don't think they responded in any substantive way that satisfied us certainly.

Judge GIBBONS. You know, if you look at this, it obviously would not be good stewardship of the taxpayers' money to build a courthouse that only accommodates today's needs. You have to look into the future. But when we try to look into the future, we get into this same point we get into with our caseload, which is that it is very hard to predict what is coming because it is not within our control. We handle what people bring to us. But in our efforts to look at our future judgeship needs, the number of senior judges we will have, our workload, I think, if anything, we have been guilty perhaps of too much optimism about the extent to which Congress was going to accommodate our judgeship needs. And we are now talking with GSA about a new planning process that would, among other things, inject less optimism.

Mr. DUFF. We have revised our projections.

Mrs. EMERSON. Thanks.

Mr. Serrano.

RESOURCE ALLOCATIONS TO FEDERAL COURTS IN THE U.S. TERRITORIES

Mr. SERRANO. Thank you.

Let me ask you about one of my favorite subjects, which is the American territories. We may have discussed this in the past. I spend a bit of time every so often, whenever a program or a bill comes up, reminding people that we have American citizens who live in the Northern Mariana Islands, and Guam, and Samoa, and the Virgin Islands and Puerto Rico. Usually what happens with everything else is there is a formula that affects the 50 States, and then there are negotiations that take place about how to deal with the territories. And it is very sad, in many ways, how it is done. I would imagine that the Federal judiciary and the Federal courts are an overall situation that do not get into formulas; or do they?

So what I want to know is how are the territories treated? I assume each territory has a Federal court system physically in place there. They don't have to go somewhere else. So how do you determine the judges? Is it based on population, or is there, pardon the expression of the word, politics in there as it is over here? And what is over here, let us be honest, if Puerto Rico—this is not a pro-statehood statement—if any of the territories had two Senators and Members of Congress, the treatment would be different. But since they don't, the treatment is different.

Mr. DUFF. It is basically the same formula we use within the 50 States. What we have found actually recently is that when a court in one of the territories is overworked, and we are required to send judges from the 50 States to a territory to help relieve the burden in the territory, that is an enormous expense. You talk about travel expenses, Madam Chair, this is one where we pushed to get a judgeship created in one of the territories recently and a judge put in place there to avoid the costs of having to send judges from the 50 States to help relieve the burden in the territories. In one sense, they benefited more recently. They don't always benefit, certainly.

I agree that there are sometimes distinctions made that are troublesome. A recent example, we actually were able to get a judgeship and a new appointment because of the costs involved in having to send judges from the 50 States to help relieve the burden. But basically the answer is it is the same sort of formula that we use throughout the Federal court system.

Judge GIBBONS. We have lots of different formulas. We use one formula for assessing judgeship needs, other formulas for staffing needs, other formulas for determining how other resources are allocated to the courts. The same formulas are used in the territory courts as are used in the 50 States.

LAW CLERK DIVERSITY

Mr. SERRANO. That is good to hear. That is not the answer, I guess, with 99 percent of the people who come from other places, other agencies.

As you know, in past hearings we have discussed the lack of diversity among law clerks. I understand that the Federal judiciary has instituted a new program to help address this issue. What can you tell us about this effort? Also, if you could provide for the record a diversity breakdown of law clerks by race and gender for appellate and district judges for the last say 5 years.

Judge GIBBONS. We will be happy to provide the statistical information.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following information:]

Law Clerks by Gender:

• In the aggregate, in 2005, 59% of all law clerks were female and in 2009, 60% of all law clerks were female.
• Over that 2005–2009 time period, female law clerks for bankruptcy judges grew the most, from 65% to 72%.
• Female law clerks are the majority for all judge types except Appellate Judges, for which they were between 44% and 48% during the 2005–2009 time frame.
• A far greater percentage of the career law clerks are female than male across all judge types (currently 75%), although their percentage is lowest in the appellate law clerk category (currently 64%).
• District judge term law clerks have been close to a 51–49 female-male split over the 2005–2009 time period.

Law Clerks by Ethnicity/Race:

CHAMBERS LAW CLERKS (APPELLATE) by ETHNICITY/RACE: FYs 2005–2009

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.8%	3.1%	1.8%	8.0%	0.3%	0.0%
FY 2006	82.8%	3.2%	2.0%	6.7%	0.2%	0.0%
FY 2007	87.1%	3.5%	2.4%	6.7%	0.1%	0.2%
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%
FY 2009	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%

The Judiciary's law clerk demographics and the corresponding percentages are generated from fiscal years 2005 through 2009 as fiscal year 2010 is not available at the time of the hearing.

CHAMBERS LAW CLERKS (DISTRICT) by ETHNICITY/RACE: FYs 2005–2009

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.0%	4.5%	3.3%	5.8%	0.1%	0.2%
FY 2006	84.9%	4.1%	3.4%	6.0%	0.2%	0.1%
FY 2007	86.1%	3.9%	3.6%	5.9%	0.1%	0.2%
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%
FY 2009	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%

The Judiciary's law clerk demographics and the corresponding percentages are generated from fiscal years 2005 through 2009 as fiscal year 2010 is not available at the time of the hearing.

Judge GIBBONS. You and I have talked about this before, and I have said we are working on it, but we are not where we need to be on this issue. The Committee on Judicial Resources is the committee of the Conference that is charged with working on this issue, and it has an ad hoc Subcommittee on Diversity. And under the auspices of that subcommittee, there is a new pilot project with the Just the Beginning Foundation in which students—minority students, economically disadvantaged law students—are placed as interns in Federal judges' offices. There are currently 37 students who will be interning in the pilot program. I believe that the hope would be to grow that over the next several years.

There are some outreach efforts where the Administrative Office staff has met with various congressional leaders, directors of the Congressional Black Caucus, the Hispanic Caucus, and the Asian Pacific American Caucus, to discuss our minority recruitment and hiring efforts. I think one of your staff people, Representative Serrano, attended such a meeting.

AO staff has talked with the National Latino Law Student Association. The Subcommittee is sending correspondence to law school

deans in an effort to recruit minority applicants; sending correspondence to hiring partners at the Nation's top law firms, suggesting that some of their rising-star minority lawyers might want to come back and clerk for a year before returning to the law firm. They are urging various external organizations to help us improve our opportunities to hire minority clerks. And then there is an effort that is ongoing to urge chief judges to take into account diversity when appointing magistrate judges. So there are a number of things under way, but we have got a ways to go.

Mr. SERRANO. One of the things that we should always remind ourselves of—and I know you know this, but I think for the record it has to be said—these issues are not about simply getting some folks into certain positions. It is about groups that traditionally have been left out, to a certain extent—in many cases, years ago, to a full extent—people who want to be part of the strength and the structure of the country and want to serve the country. When a person says, I want to be in the Federal court system, and I want to work there, that is not a person who doesn't want to be part of the society. So it is just the opposite.

But we have had situations here which are very delicate to discuss, but we had Supreme Court Justices who told us, well, we don't have diversity because we recruit for clerks from Harvard and Yale. I have said, well, recruit somewhere else every so often. It is not just those two schools.

I am glad that you said that there is communication with law schools throughout the country to make it better.

Mrs. EMERSON. I agree. The University of Missouri graduates are as good as Harvard or Yale. And it just annoys me more than you know.

INFORMATION TECHNOLOGY COSTS

Let me ask you all about your information technology request. This is important just because, interestingly enough, we had a hearing with the head of the GSA Information Technology, Vivek Kundra, who is the CIO for OMB and a GAO expert. We do not have a great track record in this government on IT, and I can't begin to tell you how many probably billions if you add it all up of dollars have been spent. And it has not been well spent whatsoever.

Anyway, you are requesting $550 million. Of that $550 million, how much is for developing new IT programs versus maintaining the existing systems?

Judge GIBBONS. I am not sure I have information that is directly responsive to the $550 million figure. I will answer that question more directly. I do have information about the $396 million that is requested for the Judiciary Information Technology Fund. And that amount, it is broken down in a number of ways, but almost $100 million, $99.7 million, is for systems and applications. And within that $100 million, $33.3 million is for development, $66.4 million for operations and maintenance. But I am told that operations and maintenance can also include sometimes development activities, such as repair of defects and some enhancements.

And then, if you are interested, the rest of that $396 million goes to allotments to the courts, infrastructure and collaboration that

support the national IT program, voice and data transmission services and telecommunications equipment, courtroom technologies in new and renovated buildings, and staff who provide IT development management and maintenance for the courts. We have been spared the bad situation of having to fix stuff that was not done properly. We have had a process that, thankfully, has worked.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following clarification:]

Chairwoman Emerson's figure of $550 million refers to FY 2012 projected obligations for the entire Judiciary Information Technology Fund (JITF). Judge Gibbons in her response was referring to FY 2012 JITF projected obligations for only the courts' Salaries and Expenses account which is the largest contributor to the JITF (about 75 percent). Other Judiciary accounts that make deposits to the JITF are the U.S. Court of International Trade, U.S. Sentencing Commission, Administrative Office of the U.S. Courts, and the Court of Appeals for the Federal Circuit. Fees received by the Judiciary for providing electronic public access to court information are also deposited into the JITF. Below is a table that breaks out FY 2012 projected obligations for the entire JITF.

Judiciary Information Technology Fund (JITF)	FY 2012 Projected Obligations (in millions)
Development	$48.0
Operations and Maintenance	$121.4
Court Allotments	$123.2
National IT Program	$81.3
Telecommunications Program	$113.1
Courtroom Technologies	$29.3
Centralized IT Staffing	$32.3
Total	$548.6

Mrs. EMERSON. So you have confidence that the Judiciary does have the IT project and contract management staff to execute such a large IT program?

INFORMATION TECHNOLOGY PLANNING

Judge GIBBONS. Yes. We have a planning process, but, more importantly—and that includes both staff and judges through the Conference committees and ultimately the Judicial Conference. But, more importantly, I am convinced through talking with some of the folks in the Administrative Office that one of the things that really makes it work and has made it work is the way we have staged and tested and managed the systems as they have been implemented, and we apparently have folks who have very significant project management skills who have really done a good job in helping us do this. So it appears, thankfully, that so far, so good on that one.

Mrs. EMERSON. Before starting any kind of IT program, do you do a cost-benefit analysis?

Judge GIBBONS. Oh, yes. That is a part of the formal project management process, and it is also a part of the planning process. It is taken into account along the way. There is also something called identifying quantitative and qualitative tools and techniques to manage cost and mitigate risk.

Mrs. EMERSON. Well, Mr. Serrano is, I think, a true geek when it comes to IT, which is a compliment. He loves it all.

Mr. SERRANO. I also played a judge on Law and Order once. I had to do one scene seven times because I kept stepping on the robe.

Mrs. EMERSON. How did you get that gig?

Mr. SERRANO. In the Village Voice they asked me, if you were not a Member of Congress, what would you be doing? I said, I would love to either play center field for the Yankees and act or sing. But I have no talent. So they said, do you want to read a part? I read a part. So they send me a script and they say, there is only one problem, you are playing a Hispanic judge, and there is only one problem with him. I said, oh, my God, he is not a drug-dealing thug. He said, no. He is very liberal.

Mrs. EMERSON. Perfect.

Mr. SERRANO. It was written for me. It was a great experience. Not that I pay attention, but it came out on DVD. It is season five, disk three, episode one.

Mrs. EMERSON. Please go ahead.

LACK OF FUNDING FOR NEW COURTHOUSES

Mr. SERRANO. You might have answered this question. If you did, you can either answer in a different way, or I will just go read the transcript. But what is the impact of GSA's decision to include zero funding for new construction of courthouses?

Judge GIBBONS. Well, we are not happy about having our priority projects not included in GSA's request. Obviously, there is a pot of money that it has out of which it is requesting construction, and by whatever process they use, no courthouses were included. And obviously our position is we would like to have our priority projects on a list somewhere.

HAWAII FEDERAL BUILDING AND COURTHOUSE

Mr. SERRANO. Of course, there is a courthouse in Hawaii.

Judge GIBBONS. Interestingly, we have learned, after hearing that there were questions about that yesterday, that is not the courthouse part of that building. It has nothing to do with the courts. It is——

Mr. SERRANO. The President didn't get his way and put a courthouse back home?

Judge GIBBONS. It is a Federal building and courthouse. And the project that is being proposed, we understand, is not related to the courthouse part of the structure. And what needs to be done in the courthouse part of the structure, I believe, has already been done.

Mrs. EMERSON. Well, you are wonderful to give us that clarification.

Mr. SERRANO. Because it became a big issue yesterday.

Mrs. EMERSON. We kind of got carried away.

Mr. SERRANO. We were saying, well, it makes sense; the President is from Hawaii. Notice I got that in, that he is born in Hawaii. And the chairman of Appropriations in the Senate. So we figure Hawaii made sense.

Judge GIBBONS. We were trying to figure out yesterday what this was we were supposed to be grateful for. Then we ascertained.

Mrs. EMERSON. Thank you very much. It is very helpful to us.

Mr. DUFF. I would say we have developed good working relationships with GSA, and I think they are under some pressures from OMB on what they submit. But we really would like to see our priority list for courthouse construction passed on through GSA.

BANKRUPTCY MEGA-CASES

Mr. SERRANO. Just one last question. The so-called megacases—the Madoff-type things—are those cases still having an impact on court resources?

Judge GIBBONS. Are you asking about bankruptcy cases that have been called megacases?

Mr. SERRANO. Right.

Mr. SERRANO. Dealing with 100 million in assets or more or 1,000 creditors.

Judge GIBBONS. They do have an impact. But the handling of those cases is really, I think, quite a success story because the courts and the judges that have had those cases have really rallied around and figured out ways to handle them, and they have done so. I think it is really a tribute to the courts that have figured out how to handle those cases properly and with dispatch.

So, yes, they have an impact, but it is one that is seen generally within the budget of the bankruptcy courts as opposed to something we are saying to you we need help with. We are doing fine on that.

CHAIRWOMAN EMERSON'S CLOSING REMARKS

Mrs. EMERSON. Judge Gibbons and Mr. Duff, thank you very, very much.

Mr. Duff, I want to tell you before I close the hearing, we are really very thrilled that you were kind enough to allow Karen Thomas to be a detailee for the Subcommittee this year. She is doing a great job—seriously, a great job—and I don't know what we would do without her.

Mr. DUFF. That is very nice to hear. We are glad to be of help. Glad she is of help.

Mrs. EMERSON. Thank you. I am certainly grateful, and I know I can speak for Mr. Serrano when I say that you have saved us, and she has more than met the expectations.

Mr. DUFF. That is great. It is good to hear. We are grateful for the opportunity she is getting here.

Mrs. EMERSON. Thank you.

Mr. DUFF. I don't want to make Congressman Serrano feel too bad; I will buy the DVD, but my great uncle did play center field for the New York Yankees. Earle Combs. You wouldn't remember.

Mr. SERRANO. Earle Combs; of course.

Mr. DUFF. With the 1927 Yankees.

Mr. SERRANO. Murderers' Row.

Mr. DUFF. Murderers' Row. He was the lead-off hitter. From Kentucky.

Judge GIBBONS. I am surprised he hasn't worked that into his testimony at an earlier time.

Mr. SERRANO. You can tell I am no longer chairman, otherwise he would have.

Mrs. EMERSON. Thank you all so very much.

Mr. DUFF. Thank you, Madam Chair.

Financial Services and General Government Subcommittee
Hearing on the Judiciary FY 2012 Budget

Questions for the Record Submitted by Chairwoman Jo Ann Emerson

PROBATION/PRETRIAL SERVICES

I understand that the Judiciary projects that in fiscal year 2011, there will be more than 110,000 charged defendants awaiting trial and more than 130,000 convicted offenders being supervised in our communities by probation and pretrial services officers. Your budget request proposes an increase of $7.6 million and 164 additional positions for probation and pretrial services.

Q. How is the Judiciary using technologies such as electronic monitoring to improve the supervision of offenders and reduce resource requirements?

Response: The Judiciary continues to use information technology to reduce costs, improve probation and pretrial services officers' effectiveness and efficiency, and improve public safety. Information technology projects under way include upgrades and enhancements to the Probation and Pretrial Services Automated Case Tracking System, which is the primary case management tool for officers in the field. The widespread use of Blackberry devices allows officers to access and update case information remotely, allowing them to spend less time in the office and more time in the field supervising offenders and protecting the public. Other information technology investments will enable the Judiciary to share case information electronically with the Bureau of Prisons, U.S. Sentencing Commission, and other federal and local law enforcement agencies.

Information technology investments in case management systems and expanding the use of mobile technology have enabled probation and pretrial services offices to reduce the number of support staff nationwide. The Judiciary has utilized these savings to hire the additional officers necessary to keep up with workload growth while at the same time keeping overall staffing levels essentially flat.

Since implementation in 2006, the Judiciary has been using a program called Access to Law Enforcement Systems (ATLAS) to enable probation and pretrial services officers to access FBI and state arrest records from their desktop computers. In 2009, the Judiciary enhanced the system to enable officers to access those records from anywhere using laptops and smart phones. ATLAS notifies officers by email immediately when a person under their supervision is arrested or even questioned by law enforcement officers. It also periodically runs "rap sheets" and alerts officers if the latest rap sheet differs from the previous one. At this time, nearly 65,000 convicted offenders are monitored this way in 90 federal court districts across the country, with more offenders being added to the database all the time.

GPS and electronic monitoring units, at a cost of about $14 a day per offender, monitor and record the whereabouts of a person under supervision at all times, or for time periods specified by the court. Officers are alerted when there is an apparent violation. Other data-gathering technologies include computer and internet monitoring software used to supervise child

pornographers and cyber offenders; drug testing devices; web, kiosk and advanced phone reporting systems to enable offenders to communicate with their probation or pretrial services officer; and polygraphs and physiological tests used in the treatment of sex offenders.

Smart phones and laptop computers provide officers with up-to-date case information when they are in the community, allowing officers to be as current as possible with the status of persons under their supervision. Utilizing this technology, for example, makes it possible for an officer about to visit the home of a person under supervision to know if the person attended a scheduled drug treatment session earlier that day, submitted a urine sample, or made that week's required restitution payment. With such information, the officer is better prepared and focused in his or her interaction with the supervisee.

Greater use of technology by probation and pretrial services officers has made them not only more effective at doing their jobs but has made them more self-sufficient over time. As evidence, we have been able to reduce support staff by 566 FTE (26 percent) since fiscal year 2004 as a result of officers requiring less administrative support. This represents a cost avoidance of more than $30 million per year.

Q. What is the Judiciary doing to ensure that probation offices are implementing the best prisoner re-entry programs available to both protect communities and reduce recidivism?

Response: The early involvement of officers in the re-entry process, coupled with individualized planning based on identified risks and needs, is part of the reason that 75 percent of persons on federal supervision remain arrest free for the three years of supervision. This outcome compares quite favorably with recidivism in state systems.

Re-entry Begins Before Release. The federal probation officer's traditional role in re-entry begins at least 30 days prior to the release of an inmate from a Bureau of Prisons institution, when the officer visits family and prospective employers and makes arrangements to address other re-entry needs such as substance abuse or mental health treatment, in order to ensure that the release plan prepared by the inmate and Bureau staff is actually workable. When the officer uncovers information that renders the release plan questionable or unworkable, there is still time before the release date to revise the release plan.

Individual Case Plan. Frequent drug testing is statutorily required in the early period of supervision upon the inmate's release, but the officer's other interactions with a newly released person are guided by an individual case plan created by the officer in consultation with a supervising officer, using all information available, including the results of actuarially-based risk/need measurement. The plan is tailored to the specific risks and needs of the individual person under supervision and may be modified over time to adjust to progress or regression as necessary.

Treatment, Counseling, Training and Testing. Many persons under supervision are required by the court to submit to substance abuse and mental health treatment, counseling, vocational training, and drug testing. In fiscal year 2010, the Judiciary arranged for more than $114 million in such services, helping nearly 88,000 persons under supervision to stop using illicit drugs. Part

of the cost to the federal government, at least $4.7 million, was defrayed by virtue of probation officers coordinating with defendants' private insurance plans, co-payments directly from persons under supervision, and using free or low-cost treatment services – where available –from state and local agencies and faith-based organizations. With early involvement of officers in the re-entry process, coupled with individualized planning based on identified risks and needs, three-quarters of persons on federal supervision remain arrest free during at least the first three years of supervision.

Workforce Development. In recent years, probation officers have partnered with the Department of Labor and other federal agencies to promote workforce development and increase rates of employment.

Re-entry Courts. In many districts, federal judges have instituted various versions of "re-entry courts" to add judicial involvement in monitoring and intervening in the re-entry process. These programs vary widely, but typically involve special hearings presided over by a judge with prosecutors and defense attorneys present in non-adversarial roles to help support the success of the person under supervision. The involvement of judges and others is believed to enhance the traditional approach to prisoner re-entry, although substance abuse and mental health treatment, drug testing, counseling, vocational training, and employment referral remain at the core of the re-entry process. Judge-involved supervision initiatives appear to be growing in popularity and show promise, although the populations served remain very small. The Judicial Conference has commissioned the Federal Judicial Center to study the cost and effectiveness of judge-involved re-entry programs.

Q. With the enactment of the Adam Walsh Act, the Federal government has increased its apprehension and conviction of sex offenders. Upon release from prison, these offenders require specialized supervision techniques and enhanced monitoring. Do your probation offices have sufficient resources to effectively supervise sex offenders and protect the citizens of the communities in which they live?

Response: Yes, our probation officers currently have sufficient resources to supervise sex offenders effectively and to protect the public. However, it is critical that the Judiciary continue to receive funding in FY 2012 and beyond sufficient to handle workload in the probation and pretrial services program which is currently at record levels and is expected to continue to grow.

Although sex offenders are a relatively low percentage of the total supervision population – about 5 percent – sex offenders represent the fastest growing segment of post-conviction supervision (growing nearly 30 percent from 2006 to 2010) and require specialized supervision techniques and enhanced monitoring of their activities. Probation and pretrial services officers are responsible for the effective management of this specialized population. Effective management involves more than just supervision and treatment. It demands the thoughtful integration of assessment, re-entry, supervision, treatment, and sex offender registry and notification, and close collaboration among those carrying out these activities.

The supervision of sex offenders is more demanding and intense than the supervision of most other defendant and offender populations. Sex offenders pose distinct and inherent risks to the public due to the potential harm they can cause to other people if they recidivate. The risk

factors they present often necessitate enhanced and non-traditional supervision strategies to ensure community protection.

Computer-based sex offenses provide a unique challenge to the federal probation and pretrial system. Sex offenders use computers and the Internet to download, trade, and distribute child pornography, as well as to identify, solicit, and groom potential victims. With these high-risk activities, it is imperative that officers have the ability to monitor and control a sex offender's Internet activity effectively. Officers supervising these individuals must possess a technical knowledge of computers (e.g., temporary Internet files, history files, recent files, cookies, operating systems) and understand the role and nature of electronic evidence, as well as how to process a violation involving electronic evidence.

Probation and pretrial services offices typically contract with specialized providers in dealing with sex offenders. Officers also arrange for these defendants and offenders to undergo physiological testing (polygraphs and other measures). In addition, Radio Frequency (RF) and Global Position System (GPS) Location Monitoring (LM) technologies are used, when ordered by the court, to determine if sex offenders have been in the proximity of schools or other exclusion zones. This effort helps to ensure the safety of potentially vulnerable victims. Also, officers make sure that sex offenders comply with all required registration laws to decrease the further likelihood of recidivism and aid in the early detection of inappropriate conduct.

DEFENDER SERVICES

The sixth amendment to the Constitution provides for the right to counsel for those who can not afford it. This is a very important Constitutional protection. However, the costs associated with this program have grown from $836 million in fiscal year 2008 to $1.1 billion requested in fiscal year 2012. Between fiscal year 2008 and now, panel attorney hourly rates from increased from $100 to $125 per hour for non-capital cases. Other cost drivers have been an increase in the number of defendants and case complexity. The cost increases associated with this program must be mitigated. Attorneys must be adequately compensated and defendants must be competently represented. However, we can not sustain double digit percentage increases in costs each year.

Q. What is the Judiciary doing to improve the management of this program and reduce costs?

Response: Costs in the Defender Services program are largely driven by external factors, primarily the prosecutorial policies and priorities of the Department of Justice. U.S. Attorneys in the 94 federal judicial districts nationwide determine which cases to prosecute and the resources that will be dedicated to each prosecution. The Defender Services program is required under the Constitution and the Criminal Justice Act to provide qualified defense counsel to indigent defendants. If a federal judge determines that a defendant does not have the financial means to hire an attorney, the judge will direct that a private panel attorney or a federal defender attorney provide that representation. Although the Defender Services program does not control the number of CJA representations – the primary cost driver in the program – there are a number of cost-containment initiatives being pursued to reduce expenses and improve efficiency. They include the following initiatives:

ONE-TIME INITIATIVES

FY 2011 Hiring Freeze ($3.8 million). A freeze on federal defender organization (FDO) hiring was implemented in December 2010 and will remain in effect through September 2011. Some vacancies will be backfilled, but overall FDO staffing levels will not exceed the December 2010 on-board level.

FDO Compensation ($5.0 million). Personnel compensation costs in the FDOs have been reduced in FY 2011 by suspending:

1) quality step increases;
2) bonuses and awards; and
3) assistant federal defender annual pay review increases.

Annual Conferences ($400,000). The federal defender conference and the FDO administrative officers' conference have been cancelled in FY 2012.

INITIATIVES IN PROGRESS

Circuit Case-Budgeting Pilot (at least $2.0 million so far). In a significant effort to control costs of CJA panel attorney representations, the Judicial Conference approved a pilot project in September 2005 which provided funding from the Defender Services appropriation for three court positions to support the case budgeting process for high-cost CJA panel attorney representations at the district court and appellate court levels within three circuits. The independent evaluation of the project by the Federal Judicial Center concluded that the "most modest estimate" of savings was $2.0 million between FY 2007 and FY 2009. At its March 2011 session, the Judicial Conference approved incremental expansion of the pilot subject to availability of funding.

Electronic Vouchering for Panel Attorney Payments. The Judiciary is developing a CJA e-vouchering system to replace the current paper-based system for processing panel attorney payments. The Judiciary anticipates that moving to a paperless system will streamline the review process, improve efficiency and oversight by providing basic automatic checks and balances for claims, and, over time, reduce Judiciary personnel costs. Other benefits of an e-vouchering system are ensuring consistent billing by panel attorneys and providing benchmarks for representation costs in comparable cases to assist judges in making approval decisions. Design of this system is currently underway, with full implementation expected by the third quarter of FY 2013.

CONTINUING INITIATIVES WITH PERMANENT COST REDUCTIONS

Equipment ($2.0 million in initial savings plus $100,000 annually in recurring savings). In 2005, the Defender Services program implemented a new FDO email system that eliminated the annual cost of maintaining an individual server for each of 73 FDOs by employing a design in which all FDOs share 18 servers residing in two national data centers.

Subscriptions ($1.0 million annually). Federal defender organizations are no longer authorized to continue hard copy subscriptions for court decisions or case digests and must instead obtain the information on-line.

Space (average annual cost avoidance from FY 2006 to FY 2010 was $400,000). In FY 2006 the Defender Services program implemented a policy requiring federal defenders to pay for tenant alterations at the beginning of a lease term, thus avoiding the considerable interest payments associated with following GSA's standard procedure of amortizing the cost of the alterations over the term of a lease.

Q. How can technology be used to reduce costs in areas such as discovery?

Response: Technology is being used to reduce existing costs and to avoid future costs in the Defender Services program.

The Judiciary has entered into agreements with a number of companies to purchase national licenses for software applications for federal defender organizations (FDOs) that will allow them to process large volumes of discovery more effectively and efficiently. It has also negotiated agreements to permit CJA panel attorneys to purchase some of those software programs at rates as much as 50 percent below the retail price.

Additionally, the Administrative Office is in the process of preparing a procurement for an evidence review platform (ERP) (one or more software applications that allow for the capture, organization, analysis, and review of case-related electronic data), for use by both FDO staff and CJA panel attorneys. There are three important reasons for purchasing an enterprise ERP and other litigation support applications: (1) the purchase of a large volume of licenses that can be used by FDO staff will result in a lower per-license cost to the program for each application; (2) the use of these tools will reduce the need to purchase similar software in each case for which it may be needed, containing costs over the course of a given fiscal year or several fiscal years; and (3) the use of a standard set of litigation support software applications by CJA practitioners for most cases will foster the development of document management work flow protocols and standardized training, as well as on the functional use of the applications. Over time, their use will reduce overall case preparation time through familiarity with the work processes and software functions.

The Administrative Office is entering into contracts with a limited number of coordinating discovery attorneys – experts in the discovery process – who will work with CJA panel attorneys to streamline the processes for selecting and using tools to manage large volumes of discovery effectively and efficiently. This will reduce the amount of time those attorneys or their staff will have to spend on, and seek compensation for, the management of discovery.

Administrative Office staff are also involved in discussions with the Department of Justice (DOJ) on development of broad national protocols with the goal of making the exchange of electronic discovery more effective and efficient, saving time for DOJ, the CJA appointed counsel program, and the courts.

In addition to discovery-related technology, the Defender Services program's capabilities and productivity are continually being enhanced through measures such as: the use of laptops to provide mobility and ensure continuity of operations (COOP) capability; mobile devices to provide connectivity and enhance productivity; increased wide area network (DWAN) bandwidth to speed up processes external to the local area network; the new Defender Case Management System (CMS) to consolidate and enhance defense services; internet and intranet web sites to consolidate and share information; and a video conferencing infrastructure to reduce administrative travel expenditures.

Q. What are judges doing to ensure that panel attorneys' expenses are appropriate?

Response: The Judiciary is reviewing new ways to assist judges in their review of CJA vouchers. Some initiatives have been implemented recently, and others are ongoing that will help ensure panel attorney expenses are appropriate.

Voucher Review Process. CJA panel attorney vouchers, and those of CJA service providers (e.g., investigators, experts, interpreters), are reviewed at a variety of levels within the Judiciary prior to payment to determine that the claims are for services and expenses that are authorized by the CJA, in accordance with applicable Judicial Conference guidelines, and necessary and reasonable to provide adequate representation.

When a CJA voucher is initially submitted, administrative, mathematical, and technical voucher reviews are conducted by either court or Federal Defender Organization (FDO) personnel (depending on the arrangement in the particular district or circuit). The reviewers ensure that the claim is complete and accurate, interact with attorneys where documents or explanations are missing, and identify any non-compensable services or non-reimbursable expenses. After these reviews are completed, the claim is provided, with the preliminary reviewer's observations and recommendations, to the judge presiding over the case. The presiding judge then performs a "reasonableness" review of the claim, approves or disapproves the amounts for payment, and signs the voucher.

For vouchers claiming an amount in excess of statutory maximums, after the presiding judge certifies that the "excess" amount is authorized and appropriate, the voucher is forwarded to the circuit chief judge (or circuit judge delegate) for review and approval. The presiding judge also furnishes to the circuit a memorandum containing the recommendation and a detailed statement of reasons for approving the "excess" amount.

Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments. The panel attorney or service provider making the request must submit a memo to the court indicating the length of time for which an interim payment will be needed, and demonstrating the need for the interim payment(s). Interim vouchers afford courts an opportunity to assess case costs and expenses as the case progresses, before the judge has to approve a final voucher payment.

Several district courts have determined that there is a substantial benefit in cost savings and the quality of representation through use of a staff attorney dedicated to managing the CJA

appointment and payment processes. The "CJA supervising attorney" for the district court reviews all CJA panel attorney and other service provider vouchers, coordinates case budgeting of eligible panel attorney representations, and manages the panel of private attorneys providing representation under the CJA. The court retains approval authority.

Voucher Documentation. In addition to various levels of judicial review, CJA panel attorneys are subject to rigorous documentation procedures when submitting a voucher, which ensures that only appropriate claims are made. To request payment, appointed panel attorneys and service providers are required to:

- Complete a detailed claim form, seeking payment of compensation and expenses.
- Provide an additional itemized statement of the services provided, including the date and number of hours (in hours and tenths of an hour) claimed for each service, by specified categories of in-court and out-of-court activity.
- Provide an itemized statement of all expenses for which reimbursement is claimed.
- Provide supporting documentation, where practical, for all travel expenses and any other expense in excess of $50.
- Sign the CJA voucher form, attesting to the accuracy of the claim.

Additionally, all claims for payment under the CJA are subject to audit, and panel attorneys must keep contemporaneous time and attendance records for all work performed (including work done by associates, partners, and support staff, as well as expense records) for three years after the final voucher is approved for payment.

Case Budgeting. In a significant effort to control costs of CJA panel attorney representations in certain high-cost cases, guidelines were promulgated by the Judicial Conference encouraging courts to utilize case budgeting for any "mega-case" – a non-capital panel attorney representation in which it is anticipated that potential costs will be extraordinary with either attorney time exceeding 300 hours or total expenditures exceeding $30,000 – and for all federal capital prosecutions and capital post-conviction proceedings. The judge reviews an *ex parte* submission from the panel attorney articulating present and prospective case-related expenses and estimating attorney time. Judges have available to them both the services of an experienced attorney to assist them with the case budgeting process generally and the expertise of specialists in federal capital trial and post-conviction proceedings.

Pilot Project. In addition to the case budgeting guidelines, which are in effect nationwide, the Judicial Conference in 2005 approved a pilot project for the Defender Services account to fund a position in up to three circuits to support the case budgeting process. The case budgeting attorneys work closely with the panel attorney to develop a budget and with the presiding judge, who determines the authorized amount of the case budget. The case budgeting attorneys also develop best practices and policies to assist in case budgeting specifically and cost containment generally in all CJA panel attorney representations. The Federal Judicial Center's December 2010 evaluation of the pilot project concluded that the case budgeting attorneys saved money – at least $2.0 million between FY 2007 and FY 2009 – while promoting a high-quality defense and enhancing the management of high-cost cases. At its March 2011 session, the Judicial Conference approved incremental expansion of the pilot subject to availability of funding.

Electronic Voucher Processing System. An Electronic Criminal Justice Act (CJA) Voucher Processing System (e-CJA VPS) is being developed to replace the current paper-based CJA Panel Attorney Payment System. The national roll-out of the electronic vouchering system is scheduled to begin in the first quarter of FY 2013, and completed by the third quarter of FY 2013. It will provide a paperless application to speed up current business processes for the submission, review and approval of CJA vouchers; reduce potential errors; and collect data on the claims filed by CJA panel attorneys and expert service providers, including investigators. The system will feature a robust reporting capability. For instance, judges reviewing a claim will be able to compare it to claims from comparable representations and to view the claims of individual attorneys in other representations. Reports will also be available showing the high-level, average representation cost-by-case disposition for comparison against previous payments for similar cases. It is expected that the tools provided by the new system will assist judges in conducting their review of vouchers for reasonableness.

Voucher Training Program. A new National CJA Voucher Training Program, instituted in 2010, provides judges, other court personnel, CJA panel attorneys and other services providers with training materials and a national web site containing CJA information and national policies and practices. "Train the trainer" sessions were conducted for personnel from district courts and courts of appeals.

Questions for the Record Submitted by Ranking Member José Serrano

JUDICIARY WORKLOAD AND FUNDING

Q. How has funding and staffing kept up with workload at the Judiciary in the past 10 years?

Response: Over the last decade there were two years in which funding shortfalls for the Judiciary resulted in a loss of on-board staff – FY 2004 and FY 2005. As a result of across-the-board rescissions that were included in the final omnibus appropriations bills for these two years, the Judiciary was forced to downsize through implementation of hiring freezes, reductions-in-force, and buyouts and early outs. In FY 2004, the Judiciary lost 1,350 on-board staff as a result of funding shortfalls, equal to 6 percent of the on-board workforce in clerks of court offices and probation and pretrial services offices. An additional 160 on-board staff were lost in FY 2005. Combined, more than 1,500 on-board staff were lost over the two year period.

In recent years, as a result of this Subcommittee making the Judiciary a funding priority, we have been able to meet our most critical workload needs and hire some needed staff. This Subcommittee again made the Judiciary a funding priority in the recently enacted FY 2011 Department of Defense and Full-Year Continuing Appropriations Act by providing the Judiciary with a small funding increase over the FY 2010 enacted level. This funding will allow the courts to maintain on-board staff but not add new staff to meet workload needs.

It is important to note that the Judiciary does not create its own work. Rather, our work is driven by factors beyond our control. The courts are recipients of criminal cases filed by the Department of Justice, civil cases filed by the government, businesses and individual citizens, and bankruptcy cases filed by businesses and individuals – all of which must be adjudicated. The Judiciary also has a significant law enforcement role performed very ably by its probation and pretrial services officers who supervise both convicted felons released from prison and criminal defendants awaiting trial. The Constitution requires legal representation for indigent criminal defendants, and our Defender Services program is the statutorily mandated mechanism for fulfilling the constitutional requirement.

It is imperative that the Judiciary have the resources needed to handle its workload and we ask the Subcommittee to again make the Judiciary a funding priority for FY 2012.

DIVERSITY AMONG LAW CLERKS

Q. As you know, in past hearings, we have discussed the lack of diversity among law clerks. I understand that the Federal Judiciary has instituted a new program to help address this issue. What can you tell us about this effort? Also, if you could provide for the record a diversity breakdown of law clerks by race and gender, for appellate and district judges for the last five years.

Response: No one in the Judiciary doubts the value of diversity among law clerks in federal trial and appellate courts, and yet our numbers suggest that there is room for improvement. The

Judiciary believes that financial considerations, such as student loans, may be a factor in some minority law school graduates not considering a federal clerkship because of the disparity in salaries between the courts and private law firms. Seeking to attract minority candidates and overcome the pay disparity issue, the Judiciary has taken a number of steps to diversify its workforce.

The Judicial Conference Committee on Judicial Resources Ad Hoc Subcommittee on Diversity was established in 2004 to examine diversity within the federal judicial workforce and to consider programs, policies, and training on fair employment practices that would benefit the Judiciary.

The Ad Hoc Subcommittee on Diversity has set forth the following goals to increase diversity in the Judiciary: identifying institutional barriers to workforce diversity; removing these barriers; establishing institutional modifications within the Judiciary that reflect diversity realities; and producing sustainable progress toward achieving workforce diversity.

Listed below are specific education and outreach initiatives being pursued:

- Initiated a joint pilot project with the Just the Beginning Foundation to share the FY 2011 judicial summer internship experience with minority, under-represented, and economically disadvantaged law students. The pilot received 331 applications from more than 40 law schools. The applicant pool was carefully screened, and 120 applicants were interviewed. Ultimately, the 31 judges participating in the pilot hired 37 students for internships which will begin in May 2011.

- Met with the Executive Directors of the Congressional Black Caucus, the Hispanic Caucus, and the Asian Pacific American Caucus on October 4, 2010, to discuss the Judiciary's minority recruitment and outreach efforts.

- Addressed the National Latino Law Student Association at a March 9, 2011, event with Congressman Charles Gonzalez (D-TX), Chair of the Congressional Hispanic Caucus.

- Attending a variety of job fairs and outreach events in an effort to reach a broad and diverse audience of law students and to highlight (1) the vast array of legal positions in the Judiciary, and (2) the Judiciary as a competitive employer.

- Working with minority law student organizations and bar associations to create and maintain minority pipelines for judicial law clerk positions.

- Contacting law school deans to discuss the benefits of clerking for a federal judge and requesting that the deans communicate the benefits with law students.

- Contacting hiring partners at the nation's top law firms requesting that they identify and encourage their minority "rising stars" to consider taking a short leave of absence to clerk for a federal judge.

Law Clerks by Gender:

- In the aggregate, in 2005, 59% of all law clerks were female and in 2009, 60% of all law clerks were female.
- Over that 2005-2009 time period, female law clerks for bankruptcy judges grew the most, from 65% to 72%.
- Female law clerks are the majority for all judge types except Appellate Judges, for which they were between 44% and 48% during the 2005-2009 time frame.
- A far greater percentage of the career law clerks are female than male across all judge types (currently 75%), although their percentage is lowest in the appellate law clerk category (currently 64%).
- District judge term law clerks have been close to a 51- 49 female-male split over the 2005-2009 time period.

Law Clerks by Ethnicity/Race:

Chambers Law Clerks (Appellate) by Ethnicity/Race: FYs 2005 – 2009

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.8%	3.1%	1.8%	8.0%	0.3%	0.0%
FY 2006	82.8%	3.2%	2.0%	6.7%	0.2%	0.0%
FY 2007	87.1%	3.5%	2.4%	6.7%	0.1%	0.2%
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%
FY 2009	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%

The Judiciary's law clerk demographics and the corresponding percentages are generated from fiscal years 2005 through 2009 as fiscal year 2010 is not available at the time of the hearing. Percentages for each fiscal year may not add to 100 percent as not all law clerks identify their ethnicity/race.

Chambers Law Clerks (District) by Ethnicity/Race: FYs 2005 – 2009

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.0%	4.5%	3.3%	5.8%	0.1%	0.2%
FY 2006	84.9%	4.1%	3.4%	6.0%	0.2%	0.1%
FY 2007	86.1%	3.9%	3.6%	5.9%	0.1%	0.2%
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%
FY 2009	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%

The Judiciary's law clerk demographics and the corresponding percentages are generated from fiscal years 2005 through 2009 as fiscal year 2010 was not available at the time of the hearing. Percentages for each fiscal year may not add to 100 percent as not all law clerks identify their ethnicity/race.

NEW COURTHOUSE AND CONSTRUCTION REPAIRS

Q. What is the impact of GSA's decision to include zero funding for new construction of courthouses?

Response: As Judge Gibbons noted at the hearing, the Judiciary is concerned that no funding was included in the FY 2012 President's Budget for new courthouse construction. This is the second year in a row that the Administration did not include funding for new courthouses. The FY 2012 budget request for GSA includes $840 million for Executive Branch new construction projects, but it does not include any funding for new courthouses. The absence of funding for any new courthouse construction in the President's Budget is problematic for the Judiciary, particularly if it translates into a lower allocation for the Subcommittee. A lower allocation means the Subcommittee will have greater difficulty funding new courthouse construction projects in FY 2012.

The Judiciary has taken strategic steps to improve its courthouse facilities planning with a focus on reducing costs. The Judiciary imposed a two-year moratorium from 2004 to 2006 on courthouse construction in order to identify options for cost reductions in the courthouse program. As part of this cost-containment effort, all proposed projects that had not yet received any congressional funding were subjected to further review under a newly adopted Asset Management Planning (AMP) process developed by the Judiciary. Projects on the current five-year plan are scored according to urgency of need, considering space, security, and operations deficiencies. The AMP process has resulted in only the highest priority projects going forward, and at a reduced cost.

The Judiciary's Five-Year Courthouse Project Plan for FYs 2012–2016 identifies funding needs for 15 courthouse projects, including five projects that require FY 2012 funding totaling $558 million to address the most pressing space requirements of the Judiciary: (1) Los Angeles, California, which remains the Judiciary's top space priority; (2) Mobile, Alabama; (3) Nashville, Tennessee, (4) Savannah, Georgia; and (5) San Jose, California. The lack of funding in the FY 2012 President's Budget is particularly frustrating given that the Judiciary has completely revised its space planning process in order to identify only the most urgent space needs and to lower space costs.

The impact of the Administration's decision not to include funding for new courthouses in the President's FY 2012 Budget is that, given the intense pressures on the federal budget, it will likely be difficult for the Subcommittee to provide funding for new courthouse construction in FY 2012. As a result, the significant operational deficiencies that exist at the five locations will likely go unaddressed. Lack of funding for new courthouse construction in FY 2012 will also create a backlog of unfunded projects that will end up costing the federal government more in the future as the cost of construction and building materials increases.

The Judiciary's Five-Year Courthouse Project Plan for FYs 2012-2016 is provided below:

Five-Year Courthouse Project Plan for FYs 2012 - FY 2016
As Approved by the Judicial Conference of the United States
September 14, 2010
(estimated dollars in millions)

FY 2012			Cost	Score	Estimated Net Annual Rent
1	Los Angeles, CA	Add'l. C	$142.0	85.0	$26.7
2	Mobile, AL*	Add'l. C	$140.3	59.8	$9.7
3	Nashville, TN	Add'l. S&D / C	$142.0	67.3	$6.4
4	Savannah, GA	Add'l. C	$95.5	61.3	$5.3
5	San Jose, CA	Add'l. S	$38.6	54.5	$14.6
			$558.4		**$62.7**

FY 2013			Cost	Score	Estimated Net Annual Rent
1	San Antonio, TX	Add'l. S&D / C	$112.0	61.3	$6.0
2	Charlotte, NC	C	$126.4	58.5	$4.9
3	Greenville, SC	C	$80.0	58.1	$4.4
4	Harrisburg, PA	C	$76.5	56.8	$3.2
5	San Jose, CA	D	$17.2	54.5	$14.6
			$412.1		**$33.1**

FY 2014			Cost	Score	Estimated Net Annual Rent
1	Norfolk, VA	C	$104.7	57.4	$6.1
2	Anniston, AL	Add'l. D / C	$41.0	57.1	$1.4
3	Toledo, OH	C	$109.3	54.4	$4.6
4	Greenbelt, MD	Add'l. C	$118.1	53.8	$7.9
			$373.1		**$20.0**

FY 2015			Cost	Score	Estimated Net Annual Rent
1	San Jose, CA	C	$223.9	54.5	$14.6
			$223.9		**$14.6**

FY 2016			Cost	Score	Estimated Net Annual Rent
1	Chattanooga, TN	S&D	$21.5	37.3	$6.8
2	Des Moines, IA	S&D	$30.0	35.3	$8.3
			$51.5		**$15.0**

S = Site; D = Design; C = Construction; Add'l. = Additional

All cost estimates subject to final verification with GSA.

* NOTE: Congress provided $50.0 out of $190.3 million needed for Mobile, AL in December 2009.

Q. Is it clear to you at all how GSA arrives at decisions about courthouse construction and repairs?

Response:

New Courthouse Construction. On an annual basis, the Judicial Conference approves a Five-Year Courthouse Project Plan, which is a prioritized list of the Judiciary's most urgent new courthouse construction needs. The Judiciary then provides this plan to GSA for its consideration as it prepares its annual budget request. We are not privy to internal discussions within GSA, or between GSA and OMB, that determine what new construction projects are ultimately included in the President's Budget. As discussed in the previous response, for the second straight year, no funding was included in the President's Budget for new courthouse construction although the FY 2012 budget request does include $840 million for Executive Branch new construction projects.

Repairs and Alterations. In contrast to new construction projects, GSA funding requests for repairs and alterations projects are based solely on GSA's determination that a project is necessary based on its assessment of a facility.

- FY 2011 Repairs and Alterations. GSA's FY 2011 budget request included two federal courthouse repairs and alterations projects (1) $28 million would provide the funding needed to reconfigure the Daniel Patrick Moynihan Federal Courthouse in Manhattan after the court of appeals and district court judges vacate the building to move back into the newly renovated Thurgood Marshall Courthouse, which is immediately adjacent to the Moynihan Courthouse, and (2) $22 million for the E. Barrett Prettyman Courthouse in Washington, DC for an upgrade to the mechanical systems in this facility. No space expansion (i.e., additional courtrooms) is involved in the renovation of the Prettyman Courthouse.

- The FY 2011 Department of Defense and Full-Year Continuing Appropriations Act provides $280 million to GSA for repairs and alterations but does not specify the projects to be funded. Instead, GSA is required to submit to the House and Senate Appropriations Committees a detailed project plan for the $280 million. The Judiciary is hopeful that the $28 million for the Moynihan Courthouse and the $22 million for the Prettyman Courthouse will be included in GSA's plan.

- FY 2012 Repairs and Alterations. There are no federal courthouse repairs and alterations projects included in the FY 2012 President's Budget. The $199 million requested in the FY 2010 President's Budget for repairs and alterations for the Prince J. Kalanianaole Federal Building and Courthouse in Honolulu, HI, is related to the federal building part of the complex, not the courthouse. This facility, which houses different federal tenants and has an attached courthouse, has been in need of renovation for many years. Funding for the repairs and alterations needed for the courthouse part of the building were provided in the American Recovery and Reinvestment Act of 2009 (Stimulus bill). That work is in process and expected to be completed in FY 2014.

THURSDAY, MAY 5, 2011.

DISTRICT OF COLUMBIA COURTS AND COURT SERVICES AND OFFENDER SUPERVISION AGENCY

WITNESSES

ERIC T. WASHINGTON, CHIEF JUDGE, DC COURT OF APPEALS, AND CHAIRMAN OF THE JOINT COMMITTEE ON JUDICIAL ADMINISTRATION

LEE F. SATTERFIELD, CHIEF JUDGE, DC SUPERIOR COURT

ADRIENNE R. POTEAT, ACTING DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Mr. DIAZ-BALART. Thank you very much for being here this morning. Today's hearing is on the D.C. Courts, and the Court Services and Offender Supervision Agency. Similar to how a state government funds state courts in the state court system, the National Capital Revitalization and Self-Government Improvement Act of 1997 made funding for these agencies the responsibility of the Federal Government. It is just interesting that the budgets for these agencies are not even considered by the Mayor or the D.C. City Council. They are proposed by the agencies and transmitted with the President's budget to us, so it is part of the Federal process. Three quarters of the funding provided in the District of Columbia section of the Financial Services Bill is for those courts and supervision activities.

The purpose of today's hearing is to learn more about your activities and your resource needs. So today I would like to welcome our witnesses, again, as I said before, it is a pleasure to have you here, Chief Judge Washington of the Court of Appeals, Chief Judge Satterfield of the Superior Court and Acting Director, Adrienne Poteat.

Thank you all very much for being here today. It is a privilege to have you here. Thank you for your testimony. Obviously, an independent judiciary that all the citizens can trust and respect is fundamental to our Nation, to our democracy, and to our rule of law. Each citizen has the right to a fair resolution of any legal dispute occurring within the borders of this, our Nation's Capital. The D.C. court system does an incredible job. You all are very busy. I understand that D.C. Superior Court has over 10,000 visitors a day. In addition, the Court Services and Offender Supervision Agency supervises just over 23,000 offenders and defendants. Still resources will be very limited, and you know that we, like everybody else, are in this struggle. Though resources are going to be very limited next year, we here in this committee will try to provide sufficient funding to complete what is obviously a very important mission, what you have to do day in and day out.

However, we will ask you to work hard to find efficiencies, to find savings within your budget. So while crime rates in the District are

on an overall decline, Washington, D.C. still has some safety challenges; it is still a relatively dangerous city, at least at certain times and in certain parts. So your agencies play such an important role in protecting the people who live, work, and visit our Nation's Capital.

We really appreciate your hard work and your dedication, and we look forward to your testimonies for the fiscal year 2012 budget request. I would like now to recognize the Ranking Member, someone who needs no introduction, my friend, Mr. Serrano.

Mr. SERRANO. Thank you so much, Mr. Chairman. This is my day with the Diaz-Balarts. I just finished doing an interview with your brother José with the Telemundo Network at 8:45. I took off my makeup because I told him I did not want to come to you with his makeup. But as we know, it is one show you will never be interviewed on.

Mr. DIAZ-BALART. I will never be interviewed on, unfortunately, that is right.

Mr. SERRANO. But he sends his hello. He will call you later. I would also like to welcome Chief Judge Washington, Chief Judge Satterfield, and Acting Director Poteat to our hearing today. We appreciate your service and look forward to hearing your testimony today about the needs and status of the D.C. Courts and of the Court Services and Offender Supervision Agency.

The District of Columbia is in a unique situation in our Nation with the functions of both a city and a state-like entity, and needs the support of the Federal Government as a rule. Our support of the D.C. court system is no exception. We expect a level of service and expertise equal to that of other jurisdictions in our Nation, and over the past years have provided funds consistent with that mission. This year's budget request includes slight increases in operations and services, and a larger increase in the capital account. I look forward to hearing more about the projects you have in mind for this funding. In a tight budget climate it is important that we are adequately able to weigh the needs of all the entities that fall under our jurisdiction and ensure that we are meeting pressing needs and getting value out of taxpayers' investments. Again, we welcome you to our hearing, and look forward to asking you questions about the Courts and Court Service and Offender Supervision activities, and I thank you, Mr. Chairman.

Mr. DIAZ-BALART. Thank you, Mr. Serrano. If I could ask of the witnesses today, if you would try to please keep your statements to five minutes if possible, that would leave us more time to converse, and talk, and ask questions. With that, it is a privilege to now recognize Chief Judge Washington for an opening statement. Thank you for being here, sir.

DC COURTS OPENING STATEMENTS

Judge WASHINGTON. Thank you very much, Congressman Diaz-Balart, Congressman Serrano, and the rest of the Subcommittee members who may hear this testimony. Thank you for this opportunity to discuss the fiscal year 2012 budget request of the District of Columbia Courts. My name is Eric T. Washington, and I am the Chair of the Joint Committee on Judicial Administration in the District of Columbia, the policy-making body for the District of Co-

lumbia Courts. I also serve, of course, as Chief Judge of the District of Columbia Court of Appeals.

With me this morning are Chief Judge Lee Satterfield of the Superior Court of the District of Columbia, and Ms. Anne Wicks, our Executive Director, along with other staff members from our court system.

Before I begin my substantive testimony here today, I would like to take just a brief moment on behalf of the District of Columbia Courts to express our concern for the people in Chairwoman Emerson's district who have been hurt by this week's flooding. Our hearts do go out to all of them and out to all the Americans who are recovering from the recent natural disasters that have wreaked havoc both in the South and in the middle parts of our country.

Congressman Diaz-Balart, Congressman Serrano, we live in a changing environment, facing new challenges to our Nation, our Nation's Capital, and our court system. Whatever challenges we face, the fair and effective administration of justice remains crucial to our way of life. In this time of economic adversity and heightened emphasis on cost effective government, the District of Columbia Courts are committed to responding to and meeting the changing needs of our citizenry. With careful stewardship of public resources, we work to fulfill our mission, which is to protect rights and liberties, uphold and interpret the law, and resolve disputes peacefully, fairly and efficiently, here in the Nation's Capital.

Focusing on issues in our strategic plan, the D.C. Courts strive to resolve cases fairly and timely, to broaden access to justice and service to the public, to build a strong judiciary and workforce, to improve court facilities and technology, to provide a safe and secure environment, and to build the public trust and confidence, Congressman, that you mentioned earlier.

We appreciate the support of Congress, which makes possible the achievement of these goals for our community. Congressman Diaz-Balart, we look forward to working with you, of course, Madam Chairwoman Emerson, and Congressman Serrano, along with the rest of the Subcommittee members on the highest priorities identified in our fiscal year 2012 budget request as described in my written testimony, which has been submitted and—which I ask be made part of the record of this hearing. Thank you. A critical focus of our 2012 budget centers on the protection of the public. To further the rehabilitation of girls in the juvenile probation system and build on recent initiatives serving this population, we have proposed funding for a community-based Drop-In Center to provide services tailored to meet the needs of female offenders. Since the District of Columbia does not have a secure detention facility for girls, the Courts' Drop-In Center will provide an option to protect public safety while keeping girls in the community under intensive supervision, where they can maintain contact and build better relationships with their families.

This alternative to detention provides a structured environment for girls after school and on Saturdays, in which tutoring, counseling, and recreational services will be available. The drop-in center model has proven to be successful in reducing school suspensions and re-arrests.

Also, to enhance the safety of domestic violence victims, additional court staff are needed to enter protection orders into the police database within 24 hours of the issuance of a protection order by the judge, so the police can enforce these orders during the very vulnerable periods of time right after a violent episode has occurred.

As part of the Courts' initiative to "Build a Great Place to Work," we are focused on enhancing employee engagement. Research has shown that a highly engaged workforce results in employees who are willing to put forth discretionary effort in the performance of their jobs. This enhances organizational performance and improves public service. To further our efforts in this area, funding is being sought to build our internal and external communications capacity and to foster the strategic transformation of our Human Resources Division to support this "Great Place to Work" initiative.

Resources for capital improvements—which Congressman Serrano referred to, do remain a critical priority for the Courts as we continue to implement the Courts' Facilities Master Plan for our five buildings that are located on our Judiciary Square campus. We do that in order to ensure that our infrastructure is sound and our security first rate for the 10,000 members of the public who visit our courthouse each day.

We believe the Courts' 2012 capital budget request addresses these responsibilities in a comprehensive and responsible manner, consistent with our Master Plan, which lays out space requirements and maintenance needs. Facing a significant space shortfall today, and not surprisingly, one that is expected to increase in the future, the Master Plan recognized the need to renovate the Historic Courthouse for use by my court, the Court of Appeals, but also calls for space to be provided through the construction of an addition to the Moultrie Courthouse and the renovation and reoccupation of a building we have affectionately known as Building C.

With support of the President and Congress over several years, the Courts have invested significant resources in improving our facilities to meet health and safety standards and to function with greater efficiency for the public. As I mentioned, the Historic Courthouse has been renovated and is now occupied by the Court of Appeals. Renovation of Building C is underway and is expected to be completed by year's end. However, much remains to be done. The Courts' fiscal year 2012 budget request seeks resources to expand the Moultrie Courthouse to meet health and safety building codes and to provide appropriate facilities for the public. The halls of justice in the District of Columbia must be well maintained, efficient, and adequately sized in order for us to achieve our goal of providing excellent service to those who live, work, and do business here in the Nation's Capital.

Funding for the Moultrie Courthouse, our largest building and home to the majority of our Superior Court trial operations, is the focus of most of the Courts' fiscal 2012 capital funding request. Funding is needed to continue the renovation of the interior of the Moultrie Courthouse and to reconfigure and backfill space that has become vacant in 2011, as a result of our ongoing efforts to consolidate all of our Family Court activities and related services in one area of the Moultrie Courthouse.

The creation of additional courtrooms is critical to our ability to timely and efficiently address the number of cases, which are overwhelming filed each year in our courts. The maintenance of the existing infrastructure, including upgrading mechanical systems and complying with fire code regulations, is necessary to ensure the safety of the building's occupants and to preserve the integrity of the Moultrie Courthouse, our main trial court facility. The Moultrie Courthouse addition, which is the final component of our Facilities Master Plan designed to address the Courts' pending and future space needs, will add 108,000 square feet of new and renovated space to our Moultrie Courthouse.

Congressman Diaz-Balart, Congressman Serrano, the District of Columbia Courts have long enjoyed a national reputation for excellence. We are proud of the Courts' record of administering justice in a fair, accessible, and cost-effective manner. And we are proud of our decade-long history of completing our capital projects on schedule and within budget. We appreciate the President's support for the Courts' funding needs in 2012 and the support we have received in the past from Congress.

We recognize the funding constraints facing our nation during these difficult times and have focused our budget request to meet only the Courts' highest priorities. Adequate funding for these priorities is critical to our success, not only next year but in future years. We look forward to working with you through this appropriations process and sincerely appreciate the opportunity to personally present to the Subcommittee our fiscal year 2012 budget request. Thank you very much.

[The prepared statement of Chief Judge Eric T. Washington follows:]

Statement of the
Joint Committee on Judicial Administration
In the District of Columbia
By Chief Judge Eric T. Washington

To the Subcommittee on Financial Services and General Government
Committee on Appropriations
U.S. House of Representatives
May 5, 2011

Congressman Diaz-Balart, Congressman Serrano, Subcommittee members, thank you for this opportunity to discuss the fiscal year 2012 budget request of the District of Columbia Courts. I am Eric T. Washington, and I am the Chair of the Joint Committee on Judicial Administration in the District of Columbia, the policy-making body for the District of Columbia Courts. I also serve as Chief Judge of the District of Columbia Court of Appeals.

As you may know, this jurisdiction has a two-tier court system comprised of the D.C. Court of Appeals, our court of last resort, and the Superior Court of the District of Columbia, a trial court of general jurisdiction. Administrative support functions for our Courts are provided by what is known as the Court System.

INTRODUCTION

We live in a changing environment, facing new challenges to our nation, our Nation's Capital, and our court system. Whatever challenges we face, the fair and effective administration of justice remains crucial to our way of life. The District of Columbia Courts are committed to responding to the changing needs of our society, and meeting these new challenges. We have been steadfast in our mission, which is to protect rights and liberties, uphold and interpret the law, and resolve disputes peacefully, fairly and efficiently in the Nation's Capital. Through our Strategic Plan, the D.C. Courts strive to resolve cases fairly and timely; broaden access to justice and service to the public; build a strong judiciary and workforce; improve court facilities and technology; provide a safe and secure environment; and build trust and confidence in our courts. We appreciate the support of Congress and the President, which makes possible the achievement of these goals for our community.

To support the achievement of our mission and goals in fiscal year 2012, the Courts request $347,962,000 for operations and capital improvements. Of this amount, $13,183,000 is requested for the Court of Appeals; $115,353,000 is requested for the Superior Court; $70,206,000 is requested for the Court System; and $149,220,000 is requested for capital improvements for courthouse facilities. In addition, the Courts request $55,000,000 for the Defender Services account.

The D.C. Courts are committed to fiscal prudence and sound financial management. The FY 2012 budget request represents an operating budget increase of $13.4 million (7%) and 29 full-time equivalent (FTE) positions over the FY 2011 enacted level. A capital budget increase of $91.6 million is requested to support critical space and security needs and to maintain the Courts' infrastructure of five buildings and 1.1 million gross square feet of space.

RECENT ACHIEVEMENTS

The Courts look forward to continued success in enhancing our services to the community, modernizing and securing our facilities, and measuring our performance to ensure accountability to the public we serve. We are proud of the Courts' recent achievements that include the following:

- completion in April 2009 of the restoration of the Historic Courthouse for the D.C. Court of Appeals, a building of importance both to the people of the District of Columbia, due to its historical and architectural significance, and to the Courts to meet critical space shortages in the trial court;

- development of a *Master Plan for Judiciary Square*, an urban design and renewal plan to revitalize this historic area of the District of Columbia that dates to the original L'Enfant Plan for the Nation's Capital, which was approved in August 2005 by the National Capital Planning Commission (NCPC);

- creation of self-help centers in collaboration with the D.C. Bar to assist unrepresented litigants in Family Court, Landlord Tenant and Small Claims courts, and Probate and Tax matters;

- adoption of our second five-year strategic plan, *Delivering Justice 2008-2012,* and development of a third five-year strategic plan to ensure that the Courts' goals, functions, and resources are strategically aligned for maximum efficiency and effectiveness;

- adoption of courtwide performance measures to monitor and assess case processing activities, court operations and performance in order to enhance public accountability;

- installation of a new case management systems in the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, thereby ensuring complete information on all persons and cases to enhance case processing and judicial decision-making;

- launch of the Building a Great Place to Work initiative, including 78% participation in the 2009 Human Capital Survey; based on the results of the survey, initiatives and teams were established in the areas of health and wellness, work/life balance, internal communications and performance management.

- improvement of the adult holding facilities and construction of new U.S. Marshals Service administrative space in the Moultrie Courthouse, with a comprehensive long-term plan for facilities upgrades to be completed in fiscal 2013 and construction of a new, separate Juvenile Holding facility, completed in May 2009, meeting current standards;

- establishment of the District of Columbia Access to Justice Commission, by the Court of Appeals, to enhance access to civil justice for all persons without regard to economic status;

- implementation of a comprehensive revision of Court of Appeals rules of practice to reduce expenses associated with record preparation, the first such revision since the mid-1980's;

- adoption of an appellate mediation program to assist parties in reaching satisfactory case outcomes more expeditiously, thereby saving the public and the Court of Appeals time and money;

- initiation of two programs by the Court of Appeals to enhance public access and trust and confidence in the judiciary: (1) the Court hears oral arguments at community law schools through the Education Outreach Initiative, and (2) the Court broadcasts oral arguments live over the Internet;

- operation of two community courts, the D.C. & Traffic Community Court and the East of the River Community Court, to enhance service to the community by addressing quality of life crimes through a blend of therapeutic and restorative justice (i.e., solve the underlying issue causing the criminal behavior and restore, or pay back, the community) and initiation of a Mental Health Court pilot program to address the special needs of defendants suffering from mental illnesses;

- implementation and expansion of e-filing from a handful of complex civil cases to nearly all civil actions, to government filings in juvenile matters, and to abuse and neglect cases, with development underway to expand to other case types;

- initiation of new juvenile probation programs by the Family Court Social Services Division to enhance public safety and rehabilitation of juveniles, including the Leaders of Today in Solidarity (LOTS) program to address the needs of female juveniles; the first Balanced and Restorative Justice Drop-In Centers in Southeast and Northeast D.C. to provide community-based juvenile probation supervision and services; and the restructuring of supervision for male juveniles to a seamless, one youth/family, one probation officer model;

- initiation of a Guardianship Assistance Program to improve services provided to incapacitated adults through a collaborative program in which master degree social

work students at local universities are appointed by the Court to visit adult wards under Court supervision and to report to Court on the services being provided to these wards and to work with the guardians appointed by the Court to address any unmet needs of the wards;

- implementation and updating of a 10-year *D.C. Courts Master Plan for Facilities (Facilities Master Plan),* resulting in comprehensive space renovation and facilities upgrades; renovated space for the Civil Division in the Moultrie Courthouse; new space for the Landlord Tenant and Small Claims courts and juvenile probation in Building B; renovated space in Building A for the Crime Victims Compensation Program and the Multi-Door and Probate Divisions; renovated space on the JM-level to consolidate Family Court Clerk's offices; and new space on the 6th floor of the Moultrie Courthouse that was formerly occupied by the D.C. Court of Appeals;

- continuation of sound fiscal management, including a transition to Federal financial statements and "unqualified" opinions on the Courts' annual independent financial audits conducted in accordance with OMB Circular No. A-133 for fiscal years 2000 through 2010;

- disposition of 1,881 cases in the Court of Appeals and 105,437 cases in the Superior Court (2010 statistics).

OPERATING BUDGET PRIORITIES

The highest priorities in the Courts' operating budget request include (1) $2,605,000 for programs to enhance public safety. To further the rehabilitation of juvenile girls on probation and build on recent initiatives serving this population, a dedicated space for a drop-in center is necessary to provide intensive services tailored to the needs of these girls. The District of Columbia does not have a facility to securely detain juvenile girls, so the Court's Drop-In Center will provide an option to protect public safety while keeping the girls in the community, where they can build better relationships with their families. To enhance the safety of domestic violence victims, three additional staff are needed to enter protection orders into the police database within 24 hours of issuance by a judge so that the police can enforce the orders during this very vulnerable period for victims. (2) The request includes $491,000 to enhance efforts underway to enhance employee engagement. A highly engaged workforce results in employees who are willing to put forth discretionary effort in the performance of their jobs, and enhanced organizational performance, leading to improved public service. To support the employee engagement effort, funding is needed for two human resources manager staff positions and a position focused on internal and external communications to address the findings of the 2009 Human Capital Survey findings in the areas of performance management, work/life balance and internal communications. Also, critical to employment engagement and the accomplishment of the Court's mission and goals is a strong judicial leadership team. Funding is requested to establish a judicial leadership development program for judges who serve in administrative positions. (3) To comply

with a new legal interpretation of the Civil Rights Act of 1964, which requires all institutions receiving federal funds to provide interpreters for all limited English proficient persons, regardless of their ability to pay, and to meet the increasing demand for foreign and sign language interpreters who ensure that litigants are able to understand and participate in court proceedings, the Courts require $500,000 to secure the services of additional interpreters. (4) As part of the Courts' continuing efforts to provide a safe and secure environment for the administration of justice, $493,000 is needed to provide the minimum baseline security improvements at court facilities, including a dedicated staff person for the access control system and additional security cameras, x-ray machines and security officer equipment. (5) To protect the mission critical software and databases from potentially devastating security threats, $137,000 is requested for an IT staff dedicated to this function. (6) To strengthen families and parent/child relationships in child support cases, $74,000 is requested for a staff person for the award-winning Fathering Court Program to assess the employment and treatment needs of fathers reentering the community following incarceration. (7) To support the enforcement of court orders by enhancing the collection of fines and fees, $192,000 is required for two additional staff.

CAPITAL BUDGET PRIORITY

As the Courts continue to implement the *Facilities Master Plan* for our five buildings and 1.1 million gross square feet of space, resources for capital improvements remain critical priorities. The FY 2012 capital budget reflects an increase of $91.6 million over the FY 2011 level. The Moultrie Courthouse, the Courts' largest building, is the focus of most of the Courts' capital projects. Funding is needed to continue the renovation and reorganization of the interior of the Moultrie Courthouse, and backfill the space to be vacated in 2011. The creation of additional courtrooms is critical to the provision of adequate facilities to conduct court proceedings. The maintenance of the existing infrastructure, including mechanical systems and structural repairs, is necessary to ensure the safety of the building occupants and preserve the integrity of the historic structures. The Moultrie Courthouse Addition, which is the final component of addressing the Court's space shortfall, will add 108,000 square feet of new and renovated space to the Moultrie Courthouse. The Courts have a decade long history of completing projects on time and within budget.

THE PRESIDENT'S RECOMMENDATION

I am very pleased that the President's Recommendation for FY 2012 supports our most important priority items: enhancing public safety through the establishment of a drop-in center for juvenile girls, staff to enhance the safety of domestic violence victims, and the implementation of much needed security improvements at court facilities. Also supported are the initiatives to improve employee engagement, enhance access to justice through the securing of additional foreign language and sign language interpreters, and protect mission critical information systems from security threats. The President's Recommendation also finances the continuation of much needed infrastructure work, the creation of new criminal and civil courtrooms, and the reconfiguration of the Moultrie

Courthouse level to optimize space usage. Continued implementation of the Facilities Master Plan process of renovating vacated offices and moving court operations into modern space is also supported. Partial funding is provided for the Moultrie Courthouse Addition—a key component of the plan for addressing the Court's space shortfall.

The Courts' budget request includes several initiatives needed to keep our capital projects on the schedule established by our *Facilities Master Plan* that are not supported this year in the President's Recommendation. For example, additional funding for the Moultrie Courthouse Addition and campus security, signage and lighting enhancements will need to be addressed in future years. As we have learned, any delay in construction projects significantly increases their cost.

D.C. COURTS INFRASTRUCTURE

The Courts' capital budget has been a primary focus of our budget request for several years. The District of Columbia Courts serve approximately 10,000 courthouse visitors each day, process more than 100,000 cases each year, and employ a staff of 1,200 who directly serve the public, process the cases, and provide administrative support. The District of Columbia Courts are among the busiest and most productive court systems in the United States.

The Courts' capital needs are significant because we are responsible for 1.1 million gross square feet of space in Judiciary Square and five buildings, including the Moultrie Courthouse, one of the busiest and most heavily visited public buildings in the District of Columbia. The ages of the Courts' buildings ranges from 30 years to 200 years. Our funding requirements include projects critical to maintaining, preserving, and building safe and functional courthouse facilities essential to meeting the heavy demands of the administration of justice in our Nation's Capital. To effectively meet these demands, the Courts' facilities must be both functional and emblematic of their public significance and character.

Facilities that provide adequate and efficiently designed space are essential to enhance the administration of justice, simplify public interaction with courts, and improve access to justice for all. In contrast, facilities with inadequate space for employees to perform their work, with evidence of long-deferred maintenance and repair, and with inefficient layouts can detract from the public perception of the dignity and importance of a court and impair its ability to function in the community. This negative perception impacts public trust and confidence in courts, a nationally recognized critical requirement for the effective administration of justice.

With the support of the President and Congress over several years, the Courts have invested significant resources in improving our facilities both for the public engaged in court matters and for the local community. However, more work remains to be done. The Courts' FY 2012 budget request seeks resources to meet health and safety building codes and to provide secure and appropriate facilities for the public. The halls of justice

in the District of Columbia must be well maintained, efficient, and adequately sized to inspire the confidence of the members of the public who enter our buildings.

The Courts' facilities plans will also enhance the efficient administration of justice and improve public access to justice in this jurisdiction by co-locating related functions. The restoration of the Historic Courthouse for the Court of Appeals, for example, provided the public with a single location for services that were formerly found on different floors and in different buildings from most Court of Appeals offices. Offices related to the Family Court, such as juvenile probation, are being consolidated in the Moultrie Courthouse, which will be made possible only as we renovate space and add an addition to the courthouse. Upon the completion of the addition, all court support divisions will return from leased space to newly renovated space, resulting in long-term cost savings. More efficient location of these offices will not only facilitate public access to the Courts, but will also enhance the efficiency of operations.

Facilities in the Courts' Strategic Plan

The capital projects included in this request are an integral part of the Courts' Strategic Plan, entitled *Delivering Justice,* which covers the period from 2008-2012. The Strategic Plan articulates the mission, vision, and values of the Courts in light of current initiatives, recent trends, and future challenges. It addresses issues such as fair and timely case resolution, the increasing presence of litigants without legal representation, increasing cultural diversity, economic disparity, complex social problems of court-involved individuals, rapidly evolving technology, enhanced public accountability, competition for skilled personnel, and increased security risks.

"A Sound Infrastructure" is the Plan's Strategic Issue 4. The Strategic Plan states—

> Court facilities must support efficient operations and command respect for the independence and importance of the judicial branch in preserving a stable community. Modern technology must be employed to achieve administrative efficiencies and enhance the public's access to court information and services.

Historic Judiciary Square

The D.C. Courts are primarily located in Judiciary Square, with some satellite offices and field units in other locations. The historical and architectural significance of Judiciary Square lend dignity to the important business conducted by the Courts and, at the same time, complicate efforts to upgrade or alter the structures within the square. Great care has been exercised in the restoration of the Historic Courthouse, the centerpiece of the square, to preserve the character not only of the building, but also of Judiciary Square. As one of the original and remaining historic green spaces identified in

Pierre L'Enfant's plan for the capital of a new nation, Judiciary Square is of keen interest to the Nation's Capital.

Buildings A, B, and C, dating from the 1930's, are situated symmetrically along the view corridor comprised of the National Building Museum, the Old Courthouse, and John Marshall Park and form part of the historic, formal composition of Judiciary Square. The Moultrie Courthouse, although not historic, is also located along the view corridor and reinforces the symmetry of Judiciary Square through its similar form and material to the municipal building located across the John Marshall Plaza.

Judiciary Square Master Plan

The National Capital Planning Commission (NCPC) required that the D.C. Courts develop a *Judiciary Square Master Plan* – essentially an urban design plan – before any construction by the Courts and others could be commenced in the area. The D.C. Courts worked with all stakeholders on the Plan, including the United States Court of Appeals for the Armed Forces, the National Law Enforcement Officers Memorial Fund (Memorial Fund), the Newseum, and the Metropolitan Police Department. The *Judiciary Square Master Plan* was approved in August 2005.

The *Judiciary Square Master Plan* resolves important technical issues related to access, service, circulation, and security within a rapidly changing and publicly oriented area of the District, while re-establishing the importance of this historic setting in the "City of Washington." It provides a comprehensive framework for capital construction for all local entities, and it lays the groundwork for the regulatory approval process with the National Capital Planning Commission, the U.S. Commission of Fine Arts, the District of Columbia Office of Historic Preservation, the District of Columbia Office of Planning, and the District of Columbia Department of Transportation, among others. The *Judiciary Square Master Plan* will ensure the preservation of one of the last green spaces in the District of Columbia awaiting revitalization, incorporating areas where the public can gather and relax, and creating a campus-like environment where citizens can feel safe and secure.

Master Plan for D.C. Courts Facilities

The Courts worked with the General Services Administration (GSA) on a number of capital projects since fiscal year 1999, when the Courts assumed capital project responsibility from the District's Department of Public Works. In 1999, GSA produced a study for the renovation of the Historic Courthouse to house the D.C. Court of Appeals. In 2001, GSA prepared Building Evaluation Reports that assessed the condition of the D.C. Courts' facilities. These projects culminated in the development of the first *Master Plan for D.C. Courts Facilities*, which delineates the Courts' space requirements and provides a blueprint for optimal space utilization, both in the near and long term. An update of the Facilities Master Plan was completed in May 2009. This update reviewed the recommendations of the 2002 Master Plan while taking into account the significant

facility improvements completed by the D.C. Courts as well as operational changes that have taken place since 2002. The *District of Columbia Courts Master Plan for Facilities May 2009 (Facilities Master Plan)*, incorporates significant research, analysis, and planning by experts in architecture, urban design and planning. The Master Plan addresses the Courts' space needs through 2018. The Plan identified a space shortfall for the Courts of 87,575 square feet of space projected in the next decade and provided recommendations for meeting this shortfall.

The experts proposed to meet the Courts' space needs through the three mechanisms identified in the original 2002 Facilities Master Plan, already in progress: (1) renovation of the Historic Courthouse for the District of Columbia Court of Appeals, to free critically needed space in the Moultrie Courthouse for trial court operations (completed in 2009); (2) construction of an addition to the Moultrie Courthouse, to include a separately accessible Family Court facility; and (3) the reoccupation and renovation of Building C (construction commenced on schedule in 2010). In addition, the Plan determined that all court facilities must be modernized and upgraded to meet health and safety standards and to function with greater efficiency.

Overview of the D.C. Courts' Facilities

The Courts currently maintain five buildings in Judiciary Square: the Historic Courthouse at 430 E Street, the Moultrie Courthouse at 500 Indiana Avenue, N.W., and Buildings A and B, which are located between 4th and 5th Streets and E and F Streets, N.W. In addition, Building C was returned to the Courts' inventory from the District and is currently under renovation.

Historic Courthouse

The Historic Courthouse, built from 1821 to 1881, is one of the oldest public buildings in the District of Columbia. Inside the Historic Courthouse, Daniel Webster and Francis Scott Key practiced law and John Surratt was tried for his part in the assassination of President Abraham Lincoln. The architectural and historical significance of the Historic Courthouse led to its listing on the National Register of Historic Places and its designation as an official project of Save America's Treasures.

The restoration of the Historic Courthouse for use by the District of Columbia Court of Appeals, pivotal to meeting the growing space needs of the court system, was completed April 15, 2009, thanks to the support of the President and Congress. Investment in this restoration not only has improved efficiencies by co-locating the offices that support the Court of Appeals, but also provided 37,000 square feet of space for renovation and reorganization in the Moultrie Courthouse for the Superior Court. The restoration of the Historic Courthouse for use as a functioning court building has also preserved an historic treasure of our nation and imparted new life to one of the most significant historic buildings and precincts in Washington, D.C. It not only meets the needs of the Court but benefits the community through an approach that strengthens a

public institution, restores a historic landmark, and stimulates neighborhood economic activity.

Moultrie Courthouse

The Moultrie Courthouse is uniquely designed to meet the needs of a busy trial court. It has three separate and secure circulation systems – for judges, the public, and the large number of prisoners brought to the courthouse each day. Built in 1978 for 44 trial judges, today it is strained beyond capacity to accommodate 62 trial judges and 25 magistrate judges, as well as senior judges and more than 1,000 support staff members. Currently, the Moultrie Courthouse provides space for most Superior Court, and Family Court operations and clerk's offices. Essential criminal justice and social service agencies also occupy office space in the Moultrie Courthouse. The Courts have clearly outgrown the space available in the Moultrie Courthouse. The space is inadequate for this high volume court system to serve the public in a safe, appropriately dignified, and well maintained setting.

Buildings A, B, and C

Buildings A and B, dating from the 1930's, have been renovated and modernized for court operations and currently house the Probate Division, Landlord and Tenant, Small Claims, and Probate Courts , Multi-Door Dispute Resolution Division and some Social Services functions. The Building C restoration project is fully funded. Design for the restoration of Building C for the D.C. Courts' Information Technology Division and Multi-Door Dispute Resolution Division is complete and construction is in progress. The restoration will provide modern office space and bring the building into compliance with all current building, mechanical, electrical, fire, life safety, health, and accessibility codes. This project involves restoration of 27,300 s.f. and the Courts are seeking a Leadership in Energy and Environmental Design (LEED) "Gold" certification for this building.

COMPLETE BUDGET REQUEST SUMMARY

To build on past accomplishments and to enhance service to the public in the District of Columbia, the Courts require additional resources in FY 2012 as outlined below. Without targeted investments in critical areas, the quality of justice in the Nation's Capital will be compromised.

FY 2012 Operating Budget: Summary by Strategic Goal

Listed below are the Courts' requested additional operating budget resources to ensure that we perform our mission with quality, professionalism, efficiency, and fiscal integrity:

Strategic Issue 1: Fair and timely case resolution--$1,237,000 and 6 FTEs

The FY 2012 request includes $1,237,000 and 6 FTEs to ensure fair and timely case resolution, including $595,000 to provide special advocates (CASAs) for abused and neglected children; $173,000 and 3 FTEs to keep pace with higher domestic violence caseloads; $161,000 and 1 FTE to provide additional leadership to and management of alternative dispute resolution programs; $161,000 and 1 FTE to increase the capacity of the General Counsel's office to conduct legal analyses and provide accurate and timely information to judges and court staff; $103,000 to update reference materials in judges' chambers and $44,000 and 1 FTE to ensure the timely processing of court mail.

Strategic Issue 2: Access to Justice--$500,000

The FY 2012 request includes $500,000 to enhance access to justice by meeting increased demand for foreign language and sign language interpreters who permit the public to participate fully in court proceedings.

Strategic Issue 3: Strong Judiciary and Workforce--$808,000 and 7 FTEs

The FY 2012 request includes $808,000 and 7 FTEs to address the Courts' strategic issue of fostering a strong judiciary and workforce, including $528,000 and 4 FTEs to foster the strategic transformation of the Human Resources by, among other things, developing a courtwide human resources plan, engaging in succession planning, increasing automation for customer service, and providing increased support to court management; $100,000 for leadership training for Superior Court judicial officers; $81,000 for 1 FTE to enhance the professional development and continuing education of court personnel; and $99,000 and 2 FTEs to coordinate the ordering and distribution of supplies.

Strategic Issue 4: Sound Infrastructure--$570,000 and 7 FTEs

The FY 2012 request includes $570,000 and 7 FTEs to address the Courts' strategic issue of maintaining a sound infrastructure, including $270,000 for 4 FTEs to provide increased facility engineering support for the Court facilities, which includes five buildings in Judiciary Square in 2012 (Moultrie Courthouse, Historic Courthouse, Buildings A, B, and C) as well as leased space at Gallery Place and probation field units in each quadrant in the city; $163,000 for 2 FTES to address the audiovisual and courtroom technology service requests; and $137,000 for 1 FTE to enhance the security of court information. In addition, as discussed below, the capital budget request includes resources to enhance the Courts' infrastructure.

Strategic Issue 5: Security and Disaster Preparedness--$1,160,000 and 2 FTEs

The FY 2012 request includes $1,160,000 and 2 FTEs to address the Courts' strategic issue of security and disaster preparedness including $1,110,000 and 2 FTEs to address needs identified by security assessments, including additional security cameras, a back-up

to the electronic access control system, and dedicated staff to strengthen security operations management and $50,000 to enhance security by providing uniforms to facilitate identification and visibility of support staff. In addition, as discussed below, the capital budget request includes resources to enhance the physical security of the court campus.

Strategic Issue 6: Public Trust and Confidence--$3,214,000 and 7 FTEs

The FY 2012 request includes $3,214,000 and 7 FTEs to address the Courts' strategic issue of engendering public trust and confidence, including $2,522,000 to enhance public safety and reduce recidivism among juvenile girls under court supervision by creating a drop-in center for supervision and services; $384,000 and 4 FTEs to support the enforcement of court orders by enhancing the collection of fines and fees; $234,000 to enhance external and internal communications, thereby improving community outreach, local government relationships, and employee satisfaction and productivity; and $74,000 and 1 FTE to strengthen families and parent/child relationships in child support cases.

Built-In Increases--$5,736,000

To maintain the current level of service, the FY 2012 request also includes $2,100,000 for non-pay inflationary cost increases and $3,636,000 for within-grade increases. A cost of living adjustment is not included.

Capital Budget Request: Infrastructure Investments

To support the Courts' Strategic Issue 4: A Sound Infrastructure as well as Strategic Issue 5: Security and Disaster Preparedness by ensuring the health and safety of those conducting business in our buildings, maintaining and improving the condition of court facilities, and addressing the space needs of court operations, the FY 2012 capital request totals $149,220,000. This request focuses on the Moultrie Courthouse, safety and security, and building maintenance.

Moultrie Courthouse. A significant portion of the FY 2012 capital budget request, $60.50 million, is for the Moultrie Courthouse Addition (C Street Expansion). This addition will add 108,000 s.f. of new and renovated space to the Moultrie Courthouse and expand the building along the south façade at C Street. The full funding request for this project is distributed over three fiscal years.

The capital budget request includes $21.01 million to continue the renovation and reorganization of the interior of the Moultrie Courthouse, which allows the Courts to move operations and functions within the courthouse in order to consolidate the Family Court in contiguous space on the John Marshall level.

The request also includes $18.13 million for the Courtrooms and Chambers project to renovate two large courtrooms and create one new criminal-capable courtroom and two

new civil courtrooms as well as renovating eight associate judges' and senior judges' chambers as they become available.

Security. The Courts, like many public institutions, face security threats to daily operations and individual judges. In addition, the Courts face unique security risks due to the presence of hundreds of prisoners in the Moultrie Courthouse each day. The Courts' request includes $20.22 million to improve physical safety through perimeter security enhancements and lighting/signage upgrades.

Infrastructure Maintenance. The capital budget also includes a request for $25.75 million to maintain and upgrade the Courts' facilities. Mechanical systems and structural repairs are necessary in order to ensure the safety of building occupants and to preserve the integrity of these historic structures. Continuing work on a 2006 study that found the electrical system in the Moultrie Courthouse to pose a danger to workers, the Courts request $5.15 million for the HVAC, Electrical, and Plumbing Upgrades project. To renovate restrooms heavily used by the public and court staff, $1.03 million is requested. The $1.29 million requested for Fire and Security will finance a sprinkler system for the Moultrie Courthouse, as recommended by GSA and U.S. Marshals Service studies. In addition, $13.78 million is requested for General Repair Projects, for, among other things, ADA accessibility, safety repairs, Moultrie Courthouse roof replacement, and continued replacement of doors and windows and continued cleaning of the exterior of the Courts' buildings. Finally, $4.5 million is requested for technology infrastructure enhancements.

Additional Master Plan Activities. The Capital Budget also includes $1.7 million to begin returning support divisions from leased space to newly-vacated space in Judiciary Square.

Defender Services Budget Request

To support the Courts' Strategic Issue 2: Access to Justice, the Defender Services request totals $55,000,000. In recent years, the Courts have devoted particular attention to improving the financial management and reforming the administration of the Defender Services programs. For example, the Courts have significantly revised the Criminal Justice Act (CJA) Plan for representation of indigent defendants to ensure that expenses are reasonable and the program is properly managed, and developed CJA attorney panels to ensure that highly qualified attorneys represent indigent defendants. In addition, the Courts have developed a new Counsel for Child Abuse and Neglect (CCAN) Plan for Family Court cases, adopting attorney practice standards and requiring attorney training and screening to ensure that well-qualified attorneys are appointed in these cases, and contracting for Guardian *ad litem* (GAL) services to enhance representation of abused and neglected children. The Guardianship Program for incapacitated adults has also been revised, imposing a training requirement on attorneys participating in the program.

Most recently, to strengthen financial management of the Defender Services accounts, the Courts have engaged an independent accounting firm to undertake a study

(1) analyzing and quantifying the liability associated with appointed counsel who have received vouchers but have not submitted them for payment, (2) developing a methodology to recognize obligations, and (3) projecting future resource requirements. The Courts seek to improve the alignment of our financial statements, which under generally accepted accounting principles recognize this liability, with our financial system, which records these obligations upon payment. The Defender Services account has maintained 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 for payment.

The study's recommendations are compelling: (1) obligation of new vouchers upon issuance instead of upon submission for payment and (2) obligation of existing vouchers that have been issued but not yet submitted for payment. The Courts began to implement these recommendations in FY 2010, converting the liability reflected in the existing vouchers to obligations in the financial system (using the carryover balance in the Defender Services account) and recording obligations at the time new vouchers are issued.

CONCLUSION

Congressman Diaz-Balart, Congressman Serrano, Subcommittee members, the District of Columbia Courts have long enjoyed a national reputation for excellence. We are proud of the Courts' record of administering justice in a fair, accessible, and cost-efficient manner. Adequate funding for the Courts' FY 2012 priorities is critical to our success, not only in the next year but also as we implement plans to continue to provide high quality service to the community in the future. We appreciate the President's support for the Courts' funding needs in 2012 and the support we have received in the past from the Congress. We look forward to working with you throughout the appropriations process, and we thank you for this opportunity to discuss the FY 2012 budget request of the District of Columbia Courts.

THE HONORABLE ERIC T. WASHINGTON
CHIEF JUDGE
DISTRICT OF COLUMBIA COURT OF APPEALS

The District of Columbia Judicial Nominations Commission designated the Honorable Eric T. Washington to serve a four-year term as Chief Judge of the District of Columbia Court of Appeals beginning on August 6, 2005. He was reappointed for a second four year term August 2009.

Chief Judge Eric T. Washington was sworn in as an Associate Judge of the District of Columbia Court of Appeals on July 1, 1999. Since his appointment, he has heard and decided hundreds of appeals from the Superior Court and District of Columbia Administrative agencies. He previously served as co-chair of the Strategic Planning Leadership Council for the District of Columbia Courts, and as a member of the Standing Committee on Fairness and Access to the Courts.

Chief Judge Washington is a 1976 graduate of Tufts University. He received his law degree from the Columbia University School of Law in 1979. He was admitted to the State Bar of Texas in 1979 and the District of Columbia Bar in 1985. He is also admitted to practice in the United States Supreme Court, the United States District Court for the District of Columbia, the United States Court of Appeals for the D.C. Circuit, the Fifth Circuit and the Eleventh Circuit.

In 1979, Chief Judge Washington began his legal career as an associate attorney with the law firm of Fulbright & Jaworski in Houston, Texas. He was engaged in a general labor and employment practice which included handling unfair labor practice cases before the National Labor Relations Board and fair employment cases before the Equal Employment Opportunity Commission as well as various state and federal courts.

In 1983, Chief Judge Washington relocated to Washington, D.C. to serve as Legislative Director and Counsel to U.S. Congressman Michael A. Andrews of Texas. He subsequently rejoined Fulbright & Jaworski in Washington, D.C., where he resumed a general administrative litigation practice. From 1987 through 1989, Judge Washington served first as Special Counsel to the Corporation Counsel (now called the Office of the Attorney General for the District of Columbia) and later as Principal Deputy Corporation Counsel for the District of Columbia, where he was responsible, along with the Corporation Counsel, for providing all legal services to the Government of the District of Columbia.

From January 1990 to May 1995, Chief Judge Washington was a partner in the law firm of Hogan & Hartson where his practice included a broad range of administrative law and civil litigation matters. Judge Washington left Hogan & Hartson in 1995 when he was appointed to the Superior Court of the District of Columbia as an Associate Judge. During his tenure on the Superior Court, Judge Washington presided over more than one hundred criminal trials as well as cases in both the Drug Court and the Court's Domestic Violence Unit. In addition, Judge Washington handled tax and probate matters on

certification from other judges and was responsible for more than one hundred cases involving children who were victims of abuse and neglect.

Chief Judge Washington has been active in many professional, civic and charitable organizations. He currently serves as President-Elect of the Conference of Chief Justices and Chair-Elect of the Board of Directors of the National Center for State Courts. He has served on several committees of the District of Columbia Bar, including the Criminal Justice Act/Counsel for Child Abuse and Neglect Committee, the Standing Committee on the Federal Judiciary, the Bar's Nominating Committee, and the Steering Committee for the D.C. Affairs Sections of the Bar. He also served as one of the first members of the D.C. Access to Justice Commission. Judge Washington presently serves on the Board of Directors for the Boys and Girls Clubs Foundation. He formerly served on the Board of Directors for the Einstein Institute for Science, Health and the Courts and currently serves on the Board of Directors of ASTAR, the Advanced Science and Technology Adjudication Resource Project.

Mr. DIAZ-BALART. Thank you very much, Chief Judge Washington, for your statement. I would now recognize Chief Judge Satterfield and ask if you have any statements that you would like to present to the Committee.

Judge SATTERFIELD. I am going to be brief, because I join in Chief Judge Washington's statements. I am here to answer any questions you may have regarding Superior Court operations, and I want to thank you for having us.

[The biography of Chief Justice Satterfield follows:]

THE HONORABLE LEE F. SATTERFIELD
CHIEF JUDGE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

In November 1992, President George Bush appointed Judge Satterfield to the Superior Court of the District of Columbia. He was sworn-in as Chief Judge on September 24, 2008.

Judge Satterfield was born in the District of Columbia. He graduated from St. John's College High School in 1976 and from the University of Maryland in 1980 with a Bachelor of Arts in Economics. He received his Juris Doctor from the George Washington University National Law Center in 1983. After law school, Judge Satterfield worked as a judicial law clerk to the Honorable Paul R. Webber, III, who was an Associate Judge of the Superior Court of the District of Columbia. In 1984, he was appointed an Assistant United States Attorney for the District of Columbia. In that position, he served in the appellate, grand jury, misdemeanor and felony sections of the United States Attorney's Office. At the time he left the United States Attorney's Office, he was prosecuting homicide and sex offense cases.

In September 1988, Judge Satterfield joined the law firm of Sachs, Greenebaum and Tayler. While in private practice, he handled both civil and criminal matters in Superior Court and in the federal courts of Virginia, Maryland and Alabama. In 1991, he left private practice and returned to the United States Department of Justice as a trial attorney in the Organized Crime and Racketeering Section. In that section, he prosecuted organized crime and labor racketeering crimes in the federal courts of the District of Columbia, Pennsylvania, and Illinois.

After he was appointed to the bench in 1992, Judge Satterfield served in the Criminal, Civil and Family Divisions, and the Domestic Violence Unit. In 1994, while serving in the Criminal Division, Judge Satterfield was one of the Court's first Drug Court judges. Between January 1998 and December 1999, Judge Satterfield served as Presiding Judge of the Domestic Violence Unit. The Domestic Violence Unit was established in 1996 and handles criminal, intrafamily and domestic relations cases involving domestic violence. During this time, Judge Satterfield served as a member of a National Advisory Committee on Domestic Violence, which developed model guidelines for the creation and operation of domestic violence courts.

In October 2001, Judge Satterfield was designated Presiding Judge of the Court's Family Division. After the enactment of the District of Columbia Family Court Act in January 2002, Judge Satterfield was designated Presiding Judge of the Family Court, a position he held until December 2005. In this capacity, Judge Satterfield handled the administrative functions of the Family Court, which included chairing the Family Court Management and Oversight Committee, the Family Court Implementation Committee, and the Family Court Advisory Rules Committee. Judge Satterfield served on several mayoral committees addressing issues related to mental health, child welfare, and juvenile justice. He served as Vice Chairperson of the District of Columbia Juvenile Justice Reform Task

Force and as Co-Chair of the Juvenile Detention Alternative Initiative Committee and the Citywide Truancy Task Force, which launched a Middle School Truancy Court Diversion Program in a District of Columbia Public School in the fall of 2005.

Judge Satterfield is a member of the Joint Committee on Judicial Administration, which is the policy-making body of the D.C. Courts. He was a member of the Superior Court's Strategic Planning Leadership Council, the Superior Court Rules Committee, the Judicial Education Committee, and the Committee on the Selection and Tenure of Magistrate Judges.

Judge Satterfield was a member of the Board of Trustees of the National Council of Juvenile and Family Court Judges. He is currently on the Board of Trustees of the National Conference of Metropolitan Courts and the Board of Directors of the Advanced Science & Technology Adjudication Resource Center. He is also a member of the National Judicial Institute on Domestic Violence's Steering Committee and serves on the faculty of the NJIDV, which conducts educational programs for judges on domestic violence matters.

Since 1991, Judge Satterfield has been an adjunct professor at the Catholic University Columbus School of Law where he taught Criminal Trial Practice and Advanced Criminal Procedure. He was a professorial lecturer in the L.L.M. litigation program at the George Washington University National Law Center for four years.

Mr. DIAZ-BALART. Thank you, sir. Thank you very much. Now I recognize Director Poteat from the CSOSA, which is the Court Services and Offender Supervision Agency. Director, thank you for being here.

Ms. POTEAT. Thank you. Good morning, Deputy Chairman Diaz-Balart, Ranking Member Serrano, and Members of the Subcommittee. I am pleased to appear before you today to present the fiscal year 2012 budget request for the Court Services and Offender Supervision Agency (PSA), which includes the Pretrial Supervision Agency of the District of Columbia. CSOSA received certification as an independent executive agency on August 4, 2000.

With implementation of the Revitalization Act and the creation of CSOSA, the Federal government took on a unique, frontline role in public safety in the District of Columbia. CSOSA's community supervision program supervises sentenced adult offenders, released to the District of Columbia, by the Federal Bureau of Prisons and adult probationers sentenced by the Court. PSA supervises pretrial defendants in the U.S. District Court for the District of Columbia and the Superior Court.CSOSA'S fiscal year 2012 budget request of $216.8 million is comprised of a $156.1 million request for the community supervision program (CSP) and $60.7 million for pretrial. It equals an increase of $4.4 million, or 2.1 percent, over the fiscal year 2010 enacted budget. The $4.4 million fiscal year 2012 increase consists of $1.1 million in program changes and $3.4 million in inflationary adjustments necessary to continue current program service levels.

As of September 30, CSP supervised a total of 16,166 offenders, including 9,866 probationers and 6,300 supervised releasees and parolees. The demographics of our population suggest many challenges; 70 percent have a history of substance abuse; 32 percent of our employable offenders employed; 37 percent have less than a high school diploma or GED. And eight percent have unstable housing, most living in shelters.

Since its inception, CSOSA has accomplished its mission through the use of four operational strategies, effective offender risk and needs assessment, close supervision, treatment and support service, and partnerships. Our Auto Screener risk and needs assessment tool quantifies the offenders' criminal and substance abuse history, mental health, community and social support attitude and motivation and other factors that are predictive of future criminal activity. It also identifies the offenders' behavioral health needs.

Our close supervision strategies include direct supervision of most offenders in field units located in the District of Columbia, in the neighborhoods where these offenders reside. This enables our offices to have an active community presence, collaborate with our neighborhood police officers, and foster effective partnerships with faith institutions, local social services providers, and employers.

CSOSA provides a range of treatment and support services to offenders based on needs assessment and drug testing results. These include contract substance abuse and sex offender treatment, transitional housing, education and employment-related services. In September, 2009, we partnered with the D.C. Department of Corrections, the U.S. Parole Commission, and the Bureau of Prisons to implement the Secure Residential Program pilot to provide an al-

ternative placement for parolees and offenders on supervised release who face revocation. We are currently implementing several program initiatives, all accomplished through reallocation of existing resources. First, we have expanded our women's program to address the increasing rate of women offenders with co-occurring substance abuse and mental health issues. We recently converted one 15-bed unit of Re-entry and Sanctions Center (RSC) to serve female offenders and designated three supervision teams to supervise women only. We have also implemented kiosk-based reporting for our lowest risk offenders. They now report once a month to a kiosk to update their housing, employment, and collateral contacts and receive instructions for drug testing, instead of reporting in-person to a supervision officer.

CSP currently supervises approximately 807 defenders under the age of 21, in which of 50 of them are jointly supervised by the D.C. Department of Youth Rehabilitation Services. We are working with the D.C. Superior Court Pretrial Services, the D.C. Department of Youth Rehabilitation Services, and D.C. Court Social Services to improve the management of these cases.

I will now turn to the fiscal year 2012 Pretrial Services Agency Budget Request of $60.7 million, which includes $1 million to relocate PSA's drug testing lab. PSA conducts a risk assessment at intake for each defendant and recommends to judicial officers the least-restrictive conditions necessary to promote future court appearance and minimize the defendant's potential risk to the community. They also partner with MPD to identify misdemeanor arrestees who can be released safely from the police station pending initial court appearance.

As of September 30, 2010, PSA supervised 6,850 defendants. In fiscal year 2010, they prepared over 16,000 pretrial services reports and conducted over 12,000 citation release investigations. They also completed over 3,000 criminal history reports for consideration of release in D.C. Code and drunk driving cases.

In fiscal year 2010 they performed over 300 mental health assessments and placed over 1,600 defendants in a specialized supervision unit. They also expanded support of the D.C. Superior Court Mental Health Diversion Court to encompass felonies as well as misdemeanors. PSA's Forensic Toxicology Drug Testing Lab processes urine specimens for CSOSA and Pretrial. Fiscal year 2010, the lab conducted almost 3.5 million drug tests on over a half a million urine samples collected from both defendants and offenders, as well as juveniles and adults whose matters are handled in the D.C. Family Court.

We continue to make great strides in providing comprehensive supervision services for offenders and defendants in the D.C. Washington community. That concludes my testimony. I will be pleased to answer any questions you may have.

[The CSOSA testimony follows:]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

FY 2012 BUDGET REQUEST

SUBMITTED TO THE

US HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL SERVICES
AND GENERAL GOVERNMENT

May 5, 2011

Good morning Deputy Chairman Diaz-Balart , Ranking Member Serrano and members of the Subcommittee:

I am pleased to appear before you today to present the FY 2012 budget request for the Court Services and Offender Supervision Agency (CSOSA), which includes the Pretrial Services Agency for the District of Columbia (PSA). CSOSA is a relatively young organization. We were established by the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act) and received certification as an independent Executive Branch Agency on August 4, 2000.

In 1997, the District of Columbia relied on a community supervision system that was over-burdened and under-resourced. With implementation of the Revitalization Act, and the creation of CSOSA, the Federal government took on a unique, front-line role in the day-to-day public safety of everyone who lives, visits or works in the District. CSOSA's mission is to serve the District of Columbia by increasing public safety, preventing crime, reducing recidivism and supporting the fair administration of justice in close collaboration with the community. CSOSA's Community Supervison Program (CSP) supervises sentenced adult offenders in the community on probation, parole, or supervised release. PSA supervises and monitors pretrial defendants in the US District Court for the District of Columbia and the Superior Court of the District of Columbia.

CSOSA's FY 2012 budget request of $216.8 million is comprised of a $156.1 million request for the Community Supervision Program and $60.7 million for PSA. Our FY 2012 budget request is an increase of $4.4 million or 2.1 percent over the FY 2010 Enacted Budget. The $4.4 million FY 2012 increase consists of $1.0 million in program changes and $3.4 million in inflationary adjustments necessary to continue current program service levels.

I will begin by addressing the FY 2012 Budget request for the Community Supervision Program, which is $156.1 million, an increase of $2.2 million or 1.4 percent over the FY 2010 enacted budget. Later in my testimony I will discuss the

FY 2012 Budget request for the Pretrial Services Agency, which is $60.7 million, an increase of $2.2 million or 3.8 percent over the FY 2010 enacted budget.

The Community Supervision Program's FY 2012 budget request provides resources to continue our public safety mission through a variety of innovative and proven offender supervision strategies designed to decrease crime and recidivism in the Nation's Capital. We supervise adult parolees and supervised releasees released to the District of Columbia by the Federal Bureau of Prisons and adult probationers sentenced by the DC Superior Court.

As of September 30, 2010, CSP supervised a total of 16,166 offenders, including 9,866 probationers and 6,300 supervised releasees and parolees. Our offender population has the following characteristics: 70 percent have a history of substance abuse; 32 percent of employable offenders are unemployed; 37 percent have less than a high school diploma or GED; 8 percent have unstable housing (most living in homeless shelters); 84 percent are male and 16 percent female. Of the offenders who entered our supervision in FY 2010, over 27 percent had been arrested for a violent offense, 30 percent had diagnosed or self-reported mental health issues, 7 percent had sex offenses in their criminal history and 26 percent had previously been under our supervision at some point in the three years prior to their FY 2010 supervision start date. In a comprehensive study of prison admissions conducted by the Bureau Justice Statistics (BJS), they noted that 35 percent of State prison inmates in 2009 were parole violators Like offenders nationwide, many of our offenders are a high risk to public safety, have significant needs and are prone to recidivate.

The Community Supervision Program employs four operational strategies to implement our mission: effective offender risk and needs assessment; close supervision; treatment and support services; and partnerships.

Key to effective community supervision is the offender assessment process. The Community Supervision Program has developed a comprehensive risk assessment instrument, the Auto Screener, which identifies each offender's risk to the community and his or her needs. The Auto Screener is a risk and needs assessment tool that captures information about the strength of an offender's community and social support, criminal history, substance abuse history, mental health, attitude and motivation, and other areas bearing on the likelihood of future criminal activity as well as identified behavioral health needs that can mitigate potential law violation. The instrument is administered by officers trained in motivational interviewing and the principles of "what works" for community supervision. Auto Screener responses are processed through an imbedded statistical formula that has been validated and re-validated by a nationally-recognized 'think tank' with secondary validation by an expert panel of statisticians, researchers and practitioners. The results of the Auto Screener provide a quantifiable basis for supervision assignment and determining required programs and services that will contribute to an offender's success. Offenders are periodically reassessed and drug tested to determine changes in their risk levels.

The Community Supervision Program's close supervision strategies include direct offender supervision performed by Community Supervision Officers located in Agency field units throughout the District. By placing field units in the offenders' communities, Officers maintain a more active, visible community presence, collaborating with neighborhood police in the various Police Service Areas, as well as spending more of their time conducting visits of offender's homes and work sites. Our community presence also enables effective partnerships with non-profit faith institutions, local social services providers and employers.

Lower caseloads are a key element of our close supervision strategy. Prior to the Revitalization Act, supervision caseloads were in excess of 100 offenders per Officer, far in excess of recognized national standards. Our overall caseload ratios are currently 57 offenders per Officer, closer to the 50 case-per-officer level

recommended by the American Probation and Parole Association. Specialized caseloads for higher-risk offenders, such as mentally ill (53:1), domestic violence (50:1), high-risk drug offenders (43:1) and sex offenders (31:1), are even lower.

A critical component of close supervision is the swift enactment of appropriate, graduated sanctions for non-compliant behavior. Research tells us that timely intervention and consistent sanctions are critical to effective community supervision. From its inception, the Agency has worked closely with both DC Superior Court and the US Parole Commission to develop a range of options that Officers can implement immediately, prior to requesting that offenders be sanctioned by the releasing authority. The Community Supervision Program uses a variety of offender interventions and sanctions including increased drug testing, placement on Global Positioning System (GPS) monitoring, assignment to our Re-entry and Sanctions Center, placement into our new Secure Residential Treatment Program pilot or assignment to our Day Reporting Center (DRC). The DRC is an on-site cognitive restructuring program designed to change offenders' adverse thinking patterns, provide education and job training to enable long-term employment, and hold unemployed offenders accountable during the day.

Treatment and support services are provided to offenders based on the results of needs assessments and drug testing. The Agency provides a range of treatment and support services that include contract substance abuse and sex offender treatment, contract transitional housing, and education and employment-related services. We also refer offenders to community-based organizations for services that are not provided directly by the Agency, including certain substance abuse and mental health treatment, healthcare and job training. The CSOSA Re-Entry and Sanctions Center (RSC) provides high-risk offenders and defendants with intensive assessment and reintegration programming in a residential setting. The RSC program is specifically tailored for offenders/defendants with long histories of crime and substance abuse coupled with repeated periods with incarceration and little outside support.

Finally, effective partnerships and information sharing with other criminal justice agencies and community organizations is critical to the Agency's success. The Community Supervision Program works closely with the DC Metropolitan Police Department (MPD) to perform joint offender home visits and share offender arrest and GPS data. We work with our faith community partners to maintain a city-wide network of faith-based services, including offender mentoring, job training and transitional housing. In September 2009, we joined with the DC Department of Corrections (DC DOC), the United States Parole Commission (USPC), and the Federal Bureau of Prisons to implement the Secure Residential Treatment Program (SRTP) Pilot. The SRTP Pilot provides an alternative placement for DC Code offenders on parole or supervised release who face a revocation hearing due to illegal drug use, other technical and, in some cases, new criminal charges. Upon successful completion of the program, the USPC reinstates the offenders to parole or supervised release supervision without revocation to a Bureau of Prisons (BOP) facility. The SRTP Pilot is funded through FY 2011; beginning in FY 2012, BOP and DC DOC will assume full responsibility for the program.

In continuing to refine our supervision strategies for managing this high-risk and high-needs population, the Community Supervision Program draws on evidence-based practices and advanced technology and utilizes wide-ranging collaborations to move the men and women under our supervision towards successful re-integration within the community. In response to changes in our offender population and the need to manage our resources ever more efficiently, we are currently implementing or expanding several program initiatives.

First, we are significantly expanding the scope of our women's programming in response to the steady growth in number of female offenders with supervision obligations and the increasing rate of women offenders with co-occurring substance abuse and mental health issues. Between 2007 and 2010, the number of women on our daily caseload has increased by 8 percent, or approximately 200 women, each

year. Approximately 50 percent of the female offenders we supervise consistently report having been evaluated, diagnosed or treated for a mental health issue. We recently converted one 15-bed unit of the Re-entry and Sanctions Center to serve female offenders with co-occurring substance abuse and mental health issues. We also designated three offender supervision teams to supervise women only and expanded the Women in Control Again (WICA) Program to provide a more comprehensive package of gender-specific supervision services to our female offenders. The WICA Program is an integrated psycho-educational therapeutic program for women suffering from substance abuse and mental illness.

A second initiative is the implementation of a Kiosk-based reporting model for our lowest-risk offenders. Supervision kiosks are automated machines, similar to ATM machines, to which fully and consistently compliant low-risk offenders will report instead of reporting in person to a supervision officer. Offenders will report once per month (during the week of their birth date) and update information pertaining to their housing, employment and collateral contacts. Kiosks are also programmed to instruct the offender to report for random drug testing. Kiosk reporting will allow Officers to allocate more time to higher-risk offenders who need more intensive interventions and monitoring. It also serves as a powerful enticement for low-risk offenders to maintain long-term compliance with their supervision conditions. Kiosks are currently located in our field offices at 25 K Street, NE; 1230 Taylor Street, NW; 3850 South Capitol Street, SE and at MPD Headquarters at 300 Indiana Avenue, N.W.

The Community Supervision Program is also currently expanding the number of Day Reporting Centers in our community field units, including one specifically for women. Both the Kiosk program and the expanded Day Reporting Center program are being accomplished by streamlining and merging existing programs and resources.

The Community Supervision Program supervises approximately 875 offenders under the age of 21, of which 50 are jointly supervised by the DC Department of Youth Rehabilitation Services. We are presently working with the DC Superior Court, Pretrial Services Agency, the DC Department of Youth Rehabilitation Services, and DC Court Social Services to improve the processes for managing and supervising cases that have both adult and juvenile charges. We expect this effort to improve the effectiveness of the continuum of support, structure and supervision of juvenile offenders. Case management teams from each agency have been put in place to strengthen case management protocols.

In late 2010, the Community Supervision Program convened a multi-disciplinary group of key supervision, treatment and program staff to strengthen the internal processes and procedures in response to the public safety challenge posed by high risk offenders who are often PCP users, younger, far more recalcitrant, and more prone to violence. The recommendations included strategies for improving coordination across agency units, prioritizing treatment needs, balancing responses to substance abuse and criminality issues, expanding sanction options, and increasing the emphasis on cognitive behavior restructuring for certain offenders. The committees also recommended policy changes, changes to the case management training curriculum and the reorganization of some functions. These recommendations are presently under review. I expect to take action on them later this year.

I will now turn to the FY 2012 Pretrial Services Agency budget request for $60.7 million. To help judicial officers make the most informed and effective release or detention determination, PSA conducts a risk assessment at intake for each defendant and recommends the least restrictive conditions necessary to promote future court appearance and minimize the defendant's potential risk to the community. Higher levels of supervision are requested if the defendant is consistently noncompliant with release conditions. In addition, PSA partners with

the Metropolitan Police Department (MPD) to identify misdemeanor arrestees who can be released safely from the police station pending initial appearance in court.

In FY 2010, almost 23,000 defendants completed initial evaluation drug tests, including over 21,000 at lock-up. Forty percent of defendants at lock-up tested positive for cocaine, amphetamines, PCP or opiates. In FY 2010, PSA prepared accurate and timely information in the form of Pretrial Services Reports (PSRs) for over 16,000 of the cases papered by the United States Attorney's Office. PSA also continued to provide courtroom coverage to all assigned arraignment court judicial officers. In partnership with MPD, PSA conducted citation release investigations in US misdemeanor arrest cases, helping to facilitate the release of over 12,000 arrestees from police custody. Finally, PSA completed over 3,000 criminal history reports for DC Superior Court judicial officers for consideration of release in DC Code and drunk driving cases.

PSA provides effective monitoring and supervision of pretrial defendants, consistent with release conditions, to promote future court appearance and decrease the likelihood of criminal activity under pretrial supervision. In FY 2010, PSA supervised over 25,000 defendants from the DC Superior Court and the US District Court for the District of Columbia.[1] On September 30, 2010, staff was managing almost 7,000 defendants. During the course of the year, PSA made 1,596 location monitoring placements into high intensity supervision with GPS, landline or cellular electronic monitoring. The high risk supervision unit averaged a daily caseload of over 400 defendants.

Defendants who violate court-ordered conditions of supervision—particularly conditions for drug testing and contact with a case manager—are significantly more likely than those in compliance to miss a scheduled court appearance or commit new offenses while on release. To reduce this increased risk, in recognition of

[1] This includes defendants who may have been placed in multiple units.

evidence-based practices PSA supervision includes graduated sanctions for quick and effective responses to each condition violation. For example, defendants who fail to abide by high-risk supervision requirements are subject to an extended curfew and increasingly lengthy periods of electronically monitored home confinement. If graduated sanctions do not restore compliance, a request for revocation is made to the Court. In FY 2010, 17% of the defendants on pretrial release had release revoked or had a request for revocation pending at the end of the fiscal year.

Sanction-based treatment is one of the most effective tools for breaking the cycle of substance abuse and crime. The connection between substance abuse and crime has been well established. Success in reducing rearrest and failure to appear for court depends on two key factors: 1) identifying and treating drug abuse and other social problems, and 2) establishing swift and certain consequences for continued drug use. In addition to public safety benefits, the community also benefits from the cost savings of providing treatment in lieu of incarceration. PSA is committed to providing sanctions-based treatment programs and support services to the defendant population as a mechanism for enhancing community safety. These services are provided based on appropriate assessments and drug test results. In FY 2010, District of Columbia defendants using drugs had a rearrest rate of 16%, while non-drug using defendants had a rearrest rate of only 7%. In FY 2010, PSA conducted over 3,000 initial Addiction Severity Index assessments, the vast bulk of which identified a substance abuse treatment need. PSA subsequently placed just over 1,700 of these defendants in appropriate residential, intensive outpatient, and outpatient services.

Many defendants in the District's criminal justice population have mental health problems severe enough to affect their ability to appear in court and to remain arrest-free. Based on surveys in jail systems across the country, it is expected that over 15% of defendants will have a serious mental illness. In FY 2010, PSA performed over 3,000 mental health assessments, and over 1,600 defendants were

placed in PSA's Specialized Supervision Unit with referrals to community-based mental health services. Since many of these defendants also are in need of substance abuse treatment, PSA arranges for substance abuse services as part of overall supervision. PSA's case management support of the DC Superior Court Mental Health Diversion Court also expanded to encompass felonies as well as misdemeanors.

Research supports the premise that employment and education services can contribute to a reduction in recidivism. Recognizing this, PSA utilizes its Social Services and Assessment Center to coordinate education, employment and other social services for defendants on the "front end" of the criminal justice system and begin the process through which defendants will be able to secure gainful employment.

PSA's Forensic Toxicology Drug Testing Laboratory processes urine specimens for CSOSA and PSA. Drug testing services are integral to the judicial process in the District of Columbia and to public safety. In FY 2010, the Lab conducted almost 3.5 million drug tests on over one-half million urine samples collected from both defendants and offenders, as well for juveniles and adults whose matters are handled in the DC Family Court. Over 50% of tested pretrial defendants had at least one positive drug test.

This budget includes $1,000,000 to fund a new program initiative, the relocation and redesign of PSA's Lab. PSA has been notified by its landlord, DC Office of Property Management, that the building at 300 Indiana Avenue N. W. will likely be refurbished when City funding becomes available, and that all current tenants should plan to vacate the building within the next few years. PSA has undertaken preliminary relocation activities, including development and submission to the General Services Administration of the required prospectus. This additional budget authority is requested in order to gradually relocate the Lab based on the estimated

costs of new space build out, lab design expertise, increased lease cost, recalibration of delicate drug testing equipment, contract assistance and miscellaneous expenses.

As you can see, CSOSA and PSA have accomplished a great deal in the provision of comprehensive supervision services for offenders and defendants in the Washington, DC community. The Fiscal Year 2012 budget request will enable us to continue supporting the fair administration of justice and promoting public safety in the Nation's Capital. Thank you for the opportunity to present our request and achievements. I will be pleased to answer any questions you may have.

Adrienne R. Poteat

Since October 2002, Adrienne R. Poteat has served as Deputy Director of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). In this capacity she is responsible for managing day to day operations for the federal agency responsible for supervising over 16,000 adults on probation, parole, and supervised release in the District of Columbia.

Ms. Poteat has over 38 years of law enforcement experience. After graduating from college she began her law enforcement career with the Hampton Police Department as an Intake Officer, followed by a short term with the Newport News Juvenile Domestic Relations Court. In 1975, Adrienne Poteat returned to Washington and became the first woman correctional officer hired by the DC Department of Corrections. This was the first of a series of progressively challenging positions with the DC DOC that included case manager, unit manager, Deputy Warden, Warden and Deputy Director.

One of Ms. Poteat's proudest accomplishments was to achieve national accreditation of the Maximum Security Facility by the American Correctional Association (ACA) during her tenure as the first and only female warded to lead that institution.

After lending her substantial leadership to the Maximum Security Facility, Ms. Poteat was named Warden of the newly constructed Correctional Treatment Facility (CTF) and later served as the principle lead expert on the privatization of the CTF through a 20-year sale/lease back agreement between the Corrections Corporation of America and the Government of the District of Columbia.

In her capacity as Deputy Director of the DC Department of Corrections, Ms. Poteat was responsible for the care and custody of over 16,000 inmates and managed nearly 3,200 employees. In 2001, Ms. Poteat ended her distinguished career with the DC Department of Corrections and joined the United States Parole Commission as a Hearing Examiner where she remained until assuming the Deputy Director post at CSOSA.

Ms. Poteat holds a B.A. in Sociology from Hampton Institute and is the recipient of numerous awards. She is a native Washington and continues to reside in the District of Columbia.

Mr. DIAZ-BALART. Thank you very much, Madame Director, for your testimony. You know, it is pretty evident that this Committee, and the Committee Chairman, the Sub-Committee Chairwoman—I think all of us are committed to addressing our country's unsustainable debt.

And you know, it is not an easy task to do, but it is going to be important that every agency look for ways to be more efficient. With that in mind, and realizing that obviously your public safety role is crucial, it may or may not be reasonable to expect that you can go back to the 2008 funding levels. What would be the impact? What would the impact be of reducing your funding to fiscal year 2008 levels?

IMPACT OF FUNDING AT FISCAL YEAR 2008 LEVEL

Judge WASHINGTON. Well, funding the courts at the 2008 levels, we estimate would result in an operating budget reduction of approximately $24 million, or a 9 percent reduction below our current budget. Approximately 73 percent of the Courts' budget is for personnel use, so a reduction of this magnitude would result in a significant reduction to the Courts' current work force, thereby negatively impacting the court's operations.

Unlike most Federal agencies, as you know, most of our work is dealing directly with people. We cannot control how many people come in, and as you know, we are extremely busy, not only our trial court but our Court of Appeals are some of the busiest courts in the country. And so a 15 percent reduction in our workforce or a hiring freeze would be very difficult for us to sustain and continue to provide the services that are deserved by the citizens and those who live, work, and do business here in the District of Columbia. We would have to cut contractual services, probably. The vacancy rate of agencies is typically about five to six percent. So just contrasting that with the 15 percent vacancy rate that might be realized if we went all the way back to 2008 gives you some sense of how difficult it would be for us to manage that and continue to provide great service.

I can tell you that several years ago our vacancy rate had risen to about 15 to 20 percent because of a lack of funding. Congress and the President, understanding the impact on the community, funded our unfunded positions so that we could reduce that level of vacancy because of the impact it was having on service provision.

I think it would have a dramatic impact on our ability to do all the things that we are trying to do to protect the community. I would say that felonies, child protection, child support, juvenile delinquency, that we would have to look at all of those areas when we are talking about cutting staff because we really do not have an ability to determine where we are going to have staff needs.

Mr. DIAZ-BALART. Let me pose the same hypothetical going back, as opposed to the 2008 level, to the 2010 level. How would that affect you and what is the difference?

Judge WASHINGTON. Well, I think the Courts would clearly be able to operate and perform their current functions if we went back to the 2010 levels. But there are several initiatives that affect public safety that would not get implemented. The expansion of services for females on juvenile probation is really very important and

critical to our maintaining safety and security of our communities. And again, the lack of a secured detention facility for girls makes it a critical part of what we think is important and needs to be done in order to promote safety here in the District of Columbia.

The reduction in the capital budget, as you know Congressman better than I, just delays and it pushes out and increases dramatically the cost of our capital improvements, all of which I think this Congress has recognized and this subcommittee and Committee have recognized, year after year, are critical for us to meet our space needs. We have been diligent and the Congress has been wonderful about appropriating money for us to do that, to meet our space needs. If we have to delay those in any significant way, which the cut back to 2010 levels might force us to do, it is going to mean that the incremental changes we will be able to make with the money that has been provided or may be provided at the 2010 levels will just stretch our plan out and cost us a lot more money and take us a lot more time to get it done. Commending our capital buildings project team, we have, in every project, consistent with our testimony to this Committee and to others, kept to our timetable and have brought in our projects on time, within budget. And we would like to continue to be able to do that.

Mr. DIAZ-BALART. Judge, your request proposes funding for nine new law clerks.

Judge WASHINGTON. Yes.

Mr. DIAZ-BALART. I believe and understand that we kind of know that the D.C. Court of Appeals has one of the highest caseloads in the country. If you could tell us how the hiring of these law clerks will impact the disposition of the cases in your caseload.

REQUEST FOR LAW CLERKS

Judge WASHINGTON. Thank you. Yes. We intend to use these law clerks. The reason I asked for nine law clerks, or additional law clerks, was to be able to use them in a way that was flexible to meet the case processing needs of the Court of Appeals. As you know, our counterparts in the Federal Court of Appeals have four law clerks per Judge. We currently have two. Originally I thought that we certainly could process more cases had we had more staff support to assist the Judges in preparing for the cases on the calendars. Many of my colleagues sit on many more calendars per month than typically is sat on by Judges in the Federal Circuit.

But additionally we have one of the smallest central legal staffs of any appellate court in the country. The central legal staff in most Federal appellate courts, and in most state high courts, handle a lot of the summary cases, preparing them for the Judge's review. At this point, because of its size, we have only five attorneys in our central legal staff, and the number of motions we have, we cannot get them involved and engaged in handling summary merits decision cases. So with these law clerks, I can help supplement those judges who need additional help, and have additional help for senior judges, to get merits opinion cases resolved. But I can also take some of the law clerk positions to help bolster our central legal staff and perhaps move, which I hope will move cases more quickly and efficiently, especially the cases that are appropriate for

summary affirmance or a summary decision through the process more quickly.

Mr. DIAZ-BALART. Thank you Judge, and I want to make sure that we quickly go to the Ranking Member because the vote has not been called yet, unfortunately. So before I do that, both in the opening statement and your response to the question, Judge, you mentioned the issue of the drop-in center for juvenile girls. And it seems that the primary focus of supervision of the juvenile offenders has been to males. And again, your request proposed an increase for a new drop-in center for juvenile girls. Prior to this initiative, it appears that programs for young women were really kind of lacking. Can you explain how you supervise juvenile girls now and what impact the new center would have on female offenders?

DROP-IN CENTER FOR JUVENILE GIRLS

Judge WASHINGTON. With your permission, I will turn to my colleague Judge Satterfield to answer that question.

Judge SATTERFIELD. Thank you. We have a series of probation officers who are trained for some of the unique issues that girls pose in terms of supervision. Because as you mentioned, throughout the many years, all these systems have been geared toward supervision of males. So, our Director of Court Social Services, who is a forward-thinking person, created a leadership for girls program with the idea that they are going to focus on the specific issues and expand our ability to supervise girls.

The Drop-In Center is another tool to help do that. We already have two Drop-In Centers that we use in the city, and they are designed to provide supervision during the most critical times of day where youth seem to get into trouble, that is in the evening hours before their parents are home. So, we take them from when they get out of school into that time period and work with them. They eat there, they get counseling there. This girls' Drop-In Center is designed to duplicate what we have been doing in the other two Drop-In Centers in the city.

Mr. DIAZ-BALART. And you can show quantified results of those two drop-in centers that you have so far, right?

Judge SATTERFIELD. Well, we are seeing very good results. We have commissioned a national study on reoffending that we are in the process of completing through a national organization, which will give us a better idea of how we are doing from that objective view, but subjectively, yes.

Mr. DIAZ-BALART. All right. Thank you. And with that, even though there is a number of other questions, let me recognize the Ranking Member while we still have the time. Thank you, sir.

Mr. SERRANO. Thank you, Mr. Chairman. Ms. Poteat, can you tell us how CSOSA is working with the community college, at UDC, to assist offenders who are furthering their education and skill sets?

Mr. POTEAT. Yes. One of our members here—in fact, two of them, Cedric Hendricks and Jasper Ormond have been very engaged with meeting with the members of UDC to get offenders placed in those college programs. In addition, they have been trying to get the college to have a program for those offenders in the Bureau of Prisons'

out-of-state facility in Rivers, North Carolina so that they can engage in some kind of college courses as well.

We do referrals for those people that have completed the GED and are interested in college courses, so that they can enroll at the campus.

Mr. SERRANO. And you are getting the assistance you feel that you should be getting?

Mr. POTEAT. Yes, we are getting the assistance. Yes. Everything could always be improved significantly, but for the most part, yes.

Mr. SERRANO. Okay. So, we look forward to a good relationship, you believe.

Mr. POTEAT. Yes.

Mr. SERRANO. Okay, because it is so important that as we deal with these issues, we also deal with educational needs and furthering those opportunities. Judge Satterfield, the Superior Court is one of the busiest courts in the nation. How have the tight quarters in the Moultrie Courthouse affected the day-to-day operations of the Superior Court system?

IMPACT OF SPACE SHORTFALL

Judge SATTERFIELD. Well, it slows things down. You do not have a sufficient number of courtrooms to be able to carry out all of the business in the court. Also, in really moving cases efficiently, you need to work with our partners, like CSOSA and Pretrial Services, to have them on-site as well. We have a horrible space situation where we have to stop giving out space to our partners. When they are out of the building, out of space, it slows things down, not to have them present on-site. So, it does delay things. And obviously, having a better work environment, I think, would increase our productivity with our staff as well.

Mr. SERRANO. And how many rooms do you have?

Judge SATTERFIELD. I had that number in here somewhere. You are talking about courtrooms?

Mr. SERRANO. Yes.

Judge SATTERFIELD. About 80 courtrooms, we have a total of more than 80 judicial officers and then, in order to maintain the performance levels that we are at now, we use a number of senior judges. Without them, we would not be able to maintain the levels we are now.

Mr. SERRANO. Let me ask you folks, there is a large discrepancy between the programs and initiatives included in the Courts' request and the President's request, which is not unusual. We see this all the time, historically. How would you prioritize the programs that were not included in the President's request? That is, which programs are your highest priority?

BUDGET PRIORITIES

Judge WASHINGTON. Our highest priority programs are the programs that we have testified about here today, primarily, programs that involve ensuring the public safety and increasing the effectiveness of our workforce, and on the capital side, providing adequate space. So, what the President has done in his budget is he supports these initiatives. We know that the President and Congress have continued to support these initiatives, which we greatly appreciate.

But the levels of that support have been less than we can utilize effectively and efficiently to ultimately reduce costs, in the long run, for these same programs and services. And so, what we are looking for, in terms of our budget initiatives, is greater funding in areas where the President has already provided us with some funding.

We again, through a number of cost-saving efforts on the part of the Courts, have been able to reprioritize some of our resources to help to move some of the projects along and especially in providing a secure environment for our employees and the 10,000 people that come to our building every day. But certainly, the improvements that we could see if we got adequate funding in those areas that I have mentioned, our priorities would be the most helpful things for the Courts.

Mr. SERRANO. Right. I know we have a vote pending here. But I just have one question that is really a follow-up to that last question. Can you describe some of the measures you have undertaken in these tight fiscal times? I understand that you have already cut drug treatment and mental health programs. These are dire steps, to say the least. What other costs have been cut from the budget in recent months?

COST SAVINGS

Judge WASHINGTON. Well, with respect to reduction of services and cost savings, we try to achieve cost savings in a number of ways, not just by cutting operations. We have held positions open that we could have filled in order to slow the rate of the costs on our operational side. Again, 73 percent or more of our budget is personnel. So if we are going achieve any savings, we had to stop hiring at some point. And while we have not implemented a freeze and we are looking at each position very carefully, we are doing it with an eye towards being very conservative and hiring only those individuals we need.

In the Court of Appeals, we had a mediation pilot program. We did not get the position we needed to actually staff the mediation program the way that we had envisioned it, and we have been using temporary personnel. We have stopped that because that is a very costly item, to bring in temporary personnel to run programs. The programs themselves really require expertise that we cannot get by just hiring temporary people to come in. That is one of those things we tried to change, use resources differently in order to help move and process cases.

So, we are looking at all those kinds of cost savings measures. Anything that we can do that does not impact on case processing and the effective and efficient and timely disposition of cases we are looking at, Congressman.

Mr. SERRANO. Okay. Thank you.

Judge SATTERFIELD. And we have used technology in the system that the Congress funded some years ago; it enabled us to use less people, because we are becoming more paperless, in terms of having our cases processed and ensuring the quality of the work that is being done in the paperwork.

Mr. SERRANO. Thank you.

Mr. DIAZ-BALART. Thank you, Mr. Serrano. The vote has been called. We have nine minutes and 40 seconds before the close, so that should be enough. I recognize Congresswoman Lee.

Ms. LEE. Thank you very much, Mr. Chairman. Good morning.

Mr. DIAZ-BALART. Good morning.

Ms. LEE. Really glad you are here, and thank you very much. And let me just preface this by saying that many of us, as Members of Congress, are also residents of the District of Columbia at least two days a week, three days a week. And so I just have to thank you for what you are doing for the residents of the District of Columbia, the citizens of the District of Columbia, and the entire city.

My children, in my last life, they attended D.C. public schools. I worked for Ron Dellums, who chaired the District of Columbia committee. And so the issues that are historical here in the District, we are still grappling with. And I want to thank you for what you are doing to ensure public safety in the city. And I think the discussion always, especially in this committee, always centers around money; it is the Appropriations Committee. The deficit, of course, cuts, that is the reality of what we have to deal with. But also, I believe when it comes to public safety, sometimes we can be, what is it, pennywise and pound-foolish? I think you all are doing a very good job with minimal resources. I wanted to ask you, have you looked at what happened, in terms of a possible increase in crime, if your budget decreased?

Just looking at these statistics that Director Poteat laid out, in terms of the 37 percent have less than a high school diploma, 70 percent have a history of substance abuse, 30 percent mental illness, mental health issues. What would happen to these people, in terms of the crime rate in Washington, D.C.? And what if, in fact, your budget were reduced to 2008 levels? I would like to see it increase but I would like to see that relationship between the budget and the crime rate.

Ms. POTEAT. That is one of the things that we are tackling consistently. We realize that public safety is paramount. And so, therefore, one of the things that we have done is restructure some things internally. For instance, with our low-risk offenders, I talked about putting them on kiosk. And the reason we did that is that we free up some of those offenders that require minimum supervision to just check in on the kiosk box. That way, the supervision officer can now focus more heavily on the high-risk offenders.

So, what do we do? One of the things we have been creative in is our call-ins. We do that periodically. In fact, we had one today at our Rhode Island Avenue site. Anybody that is high-risk, that could be a menace to the community, they could be using PCP, whatever the criteria, we call them in and give them a lecture to say that, "We are on to you, we are watching you, and we are going to increase some supervision requirements internally." MPD attends those call-ins as well.

Another thing that we have implemented is that we are focusing more on the risk and needs of the highest risk offenders: those that are PCP users, getting them in the substance abuse treatment programs. We realize right now that we can only address 25 percent of our population with substance abuse issues. That means that we

have had to decrease the number treated, but focus on the highest of the highest risk. What do we do with the others? We can do internal group sessions. We have a violence reduction program that three staff members are doing at 25 K Street. It is, I am going to say, a 30-week program; it is very intensive and conducted in various stages. They talk about anger management, critical thinking, and alternatives to the way that they used to do things.

GPS: We have increased the number of GPS, so that would be very critical for us if we were to have to eliminate that. And we have trained over 800 law enforcement partners so that now they can monitor and track our offenders throughout the city. It is not just high-risk, it could be mental health cases or sex offender cases.

Ms. LEE. Let me just ask, is it a stretch, then, to say that if your budget were reduced, possibly the crime rate would go up, or do you think it would stay the same?

Ms. POTEAT. We feel that the crime rate would go up because there are other contributing factors: housing and employment. Without that, those offenders more than likely will recidivate. If you do not have jobs for them to do, they are going to commit some type of crime. Those crimes eventually are going to the courts, then the courts are going to be bombarded with cases, and then the Federal Bureau of Prisons will be overloaded with people that have to be revoked and go back to the institutions.

I talked about the number of people that are concurrently homeless. When you do not have adequate housing, that is a contributing factor to people not being able to adapt well, and they may break into homes so they can find adequate places to sleep, because some of the shelters are full. Sex offenders can only reside in one shelter. So you are, again, putting the community at some type of risk.

Ms. LEE. Thank you very much.

Judge SATTERFIELD. Can I answer that? Because with a reduction, we do not get to our cases in a timely manner. That means they have to be supervised longer by agencies like Pretrial Services before a resolution on guilt or innocence. Then we do not get them to rehabilitation until that has been done. So, everything is stretched out. If there are reductions, we cannot get to the matters and resolve them in a timely manner. It just turns out to be more costly, and you have more people under supervision than you need to.

Mr. DIAZ-BALART. Thank you. Congresswoman, by the way, talking about great timing, I am looking at the clock that is counting down here to the vote.

Let me again thank the Ranking Member, thank our colleagues, but more importantly, thank you, the very distinguished panel for spending your time with us today. I think it was very, very important. I think we learned a lot. I clearly did, yes. If there are any questions for the record, obviously, we can submit them and I am sure there will be some other questions. And I know that the Ranking Member has some questions, and I am sure there will be others.

But again, let me thank you for your time. It has been a privilege to have you here. And with that, we close the meeting. Thank you.

[The information follows:]

Financial Services and General Government Subcommittee Hearing
on the DC Courts FY 2012 Budget
May 5, 2011

Responses by the District of Columbia Courts

Questions for the Record Submitted by Chairwoman Jo Ann Emerson

JUVENILE OFFENDERS UNDER SUPERVISION

QUESTION: Recently there have been several instances in the media where juveniles under supervision have committed horrible crimes. In one instance, youths under supervision were charged with the murder of a local middle school principal, Brian Betts. I understand that CSOSA only supervises adults. The supervision of juveniles is performed by the Court in some instances and by the City in others.

How can the supervision of these juveniles be improved?

RESPONSE: The District of Columbia's juvenile justice system is comprised of various stakeholders. The Superior Court and a City agency provide case management and supervision for juveniles:

- The Family Court Social Services Division (CSSD) serves as the juvenile pre-trial and probation department for the City. CSSD is responsible for case management, coordination of services, and community supervision for juveniles who are not committed to the District of Columbia.

- The City's Department of Youth Rehabilitative Services (DYRS) serves as the post disposition commitment agency. DYRS also operates the pre-trial detention facility, the post disposition detention facility, as well as shelter homes and group homes.

Under D.C. Law, at the disposition hearing, a judge can either place a youth on probation, which is supervised by CSSD, or transfer jurisdiction of the youth to the City through commitment, which is supervision by DYRS. Once a youth is committed to the City, DYRS decides whether the youth will reside in a secured facility or in the community. Judges typically commit youth when the youth is a repeat offender, violator of probation and/or determined to be a danger to the community or himself. Although, at the disposition hearing, a judge cannot order a youth to be held in a secured facility or residential placement, when a judge transfers jurisdiction of the youth to the City its recommendation is that either type of placement occurs.

At any given time, approximately 60% to 65% of youth in the City's juvenile system are under CSSD's pretrial or probation supervision. The CSSD stays up-to-date on best practices

in juvenile justice, has increased curfew checks and parental involvement, and has implemented several innovations to reach and rehabilitate these youth, including family group counseling, civil rights tours, and college tours. Perhaps the most dramatic innovation has been the development of community-based Balanced and Restorative Justice Drop-In Centers where youth receive services, tutoring, and recreational opportunities after school and on Saturdays under the supervision of CSSD probation officers. These Drop-In Centers provide an alternative to detention for youth who require extensive supervision.

The Court strives to improve the supervision of youth in the juvenile justice system by focusing on the following areas:

- Developing a Balanced and Restorative Justice Drop-In Center to serve adolescent girls, whose needs, services, and case management approach differ from those of boys. The Drop-In Center would provide an alternative to detention for juvenile girls, which is particularly critical because the City has no detention facility for girls, sending them to residential facilities across the country and hampering contact and better relationships with their families. Funding for this center, $2,522,000, is requested in FY 2012. The need for drop-in centers to serve additional populations in the juvenile justice system will be evaluated in the future.

- Building on successes achieved through case management services and supports for youth and families and community supervision through enhanced school visits and curfew checks.

- Increasing opportunities for community service through partnerships with various public and private agencies throughout the City.

QUESTION: How can we better coordinate the activities of CSOSA, the Court and the City regarding juvenile offenders?

RESPONSE: The Family Court Social Services Division (CSSD) collaborates with a number of City agencies, including the Public and Charter Schools, Child and Family Services Agency (CFSA), Department of Youth Rehabilitative Services (DYRS), Department of Mental Health (DMH), Addiction Prevention and Recovery Administration (APRA), Department of Parks and Recreation (DPR), Department of Employment Services (DOES), and the Metropolitan Police Department (MPD). These efforts have resulted in more timely case processing, increased services for CSSD youth, enhanced program development, as well as increased positive experiences for youth under supervision.

The Superior Court Chief Judge Lee F. Satterfield co-chairs the City's Criminal Justice Coordinating Council (CJCC) with the City's Deputy Mayor for Public Safety. In addition to the Mayor and the Chief Judge, the CJCC principals include the directors of CSOSA, DYRS, Pretrial Services Agency, Public Defender Service, D.C. Department of Corrections and the

Bureau of Prisons; and the US Attorney, the Chief of Police, the Attorney General for the District of Columbia, the United States Marshal, the Chairman of the United States Parole Commission and City Council members. CJCC's overarching goal is to reduce violent crime through interagency collaboration. CJCC has three subcommittees that focus on juvenile delinquency issues and seek to better coordinate activities relating to juvenile offenders.

With CSOSA, the CSSD coordinates service planning in cases, for example, in which the parent is under CSOSA supervision and the youth is under CSSD or DYRS supervision, to maximize resources to the family and prevent non-compliance. A recent Administrative Order permits the sharing of information across agencies to achieve such outcomes, support expedited case management, and reduce release of individuals who should be detained.

JUVENILE FACILITY

QUESTION: I understand that the City operates the New Beginnings detention and rehabilitation facility in Laurel, MD for juveniles ordered to be detained. There are safety concerns among the staff at this facility and also with the local community. Last year, there was a riot at the facility. Recently, a juvenile escaped from the facility after severely injuring the supervising official and taking the keys to his personal vehicle. There appear to be problems plaguing this facility.

Can you comment on these incidences and what are your thoughts about improvements to this facility? What concerns do you have about this facility?

RESPONSE: As you know, the New Beginnings facility is operated by the Executive Branch of the District Government, not the D.C. Courts. As a part of the District's juvenile justice system, the Court has concerns about the facility, and Superior Court Chief Judge Lee F. Satterfield has discussed these issues with the City and the Council. The Court is concerned that New Beginnings is too small to meet the need for secure detention for youth in the juvenile justice system. New Beginnings has space for 60 youths, which is 68% smaller than the previous juvenile detention facility, and no similar facility exists for girls committed to the City. This smaller size results in political pressure from the City and Council regarding the number of youth who are committed by the Court. Because New Beginnings cannot accommodate all of the committed youth, the City must rely on out-of-state residential placements or prematurely place in the community youth who need secure detention.

ENHANCING SAFETY OF DOMESTIC VIOLENCE VICTIMS

QUESTION: Your budget request proposes funds to update the Court's database within 24-hours after a domestic violence incident and therefore provide timely security for the most vulnerable victims of domestic violence. What is the current status of the Court's database and is it on-line with the MPD and the National network databases?

RESPONSE: Currently, court staff must enter Civil Protection Order (CPO) information into the Metropolitan Police Department's (MPD) database (called WALES). MPD relies on timely information to enforce CPO's and protect victims of domestic violence. Given current staffing levels, the Courts' domestic violence clerks are able to enter only 85% of CPO's into MPD's database (WALES) within two days of a judge issuing an order. The three additional FTE's requested will enhance the safety of domestic violence victims by reducing the time required to enter CPO's into WALES from 85% in 48 hours to 98% in 24 hours and will improve the speed and accuracy of the review process.

The automated transfer of warrant information from the Superior Court's database to MPD's database is under development in the Criminal Division. Once this electronic interface is established, it can be expanded to other caseloads, including domestic violence.

FATHERING COURT INITIATIVE

QUESTION: The courts budget request includes an increase for a Fathering Court Initiative. I understand that the primary goal of the program is to help fathers sustain employment, make child support payments and establish healthy relationships with their children. This program was recognized and awarded by the Harvard Kennedy School in September 2010.

How successful has this program been in keeping offenders from being involved in crimes? How helpful has it been in reducing recidivism?

RESPONSE: The goals of the Fathering Court are to help fathers recently released from prison find and sustain employment, make child support payments, and establish healthy relationships with their children. As noted, the Fathering Court was recognized as a creative and promising program with a "Bright Idea Award" from the Harvard University Ash Center for Democratic Governance and Innovation. Fathering Court has proven successful. Since its inception in 2007, only two individuals out of 60 participants were rearrested and only one of them had a new conviction. Seventy-two percent of the participants were employed while in the Fathering Court. The average child support payment made by the participants was $187 per month.

Questions for the Record Submitted by Ranking Member Serrano

CAPITAL IMPROVEMENTS

QUESTION: Can you provide us with a total estimated cost of all of the planned capital improvements in the Facilities Master Plan?

RESPONSE: The estimated cost to complete the capital projects included in the Facilities Master Plan through fiscal year 2019 is $463,000,000, in calendar year 2011 dollars.

Financial Services and General Government Subcommittee Hearing FY 2012
Budget
May 5, 2011

Responses by the Court Services and Offender Supervision Agency for D.C

Questions for the Record Submitted by Chairwoman Jo Ann Emerson

I. JUVENILE OFFENDERS UNDER SUPERVISION

Recently there have been several instances in the media where juveniles under supervision have committed horrible crimes. In one instance, youths under supervision were charged with the murder of a local middle school principal, Brian Betts. I understand that CSOSA only supervises adults. The supervision of juveniles is performed by the Court in some instances and by the City in others.

a) What are your thoughts as to how the supervision of these juveniles can be better improved?

CSOSA defers to the DC Government and DC Superior Court on this issue.

b) How can we better coordinate the activities of CSOSA, the Court and the City regarding juvenile offenders?

CSOSA (CSP and PSA) has partnered with the D.C. Department of Youth Rehabilitation Services (DYRS) and the Superior Court of the District of Columbia's Court Social Services Division (CSS) to develop information sharing and supervision procedures for persons under the authority of both the juvenile and adult justice systems. These procedures specify case management and supervision responsibilities for these individuals and create means for efficient communication among supervising agencies.

CSOSA, DYRS, and CSS have an interest in the protection, welfare, treatment, and rehabilitation of court-involved persons including youth, but lacked express authority to share information regarding a court-involved youth's placement and treatment. Information sharing among these agencies, the court, the prosecution, and counsel for the youth regarding a court-involved youth's placement and treatment may be necessary to preserve public safety and/or the protection, welfare, treatment, rehabilitation and safety of the youth.

In August 2010, the Court issued Administrative Order 10-11 to address this issue of information sharing. This allows authorized personnel from the partnering agencies to inspect confidential youth placement, treatment, and other relevant records of any other partnering agency with consent as required by law. These records are disclosed, as necessary, to these agencies in order to protect public safety, safety of the youth, or to facilitate the youth's treatment and rehabilitation. The Order does not allow anyone given access to the records to disclose the information to any other person or to use the information for any other purpose.

In March 2011, DYRS, CSS and CSOSA entered into a Memorandum of Agreement, which sets out the process that each agency will follow in implementing the Court's Administrative Order 10-11.

PSA

Under the new process, PSA contacts DYRS/CSS for all adult arrestees under the age of 21 who currently are under juvenile supervision for compliance information. PSA includes this information in its report to the Court.

If the defendant is released pending trial, PSA and DYRS/CSS determine how to coordinate supervision. (Agencies securing contracted services for defendants maintain control and pay the costs for those services.) The assigned pretrial services officer provides the DYRS/CSS with updates on the defendant's compliance with court-ordered conditions and connections to needed substance abuse or mental health services. PSA consults with and notifies DYRS/CSS of any planned or emergency changes of placement or release conditions prior to the changes being implemented, or within one business day. PSA provides notification to DYRS/CSS within two business days of a defendant's significant violation status,[1] termination of services, case transfer, case closure, loss of contact, and/or a defendant's failure to appear for a court appearance.

CSP

Under the new process, CSP serves as the entity primarily responsible for supervising the juvenile offender and the primary point of contact for providers of offender support services in the District of Columbia. Upon receiving a new offender intake, CSP's Offender Processing Unit reviews information from the District of Columbia Integrated Justice Information System (JUSTIS) to determine if the offender is currently under the supervision of DYRS. Upon verification of interagency involvement, this information is documented in CSP's offender case management system (SMART) and the juvenile offender is assigned to a CSP supervision Community Supervision Officer (CSO). The CSO coordinates supervision and offender support services with DYRS to reduce duplication of activities. CSP staff also provides monthly reports regarding the offender's compliance to the DYRS case worker, and if supervision violations will affect an offender's loss of liberty interest and/or require higher levels of monitoring (e.g., GPS). CSP provides immediate notification of serious supervision violations to DYRS. Per the Memorandum of Agreement, DYRS provides CSP with monthly updates concerning the juvenile offender.

II. JUVENILE FACILITY

I understand that the City operates the New Beginnings detention and rehabilitation facility in Laurel, MD for juveniles ordered to be detained. There are safety concerns among the staff at this facility and also with the local community. Last year, there was a riot at the facility. Recently, a juvenile escaped from the facility after severely injuring the supervising official and taking the keys to his personal vehicle. There appear to be problems plaguing this facility.

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[1] "Significant violation status" means one or more infractions of release conditions that trigger a recommendation for an increase in release conditions and/or a higher level of supervision, or a request for revocation/removal from PSA supervision.

a) Can you comment on these incidences and what are your thoughts about improvements to this facility?

CSOSA defers to the DC Government on this issue.

b) What concerns do you have about this facility?

CSOSA defers to the DC Government on this issue.

III. PROBATION/PRETRIAL SEX OFFENDER SUPERVISION

Upon release from prison, sex offenders require specialized supervision techniques and enhanced monitoring.

a) Do you have sufficient resources to effectively supervise sex offenders and protect the citizens of the communities in which they live?

b) What are CSOSA's challenges in the supervision of these high risk offenders?

CSP

CSP has developed a comprehensive supervision infrastructure that incorporates crime prevention, treatment, and meaningful intervention strategies to hold sex offenders accountable for their behavior. A variety of innovative strategies designed to reduce a sex offender's opportunity to victimize others have led to successful supervision outcomes. These strategies have decreased their long-term risk through treatment and other therapeutic measures. CSP's Sex Offender Unit (SOU) is comprised of three teams of specially-trained Community Supervision Officers (CSO) who supervise at an approximate 30:1 ratio. In September 2010, CSP supervised 645 sex offenders, of which 73 percent were assessed and supervised at the highest risk levels; a much larger percentage than our general supervision offenders (48 percent) .

All new CSP sex offenders undergo an initial psychosexual evaluation that includes a baseline polygraph test. This is critical in assessing the risks these offenders pose in committing another sex offense, and in identifying their supplemental needs. A CSP vendor provides comprehensive, outpatient sex offender screening, assessment and treatment services. These include individual and group counseling, life skills training, relapse prevention, polygraph testing, discharge/aftercare planning, and other essential services as required.

CSP uses evidence-based practices to supervise and manage sex offenders in the community. These include the Containment Model, a national strategy introduced by the American Probation and Parole Association (APPA), and a graduated sanctions matrix to address non-compliant behavior. Other tools include Global Positioning System (GPS) monitoring, search and seizure, social media monitoring, routine and incident-specific polygraph testing, offender surveillance, drug treatment, and computer and cell phone searches/monitoring. Approximately 25 percent of CSP's sex offenders are on GPS monitoring at any given time. SOU staff also works closely with our law enforcement partners on special initiatives including the servicing of warrants with the United States

Marshals Service, call-ins and joint accountability tours with the Metropolitan Police Department (MPD), and sharing of GPS data with MPD.

It is essential to public safety that CSP have resources necessary to provide adequate supervision of sex offenders. These resources include:

- **CSO staff** to supervise sex offenders at low caseload ratios necessary for highest-risk offenders. Although there is no national standard sex offender caseload ratio, recommended caseloads for intensive, high-risk sex offenders ranges from 20-25:1.[2]
- **Funding** to perform evaluation and treatment services for sex offenders. CSP currently uses portions of our overall Contract Substance Abuse Treatment budget to support sex offender evaluation and treatment.
- **Contract GPS funding** to provide enhanced monitoring of sex offenders.

PSA

High risk pretrial defendants, including those charged with sex offenses, are supervised according to court imposed release conditions. If the defendant is not detained pending trial, the court may order release conditions such as drug testing and frequent case manager contacts, as well as electronically monitored curfews, stay-away orders and home confinement. Defendants with higher-level risk scores and previous convictions for victim-related crimes who are released by the court usually have some or all of these conditions pending trial. Supervision includes continuous monitoring of court-ordered conditions, regular checks for new arrests or warrants, and swift administrative responses to defendant noncompliance.

It is essential for public safety that PSA has the resources necessary to provide adequate supervision of high risk defendants. These resources include PSA staff to supervise high risk defendants at a caseload ratio of 25:1 and contract funding for GPS and substance abuse treatment providers.

IV. RELOCATION OF FORENSIC LAB

I understand that the current Pretrial Services Agencies Forensic Lab is on Indiana Ave in the MPD headquarters building which is about to undergo a significant renovation and that CSOSA is requesting $1 million to relocate it.

a) Can you give us an overview of the costs associated with the move?

The major costs include:

- new space build out,
- lab design expertise,
- increased lease cost,

[2] California Department of Corrections and Rehabilitation, Sex Offender Supervision and GPS Monitoring Task Force, October 2010, page 3; Bill Burrell, Caseload Standards for Probation and Parole, September 2006, page 6.

- contract assistance, and
- miscellaneous expenses.

PSA's budget request includes resources commensurate with the movement and recalibration of delicate drug testing equipment, as well as the need to retain requisite design expertise. Because the relocated laboratory will have unique power, HVAC-venting, and water supply requirements, its design requires specialized Architect and Engineering (A&E) expertise.

b) Is there space near the Court where the lab can be moved?

While PSA has undertaken preliminary relocation activities, including development and submission to the Congress and to the General Services Administration (GSA) of the required prospectus, space for the new lab has not yet been identified. Given that the space requirements for the lab are very specific, it is not yet known if GSA will be able to locate affordable space that is close to the courts.

c) How many drug tests are performed at the lab?

In FY 2010, the Lab conducted 3,429,261 drug tests on 539,822 urine samples of persons on pretrial release, probation, parole, and supervised release, as well as for persons (juveniles and adults) whose matters are handled in the DC Family Court.

V. PROBATION/PRETRIAL SERVICES

I understand that for fiscal year 2011 you project there will be more than 6,900 charged defendants awaiting trial and more than 16,000 convicted offenders being supervised in the city by probation and pretrial services officers.

a) How is CSOSA using technologies such as electronic monitoring to improve the supervision of offenders?

b) Do these methods help you reduce resource requirements?

Effective recidivism-reduction programs are ones which target moderate and high risk offenders—those most likely to re-offend.[3] Many recent studies have shown support for reducing recidivism by focusing limited resources on those offenders most likely to recidivate due to their high level of risk to the community and their high criminogenic needs.[4] CSOSA has embraced evidence-based approaches and technology to identify and address the risk and needs of our highest risk populations. Because of the enormous needs of our offender/defendant population, these innovative approaches do not result in reduced resource requirements. Rather, they allow us to use existing resources more effectively.

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[3]Warren R.K. and Crime Justice Institute (2007), pg. 29.

[4] Taxman, F.S. and M. Thanner. (2006). Risk, Need, and Responsivity (RNR): It All Depends. *Crime & Delinquency*, Vol. 52, No. 1, January 2006, pgs. 28-51.

1. CSP has developed a state-of-the-art assessment instrument (AUTO Screener) that identifies offenders' level of risk and specific needs. This instrument allows CSP to effectively focus Agency resources on those high-risk, high-need offenders most likely to re-offend.
2. In March 2011, CSP deployed a Kiosk reporting system for low-risk offenders. By increasing the number of low-risk offenders reporting to automated Kiosks, supervision Community Supervision Officers (CSOs) can provide more intense supervision for high-risk offenders. The New York City (NYC) Department of Probation expanded their Kiosk system for low-risk probationers in 2003. The two-year re-arrest rate for NYC high-risk probationers declined from 52 percent to 47 percent after being assigned to more intensive officer supervision afforded by their Kiosk expansion[5]. While there are likely other factors leading to NYC's reduction in re-arrests, CSP also expects recidivism to decline over time as we focus existing resources on high-risk offenders
3. CSP and PSA use Global Positioning System (GPS) technology to remotely track high-risk offenders and defendants on a 24/7 basis and ensure stay-away orders and curfews are enforced. GPS helps deter offender involvement in crime as offenders can be identified being near a crime scene. In FY 2010, a CSP review of offenders placed on GPS showed that, for a sample of offenders, re-arrests decreased 71 percent for the 60-day period the offenders were on GPS when compared to the 60-day period prior to GPS placement. PSA evaluated the use of GPS since its inception and found that 88 percent of GPS placements involved defendants with stay-away from person or location requirements. Misdemeanor assault charges were the most common offenses for those on GPS, though violent or dangerous felony charges made up over 37 percent of program placements. Despite the electronic surveillance population presenting a greater level of risk than other defendants, High Intensity Supervision Program protocols kept the rearrest rate among this population to just 8 percent in FY 2010, 4 percent less than the overall defendant rearrest rate while under pretrial supervision.

c) What is CSOSA doing to ensure that you are implementing the best prisoner re-entry programs available to both protect communities and reduce recidivism?

Between FY 2005 and 2010, CSP supervised an average of 2,404 offenders released each year from prison. CSP works closely with Federal and DC Government agencies, as well as community-based organizations, to successfully move offenders through the three stages of reentry: prison, transition, and community integration.

1. Prison - During the first stage of reentry, the Federal Bureau of Prisons (BOP) incarcerates DC offenders in facilities located across the United States. The BOP attempts to place DC offenders within 500 miles of the District, although some special classes of offenders are housed at further distances in facilities that meet their specific program, medical and/or security needs. The BOP provides eligible offenders a number of services to support their successful return to the community. These include vocational training, substance abuse education and treatment, health and nutrition, employment, personal finance/consumer skills, information/community resources, release requirements and procedures, and personal growth and development.

[5] The JFA Institute. July 2007. Innovations in Probation: Assessing New York City's Automated Reporting System.

To facilitate the transition from prison to community for DC offenders, CSP conducts quarterly Community Resource Day presentations by videoconference for offenders at the Rivers Correctional Institute in Winton, North Carolina. This correctional facility houses the largest number of DC offenders in any single facility in the Federal Bureau of Prisons (approximately 700 of 6,000 as of September 2010). Those inmates scheduled for release within 90 days receive information from DC-based housing, healthcare, employment, and education providers through these videoconferences. CSP has also packaged the Community Resource Day presentations, and related written materials, on a set of DVDs and CDs, and, with the cooperation of the BOP, has distributed the package to all federal prisons to assist DC inmates scheduled for release.

2. Transition - Roughly half of DC inmates returning from BOP custody to CSP supervision transition to the community through a Residential Reentry Center, commonly referred to as a halfway house. CSP Community Supervision Officers (CSOs) from its Transitional Interventions for Parole Supervision (TIPS) are placed in the District of Columbia's three Residential Reentry Centers, all of which are operated by vendors under contract with BOP. These CSOs begin assessment and case planning with offenders prior to release and continue to work with these offenders during their halfway house stay. Transition through a Residential Reentry Center improves an offender's ability to develop a sound reentry plan and connect with necessary services in the community.

3. Community Integration - The most intensive portion of CSP's direct role in reentry takes place after release from prison while an offender is on parole or supervised release. CSP emphasizes offender accountability and opportunity through risk and needs assessment, close supervision, treatment and support services, and partnerships designed to increase CSP's resources to supervise offenders and meet the diverse needs that the population presents.

   CSOSA's Reentry and Sanctions Center (RSC) provides a select group of returning offenders with a 28-day assessment and treatment readiness program prior to placement in residential or outpatient programming. The program targets offenders/defendants with long histories of crime and substance abuse coupled with repeated periods with incarceration and little outside support.

   Through its Faith Community Partnership, CSP maintains a city-wide network of faith-based services, including offender mentoring, job training, employment assistance, substance abuse treatment and transitional housing. More than 200 offenders have been matched with faith-based mentors who offer additional support in the offender's efforts to navigate the reentry process.

   Recognized that official government-issued identification is essential to a returning offender's ability to securing employment and housing, CSP provides verification of a reentrant's address to assist him or her in obtaining official non-driver's identification from the DC Department of Motor Vehicles.

The Comprehensive Reentry Strategy for DC -
On December 11, 2010, the Criminal Justice Coordinating Council (CJCC) convened the Citywide Reentry Strategic Planning Forum. CSP played a major role in planning and conducting this event. The daylong strategic planning session was designed to gather input from stakeholders in order to inform the development of a 2011 Comprehensive Reentry Strategy for the District of Columbia.

More than 100 stakeholders, including returning citizens, federal and local government agency representatives, non-profit and private sector organizations and community members, took part in the interactive forum, the result of which was a series of recommendations to address the persistent education and training, employment, housing and healthcare challenges facing returning offenders

d) How does CSOSA assess offender and defendant risk of re-offending while in the community?

Criminal justice and social science research confirm that objective, actuarial risk assessments are the most effective means to predict future individual behavior—particularly future re-arrests, failures to appear for scheduled court appearances, and noncompliance with court-ordered conditions of supervision.

CSP developed a proprietary automated offender screening instrument (AUTO Screener) to assess each offender's risk and needs for purposes of assigning an appropriate level of supervision and developing an automated, individualized prescriptive supervision plan that identifies programs and services that will address the offender's needs. Offenders assesed as high risk pose the largest threat to re-offending and public safety. The AUTO Screener is administered upon assignment to a supervision Community Supervision Officer and on a recurring basis throughout supervision.

Recent studies examining pretrial defendant risk assessment have identified prior failures to appear, prior convictions, current felony charges, unemployment status, history of drug usage, and current pending charges as the most common factors related to pretrial failure.[6] PSA's objective risk assessment instrument includes all but one of the risk factors validated to pretrial misconduct (PSA excludes unemployment status given the difficulty in verifying this information before the initial court appearance) as well as factors mandated by local and Federal bail statutes. Use of an objective risk assessment has allowed the PSA and the Courts to keep overall rearrest rates and rates of rearrests for violent crimes low. For example, between fiscal years 2005 and 2011, an average 88 percent of released defendants remained arrest free throughout the pendency of their cases, while an average 97 percent of defendants were not rearrested on violent crimes.

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[6] Austin, J. and T. Murray (2009) Re-Validation of the Actuarial Risk Assessment Instrument for Harris County Pretrial Services. Washington. D.C.: The JFA Institute. Clark, J. and D. Levin (2007) The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment. Washington, D.C.: Pretrial Justice Institute. Lowenkamp, C., R. Lemke and E. Latessa (2008) The Development and Validation of a Pretrial Screening Tool. Federal Probation. Vol. 72 (3). Podkopacz, M. (2006) Fourth Judicial District of Minnesota Pretrial Evaluation: Scale Validation Study. Power Point Presentation. Siddiqi, Q. (2006) Predicting the likelihood of pretrial re-arrest for violent felony offenses and examining the risk of pretrial failure among New York City defendants: An analysis of the 2001 dataset. New York, NY: New York City Criminal Justice Agency, Inc. VanNostrand, M. (2003) Assessing risk among pretrial defendants in Virginia: The Virginia pretrial risk assessment. Richmond, VA: Virginia Department of Criminal Justice Services. VanNostrand, M., and G. Keebler (2009) Pretrial Risk Assessment in Federal Court. Federal Probation. Vol. 72 (2).

VI. FATHERING COURT INITIATIVE

The courts budget request includes an increase for a Fathering Court Initiative. I understand that the primary goal of the program is to help fathers sustain employment, make child support payments and establish healthy relationships with their children. This program was recognized and awarded by the Harvard Kennedy School in September 2010.

a) How successful has this program been in keeping offenders from being involved in crimes?

b) How helpful has it been in reducing recidivism?

One out of every four D.C. prisoners owes court-ordered child support. Offenders released from prison to CSP supervision often face a daunting job search. These former inmates, already behind in child support payments, face difficulty finding employment due to their criminal records and educational deficits. Probationers face similar employment challenges. The DC Courts' Fathering Court Initiative helps fathers who are behind in child support payments find jobs and reconnect with their children. The Fathering Court is a voluntary court proceeding and reentry program. While job seeking plays a big part in the course, the program also focuses on parenthood and relationships, with the men receiving guidance on how to reintegrate with their children.

Since the DC Courts' Fathering Court Initiative began in November of 2007, and CSP began to refer offenders to the program in the summer of 2008. A total of fifteen (15) offenders have successfully graduated from the Fathering Court program. Several of these graduates have successfully completed their probation, are working in full-time positions and making child support payments, and are actively participating in the parenting of their minor children. Of the fifteen CSP graduates, only one has since been rearrested.

The Fathering Court currently has limited program capacity. It would be beneficial to CSP if the program was expanded to increase the number of offender participants. If more slots were available, CSP could make the program mandatory for CSP offenders meeting certain child support and employment criteria. Based on the limited results of CSP offenders who have already participated in the Fathering Court, expansion of the program is an option that could improve the lives of children and help reduce recidivism.

VII. FISCALLY CONSERVATIVE FUNDING

Because of the important public safety work that you do, it may not be realistic to reduce your funding to the fiscal year 2008 level. Could you manage at the fiscal year 2010 level?

CSOSA is still realizing the effects of the FY 2011 funding levels and it is unclear what the programmatic funding levels for FY 2012 will be so the agency does not feel comfortable speculating. A reduction in funding for CSP and PSA would involve curtailing and/or eliminating mission-critical treatment and prevention programs, and will involve staff RIFs. Reduction in resources will most likely increase

revocation rate and number of new offenses in the District. An increase in requests for revocation will place increasing programmatic and financial pressure on our criminal justice partners. The ratio of counselors to clients will likely increase.

Questions for the Record Submitted by Ranking Member Serrano

VIII. SUPERVISION OF OFFENDERS

a) What are typical impediments to successful offender supervision?

Typical impediments to successful offender supervision that, if addressed, are shown to reduce an offender's likelihood to re-offend include:

1. Non-existent or unstable housing,
2. Unemployment, and
3. Lack of substance abuse and/or mental health treatment.

According to a report by the Council of State Government's Justice Center, the ability for individuals released from prison or jail to access safe and secure **housing** within the community is crucial to their successful reentry.[7] The report further states that studies have shown that the first month after release is a vulnerable period "during which the risk of becoming homeless and/or returning to criminal justice involvement is high."[8] Finding stable, adequate offender housing remains a great challenge and priority for CSP. **As of September 2010, approximately eight (8) percent of CSP's offender population lived in unstable housing; most of these offenders lived in homeless shelters.**

Another key challenge is **employment**. A recent evaluation of the Opportunity to Succeed program by the Urban Institute found that finding and maintaining employment for offenders may reduce recidivism—an increase in levels of employment was a predictor of reductions in drug dealing, violent crime, and property crime.[9] Employment placements for offenders is a key need and priority for CSP. **As of September 2010, 32 percent of CSP's employable offender population was unemployed and 37 percent of our offender population had less than a high school diploma or GED.**

The National Reentry Resource Center recently provided some data on the prevalence of **mental illness, substance use, and co-occurring disorders** among incarcerated populations: approximately, 10 to 15 percent of individuals in state prisons have severe mental illnesses; more than two-thirds of jail inmates are dependent on or abused alcohol or drugs--with little difference in the overall prevalence between men (68 percent) and women (69 percent); and in prisons, 30 percent of individuals with substance use disorders also have a major mental health disorder.[10] The majority of these offenders are released back to the community. The National Reentry Resource Center found that access to continuing community-based care upon release complements jail and prison interventions, supports an individual's recovery and ability to comply with conditions of release, and

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[7] Cortes, K. and Rogers, S. (2010). Reentry Housing Options: The Policymaker's Guide, Council of State Governments Justice Center, New York, pg. vii.

[8] Council of State Governments, *Report of the Re-Entry Policy Council* (New York: Council of State Governments, 2005), 272.

[9] http://www.urban.org/projects/reentry-portfolio/employment.cfm.

[10] http://www.nationalreentryresourcecenter.org/faqs/health.

leverages the financial investment made to treat the person while he or she was incarcerated.[11] **In FY 2010, over 30 percent of offenders entering CSP supervision had diagnosed/undiagnosed mental health issues and 60 percent had a drug-related arrest history (excluding alcohol). In FY 2010, 48 percent of those offenders tested by CSP for illicit drugs (excluding alcohol) tested positive.**

In FY 2009, a total of 10,086 offenders entered CSP supervision. A review performed by CSP revealed that about one-third (3,352 offenders) of these FY 2009 intakes tested positive for drugs (excluding alcohol) on three or more occasions during FY 2009. About two-thirds of these 3,352 offenders entered CSP supervision with special conditions for treatment imposed by the Court or the U.S. Parole Commission, and almost 60 percent of these offenders were supervised at the highest risk levels. Many of these 3,352 offenders require full substance abuse treatment services to address their issues, which consists of residential detoxification services (7 days) (where applicable), followed by residential treatment (28 days), and outpatient treatment (54 sessions) or transitional housing (90 days).

b) What resources does CSOSA have to mitigate these needs?

In FY 2011, CSP is expanding the number of Agency Day Reporting Centers (DRCs) by consolidating our existing Day Reporting Center and Vocational Opportunities, Training, Education and Employment (VOTEE) unit resources. The new DRCs will offer on-site programming during the day within certain existing CSP field units. CSP plans to offer offenders vocational development and education services as a component of the DRC program.

CSP's FY 2011 enacted budget provides funding for substance abuse treatment, transitional housing (including faith-based transitional housing), sex offender treatment, faith-based mentoring and mental health assessment contractors. In addition, CSP also uses limited amounts of High Intensity Drug Trafficking Area (HIDTA) grant funding issued to CSP from the Washington/Baltimore HIDTA (Office of National Drug Control Policy) to support contract treatment for offenders meeting HIDTA criteria. Using these resources, CSP refers offenders to treatment and transitional housing on a priority basis.

c) What other entities does CSOSA rely on to meet significant offender needs?

The majority of offenders under CSP supervision are residents of the District of Columbia. As such, the DC Government provides key services, including:

- Substance abuse treatment (Department of Health - Addiction Prevention and Recovery Administration),
- Mental health assessments and treatment (Department of Mental Health),
- Employment (Department of Employment Services), and
- Housing (DC Housing Authority)

However, the DC government has limited resources to perform these services. To meet offender needs not met by CSP or DC government resources, CSP actively engages in partnerships with local entities and faith institutions to provide employment, education, housing, relapse, grief counseling, parenting services and support for our offenders.

[11] Ibid.

IX. RE-ENGINEERING AND RE-ALLOCATION OF FUNDS

Considering the current fiscal realities, is CSOSA doing anything to address its unfunded needs within existing resources, either through re-engineering business practices or re-allocating resources?

We are continually evaluating what we do and constantly looking at ways to efficiently utilize existing to meet high priority public safety needs. When we find programs that are not working well enough, we are prepared to reform them to achieve better results. And if they are not working at all, we will recommend termination. In FY 2011, CSOSA is implementing program changes by streamlining and merging our existing resources to meet high priority public safety needs:

CSP
CSP has made great efforts toward re-organizing existing resources to provide specialized supervision services to meet the unique needs of female offenders; implemented an automated Kiosk reporting application for low-risk offenders; and are planning to expand the number of Agency Day Reporting Centers by consolidating our existing VOTEE unit resources.

PSA
To date, PSA has been able to maintain its program priorities through targeted cutbacks in developmental training for staff and in contract treatment for defendants, as well as through the reassignment of existing supervision staff to the areas of greatest need. However, should more reductions be experienced in future fiscal years, further reductions or elimination of mission-critical programs and reductions in force would be necessary.

THURSDAY, APRIL 14, 2011.

U.S. SUPREME COURT

WITNESSES

ANTHONY KENNEDY, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

STEPHEN BREYER, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

INTRODUCTION OF WITNESSES

Mrs. EMERSON. Good morning. The hearing will come to order.

Welcome, Justices Kennedy and Breyer, and thank you all so much for being here today. You both have testified before the Committee several times, and we appreciate your willingness to meet with us again.

Please give my regards to Justice Thomas and my colleagues: Joe's and Mr. Womack's as well. It seems strange that he is not here this year.

But, anyway, we appreciate so much that you all are here and look forward very much to meeting with you, and we will do our best to meet your resource needs this year.

An independent judiciary, trusted and respected by all citizens and committed to fairly and expeditiously resolving difficult and controversial questions, is fundamental to our Nation. Although the Supreme Court budget is not large in comparison to other Federal programs, I am pleased that you are here today. Because, outside the confirmation process, today's hearing is one of the few instances when we actually get to interact with the judicial branch. It is, in my opinion, a worthy interaction, as we recognize and respect the prerogatives of each branch.

As you all know, the Committee is working to reduce overall nonsecurity domestic spending to fiscal year 2008 levels, and we will ask you all if there are any areas of your budget that could be reduced, but, also, at the same time, be sure that we will make certain the Court has the resources it needs to fulfill your constitutional responsibilities.

Justice Kennedy and Justice Breyer, I look forward to hearing from you about the resources necessary for the operation of our Nation's highest court, as well as any thoughts you have regarding our Nation's courts as a whole.

And now let me recognize my good friend and colleague, Joe Serrano.

Mr. SERRANO. Thank you so much, and congratulations on the Cardinals.

Mrs. EMERSON. Thank you. We finally have hit our stride hitting. Now all we need to do is to learn how to pitch, and we will be in good shape.

Mr. SERRANO. Don't get used to it. It may fall apart.

Thank you, Madam Chair, and I would also like to warmly welcome Justice Breyer and Justice Kennedy back before this subcommittee. Seeing as they have both been here before, I must really commend them, knowing what they may be in for, for showing up again.

As I have said in past years, this is one of the rare opportunities for our two branches to interact. Because of this, our questions sometimes range beyond strict appropriations issues. As our Nation's highest court, many of us look to you for important insights into issues affecting the Federal judiciary as a whole.

There is no question that these are difficult budget times. However, as we look for savings, we must be careful not to affect the ability of our Federal judiciary to hear cases and dispense justice in a fair and timely manner. We must also be sure to provide the Supreme Court, as both the final authority on our Constitution and the most visible symbol of our system of justice, with sufficient funds to undertake not just your judicial functions but your public information functions as well.

We look forward to your testimony, and I join the Chairwoman in having you please bring our warmest regards to Justice Thomas, who I know loves to come to these hearings.

And, of course, as a person who represents the Bronx, New York, a special hello to Sonia Sotomayor. We are very proud of her in my congressional district. As you know, I was born where her parents were born, in Puerto Rico; and we take great pride in her ascension to the Supreme Court.

Thank you so much.

Mrs. EMERSON. You know, as a matter of fact, speaking of Justice Sotomayor, she may be playing on our congressional softball team this year. Just so you know. That way you will have to come to our game. And I know she and a couple of the——

Mr. SERRANO. When did she become a Member of Congress?

Mrs. EMERSON. She and a couple of the other Cabinet Secretaries who are female have indicated a desire to play on the team.

Mr. SERRANO. Talk about the branches getting together. I will have to show up.

Mrs. EMERSON. I would now like to recognize Justice Kennedy. If you would be so kind as to keep your comments to 5 minutes or under, we will have more time for questions.

Thank you so much.

OPENING STATEMENT

Justice KENNEDY. Thank you, Chairman Emerson, Mr. Serrano, Members of the Committee. It is a privilege to appear before you with my colleague, Justice Breyer.

The Chief Justice and all of my colleagues send greetings to you. We will have lunch together tomorrow, and they will be pleased to hear that you send them warm regards.

You mentioned the independence of the judiciary. We talk often of separation of powers and checks and balances in interchangeable terms. We use them to cover one concept. Really, they have a different thrust. Separation of powers means each branch of the government has powers that are its own. You have the power of the

purse. We have the judicial power. The President, the Commander in Chief, and so forth. That is separation of powers.

Checks and balances presumes that the benches can't be completely separate. We have to interact at some points. And one is when we present to you our budget request, and it is the time at which you can inquire about our operations to make sure that they are efficient.

The courts, by tradition, are cautious, prudent; and it has always been our tradition to be extremely careful in the budget request that we submit to the Congress. I can assure you that the Chief Justice went through the budget recommendations of our own staff with great care before we presented the budget request for fiscal 2012.

Many of those staff, our principal officers, are here today with Justice Breyer and me: Jeff Minear, who is Counselor to the Chief Justice; Kevin Cline, who is Director of Budget; Pam Talkin, the Marshal of the United States Supreme Court; William Suter, the Clerk of the Court; and Kathy Arberg, our Public Information Officer. I might say that we have a staff working under, principally, Jeff Minear and Kevin Cline, who talks on a regular basis with your staff, and this is an oversight function in itself. My understanding is that your staff has been extremely helpful and cooperative; and, Madam Chairwoman, if you could extend our thanks to your staff for that.

Our budget request for fiscal 2012 is a reduction, if you take an assumed budget for fiscal 2011. And we worked very hard to get that reduction because we are quite conscious of the fact that the government must be extremely careful in its stewardship of the taxpayers' dollars.

Our budget request for fiscal 2012 is $75,500,000. That is a reduction of $706,000 from the assumed budget in fiscal 2011. Even with the assumed reduction, we have been able to find cost containment measures to enable us to ask for 12 additional positions for the police. We actually need more than that for police. We need probably double, and we need other personnel. But we have, in light of budgetary constraints, confined our request to that. That is urgent that we have that.

We have a command center that has to be manned 24 hours a day. It is cost effective not to pay overtime; and our police work, as you know, is becoming much more sophisticated.

Our Court has its own Web site, and I can tell you about it later if you are interested, which has to be operated 24 hours a day, and so we do need those extra positions.

We are going to ask next fiscal year for a small amount to investigate the possibility of having payroll and personnel functions contracted out to another agency of the government. We can't use the Defense Department or HHS or a congressional payroll mechanism. We are too small. So we have an outside contractor, but we find out that there are certain government agencies that are also quite small that have a program that we can use and that will cost us some money for startup and investigation, but, in the long term, it will save money.

We are about seeing the end of the courthouse modernization renovation project. It has gone way over time, but it is within

budget. There will be claims on both sides, as happens with a long project, but, pending the outcome of those claims, it looks like we are in budget, and the construction people will be out of the building site I think by around April 30. Then landscaping can begin; and our court building, which has been undergoing this renovation since 2004, will once again be open.

I think that concludes my remarks, Chairwoman Emerson.

[The information follows:]

Statement of Justice Anthony Kennedy
Associate Justice of the Supreme Court of the United States
Before the
Subcommittee on Financial Services and General Government
of the
House Committee on Appropriations
April 14, 2011
10:00 am
Rayburn House Office Building, Room 2359

Chairwoman Emerson, and Members of the Subcommittee.

It is a privilege to appear before you with my colleague Justice Breyer. We are here to discuss the budget requirements of the Supreme Court for the fiscal year 2012.

We are accompanied today by William Suter, Clerk of the Court; Pamela Talkin, Marshal of the Court; Jeffrey Minear, Counselor to the Chief Justice; Kathy Arberg, our Public Information Officer; and Kevin Cline, our Budget Manager.

We appreciate your recognition of the constitutional position the Supreme Court has in our system of separation of powers and checks and balances. That same system, of course, vests Congress with the duty and responsibility to make appropriations for the operations of the government. We are pleased to assist the Subcommittee in evaluating the needs of the Court.

As is customary, the Supreme Court's budget request consists of two parts. The first is for salaries and expenses of the Court. The second is for care of the building and grounds. Today, we will address the salary and expenses portion. The Architect of the Capitol will present a separate statement to the Subcommittee concerning the budget request for the care of building and grounds.

Before addressing the Court's salaries and expenses, we would like to provide a brief update on the progress of an ongoing construction project: the modernization of the Supreme Court building. We are pleased to report that this project, which began in the summer of 2004, is substantially complete. The contractor is finishing work in the basement mechanical rooms, parking garage, and miscellaneous remaining areas of the building as well as performing final testing and activation of life-safety systems, mechanical systems, and electrical systems. Site demobilization has begun and will be complete very soon. We will then turn to restoring the grounds, which have been used for staging the construction work.

The primary emphasis in this brief summary is the Court's budget request for the Court's salaries and expenses. We are mindful of the severe budget constraints that the federal government confronts and of your most difficult task in establishing funding priorities. The Court's own budget is quite small, even in comparison to the modest needs of the entire federal judiciary. Nevertheless, we always review our funding requirements with great care. It is our tradition to exercise this prudence and caution so that we limit budget requests to cover just what the Court requires to conduct its vital work, not more.

The budget request for fiscal 2012, then, reflects the Court's commitment to prudence and caution as it seeks to conserve funds from the taxpayers. The amount requested for fiscal year 2012, for salaries and expenses, is $75,551,000.

If we use as a base for comparison the amount the Court requested for the last fiscal year, the request this year shows a decrease. This is a decrease of $2,207,000 from the amount requested for fiscal year 2011. (That requested amount was $77,758,000.)

If we use an assumed budget for fiscal 2011, then by this measure, too, the amount requested for fiscal 2011 is a reduction. The assumed budget for 2011 is $76,257,000. Our current request is lower than this by $706,000.

We were able to make these reductions even though the courts do not have the capacity to alter their mission or reduce their functions. The courts must hear criminal cases and civil cases in the regular course in order to protect the rights of the parties. We have no control over the number of cases that enter the judicial system. Within that framework, however, we can find, and have found, ways to make our operations more efficient.

The Chief Justice is committed to cost containment within the judiciary. He has instructed the Court's budget staff to investigate new methods of operating more efficiently and reducing costs. This has led to the prospect for additional savings through methods not previously considered by the Court. For example, the Court is evaluating the possible use of resources within the executive branch for payroll and financial operations. In the past year, the Court has begun study of the feasibility of processing the Court's payroll and financial tracking and reporting systems through government entities that perform those same functions for executive branch agencies. We are covering the costs of investigating this initiative through cost-reduction measures in other areas, including deferred filling of employee vacancies. If this initiative proves promising, we will request a modest increase in funding next year to realize long-term future savings in personnel, budget, and accounting costs. This initiative, if successful, has an additional attraction. It would allow us to reduce our reliance on contract employees by utilizing the services of existing federal employees already doing similar tasks within the government.

In fiscal year 2012, the Court will fund the increases for benefits costs and inflationary increases in fixed costs within the reduced funding amount. We also renew our request, made last year, for authority to hire an additional 12 police officers within this budget amount. As we explained in last year's hearing, these officers are required to perform needed functions and to give full coverage to each post. The additional positions will be possible as a result of our cost saving initiatives. . . and they are urgently needed. We need more staff in other areas, as well, but we will defer requesting them at this time.

Our budget is a small fraction of the overall federal budget, but we are confident that we are doing our part to address the financial constraints faced by our entire federal government.

This concludes a brief summary of our request. We will be pleased to respond to any questions about our budget request that the Members of the Subcommittee may have.

ANTHONY M. KENNEDY

BIOGRAPHICAL DATA

Born July 23, 1936 in Sacramento, California. Married Mary Davis, June 29, 1963; three children.

Education

Stanford University, 1954–57; London School of Economics, 1957–58; Stanford University, B.A., 1958; Harvard Law School, LL.B., 1961.

Judicial Offices

Nominated by President Ford to U. S. Court of Appeals for the Ninth Circuit; took oath of office May 30, 1975; Nominated by President Reagan as Associate Justice of the United States Supreme Court; took oath of office February 18, 1988.

Law Practice

Admitted to California bar, 1962; U. S. Tax Court bar, 1971; Associate, Thelen, Marrin, John & Bridges, San Francisco, 1961–63; sole practitioner, Sacramento, 1963–67; partner, Evans, Jackson & Kennedy, Sacramento, 1967–75,

Law Teaching

Professor of constitutional law, McGeorge School of Law, University of the Pacific, 1965–1988.

Other Offices

California Army National Guard, 1961; member, the Judicial Conference of the United States Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, 1979–87; the Committee on Pacific Territories, 1979–1988, named chairman 1982; board of the Federal Judicial Center, 1987–1988; American Bar Association, Sacramento County Bar Association, State Bar of California, Phi Beta Kappa; board of student advisors, Harvard faculty, 1960–61.

(Revised April 2000)

STEPHEN BREYER

BIOGRAPHICAL DATA

Birth, Residence, and Family

Stephen Breyer was born August 15, 1938, in San Francisco, California, the son of Irving G. Breyer and Anne R. Breyer. He married Joanna Hare, September 4, 1967. They have three children: Chloe (born 1969); Nell (born 1971) and Michael (born 1974).

Education

Attended public elementary and high schools (Lowell High School) in San Francisco; Stanford University, A.B. 1959, Great Distinction; Oxford University, Magdalen College, Marshall Scholar, B.A., 1st Class Honors, 1961; Harvard Law School, LL.B., magna cum laude, 1964, Harvard Law Review, articles editor.

Law Clerkship

Clerk to the Honorable Arthur J. Goldberg, Associate Justice, Supreme Court of the United States, 1964–1965.

Law Teaching

Harvard University: Assistant Professor, 1967–1970; Professor of Law, 1970–1980; Professor, Kennedy School of Government, 1977–1980; Lecturer, 1980–present. Visiting Professor, College of Law, Sydney, Australia, 1975; University of Rome, 1993.

Judicial Offices

Judge, U.S. Court of Appeals for the First Circuit, December 10, 1980 (nominated by President Carter); Chief Judge, 1990–1994; Associate Justice, Supreme Court of the United States, August 3, 1994 (nominated by President Clinton); Member, Judicial Conference of the United States, 1990–1994; Member, U.S. Sentencing Commission, 1985–1989.

Government Service

Special Assistant to the Assistant Attorney General (Antitrust), Department of Justice, 1965–1967; Assistant Special Prosecutor, Watergate Special Prosecution Force, 1973; Special Counsel, U.S. Senate Judiciary Committee, Subcommittee on Administrative Practices, 1974–1975; Chief Counsel, U.S. Senate Judiciary Committee, 1979–1980.

Published Works

Judges in Contemporary Democracy: An International Conversation (New York University Press, 2004), *Breaking the Vicious Circle: Toward Effective Risk Regulation* (Harvard University Press, 1993), *Regulation and Its Reform* (Harvard University Press, 1982), *Administrative Law and Regulatory Policy* (Little Brown 3rd ed., 1992) (with Richard Stewart); *The Federal Power Commission and the Regulation of Energy* (with Paul MacAvoy) (Brookings, 1974). Has contributed numerous articles to legal journals primarily on the subjects of administrative law and economic regulation.

Civil and Professional Activities

Trustee: University of Massachusetts (1974–1981); Trustee: Dana Farber Cancer Institute (1977–____); Member: American Academy of Arts and Sciences; American Law Institute, American Bar Association.

Recreation

Bicycling, jogging, cooking, and reading.

(Revised March 2005)

STATEMENT OF
THE HONORABLE STEPHEN T. AYERS, AIA, LEED AP
ARCHITECT OF THE CAPITOL

Regarding Fiscal Year 2012 Appropriations
U.S. SUPREME COURT, CARE OF THE BUILDING AND GROUNDS

Subcommittee on Financial Services and General Government
Committee on Appropriations, U.S. House of Representatives

April 14, 2011

Madam Chairwoman, I am pleased to submit this formal statement regarding the Office of the Architect of the Capitol's (AOC's) Fiscal Year 2012 budget request for the care of the building and grounds of the Supreme Court of the United States (SCUS).

The AOC is responsible for the structural and mechanical care, maintenance, cleaning, and operation of the buildings and facilities supporting the Congress. This responsibility includes the Capitol Building, the House and Senate Office Buildings, as well as the U.S. Botanic Garden, the Library of Congress buildings and grounds, and the U.S. Capitol Police buildings and grounds. Our agency also undertakes the design and construction of new facilities and the renovation of existing facilities on behalf of the Congress.

For the Judicial Branch, the Architect of the Capitol, by authority of 40 U.S.C. 6111a-6111b, dated May 7, 1934, is responsible for the structural and mechanical care of the Supreme Court building and grounds, to include the design and construction of new facilities and the renovation of existing buildings.

Operations and Maintenance

The AOC's priorities continue to be the care and maintenance of the U.S. Supreme Court to ensure the safety and security of the Justices, Court personnel, and visitors, as well as to make improvements to the building and grounds. Our Fiscal Year 2012 budget request continues to focus on these important priorities, and therefore, we have requested $8,504,000 to meet the

requirements of the Court for the care of the building and grounds. This request is $151,000 more than the Fiscal Year 2011 assumed appropriation. Program increases totaling $85,000 have been requested to fund two additional permanent positions. Adjustments to the base of $66,000 are requested to cover costs for within grade increases, benefits adjustments and general inflationary costs for current operations and maintenance services.

During Fiscal Year 2010, we made significant improvements to the building systems and grounds, and we continued to refine and enhance our maintenance processes. Some of the projects that were completed include Phase II of the planned roof repairs, and the partial installation of roof fall protection and lightning protection systems. We also surveyed the East Conference room and restored the highly decorative plaster ceiling and oak walls. We installed ADA-compliant water coolers in public spaces; made repairs to the central vacuum system; replaced the sump pumps serving the North and South drives; upgraded the building cable television system, and renovated a number of private restrooms. Our dedicated staff at the Court also conducted a condition survey of all existing exterior bronze elements, and continued pointing and grouting interior and exterior marble joints.

In addition, we continued our successful program of tracking the ongoing preventive maintenance of mechanical and other equipment, and bar coding these assets to better facilitate routine, scheduled servicing. Our customary care and maintenance of the facility includes pressure washing the annex garage concrete and marble terraces, repairing and painting fountain concrete, and performing maintenance on the grounds and in the interior courtyards. In addition, numerous minor repairs and improvements were made to the building's plumbing, heating/ventilating/air conditioning (HVAC), and electrical systems. As part of the ongoing building security project, we recently installed new infrastructure, raceways, and security devices.

Building Modernization Project Status Update

I am pleased to report that the U.S. Supreme Court Building Modernization Project has reached substantial completion, and that the project remains within budget. This two-phased construction project began in summer 2004 and reached substantial completion in January 2011. In Fiscal Year 2007, an additional $6.3 million was appropriated to attain full funding for the estimated cost to complete, which brings the appropriated budget authority to $122.3 million. Completion of punch list, administrative closeout, and change order negotiation remain to be completed for the project to reach final completion.

Conclusion

Mr. Chairman, we recognize that the current fiscal environment presents a very difficult challenge for all of us to do more with less funding. We strive to make the maximum use of every taxpayer dollar, and we continue to identify cost savings and efficiencies. However, as stewards of these historic facilities, such as the Supreme Court Building, it is important that we continue to invest in the Supreme Court's infrastructure to ensure the seat of our Federal judicial system continues to endure. Our budget request for Fiscal Year 2012 reflects our serious efforts to balance our stewardship responsibilities with fiscal responsibility. We will continue to work closely with this Subcommittee and the Court on these important matters. We appreciate your continued support of our efforts.

Mrs. EMERSON. Thank you, Justice Kennedy.

Justice Breyer.

Okay. Let's go ahead, and we will start the questions.

I know you will be very happy to have the construction work completed; and, it is one of those questions that I want to ask about because, you know, when I have so many constituents who come to Washington the first time, and this is the time of year they are visiting, they have asked about the front door of the Supreme Court. And I also know that there was concern raised by some Members of the Court and also some of our colleagues with regard to the fact that you were closing its main door.

But then, again, tragic incidents like that which happened last year at the courthouse in Las Vegas, at the Pentagon, more recently, the tragedy in Tucson, remind us of the importance of security. It is my understanding, though, that visitors can climb the steps to the main entrance and still can exit the building from that entrance. And I further understand that the new visitor screening process was contemplated and funded during the modernization process. You know and we all know that both the White House and the Capitol have elaborate screening processes, and there is no reason that you all should not as well.

Justice Kennedy, can you describe the process the Court used in deciding to change its visitor screening procedures? And then a couple of other questions along that line: Are visitors still welcome to climb the steps to the main entrance? Can they exit using the main entrance?

And then I will ask Justice Breyer for any comments he might have on that.

Justice KENNEDY. There is a symbolism in going up the steps to the Supreme Court and a symbolism to make sure that it is open. In the Cold War and just after the Cold War, when we had visitors from Eastern Europe, they were amazed that our courts were open. Well, of course, they are open; and the steps symbolize that.

As part of the reconstruction of the Court—renovation of the Court, I should say—we had actually some experts on exhibits and visitors, and they found that the atrium to the Court, which is unair conditioned, is just stifling in the summer, quite unwelcoming. The minute the visitors went in to the Great Hall, we had to have screening devices in the Great Hall of the Supreme Court. The restrooms were on either side. It was just not a welcome or dignified entrance for visitors, quite apart from security.

Then, when we looked at security, the security people said there is no way that you can do this, and we agreed with that and spent—it is classified—millions of dollars on an updated security facility so that they enter under the steps. When you go into the Court now to the ground level, it is slightly confusing for the visitor, because some visitors don't know that they can go upstairs and see the Court. So we are working on new brochures, signage, and so forth so that it will continue to be a good experience.

But just insofar as the looks of the Great Hall, it is greatly improved, quite apart from security; and from security, it is mandatory.

Mrs. EMERSON. I appreciate that.

Justice Breyer, do you have any comments?

Justice BREYER. Well, I wrote some comments.

We have many difficult questions in the Court, and we don't always agree, and that is because they are difficult and there are two sides to the question. This was one of the questions where, in my mind, it was a close and difficult question. And, as you pointed out, there is security considerations on one side, and the other side is the traditional idea of people being able to walk up the steps and go into the room.

So we disagreed. I thought we should have left it open. I read the same papers and others read the same papers and came to the conclusion that we should close it off from people coming up.

I am glad I wrote the paper, because my reason, really, is I don't want it to get lost. Eventually, things will calm down, I hope, and eventually, at that time, the security needs may diminish, and eventually, at that time, I hope it will be possible for every American to walk into that plaza, walk up the steps, into equal justice under law and walk into the building. That is why I wrote it.

Mrs. EMERSON. Thanks.

ADDITIONAL POLICE OFFICERS

Now, Justice Breyer, you and Justice Thomas last year—and Justice Kennedy discussed this briefly in his remarks—about the need and actually made a very compelling argument for additional police officers at the Supreme Court. And when we had last year's hearing we never anticipated that the fiscal 2011 budget process would be dragged out until today. But, nonetheless, it has, far longer than I know our co-chair, Ranking Member Mr. Serrano, and I had hoped.

But, once again, you all have proposed 12 additional police officers to operate your modern police command center and also to enable you to secure additional entryways once the modernization is completed. So can you all explain how this new command center is going to improve security at the Court?

Justice KENNEDY. Our Court is open 24 hours a day because we have a Web site that is always up. I tell my law clerks, one of us has to work until 2:00 in the morning, and it is not me. So the law clerks are there late in the evening.

We have eight acres of grounds which have to be protected, and a number of our officers now have to spend time learning about cyber security threats and so forth, and that is part of the command center.

The command center has to be manned, and it should be manned, by more than one person; and we think it is unproductive and not sound cost responsibility to pay overtime. And so that is why we need—actually, our people said we needed 25, and the Chief Justice and the staff went over it, and we can live with the 12. We do consider the 12 urgent, and it is in the context where I have explained, again, if you assume fiscal 2011 as a baseline, of a reduction of some $706,000, even with the new police.

It also takes time. They have to go through special training, and we have to implement them. So the 12 will be quite workable.

Mrs. EMERSON. Thank you.

CHANGES IN JUSTICE PROTECTION

Can you tell me, to the extent that you can say it in public, has the shooting in Tucson resulted in any changes in your protection when the Justices are away from the Supreme Court building?

Justice KENNEDY. Let me just say this, since you mentioned it. The Ninth Circuit is my circuit. I was on that circuit court, and I am now the circuit justice for that.

Chief Judge John Roll was one of the fine judges in the United States system. We know who our good trial judges are. He was one of them. He had a marvelous background. He was on the Criminal Rules Committee, Justice Breyer, and would be called by judges from around the country if there were a particular problem. And that shooting left his wife Maureen and three children. He was the chief judge of the district. Arizona is a single district.

The judges have picked up right where they left off, in part because of the commitment that he showed. Our judges are among the most dedicated, principled, public servants in the world, and it is urgent for the Congress to make provisions so that we can continue to attract to our bench practitioners who are preeminent in the practicing bar.

Now, anytime there is an incident like that, we take a second look at our procedures. We have threat assessment going on at all times. Again, that is part of our police force, and we are always aware of security threats.

Mrs. EMERSON. Justice Breyer, do you have any comments?

Justice BREYER. I agree with the Justice.

Mrs. EMERSON. Okay. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you so much.

SUFFICIENT BUDGET LEVEL

We are always very careful on the House floor or in committee hearings never to speak to anyone in the audience. So I will be very careful about that rule and simply say that some visitors to this building should be aware of what is happening today, which is a unique situation.

We know the Supreme Court is this body of men and women who interpret our Constitution and make so many important decisions that affect all our lives, but the Supreme Court is also a place where people get hired and salaries have to be paid, and the building itself is a tourist attraction. So, to some, this hearing may seem a little different than what you expect, but it is that other part of legislating and appropriating when you have to make sure that those places which are part of our society and our government, such as the White House and this Capitol Building and the museums and all the other things, but also the Supreme Court are properly funded.

So issues of whether the door is open or not are very important, and going up those steps are very important, and they take on a new significance. We all, in a bipartisan fashion, want to make sure that the building is in good shape and that the tourists who come there get to see the proper presentation and that it is some-

thing that we can be proud of, as we are, but we have to make sure that it happens all the time.

Notice how I did that without speaking to anyone in particular directly.

I just want you to know, later today we will vote on finishing the fiscal year 2011 process at last, hopefully. For salaries and expenses, the Supreme Court budget is held to last year's level of $71.8 million. Is this level sufficient for your staffing needs?

Justice KENNEDY. My understanding—and I am going to look at our experts after I answer the question—is we can live with it 2011, but we need what we are requesting in 2012. Yes.

Mr. SERRANO. That starts tomorrow, that fight. So what you are telling us, it may be okay what we do today, but tomorrow you need some other things.

FEDERAL COURT SECURITY

The Court officers, the police officers that were mentioned, is this part of a larger need for security not only at the Supreme Court but the courts throughout the Nation? I mean, the incident in Arizona was one where a judge was stopping by a local congressional event. But we know in the past there have been issues in recent years where the security and the safety of judges throughout our system have been threatened. What are the security issues, if any, at the Court? Again, within those things that you can tell us in public.

Justice KENNEDY. Remember that the Federal courts have the responsibility to adjudicate criminal prosecutions. Last fiscal year, we had 100,000 people indicted in the United States district courts. These people are in organized crimes, they are in drugs and so forth. Then there is the correctional population for which the courts have a lessened responsibility but still some ongoing responsibilities, and this population alone means, because of witnesses and threats and so forth, that we must be very, very careful in the United States district courts.

The responsibility for security is generally divided into two parts. There are court security officers hired in the various districts, just like we have our own Supreme Court police and the United States Marshal Service operating out of the Justice Department, and we have constant studies and recommendations from those agencies.

That is one reason why courthouse construction is so expensive. If you are talking about a courthouse, a trial courtroom has to have four entrances: one for the judge, one for the jury, one for the defendant in custody, one for the public. Well, that sounds simple enough, four entrances, but if you have a multiple courtrooms, then it gets extremely complicated, and so security drives the costs, not just personnel but construction.

Justice BREYER. I would add one thing. I have been on the Court now—I don't like to admit this—but for more than 16 years; and, during that time, I think our Court police—because that is our responsibility directly. We have the Court police. We are in charge of our Court police. I have always found them to be excellent. I mean, there has never been a moment in that time that I have experienced anyone feeling nervous or that I have experienced any lack of efficiency, and the public I think reacts with them well. So

I would say from my own personal experience that the management of the Court police by the Supreme Court and the people they have chosen to do that have done very well.

CODE OF CONDUCT FOR JUSTICES

Mr. SERRANO. Recently, there have been several proposals to apply the Judicial Conference's Code of Judicial Conduct to Supreme Court Justices and to make recusal decisions by the Justices more transparent to the public. Currently, the Code of Judicial Conduct applies to all other Federal judges, but it is only advisory for Supreme Court Justices. Do you have any thoughts on these proposals? Do you believe that the Code of Judicial Conduct should apply to Supreme Court Justices, or are there good reasons for not doing so?

Justice KENNEDY. I will let my colleague, Justice Breyer, comment on my answer and add his own insights.

The code of conduct does apply to the justices in the sense that we have agreed to be bound by them. Those rules are public, and if there is some question that we haven't complied with the letter or spirit of those rules, there can be comment about that.

Of course, the Court has to follow rules of judicial ethics. That is part of our oath. That is part of our obligation of neutrality.

Insofar as making them binding, there is a legal or constitutional dissonance problem. Those rules are made by the Judicial Conference of the United States, which are district and appellate judges; and we would find it structurally unprecedented for district and circuit judges to make rules that Supreme Court judges have to follow. So there is a legal problem in doing that.

I really think there is no problem at all, since by resolution we have agreed to be bound by those. We are also, of course, bound by the ethics and government statutes for conflicts of interest and so forth.

Justice BREYER. The answer to your question, should the justices be bound by the same rules of ethics, I think is yes. All right.

The second, different question is, does that mean you should legislate? Then I think the answer is no. And the reason that I get to the two different answers is because I personally have seven volumes of ethics rules, the same that every district judge has, right in my office. And when I find a difficult question, I go to those volumes, try to apply them exactly as the district judge would, and I have people whom I call who are ethics experts, really, if I find a difficult problem.

So why not legislate? The only reason not to legislate, I suppose, is, one, the kind of theoretical, getting to a problem with can you legislate and where and the Supreme Court, which people love to debate, and I love, when they have such a question of where does the power lie, not to answer the question and to go on to something else because I think it produces heat and not too much light.

The other reason I think perhaps never happens anymore, but when I worked on the staff of the Senate, sometimes a bill, which we thought was perfect, would get to the floor of the Senate, and the words that came out didn't seem to be quite the same words that went in. And so I didn't know always what was going to happen when legislation started.

But those are rather detailed, technical, and they are not real objections. Your basic question is right, and I think it is followed. I think all the justices do what I do, which is we do follow the rules. They do apply, and somehow it has gotten around they don't. Well, they do. I mean, I apply them.

And I would add one other thing. It is a different thing, which I discovered, being a Supreme Court Justice in respect to ethics and disqualification than a district court or court of appeals. When I was in the court of appeals or a district court and a tough question came up, I would say I take myself out of the case. Who cares? They will find somebody else.

But you can't do that on our Court. So you have to think about it in a different way, and you have to remember you also have a duty to sit. Because there is no one to replace me if I take myself out, and that could sometimes change the result.

Mr. SERRANO. Right.

Justice BREYER. So I have to think long and hard in a way I didn't have to think long and hard on the court of appeals.

Justice KENNEDY. If I may just add, as Justice Breyer indicates, if we have one of us recuse from a case and we come out four to four, we have wasted everybody's time. It could be a criminal conviction automatically affirmed. And so we do have special problems.

We have in the Judicial Conference of the United States the Committee on the Codes of Judicial Conduct, and I served—I was one of the—I think there were five of us that served on that committee for more years than I like to remember, and that committee is a very hardworking committee. It gets requests from judges setting forth what the ethical problem is.

The judge is in the middle of trial. He or she has invested years and years of time. Suddenly, there is a marriage in the family, and there is a conflict of interest because the new spouse owns some stock. Does that judge have to leave after, you know, investing years in the litigation?

Those are the kinds of things we try to answer. And the committee is open and receives questions from us. We can ask for advice from the Committee on Codes of Judicial Conduct, and we do ask for that advice.

Mr. SERRANO. Madam Chair, let me just close by saying that I would accept both of your statements, that you are very careful and the Court is very careful how it deals with these things. So I guess the next question for yourselves, not for me to ask, is why are there now proposals floating around? What has happened recently that has had people ask these questions like they have never asked before?

RECENT INTEREST IN CODE OF CONDUCT FOR JUSTICES

Justice BREYER. One thing I think is—just a guess—is that somehow people got the idea that we don't apply these same seven volumes. That is just a wrong idea, and I think that came from the fact that they are not legally binding on us in a sense that they might be in a court of appeals judge. That was interpreted to mean we don't apply them, which is wrong. Then that was written about in the newspaper, and everybody thought that was so. I think that is what happened.

And I suppose, also, always—not always—almost always there is some controversial thing going on, and the reason it is more controversial in our Court is, one, we are more visible, and, two, we do have this duty to sit, which can make the question of answering the ethics question more controversial.

So I think those two things combined, and that is just my guess as to why this is going around.

Mr. SERRANO. Thank you so much.

Thank you, Madam Chair.

Mrs. EMERSON. Thank you, Mr. Serrano.

Mr. Womack.

ADEQUATE INCREASE IN POLICE OFFICERS

Mr. WOMACK. Thank you, Madam Chairwoman, and I want to thank the Justices for not only being here today but for your service to our country. It is an honor, as someone who respects the separation of powers and the branches of government dating all the way back to my civics classes—and as a new freshman in this Congress, I am honored to sit up here today and to engage you in conversation.

Justice Breyer, particularly to you, thank you for your trip to Arkansas last week. I know I——

Justice BREYER. Thank you very much.

Mr. WOMACK. I speak for all Arkansans in thanking you for exporting, if you will, yourself and your knowledge and perspective to the people of the great State of the Arkansas, and I thank you for that.

Justice BREYER. Thank you.

Mr. WOMACK. As I told you in conversations before the committee hearing this morning, I am particularly interested in security, having a wife who has spent the better part of 30 years as a trial court assistant in Arkansas at the circuit court level and fully recognizing the importance of security. I noticed in your 2012 budget request it is for the 12 officers, and I think if I read correctly that there has been demonstrated a higher need but that 12 has been the number that we have settled on for 2012. Is it adequate? Given the circumstances, the times in which we live, the recent issues in Tucson, is it adequate?

Justice KENNEDY. Our experts tell us that. Our own staff, and they have looked at this very carefully, say that it would be adequate. As we train and implement these officers, it may be that we will find that we need more, but the 12 is what we can absorb and what we need now.

POLICE OFFICER RETENTION

Mr. WOMACK. Given the fact that training and equipping officers in this line of work is a little different than what I am accustomed to as a former mayor and developing police officers at the municipal level, but is there a revolving door, so to speak? Because I want us to be very careful that we are not investing large sums of money in the training and equipping of officers only to prepare them for the next line of duty in some other organization. Are we pretty good at keeping our folks?

Justice KENNEDY. My answer would be anecdotal. I have asked about it. We are good about it. When they do leave, they go generally to other government security agencies. We just lost one of our fine officers to the United States Marshal Service. So that capital investment that the government made continues to produce results.

Mr. WOMACK. I find it comforting that in the discussion about the entryway to the Supreme Court and the difference of opinion at the Court, it is on the Court itself of what to do, what not to do. It is comforting to know that, Jo, we are not the only people that disagree from time to time on matters of importance, the Yankees-Cardinals and the discussions that take place in the well of the House. It is good to know that they, too, have some division of opinion from time to time.

Madam Chairwoman, I have no further questions. Again, it is an honor to be here with two of our Justices.

Mrs. EMERSON. Thank you so much, Mr. Womack.

Mr. Diaz-Balart.

SEPARATION OF POWERS

Mr. DIAZ-BALART. Thank you very much, Madam Chairwoman.

It is a pleasure to see you both, Justices.

Justice Breyer, you were in south Florida on a matter, and I was there, and it was enjoyable to listen to you speak, but I would tell you more enjoyable even to be able to have a number of people ask you questions. We appreciate that. I think it is important.

I am actually going to change my line of questions. I don't have a lot of questions, but we were talking a little bit about, you know, obviously the separation of powers, which is essential for our democracy, for our freedoms. There is always, I guess, the temptation to creep into other branches of government. I know that you probably—I am sure the judiciary sometimes believes that Congress may have a tendency to try to creep into what is judicial territory, and we in the Congress have many times the feeling of the same thing, and particularly with the administrations, with the executive branch.

So is there anything that Congress can do to, in essence, resuscitate the non-delegation doctrine within the judicial branch? Because there are many of us who feel—and it is not new and it is not on a specific issue—that particular agencies, Federal agencies, tend to try to, frankly, far exceed their congressional authority. So is there something that we could be doing to resuscitate that non-delegation of——

Justice KENNEDY. I will answer first so that Administrative Law Professor Breyer can be thinking about your question, a substantive question that is one of the most difficult questions in the law.

You will tell a civics class, now here is a chart of the three branches of government: article I, legislature; article II, the executive; article III, the judiciary.

What is an administrative agency? Does it make laws? Just try violating the Forest Service regulations sometime, and you will find out. Yes, they make laws.

What is it? Is it part judicial, part legislative? That is one of the conceptually most difficult questions in constitutional law. And I am not indicating that agencies aren't important—we can't survive without them—but it does seem to me that Congress has to make it very clear what the authority of the agency is, the congressional duty in establishing the agency, to give it not only its responsibilities but the limits on its powers.

Mr. DIAZ-BALART. I don't know if, Justice Breyer, if you would like to comment.

Justice BREYER. When I used to teach ad law, I would say there you have a friend and an enemy. The friend is it is up to you how much power you delegate. You want to delegate less power, delegate less power.

The enemy, the enemy I say is the enemy of us all, which is time. The problem is, if you have time to go into any agency and really understand what they are doing and really try to figure out whether they need a power to have, say, like something written into the statute, or it should be more general and cover all things of this type or this intermediate thing, if you only had the time where you could do that bit by bit in thousands of instances, you would have enormous power and you would be able to write the perfect statute.

But we are all faced with time. We are all faced with complicated problems. We are all uncertain as to exactly how much authority is necessary to delegate in order to allow those problems to be dealt with as people in the country want, and, therefore, that is kind of almost like a cliche, and it can't be much more helpful than that cliche.

Mr. DIAZ-BALART. It is interesting. Because I guess in the '30s I guess there were a couple of Supreme Court opinions that—and there is always a flip side to that because those opinions could be seen as also then muddling in congressional authority, but yet the Supreme Court then thought that I guess Congress was being too vague.

Justice BREYER. They were. The very great opinion, Panama Refining and the other one was Schechter.

Justice KENNEDY. Schechter.

Justice BREYER. And Schechter is the really one that counts and even Cardoza. They had delegated a system, and they thought it would get them out of the recession—depression, really, where you would have committees of government, labor, and businesspeople, and they would set prices, and they would determine outputs, and they really ran everything.

And Cardoza, who was certainly—he was known as a liberal judge. He was so well-known once somebody wrote him a letter and said, you are a liberal judge. Can you lend me $50? I mean, he made the famous phrase——

Mr. DIAZ-BALART. I do that——

Justice BREYER. He made the famous phrase in that case. He says, this is delegation run riot.

So you are right. There are those two cases. But they were reviewing decisions of Congress and thought that Congress and the President had gone too far in those instances.

Justice KENNEDY. It was the national investor recovery act—to show that you were part of it. And they had codes of conduct for

every industry, and you put up a blue eagle on your storefront to show that you were compliant. It was just not working. And, really, the Court, in declaring it unconstitutional, I think Congress breathed a sigh of relief after seeing what it created, but it is the Congress that creates these things.

Mr. DIAZ-BALART. Thank you, Madam Chairman.

Justice KENNEDY. In Japan, the way they do it is the agency consists of the parliamentary committee. So it would be like the Commerce Committee would be on ICC as a mixture of functions so they know what is going on.

Mrs. EMERSON. Thank you very much.

Mr. Yoder.

CASELOAD COVERAGE

Mr. YODER. Thank you, Madam Chair.

Justices, we appreciate the opportunity to have you here today. And I know, just in reviewing some of the material, how difficult your workload is. And to take time to come to the Hill to visit with us about the financing of what we are doing here in this country is an important topic, and I am glad you are here to deal with this.

I am a KU Law grad, and I want to say both of you have been to KU Law before to give lectures, and so I appreciate that. Certainly as a young attorney, it is a great opportunity to have you here today.

I had an opportunity for 8 years to serve in the Kansas legislature, and one of the issues we dealt with there is a similar issue we are dealing with in the country, which is how to fund the growing pressures on our court system. We always dealt with a growing amount of caseloads and the pressure of having to add additional judgeships and, many times, because of budget constraints, we were unable to do so.

I guess I want to just have a little discussion with you about the situation in our district courts and our courts of appeal. Certainly in Kansas where I am from, visiting with my local judges, they are concerned about the backlog. We hear backlogs in immigration courts.

I guess, first of all, I want to get your comment on the severity of those things and what our potential responses could be, besides adding additional resources.

One of the issues we dealt with in Kansas was we had growing areas where the amount of cases were increasing rapidly, but there are also areas where it was decreasing, and the courts were reluctant to move judges from decreasing court case areas to increasing court case areas. So we were only just adding or increasing and never decreasing where the caseloads were decreasing.

So is that a factor here? And just from your perspective sitting on the Supreme Court, how does that affect your work and what would your advice be for Congress as we deal with this?

Justice KENNEDY. Over the years, the Congress has been generous——

Mr. YODER. Justice Kennedy, if I might interrupt—as a young lawyer, it has always been my dream to interrupt a Supreme Court Justice, and so I just wanted to take that opportunity——

Justice KENNEDY. You can't afford my hourly rate.

Mr. YODER. I just wanted to take that opportunity to do so, and I am sure if I ever have the pleasure of being before your Court, you will do the same. My respect to you, sir.

Justice KENNEDY. The Congress of the United States has been prudent, farsighted, and wise and sensible in providing resources generally to the Federal courts. There are some problems with judicial salaries, but so far as resources, the Congress has given ample support to the Federal courts and for its infrastructure. The Federal courts are one of the most efficient, admired judiciaries in the world.

In the last 3 fiscal years, bankruptcy filings have increased. I think it is fiscal 2009, last I looked at it, 1.5 million bankruptcy filings. We handled those filings. And I indicated 100,000 criminal defendants appeared before the Federal courts.

We have, generally, the capital infrastructure to manage that. When we go to foreign countries or when judges come here, we find that, worldwide, legislators and parliamentarians are somewhat reluctant to give resources to their court. They think judges have an easy job, and they don't know why they need all these resources. But I tell those people from those countries that a functioning, efficient, transparent, honest judiciary of integrity is part of the capital infrastructure.

The bankruptcy filings, we don't like to see bankruptcy, but we handled those as part of the recovery.

So it is important for the courts to be open and flexible. Of course, the caseload changes, and we talk about that. We wonder. We are losing some of the major civil cases to arbitration, and if the judges—pardon me—if the bar thinks that is more efficient, fine. I don't like to see us lose those cases, because it takes too long to go to trial. But we are working with that. The caseload is changing. There are more Federal crimes, more Federal prosecutions, immigration load.

In some districts, we have a serious problem. My home district, Sacramento, California, is the Eastern District of California. The judicial load, the average caseload for a United States district judge is about 450 cases per year per judge, and that is a lot, but it is manageable. These judges are handling 11- to 1,400 cases. You just can't do that to my judges. We need more judges, and the Congress should authorize the judges in those districts.

Western District of Texas is another one.

Some districts' filings have dropped, not much. That can be taken care of over time, and we are in the happy position because article III judges can be assigned to other courts. We couldn't manage in ninth circuit without visiting judges. We have visiting judges come to take up the workload.

All right. Was that generally responsive?

Mr. YODER. Very helpful, very helpful, and it gives me an idea of how things are going. And I do understand as caseloads drop in certain areas that through retirements, I think is that what you meant, you said that can be taken care of, as opposed to reassigning judges from declining caseload areas to areas that are increasing? That was always a challenge we had at the State level, is we knew we could move them, but it was politically too difficult to move the judge.

Justice KENNEDY. We do that on an interim basis, but over the long term it takes care of itself.

SAVINGS AS A RESULT OF IMPROVED TECHNOLOGY

Mr. YODER. In terms of technology, which certainly always comes up and affects the Court, I wonder how much have we saved by moving away from paper filings and towards electronic filings?

And I will say I did not practice in Federal courts, although I did practice in the bankruptcy courts, and that was I think a very efficient system for the attorneys to be able to upload the documents, scan them, and the Federal court was a good 30 minutes away. So it saved on gas and time and everything. So, in terms of attorneys, I think it has been useful from my perspective, but I wonder from the courts, does that save money and how is that——

Justice KENNEDY. Congressman, we have seen just since Justice Breyer and I have been on our Court a quiet revolution because of IT, information technology.

We have a Web site. We run it ourselves. We get 59 million hits a month. There is a study that I have seen—I am somewhat skeptical of it—that we are about 12th or 13th of any government agency. We get 179,000 page hits a day. A page hit is where you look for something specific and study it. We get 179,000 of those a day.

It used to be that I would read Supreme Court cases over the summer, and we would wait for months, maybe even more than a year, for a law review article. Now, there are blogs. Law professors in a specialized area, information technology, information technology crimes, antitrust, any number of specialists have blogs. Within weeks, days, even hours, they comment on our cases. Our case law is now part of the arguments that attorneys make to district and circuit judges within hours after we decide a case. It is very, very efficient. There has been a sea change in how accessible our opinions are. The system works.

I have testified before this committee—my staff told me this is my 15th time, and I looked at the budget in the '80s. It was half of what it is now. It is IT, and I thought that, well, maybe library expenses would go down, but it doesn't. The library expenses are the same, plus we have the IT. But you have made that investment now. That is there. It is in place. It is running. As I say, it is a quiet revolution. It makes our courts very, very efficient and very effective.

Mr. YODER. Well, and I appreciate that.

How do we move from what is a great service, and, clearly, it has revolutionized how we utilize the information coming out of the Court very rapidly, as you described. How do we turn that into savings for the Court? Is there a point where we can reduce savings on the printing side? Or you said the budgets have actually gone up. Is there a point where the investment pays off in terms of the infrastructure of expenses——

Justice KENNEDY. I thought we needed fewer books. We don't. No saving there. Printing, we used to have a printing press in the basement before we came to the Court, a printing press in the basement. Felix Frankfurter would go down and get ink on his hands. Now, we print the opinions electronically.

On paper filings, about only 2 percent of our petitions in criminal cases are granted, and they are handwritten by prisoners. If we scanned that, it would not be cost effective. But often a prisoner will not comply with the rules and will not attach a copy of the opinion of the highest court that affirmed his conviction or her conviction; and rather than send the petition back, our clerks just push a button and add the petition and we have it.

So we are much, much more efficient. We are handling a huge volume of litigation under which our old system would have cracked. So when you think about cost savings, we are more effective on a case-by-case basis already.

Mr. YODER. Thanks for your responses.

Madam Chair——

Justice KENNEDY. I preempted Justice Breyer.

Mr. YODER. Madam Chair, I yield back.

Mrs. EMERSON. Thank you, Mr. Yoder.

COURT OPERATIONS DURING HIGH PROFILE CASES

Over the years, you all have heard numerous high-profile and somewhat controversial cases, and it is possible that next year you will be hearing another one with regard to the Affordable Care Act. And so I am curious, in situations like that, regardless of whether it is that or something else, how do highly publicized and controversial oral arguments affect the Court's operations and the Court's grounds, especially as it pertains to reporters and interested citizens? Does other Court business get put on hold for the day? I am more interested in the process, not the subject, if you know what I mean.

Justice KENNEDY. We have a system that has formal traditional constraints and etiquette. We follow that. We don't talk about cases with each other until they are argued so that we don't have cliques or cabals.

Our workload is such that we really don't address problems until we have to. We, as you know, get all of our work done every year by June 30. Thank you very much. We are always 100 percent finished on our argued cases. And I go home and I tell my wife, you know, we have solved every problem in the world, there is nothing left, and then we find all these new problems.

But that is the dynamic of the law. We wait until a dispute comes before us, and it is only in the context of a real dispute that we determine how to elaborate and explain the legal principles that are involved.

Mrs. EMERSON. Whether it is an abortion type of case or it is the health care law or anything when you actually are hearing the oral arguments that day in the Court, does it require a lot more security? Are there different things that you have to do? Is the behavior of, you know, how the process works within the Court, is it changed from on a daily basis when you are not hearing a controversial argument?

Justice KENNEDY. Oh, I guess there is maybe an air of anticipation in the room, as you might expect. But we will hear a so-called high-profile case between 10:00 and 11:00, and 11 o'clock we will hear the next case, and judges will start asking questions about the

next case. It is a set precedent-based, tradition-based, formal system that enables us to go from one case to the other.

Justice BREYER. There might be a longer queue. There probably will be. And so there will be more police officers, and they will have to look around and see if there are any problems or so forth. There haven't been any processing problems. There are more people who want to see the case.

Mrs. EMERSON. Right. And so, consequently, even though you have got all eyes on this controversial case, the rest of the business of the Court goes on?

Justice BREYER. Well, Bush v. Gore, we were inside writing, and it wasn't us on the steps. It was the press on the steps who was taking the papers as soon as they came out and began to show all the papers that are being written.

So it does cause a lot of extra work for a lot of other people. It doesn't cause extra work for the nine justices. We work along as we would anyway, but other people in the Court may have to go to extra trouble.

Mrs. EMERSON. Okay. Thank you.

JUSTICE EXPERTISE FOR COMPLEX CASE ISSUES

You know, I am curious when you deal with cases like that, whether you are getting into the intricacies of health care law or technology, how do you all keep your skills and expertise current? Because you are getting into nitty-gritty technicalities that are quite complex. I am curious.

Justice BREYER. I would be interested in what Justice Kennedy thinks, too.

I like very much the fact that people file amicus curiae briefs, and in a tough case, a right-to-die case, we had one of those where it was one of these, you know, about medical care, or we had various computer cases, and we had 70 briefs in that case. And they will try to educate us, all kinds of different groups on both sides. And once we set up an exhibition in the library so the justices could come up and figure out how to work the computers in the particular way that was necessary to know for the case.

In a patent case, one of the lawyers—it was a very good idea—in the district court, but it was still there, put the patent on the Internet. So they did a diagram and so anyone, anyone in the world, including the justices, could press a button and you would actually see how this thing worked in practice.

So others, one, they are using these different methods, they know it is important in a case to educate us, and they have amicus briefs and other methods, if necessary, to try to get us up to speed.

Justice KENNEDY. It is part of the adversary system, highly skilled attorneys who spend years on a case, and they have an hour to give, or half hour per side, to give us their argument. But there has to be a room in the law for generalists. We are generalists in a specialized world; and we, as Justice Breyer said, are educated by the amicus briefs and by counsel.

Mrs. EMERSON. Well, it is important to look at both sides before you start.

Mr. Serrano.

Mr. SERRANO. Thank you.

PRESIDENTIAL CITIZENSHIP REQUIREMENT

You made me a little nervous, Madam Chair, when you started to say something about a famous or important case next year.

Mrs. EMERSON. What were you expecting?

Mr. SERRANO. I thought it was about whether I can run for President or not. Having been born in Puerto Rico, that still hasn't been settled by this panel.

Justice Thomas got quoted in all the blogs as saying—I asked him that question, as I do, you gentlemen know that, every year, every hearing. And Justice Thomas answered by saying, well, you can serve on the Supreme Court, but he never answered the part.

The blogs also said that a certain Justice Breyer came very close to saying I don't see why not, but that does bring up an interesting question, and forgive me for asking it, if it is out of order. On a question like that, do you first have to wait to elect me President and then the case comes up—seriously—or can somebody bring up a case? My understanding—I am not a lawyer—is that there has to be someone aggrieved first. So does the person get aggrieved at the time I declare my candidacy or do I have to be elected first?

Justice KENNEDY. I tell you, there are some lawyers I can recommend who can advise you of the rules of declaratory judgment.

Justice BREYER. Why would anyone be aggrieved if you were running for President? Wouldn't they be pleased?

Mr. SERRANO. Oh, just—and I am not telling you whether I was born—I think some folks on the right would be very unhappy that I was running or maybe happy that I would be easy to defeat. I don't know. Okay. So I won't get an answer. I am just going to have to declare my candidacy.

Justice BREYER. Well, what it says, it says no person except a natural born citizen. Well——

Mr. SERRANO. I am a natural born citizen.

Justice BREYER. Okay.

Mr. SERRANO. I can't believe we just had a Supreme Court decision.

Justice BREYER. Well, you said you were a natural born citizen.

Mr. SERRANO. Well, that is what I believe I am, but it is interesting. Those folks with pen and pencil in the back I think have a heck of a story.

Mrs. EMERSON. So are we to take it that this is your announcement to run in the primary against the President?

Mr. SERRANO. No, not in 2012.

Justice BREYER. Maybe I should point out that there are some people who think that means everyone except a naturalized citizen, and there are others who think it has a broader or a narrower meaning.

Mr. SERRANO. And, on a serious note, there are some New York scholars who have told me that, in the 1940s, the Puerto Rico situation was resettled again where natural born was put in the language, natural born.

MINORITY SELECTIONS FOR JUDICIARY INTERNSHIPS

Okay. So I have got to get my campaign ready. But before I do that, let me have a platform. So let me ask you a question that I

always ask. As in past years, I continue to be interested in seeing an increase in the number of minorities selected for Supreme Court clerkships. Are there any new initiatives to reach out to minority law students and graduates in the Federal judiciary as a whole?

And the second question to that, I know that the Supreme Court Justices lecture and go to commencement exercises and so on. Do they use that opportunity to invite young people into the law profession, especially if they are in law school, and to apply for clerkships?

Justice KENNEDY. When we go to law schools—and we often go to the smaller law schools for moot courts and spend a day or two with the students and so forth—I always encourage the students to apply for clerkships to the Federal district courts and the courts of appeal. In fact, I tell clerks, I say, you can really learn a lot in the trial court that you would never learn in the court of appeals. The district court has to do a lot of writing. They write a lot of opinions. So you will do everything a circuit court clerk does, plus you will learn how to try a case. I think district court clerkships are one of the best ways to train lawyers, and I encourage them to do that.

Justice BREYER. It is not usually necessary to say apply for clerkships, because there are a lot of people that want to apply for clerkships.

It is hard for me to say what is statistical and what isn't. When I started in this—I have had quite a few minority clerks over the years. It was difficult at the beginning to find people who would come in, and then it got a lot easier, frankly. There is the problem.

And then in more recent, last 2 or 3 years, I began to wonder, well, wait a minute here. Maybe there is a communications or something. So I am going back to the first let's-try-to-get-the-word-out approach.

Mr. SERRANO. Without hammering this too much, have we gone back to the old problem? Which I understood was that, basically, Harvard and Yale were the schools where people were recruiting, where the courts were recruiting. Has that changed?

Justice KENNEDY. Well, I frankly don't think that is the problem. I was thinking I had a clerk from Kansas last year—2 years ago, Kansas University, and I taught at a smaller law school for decades. I taught night law school. I know how hard these students work, how committed they are to law.

I have to tell you that the bigger schools—Harvard, Yale, and Michigan, NYU, Stanford—themselves go out and are very good at recruiting minorities. So your chances of getting a minority clerk out of those schools is actually better than some of the smaller schools. So it works. It is somewhat surprising, kind of intuitive.

COURT WEB SITE INTEREST

Mr. SERRANO. Let me just ask you one more question. Your Web site, last year about this time at the hearing the Web site was, you know, making a big splash. How has it been and what are the comments that you are getting from folks? Is it being used? Is it a positive thing that is going on?

Justice BREYER. Very, very. That is what Justice Kennedy was saying, I mean, like 59 million hits a month. I guess that is maybe

close to a billion or something a year, I mean, some huge number of hits, unbelievable, and the number you just had was actually looking at the opinions——

Justice KENNEDY. 179,000 page hunt studies a day.

Mr. SERRANO. Just think, today, you are going to get about 4 million from Puerto Rico alone.

Well, I just want to take this opportunity to thank you—I have no further questions—for your service to our country, and we always meet in a light-hearted fashion, but we know the issues are very serious. We do ask some serious questions. We got some serious answers. I certainly got one—no—but I do personally and on behalf of—I know I speak for everyone else, as the chairwoman will lead us, in saying that we respect your service to our country, and we take very seriously the fact that we still live in a place on Earth where we have laws and we have respect for the law. And we have evolved and evolved and we disagree and we yell and we scream, but, you know something, we would rather be here than anywhere else. And that is so important to all of us.

Thank you.

Mrs. EMERSON. Thank you so much. Well said, Mr. Serrano.

Mr. Womack.

JUSTICE USE OF SOCIAL MEDIA

Mr. WOMACK. I agree with the comments of my colleague from New York that it is the genius I think of our country that we have the separation of powers and the Constitution, and it is remarkable what we have accomplished as a Nation.

On the subject of the phenomena of social media, I was predisposed to asking the question, do you tweet? But I think perhaps the first question should be, can you tweet? I am not sure even ethically if you can, but are the advances of the social media changing how you do your work?

Justice KENNEDY. I suppose in an indirect sense that our work is sometimes reflected and discussed in the social media in that different context, but that is good. The law lives in the consciousness of the people, and to the extent there is greater interest and greater awareness in public affairs and that that finds its way into the social media, I think that is all to the good.

Justice BREYER. I mean, I actually have a tweeting thing. Because I was very interested in the Iranian revolution, remember, when they just had this uprising over a year ago. And I sat there fascinated, because you could actually look through the tweeting and you could see what was going on. You could see the violence. You could see women killed. It was terrible. And I wanted to keep track of that, and I sat there totally fascinated. The only way you could do it was to go through the tweet or the Twitter. So my name is there.

So from time to time, since I don't know how to take it off, I get requests, can we follow you? So I think for us that is very nice, somebody would like to follow me. Quite flattering, but I wisely say, no, it is not a good idea on balance. And the same is true of the Facebook. It is probably not a good idea.

Judges wear black robes so that they will resist the temptation to publicize themselves, because we really speak for the law, and

that is to be anonymous. And I do fear that—you know, I wouldn't want to have followers on the Twitter or people going to the Facebook page, but for my children, and I can get in touch with them anyway.

ADVICE FOR CURRENT LAW STUDENTS

Mr. WOMACK. Finally, recognizing that we have some young people that are in this room today, and I am just making an assumption that perhaps they are law students or I would make that assumption, not knowing for sure, and given the fact that in the health care debate—and I have seen and talked to a lot of medical professionals that tell me a lot of potential physicians are not going into the general practice field but instead more specialization. What recommendations can you give to the prospective attorneys now matriculating through law school that would be useful as they make career decisions?

Justice KENNEDY. Law is becoming more specialized, and that means that whatever area of human affairs and human history and human intellect and learning you are interested in there is a place for you in the law.

Harvard, where Justice Breyer is on the faculty, I think Stephen now has 400 courses of law and medicine, law and animal rights. Whatever you are interested in the law can accommodate it, and that is part of the genius of the American system.

For us, law is not a threat. It is not a dictatus. It is not a concept. It is a promise. It is an aspiration. And the law training, even if you do not end up practicing, can be rewarding. I love to practice law. I miss my clients. I miss the practice of law.

Justice BREYER. We answer this question quite a lot, Congressman. We get it in law schools and places, and we have very similar answers. I usually tell the law students, you are in a great profession. I am not saying it is the only great profession, but it is a great profession. The reason you are in it is because it requires you to have a head, and it requires you to have a heart, and if you don't pay attention and use your head, nobody will want your services. So don't go into this profession.

But if you only have a head and are just serving yourself, you shouldn't be in the profession. Because the whole point of the profession is to use that head of yours to help serve other people. And I think they understand what I mean, and then I hope, you know, that will register for a while and they will maybe embody that and we will see you in a few years.

Mr. WOMACK. Sage advice. I think we could use some of that as Members from time to time.

Thank you, Madam Chairwoman. Thanks, again.

Mrs. EMERSON. Indeed, thanks, Mr. Womack.

Mr. Yoder.

Mr. YODER. Thanks, Madam Chair.

CURRENT CONFIRMATION SYSTEM

I have a couple of questions related to politics and its impact on the courts, and I am sure from time to time those issues seep into discussions on the courts.

My first question would be, what do you think about our current confirmation system that we have in this country? Some of the States do it differently. For example, Kansas doesn't allow the Senate to approve their State court appointments. They have a nominating committee that is made up of bar members and members appointed by the Governor who then make three recommendations to the Governor, and the Governor picks one of the three. The folks in the State argue that that is far superior to the Federal system.

I guess my first question would be is, what are your thoughts on the confirmation system we use, and is it perfect? How would you do it differently?

If you can comment on these matters, and what do you think about the election of judges in some of our lower courts at the State level across the country?

Justice KENNEDY. I am cautious about saying what I think should be the system. The States are laboratories for experimentation, and we can see the follies of some ideas and the wisdom of others as it plays out.

My home State of California has a judiciary that is bigger than the entire Federal judiciary. If you said all of them had to be appointed, I think there would be some systemic consequences of that that might be cause for serious concern.

The Framers said that judges are subject to the confirmation by the Senate, and the Senate is a political body, and it acts in a political way. The dynamic, the discipline, the challenge is to follow that process and to pursue that process in a way that respects the integrity and the decency of the judicial candidate so that it is not a process that discourages eminent practitioners from seeking to be confirmed to the Federal bench. And that is for the Senate and, to some larger extent, for the Congress to decide. It is not for us to dictate.

We do have concerns, of course, about the delays in the process. If you are a private practitioner, especially in a small practice, and you are waiting for confirmation, can you take this case, can you begin consulting with this client when the nomination is pending? It can be very, very difficult.

But I think it is for the Congress and the Senate to determine how this process should be followed in a principled way so that they can judge the temperament and the qualifications of the prospective judge without subconsciously asking how would this judge rule on issue A or issue B—I think that is improper. What you must ask for is a judge of independence and of commitment to the law and of an open mind and of a willingness to listen.

Justice BREYER. Well, it is a big topic, and it is a topic that probably Justice Kennedy and I and Justice O'Conner and Justice Souter have spoken quite a lot about. And your staff is welcome to go online and find some of the 92 speeches I have probably given on this topic. And, overall, there is no perfect system there, but——

Mr. YODER. Would you be willing to tweet about it?

Justice BREYER. I would if I permit myself to respond to tweets. But I figure that way lies perdition. I am worried about that. So there will be quite a lot on that.

And major areas of concern are the campaign contributions combined with the State election system. That is one of the areas he talks about and then I have, too.

The Federal system, you are the elected officials, and the Senators are the elected officials, and I remind people of that. When I am asked this kind of question, confirmation, I say I was not a confirming person; I was a confirmed person. I was not a nominating person; I was a nominated person. And to ask me is in a sense like asking for the recipe for chicken a la king from the point of view of the chicken.

Justice KENNEDY. I will think about that. Of course, it used to be, Congressman, in my hometown in California, if a State trial judge was challenged, if that judge was a good judge, the bar would come to his defense or her defense. The bar would defend that judge.

Now, we have plaintiffs bars, defense bars. If X runs against Y and X says Y is soft on crime, Y has to answer that. Studies show that Y can't just say, it is beneath me to answer it. They must answer. And you know what that means, money, and that is the process.

I think elections were part of the Jacksonian democracy in 1840 for judges. Judges have tremendous power in our society, and so there has to be some public political control at some point. I think it is visionary to think that we can eliminate elections. The object is to use elections to educate the electorate on what the requisite qualifications should be for a judge. This is a great chance to educate the public as to what judges do and what are the qualifications for a judge who brings dignity to the bench, and we can use elections with intelligent commentary from the press and from civic groups as to what a campaign ought to do, as to whether a campaign is dignified or not, and I think we have to pay much more attention to that.

You know, democracy is pretty new in historical terms, especially when we consider democracy with a mass media. We are not quite yet sure what the balance ought to be, but it is urgent for us to have a public discourse that is more civil, that is more rational, that is more moderate, that is more productive, that is more principled, and I think judicial elections might be a good way to start. I haven't seen any yet that I can uphold up as a model for you.

CONGRESSIONAL INTENT

Mr. YODER. Madam Chair, if I might, I had one additional thought here.

One of the tensions that always exists in this town is between the three branches of government. This has been discussed a little bit here already today. The often-thrown-around phrase is "activist court" or "activist judges," and I know that that is probably not a phrase that is thrown around with quite joy around the Supreme Court.

As that tension continues—and I am sure it always will in this country—between what Congress believes its intent is or some believe what Congress' intent is and what the Court determines is the real result, what sort of resources do you rely on to define congressional intent? And what could Congress do, particularly Con-

gressmen and -women who feel that the Supreme Court is taking positions that are contrary to maybe the intent of Congress, to make the intent clearer to do their part to do everything they can to make sure that the laws are written in specificity or the Congressional Record is such that it makes clear that position from the legislative branch?

Justice KENNEDY. This is a question of considerable academic and philosophic difficulty. It is current, it is topical, but it has also been going on for about a hundred years.

Of course, it is the obligation of the Congress to tell the courts what it means and what it intends. When I was in private practice, I found that sometimes in negotiations, the contract, you wanted to leave some things a little murky. And most of us think that precision in drafting means that you have absolute specificity, but sometimes leave things a little murky.

I think often in the Congress, which cannot go back to revisit its legislation to clarify it, is too murky just because of the dynamics of the political process. That is the way the bill gets out, but you do that at a risk that some court will not understand what your intent is or misinterpret it.

Justice BREYER. One bit of advice, and this produces argument within the Court. I, probably more than many members of the Court, I will look at the language. I will look at the history. I will look at the tradition. I will look at the precedence. But I think when that isn't clear, and it usually isn't, I will try to figure out what the purpose of this is.

Why the word "cost" is in a statute that allows parents of a child who has now—they have sued and won and got that child a better education because he is a handicapped child—says you have to cover your costs. Does that include expert fees or not? Read the word "costs." I mean, really? Doesn't tell you.

So I will look at purposes, and, therefore, I want to read the reports, and I want to read the debates, and I want to read what people have in mind. Not everyone wants to do that. I find that enlightening, because I think it is terribly important that the courts bring their decisions in line with the purposes of those who passed the bill in Congress.

However, you say, is there anything we can do? It is hard to resist that question. Since I worked in Congress for a while, I would say if I have one single thing you would really do is don't circumvent your own processes.

When I worked on the staff, I mean, we would spend a lot of time over in the Senate Judiciary Committee going through hearings and showing the drafts to everybody interested so we could get advice from them and trying over time to get the words to mean what you want it to mean. That is a time-consuming process.

So when we have in front of us a bill and the words in the bill are unclear and I know this is a floor amendment, I don't say I sort of shudder, but I think it may not be quite as clear, and it is going to be harder for me than if the process had been gone through and there had been hearings and debate and discussion just like the 12th grade civics books says that is what happens in Congress. And the more that is, the easier our job is.

Mr. YODER. Great. Thank you, Justices.

Madam Chair, I yield back.

Mrs. EMERSON. Thank you so much, Mr. Yoder.

CLOSING REMARKS

I really do want to thank you all so very much, not only for your service but for taking so much time out of your very busy schedules to be here today. I never thought that we would ask a Supreme Court Justice about their tweeting, but, nonetheless, it shows how times have changed and—pardon me?

Mr. SERRANO. I tweeted on behalf of all of us.

Mrs. EMERSON. Oh, did you? Thank you.

Well, you have to say yes that you follow Justice Breyer, though.

Mr. SERRANO. I said that that they were here, and I can run for President.

Mrs. EMERSON. I am certain all of the people who would love to follow Justice Breyer will be asking him today, based on your comment, Mr. Serrano.

But, seriously, you all perform a very, very important function for this government and for our country; and for that I am very grateful. Thank you.

THURSDAY, MARCH 17, 2011.

OFFICE OF MANAGEMENT AND BUDGET, GOVERNMENT ACCOUNTABILITY OFFICE, AND GENERAL SERVICES ADMINISTRATION—INFORMATION TECHNOLOGY OVERSIGHT

WITNESSES

VIVEK KUNDRA, CHIEF INFORMATION OFFICER, OFFICE OF MANAGEMENT AND BUDGET

DAVID POWNER, DIRECTOR, INFORMATION TECHNOLOGY MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE

STEVEN KEMPF, COMMISSIONER, FEDERAL ACQUISITION SERVICE, GENERAL SERVICES ADMINISTRATION

Mrs. EMERSON. Okay, the hearing will come to order. Thank you all so much. Can I ask the recorder if you can hear me? This microphone it is not doing anything. All right. Here we go.

The purpose of today's hearing is to examine the Federal government's acquisition and management of information technology.

The Federal government spends $80 billion a year on IT and has had a troubled past trying to implement well intended IT projects. This has resulted in billions of dollars of waste. There have been high profile IT development failures that have made the headlines, such as the FBI's new case management system, the VA's financial management systems, and the Census Bureau's attempt to develop handheld computers for the 2010 census.

But there have also been numerous other failed projects that do not necessarily make the news, but have cost the taxpayers millions without providing any benefits.

Within the jurisdiction of this Subcommittee, several agencies are attempting major IT overhauls, including the National Archives, OPM, the SEC, the SBA, and the IRS. Among those agencies, OPM, the National Archives and SBA have all recently experienced major setbacks. As the Committee works to reduce spending for the fiscal year 2008 levels, we can no longer throw resources away on failed IT projects.

We have asked the witnesses to be here today to inform the Committee on actions the executive branch is taking to improve the contract and program management of IT projects to ensure that the taxpayers are receiving a return on their $80 billion per year investment.

Our witnesses today are Vivek Kundra, the U.S. Chief Information Officer. Mr. Kundra is leading the Office of Management and Budget's efforts to reform IT management. He has issued a 25-point implementation plan to reform Federal information technology management. And the plan includes holding agencies accountable for IT development programs through periodic reviews, which are referred to as "TechStat sessions," using cloud-computing

to reduce costs and improve performance; consolidating data centers across government; and improving IT development processes, procurement vehicles, and staff skill sets.

We also have David Powner from the Government Accountability Office with us today. Mr. Powner has 20 years of experience on information technology issues in both public and private sectors. Currently, he is responsible for a large segment of GAO's IT work, including systems development, IT investment management, health IT, and cyber-critical infrastructure protection reviews.

Our last witness is Steven Kempf, the Commissioner of Federal Acquisition Service at the General Services Administration. GSA contracts acquired approximately $22 billion of IT products and services on behalf of the Federal government each year, and we are interested in how GSA is working to improve acquisition and contract management for Federal agencies and for itself.

Many welcomes to each of you all, and we appreciate very much your attendance today. Before I recognize Ranking Member Serrano, I would like to wish him, the witnesses, and everyone else with us today a happy St. Patrick's Day. And you remembered to wear green. I overslept, so it didn't occur to me to remember it was St. Patrick's Day.

Mr. SERRANO. Just call me O'Serrano today.

Mrs. EMERSON. O'Serrano today.

Mr. SERRANO. We are all Irish, especially back home in New York. I would like to welcome our witnesses to today's hearing. I am interested to hear your testimony on new efforts to improve and efficiently upgrade our government's IT systems and to reduce duplication of services. As any longtime member of the Appropriations Committee can tell you, information technology upgrades across the government agencies have historically been the bane of an appropriator's existence. The number of agencies that have undertaken an IT upgrade and completed it on time and under budget can be counted on one hand. It rarely matters what agency we talk about, whether it be the FBI, or the Department of Defense, they have all had trouble upgrading their computer systems to meet today's needs in a timely and cost-effective fashion.

Also, too frequently, we end up with systems that, when finished, are already out of date, are ineffective to the current needs of the agency, or both. Although some agencies, such as the IRS, have gotten their IT upgrades back on track, others have yet to do so. I am interested to hear more about government-wide policies and programs that can help us save money, reduce duplication, and better serve the American people. And I am hopeful that your plans to structure infrastructure and other technologies across federal agencies will help us to achieve these goals.

Before I end, the other day we had the Securities and Exchange Commission, and one of the questions was, "While you are trying to oversee and regulate, are the folks that caused the problem in the first place better equipped technology-wise to outgun you at any level?" So this is more, at times, than meets the eye. It is not just doing our work, it is making sure we do the right work, and defend our agencies and our country from other folks. Thank you so much for being here today, and thank you.

Mrs. EMERSON. Thank you, Mr. Serrano. As I mentioned to you all earlier, we are anticipating a vote at 10:15, so I am going to ask that you try to keep your statements at five minutes or below, so we can at least hear all of them. And we will attempt to do some questions prior to us having to go to vote. So, let me now recognize Mr. Kundra for an opening statement, and thank you so much, Mr. Kundra, for being here, and for undertaking the incredible amount of responsibility you have in trying to get this all squared away for the Federal government.

Mr. KUNDRA. Good morning, Chairwoman Emerson, Ranking Member Serrano, and Members of the Subcommittee. Thank you for the opportunity to testify on the administration's ongoing efforts to reform Federal IT management and oversight. For too long, we have witnessed runaway projects that waste billions of dollars and are years behind schedule. By the time some of these projects launch, if they launch at all, they are already obsolete.

At the same time, the government has built out redundant and inefficient IT infrastructure. Since 1998, the number of data centers across the Federal government has grown from 432 to 2,094. This is why, for the past 25 months, we have focused on reforming federal IT to cut waste and boost performance. We have cracked down on wasteful IT spending, eliminated duplicative infrastructure, and saved money through game-changing technologies and approaches. Through relentless oversight, we have delivered $3 billion in life-cycle cost reductions on major IT investments, and cut in half the time it takes to deliver system functionality to end users.

We have already saved millions of dollars by deploying cloud-computing technologies, and are in the process of shutting down at least 40 percent of the data centers across the Federal government by 2015. To get a better return on IT investments for the American people, we have transformed how we manage technology projects. We are using transparency to shed light on government operations and holding managers accountable for results. And we have reached beyond the four walls of Washington to make sure that we have access to the best technologies and the most innovating thinking on how we fundamentally change the way we manage IT.

In June 2009, we launched the "IT Dashboard" to shine light on the performance of over 6,800 Federal IT investments. Using the IT Dashboard, anyone from agency officials, to the American people, can identify and monitor the performance of IT projects.

However, it is not enough to simply shine light and hope that performance improves. That is why in January 2010, we launched TechStat accountability sessions, to make the tough decision to halt, turn around, or terminate IT investments that were underperforming. Our reviews have already produced results. For example, at USDA, after four years, and a $100 million in spending, the Department had nothing to show for an IT system that manages the delivery of food to 30 million Americans. As a result of the TechStat, within six months, the system was released to 9,000 system users and vendors.

At EPA, a TechStat was triggered because its financial management system project appeared to be $30 million over budget and a year behind schedule. As a result of the TechStat, EPA de-scoped

their project into manageable increments, and will go live on schedule and within budget.

At the Department of Interior, employees could not even send a department-wide e-mail, due to 13 fragmented e-mail systems, and after having spent billions of dollars on its' IT infrastructure. As a result of the DOI TechStat, it is now shutting down 95 data centers, and leveraging cloud-computing, which will reduce the lifecycle cost by $500 million of its core infrastructure.

Collectively, our efforts have already led to over $3 billion in lifecycle cost reductions, and have, on average, reduced the time to deliver functionality to end users from two years to eight months. We are also leveraging innovative technologies to lower the costs of government operations. Agencies such as GSA and USDA will collectively save $42 million by shifting services like e-mail to cloud-computing technologies.

Most importantly, we have used the learning from our work to date to identify the structural changes required to drive sustainable improvements across government. In September 2010, the administration released a 25-point plan to reform Federal IT management. The implementation plan, developed with input from Congress and the private sector, is focused on eliminating the structural barriers that get in the way of consistent execution. The plan provides specific deliverables in six month increments, and focuses on achieving operational efficiency and making sure that we are effectively managing large-scale IT programs. We know we can deliver results because we already have. In the past 25 months, we've accelerated delivery of IT functionality, re-scoped and terminated projects, and saved money. But we must continue to scale practices that we know work, and drive execution to make Federal IT programs perform at the level the American people expect and deserve. Thank you for the opportunity to testify. I look forward to any questions you may have.

Mrs. EMERSON. Thank you so much, Mr. Kundra. Mr. Powner.

Mr. POWNER. Chairwoman Emerson, Ranking Member Serrano, and Members of the Subcommittee, we appreciate the opportunity to testify this morning on IT acquisition oversight. GAO's work for this Subcommittee has highlighted the positive effects of aggressive Congressional oversight at the Internal Revenue Service. IRS is not perfect, but the many years of this Subcommittee's attention to IRS's business systems modernization has contributed greatly to their success in delivering systems that process our tax returns. OMB plays a key role in this oversight. In fact, OMB has been required, since 1996, with the Clinger-Cohen Act, to track, analyze, and report to the Congress on IT expenditures, which now total almost $80 billion.

To help carry out this role, OMB established several oversight mechanisms, including lists of troubled projects, starting in 2003, that clearly were not as effective or useful to perform the appropriate level of oversight. Under Vivek Kundra's leadership, OMB improved its oversight and management of IT acquisitions by one: creating the "IT Dashboard"; two: using this information on the Dashboard to hold agencies and CIOs accountable; and three: introducing comprehensive IT reform. I would like to expand on each of these three.

First, the IT Dashboard: In June 2009, OMB deployed a public website, known as the "IT Dashboard" to improve the transparency and oversight of approximately 800 Federal investments, totaling about $40 billion. The Dashboard presents information on cost, schedule, and the CIO assessment, among others. Today, the Dashboard shows that nearly 40 percent of 800 investments are in need of management attention due to their red or yellow status. More simply put, this equates to 300 investments totaling $20 billion that are at risk. I would like to repeat those numbers. We have 300 investments totaling $20 billion that are at risk, and this is only looking at a universe of $40 billion.

In addition to identifying troubled IT projects, the Dashboard is an excellent tool to identify duplicative investments that could result in significant savings. We have ongoing work for the Congress on this duplicative spending. Despite this improved transparency, data reliability remains an issue, as our work has shown that the Dashboard information is not always accurate and consistent with agency records. OMB and agencies acknowledge this, and have a number of activities to improve the Dashboard and the accuracy of what is being recorded.

OMB has improved the management of IT investments needing attention by holding TechStat sessions. These meetings started in January 2010 and are led by Mr. Kundra and agency leadership. Well over 50 of these meetings have been held and the results are impressive. Four projects have been canceled and 11 have been restructured. OMB has claimed that these efforts have saved $3 billion.

OMB has also identified 26 high-priority projects that have undergone extensive review and resulting corrective action plans. One of the high-priority projects is the National Archives Electronic Records Acquisition. Our work for the Subcommittee over the past years has highlighted the mismanagement and major cost and schedule issues associated with this acquisition. It is one of the projects that OMB is in the process of restructuring. Although OMB has significant results with its TechStat and high-priority projects, many more projects are in need of OMB and agency oversight.

In addition to the Dashboard and TechStat sessions, OMB recently issued comprehensive IT reform that includes replicating TechStat sessions throughout the government to improve governance and program management. Many of the initiatives are consistent with our body of work on IT acquisition, and to its credit, OMB has issued aggressive milestones over the next 18 months. Now the challenge lies in implementation.

In summary, OMB's efforts to improve transparency through the IT Dashboard, to improve IT acquisition through its TechStat sessions, and its IT reform initiatives are encouraging. But the accuracy of the Dashboard needs to improve. Even more focus needs to be put on the $20 billion at risk. And the major IT initiatives now need to be implemented.

I would like to conclude by commending this Committee and Mr. Kundra's leadership on IT oversight. I would be pleased to respond to questions.

Mrs. EMERSON. Thank you so much Mr. Powner. Mr. Kempf.

Mr. KEMPF. Thank you. Good morning Madam Chair, Ranking Member Serrano and Members of the Subcommittee. My name is Steven Kempf. I am the General Services Administration Commissioner for the Federal Acquisition Service. Thank you for inviting me to appear before you today to discuss how GSA supports government agencies with IT purchasing. GSA is committed to improving the ease of acquisitions for customers through training, tools, and services that assist the government's acquisition staff to be more productive, effective, and make better informed purchasing decisions for their agencies.

GSA is capitalizing on our unique opportunity to use our government-wide perspective and expertise, along with our centralized procurement role to improve the effectiveness of government and delivering lower cost to taxpayers.

The Federal Acquisition Service (FAS), as a whole, is responsible for over $52 billion in annual spending. Of this amount, approximately $21 billion reflect government spending to acquire IT products and services. FAS operates a suite of IT acquisition programs, including the IT Multiple Award Schedule 70, government-wide acquisition contracts (GWAC), the network services contracts, and select strategic initiatives like "SmartBUY". These programs offer our customers the complete range of IT products and services to meet virtually any IT need.

Aggregated purchasing is a widely accepted practice in many organizations, both public and private and is viewed as particularly beneficial where unique purchasing expertise and large volumes of common requirements, as is often the case with IT purchasing, can be more broadly leveraged. For example, GSA's Federal telecommunications contracts, like Networx, leverage the government's buying power to drive aggregate annual savings to customers. These savings total hundreds of millions of dollars when benchmarked against comparable commercial offerings.

Similarly, since its inception in 2003, GSA's SmartBUY program has generated savings for the government's software purchases approaching $1 billion. The SmartBUY program works in collaboration with DOD's Enterprise Software Initiative to establish blanket purchase agreements against IT Schedule 70 contracts for frequently licensed, commercial off-the-shelf software and software related services.

We continue to manage additional opportunities to apply this Strategic Acquisition Model to further realize savings for the American taxpayer.

Another example is our Commercial Satellite Effort where we partnered with the Department of Defense. This commercial satellite communications initiative, we call "COMSATCOM," combines GSA and Defense Information Systems Agency, technical and acquisition expertise and experience to reshape the Schedule 70 commercial satellite offering for services, and efficiently delivers end-to-end solutions available to all our government customers by using a single collaborative acquisition to replace multiple existing contracts. This approach is expected to greatly reduce acquisition costs.

A final dimension of our value is GSA's ability to shape technology markets in a way that delivers better technical solutions.

GSA has been mentioned in various cyber-security reports as using its procurements to improve the cyber-security posture of the nation more broadly. Specifically, GSA partnered with the Department of Homeland Security to develop a trusted Internet connection managed service. This has shaped the government's cyber-security market, and provided leadership to the commercial sector on how to effectively deliver new cyber-security solutions. By reducing the number of Internet connections in government networks, and improved security filtering, this service protects government networks against sophisticated cyber-attacks.

GSA has also moved out to offer new and innovative products and services that can help to lower the cost of IT service infrastructures for virtually all government operations. One example is cloud-computing services, an emerging computing-as-utility service model, which is becoming widely embraced both within and outside the government. Our cloud-computing solutions have the potential to substantially reduce IT capital spending, while providing Federal agencies with flexibility and speed, allowing them to focus on their mission-critical activities, while easily leveraging technology advances. Last fall, we awarded contracts for infrastructure as a service, and are working to complete contracts for e-mail as a service later this year. The more agile IT solutions, like cloud-computing, and shared software services, reduce the need for expensive, redundant infrastructure, while lowering energy costs. For those customers who may not have the internal resources necessary to manage parts, or all, of an acquisition, GSA also offers an assisted fee-based service to support such needs. Last year, GSA's Assisted Acquisitions Services program managed about $4 billion in IT and professional service contracts. In total, our many programs make IT purchasing easier for our customers. We continually look to provide the latest technology, and the most effective way of procuring that technology, to improve our customers mission-performance while lowering the cost of government for all. Thank you for the opportunity to testify today, and I am happy to answer any questions that you might have.

[The statements of the witnesses follow:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 17, 2011

STATEMENT OF VIVEK KUNDRA
FEDERAL CHIEF INFORMATION OFFICER,
ADMINISTRATOR FOR E-GOVERNMENT AND INFORMATION TECHNOLOGY
OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

"Information Technology Oversight"

Good morning, Madam Chairwoman, Ranking Member Serrano, and members of the Subcommittee. Thank you for the opportunity to testify on ongoing efforts to reform Federal information technology.

For the past 25 months, we have focused on reforming Federal IT to cut waste and boost performance. Instead of accepting the status quo, the President has worked from day one to change how business is done in Washington.

We have cracked down on wasteful IT spending, eliminated duplicative infrastructure and saved money through game changing technologies and approaches. Through relentless oversight, we have reduced life cycle costs of major IT investments by $3 billion and decreased the average time for delivery of meaningful functionality from over two years to eight months. We are in the process of shutting down at least 800 Federal data centers by 2015. And we have already saved millions of dollars by deploying cloud computing technologies and leveraging challenges and prizes.

Most importantly, we have used what we have learned from our work to date to identify the structural changes required to drive sustainable improvements across government. The "25-Point Implementation Plan to Reform Federal Information Technology Management" (Attachment I), developed with input from Congress and the private sector, is focused on eliminating barriers that get in the way of achieving operational efficiency and effectively managing large-scale IT programs.

I. The Story of Federal IT

In the Federal Government, for too long we have witnessed runaway projects that waste billions of dollars and are years behind schedule. By the time some of these projects launch – if they launch at all – they are often obsolete.

These issues go back at least 40 years. In 1968, the Air Force Logistics Command estimated that it would take 10 years and $821 million to develop, implement and operate a new computer-based information and data processing system. In 1975, after $250 million had been spent, Congress ordered the termination of the project due to lack of progress.

In 1988, the National Institutes of Health (NIH) spent $800 million on mainframe computers that its researchers refused to use. NIH's failure to consult its users prior to the purchase contributed to millions of dollars of waste. Ultimately, some of the mainframes were made available to other agencies while the rest were relegated to performing administrative tasks, at a fraction of their capacity.

More recently, the Defense Integrated Military Human Resources System (DIMHRS) was canceled in February 2010 after 10 years of development and approximately $850 million spent – despite originally being planned for deployment in 2007 at a cost of $427 million. As Secretary of Defense Robert Gates put it "...years of effort, poor performance and difficulties" with DIMHRS have amounted to "an unpronounceable acronym."

These are but a few examples – unfortunately, there are many more. Simply put, the Federal Government needs to improve its ability to manage large, complex projects.

At the same time, the Government has also done a poor job controlling infrastructure costs. The Federal government currently spends $24 billion or 31 percent of its annual IT budget on often redundant and inefficient infrastructure. For example, since 1998 the Federal Government has increased the number of its data centers, from 432 to 2,094, a 385 percent increase. This is the opposite of what the private sector is doing. Large companies are radically reducing their number of data centers to significantly reduce facilities, energy, IT infrastructure and operations costs. This pattern is repeated in other commodity areas such as call centers, help desk, payroll, telecommunications and other enterprise services.

II. Making the tough decisions

To get a better return on investment for the American people, we have transformed the way we manage the Federal Government's IT projects – using transparency to shed light on government operations and to hold government managers accountable for results.

Cracking down on wasteful IT Spending

In June 2009, we launched the IT Dashboard, which transformed the way we look at Federal IT investments, making information on the performance of IT projects, such as project budgets and schedules, publicly available and constantly updated.

Using the Dashboard, anyone from agency officials to the American public can now identify and monitor the performance of IT projects, just as easily as they can monitor the stock market or

baseball scores. It shows budget, schedule and performance metrics. If a project is behind schedule or over budget, the Dashboard tells you that.

The Dashboard also ends the days of faceless accountability. It provides not only the contact information for the agency official responsible for the project, but also shows you their picture and lets you contact them directly to provide feedback on the project's performance.

In January 2010, we held the first TechStat Accountability Session. A TechStat session is a face-to-face, evidence-based review of an IT program, undertaken with OMB and agency leadership and powered by the IT Dashboard.

TechStat sessions have yielded results. For example, TechStat highlighted that the Department of Commerce's export control system (BIS ECASS 2000+) was duplicative. As a result, DOC halted new development and instead is migrating to a system operated by the Department of Defense.

In June 2010, we halted all financial system modernization projects representing approximately $3 billion in annual spending – requiring agencies to ensure that project plans were focused only on critical functionality and systems were broken down into small frequent deliverables.

Then in August 2010 we targeted 26 of the highest priority IT investments, to ensure that they deliver value to the American people. The Department of the Interior accelerated delivery of incident management and reporting system to the 6,000 law enforcement officers protecting the nation's natural resource and cultural monuments from 24 months to six month increments. The Department of Homeland Security also terminated its troubled National Flood Insurance Program IT modernization project, avoiding an additional $24 million in spending.

The high priority and financial systems reviews alone have led to over $3 billion in life-cycle cost reductions, and have reduced time to delivery from over two years to eight months.

Eliminating duplicative infrastructure

In addition to focusing on fixing poorly performing projects, we took significant steps to reduce our infrastructure footprint. By committing to shut down at least 800 of our 2,094 Federal data centers by 2015, we are taking on duplicative and inefficient spending on IT infrastructure that has grown unchecked for decades.

III. Saving money through game-changing technologies and new approaches

Federal agencies have been adopting new technologies and innovative approaches as a way to increase efficiency and reduce costs. By moving to the cloud and leveraging innovative tools to tap into the ingenuity of the American people, agencies are finding creative new ways to meet their needs.

Moving to the Cloud

To harness the benefits of cloud computing, we have instituted a "Cloud First" policy. This policy is intended to accelerate the pace at which the government will realize the value of cloud computing by requiring agencies to evaluate safe, secure cloud computing options before making any new investments.

By leveraging shared infrastructure and economies of scale, cloud computing presents a compelling business model for Federal leadership. Agencies will be able to measure and pay for only the IT resources they consume, increase or decrease their usage to match requirements and budget constraints, and leverage the shared underlying capacity of IT resources via a network.

$20 billion in annual IT spending could potentially move to the cloud. Some agencies are already taking advantage of the benefits afforded by the cloud, by reducing their ownership costs, improving productivity, and provisioning and scaling faster than ever before. The Department of Agriculture is migrating 120,000 users across 5,000 locations to the cloud, saving $27 million, while the General Services Administration (GSA) is shifting 17,000 email users to the cloud, reducing costs by $15 million over the next five years. The Census Bureau deployed a cloud-based customer self-service tool in just 25 days, rather than the six months it would have taken conventionally.

Creating an App Economy

Data.gov was launched with 47 datasets of government information. Today, there are more than 300,000 datasets, hundreds of apps created by third parties, and a global movement to democratize data. Already 11 cities, 24 states, 13 nations, and international organizations such as the World Bank and OECD have followed our lead in making data available to the public.

From these datasets, citizens are creating an app economy; developing hundreds of apps that include helping parents keep their children safe, letting travelers find the fastest route to their destinations, and informing home buyers about the safety of their new neighborhood. An example of a citizen-developed app that makes use of data provided through Data.gov is FlyOnTime, which provides travelers with real-time information on the on-time record of every flight between the cities on their itinerary, allowing them to select their carrier and departure time with an informed understanding of the likelihood of a delay.

Never before have people been so empowered with the information they need to make everyday decisions. New capabilities being deployed this month will make the data even more accessible and useful to citizens by enabling them to analyze, sort, group, and visualize the data live, via the cloud. Transforming data into information puts the data to work, allowing citizens to be more informed, make better decisions, and derive greater value from their government.

We also tapped into the ingenuity of the American people through prizes and challenges for innovative ideas and solutions. So far, the American people have helped the Government find the innovative path through over 70 competitions held to date on Challenge.gov. Nearly 30 agencies have sponsored challenges, from the Department of Energy seeking a new energy efficient lightbulb, to USDA asking students to create healthy school lunches, to FAA challenging colleges to improve the design of airports nationwide. In less than a year, we've seen many examples of individuals and organizations who have provided innovative solutions for government. The Apps for Army competition spurred the development of 53 web and mobile apps, with the top five winning apps supporting physical training, mental health, disaster relief, mapping, and recruiting. The Progressive Automotive X Prize resulted in winning vehicles that get over 100 mpg, meet all federal safety and other requirements, and promise to revolutionize the auto industry. The General Services Administration has made it easy and cost effective for agencies to conduct challenges, by establishing Challenge.gov as a common platform across government.

Now, for the first time, Congress has granted agencies the authority to use prizes and challenges to spur innovation through the America COMPETES Act. Dramatically increasing agencies' ability to leverage prizes and challenges, the enacted legislation gives us a whole new approach to solving government problems: we pay only for results, stimulate private sector investment in a challenge, and can increase public support and engagement around a particular issue or problem.

IV. Reforming Federal IT Management

On December 9, 2010, the Administration released the 25 Point Implementation Plan to Reform Federal Information Technology Management. The implementation plan spans 18 months, with deliverables in six month increments. To develop the plan we engaged the Federal IT, acquisition, and program management communities; industry experts; and academics. We conducted listening sessions with Congress, agency chief information officers (CIOs), and Senior Procurement Executives. The implementation plan focuses on achieving operational efficiency and effectively managing large scale IT programs:

- *Applying Light Technology and Shared Solutions* - Government agencies too often rely on proprietary, custom IT solutions. We need to fundamentally shift this mindset, from building custom systems to adopting lighter technologies and shared solutions. This is driving needed improvements within the pre-RFP process, to include the introduction of social technologies as part of the interactive collaboration with industry, citizens and agencies.

  The shift to "light technologies," that is, cloud services, which can be deployed rapidly, and shared solutions will result in substantial cost savings, allowing agencies to optimize spending, and allowing agencies to reinvest in their most critical mission needs. Agencies must focus on consolidating existing data centers, reducing the need for infrastructure growth

by implementing a "Cloud First" policy for services, and increasing their use of available cloud and shared services.

- *Strengthening Program Management* - The success of IT projects hinges on strong program management. But in government, program management is too often an afterthought. Take the program manager position. In most government agencies, this function is often filled on an ad-hoc basis with individuals temporarily pulled from other functional areas. As a result, agencies suffer from high turnover and a lack of expertise in this critical position. No matter how well-thought out our policies, no matter how well-informed our technology choices, and no matter how well-planned our investments, it is well-trained project managers, focused on execution, who will ultimately lead projects to success. Yet challenges in recruiting, training, and retaining top-tier project managers have made it difficult to put the best talent on the toughest projects.

  Effectively managing modular IT programs requires a corps of program and project management professionals with extensive experience and robust training. Strong program management professionals are essential to effectively steward IT programs from beginning to end, align disparate stakeholders, manage the tension between on-time delivery and additional functionality, and escalate issues for rapid resolution before they become roadblocks. The size and criticality of large Federal Government IT programs are considerable. The people managing these programs must represent the best of the best.

  Challenges with program management are pervasive across the Federal Government due to a general shortage of qualified personnel. However, pockets of excellence exist in the government. For example, the Social Security Administration (SSA) has developed a multi-tier career track for program managers that requires both training and experience for advancement. Program managers advance by gaining experience on small projects before moving to larger, more complex programs. SSA feels so strongly about the critical role of program managers that it will not begin a new program unless the right manager is in place and dedicated to lead it.

  High-performing IT organizations have a well-developed program management talent strategy. The Office of Personnel Management (OPM), working with the Chief Human Capital Officers Council, is taking steps to significantly enhance the supply of IT program management talent in the Federal Government by creating a career path to attract and reward top performers. In addition, agencies will establish integrated, multi-disciplinary program teams with key skills before beginning major IT programs. We have asked the CIO Council to establish a collaboration portal for program managers to share best practices at the close of each program, and to launch a technology fellows program. Finally, OPM, OMB, and the CIO Council will explore ways to encourage mobility of program managers across the government.

- *Aligning Acquisition and Budget Cycles with Technology* - The way that we currently budget and acquire IT is broken. The budget process forces agencies to specify in detail what they are going to build 24 months before they can even start a project, and the acquisition process routinely tacks on another 12 to 18 months, locking agencies into specific technology solutions that are almost by definition out of date by the time the project starts. Three years is forever in technology.

  The procurement reforms enacted in the 1990s provided tools to speed up the acquisition process, but the government has failed to take full advantage of those tools, so we continue to see programs delayed longer than the life of the technology. In particular, the use of multiple-award indefinite delivery, indefinite-quantity (ID/IQ) contracts, called for in the 1994 Federal Acquisition Streamlining Act (FASA), was intended to allow quicker issuance of task orders, to be competed through streamlined "fair opportunity" mini-competitions among the multiple contract holders. The creation of government-wide acquisition contracts (GWACs) for purchasing IT goods and services was also intended to provide a limited number of specialized vehicles open to the entire government that could quickly respond to individual agency needs.

  While the innovations in FASA have produced benefits, too often those tools are not used or not used effectively. IT acquisition, particularly for large projects, continues to move too slowly. We need to make real change happen, by developing a cadre of specialized acquisition professionals and by educating the entire team managing IT projects about the tools available to streamline the acquisition process.

  In addition, requirements are often developed without adequate input from industry, and without enough communication between an agency's IT staff and the program employees who will actually be using the hardware and software. Moreover, agencies often believe that they need to develop a cost estimate that is low in order to have the project approved. As a result, requirements are too often unrealistic (as to performance, schedule, and cost estimates), or the requirements that the IT professionals develop may not provide what the program staff expect – or both. Speeding up the acquisition timeline and awarding more successful contracts for IT requires a multifaceted set of solutions including increased communication with industry, high functioning, "cross-trained" program teams, and appropriate project scoping.

  As with the acquisition cycle, the rapid pace of technological change does not match well with the Federal Government's budget formulation and execution processes either. In addition, modular development means that lessons learned from an early cycle in an IT program will likely inform the detailed plans for the next cycle. As such, agencies need more flexibility to manage IT programs responsibly. To compensate for this misalignment between the realities of IT program management and the need for detailed budgets several years in

advance, several agencies have worked with Congress to achieve greater IT budget flexibility through multi-year and/or agency-wide portfolio appropriations.

To deploy IT successfully, agencies need the ability to make final decisions on technology solutions at the point of execution, not years in advance. Agencies need the flexibility to move funding between investments or projects within their portfolio to respond to changes in needs and available solutions.

But at the same time, Congress has a legitimate and important need for oversight; and given the history of project failures and wasted investments, it is understandable that Congress requires compliance with a rigid system for managing IT investments.

The Department of Veterans Affairs (VA) presents an interesting model. Greater budget flexibility has allowed the VA CIO to freeze projects that are off track and either restructure them for success or cancel them. VA established an accountability system so projects that are missing milestones are flagged early. Greater budget flexibility paired with real-time visibility is leading to success at VA – and minimizing the risk of "big bang" failures.

- *Streamlining Governance and Improving Accountability* - There is both a profusion and fragmentation of accountability across government that ultimately makes it hard for anyone to drive performance. There are layers upon layers of oversight and accountability across programs, bureaus, agencies, and departments. And that's before you get to GAO, Congress, and OMB.

  Take DHS for example. When we prepared for our first TechStat session to review IT projects with DHS, we had to sort through seven layers of oversight between the program manager and the Secretary's office. DHS isn't alone. These layers exist government-wide. These multiple layers create a false sense of security, and they delay difficult decisions. With so many people having some responsibility for oversight, true accountability is almost nonexistent.

  For too long we have shied away from making the tough decisions to halt, turn around or terminate underperforming projects. Poorly performing projects have been cancelled only after they have become newspaper headlines, wasting billions of taxpayer dollars.

  To strengthen IT governance, we need to improve line-of-sight between project teams and senior executives, increase the precision of ongoing measurement of IT program health, and boost the quality and timing of interventions to keep projects on track. These improvements will both boost the efficiency of project oversight and better manage programs in distress.

  Our strategy for strengthening IT governance centers on driving agency adoption of the "TechStat" model currently used at the Federal level. Our goal is to scale this capability across the Federal Government, increasing the number of programs that can be reviewed and

hastening the speed at which interventions occur. Through this strategy, we aim to enable agencies to grow their own performance management standards and focus OMB direct involvement on a limited number of highest-priority cases. So far, 129 agency representatives have been trained and eight agencies have conducted their initial TechStats.

- *Increasing Engagement with Industry* - Effective engagement with the private sector happens too rarely, as misinterpretations of acquisition regulations, coupled with the desire to avoid the appearance of impropriety have erected barriers between agencies and industry. While we must maintain the integrity of each and every acquisition, we also need to avoid allowing risk aversion to drive us into the mode where the government makes decisions without effectively engaging industry.

  The Federal Government does not consistently leverage the most effective and efficient available technologies. Federal IT contracts have been difficult to manage because they were not well-defined or well-written. These contractual challenges, which could be overcome with better communication with industry, often produce waste, delivery delays, and erosion of the value of IT investments.

  In many cases, agencies have been hindered by inadequate communication with industry, which is often driven by myths about what level of vendor engagement is permitted. The result has been barriers between industry and government buyers, whose efforts are often frustrated by a lack of awareness of the most efficient and effective technologies available in the private sector. These barriers negatively affect the acquisition process including needs identification, requirements definition, strategy formulation, the proposal process, and contract execution. In support of the 25 point plan, the Office of Federal Procurement Policy (OFPP) recently issued guidance to agencies to assist them in improving their communications with vendors and will continue to educate the community on the facts and myths of vendor engagement strategies. This will increase constructive and responsible engagement with the private sector IT community and improve the quality and cost effectiveness of the IT services provided.

Conclusion

We know we can deliver results, because we have already accelerated the delivery of IT functionality, re-scoped and terminated poorly performing projects, and saved money. But, we must continue to scale practices that we know work and drive execution to make Federal IT perform at the level the American people expect and deserve.

I look forward to answering your questions and working with you to address these critical Federal information technology issues.

25 POINT IMPLEMENTATION PLAN TO REFORM FEDERAL INFORMATION TECHNOLOGY MANAGEMENT

Vivek Kundra
U.S. Chief Information Officer

DECEMBER 9, 2010

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Introduction

Information technology should enable government to better serve the American people. But despite spending more than $600 billion on information technology over the past decade, the Federal Government has achieved little of the productivity improvements that private industry has realized from IT. Too often, Federal IT projects run over budget, behind schedule, or fail to deliver promised functionality. Many projects use "grand design" approaches that aim to deliver functionality every few years, rather than breaking projects into more manageable chunks and demanding new functionality every few quarters. In addition, the Federal Government too often relies on large, custom, proprietary systems when "light technologies" or shared services exist.

Government officials have been trying to adopt best practices for years – from the Raines Rules of the 1990s through the Clinger Cohen Act and the acquisition regulations that followed. But obstacles have always gotten in the way. This plan attempts to clear these obstacles, allowing agencies to leverage information technology to create a more efficient and effective government.

Over the last 18 months, we have engaged the Federal IT, acquisition, and program management communities; industry experts; and academics. We have conducted listening sessions with Congress, Agency CIOs, and Senior Procurement Executives. We have received detailed input and recommendations from many industry groups such as TechAmerica. This engagement process has led to recommendations for IT reform in the areas of operational efficiency and large-scale IT program management.

A 25 point action plan is detailed below to deliver more value to the American taxpayer. These actions have been planned over the next 18 months and place ownership with OMB and agency operational centers, as appropriate. While the 25 points may not solve all Federal IT challenges, they will address many of the most pressing, persistent challenges. This plan requires a focus on execution and is designed to establish some early wins to garner momentum for our continued efforts. Active involvement from agency leadership is critical to the success of these reforms. As such, the Federal CIO will work with the President's Management Council to successfully implement this plan.

Some highlights of the implementation plan include:

- Turnaround or terminate at least one-third of underperforming projects in IT portfolio within the next 18 months
- Shift to "Cloud First" policy. Each agency will identify three "must move" services within three months, and move one of those services to the cloud within 12 month and the remaining two within 18 months.
- Reduce number of Federal data centers by at least 800 by 2015
- Only approve funding of major IT programs that:
  - Have a dedicated program manager and a fully staffed integrated program team
  - Use a modular approach with usable functionality delivered every six months
  - Use specialized IT acquisition professionals

- Work with Congress to:
  - Consolidate commodity IT funding under the Agency CIOs and
  - Develop flexible budget models that align with modular development
- Launch an interactive platform for pre-RFP agency-industry collaboration

This plan is divided into two sections: Achieving Operational Efficiency and Managing Large-Scale IT Programs Effectively. The first section outlines the steps being taken to adopt cloud solutions and leverage shared services. The second section covers the structural areas that impact the success rates of large IT programs across government. The 25 action items listed throughout the plan are summarized in the chart at the end of the document.

PART I: ACHIEVING OPERATIONAL EFFICIENCY

As part of a broader IT transformation, the Federal Government needs to fundamentally shift its mindset from building custom systems to adopting light technologies and shared solutions. Too often, agencies build large standalone systems from scratch, segregated from other systems. These systems often duplicate others already within the Federal Government, wasting taxpayer dollars. The growth in data centers from 432 in 1998 to 2,094 in 2010 highlights this problem.

Leading private sector companies have taken great strides to improve their operating efficiencies. Cloud technologies and Infrastructure-as-a-Service enable IT services to efficiently share demand across infrastructure assets, reducing the overall reserve capacity across the enterprise. Additionally, leveraging shared services of "commodity" applications such as e-mail across functional organizations allows organizations to redirect management attention and resources towards value-added activities. The massive scale of the Federal Government allows for great potential to leverage these efficiencies.

The following section outlines actionable, achievable steps to improve the government's operational efficiency.

A. Apply "Light Technology" and Shared Solutions

The shift to "light technologies," that is, cloud services, which can be deployed rapidly, and shared solutions will result in substantial cost savings, allowing agencies to optimize spending, and allowing agencies to reinvest in their most critical mission needs. For example, GSA recently entered into a contract to shift email services to the cloud, resulting in a 50% cost reduction over five years – a savings of about $15 million. Agencies must focus on consolidating existing data centers, reducing the need for infrastructure growth by implementing a "Cloud First" policy for services, and increasing their use of available cloud and shared services.

1. Complete detailed implementation plans to consolidate at least 800 data centers by 2015

In February 2010, the Administration launched the Federal Data Center Consolidation Initiative (FDCCI) and issued guidance for Federal CIO Council agencies. The guidance called for agencies to inventory their data center assets, develop consolidation plans throughout fiscal year 2010, and integrate those plans into agency fiscal year 2012 budget submissions.

The FDCCI is aimed at assisting agencies in identifying their existing data center assets and formulating detailed consolidation plans that include a technical roadmap and clear consolidation targets. The FDCCI will cut down the number of data centers across the government and assist agencies in applying best practices from the public and private sector, with goals to:

- Promote the use of Green IT by reducing the overall energy and real estate footprint of government data centers
- Reduce the cost of data center hardware, software, and operations
- Increase the overall IT security posture of the government, and
- Shift IT investments to more efficient computing platforms and technologies.

After an 8 month peer review process, we now know that the government is operating and maintaining almost 2,100 data centers. Through the FDCCI, a minimum of 800 data centers will be closed by 2015.

To meet this reduction target, OMB and Agency CIOs will take the following steps:

1.1 Identify agency data center program managers to lead consolidation efforts

Large IT projects often fail to meet goals because of distributed accountability for success. Large, complex, and critical infrastructure programs, such as data center consolidation, require a single person to lead the coordinated effort.

Within the next six months, each agency will designate a senior, dedicated data center consolidation program manager with project management experience and technical competence in IT infrastructure. Because data center consolidation requires interactions with many stakeholder groups, the data center

program manager must also have strong communication skills. The data center program manager at each agency will be responsible for developing a plan with interim, verifiable milestones to reach the agency's data center reduction target and monitor progress toward those goals.

1.2 Launch a Data Center Consolidation Task Force to ensure successful execution

Within the next three months, the Federal CIO Council will launch a government-wide Data Center Consolidation Task Force comprised of the data center program managers, facilities managers, and sustainability officers. The Data Center Consolidation Task Force will be responsible for working together to share progress toward individual agency goals and the overall Federal target of a minimum of 800 data center closures by 2015. The Data Center Consolidation Task Force will meet monthly to review progress of each consolidation project and ensure government-wide alignment between agency efforts where appropriate. The Task Force will serve as a "community of practice" for Agency CIOs and data center program managers to share best practices from this effort and enhance consolidation effectiveness.

1.3 Launch a publicly available dashboard to track data center consolidation progress

OMB will launch a publicly available dashboard to serve as a window into progress of the data center consolidation program. The dashboard will ensure transparency and accountability, and keep the overall program in plain view of the public.

2. Create a government-wide marketplace for data center availability

Within the next 18 months, OMB and GSA will create a government-wide marketplace that better utilizes spare capacity within operational data centers.

This online marketplace will match agencies with extra capacity to agencies with increasing demand, thereby improving the utilization of existing facilities. The marketplace will help agencies with available capacity promote their available data center space. Once agencies have a clear sense of the existing capacity landscape, they can make more informed consolidation decisions.

3. Shift to a "Cloud First" policy

In the private sector, a web-based multimedia production company used the cloud to allow anyone with access to an Internet connection the ability to create their own fully customized, professional-quality, TV-like videos. Consumers can then share the resulting videos with friends and family across the world. The cloud allowed for a rapid response when demand jumped from 25,000 users to more than 250,000 users in three days, eventually reaching a peak rate of 20,000 new customers every hour. Because of the cloud, the company was able to scale from 50 to 4,000 virtual machines in three days to support increased demand on a real-time basis.

In contrast, the Federal Government's Car Allowance and Rebate System (CARS, more commonly known as "Cash-For-Clunkers") failed when faced with peak loads. To process the anticipated 250,000 transactions, the National Highway Traffic Safety Administration (NHTSA) deployed a customized commercial application hosted in a traditional data center environment on June 19, 2009. When dealer registrations

began on July 24, 2009, demand far exceeded initial projections, and within three days, the system was overwhelmed, leading to numerous unplanned outages and service disruptions. Ultimately, approximately 690,000 CARS transactions were processed. However, lacking the ability to scale rapidly, system stability was not achieved until August 28, 2009, over a month after registrations started coming in.

The Federal Government must be better prepared in the future. Beginning immediately, the Federal Government will shift to a "Cloud First" policy.

The three-part strategy on cloud technology will revolve around using commercial cloud technologies where feasible, launching private government clouds, and utilizing regional clouds with state and local governments where appropriate.

Cloud computing brings a wide range of benefits:

- *Economical*: Cloud computing is a pay-as-you-go approach to IT, in which a low initial investment is required to begin, and additional investment is needed only as system use increases.
- *Flexible*: IT departments that anticipate fluctuations in user demand no longer need to scramble for additional hardware and software. With cloud computing, they can add or subtract capacity quickly and easily.
- *Fast*: Cloud computing eliminates long procurement and certification processes, while providing a near-limitless selection of services.

When evaluating options for new IT deployments, OMB will require that agencies default to cloud-based solutions whenever a secure, reliable, cost-effective cloud option exists. To facilitate this shift, we will be standing up secure government-wide cloud computing platforms.

3.1 Publish cloud strategy

Within the next six months, the Federal CIO will publish a strategy to accelerate the safe and secure adoption of cloud computing across the government.

The National Institute of Standards and Technology (NIST) will facilitate and lead the development of standards for security, interoperability, and portability. NIST is working with other agencies, industry, academia, standards development organizations, and others to use existing standards as appropriate and develop cloud computing standards where gaps exist. While cloud computing services are currently being used, experts cite security, interoperability, and portability as major barriers to further adoption. The expectation is that standards will shorten the adoption cycle, enabling cost savings and an increased ability to quickly create and deploy enterprise applications.

3.2 Jump-start the migration to cloud technologies

Each Agency CIO will be required to identify three "must move" services and create a project plan for migrating each of them to cloud solutions and retiring the associated legacy systems. Of the three, at least one of the services must fully migrate to a cloud solution within 12 months and the remaining two within 18 months.

Each migration plan will include major milestones, execution risks, adoption targets, and required resources, as well as a retirement plan for legacy services once cloud services are online. These new cloud implementations should be compatible with the secure, certified platforms currently provided in the private sector. Migrating these services will build capabilities and momentum in the Federal Government, encourage industry to more rapidly develop appropriate cloud solutions for government, and reduce operating costs.

4. Stand-up contract vehicles for secure IaaS solutions

Federal, state, and local governments will soon have access to cloud-based Infrastructure-as-a-Service (IaaS) offerings. GSA's IaaS contract award allows 12 vendors to provide government entities with cloud storage, virtual machines, and web hosting services to support a continued expansion of governments' IT capabilities into cloud computing environments.

Within the next six months, after completing security certification, GSA will make a common set of contract vehicles for cloud-based Infrastructure-as-a-Service solutions available government-wide.

A government-wide risk and authorization program for cloud computing will allow agencies to rely on the authorization completed by another agency or to use an existing authorization, so that only additional, agency-specific requirements need to be separately certified. Our aim is to drive to a set of common services across the government supported by a community, rather than an agency-specific risk model. This will allow the Federal Government to "approve once and use often."

5. Stand-up contract vehicles for commodity services

The Software-as-a-Service (SaaS) E-mail Working Group, formed in June 2010, has begun to identify and develop the set of baseline functional and technical requirements for government-wide cloud email solutions and is working towards developing business case templates for agencies who are considering transitioning to SaaS e-mail.

Within 12 months, GSA will utilize these requirements to stand up government-wide contract vehicles for cloud-based email solutions. GSA will also begin a similar process specifically designed for other back-end, cloud-based solutions.

6. Develop a strategy for shared services

Within the next 12 months, the Federal CIO will develop a strategy for shared services. That strategy will build on earlier Federal Government successes in shared services and include benchmarks on current usage and uptake rates, as well as service level agreements (SLAs), customer satisfaction levels, costs, and overall economic effectiveness.

Managing partners of shared services will assess the current state of shared services and each release a roadmap to improve quality and uptake. Ultimately, the managing partners will be responsible for executing these roadmaps and will be held accountable for improvements on SLAs and reductions in cost. These efforts will enable the current shared services to be accessible government-wide at higher quality levels.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
1	Complete detailed implementation plans to consolidate 800 data centers by 2015	OMB, Agencies	●		
2	Create a government-wide marketplace for data center availability	OMB, GSA			●
3	Shift to a "Cloud First" policy	OMB, Agencies	●		
4	Stand-up contract vehicles for secure IaaS solutions	GSA	●		
5	Stand-up contract vehicles for "commodity" services	GSA		●	
6	Develop a strategy for shared services	Federal CIO		●	

PART II: EFFECTIVELY MANAGING LARGE-SCALE IT PROGRAMS

IT has transformed how the private sector operates and has revolutionized the way in which it serves its customers. The Federal Government has largely missed out on these transformations, due in part to its poor management of large technology investments.

To address these execution problems, we launched the IT Dashboard in June 2009, allowing the American people to monitor IT investments across the Federal Government and shining a light onto government operations. While this unprecedented transparency was an important first step, it was not enough to simply shine a light on problems and hope that solutions would follow.

Building on the foundation of the IT Dashboard, we launched TechStat Accountability Sessions ("TechStats") in January 2010. A TechStat is a face-to-face, evidence-based review of an IT program with OMB and agency leadership. TechStat sessions enable the government to turnaround, halt, or terminate IT investments that do not produce dividends for the American people.

As a result of more than 50 TechStat reviews, OMB now has a sharper picture of the persistent problems facing Federal IT. One of the most consistent problems lies in project scope and timeline. In TechStat sessions, OMB found that many current IT projects are scheduled to produce the first deliverables years after work begins, in some cases up to six years later. In six years, technology will change, project sponsors will change, and, most importantly, program needs will change. Programs designed to deliver initial functionality after several years of planning are inevitably doomed.

Modular development delivers functionality in shorter timeframes and has long been considered best practice in the private sector and in some areas of government; in fact, both Raines Rules and the Federal Acquisition Regulation (FAR) advise agencies to plan programs in this way. Successful organizations using modular development base releases on requirements they define at a high level and then refine through an iterative process, with extensive engagement and feedback from stakeholders. To maintain the discipline of on-time and on-budget, organizations push out additional functionality and new requirements for major changes into future releases and prioritize critical needs and end-user functionality.

Evidence shows that modular development leads to increased success and reduced risk. However, because this is a new way of thinking about IT programs for some groups within government, it requires additional training, templates, and tools. Many existing government processes – from planning to budgeting to procurement – naturally favor larger, more comprehensive projects. As such, far too many Federal IT programs have multi-year timeframes well beyond the now accepted 18- to 24-month best practice. The activities outlined in this plan attempt to address the structural barriers to implementing modular development consistently across government.

Moving forward, Federal IT programs must be structured to deploy working business functionality in release cycles no longer than 12 months, and, ideally, less than six months, with initial deployment to end users no later than 18 months after the program begins.

Program managers need to define each phase of the IT development lifecycle and rigorously manage scope. These timelines should encompass the entire process – from concept through requirement analysis, development, test, and delivery. Today, a number of agencies have implemented these modular practices successfully. The Department of Veterans Affairs now requires that large IT programs deliver working functionality every six months.

The following practices will help achieve the promises of modular development:

- Ensuring each module aligns with overall program and business objectives and has clear quantitative and qualitative outcome measures for success
- Awarding contracts that incorporate clear business objectives and performance outcomes, a vision for future state architecture, and parameters for iterative design and development
- Delivering new working functionality to users at least every 12 months, with no more than 3 months dedicated to creating detailed system specifications
- Regularly capturing and incorporating user feedback through an iterative process that assesses user satisfaction with each release, continuously refining design to ensure alignment with business needs
- Preventing scope creep by defining high-level requirements upfront, locking down the current release, and pushing additional non-critical functionality to future releases
- Moving resources from one release phase to the next as soon as they complete their work (e.g., the requirements team builds requirements for the next release, while developers build current release)

B. Strengthen Program Management

Effectively managing modular IT programs requires a corps of program and project management professionals with extensive experience and robust training. Strong program management professionals are essential to effectively steward IT programs from beginning to end, align disparate stakeholders, manage the tension between on-time delivery and additional functionality, and escalate issues for rapid resolution before they become roadblocks. The size and criticality of large Federal Government IT programs are considerable. The people managing these programs must represent the best of the best.

Challenges with program management are pervasive across the Federal Government due to a general shortage of qualified personnel. However, pockets of excellence exist in the government. For example, the Social Security Administration (SSA) has a developed a multi-tier career track for program managers that requires both training and experience for advancement. Program managers advance by gaining experience on small projects before moving to larger, more complex programs. SSA feels so strongly about the critical role of program managers that it will not begin a new program unless the right manager is in place and dedicated to lead it.

High-performing IT organizations have a well-developed program management talent strategy. The Office of Personnel Management (OPM), working with the Chief Human Capital Officers Council, will need to take steps to significantly enhance the supply of IT program management talent in the Federal Government. Steps include creating a career path to attract and reward top performers, establishing integrated, multi-disciplinary program teams with key skills before beginning major IT programs, requiring program managers to share best practices at the close of each program, launching a technology fellows program, and encouraging mobility of program managers across the government.

7. Design a formal IT program management career path

In the next six months, OPM, with input from agencies and OMB, will create a specialized career path for IT program managers (PMs). This will likely require creating a separate Occupational Series specific to IT program management within the current IT family with career advancement paths that are more competitive with the private sector. The path should require expertise and experience for advancement. It will also require the development of a competency model for IT program management consistent with the IT project manager model.

Finding, recruiting, and hiring top IT program management talent is challenging. In the next six months, OPM will work with OMB to provide agencies with direct hiring authority for IT PMs as necessary.

Further, agencies will identify specific IT program management competency gaps in the next Human Capital Management Report and develop specific plans to close the IT PM gap. To ensure that agencies are executing these plans, senior agency executives will review their progress and provide an interim report to OMB, 12 months after the next Human Capital Management Report is published.

OPM will work with the Department of the Treasury and the Department of Agriculture (USDA) to pilot the IT program management career track.

8. Scale IT program management career path government-wide

After piloting IT program management career paths at Treasury and USDA, OPM will work to expand the IT program management career paths more broadly across the Federal Government.

9. Require integrated program teams

A primary challenge impacting the successful delivery of IT programs is the need to manage a broad set of stakeholder communities, including agency leaders, business process owners, IT, acquisition, financial management, and legal. The typically siloed nature of government stakeholder communities is ill-suited for the multi-disciplinary and rapidly evolving needs of major IT program management processes.

High-performing private sector firms quickly bring together small multi-disciplinary, integrated program teams (IPTs) consisting of the following functions: business process owners who have a clear vision of the problem they are solving, IT professionals who understand the full range of technical solutions, acquisition professionals who plan and procure needed labor and materials, and finance staff to secure required funding. In addition, other functions such as HR and legal are included on the program team as needed. At the hub of these IPTs is a strong and effective program manager who stewards the process from beginning to end.

Examples of high-functioning IPTs exist in pockets of the Federal Government in which a complete IPT is required for major programs prior to beginning the investment review process. However, the practice is still only unevenly applied. The healthcare.gov initiative at the Department of Health and Human Services provides a good example of what a fully integrated multi-disciplinary team can do in the Federal Government. The healthcare.gov team successfully launched a citizen-facing website within 90 days of program initiation to rave reviews.

Over the next six months, OMB will issue guidance requiring an IPT, led by a dedicated, full-time program manager and supported by an IT acquisition specialist, be in place for all major IT programs before OMB will approve program budgets.

9.1 Dedicate resources throughout the program lifecycle and co-locate when possible

For each large IT program, critical members of the IPT will serve as full-time resources dedicated to the program. This must include a 100% dedicated IT program manager, but other roles will vary by program. Key members of the IPT will also be co-located during the most critical junctures of the program. This is especially important during the requirements-writing phase, when business, IT and acquisition must define and modify requirements in short iterative cycles, and when "translation issues" have historically caused problems.

The core of the IPT, including all IT program leadership roles, will be in place throughout the program lifecycle, from the initial concept development phase through the delivery of the last increment under the contract. For major IT investments, agency leadership will approve the composition of the integrated program team and the dedicated program manager.

9.2 Agencies will hold integrated program team members accountable for both individual functional goals and overall program success

A pervasive issue in government programs is that individual stakeholders focus primarily on performance metrics within their functions, and not on the holistic outcomes of the program. For example, IT or program staff may push to award work to a particular vendor, or to add "bells and whistles" that fail to take into account time pressures and budgetary constraints. Similarly, contracting staff may focus so much on competition requirements and small-business participation goals that they fail to look for solutions that meet these important requirements while also satisfying program needs. We need to replace these "stovepiped" efforts, which too often push in inconsistent directions, with an approach that brings together the stakeholders and integrates their efforts.

Agency executives will work with their senior procurement executives (SPEs), CIOs, and program leaders to take action and drive towards a more balanced set of individual and program success metrics based on the following two recommendations:

- First, agencies should set up individual performance goals that cover individual and program objectives. Performance goals for acquisition, IT, and business personnel need to include a combination of individual and program objectives.
- Second, agencies must also ensure that the individual and program metrics balance speed, quality, effectiveness, and compliance with Federal Acquisition Regulations. Supervisors must utilize a balanced set of performance metrics to evaluate individual performance. Individuals who provide exemplary contributions to the team will be recognized for their success (e.g., acquisition recognition through the Federal Acquisition Institute Awards & Recognition Program for individuals who effectively meet program needs without sacrificing compliance).

10. Launch a best practices collaboration platform

Within six months, the Federal CIO Council will develop a collaboration portal to exchange best practices, case studies, and allow for real-time problem solving. To institutionalize this best practice sharing, agency PMs will submit post-implementation reviews of their major program deliveries to the portal. These reviews will populate a searchable database of synthesized and codified program management best practices that all PMs can access.

11. Launch technology fellows program

Within 12 months, the office of the Federal CIO will create a technology fellows program and the accompanying recruiting infrastructure. By partnering directly with universities with well-recognized technology programs, the Federal Government will tap into the emerging talent pool and begin to build a sustainable pipeline of talent. The technology fellows programs should specifically target competency gaps that are identified in the Human Capital Management Reports submitted by agencies.

The program will aim to cut bureaucratic barriers to entering public service and provide access to unique career opportunities in government agencies. At the same time, these roles will provide new fellows with relevant training in large IT program management.

12. Enable IT program manager mobility across government and industry

The Federal CIO Council, OMB, and OPM, over the next 12 – 18 months, will be responsible for developing a process that will support and encourage movement of program managers across government and industry. Rotational opportunities allow the Federal Government to leverage its size to share knowledge and expertise across agencies. IT program managers with experience on specific types of programs or with specific types of systems should have opportunities to apply this experience on similar programs across government. Similarly, program managers should be given opportunities to learn from leading private companies. The Federal CIO Council, OMB, and OPM will work to design opportunities for industry rotation to allow Federal program managers to remain up-to-date with the latest skills while managing conflict of interest issues.

To support PM mobility, the Federal CIO Council will build a repository of information on all Federal Government IT PMs, including relevant background, specific expertise, implementation experience, and performance as part of its best practices collaboration platform.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
7	Design a formal IT program management career path	OPM, OMB	•		
8	Scale IT program management career path	OPM, Agencies			•
9	Require Integrated Program Teams	OMB	•		
10	Launch a best practices collaboration platform	Federal CIO Council	•		
11	Launch technology fellows program	Federal CIO		•	
12	Enable IT program manager mobility across government and industry	OMB, CIO Council, OPM			•

C1. Align the Acquisition Process with the Technology Cycle

The acquisition process can require program managers to specify the government's requirements up front, which can be years in advance of program initiation. Given the pace of technology change, the lag between when the government defines its requirements and when the contractor begins to deliver is enough time for the technology to fundamentally change, which means that the program may be outdated on the day it starts.

The procurement reforms enacted in the 1990s provided tools to speed up the acquisition process, but the government has failed to take full advantage of those tools, so we continue to see programs delayed longer than the life of the technology. In particular, the use of multiple-award indefinite-delivery, indefinite-quantity (ID/IQ) contracts, called for in the 1994 Federal Acquisition Streamlining Act (FASA), was intended to allow quicker issuance of task orders, to be competed through streamlined "fair opportunity" mini-competitions among the multiple contract holders. The creation of government-wide acquisition contracts (GWACs) for purchasing IT goods and services was also intended to provide a limited number of specialized vehicles open to the entire government that could quickly respond to individual agency needs.

While the innovations in FASA have produced benefits, too often those tools are not used or not used effectively. IT acquisition, particularly for large projects, continues to move intolerably slowly. We need to make real change happen, by developing a cadre of specialized acquisition professionals and by educating the entire team managing IT projects about the tools available to streamline the acquisition process.

In addition, requirements are often developed without adequate input from industry, and without enough communication between an agency's IT staff and the program employees who will actually be using the hardware and software. Moreover, agencies often believe that they need to develop a cost estimate that is low in order to have the project approved. As a result, requirements are too often unrealistic (as to performance, schedule, and cost estimates), or the requirements that the IT professionals develop may not provide what the program staff expect – or both. Speeding up the acquisition timeline and awarding more successful contracts for IT requires a multifaceted set of solutions including increased communication with industry, high functioning, "cross-trained" program teams, and appropriate project scoping.

13. Design and develop a cadre of specialized IT acquisition professionals

Effective IT acquisition requires a combination of thorough knowledge of the Federal acquisition system, including the tools available, a deep understanding of the dynamic commercial IT marketplace, and the unique challenges inherent to successfully delivering large IT programs in a modular time-boxed manner. Agency CIOs and SPEs advised that acquisition professionals who were specialized in IT were more effective. This specialization is also consistent with private sector best practice. To bring these

increased capabilities online, we will be creating standardized training and development opportunities to develop a cadre of acquisition professionals with the specialized knowledge and experience required to expedite complex IT acquisitions across the Federal Government.

Over the next six months, the Office of Federal Procurement Policy (OFPP) and the Federal CIO, with input from agencies, will design a specialized IT acquisition cadre. In doing so, they will need to answer the following questions:

- What is the process for acquisition professionals to become specialized in IT?
- How do professionals progress within the community (i.e., transition from entry-level through to senior contributor)?
- How do you ensure that community members can focus on participating in IT acquisition?
- What training, experience, and certification are needed?
- What will be the impact on the remaining acquisition workforce and non-IT acquisitions if some of the staff are dedicated to IT acquisition?

A number of agencies have already developed IT acquisition specialists who can serve as a means to expedite IT programs. Useful lessons can be learned from drawing on the experience of the GWACs and the staff that support them at GSA, NASA, and the National Institutes of Health (NIH).

In the case of smaller agencies, where IT-only acquisition groups may be impractical, leveraging GWACs or using specialized cadres at larger agencies through Economy Act transactions may be the best solution (e.g., the Department of Veterans Affairs' Technology Acquisition Center and Treasury Department's BPD Acquisition Resource Center). In addition, both the GWACs and these other agencies can potentially provide cross-functional support through experienced IT program management and technical staff. Access to these resources will, of course, not be limited to smaller agencies, as they can often provide an efficient alternative to in-house IT acquisition even for larger agencies. Particularly within the current budgetary constraints, agencies may have only a limited capability to hire new staff as candidates for the IT cadre, so drawing on other agencies' resources may be vital to success.

13.1 Strengthen IT acquisition skills and capabilities

Within six months, OFPP, with input from agencies, will develop guidance on requirements for IT acquisition specialists. In addition, OFPP will develop guidance on curriculum standards to cross-train program managers and IT acquisition professionals.

In particular, the guidance will focus on increasing cross-functional knowledge of the IT marketplace, IT program management, and IT acquisition. OFPP will build upon its current Federal Acquisition Certification in Contracting (FAC-C) to develop a path for IT expertise. OFPP will leverage existing curriculum that may exist within agencies that already host specialized IT acquisition professionals. Skills development will include:

- *Classroom training*: OFPP will leverage and strengthen, where necessary, existing classes at the Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU), and engage these and other training providers to develop additional offerings as necessary.

- *On-the-job experience*: As is true with acquisition in general, the skills needed to successfully handle large IT acquisitions call for a blend of classroom training and on-the-job experience. For example, contracting professionals with hands-on IT experience are better equipped to help IT and program staff translate business and technical requirements into a statement of work that can help ensure a smooth procurement.
- *Mentorship:* Building a strong culture of mentorship enables IT acquisition professionals to more quickly learn "the art of the possible" to deliver effective IT acquisition solutions. OFPP can encourage this by building on FAI's ongoing efforts to foster mentorship and networking opportunities, within and between agencies.

As an immediate action to implement these recommendations, OFPP will consider these initiatives as part of its review of the Federal Acquisition Certifications for Program/Project Managers (P/PMs), Contracting Officer Technical Representatives (COTR), and contracting professionals in the next six months.

14. Identify IT acquisition best practices and adopt government-wide

OFPP will lead an effort over the next six months to study the experience of those agencies that have already created specialized IT acquisition teams, in order to develop a model to scale more broadly. Among the key questions to be considered will be the length of time individuals need to spend devoted solely to IT acquisition in order to add value to IT program teams, the kind of training and experiences that are most valuable, appropriate organizational structures, and successful acquisition strategies and practices.

Drawing on that experience, OFPP should work closely with senior agency leadership at the Department of Homeland Security (DHS) and Department of Energy (DOE) as they rollout their IT acquisition cadres in the next year. The next step, over the following 18 months, is to scale the specialized IT acquisition cadre government-wide.

15. Issue contracting guidance and templates to support modular development

Over the next year, OFPP will work with the acquisition and IT communities to develop guidance on contracting for modular development. As part of this effort, OFPP will hold an open meeting with industry leaders to solicit ideas/feedback on contracting for modular development. OFPP will develop templates and samples, and will create communities of practice to facilitate adoption of modular contracting practices.

This guidance will address a variety of factors that IT program managers as well as contracting officers will need to consider as they plan for modular development efforts, such as whether to award to a single vendor or multiple vendors; how to ensure that there is appropriate competition at various stages in the process; how broad or specific the statements of work should be; when to use fixed-price contracts or rely on other pricing arrangements; and how to promote opportunities for small business. As noted above, the Federal Acquisition Streamlining Act of 1994 provides a variety of flexibilities for acquiring

commercial items and for streamlining competition that will be reflected in the guidance to ensure IT program managers and others are aware of existing authorities that can further support modular IT development.

When evaluating acquisition strategies, agencies will need to prioritize those solutions that promote short deadlines for deliverables (generally less than three months), allow for responsiveness to rapidly evolving program and technical requirements, and facilitate a streamlined award process. One innovative example is at the Department of Transportation (DOT), which has recently formed IT "Agility Platforms" with contract vehicles in place that simplify how business owners can quickly access technology.

16. Reduce barriers to entry for small innovative technology companies

Small businesses in the technology space drive enormous innovation throughout the economy. However, the Federal Government does not fully tap into the new ideas created by small businesses. Unlike larger, more established firms, new entrants have little at stake in current technological systems ranging from software standards, to operating system and file standards, to business processes. While large firms drive many incremental improvements to the status quo, smaller firms are more likely to produce the most disruptive and creative innovations. In addition, with closer ties to cutting edge, ground-breaking research, smaller firms often have the best answers for the Federal Government.

However, small businesses too rarely approach the Federal Government as a customer because of the real and perceived barriers to contracting. The sales process is perceived as lengthy and complex, and, therefore, not seen as worthwhile unless done at scale. Without existing knowledge or access to specialized lawyers and lobbyists, small firms default to more traditional channels. And given their limited size, small businesses often find it difficult to bid on the large chunks of government work that require a substantial workforce across many functional capabilities. Ultimately, the government contracting process is easier to navigate by large, existing players, who in turn dominate the volume of contracts and therefore create a track record making them "less risky" and more likely to win future contracts.

To address the barriers that small businesses face generally (both in IT and more broadly), in April 2010, the President established an interagency task force to make recommendations for improving the participation of small companies in Federal contracts. The task force made 13 recommendations in its August 2010 report, which are currently in various stages of implementation. Of the 13 recommendations, six were also included, in whole or in part, in provisions of the recently-enacted Small Business Jobs Act of 2010.

As part of this effort, and to enable small IT companies to work with the Federal Government, SBA, GSA, and OFPP will take concrete steps over the next 18 months to develop clearer and more comprehensive small business contracting policies.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
13	Design and develop cadre of specialized IT acquisition professionals	OMB, Agencies	●		
14	Identify IT acquisition best practices and adopt government-wide	OFPP	●		
15	Issue contracting guidance and templates to support modular development	OFPP		●	
16	Reduce barriers to entry for small innovative technology companies	SBA, GSA, OFPP			●

C2. Align the Budget Process with the Technology Cycle

The rapid pace of technological change does not match well with the Federal government's budget formulation and execution processes. In addition, modular development means that lessons learned from an early cycle in an IT program will likely inform the detailed plans for the next cycle. As such, agencies need more flexibility to manage IT programs responsibly. To compensate for this misalignment between the realities of IT program management and the need for detailed budgets several years in advance, several agencies have worked with Congress to achieve greater IT budget flexibility through multi-year and/or agency-wide portfolio appropriations.

To deploy IT successfully, agencies need the ability to make final decisions on technology solutions at the point of execution, not years in advance. Agencies need the flexibility to move funding between investments or projects within their portfolio to respond to changes in needs and available solutions. But at the same time, Congress has a legitimate and important need for oversight; and given the history of project failures and wasted investments, it is understandable that Congress requires compliance with a rigid system for managing IT investments.

The Department of Veterans Affairs (VA) presents an interesting model. Greater budget flexibility has allowed the VA CIO to freeze projects that are off track and either restructure them for success or cancel them. VA established an accountability system so projects that are missing milestones are flagged early. Greater budget flexibility paired with real-time visibility is leading to success at VA – and minimizing the risk of "big bang" failures.

17. Work with Congress to develop IT budget models that align with modular development

Working with Congress to design ways to better align funding to the technology cycle will reduce waste and improve the timeliness and effectiveness of provided solutions. Creating and leveraging flexible IT budget models requires work by OMB, Congress, and agency leadership.

17.1 Analyze working capital funds and transfer authorities to identify current IT budget flexibilities

Over the next six months, OMB will work with Congress to analyze existing working capital funds (WCFs) and other vehicles for pooling funds and extending availability of funding. Working capital funds (WCFs) are agency revolving funds for managing common administrative services that add budgeting flexibility within the agency. In addition to WCFs, franchise funds and other accounts can potentially provide added IT funding flexibility. These accounts add flexibility by pooling bureau-level funds to serve agency-wide purposes.

This analysis will address limits on the amount of funding that could flow through such accounts under current law across all appropriations and agencies, any limits on the types of activities that may be

funded, and any other limitations on the use of transfer authorities to feed such accounts from contributing accounts. This analysis would also include a comprehensive review of the legislative language for accounts receiving funds such as WCF accounts, General Provisions, or other legislative limits on transfer authorities, and the legal limits on use of general transfer authorities such as the Economy Act or the E-Government Act of 2002. The analysis will also identify examples of the use of the existing funding flexibility vehicles for IT projects and develop best practices guidance on applicability and implementation across the government, as well as identify where skill gaps exist in developing costing models and managing funds.

17.2 Identify programs for which to pilot flexible budget models

Within six months, Agency CIOs and CFOs will identify programs at several agencies for which added budget flexibility could save money and improve outcomes. OMB and agencies will work with Congress to develop proposed budget models to complement the modular development approach. In addition, OMB and agencies will evaluate mechanisms for increased transparency for these programs.

18. Develop supporting materials and guidance for flexible IT budget models

In order to support agencies and appropriations staff in leveraging budget flexibility, the Federal CFO Council, in collaboration with the Federal CIO Council, will develop a set of best practices and materials that explain the need for these types of funding, and prescribe a path to achieving more flexible models.

As a first step, the Federal CIO Council will create a segmentation of common IT program types and the associated funding requirements. The Federal CFO Council will then work with the Federal CIO Council to create detailed "playbooks" mapping each IT program type to specific budget vehicles based on examples of past investments and IT needs (e.g., multi-year funding for programs with several discrete deliverables). The playbooks will also explain in detail how the recommended budget flexibility improves delivery of the corresponding IT program results. Agencies will utilize these templates and training to clearly outline their financial needs to successfully deliver IT programs.

Program leaders and CIOs with increased budget flexibility will face higher expectations around successful delivery from agency leaders and Congress. Achieving greater flexibility in funding also requires greater transparency into spending effectiveness. Agencies will need to engage in more frequent dialogues with appropriations staff and to clearly demonstrate the performance of IT investments in achieving mission goals.

The Federal CFO and CIO Councils will create a set of guidelines for increasing transparency in the utilization of IT funds. Agencies will follow these guidelines and institute additional review processes for multi-year funds and portfolio funding to prevent mismanagement of increased funding flexibility (e.g., masking program delays or overruns).

19. Work with Congress to scale flexible IT budget models more broadly

Within 12 months, OMB will engage several agencies to work with Congress to launch flexible IT budget models where appropriate. As pilot agencies demonstrate success with flexible IT budget models on selected programs, OMB will continue to work with Congress to scale flexible budget models across major IT programs government-wide.

20. Work with Congress to consolidate commodity IT spending under Agency CIO

Agencies, departments, bureaus, and, at times, even programs currently design, build, and operate independent systems for "commodity" IT services (e.g., e-mail, data centers, content management systems, web infrastructure). Their functionality and the infrastructure that supports them are often duplicative and sub-scale. These independent systems currently draw resources away from IT programs that deliver value to the American taxpayer. With few exceptions, the minor differences between agency-specific systems and their associated operational processes do not drive value for the agencies.

Consolidating these systems and their associated infrastructure (e.g., data centers) will be difficult and complex if the current funding models are maintained. Within the next six months, OMB will work with Congress to develop a workable funding model for "commodity" IT services. These funding models will be applicable to both inter-agency IT services and intra-agency IT services. On an annual basis, the Agency CIOs and the Federal CIO Council will identify "commodity" services to be included in this funding model as they are migrated towards shared services.

A benefit of consolidated commodity IT spending is the ability to move more rapidly to adopt strategic sourcing solutions. Once agencies with common business needs can effectively coordinate or consolidate the procurement of IT-related goods and services and demand is aggregated within agencies, it will be easier for the government to more effectively negotiate for volume discounts and improved service levels.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
17	Work with Congress to create IT budget models that align with modular development	OMB, Agencies	•		
18	Develop supporting materials and guidance for flexible IT budget models	OMB, CFO Council, CIO Council		•	
19	Work with Congress to scale flexible IT budget models more broadly	OMB, Agencies			•
20	Work with Congress to consolidate Commodity IT spending under Agency CIO	OMB, Agencies	•		

D. Streamline Governance and Improve Accountability

To strengthen IT governance, we need to improve line-of-sight between project teams and senior executives, increase the precision of ongoing measurement of IT program health, and boost the quality and timing of interventions to keep projects on track. These improvements will both boost the efficiency of project oversight and better manage programs in distress.

Our strategy for strengthening IT governance centers on driving agency adoption of the "TechStat" model currently used at the Federal level. TechStat Accountability Sessions are face-to-face, evidence-based reviews of agency IT programs with OMB and agency leadership. Using data from the Federal IT Dashboard, investments are carefully analyzed with a focus on problem-solving that leads to concrete action to improve performance.

TechStats have led to accelerated deliverables, budget reductions, and project terminations. Results include:

- $3 billion reduction in lifecycle costs
- Average acceleration of deliverables from over 24 months to 8 months

Our goal is to scale this capability across the Federal Government, increasing the number of programs that can be reviewed and hastening the speed at which interventions occur. Through this strategy, we aim to enable agencies to grow their own performance management standards and focus OMB direct involvement on a limited number of highest-priority cases.

21. Reform and strengthen Investment Review Boards

Investment Review Boards (IRBs) were created to control and evaluate the results of all major IT investments. In practice, these review boards have frequently failed to adequately manage the IT program portfolio by establishing successful projects or taking corrective action. Today, typical IRB meeting agendas currently set aside two hours to review the entire IT portfolio, far too little time to adequately review dozens of technical projects. These IRBs will be restructured according to the "TechStat" model.

21.1. Revamp IT Budget Submissions

OMB Exhibits 53 and 300 have come to support stand-alone processes to request and justify funding rather than serving as management tools for monitoring program health. In many cases, these documents are prepared in large part by third-party contractors and there is minimal involvement by agency executives and program managers.

These exhibits will be revamped to better align them to agency budgeting and management processes, make them more relevant and useful, and ensure they promote the use of modular development principles. The improved exhibits will also alleviate reporting burden, increase data accuracy, and serve as the authoritative management tool.

By May of 2011, OMB will reconstruct the 300s and 53s around distinct data elements that drive value for agencies and provide the information necessary for meaningful oversight. The timing of these elements will be separated into distinct streams to clarify objectives, give agencies adequate time to assemble strong responses, and improve data quality. These streams will include:

- *Budget justification* for new major Development, Modernization and Enhancement (DME) investments, significant re-engineering of existing DME investments, and annual re-justification of DME investments.
- *Health monitoring* of existing DME investments and Operations and Maintenance (O&M)
- *Portfolio governance* to ensure the IT portfolio and individual projects are consistent with the agency mission and Federal policy objectives

Importantly, OMB and agencies must evaluate the way in which IT programs are reviewed so that budget approval for large IT programs is tied to key implementation steps rather than seemingly upfront, wholesale approval of massive programs. OMB will evaluate ways to ensure agencies can demonstrate strong performance in earlier modules in order to receive approval for funding of subsequent modules.

21.2 Rollout "TechStat" model department-wide

By March 2011, OMB will work with Agency CIOs and other agency leaders to stand up the "TechStat" model at the departmental level. Steps include:

- OMB will assist agencies in designing tools and enforcing their use, to provide the transparency required for the "TechStat" model to be effective
- OMB analysts will provide in-person training to Agency CIOs in "TechStat" methodology including accountability guidelines, engagement cadence, evaluation processes, and reporting processes.
- Agency leaders will lead, sponsor, and manage the process within their departments

22. Redefine role of Agency CIOs and Federal CIO Council

Currently, Agency CIOs and the Federal CIO Council spend a majority of their mindshare on policymaking and maintaining IT infrastructure. As we move forward with the IT reforms, CIO focus must shift towards portfolio management. This shift will be encouraged by activities such as the restructuring of the Investment Review Boards. Similarly, agencies will be increasingly freed from low-value activities (e.g., building redundant infrastructure) as they adopt technologies such as cloud computing.

- Agency CIOs will be responsible for managing the portfolio of large IT projects within their agencies. This portfolio management role will include continuously identifying unmet needs to be addressed by new projects, terminating or turning around poorly performing projects, and retiring IT investments which no longer meet the needs of the organization. Steps will include:
- As described above, Agency CIOs will take on responsibility for the "TechStat" governance process within their agencies as of March 2011.

- Agencies will turnaround or terminate at least one-third of poorly performing projects in their portfolio within the next 18 months. The Federal CIO Council will play a similar portfolio management role, but at a cross-agency level. Within six months, the Federal CIO Council will periodically review the highest priority "TechStat" findings assembled by the Agency CIOs. These reviews will enable CIOs to share best practices and common sources of failure to improve success rates over time.

23. Rollout "TechStat" model at bureau-level

Once cemented at the agency level, the "TechStat" model will be deployed at the bureau-level to ensure the effective management of large programs. Within 18 months, Agency CIOs, in collaboration with other agency leaders, will be responsible for deploying the tools and training necessary to ensure rollout has been completed.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos	6-12 mos.	12-18 mos.
21	Reform and strengthen Investment Review Boards	OMB, Agencies	•		
22	Redefine role of Agency CIOs and Federal CIO Council	Federal CIO, Agency CIOs	•		
23	Rollout "TechStat" model at bureau-level	Agency CIOs			•

E. Increase Engagement with Industry

The Federal Government does not consistently leverage the most effective and efficient available technologies. Federal IT contracts have been difficult to manage because they were not well-defined or well-written. These contractual challenges produce waste, delay program delivery, and erode the value of IT investments.

In many cases, agencies have been hindered by inadequate communication with industry, which is often driven by myths about what level of vendor engagement is permitted. The result has been barriers between industry and government buyers, whose efforts are often frustrated by a lack of awareness of the most efficient and effective technologies available in the private sector. These barriers negatively affect the full breadth of the acquisition process including needs identification, requirements definition, strategy formulation, the proposal process, and contract execution. Educating the community on the myths of vendor engagement will increase constructive and responsible engagement with the private sector IT community and improve the quality and cost effectiveness of the IT services provided.

24. Launch "myth-busters" education campaign

Commonly-held misunderstandings about how industry and government can engage with one another during the acquisition process place an artificial barrier between Federal agencies and their industry partners. These myths reduce the government's access to necessary market information as government officials, both program managers and contracting officers, are often unsure how to responsibly engage with their industry counterparts. They may have inaccurate information about the rules, may be overly cautious in their interactions, or may be unaware of communication strategies that can help the government define its requirements and establish sound acquisition strategies. The fact is that the statutory and regulatory framework for communications between industry and government allows significantly greater engagement than current practice. The government therefore needs to raise awareness of these flexibilities to its workforce.

OFPP will identify the major myths that most significantly hinder requirements definition and the development of effective acquisition planning and execution. In January 2011, OFPP will issue a memorandum identifying these myths and the related facts and strategies to improve constructive engagement. This effort will be supported through discussions and other outreach efforts with key stakeholders in early 2011 including, but not limited to:

- Professional associations and other industry representatives
- Federal stakeholders including program managers, contracting professionals, agency attorneys, and ethics officials

Throughout 2011, the Federal Acquisition Institute (FAI) and OFPP will conduct a "myth-buster" awareness campaign to eliminate artificial private sector engagement barriers. Steps will include at least the following:

- Launch an online community of practice within the next six months using technologies such as video channels to provide a Q&A forum, celebrate successes, and share "myths" and potential "myth-busters"
- Conduct FAI webinar for the acquisition workforce hosted by OFPP by late January 2011
- Create mandatory, continuous learning program through the FAI website
- Present at conferences such as the GSA Expo, the National Contract Management Association (NCMA) World Conference, and NCMA Government Contract Management Conference throughout 2011

25. Launch interactive platform for pre-RFP agency-industry collaboration

The government benefits when there is broad engagement with industry before beginning an IT project. Recently, the government used an online wiki tool to rapidly and effectively explore solutions for a planned Federal IT investment. Tens of thousands of visitors participated from all 50 states and workers at Fortune 500 companies interacted with the owners of a 10-person business to discuss the best solutions for the government. The dialogue allowed participants to tag and vote on the best ideas, providing the agency with a list of top priorities and key themes that made the feedback both more comprehensive and more actionable than what could have been obtained through traditional methods. Technological opportunities were discussed, weighed, and judged by the community that were not immediately obvious at the onset of the effort.

Inexpensive, efficient solutions such as these should be made available to all agencies to effectively tap the understanding of industry partners, especially in the period prior to issuing a Request for Proposal (RFP). Within the next six months, GSA will launch a government-wide, online, interactive platform for this purpose. Action item owner and deadlines

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
24	Launch "myth-busters" education campaign	OFPP	•		
25	Launch an interactive platform for pre-RFP agency-industry collaboration	GSA	•		

Summary

From delivering benefits to our veterans to advancing biomedical discovery, Federal Government IT investments are designed to serve the American people. By focusing on execution, oversight, and transparency, this plan will deliver tangible results to stakeholders across the Federal Government and the American taxpayers.

Individually and together, the 25 actions detailed above will move the government towards the future – more nimble, more cost effective, and more citizen-focused. These IT reforms require collaboration with Congress; engagement with industry; and commitment and energy from government leadership and IT, acquisition, and financial management professionals. They require relentless focus on near-term execution, recognition of past lessons, and a long-term vision for the future. But these efforts are worth the hard work. By shifting focus away from policy and towards execution and oversight, these IT reforms will succeed in delivering results for the American people.

The future picture for Federal Government IT is exciting. IT enables better service delivery, enhanced collaboration with citizens, and dramatically lower costs. We must get rid of the waste and inefficiencies in our systems. Outdated technologies and information systems undermine our efficiency and threaten our security.

Federal IT projects will no longer last multiple years without delivering meaningful functionality. Poorly performing projects will be identified early and put under a spotlight for turnaround – those that continue to flounder will be terminated. No longer will large IT contracts be negotiated by individuals without IT expertise. No longer will one agency build expensive new data centers when other agencies have excess capacity. And no longer will rigid budgeting constraints prevent executives from making smart decisions with taxpayer dollars; flexible models will allow agency leaders to shift funds where and when they are needed, ensuring that results matter more than plans.

A government powered by modern information technology is a faster, smarter, and more efficient government. While IT projects throughout the government will always have risks, there are no excuses for spectacular failures. And while not all projects can be perfect, major errors must and will be caught early and addressed appropriately. Projects should never be so far behind schedule that the primary activity of program managers shifts to waging a constant public relations battle to ensure continued funding. Instead, with streamlined governance and experienced program managers, issues can be caught early and course corrections can be made without wasting time and money.

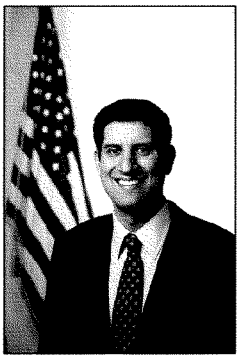
The Federal Government will be able to provision services like nimble start-up companies, harness available cloud solutions instead of building systems from scratch, and leverage smarter technologies that require lower capital outlays. Citizens will be able to interact with government for services via simpler, more intuitive interfaces. IT will open government, providing deep visibility into all operations. With this 25 point plan, the Federal Government will turn the corner on implementing the most critical reforms, ensuring that large IT programs perform as expected and can be delivered on time and on budget in order to deliver for the American people.

Action item owner and deadlines

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
1	Complete detailed implementation plans to consolidate 800 data centers by 2015	OMB, Agencies	●		
2	Create a government-wide marketplace for data center availability	OMB, GSA			●
3	Shift to a "Cloud First" policy	OMB, Agencies	●		
4	Stand-up contract vehicles for secure IaaS solutions	GSA	●		
5	Stand-up contract vehicles for "commodity" services	GSA		●	
6	Develop a strategy for shared services	Federal CIO		●	
7	Design a formal IT program management career path	OPM, OMB	●		
8	Scale IT program management career path	OPM, Agencies			●
9	Require Integrated Program Teams	OMB	●		
10	Launch a best practices collaboration platform	Federal CIO Council	●		
11	Launch technology fellows program	Federal CIO		●	
12	Enable IT program manager mobility across government and industry	OMB, CIO Council, OPM			●
13	Design and develop cadre of specialized IT acquisition professionals	OMB, Agencies	●		
14	Identify IT acquisition best practices and adopt government-wide	OFPP	●		
15	Issue contracting guidance and templates to support modular development	OFPP		●	
16	Reduce barriers to entry for small innovative technology companies	SBA, GSA,OFPP			●

SUMMARY

	Action Item	Owner(s)	Within 6 mos.	6-12 mos.	12-18 mos.
17	Work with Congress to create IT budget models that align with modular development	OMB, Agencies	●		
18	Develop supporting materials and guidance for flexible IT budget models	OMB, CFO Council, CIO Council		●	
19	Work with Congress to scale flexible IT budget models more broadly	OMB, Agencies			●
20	Work with Congress to consolidate Commodity IT spending under Agency CIO	OMB, Agencies	●		
21	Reform and strengthen Investment Review Boards	OMB, Agencies	●		
22	Redefine role of Agency CIOs and Federal CIO Council	Federal CIO, Agency CIOs	●		
23	Rollout "TechStat" model at bureau-level	Agency CIOs			●
24	Launch "myth-busters" education campaign	OFPP	●		
25	Launch an interactive platform for pre-RFP agency-industry collaboration	GSA	●		



Vivek Kundra,
US Chief Information Officer

Vivek Kundra was appointed as the United States Chief Information Officer by President Obama in March 2009. Prior to joining the Obama administration, Kundra served in Mayor Fenty's cabinet as the CTO for the District of Columbia and Governor Kaine's cabinet as Assistant Secretary of Commerce and Technology for the Commonwealth of Virginia. He has also served in leadership roles in the private sector.

The World Economic Forum selected Kundra as a 2011 Young Global Leader, representing a group of exceptional young leaders who share a commitment to shaping the global future. He has been recognized as the 2009 Chief of the Year by InformationWeek for driving unprecedented change in Federal IT and as the 2008 IT Executive of the Year for his pioneering work to drive transparency, engage citizens and lower the cost of government operations. He has also been recognized by InfoWorld among the top 25 CTO's in the country.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. House of Representatives

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INFORMATION TECHNOLOGY

Investment Oversight and Management Have Improved but Continued Attention Is Needed

Statement of David A. Powner
Director, Information Technology Management Issues

Abbreviations

CIO	chief information officer
IT	information technology
OMB	Office of Management and Budget

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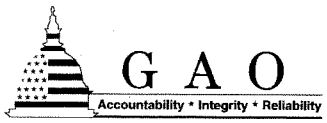


GAO-11-454T

March 17, 2011

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of GAO-11-454T, a testimony before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. House of Representatives

INFORMATION TECHNOLOGY

Investment Oversight and Management Have Improved but Continued Attention Is Needed

Why GAO Did This Study

The federal government anticipates spending $79 billion on information technology (IT) in fiscal year 2011. The Office of Management and Budget (OMB) plays a key role in overseeing the implementation and management of federal IT investments. Given the size of these investments and their importance to the health, economy, and security of the nation, it is critical for OMB and federal agencies to provide appropriate program oversight and ensure adequate transparency. Over the past several years, GAO has issued a number of reports and testimonies on OMB's initiatives to highlight troubled projects, justify IT investments, and use project management tools. Partly in response to this prior work, in 2009 OMB deployed a public Web site—known as the IT Dashboard—that provides detailed information on approximately 800 major federal IT investments, including assessments of these investments' performance against cost and schedule targets (referred to as ratings).

GAO was asked to testify on OMB's key efforts to improve the oversight and management of federal IT investments through the use of the Dashboard and other efforts. To prepare this statement, GAO drew on previously published work on IT investments, including OMB's Dashboard, agencies' oversight boards, and agencies' use of project management tools.

What GAO Found

OMB has improved the oversight and management of IT investments through multiple initiatives. By establishing the IT Dashboard, OMB has drawn additional attention to troubled IT investments at federal agencies, which is an improvement from the previously used oversight mechanisms. The Federal Chief Information Officer (CIO) also stated that the Dashboard has increased the accountability of agency CIOs and established much-needed visibility into investment performance. However, GAO has found that the data on the Dashboard are not always accurate. Specifically, in reviews of selected investments from 10 agencies, GAO found that the Dashboard ratings were not always consistent with agency cost and schedule performance data. In these reports GAO made a number of recommendations to OMB and federal agencies to improve the accuracy of Dashboard ratings. Agencies agreed with these recommendations, while OMB agreed with all but one.

In addition to the Dashboard, beginning in January 2010, the Federal CIO began leading reviews—known as "TechStat" sessions—of selected IT investments involving OMB and agency leadership to increase accountability and transparency and improve performance. OMB officials stated that, as of December 2010, 58 sessions had been held and resulted in improvements to or termination of IT investments with performance problems. For example, the June 2010 TechStat session for a National Archives and Records Administration investment resulted in the halting of development funding pending the completion of a strategic plan. In addition, OMB identified 26 additional high-priority IT projects and plans to develop corrective action plans with agencies at future TechStat sessions. According to the Federal CIO, OMB's efforts to improve management and oversight of IT investments have already resulted in $3 billion in savings.

Additionally, in December 2010, OMB issued an 18-month plan for reforming federal IT management that has five major goals, including strengthening program management, streamlining governance and improving accountability, and using shared solutions, among others. These goals and the plans in place to support them are consistent with GAO's work highlighting IT management and governance weaknesses, as well as work to identify duplicative activities in the government. As part of this plan, OMB has initiatives under way to strengthen agencies' investment review boards and to consolidate federal data centers.

GAO has ongoing work to review the Dashboard and other OMB initiatives. These efforts, along with full implementation of GAO recommendations, could result in further significant savings and increased efficiency.

View GAO-11-454T or key components.
For more information, contact David A.Powner at (202) 512-9286 or pownerd@gao.gov.

March 17, 2011

Madam Chairwoman and Members of the Subcommittee:

I am pleased to be here today to discuss the federal government's key activities and efforts to improve the management of information technology (IT) investments, totaling an estimated $79 billion for fiscal year 2011. Given the size of these investments and the criticality of many of these systems to the health, economy, and security of the nation, it is important that the Office of Management and Budget (OMB) and federal agencies provide appropriate oversight of and adequate transparency into these programs.

During the past several years, we have issued multiple reports and testimonies on OMB's initiatives to highlight troubled projects, justify IT investments, and encourage the use of project management tools.[1] We made numerous recommendations to OMB and to federal agencies to improve these initiatives to further enhance the transparency, oversight, and management of IT projects.

As part of its response to our prior work, OMB deployed a public Web site in June 2009, known as the IT Dashboard, which provides detailed information on federal agencies' major IT investments,[2]

[1]See for example, GAO, *Information Technology: OMB Has Made Improvements to Its Dashboard, but Further Work Is Needed by Agencies and OMB to Ensure Data Accuracy*, GAO-11-262 (Washington, D.C.; Mar. 15, 2011); *Information Technology: OMB's Dashboard Has Increased Transparency and Oversight, but Improvements Needed*, GAO-10-701 (Washington, D.C.: Jul. 16, 2010); *Information Technology: Federal Agencies Need to Strengthen Investment Board Oversight of Poorly Planned and Performing Projects*, GAO-09-566 (Washington, D.C.; June. 30, 2009); *Information Technology: Management and Oversight of Projects Totaling Billions of Dollars Need Attention*, GAO-09-624T (Washington, D.C.: Apr. 28, 2009); *Information Technology: Agencies and OMB Should Strengthen Processes for Identifying and Overseeing High Risk Projects*, GAO-06-647 (Washington, D.C.: June 15, 2006).

[2]Major IT Investment means a system or an acquisition requiring special management attention because it: has significant importance to the mission or function of the agency, a component of the agency, or another organization; is for financial management and obligates more than $500,000 annually; has significant program or policy implications; has high executive visibility; has high development, operating, or maintenance costs; is funded through other than direct appropriations; or is defined as major by the agency's capital planning and investment control process.

including assessments of actual performance against cost and schedule targets (referred to as ratings) for approximately 800 major federal IT investments. The Dashboard is intended to improve the transparency and oversight of these investments.

You asked us to testify on OMB's key efforts to improve the oversight and management of federal IT projects. Specifically, my testimony covers OMB's efforts to improve IT management—in particular, through the use of the Dashboard and its recently announced IT reform plan.[3] In preparing this testimony, we relied on prior GAO reports and testimonies that assessed the government's management of IT investments, including OMB's Dashboard, agencies' oversight boards, and agencies' use of project management tools.[4] All of our work for these reports and testimonies were performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

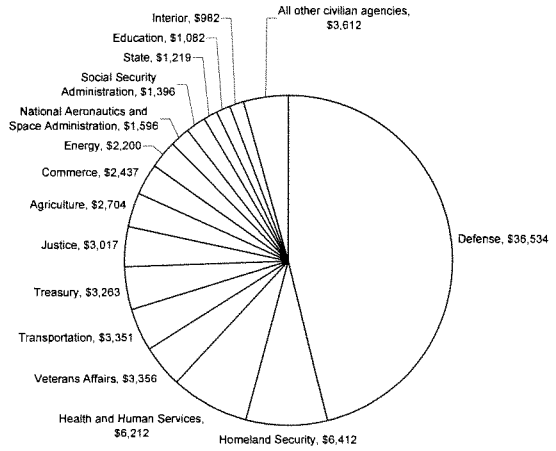
Each year, OMB and federal agencies work together to determine how much the government plans to spend on IT projects and how these funds are to be allocated. The President's Budget for fiscal

[3]OMB, *25 Point Implementation Plan to Reform Federal Information Technology Management* (Washington, D.C., 2010).

[4]GAO-11-262; GAO-10-701; GAO, *Information Technology: Agencies Need to Improve the Implementation and Use of Earned Value Techniques to Help Manage Major System Acquisitions*, GAO-10-2 (Washington, D.C.; Oct. 8, 2009); GAO-09-566; *Information Technology: Agencies Need to Establish Comprehensive Policies to Address Changes to Projects' Cost, Schedule, and Performance Goals*, GAO-08-925 (Washington, D.C.: July 31, 2008); *Information Technology: Agencies Need to Improve the Accuracy and Reliability of Investment Information*, GAO-06-250 (Washington, D.C.: Jan. 12, 2006); *Information Technology Management: Governmentwide Strategic Planning, Performance Measurement, and Investment Management Can Be Further Improved*, GAO-04-49 (Washington, D.C.: Jan. 12, 2004).

year 2011 totaled an estimated $79.4 billion for IT investments. Figure 1 displays the breakdown of agencies' planned IT expenditures for fiscal year 2011.

Figure 1: Breakdown of $79.4 Billion in Planned IT Investments for Fiscal Year 2011



Source: OMB data.

OMB plays a key role in overseeing the implementation and management of federal IT investments. To improve oversight, Congress enacted the Clinger-Cohen Act of 1996, which requires OMB to establish processes to analyze, track, and evaluate the risks and results of major capital investments in information systems made by federal agencies and report to Congress on the net program performance benefits achieved as a result of these investments.[5]

[5]40 U.S.C. § 11302(c).

Further, the act places responsibility for managing investments with the heads of agencies and establishes chief information officers (CIO) to advise and assist agency heads in carrying out this responsibility.

To help carry out its oversight role, in 2003 OMB established the Management Watch List, which included mission-critical projects that needed to improve performance measures, project management, IT security, or overall justification. Further, in August 2005, OMB established a High-Risk List, which consisted of projects identified by federal agencies, with the assistance of OMB, as requiring special attention from oversight authorities and the highest levels of agency management. Our reviews of these efforts have highlighted many issues regarding the accuracy and usefulness of these lists.[6] To address these issues, we made multiple recommendations to OMB, including disclosing risks and deficiencies of troubled projects and reporting to Congress on remediation plans for these projects.

More recently, in June 2009, OMB replaced the Management Watch List and High-Risk List with a public Web site—known as the IT Dashboard—to further improve the transparency into and oversight of agencies' IT investments. It displays detailed information on federal agencies' major IT investments, including assessments of actual performance against cost and schedule targets (referred to as ratings) for approximately 800 major federal IT investments. According to OMB, these data are intended to provide a near real-time perspective of the performance of these investments, as well as a historical perspective. Further, the public display of these data is intended to allow OMB, other oversight bodies, including Congress, and the general public to hold government agencies accountable for results and progress.

[6]GAO-09-624T; GAO-08-1051T;,GAO-07-1211T; GAO-06-1099T; GAO-06-647, GAO-05-571T; GAO-05-276.

Prior Reviews of Agencies' IT Investment Governance Have Identified Weaknesses

We have previously reported on the enduring challenges that agencies have faced in effectively managing IT investments. Specifically, we found that agencies had weaknesses in several areas relating to the oversight, budget justification, planning and management of these investments, among others.

- In January 2004, we reported that agencies did not always have the mechanisms in place for investment review boards to effectively control their investments.[7] Among other things, we reported that selected agencies largely had IT investment management boards, but these boards did not have key policies and procedures in place for ensuring that projects are meeting expectations. Agencies cited a variety of reasons for not having these mechanisms in place, such as that the CIO position had been vacant, not including a requirement in guidance was an oversight, or that the process was being revised. We made recommendations to the agencies regarding those practices that were not fully in place.

- In January 2006, we reported that the underlying support for agencies' IT budget justifications for IT investments (OMB's Capital Asset Plan and Business Case, also known as the exhibit 300) were often inadequate.[8] Specifically, we found weaknesses in all 29 of the exhibit 300s that we reviewed. For example, 21 investments were required to use a specific management system as the basis for the cost, schedule, and performance information in the exhibit 300, but only 6 did so following OMB-required standards. We made recommendations aimed at improving related guidance and training and at ensuring the disclosure and mitigation of limitations on reliability.

- In July 2008, we reported that approximately half of the federal government's major IT projects had been rebaselined—i.e., had modifications made to their cost, schedule, and performance goals

[7] GAO-04-49.

[8] GAO-06-250.

to reflect changed circumstances.[9] Reasons for these rebaselines included changes in project goals, changes in funding, or inaccurate original baselines. We also found that agencies lacked comprehensive rebaselining policies and that without such policies, baseline changes could be used to mask cost overruns or schedule delays. We recommended that OMB issue guidance for rebaselining policies and that the major agencies develop policies that address identified weaknesses. Consequently, OMB issued a memorandum in June 2010, on baseline management that provided this guidance.[10]

- In June 2009, we reported that about half of the projects we examined did not receive selection reviews (to confirm that they support mission needs) or oversight reviews (to ensure that they are meeting expected cost and schedule targets).[11] Specifically, 12 of the 24 reviewed projects were identified by OMB as being poorly planned did not receive a selection review; and 13 of 28 poorly performing projects we reviewed did not receive an oversight review by a department-level board. To address these weaknesses, we made recommendations to selected agencies to improve their department-level board representation and selection and oversight processes.

- In October 2009, we reported that selected agencies' policies were not fully consistent with best practices for a key program management tool.[12] Specifically, most agencies' policies lacked appropriate earned value management training requirements and did not adequately define criteria for revising baselines. Earned value management is a project management approach that, if implemented appropriately, provides objective reports of project status, produces early warning signs of impending schedule delays and cost overruns, and provides unbiased estimates of anticipated costs at completion. Additionally, we reported that for 13 of 16 selected investments, key practices necessary for sound earned value management execution

[9]GAO-08-925.

[10]OMB Memorandum, M-10-27.

[11]GAO-09-566.

[12]GAO-10-2.

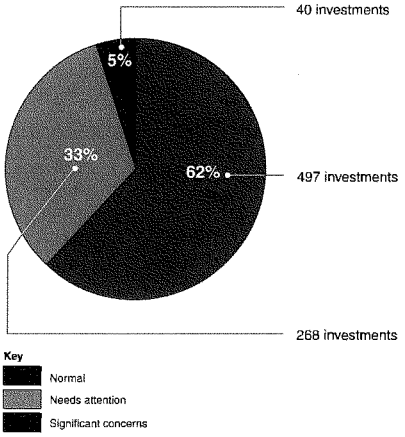
had not been implemented. Finally, we estimated the total cost overrun of these investments to be about $3 billion at program completion. We recommended that the selected agencies modify policies to be consistent with best practices, implement practices that address identified weaknesses, and manage negative earned value trends.

OMB Has Several Initiatives Under Way to Improve the Oversight and Management of IT Investments, but Continued Attention Is Needed

OMB has initiated several efforts that have improved the oversight and transparency of IT investments. As discussed earlier, OMB deployed its IT Dashboard in June 2009, providing detailed information, including performance ratings, for over 800 major investments at federal agencies. Each investment's performance data are updated monthly, which is a major improvement from the quarterly reporting cycle used by OMB's prior oversight mechanisms.

As of March 2011, the Dashboard provided additional visibility into $19 billion in IT investments in need of management attention (rated "yellow" to indicate the need for attention or "red" to indicate significant concerns). (See fig. 2.) In addition, the Federal CIO stated that the Dashboard has greatly improved oversight capabilities compared to previously used mechanisms, increased the accountability of agencies' CIOs, and established much-needed transparency.

Figure 2: Overall Performance Ratings of Major IT Investments on the Dashboard, as of March 2011



Source: OMB's Dashboard.

However, in a series of reviews, we have found that the data on the Dashboard are not always accurate. Specifically, in reviews of selected investments from 10 agencies, we found that the Dashboard ratings were not always consistent with agency performance data.

- In July 2010, we reported that cost and schedule performance ratings were not always accurate for selected investments.[13] Specifically, we reviewed investments at the Departments of Agriculture, Defense, Energy, Health and Human Services, and Justice and found that the cost and schedule ratings on the Dashboard were not accurate for 4 of 8 selected investments and the

[13]GAO-10-701.

ratings did not take into consideration current performance. For example, the Dashboard rated a Justice investment's cost performance as "green" from July 2009 through January 2010, but our analysis showed the investment's cost performance was equivalent to a "yellow" rating, meaning it needed attention. We also found that there were large inconsistencies in the number of investment activities that agencies report on the Dashboard.

- In March 2011, we also reported that agencies and OMB need to do more to ensure the Dashboard's data accuracy. Specifically, we reviewed investments at the Departments of Homeland Security, Transportation, Treasury, and Veterans Affairs, and the Social Security Administration and found that cost ratings were inaccurate for 6 of 10 selected investments and schedule ratings were inaccurate for 9 of 10. We also found weaknesses in agency and OMB practices contributing to the inaccuracies on the Dashboard, including agencies uploading inconsistent or erroneous data, and OMB's ratings understating some schedule variances.

In these reviews, we made recommendations to OMB, including that it report on the effect of planned changes to the Dashboard to improve the accuracy of ratings, provide guidance to agencies to standardize reporting, and improve how it rates investments related to current performance and schedule variance. OMB agreed with most of these recommendations but disagreed with the recommendation to change how it reflects current investment performance in its ratings. We also recommended that agencies take steps to improve the accuracy and reliability of data submitted to the Dashboard, and these agencies generally concurred.

Our recent and ongoing work has identified additional opportunities for using the Dashboard to increase operational efficiency and realize cost savings. As part of our first report responding to a statutory requirement that GAO identify duplicative goals or activities in the federal government, we reported on the potential for further significant savings if OMB implements planned improvements to the Dashboard, along with outstanding GAO

recommendations.[14] We also have ongoing work to evaluate the data provided by the Dashboard in order to determine the extent to which agencies may be investing in similar projects, as well as OMB's efforts to identify and act on such duplicative investments.

Recent OMB Efforts Have Resulted in Improved Management of Troubled IT Investments

Drawing on the visibility into federal IT investments provided by the Dashboard, OMB has initiated efforts to improve the management of IT investments needing attention. In particular, in January 2010, the Federal CIO began leading TechStat sessions—a review of selected IT investments between OMB and agency leadership to increase accountability and transparency and improve performance. OMB has identified factors that may result in a TechStat session, such as policy interests, Dashboard data inconsistencies, recurring patterns of problems, or an OMB analyst's concerns with an investment.

As of December 2010, OMB officials stated that 58 TechStat sessions have been held with federal agencies. According to OMB, these sessions have enabled the government to improve or terminate IT investments that are experiencing performance problems. For example, the June 2010, TechStat on the National Archives and Records Administration's Electronic Records Archives investment resulted in six corrective actions, including halting fiscal year 2012 development funding pending the completion of a strategic plan. In January 2011, we reported that the National Archives and Records Administration had not been positioned to identify potential cost and schedule problems early, and has not been able to take timely actions to correct problems, delays, and cost increases on this system acquisition program.[15] Moreover, we estimated that the program would likely overrun costs by between $205 and $405 million if the agency completed the program as originally designed.

[14]GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.; Mar. 1, 2011).

[15]GAO, *Electronic Records Archive: National Archive Needs to Strengthen Its Capacity to Use Earned Value Techniques to Management and Oversee Development.*, GAO-11-86 (Washington, D.C.; Jan. 13, 2011).

We made multiple recommendations to the Archives, including establishing a comprehensive plan for all remaining work, improving the accuracy of key performance reports, and engaging executive leadership in correcting negative performance trends. The Archivist of the United States generally concurred with our recommendations.

OMB has also identified 26 additional high-priority IT projects and plans to coordinate with agencies to develop corrective actions for these projects at future TechStat sessions. According to OMB officials, OMB and agency CIOs identified these projects using Dashboard data, TechStat sessions, and other forms of research. For example, OMB directed the Department of the Interior to establish incremental deliverables for its Incident Management Analysis and Reporting System, which will accelerate delivery of services that will help 6,000 law enforcement officers protect the nation's natural resources and cultural monuments.

According to OMB, the TechStat sessions and other OMB management reviews have resulted in a $3 billion reduction in life-cycle costs, as of December 2010. Further, OMB officials stated that, as a result of these sessions, 11 investments have been reduced in scope and 4 have been cancelled. Additional opportunities for potential cost savings and efficiencies exist with the use of the Dashboard by executive branch agencies to identify and make decisions about poorly performing investments, as well as its continued use by congressional committees to support critical oversight efforts.

Recent OMB Plan Aims to Reform IT Management

In addition to the efforts already described, in December 2010, OMB issued its *25 Point Implementation Plan to Reform Federal Information Technology Management*, a plan spanning 18 months to reform federal IT management throughout the federal government. The plan contains five major goals:

- strengthen program management,
- align the acquisition and budget processes with the technology cycle,

- streamline governance and improve accountability,
- increase engagement with industry, and
- apply "light technology" and shared solutions.

Many of these major goals, and their supporting reform initiatives, are consistent with our body of work on IT acquisition issues—which has shown a lack of implementation or execution of critical project management and executive governance activities. For example, as previously discussed, in a June 2009 review[16] of 24 IT projects identified by OMB as needing the most attention, about half did not receive selection or oversight reviews by agency governance boards. OMB's plan acknowledges this issue and calls for agency Investment Review Boards to be restructured according to OMB's TechStat session model, in support of the goal to streamline governance and improve accountability.

Additionally, in support of the goal to apply "light technology" and shared solutions, the plan outlines OMB's Federal Data Center Consolidation Initiative to guide federal agencies in developing and implementing data center consolidation plans. According to OMB, the number of federal data centers grew from 432 in 1998 to more than 2,000 in 2010. These data centers often house similar types of equipment and provide similar processing and storage capabilities. These factors have led to concerns associated with the provision of redundant capabilities, the underutilization of resources, and the significant consumption of energy. In our March 2011 report[17] on duplicative goals or activities within the federal government, we noted that data center consolidation makes sense economically and as a way to achieve more efficient IT operations. However, we also described key challenges associated with this effort, such as agencies' ability to ensure the accuracy of their inventories and plans and integrate consolidation plans into fiscal year 2012 agency budget submissions (as required by OMB).

[16]GAO-09-566.

[17]GAO-11-318SP.

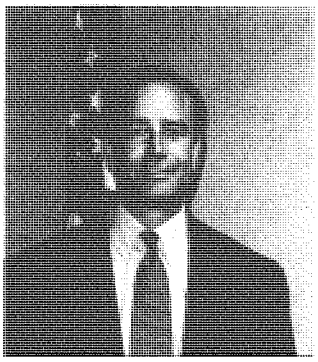
In October 2010, OMB reported that all federal agencies had submitted consolidation plans. OMB plans to monitor agencies' progress through annual reports and has established a goal of closing 800 of the over 2,100 federal data centers by 2015. We are currently evaluating the data center initiative as well as agencies' efforts to develop and implement consolidation plans.

In summary, OMB's recent efforts have resulted in greater oversight and management of federal IT investments, but continued attention is necessary to build on the progress that has been made. For example, OMB and federal agencies need to improve the accuracy of information on the Dashboard, and continue to use OMB's TechStat sessions to address troubled investments. In addition, the full implementation of OMB's 18-month roadmap to reform federal IT management, along with outstanding GAO recommendations, should result in more effective IT management and delivery of mission-critical systems, as well as further reduction in wasteful spending on poorly managed investments.

Madam Chairwoman, this concludes my statement. I would be happy to answer any questions at this time.

Appendix I: GAO Contact and Acknowledgements

If you should have any questions about this testimony, please contact me at (202) 512-9286 or by e-mail at pownerd@gao.gov. Individuals who made key contributions to this testimony are Carol Cha, Assistant Director; Lee McCracken; and Kevin Walsh.



David A. Powner

Experience
Twenty years' experience in information technology issues in both public and private sectors.

Education
Business Administration
University of Denver

Senior Executive Fellows Program
Harvard University
John F. Kennedy School of Government

Director, IT Management Issues
U.S. Government Accountability Office

Dave is currently responsible for a large segment of GAO's information technology (IT) work, including systems development, IT investment management, health IT, and cyber critical infrastructure protection reviews.

In the private sector, Dave has held several executive-level positions in the telecommunications industry, including overseeing IT and financial internal audits, and software development associated with digital subscriber lines (DSL).

At GAO, Dave has led teams reviewing major IT modernization efforts at Cheyenne Mountain Air Force Station, the National Weather Service, the Federal Aviation Administration, and the Internal Revenue Service. These reviews covered many information technology areas including software development maturity, information security, and enterprise architecture.

Statement of

Steven Kempf
Commissioner

Federal Acquisition Service
U.S. General Services Administration

Before the
Subcommittee on Financial Services and General Government

Committee on Appropriations

U.S. House of Representatives

March 17, 2011

Good morning Chairwoman Emerson, Ranking Member Serrano and Members of the Committee. My name is Steven Kempf and I am General Services Administration (GSA) Commissioner for the Federal Acquisition Service (FAS). Thank you for inviting me to appear before you today to discuss how GSA supports government agencies through efficient and responsible information technology (IT) purchasing and our select strategic IT sourcing initiatives that help lower the cost of government, among other benefits. GSA is committed to improving the ease of acquisition for customers through training, tools, and customer services that help the government's outstanding yet overextended procurement staff be more productive and effective, and make better informed purchasing decisions for their agencies. Through these efforts, GSA is capitalizing on our unique opportunity to use our government-wide perspective and expertise along with our centralized procurement role to improve the effectiveness of government at a lower cost to taxpayers.

GSA ENABLES EFFICIENT AND VALUABLE IT PURCHASING

The GSA's Federal Acquisition Service (FAS) as a whole is responsible for over $52 billion in annual sales which would put us in the top half of global Fortune 500 companies if we were a private entity. Of this amount, approximately $21 billion reflects government agency spending to acquire IT products and services offered by our nation's exceptional IT industry to fulfill challenging mission needs. The FAS Office of Integrated Technology Services operates a suite of IT acquisition programs offering our government customers the complete range of IT hardware, software, communications, and supporting products and services to meet virtually any IT need. Through this expert IT acquisition portfolio, FAS is actively working to make it easier to partner and present "One GSA" technology solutions to customers.

As you may know, centralized purchasing is a widely accepted practice in many organizations, public and private, and is viewed as particularly beneficial where unique purchasing expertise and large volumes of common requirements – as is often the case with IT purchasing, for example – can be more broadly leveraged. Toward that end, the

FAS suite of IT acquisition programs leverages that expertise across multiple acquisition vehicles that flexibly enable customers to purchase what they want as they want it. These programs include:

- the IT Multiple Award Schedule 70, which affords almost 5000 commercial firms, the majority small businesses, the opportunity to offer IT products and services direct to customer agencies;
- the OMB-chartered government-wide IT acquisition contracts (or "GWACs"), that provide a little more flexibility in acquiring technology and supporting services as a more complete "solution" for customers;
- the Network Services family of contracts, including Networx, satisfy a complete range of local and wide area telecommunications services and support; and
- select "strategic" or "good for government" initiatives like the SmartBUY program, specifically designed to leverage common software requirements government-wide to drive exceptional pricing and terms, as well as shared HSPD-12 identification validation services that can economically meet government-wide needs.

Through its central office and 11 regional offices, in FY 2010 FAS delivered IT products and services to 135 Federal agencies and entities at locations around the world. Purchasing from IT Multiple Award Schedule 70 is open to state and local governments as well; sales to those governmental entities were almost $550 million in FY 2010.

Interagency acquisitions like those that FAS manages, offer important benefits to all government agencies, including economies and efficiencies and the ability to leverage resources. For example, GSA's federal telecommunications contracts, like FTS2001 and Networx, directly leverage the government's buying power to drive aggregate annual savings to customers of hundreds of millions of dollars when benchmarked against comparable commercial contract offerings. Similarly, since its inception in 2003, GSA's SmartBUY (Software Managed and Acquired on the Right Terms) program has generated savings for software purchasers approaching $1 billion. The SmartBUY program works in close collaboration with the Defense Department's Enterprise Software Initiative to establish Blanket Purchase Agreements (BPAs) against IT

Schedule 70 contracts for frequently licensed, commercial off-the-shelf software and software-related services. We continue to actively look for opportunities to apply this strategic acquisition model for additional products and services to bring these savings to the taxpayer.

GSA also drives IT procurement value government-wide by partnering with large customers to develop and offer acquisition vehicles that can be used across government. This is most evident in our commercial satellite activity with the Defense Department. This commercial satellite communications initiative – COMSATCOM – combines GSA and Defense Information Systems Agency technical and acquisition expertise and experience to reshape the commercial satellite market and efficiently deliver transponder capacity, subscription services, and end-to-end solutions to all government customers – Federal, State, and Local. By using a single, collaborative acquisition to replace multiple existing contracts, the approach is expected to greatly reduce acquisition costs for federal workers fighting wilderness wildfires, patrolling remote borders and rescuing injured citizens from devastating hurricanes or tornadoes, saving lives and millions of taxpayer dollars.

The savings and efficiencies associated with purchasing IT through GSA also extends to the time and effort that agencies could potentially save by using a pre-existing, pre-competed GSA contract to meet its IT purchasing needs. For example, we have been examining how long it takes a government entity to award its own full and open contract for products and services readily available from GSA. Although that work is still in progress, our tentative findings after review of over 700 contracts suggest that large value IT contracts may take 25 months on average to complete. Further, in 77% of the more than 700 instances examined, contract awards were ultimately made to vendors already holding GSA IT contracts.

While there may be instances where additional factors, like specific terms and conditions perhaps, don't meet customer needs, there may also be significant opportunities open to Federal agencies to save time and money by making greater use

of acquisition work that GSA has already completed. As GAO reported last April in its report on interagency contracting strategies, the proliferation of government contracts offering similar products and services increases the costs to Industry and government to complete these redundant procurement activities.[1]

An additional dimension of value that GSA's IT acquisition activities generate is support for the nation's critical small business community. Specifically, several of our IT GWACs are specifically designed by our Small Business GWAC Center in Kansas City to support the small business community, 8(a) contracting, and service-disabled veteran owned businesses. Such contracts also enable agencies to quickly satisfy specific procurement goals while also meeting their mission needs. For example, among the task orders with a total estimated value of $683 million awarded, the Department of Energy National Nuclear Security Administration's Information Assurance Response Center used our Alliant Small Business GWAC to obtain information security and cybersecurity support services for two locations at a cost they estimated would save them $22 million over the life of that task order. In addition, last fiscal year nearly 3,000 orders have been placed against our 8(a) STARS IT GWAC totaling $2.9 billion in obligations over the life of the task orders, while our VETS IT GWAC for service disabled veteran-owned small businesses earned 192 orders with obligations totaling $657 million. Small and women-owned businesses are active players in all of our Multiple Award Schedule contracts as well, which collectively reflects GSA's firm commitment and support for development of American small businesses while satisfying critical governmental needs.

A final dimension of our value I would like to mention briefly is GSA's ability to shape technology markets in a way that delivers value beyond government alone. GSA has been mentioned in various cybersecurity reports as having a role to play in using its procurement activities to improve the cybersecurity posture of the nation more broadly. In one instance it appears that we may have already had just such an impact.

[1] CONTRACTING STRATEGIES: Data and Oversight Problems Hamper Opportunities to Leverage Value of Interagency and Enterprisewide Contracts, GAO-10-367, April 2010

Specifically, GSA partnered with the Department of Homeland Security to develop a Trusted Internet Connection (TIC) managed service that has shaped the government cybersecurity market and provided leadership to the commercial sector on how to effectively deliver new cybersecurity solutions. This offering, available through GSA's Networx contracts, defines a simple orderable service that fully implements all critical requirements of OMB M-08-16, Guidance for Trusted Internet Connections, while offering government agencies access to advanced security services to protect government users against sophisticated cyber attacks. We understand that, based on its success in the government market and its many advanced features such as supply chain risk management, this offering is now being replicated for the commercial use by Networx contractors, with the potential to more broadly assist in making the total infrastructure of the United States less vulnerable to cybersecurity threats.

GSA INITIATIVES CAN POTENTIALLY LOWER THE COST OF GOVERNMENT

GSA's suite of IT acquisition programs offers products and services that can help to lower the cost of IT service infrastructures that support virtually all government operations. As I already noted, our telecommunications contracts offer compelling pricing and security value to customers in the area of telecommunications and network services. Additional opportunities exist to help customers lower their costs of processing data.

Each year, the government spends billions of dollars on IT products and services, with a heavy focus on maintaining current infrastructure needs and demands. More specifically, the Federal government spends about $25 billion each year to operate its IT infrastructures, which includes data centers, a significant cost that both the current and prior Administrations have targeted for improved economies and efficiencies. This cost savings opportunity is made more compelling by the energy savings potential given the extraordinary power consumption of these centers. Given the broad range of requirements – ranging from operations and storage to computing power, and website

hosting – GSA offers an array of services that government agencies can tap into to generate significant savings.

Services available from GSA can support numerous efforts that help agencies wring savings from their existing infrastructures. These services might include, but are not limited to:

- facility design and redesign to exploit building-related opportunities in conjunction with newer technologies;
- operational assessments and support for more economical operations;
- virtualization products that support more efficient server consolidation and infrastructure sharing; and
- a range of managed hosting and other managed options to more economically acquire needed services.

This also includes GSA's direct support for the full suite of Cloud Computing services, which is an emerging computing "as a service" model that is becoming widely embraced, both within and outside of government. Through the Federal Cloud Computing Initiative, we are changing the way government thinks about IT, shifting from a mindset of asset ownership to one of service provisioning. Our Cloud Computing solutions have the potential to substantially reduce IT capital spending while providing Federal agencies with the flexibility and speed that lets them focus on their mission-critical activities while easily leveraging technology advances to meet their mission needs. Last Fall, we awarded contracts for Infrastructure-as-a-Service (IaaS), and awardees are now working with GSA to get an Authority to Operate that can be accepted by other agencies for security compliance. We are also working to complete contracts for Email-as-a-Service later this year.

While there are savings to be obtained from physical IT infrastructures, both economic and environmental, there is also a perception that even greater savings can be obtained through shared use of common software applications across organizations. Email-as-a-service is one such application with substantial savings potential. For example, GSA

itself has embraced the "Cloud" and in December awarded a task order, under our Alliant GWAC, for a suite of services, including e-mail and collaboration tools, to facilitate a more mobile work force, becoming the first Federal entity to utilize a cloud-based system for e-mail agency wide. The migration is expected to result in a 50 percent savings over the next five years when compared to current staff, infrastructure, and contract support costs. GSA's move to cloud-based e-mail and collaboration tools is part of the government's broader efforts to use more agile IT solutions like cloud computing and shared software services to limit the need for expensive, redundant infrastructure and lower energy costs.

GSA IS COMMITTED TO MAKING IT PURCHASING EASIER FOR CUSTOMERS

Our suite of IT acquisition programs are intended to be flexible and easy for use by our customers. GSA's IT contracts are available to prospective customers for their direct ordering and use, which permits them the option to manage those task orders in full accord with their needs. GSA offers a range of training and tools to help users get the most effective use from our contracts for their needs. In addition, for those customers who may not have the internal resources necessary to manage parts or all of an acquisition, GSA offers an assisted, fee-based service to them to support such needs. In total, we are working through many avenues to make IT purchasing as easy for our customers as we can.

At time when the federal acquisition workforce is being asked to do more with less - from 2001 to 2008, contract spending more than doubled, while the size of the acquisition workforce remained relatively flat – it is critical the acquisition workforce receives adequate training on how to affectively use FAS acquisition programs. Under our MAS program, Schedule 70 remains the largest government-wide contract vehicle program for IT with over $16 billion in sales in FY 2010, and there a number of initiatives FAS has under taken to help agencies maximize effective usage of the MAS program; specifically:

- FAS has worked with the Federal Acquisition Institute to develop basic and advanced courseware on how to place Multiple Award Schedule orders, with pilot training using that courseware scheduled for this month; and
- FAS developed a strategy to take advantage of Web 2.0 and social media technology to better reach agencies and train them on how to maximize effective use of the MAS program.

Training is also provided for proper use of our GWAC contracts. In FY 2010, the GSA GWAC offices trained more than 1600 federal government and industry personnel on GWAC offerings and proper usage. This training was conducted, and continues to be offered, via webinar, online training through GSA's Center for Acquisition Excellence, teleconferences, onsite at customer locations, and a variety of GSA and non-GSA conferences and events. In addition, GSA is hosting a training conference this May offering over 200 classes in areas such as acquisition, project management, sustainability and technology.

FAS has made major improvements to its customer facing electronic tools, such as GSA Advantage. Advantage! --- FAS' online shopping and ordering system --- gives agencies access to over 18,000 Multiple Award Schedule (MAS) contracts, as well as over 28 million products, services, and solutions at the best value. The website has close to 800,000 registered users and receives 500,000 visits per day. In addition to federal government users, state and local government agencies can use GSA Advantage! to purchase IT and disaster-recovery products and services.

More strategically and longer term, we are planning to create an end-to-end electronic contracting environment that will drive process improvements ultimately making it easier, faster and cheaper to do business with us by:

- Standardizing and eliminating duplicative processes
- Automatically incorporating acquisition policy changes and
- Increasing transparency in our daily business activities.

Efforts to date to improve the electronic processing of contract offers and modifications are making it easier for customers to place orders by giving GSA and its suppliers the capability to more quickly and efficiently post Multiple Award Schedule contracts' terms and conditions to GSA e-Library. eBuy is an online Request for Quote (RFQ) system that allows agencies to request information, find sources, and prepare RFQs for required products/services offered on GSA GWACs and MAS contracts. Agencies can obtain best pricing/value through online competition and give all qualified contractors an opportunity to quote.

While such training and tools make it easier for some users to do it themselves, with full control over management of their transaction, some agencies do not have the internal resources necessary to manage parts or all of an acquisition. To meet the needs of these customers, the FAS Office of Assisted Acquisition Services (AAS) provides life cycle acquisition support services on a fee for service basis. AAS provides value-added, customized, acquisition, project management, and financial management services for IT related products and services and Professional Services to federal agencies worldwide. The organization currently consists of about 250 contracting officers, contracting specialists, project managers, financial managers and legal support staff who manage $3.5B in customer requirements annually.

CONCLUSION

GSA's accomplishments in government IT acquisition are substantial: at about $21 billion in contract sales last fiscal year, we were the single largest IT acquisition center for Federal, State, and local governments. Our IT acquisition programs deliver value to customers and stakeholders across multiple dimensions, by strategically leveraging the government's buying power for critical needs while continuously seek opportunities to improve programs and processes.

As Administrator Johnson testified before this Subcommittee last April 28th, "GSA is an organization with tremendous history of innovation, a deep and growing understanding

of our customers and their missions, and a great skill at delivering solutions." As FAS Commissioner, I share that understanding and deep commitment to meet our current challenges and customer needs, and to identify and seize the opportunities that lie ahead for all of us at this time.

Although our annual IT acquisition business is substantial, it represents about one quarter of annual Federal IT contract spending. As such, we at GSA offer an enormous opportunity for government agencies to more fully leverage our existing products and services to create substantial savings for their agencies and for the government as a whole. We are continuously making improvements in our processes for better performance. We and the government as a whole cannot afford to do otherwise.

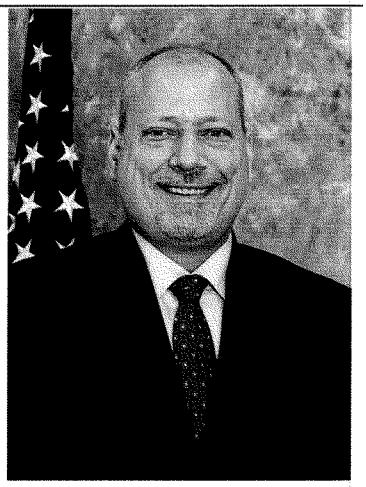
My organization and I are fully committed to continuous improvement throughout all of our programs and operations. We are always seeking opportunities like COMSATCOM to partner with large customers to directly address their critical needs in a way that can be leveraged more broadly for government-wide benefit. We welcome customer communications and engagement that will help us improve our key processes and operations, design more effective products, and programs, and improve our delivery of services. In that vein, we are continually looking to provide the latest technology and the most advantageous way of procuring that technology that can improve our customers' mission performance while lowering the cost of government for all. For example, in 2011, our focus will be on continuing to align our contracts to customer needs and focus on leveraging capabilities across the enterprise to develop, highlight, and deliver strategic offerings like Cloud Computing services, cybersecurity products and services, and data center services. We will expand our comprehensive suite of sustainable IT products and services, like Telepresence, while leveraging the government's purchasing power to promote environmentally responsible products and technologies and continue to provide leading edge solutions to enable agencies to comply with the Administration's Comprehensive National Cybersecurity Initiatives (CNCI).

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

GSA

Steven J. Kempf

Commissioner
Federal Acquisition Service
U.S. General Services Administration



Steven J. Kempf was appointed Commissioner for the U.S. General Services Administration's Federal Acquisition Service (FAS) effective July 10, 2010. In this capacity, he sets strategic direction and oversees the delivery of over $50 billion of best-value products, services and solutions to federal customers, allowing them to effectively and efficiently achieve their missions. He also held this position in an acting capacity from April through June 2010, and was the Deputy Commissioner prior to that.

Kempf has held multiple leadership positions throughout FAS and its predecessor organizations. He served as the Acting FAS Deputy Commissioner from October 2008 through January 2009. In February 2008, he was named Assistant Commissioner for the FAS Office of Acquisition Management where he was responsible for overall acquisition policy planning and coordination. Some of the programs under his leadership included the Multiple Award Schedules, environmentally sustainable acquisition practices, the acquisition workforce, and supplier management. He also established the Multiple Award Schedules Program Office and worked to make FAS a leader in government green initiatives.

Previously, Kempf served as Deputy Assistant Commissioner for the Office of Integrated Technology Services where he oversaw FAS' delivery of IT solutions including Schedule 70, Government-wide Acquisition Contracts (GWACs), and the Network Services program. He was instrumental in creating the FAS Homeland Security Presidential Directive 12 (HSPD-12) Program Management Office, designed to standardize and enhance the efficiency and effectiveness of the government's personnel credentialing efforts.

In January 2000, Kempf joined the Federal Systems Integration and Management Center (FEDSIM), which provides project, acquisition and financial management services to help federal agencies implement complex and large-scale IT initiatives. He held a variety of positions, eventually serving as Director of Operations where he managed daily operations of the $1 billion organization.

Kempf began his GSA career in 1992 as an intern for the Office of Technology Assistance. In 1996, he moved to GSA's regional program in California where he was the technical chairperson for ANSWER, GSA's first GWAC. He also managed projects for a variety of clients in the Monterey, CA, area.

Kempf is a member of the Senior Executive Service. In recognition for his work on the HSPD-12 Program Office, in 2008 he received *Federal Computer Week's* Federal 100 award.

Kempf holds a Bachelor of Arts in History from Marquette University in Milwaukee, WI, and a law degree and Master of Business Administration from the George Washington University in Washington, DC.

Mrs. EMERSON. Thank you so much, Mr. Kempf. Thank you all very, very much. I want to direct my first question to Mr. Kundra, and I want to commend your efforts. I think you are doing a really good job in what I consider to be a very complex and somewhat challenging role. Let me ask you, can you give any agency or Department of the government an "A" for their IT systems?

Mr. KUNDRA. Unfortunately, no. And the reason is because there are major structural barriers that get in the way of their ability to actually execute. What I mean by that is if you look at IT, for example, in terms of how quickly development moves forward, but when we appropriate money for IT, in terms of the budget cycles, it takes two-plus years. And given Moore's Law, IT is evolving so fast, so agencies are having to predict two years out what their projects are going to look like.

Secondly, if we look at program management across the federal government, one of the challenges we found was that program management is not even a professional career tract. And these are people who are managing billion dollar projects. Yet what ends up happening too often is that somebody who has been working at a government agency for a while is plucked out of their role, and suddenly they are told, "Well, you managed a $10 million project, let's now have you manage a billion dollar project."

Third, I think the lack of effective engagement with industry, where the private sector and the public sector—there are lot of myths around what the government can do in terms of engaging the private sector and some of the most innovative companies in this country as they are thinking about the problem. So what ends up happening is a lot of agency officials are frozen, in terms of their thinking of technology, in the 1990s, 1980s, or 1970s, for that matter, as they are writing out these procurements. So, what we found as we met with every single agency, as we sat down with Congress, the private sector, is that there are a number of barriers that actually get in the way of effective execution. And it is not because government officials or private sector companies wake up every day and they say, "Hey, how do I make sure this project fails?" I think we have a number of structural barriers that we need to take on. And that is one of the reasons we put forward a 25-point plan, where we have been very specific. Because part of what we also want to do is move away from this model where the government has to own and build everything. Why can't we leverage technologies from some of the most innovative companies? So we are trying to shift from this model of asset ownership to service provisioning, so that if there is a better private sector solution, that should be the default. We shouldn't go out there and try to build a multi-million, multi-billion dollar system, when we can procure it from the private sector for pennies on the dollar.

But I think those reforms, coupled with the management attention that we are bringing forward in terms of oversight, are going to move the ball forward. What I will point out, though, is where we are seeing a lot of great work happen, for example, at VA with extensive oversight. But we are at a point in terms of the history, as Dave pointed out, where you still have billions of dollars of IT projects that are frankly behind schedule and significantly over budget, and we are very focused on making sure number one, the

American people know how that money is being spent, and number two, that we are taking concrete actions to crack down on wasteful IT spending and eliminate duplication.

Mrs. EMERSON. Okay, let's just do a hypothetical example here. And we will use the Department of Agriculture as an example simply because, having served on that Subcommittee, I am probably more aware than I need to be, or want to be, about their computer systems and how horrible they are because I hear it from the farmers, and I hear it from the different agencies within USDA. If USDA is trying to upgrade, or they have several different things that they want to be able to accomplish with their IT system, do they actually go to the Chief Information Officer to discuss that? Do they do it among themselves? Do they go to the GSA or GAO? What worries me is that you say nobody, or not a lot of people, have program management experience or training to do this. How has that historically happened?

Mr. KUNDRA. So, generally what would happen is at the Bureau level and Departmental level, you have got an agency CIO, and a lot of the IT projects are conceived early on. One of the challenges that we face government-wide, unfortunately, is the fact that the average lifespan of most CIOs is about 24 months. And so let's say you have a CIO who comes in the budget formulation process at the agency level and has come up with a plan, a base-line, and has scoped the project. Then what happens is that goes through the OMB processes in terms of the budgeting side, where OMB will look at the request and work with Congress with the appropriations committees.

Now the challenge is when you move to implementation. The plan was hatched two years before, and the contracting processes sometimes end up taking really long, especially for these really large-scale IT projects. And when you look at the time it takes to actually get the budget, get the contract in place, Deputy Secretary Lynn was joking one day, he said, You know, after two years, I basically get the budget, where Steve Jobs gets an iPhone. And that right there is a major structural problem that we are trying to fix.

To think of how do we actually fundamentally rethink how IT is funded; and also, we should not be funding any IT project where any CIO in the government, or agency leader, says, "You are going to get a deliverable five years from now." One of the biggest problems we have discovered throughout our TechStat sessions is that deliverables for some of these projects are five years out, a decade out. One of the projects we reviewed at the end of five years and $40 million: what we got was nothing more than a book, and it was architectural documents and business reengineering.

So that is one of the reasons a key to our reform is to basically say if you do not have a customer-facing deliverable, where users are actually using the system, you need to halt it, and re-look at it. And that is what we have done during the TechStat sessions, where we have literally halted IT projects.

One of the biggest problems we find across the Federal Government was actually financial systems. That is why we halted about $20 billion worth of financial assistance across the U.S. Government, because these were over-scoped, they were years behind schedule and way over budget.

But part of what we need to be able to do is, besides having accountability where we are providing meaningful oversight from an OMB perspective, is to actually solve it at the agency level, to make sure that the agency CIOs and the agency heads are very focused on this problem.

Mrs. EMERSON. You mentioned barriers to leveraging private sector expertise in the newest developments. What are some of those barriers?

Mr. KUNDRA. Some of it is actually just perceived, in terms of the number of myths that are out there, where government CIOs believe they can't even meet with private sector.

Mrs. EMERSON. For ethics purposes?

Mr. KUNDRA. For ethics purposes or because they believe it's going to increase the chances of a protest, it is better not to meet with private sector companies.

My colleague Dan Gordon, who is in charge of procurement policy, actually issued the top 10 myths, to demystify and dispel those myths, and to encourage greater interaction between the public sector and the private sector. Because at the end of the day, we don't have a monopoly on the best ideas, and there is a lot we can learn as we are thinking about some of these problems. And the other thing we are trying to do is we are actually building a pre-RFB platform that is going to be launched in the next couple of months. And what this pre-RFB platform would be is that the government would say, "This is the problem we are trying to solve, and invite the entire country to give us some ideas on how you would do it."

The other thing that has happened from how we actually buy IT, right now there are only two primary mechanisms. One is through grants, and second is through contracts. The third path is through competitions and challenges. So we worked with the Congress to make sure that we were allowing challenges and prizes to be part of how we actually can acquire solutions.

Through the America Competes Act, there's a provision now that allows agencies to issue challenges up to $50 million. So you can imagine what NASA and DARPA have been doing for years, where they've said, for example, "We are looking for a solution that will allow for a car to travel 100 miles an hour using traditional energy or alternative energy sources," and they have got all these start-up companies and innovative entrepreneurs to actually deliver two cars that did just that, instead of overly specifying what the solution was.

That is what we're looking to do in the IT arena. To figure out why we cannot put a challenge forward and say, "This is the problem we are trying to solve. What is the best thinking, and what are some of the most innovative companies that can provide a solution?"

Mrs. EMERSON. I would say it is about time. And I am glad that you are leading the charge there. Mr. Serrano.

Mr. SERRANO. Thank you. Just listening to you, and this may not be totally related, but just an example, you see articles every so often saying, Oh, Members of Congress have BlackBerries, they have iPads, and they are on social media. It is a shock to people that we would be doing that. When the answer should be, yeah, we should have done it immediately when people started to do it out

there. Everybody was ahead of us for such a long time. And it seems that we are always trailing.

So, what is the solution? I mean, can you get government to fully understand what we are up against, and that they have to be able to compete with the private sector, if you will, not only to invite people who may want to work in government, who have all these ideas. But secondly, to be able to deliver a product, deliver the services. And I bring you back to the whole issue with the Securities and Exchange Commission. If people like Madoff have better access to IT than the SEC, then how do we ever win the war?

Mr. KUNDRA. I think there is a huge gap between the public and private sector, that we are trying to close. Just to give you an example, if you're going to the valley, for example, and you wanted to start up a company. And if you went to any venture capitalist, and you said, "I need millions of dollars and six months to a year to build up my financial system, or stand up my e-mail system, or actually build out a work flow system," you would get laughed out of the room. Because what's happening is a lot of these start-ups now, the way they're procuring IT is, for example for financial systems, they will provision using Intuit QuickBooks, or they'll go and use, whether it's Microsoft e-mail, or Google, or IBM, and when it comes to work flow, they may go to sales first and so forth.

That is one of the reasons, the Administration, we are very, very focused on cloud-computing; and we see a huge opportunity here for the public sector to actually lead rather than trail. And what I mean by that is, we have identified approximately $20 billion worth of IT systems that could actually move to the cloud. And the reason that is really, really powerful is that we can provision these solutions, rather than having to build out these custom systems ourselves, because one of the things we will not be able to do is actually compete for talent effectively, in terms of getting the best programmers across the country to work on a project for a sustainable period.

So part of what we want to do is for commodity IT, and what I mean by commodity IT, is that this will be infrastructure, e-mail systems, financial systems, some of the back-end systems, we should not be spending billions of dollars because people believe in agencies, for example, that they are so special. That is one of the reasons we are cracking down in these 2,094 data centers and making sure we are working with NIST and with GSA, that we're putting in place government-wide contracts that actually adopt some of these innovative technologies.

And the reason that is really important is because if you look at a consumer space there is Darwinian pressure to innovate because if consumers do not like solution A, they will move to solution B very fast. In government, unfortunately, what ends up happening is one individual or contracting officer sometimes ends up deciding a contract for an agency, let's say of 120,000 people, and there are not the appropriate incentives to innovate and keep updating that software. So victory for some of the providers ends up being just winning that contract, and making sure that they are keeping down their operating costs, as low as possible, and their margins as high as possible. So part of what we are trying to do is bring that innovative pressure within the public sector.

Mr. SERRANO. Do we have time for one more question?

Mrs. EMERSON. Go ahead. We've got one minute and 29 seconds, but there are 326 people who haven't voted yet, so I think you can go ahead.

Mr. SERRANO. Mr. Kempf, this picture that is being painted today, and I believe it to be an honest picture, but it's a pretty gloomy picture, in terms of where we are and where we should be. Yet, you have been around a long time and had a remarkable career in the IT world. Are there any success stories? Are there things that are going well? You know, that we should build on?

Mr. KEMPF. Sure, recently Mr. Kundra has talked about some of the efforts underway. One thing that we are doing at GSA; we are going to be converting our e-mail system to a cloud e-mail solution from Google, that is actually brought to us through our Alliant contract, the GWAC contract with Unisys.

We expect to save $15 million by going to the cloud. We expect to get better service, probably better security than we are getting now, better management of the version that we were having. So we will get a better system for less money with greater flexibility. I think that is a huge win for us. Our CIO Casey Coleman has led that effort. It is just one example of the cloud.

Mrs. EMERSON. I think we'd better take a quick recess here. We have two votes?

Mrs. EMERSON. All right, so we'll be back. Sorry about the delay. Thanks.

Mr. DIAZ-BALART [presiding]. Let me just start with a couple questions. Thank you, again, for your patience and thank you for sticking around during this process of votes.

Mr. Powner, the GSA has recently moved its e-mail servers to the cloud resulting in a reported 50 percent reduction in cost; you kind of spoke about that, over 5 years saving $15 million. Now, GAO looked into this reported savings? Do we know that is accurate?

Mr. POWNER. We have not looked specifically at the savings associated with the cloud, but we are looking at, for instance, a data center consolidation; we are reviewing all 24 plans right now looking at savings associated with the data center efforts, in particular the aggressive milestone of going from 2,100 to 800; reducing 800 data centers by 2015. So we are going through those plans right now and validating those savings that are being reported.

Mr. DIAZ-BALART. Any idea how much we could save across all agencies if all agencies used that kind of system, the cloud system? Do you have any idea what the overall savings could be?

Mr. POWNER. No, we have not looked specifically at that.

Mr. DIAZ-BALART. Are you going to be looking at that? Are you going to have the ability to look at that any time soon? To see what the potential savings could be?

Mr. POWNER. Well, one of the things we are doing as part of the IT reform efforts, we have a request where we are actually looking at all the reform initiatives, including those areas to ensure that the 18 month deliverables are in place; and so clearly we will be able to report on those savings through that initiative.

Mr. DIAZ-BALART. Let me ask you, are we sure that it is secure, and that it is dependable? Do we know that yet? For example, obvi-

ously we cannot have IRS systems go down, or be hacked into, particularly during tax season or having leaks of people's information. Any idea if that is a system that we know is reliable and is secure?

Mr. POWNER. Well, a couple things. When the Federal government enters into an arrangement like that those security requirements ought to be built in. And also when you start looking at data center consolidation from a redundancy point of view, you want to make sure there is appropriate back-up and disaster recovery. So that is something that clearly you cannot lose sight of. But sometimes, also too, that is used as a crutch for not moving forward and we do not want that either.

Mr. DIAZ-BALART. Sure. Let me ask Mr. Kempf, if I may move on to you. Can you comment on GSA's experience moving to the cloud-computing? How has it been, what are the lessons you have learned?

Mr. KEMPF. Well, we are just moving into it. So we would not have realized our savings yet, because we are just transitioning into it. And I think it seems to be moving forward well. I think we tried to look at all of those issues that you talked about as well, like security issues.

One of the things that I think, with respect to security, is actually we may find that better security is that there is better application management in terms of version control and updates for security purposes. So, for instance, I think sometimes the private sector that is managing a very large e-mail system of systems, if you will, is better at getting the security updates into the system much more quickly, and managing the security much more effectively than sometimes we can. So I think we may see, indeed, better security than we could apply ourselves.

I also want to add that one of the things that we are doing is trying to take the lessons we learned in purchasing this and applying it as part of our schedule; we are releasing a solicitation for a BPA for e-mail services, so that we can sell it much more easily to the other agencies across the Federal government. So we are working on that right now, we expect that to be awarded sometime this summer.

Mr. DIAZ-BALART. And is it is certain that GSA gets a better deal than if the agencies did it on their own?

Mr. KEMPF. We would like to think so. That is one of the things. There are two parts to the savings: there is the final price that you pay, and then there is the acquisition cost in order to get it done, and then also the uncertainties of the acquisition to get it done right. So I think what we try to do at GSA is one, make sure that we have the right terms and conditions for the contract, and then also the right price. And then it also makes it much easier for the agencies to buy. So that also gives their acquisition people much more time to focus in on the mission critical systems, some of the more complex one-up systems, rather than the commodities which they can depend on GSA for support.

Mr. DIAZ-BALART. Okay. And before we go on to Mr. Serrano, he and I and the Chairwoman, when we were walking to the elevators to go to vote, we were talking about a comment about the contract with, I guess it was with Google, but that it is going to Unisys, and we were saying, "Why do you have to go through Unisys?" I think

it was Unisys, "Why can't you just go directly to Google?" And I'm not quite sure; I think it was you, sir, who had mentioned that. It would seem that you could just go directly to Google, versus having to go through somebody else.

Mr. KEMPF. Right. One of the reasons we used the approach that was taken was to include the use of an Integrator. We wanted some assistance with the change management, and some of the other integration capabilities and collaboration tools. And so they are actually doing the training, and those kinds of change management responsibilities to ensure greater success in uptake of this system, as it gets implemented.

Mr. DIAZ-BALART. And that's something that Google, for example, doesn't provide?

Mr. KEMPF. Well, we decided to use the GWAC tool, and the services were combined through the integrator, so it is a little bit broader in terms of just turning on an e-mail system for us.

Mr. DIAZ-BALART. Okay. Mr. Serrano.

Mr. SERRANO. Thank you. Mr. Powner, your testimony very clearly lays out the challenges and opportunities of IT coordination and consolidation. As you state, the Federal government anticipates spending 79 billion on IT systems in fiscal year 2011. You have been involved in analyzing IT systems for quite some time. Do you feel that agencies are ready, at this point, to have a serious and productive conversation about IT improvements and cost reduction? Also, are CIOs involved enough? Are they invested in this effort?

Mr. POWNER. You know, our work over the years has shown that CIOs and executive level attention to IT projects is not where it needs to be. And I will give you a couple examples. If you go to IRS and you look at their executives and how they are engaged with delivering the business systems and modernization. There are CTOs in on monthly meetings. Some of the recent failures in the government, when you look at electronic records archive, or if you look at what happened with the census handhelds, there was a problem with program management on those projects, but clearly the executives were not engaged to the level that they should have been. And our work clearly showed that where you have governance meetings, where there are executives holding program managers and contractors accountable. We do not see that enough across the Federal government. So clearly, when you look at Mr. Kundra's 25-point plan, that is one of his four major areas: improving governance; and that is something he is trying to do through replicating the TechStat sessions across the government. Frankly, that is something that was called for in 1996 with the Clinger-Cohen Act in elevating the CIO position; so that is something that, clearly, we need greater attention focused on.

Mr. SERRANO. And in areas like the census issue, where something went wrong, are those folks waiting for you to tell them what to do, or did they start trying to correct some of that themselves?

Mr. POWNER. Well, it is kind of a mixed bag. On the census issue, we issued multiple reports. A big problem with the Census Bureau was that they didn't define what they wanted with the handheld solution. They had a real requirements problem early, along with the executive oversight. So that was something that

there were recommendations made by the GAO, frankly, they were internal reports from the MITRE Corporation that were well-documented in congressional testimonies, and there was not enough attention placed on those recommendations and suggestions.

Mr. SERRANO. Let me go back and respond for a second to the one that I have mentioned now twice, the SEC. Does the role of the CIO at the SEC and other financial regulatory agencies, in your opinion, need to be strengthened in order to achieve the necessary technology efficiencies that improve agency performance? Especially in this new regulatory environment of Dodd-Frank?

Mr. POWNER. I have not done detailed work looking at the authorities of the CIO at the SEC, but I think, you know, collectively, when you look across the board, that is a government-wide issue with, authority issue with CIOs. I think one of the things that has been very helpful with Mr. Kundra's Dashboard, where there was a CIO accountable for each of the 800 major investments, there is a picture associated with that individual CIO, and frankly, some of the CIOs have the appropriate authority at certain agencies, and many don't. And that continues to be a major issue.

Mr. SERRANO. And so would be, Mr. Kundra, part of what we need to do to strengthen these folks and to identify what role they play so that we can be in place? I mean, it just seems that, and I don't want to sound like some of the guys on the other side, but in a very large government, you know, how do you get at this if in so many areas the agencies are so far behind?

Mr. KUNDRA. The way I think you solve it, and part of our approach has been to be very, very execution-focused. One of the challenges that I see across the board in departments is that you have CIOs who sometimes have a self-image that they are policy officials. Because it is very easy to attend a lot of meetings and talk about issues rather than actually roll up your sleeves and look at an IT project, and make the tough decisions around: Are we going to stop this because we don't want to throw good money after bad money, or are we going to terminate it because we know that the likelihood of success is approaching zero percent?

Part of our reform agenda has been very much around making sure that we are actually more execution-focused. So we are actually re-engineering and fundamentally reassigning the roles of the CIOs across every major department. And also, the President's Management Council is very, very focused on this. I have personally met with deputy secretaries and their CIOs to talk about the reforms that we need to drive.

For example, Deputy Secretary Hayes is providing leadership at the Department of Interior, where he has elevated the role of his CIO. And on top of that, they have started "I-Stats," Interior Stats, very similarly modeled after TechStats. What we are doing is we are actually productizing what we came up with a model that we know works; we know it produced results. And in some ways it is so simple, which is: Get everybody in the room who has the ability to fund this project, the managers who are responsible for it, the senior leadership, the project manager, and make a decision. And the reform agenda is very aligned with a lot of the findings from Mr. Powner's work, in terms of what has worked, what has not worked over the last decade.

And what we don't want to do is we didn't want to come up with is some type of philosophical strategy. But that is why the 25-point plan is broken down into six month increments with deliverables that are very, very execution-focused.

Mr. SERRANO. Mr. Kundra, your testimony also talked about creating an app-economy. As someone who really likes apps, and I might want to show you a little one I have here.

Mr. KUNDRA. Oh, I love it.

Mr. SERRANO. Like I said, I am intrigued by the idea you are encouraging all people to create apps based on the information that the government would normally not share. Can you give us an idea of the kinds of apps that have been created, and how you see this technology growing?

Mr. KUNDRA. Sure. So what has been really exciting in the space is that we launched a platform called data.gov in May of 2009. We started with only 47 data sets. Today, we have over 305 data sets, 305,000 data sets in every aspect of government operations from health care data to data around EPA, and data around actually when planes take off and land across the country. That has been coupled with actually challenging developers across the country to create applications that could help the American people, support the American people.

I will give you an example. At the Consumer Product Safety Commission, there is all this data that they have around which products have been recalled, which products actually have major, major issues that could lead to fatalities.

There is a developer that took the data from CPSC and created an iPhone app called "Recalls." And what this app does is it actually allows you, on your iPhone, to see every product that has been recalled, with a picture of it. But what is really interesting is now you can use your iPhone and if you are in a store about to buy a crib, let's say, you can scan that crib to see whether that crib has been recalled or not, by literally taking a quick picture and it hits a database in the back end.

What has been exciting, when I was talking to CPSC, they said, well, they worry, actually, less in some cases about products that are recalled that are on store shelves because stores move very fast; they worry about products that are already in people's homes; because if they have bought them, they are not going and checking whether they have been recalled.

So what this allows us to do, by democratizing data, getting innovative developers to take advantage of these data sets, and build consumer-grade apps, is that we are literally shifting power to the American people where they can now scan products in their home and see whether the product has been recalled or not.

Another interesting app was an app where people took data from the FAA, on average delays and landing times of flights. And a developer took this data and built an app called FlyonTime.us, and used Twitter so that people who are waiting in airport security lines could tweet what the delays were. And now you can make an intelligent decision on when you should leave your house to catch a flight, because you can actually see real-time what the delays are.

And across the country there is massive innovation happening. We are not spending millions of dollars on this type of innovation, where we have been able to tap into the ingenuity of the American people to create some of the most innovative applications. And agencies are now being able to run competitions, to say, "Hey, we are looking for this type of application." Who can actually develop this type of app for us? And it takes, literally, days to months, not years. And these projects are not hundreds of millions of dollars, and years behind schedule.

Mr. SERRANO. And I can see where this would not create a security issue because the information would either be controlled by the agency, or in the case of the Consumer Product Safety Commission; they were just picking up what was available on a website anyway, they were just bringing it closer to the person on the iPhone.

Mr. KUNDRA. Absolutely.

Mr. SERRANO. I don't have that app, I think I'm going to get it.

Mr. KUNDRA. There are a couple of other apps that we would recommend.

Mr. SERRANO. Is it free, or what?

Mr. KUNDRA. It is free. There is "Recalls," FlyonTime.us, there are a number of really interesting apps. Actually, if you live in Washington, there is an app that allows you to see, on your iPhone, based on where you're standing, the closest metro station and when the trains are coming in both directions. So you can decide when to leave your office. And there are some really, really cool apps out there.

But from a security perspective, what we do worry about is what I call the mosaic effect. If data is released, let's say, on Medicare, Medicaid, it is one thing if the data is released at a State level, but it's another thing if that same data is released at a zip code level, because in the rural part of the country you may be able to identify an individual. Or data that may have an impact on national security; that is why agencies go through a process to actually vet that data, and they are the ones who make the decision on what data could be put out there. And we also make sure that the combination of data sets doesn't, in any way, lead to violating the American people's privacy or national security risks.

Mr. SERRANO. It is interesting you say that, there is an app called "WikiHood," which tells you where you are and what restaurants are around you and so on. It also tells you what monuments are in the area, points of interest. And in the Bronx, the General would be interested in knowing this, it lists the elected official, so it listed my son as the local Senator, which is true, but it did not list me. I am thinking of getting rid of the app, even if it was free. But it is very exciting and there is no end to what could happen and it needs to be done properly and government can provide a lot of information through these apps, you are absolutely right. One last question for you Mr. Kundra, the fiscal year 2012 budget request includes $60 million for a funding line called "Integrated Efficient and Effective Uses of Information Technology". What will you use these funds for, and how will this help streamline redundant capabilities at federal data centers?

Mr. KUNDRA. So this fund is actually devoted on making sure that we are cracking down on these duplicative systems, and that

we are going through and increasing the number of large scale IT projects that we are reviewing. So it includes funding for the Federal Cloud Computing Strategy to make sure that we realize the potential savings, in the billions there; includes support for shutting down 800 data centers across the Federal government. It includes funding to actually scale the text set model government-wide, but also to conduct text sets where we are looking at duplication across the government, and actually taking actions. What is difficult as you look at these text set session, is not the act of just conducting the text set sessions, it is actually the follow through and the follow up, which takes countless hours and resources to make sure that if Agency A has committed to making sure they are going live in one month, that we come back a month from there and say, You said you would go live, what happened? Or, if they need support in terms of engineering talent, to look at some innovative technologies like Cloud, and realize similar savings that GSA's going to realize; that we are moving forward and identifying those types of projects, and actually moving that direction.

Mr. SERRANO. That makes sense. Thank you so much.

Mr. DIAZ-BALART. Thank you Mr. Serrano. When I was listening to you there, going back and forth, it was fascinating to see the incredible amount of innovation that is out there. Going back to the apps issue, basically those are Web based? I mean all of these systems are basically Web-based when you talk about all of these apps, whether it is on your iPhone or BlackBerry or on your iPad, it is all basically Web-based, correct? And when you mention all of these apps, are these private individuals out there who are doing this thing, they get the information, they do it on their own kind of thing, is that what we are looking at?

Mr. KUNDRA. Right, so you have actually two things happening, one is you have all of these innovation happening in the private sector, and what we have done is, we have built the platforms, so government has a platform, and third parties are creating some of the most innovative applications that government officials could not have even dreamed of.

Mr. DIAZ-BALART. The platform is where you basically provide the information right? What do you mean by the platform.

Mr. KUNDRA. So, what a platform is, it is Data.gov, and on that we actually provide machine-readable data sets. And these data sets could be everything from Medicare, Medicaid data sets on hospital outcomes to whether it is a data set around products that have been recalled. A good way to think about it is in the same way when the United States military decided to release data around GPS, satellite data, it actually gave birth to a whole host of companies and innovations to the point where now I can go in any new city, or any part of the country and navigate it using GPS technology. That is what is happening in that space, but also what we are doing is, agencies are using the same platform to create apps. So TSA for example has created a mobile app that is available on GSAs Website that actually allows you to see what you can bring on a flight, warning that are happening across the country in terms of airports and so forth, and you also have apps that have been created by a whole host of other agencies that are providing valuable information to the American people.

Mr. DIAZ-BALART. This is just a comment on it, not on you, but it is ironic that when see innovation on the Internet, and we see the issues that we have, and we understand why; that is what you are trying to get to, the issues that we have within the government structures and the government systems, which are obviously not the most efficient. And yet now we are seeing the FCC basically to regulate the Internet which is frankly just crazy. If there is a place that has been revolutionary, I mean totally revolutionary as far as innovation and access and the lowering cost and everything else, it has been the Internet. But I guess now the FCC believes that Federal government can do better than what has been probably the most revolutionary and the most dramatic opening in the history of mankind. The FCC believes the Federal government can do better which is, frankly, crazy. It is absolutely insane.

Let me go back to now the issue that we were talking about, for example you mentioned the issue of the Census and the handhelds. Now when you are looking at doing what you are doing, you were talking about the difference between the private sector; the private sector has a need to innovate because otherwise they are basically out of business and individuals in the private sector have a need to make sure they are on the cutting edge otherwise their company does not do well and they are out of a job. Do you have the ability to incentivize those who do well by, for example, bonuses, pay increases? And then what are the consequences, going back to the Census, what are the consequences for those that made decisions, the wrong decisions that cost taxpayers a ton of money? Do they get fired, are they out of a job, do they lose their pay? Do they get demoted? Specifically what are the consequences, and what were the consequences for example, in the case of the handhelds with the Census, number one, and do you have the flexibility to do what it takes to both have the carrot and the stick?

Mr. KUNDRA. So I think the incentives and how they are lined up, and what happens from an HR perspective, that work is happening at the agency level. What I would say is because we have not had a formal program management career track, which is one of the things that we are working on right now with OPM to actually make sure that we hardwire and bake in the very incentives that you are referring to, to make sure that where we have good people, they move up very quickly in terms of making sure that they are recognized government-wide; and where you have non-performers that we actually identify those people that are not performing under consequences. What we need to be able to do is we need to make sure our incentive systems, and this is something Director John Berry is working on, and part of the OPM reforms around the program management career track is that, we do get rid of people who are non-performers; we cannot tolerate to spend billions of dollars in IT systems where you have program managers that are frankly not managing them very, very well. That is one of the reasons, in this administration, one of the first things we did is we said there is this culture of faceless accountability where everybody has pointed at everybody else in terms of why projects fail.

That is one of the reasons we did what we did with the IT Dashboard; not only did we put every project online, but we also put the picture of the CIO who is responsible for those projects, and that

was actually pretty radical because everybody hated me at that point and I said, Well, who is responsible? And what you would see is they would point to 20 different people, well if everyone is responsible, nobody is really responsible.

At the agency CIO level now, that picture has had a profound impact. I remember when the President looked at the IT Dashboard, and we took a picture and put it on a blog, for the first time I got calls from various CIOs who were saying, "Oh my God, for the first time I am getting pulled into a meeting in my Secretary's office and they are asking me what happened with this project, why is it red, why is it yellow?" And that is a level of accountability that we are driving now through the text data approach at the agency level to make sure that we are focused not just on inputs, which are reports but results. What are you doing? And we have committed that we are going to be terminating and turning around one-third of the IT portfolio that is underperforming.

Mr. DIAZ-BALART. And you think you have the tools and the ability to both do that, which is the consequences of those actions, but also the tools to incentivize. Obviously there is always an element of risk when decisions are made and so therefore you have to have both, the private sector has it, the carrot and the stick, you have to have them both. And so you think you have the tools and the flexibility to be able to incentivize those who make the decisions and may take a risk, but then hopefully will make the right decision, and then if they do they have some sort of incentive; and also the ability to discipline those who do not? And you think you actually have the flexibility and the tools, the agencies have them?

Mr. KUNDRA. Right we are building that in now to the program management career track, that is supposed to be done within the first six months.

Mr. DIAZ-BALART. Great. Mr. Serrano, do you have any more comments or questions?

Mr. SERRANO. I do not have any questions at this time, but a comment. Getting back to this apps thing, which really fascinates me. I have an app called "App Advice," and every day it tells me what new apps are out there. It would be interesting, as government goes out there and creates its own apps for information and assistance, or as private sector creates apps that has government information on it; if there was a way, this sounds silly that members of Congress would know about this, that we and our staffs could have access to those, because there is no way of knowing when there are 100,000 out there and a couple of hundred come in every day, and everything from games to other stuff; there is no way of knowing.

But from what I am hearing here, there is a desire and a need for you folks, for us, to begin to move in that direction, so there has to be a sort of a central database, if you will, that will tell us this is available when it is available. I mean this one you just mentioned today, in itself; you would be surprised how important that would be to offer that information to our constituents.

Mr. KUNDRA. I think that is a great idea. What we have done is on USA.gov, we have put a number of those apps. But I think you are absolutely right, which is it would be much better if you had

it on a handheld while you are making the decision of which app to download. So we will definitely start building it.

Mr. SERRANO. Okay. Thank you so much.

Mr. DIAZ-BALART. Mr. Serrano, obviously it looks like you are kind of addicted to apps, there may be an "Apps Anonymous" app that you might want to look at.

Mr. SERRANO. My favorite is an app that kind of takes the embarrassment out of being at a restaurant and looking at sushi and saying, I love it, but which one is that? And there is this app with these beautiful pictures, and it makes you sound so smart, you know?

Mr. DIAZ-BALART. That is amazing. And I think the idea, that he just threw out of an app where you can look at what apps the government has for different agencies is a great one.

The Chairwoman will have some questions that she will submit in writing. I appreciate, and we all appreciate your efforts, and for being here. And thank you again for sticking with us during the votes. And with that, I think this meeting is closed.

Mr. KUNDRA. Thank you very much.

[The information follows:]

ANSWERS TO QUESTIONS FOR THE RECORD
OF A HEARING BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

"Managing Federal Information Technology: IT Reform of the Federal Government"

March 17, 2011

Questions for Mr. Kundra from Chairwoman Emerson

The fiscal year 2012 budget request proposes a $60 million OMB appropriation to provide funding for several IT reform efforts. I question whether OMB needs additional resources to oversee agency activities. Improving management across the Federal government is one of OMB's core missions.

- **Hasn't the Administration already begun implementing some of your ideas such as cloud computing, server consolidation, and IT program reviews without a special OMB IT account?**
- **Why does it cost more money for OMB to save money?**

Currently, the U.S. government spends approximately $80 billion annually on over 12,000 separate Information Technology (IT) systems, making it the largest single purchaser of IT in the world. In the private sector, gains in IT efficiency have increased more than 50% over the last 20 years, but the same has not been true for Federal government IT.

Recognizing the need for change, over the past year, OMB has been engaged in a government-wide intense effort to study the root causes of the problems with Federal IT projects. One of the biggest issues OMB has identified has been that a significant portion of the IT budget is spent on infrastructure that can be made more efficient and significantly less redundant. For example, in the private sector the trend is for relatively fewer data centers to reduce costs for facility upkeep, energy, and IT operations costs, but for the past twelve years the trend in the Federal government has been in the other direction – since 1998 the Federal government increased the number of its data centers from 432 to 2,094, representing a 385 percent increase. Consequently, as explained further below, reversing this trend and facilitating Federal data center consolidation is a key part of the plan to improve Federal government IT.

In order to improve Federal government IT, we need a centralized and systematic, government-wide approach to both turn around poorly performing IT projects and consolidating purchasing and operations of commodity IT functions. To that end, the President's Fiscal Year 2012 Budget proposes $60 million in the new Integrated, Efficient, and Effective Uses of Information Technology (IEEUIT) account to be used as a central Government fund to accomplish two primary goals:

1. To turn around poorly performing IT projects, building upon the efforts to date to review hundreds of additional major IT investments annually, and

2. To consolidate purchasing and operations of commodity IT functions, leveraging lightweight technologies such as cloud computing while consolidating Federal data centers to reduce costs and improve performance.

The Fund proposes to accomplish these goals through four major initiatives, with funding allocated as follows:

Federal Cloud Computing Initiative ($24m). Adoption of a cloud computing model is a major part of the strategy to achieve efficient and effective IT, compared to the alternative of expanding dedicated agency data centers and continuing the implementation of stove-piped agency-specific systems.

Data center consolidation ($10m). This consolidation is a key element of the new Federal IT strategy because it will reverse the historic growth in data center numbers, reduce costs, energy consumption, and environmental impacts, and improve customer services. Data center consolidation efforts are currently underway and more detailed information about cost savings is expected at fiscal year end. Expected cost savings at the level requested is approximately $3 billion.

Shared Services ($16m). Shared services paradigm and the cloud computing model make it possible for Federal agencies to participate in a pool of powerful technology resources that reduce duplication and provide a more diverse range of shared services in an agile and sustainable manner. These services can reduce the resources burden on agencies by leveraging more scalable approaches to service provisioning and consumption. The approach also allows agencies to focus time and effort on mission-critical tasks.

The annual implementation of 3-5 new shared services in mission and support areas of government is expected to yield substantial cost savings through elimination of duplicative systems and business processes. Target areas include health IT, export trade licensing, transportation licensing, veteran's benefits, disaster management, records management, and agency email.

Turn around poorly performing projects ($10m). The use of centralized expert resources implementing best practices and TechStats will lead to stronger project management resulting in more projects finishing on-time and within budget. The resources will provide capacity to both troubleshoot and assist agency leadership with short-duration, focused, and targeted interventions for the most troubled high priority investments that impact mission operations. Additionally, by consolidating these resources through the funding requested, all agencies will have ready access more quickly to highly qualified personnel that can help them ensure that investments are planned and managed for success from the outset, problems detected are mitigated more quickly and effectively, and systems are built to better meet users' needs, share information and interoperate to maximize value to the taxpayer. Not only will these support resources assist in the turnaround of troubled projects, but also as embedded members of the agency team they will propagate lessons learned and best practices, leaving valuable knowledge for continued improvement in investment management Government-wide. Requested funding levels would

yield hundreds of in-depth project reviews, resulting in an estimated $2.5 to 4 billion in life cycle cost savings beyond FY 2012, based on results achieved in other TechStats to-date.

Before providing OMB with any additional resources, the Committee would want some assurances that these funds will result in real budgetary savings.

- **To date, can you tell us how much your TechStat, cloud computing and data consolidation efforts have saved?**

  For TechStats – we completed 38 High Priority Project (HPP) TechStats and financial systems reviews in 2010. As a result of these sessions, we have identified approximately $3 billion in life cycle cost reductions. The outcomes were:
  - Eleven were determined to be basically on track;
  - Eleven were significantly reduced in scope resulting in a budget reduction. For example, the Environmental Protection Agency has moved forward on cuts of $185 million to its troubled financial management system modernization project, the Financial Replacement System initiative;
  - Twelve were accelerated to deliver meaningful functionality. For example, at USDA, after 4 years and $100 million dollars in spending, the Department had nothing to show for an IT system that manages the delivery of food to 30 million Americans. As a result of the TechStat, within 6 months the system was released to 9,000 system users and vendors. And the Department of the Interior accelerated delivery of incident management and reporting system to the 6,000 law enforcement officers protecting the nation's natural resource and cultural monuments from 24 months to six month increment;
  - Four were terminated altogether. For example, the Department of Homeland Security terminated its troubled National Flood Insurance Program IT modernization project, avoiding an additional $24 million in spending.

  For the Federal Data Center Consolidation Initiative (FDCCI) – Agencies have only recently begun executing against their consolidation plans. As per the February 2010 FDCCI guidance, agencies are required to report a fiscal year end progress report; these will include more detailed cost savings information.

  For cloud computing – Agencies are saving money by moving to cloud computing. For example, GSA and USDA have already identified $42 million in savings by moving to cloud computing email services:
  - USDA Email: 120,000 users, 21 fragmented systems, 5,000 locations ($27M in savings)
  - GSA Email: 17,000 users, 17 global locations ($15M in savings over the next 5 years)

- **What programs can be reduced in the fiscal year 2011 CR and fiscal year 2012 request based on these savings?**

  Agencies are tasked with implementing the outcomes of a TechStat, and these session outcomes will produce near-term savings. However, the funding for most Federal IT spending is not provided in dedicated appropriations, with a few notable exceptions. For example, NARA's Electronic Records Archive's (ERA) planned cost was reduced by $13.5 million in FY 2011, and $36.3 million in FY 2012. NARA is focused on improving public access to historical records and documents by expanding ERA's search capabilities; expanding ERA to include classified information; and engaging Federal agencies aggressively to transfer permanent electronic records into ERA, with volumes to exceed a petabyte (a million gigabytes) in FY 2012.

  Most funding for IT is bundled together with staffing and other administrative costs in broader appropriations. OMB is supporting the Administration's detailed review of all discretionary spending to find common ground for further reductions, which includes accounting for potential IT savings, but it is not possible to separate out this element of most programs to identify specific savings tied to IT, when reductions must be made at the program levels which include other costs. As part of IT Reform, OMB is exploring approaches to IT funding which could include appropriations dedicated solely to IT projects, allowing IT costs to be better identified and controlled in the budget process. This would increase transparency, and agency control and accountability.

The bill language accompanying the $60 million funding request allows the Director of OMB to "transfer these funds to one or more other agencies to carry out project to meet these purposes". Which agencies would you likely transfer funding to and why?

Historically, we have identified specific agencies as managing partners, who have operated on behalf of other participating agencies. Agencies receiving funding will be selected based on capacity and capabilities. No determination has been made at this time as to the most appropriate agencies to carry out projects under this fund.

IT Dashboard

The Administration, in collaboration with the General Services Administration (GSA) through the Electronic Government Fund, created an IT Dashboard website that enables Federal agencies, industry, and the general public to view details of Federal information technology investments.

The purpose of the Dashboard is to provide information on the effectiveness of government IT programs and to support decisions regarding the investment and management of resources.

- **How has the dashboard been received by the public?**

  With thousands of unique visitors every month, the IT Dashboard has been well received by the public, NGOs, and industry associations. In addition, we have received several letters of support from Members of Congress.

- **Are many people using it?**

  The IT Dashboard averages approximately 15,000 unique visitors per month.

- **How is it received by the agencies?**

  The launch of the IT Dashboard was a break from the status quo, whereby data previously reported to OMB twice per year was now to be reported to the public on a monthly basis. Initial concerns ranged from questions about exactly how the data would be presented, to concerns about protecting sensitive data such as pre-decisional or procurement-sensitive information. To the extent practicable, OMB has worked closely with agencies to address these concerns and to gather feedback on how to both improve the quality of the data reported on the IT Dashboard as well as to reduce the overall reporting burden on agencies. Since the IT Dashboard's launch, agency feedback has also resulted in several updates to the Dashboard's functionality. For example, based on agency comments, OMB developed an automated submission method for entering monthly updates, enabling agencies to update all their investments via a system-to-system interface, rather than one-at-a-time manually.

- **Is it increasing accountability?**

  OMB has used the IT Dashboard to support the 38 High Priority Project (HPP) TechStats and financial systems reviews completed in 2010. Additionally, agencies are now using the IT Dashboard to conduct their own TechStat Accountability Reviews at the agency level, further increasing accountability government-wide. The combined use of the IT Dashboard and TechStat reviews to increase accountability is also reflected in the conclusions expressed by GAO in its March 2011 review of the IT Dashboard. GAO concluded that "the Dashboard has enhanced OMB's and agency CIOs' oversight of

federal IT investments" and that "performance data from the Dashboard are being used to identify poorly performing investments for executive leadership review sessions."[1]

- **How much does it cost to operate each year?**

  The IT Dashboard operations and maintenance, funded through the Electronic Government Fund managed by GSA, incurs costs of approximately $1.8M per year.

- **How accurate is the information on the site?**

  The IT Dashboard relies on input data received from agencies, updated by them monthly. The accuracy of the data will depend entirely on the quality of the data provided by those agencies.

OMB requires agencies implementing major IT investments to prepare budget justification and reports using what are known as Exhibits 300 and 53.

- **Do OMB and agency CIOs actively use Exhibits 300 and 53 as management tools?**

  Yes, OMB and agency CIOs use these exhibits as a key source of information regarding the performance of Federal IT investments. Data from Exhibits 300 and 53 are used to populate the IT Dashboard. The Exhibit 300 supplies the agency-provided data used to depict the performance of each investment on the IT Dashboard. The Exhibit 53 data enables the IT Dashboard's portfolio tools (trend analysis and current year funding overviews), including the total spending in the Federal IT Portfolio. OMB continuously reviews the data on the IT Dashboard to identify troubled projects. Going forward, as part of the IT Reform program, agency CIOs are conducting agency-specific program (TechStat) reviews based on data provided by the agency's project/program managers, and that reflected in the Exhibit 300 and 53.

- **If so, please provide examples of when these exhibits improved the life cycle performance of an IT project.**

  The data from these exhibits is used by OMB analysts to provide insights into the performance of Federal IT investments. Specifically, we have used the data to identify candidate projects for TechStat reviews, through which we have identified significant cost savings, as noted in the response provided on page 2. It is important to note that individual agencies may also be able to provide examples of how this data is used to make internal decisions regarding their own investments, particularly as agencies begin the process of running their own TechStat accountability sessions.

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[1] Government Accountability Office. *GAO-11-262*, March 2011. Available at: http://www.gao.gov/new.items/d11262.pdf

- **If no, why not develop a better reporting tool?**

  Data collected using Exhibits 53 and 300 have been critical to gaining insights into the Federal IT portfolio. That being said, as part of the IT Reform effort, OMB is in the process of making major updates to the Exhibits 53 and 300 to ensure that they focus on core data elements that enable more effective oversight while reducing reporting burden. OMB is working closely with agencies to develop these updates, which will be released in draft form in the Spring of 2011.

Future Innovations

Technology is always evolving. We don't know what the next innovation will be.

- **How can the government effectively contract for IT services when IT capabilities are always changing?**

  Although technology evolves, the government can improve delivery of services for the American people if we invest wisely. As outlined in OMB Circular A-11 and the Federal Acquisition Regulation, modular contracting is one way for us to minimize risk. Agencies should, to the maximum extent possible, consider breaking large acquisitions into smaller, more manageable segments or modules. This can reduce program management and contract risk and allow the flexibility to address changing technology and agency priorities.

  As part of the IT Reforms we are putting in place, we are working with agencies on how to further support modular and agile development. When evaluating acquisition strategies, agencies will need to prioritize those solutions that promote short deadlines for deliverables (generally less than three months), allow for responsiveness to rapidly evolving program and technical requirements, and facilitate a streamlined award process.

- **How do you ensure that agencies can utilize the latest technology advances and aren't locked into a contract for outdated IT services?**

  The government has a number of ways to ensure that contractual arrangements do not drive program decisions. For example, many contracts have provisions for technology upgrades built in to the agreements, thus giving the government alternatives throughout the life of the contract. The government can also choose not to exercise the next option period of the contract, usually at the end of a fiscal year, if those services are no longer needed. Additionally, most government contracts contain a "Termination for Convenience" clause. As outlined in FAR 52.249, this clause permits the government to

terminate performance of work under a contract if it is determined that a termination is in the government's interest, considering related settlements costs.

As outlined in the IT Reform plan, we are identifying IT acquisition best practices and scaling them government-wide over the next 15 months through the use of communities of practice and improved collaboration between the Chief Information Officers Council and the Chief Acquisition Officers Council. This will enhance communication among the federal agencies on what works well in IT acquisition and improving communicating on how to approach IT procurements.

Competition

- **What is the Administration doing to promote competition in IT procurements for cloud computing, data center consolidations and other IT services?**

As part of IT Reforms, the Administration is working to improve communication between government and industry during the acquisition phase, especially during requirements development, to ensure the government has access to the most current market and product information so we can define our needs better and structure our contracts to promote competition and innovation.

We will also launch an interactive platform for pre Request for Proposal (RFP) agency-industry collaboration. This platform will provide opportunities for the Federal Government to rapidly and effectively explore IT solutions with industry partners, including small innovative businesses, especially during the pre-RFP period.

Data Center Consolidation

Last February you launched an effort to consolidate 800 Federal data centers by the year 2015.

- **How are your efforts proceeding?**

Agency consolidations efforts are fully underway. In addition to compiling detailed inventories, agencies spent FY 2010 creating consolidation plans, which outline consolidation work through FY 2015. As part of the FY 2012 budget development process OMB worked with agencies to improve these plans. As of January, agencies are now executing against their consolidation plans.

Recently, the CIO Council launched a government-wide Data Center Consolidation Task Force (DCCTF) comprised of data center program managers, facilities managers, and the Federal sustainability community. Over the next four months, agencies will further identify specific consolidation targets, investigate how to use cloud computing to drive consolidation, craft technical implementation playbooks, complete cost benefit analyses,

map applications needed to consolidate, design migration architectures and evaluate the appropriate acquisition vehicles needed to execute consolidation.

The Task Force is also hard at work to create a Government-wide data center "marketplace" to accelerate consolidation. The goal of the marketplace is to increase the number of multi-tenant Federal data centers, matching up supply with demand. Multi-tenant data centers would enhance the Federal Data Center Consolidation Initiative by providing additional consolidation opportunities.

- **How many data centers have you closed and at what agencies?**

  As stated above, the CIO Council has launched a government-wide Data Center Consolidation Task Force (DCCTF). Agencies are currently working on their detailed consolidation plans as well as more specific consolidation targets. This work will be completed by July 31, 2011, when agencies will make their consolidation plans make public. By that same date, OMB will also create a consolidation dashboard to track and highlight the progress of the agency efforts.

- **How many data centers to intend to close during fiscal year 2012 and at what agencies?**

  The Administration's proposed FY 2012 budget outlines broad agency consolidation targets through FY 2015. By 2015, agencies will consolidate a minimum of 800 data centers across the Federal government. When the DCCTF completes the process of identifying specific consolidation targets by July 31, 2011, agencies make public their consolidation plans and will detail what data centers will be consolidated in FY 2012.

New Dodd-Frank Agencies

The Dodd-Frank bill establishes the Office of Financial Research and the Consumer Financial Protection Bureau. These new agencies will need a significant amount of IT capabilities to collect and analyze a variety of financial data.

- **Have these agencies reached out to you for advice on their IT requirements?**

  Both OFR and CFPB have reached out for counsel on their IT requirements. The technology roadmaps for these agencies should be consistent with Administration IT priorities, including cloud computing, data center consolidation, cybersecurity and transparency and provide the flexibility needed to fulfill the mission. These organizations should also engage with stakeholders, both internally and externally, so that any selected technology solutions suit the dynamic nature of the financial services industry.

- **What are you doing to ensure that their IT investments are well thought out and cost effective?**

Consistent with our overall IT reform efforts, OMB is advising each organization on best practices, effective oversight models like TechStats, proper ways to structure acquisitions, the use of integrated program and project teams and development projects that are implemented with agile and modular approaches, with customer facing deliverables every six months. Furthermore, to avoid the creation of redundant and inefficient infrastructures, each agency has been apprised as to the benefits of cloud computing and made aware of efforts at the Department of the Treasury to consolidate data centers. Concurrently, we have engaged with Departmental management to make sure OFR and CFPB technology needs are appropriately considered inside agency capital planning and budgeting processes and Department-wide efforts to shift to the cloud and consolidate data centers.

- **Will these agencies build new IT data collection and analysis systems or will they seek to leverage some of the existing IT systems or infrastructure of financial regulators?**

  Answers to these questions are still being worked by staff at OFR and CFPB. OFR and CFPB are strongly encouraged to leverage the work of other Federal agencies, including the Treasury Department's data center consolidation efforts. Also, consistent with our cloud first policy, agencies are required to evaluate the safe and secure adoption of cloud computing solutions as they consider their technology needs. Where possible, OFR and CPFB should provision IT as a service rather than owning IT as an asset. Until more work is done to define each organization's ultimate data and computing needs, the exact combination of what will be acquired or serviced is not available.

Office of Personnel Management RSM

OMB identified OPM's Retirement Modernization Project as "high-risk" and in need of more scrutiny. GAO has done several reviews of this troubled project over the years and made many recommendations to improve its execution. No funds are requested for the project in fiscal year 2012.

- **What is the status of the project today?**

  OPM terminated the RSM investment and the RSM Program Office has been closed.

  OPM is now working to complete a review of the Retirement Services process from the bottom up and will not identify new technological fixes until the review is completed.

  In the meantime, OPM is making other incremental improvements to retirement related systems. The program approach OPM is taking is starting with the basics; small incremental changes that can be piloted first, before spending large sums of money.

- **How close is the retirement calculator to completion?**

According to OPM, the retirement calculator was completed as of December 2010.

- **How was the decision made to halt this program and request no funding for RSM in fiscal year 2012?**

  Based on OPM's evaluation of the RSM investment and other alternatives, the OPM Director made the decision to terminate the investment and transfer future retirement solutions to other Retirement Services IT investments.

OPM administers the Federal Retirement Program for more than 2.7 million active employees and 2.5 million annuitants, so clearly finding a better solution to processing retirement claims needs to be addressed.

- **What do you see as the next step going forward?**

  According to OPM, they are conducting a complete review of the Retirement Service process from the bottom up, will be making changes to improve business processes, will make incremental technology changes where appropriate, but will not be able to identify broader technology changes until the review is completed.

National Archives and Records Administration ERA

The Electronic Records Archive system at the National Archives and Records Administration has consistently had trouble with costs and keeping on schedule. I understand that you all have bumped up the timeframe in which NARA needs to complete ERA to the end of this fiscal year.

- **Why has this program had so many problems?**

  NARA experienced a number of challenges in implementing ERA to include: handling the complexities related to managing and preserving electronic records in numerous formats; continued problems with contractor performance in a cost-plus-award-fee contract; and a nonresponsive software methodology employed by the development contractor. To address these issues, NARA has taken action to improve oversight and communications with its contractor by conducting a comprehensive analysis of the ERA's requirements and formulating a rollout schedule for Federal agencies. The agency is working to address its earned value management practices and continues to document and implement major decisions made at NARA's executive level. Additionally, NARA will issue a new firm fixed price Operations and Maintenance contract by September 2011, and has also adopted spiral software methodology, with more frequent, product-focused smaller releases.

- **With the timeframe being pushed up, what is the ERA system sacrificing in terms of functionality in order to be completed by the end of this fiscal year?**

NARA performed a requirements review in coordination with its stakeholders and has committed to delivering all high priority functionality by the end of FY 2011. The high priority functionality includes the Online Public Access and Classified Records Instance, among other capabilities. Additionally, NARA is ensuring that all core capabilities necessary to deploy ERA to the entire Federal Government by the end of 2011 are completed in this final year of development. The non-essential functionality that will not be delivered includes: internal workflow for records management processes; capabilities for users to email search results; integrated account management for agencies; and other low priority functions.

- **Are you confident that NARA can complete this project within the timeframe given?**

  OMB is hosting monthly meetings with NARA to track progress and identify issues so they may be promptly addressed. The focus is on ensuring the completion of the planned system development activities in FY 2011 and ensuring agencies are leveraging the ERA system capabilities on schedule and to the fullest extent.

- **Are you confident in ERA's ability to preserve records as well as provide access to them to the public? Will either of these functions be degraded because of the shortened timeframe?**

  OMB is not aware of any issues with respect to ERA's ability to preserve records and provide access to the public. As of March 2011, 99.13 terabytes of data have been ingested into ERA with the goal of ingesting at least 10 terabytes of data each quarter. NARA also completed a pilot for Online Public Access, and it is slated for release into production by the end of Calendar Year 2011.

- **As this system is not only digitizing NARA's archives, but also will be taking in agency electronic records for preservation, how are you synthesizing agencies' electronic records processes with NARA/ERA's?**

  ERA will ingest "born digital" records, and scanned digital images. However, it does not digitize or scan traditional records. OMB is working with NARA to ensure that agencies, including NARA, are meeting their records management responsibilities and leveraging the capabilities available within ERA.

IRS BSM:

If successfully implemented, IRS's Business System Modernization holds the potential to change IRS's culture, productivity, and effectiveness. Nonetheless, BSM remains on GAO's list of high risk areas due to a number of early false starts.

- **How has IRS's project management changed over time? Are they better positioned to manage BSM than they were in the past?**

IRS's project management model has matured over time, with both external validation of that maturity as well as internal management practices and processes that have been institutionalized and are already showing positive results.

Application of industry best practices is evident in IRS's priority project, CADE 2, which is currently operating under an enhanced program management model, with early successes already in exiting milestones and in staying on track for timely deployment in January 2012. In particular, IRS established a right-sized CADE 2 Program Management Office (PMO) with a mix of executives with experience in legacy and modernized systems as well as clear successes in managing large-scale projects. Equally important has been formation of a sound governance structure and collaborative management model with a clear accountability framework and expertise to enable them to assume accountability for the outcome of the program.

- **Have they learned from their mistakes?**

The IRS has institutionalized lessons learned into "Critical Success Factors" for their linchpin project, CADE 2, with plans to achieve success built into their program management plan and used to guide the CADE 2 program in achieving its mission and goals. These critical successes include specific improvements across the following functional areas:

- Maintaining Executive Sponsorship
- Instituting Changes to Encourage Organizational Buy-in and Support. 2 PMO
- Leveraging Standard Program-Level Efforts
- Managing Risk
- Communicating Frequently
- Acquiring and Retaining the Appropriate Skills
- Using Prototypes and Models
- Gaining the Commitment of Delivery Partners
- Constant Oversight

- **What concerns do you have about BSM, and in particular CADE2? And what are you doing to improve IRS's chances of success?**

As noted above, the new program management model and use of industry best practices have been evident in the CADE 2 program. The program has completed all of its milestones on-time without conditions and a Program Director assessment shows that CADE 2 is on track for its planned January 2012 deployment of its Transition State 1. Since its inception, OMB has met with BSM on a quarterly basis to review progress and provide advice. The IRS has also engaged independent reviewers to validate program deliverables, planning, and critical decision points. The CADE 2 program has been very transparent about reporting successes, progress and risks, and we continue to work

closely with executive leadership from IRS to make sure they have what they need to address risks and keep momentum on this very important initiative.

QUESTIONS FOR THE RECORD
HEARING BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
March 17, 2011

"Managing Federal Information Technology: IT Reform of the Federal Government"

Vivek Kundra, OMB

Questions for the Record Submitted by Ranking Member Serrano

IT Dashboard:

We are all aware of the IT challenges that OPM is facing in regards to their retirement system modernization project.

- **Is this a project that OMB has examined? If not, why not? If so, how is OMB and the dashboard system working to improve this longstanding problem?**

OMB has examined this project. At a TechStat session held October 19, 2010, OMB and Office of Personnel Management (OPM) reviewed the Retirement Systems Modernization (RSM). Based on OPM's reports to OMB, after 23 years, OPM was on its fourth attempt to modernize its retirement systems. As documented in OPM's reports at the meeting, the investment has had past issues with planning, cost estimating, earned value management, requirements management, testing, and program oversight.

OPM terminated the RSM investment and the prior RSM Program Office has been closed. OPM is now working to complete a review of the Retirement Service process from the bottom up and will not identify new technological fixes until the review is completed. In the meantime, OPM is making other incremental improvements to retirement related systems. The program approach OPM is taking is starting with the basics; small incremental changes that can be piloted first, before spending large sums of money.

Questions for the Record Submitted by Congresswoman Lee

Impact of Proposed Budget Cuts:

How would a return to FY2008 levels effect current IT modernization and streamlining efforts and how would these cuts affect the rollout of projects that are already in the pipeline?

A reduction to FY 2008 levels in agency budgets would generally be enacted via reductions more to programmatic levels, than through reductions specific to IT, so it is not straightforward to predict how agencies would allocate programmatic cuts between IT and non-IT uses.

However, a reduction in agency IT funding levels would have a significant impact, particularly on development and modernization initiatives designed to improve transparency, efficiency and services to the public. Some potentially impacted major ongoing or planned initiatives, include: (1) modernization of financial systems, with impacts on agencies' ability to identify and reduce improper benefit and tax payments, (2) improvements in providing information to citizens in centralized, user-friendly delivery modes, including information tax and benefit programs, (3) transparency of Federal spending and performance, as exemplified by USASpending.gov, Data.gov, the IT Dashboard, and Performance.gov.

In fact, many of these transparency initiatives dependent on the E-Government Fund would suffer disproportionately, due to reductions from the FY 2010 level of $34 million to the FY 2011 enacted level of $8 million. A further reduction to the FY 2008 level for FY 2012 would provide only $3 million, effectively terminating most of the initiatives still able to operate in a limited capacity under FY 2011 cuts.

Beyond these key centralized initiatives already noted, with major IT funding reductions, many on-going agency-based improvements to internal business processes dependent on new IT systems would also need to be slowed or cancelled, with the result that program productivity improvements from new IT systems would not be realized, and initiatives important to achieving future efficiencies, and savings such as data center consolidation and the migration of agency IT services to cloud-based solutions would be seriously impeded. Near-term constraints on IT spending would jeopardize much larger savings through efficiency gains that we have already seen realized in the private sector.

How might stopping important investments in IT impact the delivery of tax returns, social security checks, business tax credits and any other payment or credit process that the federal government is responsible for?

While specific information on the impacts of funding cuts on any agency investments are best addressed by agency CIOs, we can say that because most often spending is directed first to operate and maintain existing systems and infrastructure, IT budgets cuts are likely felt hardest in the area of development spending, used to build new, and modernizing existing systems. As a result, cuts would have the likely impact of putting Government further behind in its efforts to replace outdated technology. Currently, major IT investment spending on development or enhancement to modernize current systems represents $24.5 billion in IT spending in FY 2011, out of a total of approximately $78.5 billion in Federal IT spending overall. Given the rapid pace of change in IT, and the greatly increased efficiency of using the latest technology, reduced modernization budgets would have dramatic effects on plans to increase efficiency and service in a number of areas relating directly to the processing of tax, benefit and other Federal programs that make payments to citizens or organizations in the private sector.

For example, the Internal Revenue Service's Customer Account Data Engine 2 (CADE 2) investment, for which $199 million was requested in the FY 2012 Budget, is a key element of the IRS's business systems modernization strategy, aimed at improving customer service and tax compliance through technologies focused on data management. This program plans to deliver a modernized, citizen-accessible system to replace the outdated, flat-file legacy processes of IRS tax administration. Undermining investment in this area, which is likely given a rollback to FY

2008 funding levels, could jeopardize IRS' modernization efforts, with likely negative effects on refund timeliness, taxpayer service, and tax compliance.

Environmental Impacts of IT

As the federal government continues to improve and maximize the positive impact of IT on productivity and effectiveness on all manner of operations, how are we mitigating the environmental impact of the growing power needs of computers and servers controlled by federal agencies and are environmental considerations a part of the contracting process when we are pursuing "cloud computing" opportunities?

OMB is committed to working towards Federal Sustainability targets and other management goals. This holds true for the Federal Data Center Consolidation Initiative (FDCCI), an OMB-led initiative to consolidate and reduce the number of Federal data centers. Over the last decade the number of data centers has expanded dramatically, leading to costly, redundant and inefficient IT investments.

The FDCCI seeks to curb this growth by reducing the cost of data center hardware, software and operations; shifting IT investments to more efficient computing platforms and technologies; promoting the use of sustainable IT by reducing the overall energy and real estate footprint of the government data centers; and, increasing the overall IT security posture of the government. This will have the beneficial effect of cutting energy use and costs, which helps the Federal Government meet the sustainability performance goals outlined in Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance. In addition, it is consistent with the President's June 2010 Memorandum on Real Property that established a $3 billion dollar cost savings goal for the Federal Government's real estate.

Though not a direct part of the contracting process, the environmental benefits of cloud computing are a by-product of the move from asset ownership to service provisioning. Applying cloud technologies across the entire Federal Government can yield tremendous benefits in efficiency, agility, and innovation. Capacity can be provisioned to address the peak demand across a group of applications, rather than for a single application. When demand is aggregated in this fashion and properly managed, the peaks and troughs of demand smooth out, providing a more consistent and manageable demand profile. As utilization is improved, more value is derived from the existing assets, reducing the need to continuously increase capacity. Fewer machines mean less spending on hardware, software, and operations maintenance, real estate, and power consumption.

In addition, the White House Council on Environmental Quality (CEQ) and OMB, working in partnership, included Electronics Stewardship and Data Centers as an element of the Strategic Sustainability Performance Plans. We will continue to coordinate closely to ensure the Administration meets and exceeds its Federal sustainability goals.

Another example is the US Government Configuration Baseline (USGCB), a Federal government-wide initiative that provides guidance to agencies on what should be done to improve and maintain effective configuration settings focusing primarily on security. The latest version of the USGCB has an increased focus on sustainability, including power management settings to save energy, money and the environment.

Minority Hiring and Contracting

What is being done to ensure that there are robust efforts across the IT programs across the federal government to promote the recruiting and hiring of a diverse staff including individuals from different races and ethnicities? For instance how many agencies have outreach programs that offer internships or fellowships at any of the Historically Black Colleges and Universities?

As conducted for all Federal hiring, agencies are executing robust efforts to promote the recruitment and hiring of diverse IT programs staff, to include individuals of various races and ethnicities, individuals with disabilities and women. Specifically, agencies continue to utilize their Federal Equal Opportunity Recruitment Program (FEORP) Plans and Executive Order 13548 (Increasing Federal Employment of Individuals with Disabilities) Strategic Plans to recruit and hire individuals from diverse backgrounds. This effort includes recruitment and hiring for IT programs. Agencies are also required to develop annual plans of their efforts to strengthen the capacity of Historically Black Colleges and Universities (HBCUs), and of Tribal Colleges and Universities (TCUs), through increased participation in appropriate Federal programs and initiatives. Similarly, agencies are required to develop action plans for the White House Initiative on Asian American and Pacific Islanders and reports on Hispanic Employment in the Federal Government under Executive Order 13171.

United States Government Accountability Office
Washington, DC 20548

April 7, 2011

The Honorable Jo Ann Emerson
Chairwoman
Subcommittee on Financial Services and General Government
Committee on Appropriations
House of Representatives

Subject: *Efforts Underway to Govern Selected Federal Information Technology (IT) Investments*

This letter is in response to questions you sent us following the March 17, 2011, hearing on the governance of federal IT investments.[1] At that hearing, we discussed the Office of Management and Budget's (OMB) key efforts to improve oversight and management of these investments through the use of the IT Dashboard[2] and other efforts. Your questions, along with our responses, follow.

Office of Personnel Management (OPM) Retirement Systems Modernization

OMB identified OPM's Retirement Modernization Project as "high-risk" and in need of more scrutiny. GAO has done several reviews of this troubled project over the years and made many recommendations to improve its execution. No funds are requested for the project in fiscal year 2012.

(a) What is the status of the project today?

In March 2011, OPM officials, including the Associate Director for Retirement Services and the Chief Information Officer, told us that the agency had discontinued its Retirement Systems Modernization project, which was a multi-year initiative to achieve end-to-end transformation of retirement

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[1]GAO, *Information Technology: Investment Oversight and Management Have Improved but Continued Attention Is Needed*, GAO-11-454T (Washington, D.C.: Mar. 17, 2011).

[2]The IT Dashboard, deployed by OMB in 2009, provides detailed information on approximately 800 major federal IT investments, including assessments of these investments' performance against cost and schedule targets.

processing, at an estimated cost of about $300 million.[3] The officials also said that the agency had decided to pursue a new, targeted approach to improve its retirement process and systems. This new approach includes a variety of ongoing and planned efforts that are intended to improve selected aspects of retirement claims processing. For example, OPM told us that it plans to

- add 40 retirement claims adjudicators to its existing complement of 110 adjudicators in an effort to speed processing and reduce the backlog of claims;
- expand its capability to create and use electronic images for processing retirement claims to reduce its reliance on paper-based records; and
- develop online capabilities intended to increase active and retired employees' access to tools for estimating benefits, applying for retirement, and checking claim status.

(b) What do you see as the next step going forward?

Regardless of the approach OPM pursues going forward (e.g., formally designated project or targeted efforts), the agency's long-standing need to improve the timeliness and accuracy of retirement processing remains. In this regard and consistent with our prior review, OPM needs to establish the capability to effectively plan and oversee its efforts. Such planning should reflect a complete understanding of the agency's retirement processing requirements and include establishment of results-oriented (i.e., objective, quantifiable, and measurable) performance goals and measures to determine whether the targeted efforts yield the improvements in the timeliness and accuracy of retirement claims processing that the agency is seeking.

National Archives and Records Administration's (NARA) Electronic Records Archive (ERA)

The ERA system at the National Archives and Records Administration has consistently had trouble with costs and keeping on schedule. I understand that the timeframe in which NARA needs to complete ERA has been moved up to the end of this fiscal year.

(a) Why has this particular program had so many problems?

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[3]We previously reported on the Retirement Systems Modernization project. See GAO, *Office of Personnel Management: Retirement Modernization Planning and Management Shortcomings Need to Be Addressed*, GAO-09-529 (Washington, D.C.: April 21, 2009).

Ongoing delays in NARA's ERA program are largely due to significant weaknesses in basic management processes.[4] Specifically, NARA had not provided adequate executive review of decisions about the project's scope and timing or adequately defined the system's requirements (the technical details of what the system is intended to do). To address these weaknesses, we recommended that NARA fully prioritize ERA's remaining requirements and ensure adequate executive review of any changes in the project's scope, timing, or cost. Further, NARA has not been able to effectively oversee the contractor, since most project management best practices have not been fully implemented. These project management weaknesses have impeded NARA's ability to measure progress made on contractor deliverables as well as to identify potential cost and schedule problems early on. For example, ERA's contractor-estimated cost overrun at completion was $2.7 million; in contrast, our analysis indicated a likely overrun ranging between $195 million and $433 million. As a result, we made multiple recommendations aimed at improving NARA's ability to effectively implement project management best practices on the ERA program.

(b) Are you confident in ERA's ability to preserve records as well as provide access to them to the public? Will either of these functions be degraded because of the shortened timeframe?

During follow-up on the implementation status of our prior recommendations, NARA reported to us that it has ingested more than 10 terabytes of federal records into the ERA system since the start of fiscal year 2011 and launched a prototype for providing public access to some of those records. NARA plans to ingest another 10 terabytes of federal records in each of the remaining quarters of fiscal year 2011, as well as 488 terabytes of Census data by the end of the fiscal year. In total, NARA expects ERA to contain 696 terabytes (roughly 178 billion pages of text) of federal and presidential records by the end of the fiscal year.

The recent changes made to the ERA program at the direction of OMB do not mean that the deployment of the system as originally planned will be accelerated to the end of fiscal year 2011.[5] Rather, NARA is to halt all development activities by the end of fiscal year 2011 and develop an action plan to

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[4]GAO, *Electronic Records Archive: National Archives Needs to Strengthen Its Capacity to Use Earned Value Techniques to Manage and Oversee Development*, GAO-11-86 (Washington, D.C.: Jan. 13, 2011); *Electronic Government: National Archives and Records Administration's Fiscal Year 2011 Expenditure Plan*, GAO-11-299 (Washington, D.C.: Mar. 4, 2011).
[5]GAO-11-86.

prioritize the remaining outstanding requirements, among other things. Several functions, such as users' ability to cancel their accounts or update their account information and system management of Freedom of Information Act requests, were deferred as a result of this new direction. According to NARA, work on elements determined to be the highest priority may lead to a second phase of the ERA development in the future.

Internal Revenue Service (IRS) Business System Modernization (BSM) Program

If successfully implemented, IRS's BSM holds the potential to change IRS's culture, productivity, and effectiveness. Nonetheless, BSM remains on GAO's list of high-risk areas due to a number of early false starts.

(a) How has IRS's project management changed over time? Are they better positioned to manage BSM than they were in the past? Have they learned from their mistakes?

IRS has taken steps, many in response to GAO recommendations, to improve its management of the BSM program. As we recently reported,[6] since we designated IRS's BSM program as high-risk in 1995, we have reported on a number of management controls and capabilities that are critical to the effective management of the program and made numerous recommendations aimed at improving them. For example, we reported that IRS did not have adequate policies and procedures to guide system modernization projects in developing and managing requirements, as well as procedures for validating contractor-developed cost and schedule estimates. We made recommendations aimed at improving these and other areas of the BSM program. Over the years, IRS has taken action to address our recommendations. Among other things, IRS established policies, procedures, and tools to provide a more robust approach to requirements development and management. IRS also initiated several improvement efforts intended to help manage IT processes more efficiently. For example, IRS's Application Development office recently went through a process to bring its key IT management disciplines, including project planning and project monitoring and control, in line with industry best practices. These efforts, combined with those to address our recommendations, put IRS in a better position to manage BSM than in the past.

(b) What concerns do you have about BSM, and in particular the Customer Account Data Engine 2 (CADE 2) strategy?

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[6]GAO, *High-Risk Series: An Update,* GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

On March 24, 2011, we reported[7] that IRS had defined benefits for the first phase of the CADE 2 program but not the second, and that while preliminary life cycle cost estimates for the first two phases had been developed, the agency did not follow multiple best practices intended to improve the credibility of these estimates. Specifically, IRS had not yet finalized expected benefits for the second phase or set related quantitative targets, because, according to officials, these are contingent upon design and funding decisions that have not yet been made. Further, we reported that IRS's process for developing CADE 2's preliminary cost estimates was generally consistent with best practices; however, the agency did not consistently document excluded costs or provide a rationale for excluding them, use inflation in calculating costs, or examine the effects of changing ground rules and assumptions. We noted that until the agency implements all these practices, its estimates may not be credible. We recommended that IRS take actions to address our findings related to the benefits for the second phase of CADE 2 and to the preliminary cost estimates.

We also reported that IRS's process for managing the risks associated with CADE 2 is generally consistent with best practices and that through this process IRS identified significant risks facing CADE 2, including that the tax filing season and other top IT investment priorities may result in contention for key resources, and that the delivery of the first phase of CADE 2 may be delayed if deficiencies identified in its requirements are not corrected in a timely manner. To its credit, IRS has developed mitigation strategies for each identified risk. We noted that although IRS is working to ensure that CADE 2 is successfully managed, the schedule for delivering the initial phase is nevertheless ambitious. While IRS officials are taking actions to increase their chances of meeting it, including moving certain activities up, performing others concurrently, and adding checkpoints to monitor the program's status, some of these actions, such as performing activities concurrently, could potentially introduce more risk to CADE 2's successful development and implementation.

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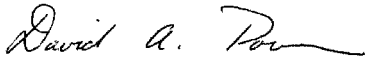
[7]GAO, *Taxpayer Account Strategy: IRS Should Finish Defining Benefits and Improve Cost Estimates*, GAO-11-168 (Washington, D.C.: Mar. 24, 2011).

In responding to these questions, we relied on previously reported information on the OPM, NARA, and IRS programs, as well as information collected through follow-up on our outstanding recommendations on these programs. The work supporting these reports was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Should you or your office have any questions on matters discussed in this letter, please contact me at (202) 512-9286 or pownerd@gao.gov.

Sincerely yours,



David A. Powner
Director, Information Technology
Management Issues

United States Government Accountability Office
Washington, DC 20548

May 6, 2011

The Honorable Barbara Lee
Subcommittee on Financial Services and General Government
Committee on Appropriations
House of Representatives

Subject: *Federal Information Technology (IT) Investment Management*

This letter is in response to questions you sent us following the March 17, 2011, hearing on the governance of federal IT investments.[1] At that hearing, we discussed the Office of Management and Budget's (OMB) key efforts to improve oversight and management of these investments through the use of the IT Dashboard[2] and other initiatives. Your questions, along with our responses, follow.

Impact of Proposed Budget Cuts
How would a return to fiscal year 2008 levels effect current IT modernization and streamlining efforts and how would these cuts affect the rollout of projects that are already in the pipeline?

A return to fiscal year 2008 levels of IT spending (approximately $70 billion) from the current fiscal year level of about $79 billion would likely slow the deployment of selected federal IT projects. Until the fiscal year 2012 budget is finalized, it is uncertain what specific IT projects could be affected or what impact there could be to the current IT modernization and streamlining efforts under way at OMB and other agencies. However, uncertain funding streams are a practical reality that agencies should already be considering as part of their risk management programs.[3] Furthermore, this reality intensifies the need for effective IT governance and will require agency chief information officers to make trade-offs based on mission priorities.

In this era of significant budgetary constraints, improving the federal government's ability to invest more efficiently in IT is essential to ensuring that critical priorities are met. We have reported that OMB's Dashboard is a key mechanism for identifying such opportunities for

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[1]GAO, *Information Technology: Investment Oversight and Management Have Improved but Continued Attention Is Needed*, GAO-11-454T (Washington, D.C.: Mar. 17, 2011).
[2]The IT Dashboard, deployed by OMB in 2009, provides detailed information on approximately 800 major federal IT investments, including assessments of these investments' performance against cost and schedule targets.
[3]GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: Mar. 2011), p. 17.

greater efficiency.[4] Specifically, OMB officials indicated they had relied on the Dashboard as a management tool, including using investment trend data to identify and address performance issues and to select investments for a TechStat session—a review of selected IT investments between OMB and agency leadership that is led by the Federal Chief Information Officer. According to OMB, as of December 2010, 58 TechStat sessions have been held, which have resulted in reducing the scope of 11 investments and canceling 4 others. The Federal Chief Information Officer stated that OMB's efforts have already resulted in a $3 billion budget reduction. Further, we have reported that additional opportunities for potential cost savings exist with the use of the Dashboard by executive branch agencies to identify and make decisions about poorly performing investments, as well as its continued use by congressional committees to support critical oversight efforts.

How might stopping important investments in IT impact the delivery of tax returns, social security checks, business tax credits and any other payment or credit process that the federal government is responsible for?

Our past work at the Internal Revenue Service (IRS) and the Social Security Administration (SSA) has highlighted the importance of IT to their mission-critical operations as well as the challenges to the acquisition and management of their key IT investments.

- IRS's Business Systems Modernization program is a multibillion-dollar, high-risk,[5] highly complex effort intended to replace the agency's aging business and tax processing systems. As part of this effort, IRS initiated the Customer Account Data Engine (CADE) project in 1999, which began processing and recording tax return and tax account information in 2005 for millions of individual taxpayers with simple returns. However, IRS found that the development of the system was more complex and taking longer than initially anticipated and decided to undertake a broad review of its IT systems modernization efforts. The results of the review led IRS to adopt a new strategy for managing individual taxpayer accounts that would provide benefits to IRS and the taxpayers sooner than CADE. The new strategy is referred to as CADE 2. In March 2011, we reported on CADE 2's expected benefits, estimated costs, and management of risks.[6] Specifically, we found that IRS had identified numerous expected benefits, but had not defined quantitative targets for all of them; not followed three practices intended to improve the credibility of cost estimates; and generally followed risk management best practices. As such, we made multiple recommendations to improve this program, including improving the identification of benefits and improving the credibility of cost estimates.
- SSA manages and funds a variety of IT initiatives ranging from those supporting the processing and payment of disability and supplemental security income benefits to those that facilitate the calculation and withholding of Medicare premiums.[7] For example, SSA

[4]GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.: Mar. 1, 2011).

[5]A long history of continuing delays and design difficulties and their impact on IRS's operations led us to designate IRS's systems modernization as a high-risk area in 1995 and the program has since remained high risk. GAO, *High-Risk Series: an Update*, GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

[6]GAO, *Taxpayer Account Strategy, IRS Should Finish Defining Benefits and Improve Cost Estimates*, GAO-11-168 (Washington, D.C.: Mar. 24, 2011).

[7]GAO, *Information Technology: SSA Has Taken Key Steps for Managing Its Investments, but Needs to Strengthen Oversight and Fully Define Policies and Procedures*, GAO-08-1020 (Washington, D.C.: Sep. 12, 2008).

uses IT to support data exchanges with federal and state partners. Specifically, the agency both receives incoming data to support its own programs and provides outgoing data to support programs of other federal and state agencies through more than 3,000 data exchanges. Most of these exchanges involve collecting incoming electronic data from other agencies, primarily to support the administration of Social Security benefits programs. The outgoing data are typically Social Security number verifications or are used to implement payment offsets in support of other agencies' business operations. In this regard, the agency performs more than a billion transactions each year. To carry out these data exchanges, SSA relies on a network of electronic information systems and an infrastructure that communicates with a variety of external systems used by the agency's partners. In 2008, we reported that SSA faced three primary challenges to supporting its existing and future data exchanges: (1) meeting increasing demand for its data exchange services; (2) ensuring privacy and security of data provided to its data exchange partners; and (3) establishing effective practices for implementing and managing data exchanges.[8] Recognizing these challenges, the agency has undertaken an initiative to better manage its data exchange environment and address current and future challenges and limitations.

A total stop in the IT investments noted above would likely have an immediate impact on the agencies' ability to carry out their missions.

The GAO has identified many critical agencies as having material weaknesses in their information security. Would dramatically cutting IT funds slow or stop efforts at strengthening the federal government's information security?

In fiscal year 2009, 6 of the 24 major agencies[9] noted material weaknesses in information security over their financial systems, and the Inspectors General of 13 agencies designated information security as a major management challenge for their agency.[10] Further, we reported in 2010 that federal agencies did not consistently implement controls to prevent, limit, or detect unauthorized access to computing resources.[11] Specifically, agencies did not always provide reasonable assurance that (1) security management is effective; (2) access to computer resources (data, equipment, and facilities) is reasonable and restricted to authorized individuals; (3) changes to information system resources are authorized and systems are configured and operated as intended; (4) incompatible duties are effectively segregated; and (5) contingency planning protects information resources and minimizes the risk of unplanned interruptions and provide for recovery of critical operations. A primary reason for these weaknesses is that federal agencies have not yet fully institutionalized comprehensive security management programs, which are critical to identifying information security control

[8]GAO, *Information Technology: Demand for the Social Security Administration's Electronic Data Exchanges Is Growing and Presents Future Challenges*, GAO-09-126 (Washington, D.C.: Dec. 4, 2008).
[9]We are using "24 major agencies" to refer to 24 agencies listed in the Chief Financial Officers (CFO) Act of 1990 (31 U.S.C. §901(b)). They are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs; the Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, Social Security Administration, and U.S. Agency for International Development.
[10]GAO, *Information Security: Concerted Response Needed to Resolve Persistent Weaknesses*, GAO-10-536T (Washington, D.C.: Mar. 24, 2010).
[11]GAO, *High-Risk Series: An Update*, GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

weaknesses, resolving information security problems, and managing information security risks on an ongoing basis.

A dramatic cut in IT funds would likely slow or stop the agencies' efforts to address the deficiencies that we and others have found, including institutionalizing comprehensive security management programs.

Environmental Impacts of IT

As the federal government continues to improve and maximize the positive impact of IT on productivity and effectiveness on all manner of operations, how are we mitigating the environmental impact of the growing power needs of computers and servers controlled by federal agencies and are environmental considerations a part of the contracting process when we are pursuing "cloud computing" opportunities?

In October 2009 we testified that the federal government's approach to ensuring environmentally responsible management of electronic equipment from procurement through disposal relies heavily on two interrelated initiatives.[12]

- The electronic product environmental assessment tool (EPEAT®) was developed along the lines of the Environmental Protection Agency and the Department of Energy's Energy Star program and assists federal procurement officials in comparing and selecting computers and monitors with environmental attributes that also routinely save money through reduced energy usage over the products' lives.
- The Federal Electronics Challenge helps federal agencies realize the benefits of EPEAT-rated electronics by providing resources to help agencies extend these products' life spans, operate them in an energy efficient way, and expand markets for recovered materials by recycling them at end of life.

However, while the EPEAT and Federal Electronics Challenge are steps in the right direction, we noted that opportunities exist to increase the breadth and depth of federal participation and contractor oversight. First, agencies and facilities representing about two-thirds of the federal workforce are not participating in these promising initiatives. Second, few participating agencies and facilities, maximize these programs' resources and their potential benefits. Greater participation in these initiatives could lead to additional energy reductions and cost savings.

We have not performed work specifically related to environmental considerations when selecting and acquiring cloud computing solutions. However, our findings with respect to procurement, operations and maintenance, and end-of-life disposal are still germane despite potential differences in energy consumption under cloud computing scenarios compared with current electronic equipment use.

In addition, we have work underway in two key areas related to this topic, both of which we expect to report on by the fall of 2011:

- "Green" IT—We are evaluating federal efforts related to developing and implementing policy and guidance on green IT and identifying additional promising green IT practices. (Green IT refers to environmentally sound computing practices that can include a variety of efforts, such as using energy efficient data centers, purchasing computers that meet

[12]GAO, *Federal Electronics Management: Federal Agencies Could Improve Participation in EPA's Initiatives for Environmentally Preferable Electronic Products*, GAO-10-196T (Washington, D.C.: Oct. 27, 2009).

certain environmental standards, and recycling old or unusable electronics.) In fiscal year 2008, total energy consumption of federal government buildings and operations was roughly 1.5 percent of total U.S. consumption, making the federal government the single largest user of energy in the nation. Moreover, the use of IT products and processes has a significant environmental impact. For example, they contain materials such as lead and mercury that can have an adverse impact on human health and the environment, and computer equipment requires significant energy to operate, leading to increased greenhouse gas emissions that contribute to changes in the earth's climate. Widespread implementation of green IT practices has the potential to reduce the federal government's energy usage and environmental impact.

- Federal data center consolidation—Our evaluation is focused on federal efforts to consolidate data centers. According to OMB, the number of these centers (defined as data processing and storage facilities over 500 square feet with strict availability requirements) grew from 432 in 1998 to more than 2,000 in 2010. According to the Department of Energy, data center spaces can consume 100 to 200 times as much electricity as standard office spaces. In February 2010, OMB launched the Federal Data Center Consolidation Initiative to guide agencies in developing and implementing data center consolidation plans. OMB plans to oversee the agencies' plans and measure their progress. Further, as part of its plan to reform federal IT,[13] OMB has committed to closing a minimum of 800 data centers by 2015. According to OMB, the closure of 800 data centers could be a significant step to mitigating the environmental impact of the federal government's energy use.

Minority Hiring and Contracting

Can GSA and OMB provide for the Subcommittee detailed breakdowns of diversity in your federal information technology staffs? Please provide as much detail as possible along both pay scale, job categories and management hierarchy.

While we have not performed work regarding minority hiring and contracting in the federal IT sector, we have issued reports on governmentwide workforce diversity within the Senior Executive Service (SES) and the SES developmental pool.[14] As we previously reported, table 1 shows the changes in the representation of career SES governmentwide from October 2000 through September 2007.

Table 1: Changes in the Career SES Governmentwide

Equal employment opportunity group	Career SES governmentwide				Changes in career SES governmentwide	
	October 2000		September 2007			
	Number	Percent	Number	Percent	Number	Percent
African American	512	8.4	560	8.5	+48	+0.1
American Indian/Alaska Native	75	1.2	88	1.3	+13	+0.1
Asian/Pacific Islander	103	1.7	153	2.3	+50	+0.8
Hispanic	155	2.5	236	3.6	+81	+1.1
White	5,261	86.1	5,502	83.9	+241	-2.2
Unspecified/other	4	0.1	16	0.2	+12	+0.1
Total[a]	**6,110**	**100.0**	**6,555**	**100.0**	**+445**	**+0.0**

[13]OMB, *25 Point Implementation Plan to Reform Federal Information Technology Management* (Washington, D.C., 2010).

[14]GAO, *Human Capital: Workforce Diversity Governmentwide and at the Small Business Administration*, GAO-08-725T (Washington, D.C.: April 23, 2008); GAO, *Human Capital: Diversity in the Federal SES and Processes for Selecting New Executives*, GAO-09-110 (Washington, D.C.: Nov. 26, 2008).

Source: GAO analysis of OPM's Central Personnel Data File

Note: Governmentwide includes civilian employees of all cabinet-level departments, independent agencies, commissions, councils, and boards in the executive branch except the intelligence agencies, the U.S. Postal Service, and the Foreign Service (as of 2007).

[a]Percentages may not add to 100 because of rounding.

We also reported that the two greatest percentage changes among equal employment opportunity groups within the career SES governmentwide from October 2000 to September 2007 were a decrease among whites and an increase among Hispanics. Table 2 shows the changes in the representation of the SES developmental pool governmentwide from October 2000 to September 2007, and shows a similar decrease among whites and an increase among African Americans.

Table 2: Changes in the SES Developmental Pool Governmentwide

Equal employment opportunity group	SES governmentwide developmental pool (GS-15s and GS-14s)				Changes in SES governmentwide developmental pool	
	October 2000		September 2007			
	Number	Percent	Number	Percent	Number	Percent
African American	10,679	7.9	15,547	10.4	+4,868	+2.5
American Indian/ Alaska Native	1,254	0.9	1,528	1.0	+274	+0.1
Asian/Pacific Islander	6,361	4.7	9,808	6.6	+3,447	+1.9
Hispanic	4,668	3.5	6,611	4.4	+1,943	+0.9
White	111,936	82.9	115,368	77.4	+3,432	-5.5
Unspecified/other	114	0.1	287	0.2	+173	+0.1
Total[a]	**135,012**	**100.0**	**149,149**	**100.0**	**14,137**	**+0.0**

Source: GAO analysis of OPM's Central Personnel Data File

Note: Governmentwide includes civilian employees of all cabinet-level departments, independent agencies, commissions, councils, and boards in the executive branch except the intelligence agencies, the U.S. Postal Service, and the Foreign Service (as of 2007). We included GS-15, GS-14, and equivalent employees. GS-equivalent employees are those in equivalent grades under other pay plans that follow the GS grade structure and job evaluation methodology or are equivalent by statute.

[a]Percentages may not add to 100 because of rounding.

Additionally, we reported that data in Office of Personnel Management's (OPM) Central Personnel Data File show that, as of September 2007, the overall percentages of women and minorities, including Hispanics, have increased in the career SES governmentwide and the SES developmental pool for potential successors since October 2000.

What is being done to ensure that there are robust efforts across the IT programs across the federal government to promote the recruiting and hiring of a diverse staff including individuals from different races and ethnicities? For instance how many agencies have outreach programs that offer internships or fellowships at any of the Historically Black Colleges and Universities?

While we have not performed work regarding recruiting and hiring of a diverse IT staff, we provided testimony on governmentwide recruiting and hiring in May 2008.[15] Specifically, we stated that Congress, OPM, and agencies had made important strides in improving federal recruitment and hiring, but that additional efforts were needed in select areas. For example, Congress had provided agencies with hiring flexibilities that could help streamline the hiring process; OPM had sponsored job fairs and developed automated tools; and individual

[15]GAO, *Human Capital: Transforming Federal Recruiting and Hiring Efforts*, GAO-08-762T (Washington, D.C.: May 8, 2008).

agencies have developed targeted recruitment strategies to identify and help build a talented workforce. However, in building on this work, we noted diversity management as a key area needing attention. We found that developing and maintaining workforces that reflect all segments of society and our nation's diversity was a significant aspect of agencies' recruitment challenges. As we previously reported,[16] recruitment is a key first step toward establishing a diverse workforce. To ensure that agencies reach out to diverse pools of talent we highlighted a number of active recruitment strategies that should be considered, including:

- Widening the selection of schools from which they recruit to include, for example, historically black colleges and universities, Hispanic-serving institutions, women's colleges, and schools with international programs.
- Building formal relationships with targeted schools and colleges to ensure the cultivation of talent for future applicant pools.
- Partnering with multicultural professional organizations and speaking at the government's conferences to communicate their commitment to diversity to external audiences and strengthen and maintain relationships.

On the procurement and contracting side, can you also provide information regarding the amount and percent of contracts, with small and disadvantaged business enterprises, particularly women and minority owned firms?

While we do not have specific information regarding the amount and percent of federal contracts awarded to small and disadvantaged business enterprises, in 2008 we reported on the extent to which federal agencies have met small business contracting goals set by the Small Business Administration (SBA).[17] SBA is required to report on contracting goal achievements of federal agencies in an effort to meet the statutory governmentwide goal of awarding 23 percent of contracting dollars to small businesses and goals established for four socioeconomic categories (see table 3).[18]

Table 3: Statutory Governmentwide Goals for Small Business Contracting

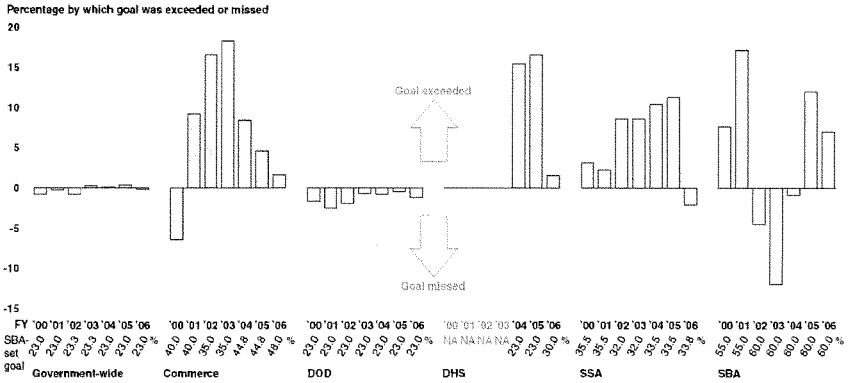
Categories	Goal
Small Business	23%
Socioeconomic Categories	
Small Disadvantaged Business	5%
Women-Owned Small Business	5%
Historically Underutilized Business Zone Business	3%
Service-Disabled Veteran-Owned Small Business	3%

[16]GAO, *Diversity Management: Expert-Identified Leading Practices and Agency Examples*, GAO-05-90 (Washington, D.C.: Jan. 14, 2005).
[17]GAO-09-16.
[18]In a prior report, we stated that it can be difficult to identify how many contract dollars firms received based on a particular socioeconomic program because agencies can count contracting dollars awarded to small businesses under more than one socioeconomic program. See GAO, *Small Business Administration: Additional Actions Are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643 (Washington, D.C.: June 17, 2008).

Source: Small Business Act, as amended 15 U.S.C. 644(g).

We previously reported that for most fiscal years from 2000 through 2006, federal agencies collectively achieved or came close to achieving the governmentwide goal for overall small business contracting. However, governmentwide, agencies did not meet or exceed the overall contracting goal of 23 percent in 4 of the 7 years. At selected agencies we reviewed, goal achievement varied. For instance, the Department of Homeland Security (DHS) consistently had met its SBA-negotiated goal since 2004. The Department of Defense (DOD) did not meet is goal in any year from 2000 through 2006 but generally came close each year. Figure 1 provides a summary of overall small business goal attainment governmentwide and at selected agencies.

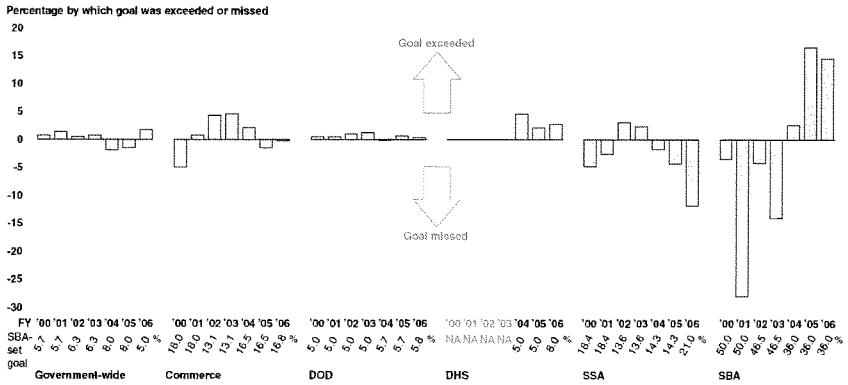
Figure 1: Overall Small Business Goal Attainment Governmentwide and at Selected Agencies, Fiscal Years 2000–2006



Source: GAO analysis of Small Business Goaling Reports and FPDS-NG Reports on Annual Procurement Preference Goaling Achievements.

We reported that governmentwide, federal agencies exceeded the 5 percent statutory goal for small disadvantaged businesses from 2000 through 2006. For the agencies we reviewed, goal achievement varied. For instance, DHS and DOD met their respective goals in all years we reviewed. The Department of Commerce did not meet its goal in 3 of 7 years; however, in 2006 it missed its goal by a slight margin. Figure 2 provides a summary of small disadvantaged business goal attainment governmentwide and at select agencies.

Figure 2: Small Disadvantaged Business Goal Attainment Government-wide and at Select Agencies, Fiscal Years 2000–2006

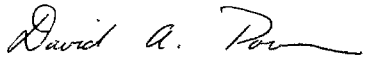


Source: GAO analysis of Small Business Gosling Reports and FPDS-NG Reports on Annual Procurement Preference Goaling Achievements.

We noted that, according to SBA officials and Office of Small and Disadvantaged Business Utilization directors, many factors can influence an agency's ability to achieve socioeconomic goals, such as the focus of the agency's business plan (that is, the type of contracts required), a lack of small business firms that can meet specialized procurement needs, or fluctuations in an agency's procurement cycle. For example, the Department of Energy relies on a business model that emphasizes large contracts, which can make achievement of small business goals difficult. SBA and DOD officials explained that small businesses do not provide many of the goods and services that DOD purchases, such as airplanes, tanks, and weapons. Commerce officials explained that SBA's goal-setting process did not adequately take into account the significant increase in spending associated with the decennial census, which generally relies on larger contracts that are not as conducive to small business contracting opportunities. In contrast, SBA officials explained that other agencies might have fewer contract dollars to spend but require more types of services amenable to small business contracting. Finally, SBA officials stated that changes in an agency's mission and the types of goods and services purchased could present barriers to goal achievement.

In responding to these questions, we relied on previously reported information on initiatives for improving the management of federal IT investments;[19] IRS, SSA, EPA, and SBA programs; governmentwide information security management and human capital management; as well as agency documents describing green IT. The work supporting these reports was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Should you or your office have any questions on matters discussed in this letter, please contact me at (202) 512-9286 or pownerd@gao.gov.

Sincerely yours,



David A. Powner
Director, Information Technology
Management Issues

[19]GAO-11-318SP; GAO-11-454T.

Financial Services and General Government Subcommittee
Hearing on the IT Oversight - FY 2012 Budget

Questions for the Record Submitted by Chairwoman Jo Ann Emerson

FUTURE INNOVATIONS

1. Technology is always evolving. We don't know what the next innovation will be. How does the government effectively contract for IT services when IT capabilities are always changing?

   The Federal Acquisition Service (FAS) offers customers a choice of contracting programs to help ensure that their mission's IT needs can be flexibly and efficiently met. The multiple award Schedule 70, for example, allows technology contractors (or Schedule holders) to update their technology products and services at their pace, which ensures a market-driven approach to making the latest offerings available to customers. In addition, our suite of highly flexible, multiple award Government-wide Acquisition Contracts (GWACs) allow federal customers to place task orders to meet their uniquely and specialized IT service solutions. These contracting platforms were structured to ensure that emerging IT innovations that satisfy government mission or business needs can be delivered as appropriate to a given solution.

2. How do you ensure that agencies can utilize the latest technology advances and aren't locked into a contract for outdated IT services?

   GSA has put in place contracting platforms structured to ensure that emerging IT innovations that satisfy government mission or business needs can be delivered as appropriate to a given solution. A given contractual solution can include technology refreshment, if that is integral to the stated acquisition requirement and is solicited accordingly. The most effective and competitive IT acquisition scenario encompasses the acquiring agency or activity stating its objective in required functional terms, and requiring the contractor to develop and deliver the solution that best meets the agency's stated objectives.

DATA CENTER CONSOLIDATION

3. What is GSA doing to help agencies procure data center capacity in an efficient and cost effective manner?

GSA offers a range of data center services from complete data center capacity and operations to component support services including configuration management, vulnerability assessment, and consolidation planning. Within the realm of "Cloud" services, multiple contractors holding GSA's Infrastructure-as-a-Service blanket purchase agreements offer users practically unlimited storage, automatic monitoring of resource utilization and rapid elasticity for customizable scaling of service. GSA has various government-wide acquisition contracts (GWACs) that support the Federal Data Center Consolidation initiative and the promotion of federal contracting opportunities for small business. For example, the Alliant Small Business GWAC is set-aside for Small Business and has 72 industry partners available to support agencies while the VETS GWAC is set-aside solely for participation from service-disabled veteran-owned small businesses. GSA's small business GWACs support customers interested in fulfilling agency small business goals as well as the mission of consolidation data centers through a contractor capabilities research service.

4. Do you have pre-negotiated contracts in place that agencies can access to get the data center capacity they need without building redundant capabilities?

Yes, as indicated above.

GSA IT SPENDING

5. GSA spent $633 million on major IT systems, infrastructure, and architecture for GSA's own use in fiscal year 2010. Most of these expenses are incurred for the Public Building and Federal Acquisition Services. To what extent does GSA use GSA blanket purchase agreements? When does GSA not use GSA blanket purchase agreements?

The Federal Acquisition Service (FAS) uses its own blanket purchase agreements (BPAs). For example, the Domestic Delivery Services (DDS2), Federal Strategic Sourcing Initiative Office Supplies 2 and SmartBUY blanket purchase agreements are the preferred sources for small package deliveries, office supplies and software respectively.

There are two BPAs that support the Public Buildings Service (PBS) CIO requirements, however, the BPAs were not established exclusively for PBS CIO procurements. One is a BPA for desktops, laptops, servers and peripheral items and the other is a BPA for printers, scanners, and plotters. The GSA Office of the CIO established both BPAs for GSA to support recurring enterprise requirements and drive standards, which in turn result in efficiencies for operations, maintenance, support and inventory management for consumable items, like toner. If there is not an identified recurring requirement, a BPA would not be considered.

BPAs are issued on a case-by-case basis (usually determined by the contracting officer based on the nature of the requirement) and may be appropriate when there is no existing contract vehicle available to satisfy the recurring requirements of our clients.

6. GSA's highest priority and most expensive IT initiative in the 2012 budget is $38 million to consolidate eight procurement systems and to extend this process to grant management. What effect would procurement system consolidation have on government IT acquisition?

GSA's Office of Government-wide Policy (OGP) provides the executive leadership and technical oversight of the federal government's government-wide acquisition systems. Collectively this is known as the Integrated Acquisition Environment (IAE). IAE, one of the E-Government programs, creates efficiencies through the integration and consolidation of data for both internal and external parties, and most importantly, the American taxpayers. The GSA's IAE program is currently managing and integrating eight procurement systems on behalf of the federal government providing common services that support agency acquisition functions. GSA's identified funding need of $38 million will continue the systems modernization and integration effort, by increasing efficiency and eliminating duplication in the federal government's Integrated Acquisition Environment. Funding the FY 12 request will build upon efforts initiated with the approximately $7 million in funding appropriated in FY 2011. Enactment of the FY 2012 request would provide GSA with the funding necessary to build a single data source for all federal acquisition and award data information. Currently, eight separate federal procurement systems managed by the IAE program are:

- Siloed systems –each with separate login and separate data entry increasing the risk of data inaccuracies and resulting in inefficient use of personnel time
- Redundant systems – overlapping data exist between and among the eight systems requiring duplicative data entry by contracting officers and vendor community
- Hosted in separate locations– various hosting locations managed separately increasing risk if there are IT failures and driving the cost of operations up each fiscal year

The investment of $38 million into a System of Award Management (SAM) will allow GSA to improve operating capabilities, eliminate redundancy, increase data accuracy and improve agility of the application for future expansion. SAM will consolidate the eight procurement systems by consolidating eight databases into one, which will greatly improve unnecessary duplication and redundancy and improve data quality for both the acquisition workforce and the public. Specific benefits include:

Improving Functionality and Reducing Operations & Maintenance Costs – Due to the age and complexity of the eight systems currently supported, it is difficult to make changes quickly and changing eight systems is very costly. It is very expensive and increasingly more difficult to make changes required by legislation, executive order or the Federal Acquisition Regulation (FAR). Cost savings, once integration is complete, will be significant. SAM, a single system versus the current eight systems, will allow for more active management and for active competition of support services through the life of the integrated system.

Single Login and Data Entry – SAM will result in one online location for data entry that will increase functionality and accessibility for the federal contracting community and interested businesses. For example, there will only be one input for a vendor's name and address, which will be used to support multiple functions and appear in multiple reports. A unified system will make it possible to have a single log on and single reporting system that enables the acquisition workforce and public to retrieve and analyze procurement data and ensure accurate data from the vendors who do business with the federal government.

Single Data Source – SAM will enable centralized, normalized data to eliminate potential conflicting value when agencies and public are conducting searches for contract data. SAM will simplify and reduce the number of interfaces that each agency must maintain thereby also benefitting the vendors who provide agencies with procurement systems. The processes that each of the eight systems performs are being analyzed and redundancies will be removed resulting in such improvements as the quality of standardized reports.

Single Hosting Site – SAM will consolidate hosting for multiple websites. Consistent with the Administration's "Cloud First" policy, GSA is creating a private cloud based on the standards developed by the National Institute for Standards and Technology (NIST) that uses cloud technologies that are inherently more reliable and flexible. The consolidation will also bring immediate benefits from a security and accreditation standpoint since each of the systems share common solutions for physical and internet security, so one set of documentation can be used for all eight systems.

7. How would procurement system consolidation improve the chances of successful implementation of IT projects at IRS, HHS and other agencies?

First, the SAM acquisition strategy provides a good model for other large IT projects. Second, as GSA will manage and host from a single data source, it will streamline agencies' data interfaces with GSA's IAE/SAM environment. We believe that the SAM project, which is embracing a modular and incremental contracting approach, assuming funding at the requested levels, will increase the chances of a successful investment. We also believe that the incremental building of SAM will reduce risk and enhance competition to include for small businesses, since each increment will be competed. Finally, because the software developed for the government is based on open standards and products, the barriers to competition will be reduced.

Questions for the Record Submitted by Congresswoman Lee

IMPACT OF PROPOSED BUDGET CUTS

1. How would a return to FY 2008 levels effect current IT modernization and streamlining efforts and how would these cuts affect the rollout of projects that are already in the pipeline?

A return to FY 2008 funding levels for FY 2012 would essentially limit GSA's IT portfolio spending to a minimal operations environment that merely strives to "keeps the lights on." Almost all modernization, streamlining, and project rollouts would be held in abeyance, pending availability of additional funds for development, modernization or enhancement efforts. Further, GSA's infrastructure would be more vulnerable as aging systems would need to be

maintained beyond their planned lifecycle, resulting in greater risk of system outages and/or release of sensitive (e.g., personal identification) information. FY 2008 funding levels would likely preclude GSA from meeting Presidential mandates, implementing industry best practices, and potentially open GSA up to unplanned contractual issues such as early termination penalties. An exception to this impact would be IT capabilities that are funded by the Federal Acquisition Service and do not receive direct appropriations. There would be no degradation of service to FAS customers who use services from Schedules 70 and 84, government-wide acquisition contracts (GWACs), network services programs (FTS2001/Networx, satellite offerings, Connections, Fed Relay) and the professional services schedules (MOBIS, PES, Logistics Worldwide, Consolidated Schedules).

For the E-Gov Fund, adopting a FY2008 budget level for FY2012 means a budget of only $2 million down from the President's request of $34 million, requiring us to shut down all systems funded from that source except potentially USAspending.Gov. The systems to go dark include Data.gov, ITDashboard.gov, Performance.gov, Paymentaccuracy.Gov, Challenge.Gov, Apps.gov/NOW, Fedspace, sub-award reporting assistance (contract and grants sub-awards) and GSA work supporting OMB efforts on data center consolidations.

GSA's Office of Government-wide Policy (OGP) has requested $38 million in FY2012 for modernization, upgrades, and continued operation of the Integrated Acquisition Environment (IAE), a government-wide information system. Timely investment in IAE is critical to fulfilling the Federal Funding and Transparency Act (FFATA) and will improve contract and grant award, management, and reporting.

The $38 million request for IAE is new for FY 2012; a return to FY 2008 levels would eliminate funding for this initiative. The following provides, in more detail, the impact in terms of what would not be accomplished if there is a return to FY 2008 levels.

The IAE, one of the E-government programs, creates efficiencies through the integration and consolidation of data for both internal and external parties, and most importantly, the American taxpayers. The GSA's IAE program is currently managing and integrating eight procurement systems on behalf of the federal government providing common services that support agency acquisition functions. GSA's identified funding need of $38 million will continue the systems modernization and integration effort, by increasing efficiency and eliminating duplication in the federal government's Integrated Acquisition Environment (IAE). Funding the FY 12 request will build upon efforts initiated with the approximately $7 million in funding appropriated in FY 2011. Enactment of the FY 2012 request would provide GSA with the funding necessary to build a single data source for all federal acquisition and award data information. Currently, eight separate federal procurement systems managed by the IAE program are:

- Siloed systems – each with separate login and separate data entry increasing the risk of data inaccuracies and resulting in inefficient use of personnel time
- Redundant systems – overlapping data exist between and among the eight systems requiring duplicative data entry by contracting officers and vendor community
- Hosted in separate locations – various hosting locations managed separately increasing risk if there are IT failures and driving the cost of operations up each fiscal year

The investment of $38 million into a System of Award Management (SAM) will allow GSA to improve operating capabilities, eliminate redundancy, increase data accuracy and improve agility of the application for future expansion. SAM will consolidate the eight procurement systems by consolidating eight databases into one, which will greatly improve unnecessary duplication and redundancy and improve data quality for both the acquisition workforce and the public. Specific benefits include:

Improving Functionality and Reducing Operations & Maintenance Costs – Due to the age and complexity of the eight systems currently supported, it is difficult to make changes quickly and changing eight systems is very costly. It is very expensive or becoming difficult to make changes required by legislation, executive order or Federal Acquisition Regulations (FAR). Cost savings, once integration is complete, will be significant. SAM, a single system versus the current eight systems will allow for more active management and for active competition of support services through the life of the integrated system.

Single Login and Data Entry – SAM will result in one online location for data entry that will increase functionality and accessibility for the federal contracting community and interested businesses. For example, there will only be one input for a vendor's name and address, which will be used to support multiple functions and appear in multiple reports. A unified system will make it possible to have a single log on and single reporting system that enables the acquisition workforce and public to retrieve and analyze procurement data and ensure accurate data from the vendors who do business with the federal government.

Single Data Source – SAM will enable centralized, normalized data to eliminate potential conflicting value when agencies and public are conducting searches for contract data. SAM will simplify and reduce the number of interfaces that each agency must maintain thereby also benefitting the vendors who provide agencies with procurement systems. The processes that each of the eight systems performs are being analyzed and redundancies will be removed resulting in such improvements as the quality of standardized reports.

Single Hosting Site – SAM will consolidate hosting for multiple websites. Consistent with the Administration's "Cloud First" policy, GSA is creating a private cloud based on the standards developed by the National Institute for Standards and Technology (NIST) that uses cloud technologies that are inherently more reliable and flexible. The consolidation will also bring immediate benefits from a security and accreditation standpoint since each of the systems share common solutions for physical and internet security, so one set of documentation can be used for all eight systems.

The consolidation of the eight procurement systems would provide an indirect impact and increase chances of success for other agency applications. First, the SAM acquisition strategy provides a good model for other large IT projects. Second, as GSA will manage and host from a single data source, it will streamline agencies' data interfaces with GSA's IAE/SAM environment. We believe that the SAM project, which is embracing a modular and incremental contracting approach, with the appropriate funding will increase our chances of a successful investment. We also believe that building SAM in increments will reduce risk and enhance competition among large and small vendors since each increment will be competed. Finally, because the software developed for the government is based on open standards and products, the barriers to competition will be reduced.

ENVIRONMENTAL IMPACTS OF IT

2. As we make critical upgrades and investments in federal Information Technology, we necessarily shutdown and stop using thousands, if not millions of computers and other hardware. What currently happens to the electronics that we stop using?

   Per regulation, electronics, the same as any other commodity, should be reported to GSA for transfer, donation, or sales action. Computers and related peripherals are also available for transfer to schools and non-profit educational activities through the Computers for Learning Program (CFL). The Federal Management Regulation also allows agencies to make an abandonment/destruction determination before reporting property for transfer and, to the best of our knowledge, a sizeable percentage of electronics are processed for recycling under the abandonment/destruction authority.

3. Do we maximize the refurbishment and reuse of our old technology?

Agencies have the authority to transfer their excess computer equipment directly to schools and non-profit educational institutions in the United States. The GSA Office of Personal Property Management manages the online Computers for Learning Program to facilitate such transfer decisions and actions by Federal agencies, and to the extent that the agencies use this facility, GSA collects data on the amount of such equipment transferred. For example, during the period July 2010 through April 2011, our records show that approximately 4,600 items of equipment, having an original acquisition value of $1.9 million, were transferred to schools and non-profit educational institutions by GSA. It is important to note that agencies are not required to use the Computers for Learning website to effect property transfers, and therefore, the data collected by this program is considered incomplete. All agencies are required to report their non-Federal Recipients program activity directly, including Computers for Learning, to the Office of Government-Wide Policy. In 2010, executive agencies reported the transfer of equipment with an original acquisition cost of $447,927,222 to schools and nonprofit educational institutions. Beyond this, some, although a relatively small amount, are transferred to other federal agencies, donated, or sold for continued use.

4. Do we ever donate some of our old computers, making sure that any sensitive data is wiped clean of course, to needy schools, social service or faith organizations that provide computer and technology training or even donate items for reuse in developing countries?

GSA transfers old computers to schools and non-profit educational organizations under the Computers for Learning program as described in the responses above. All agencies utilizing this program are responsible for ensuring that no sensitive data is transferred. It is GSA's policy to sanitize all equipment in accordance with National Institute of Standards and Technology, Publication SP800-88, Guidelines for Media Sanitization. No computers or equipment transferred under this program can be reused in developing countries – CFL property can be used only in the United States by schools and non-profits which serve some portion of the Kindergarten through Grade 12 population.

5. As the federal government continues to improve and maximize the positive impact of IT on productivity and effectiveness on all manner of operations, how are we mitigating the environmental impact of the growing power needs of computers and servers controlled by federal agencies and are environmental considerations a part of the contracting process when we are pursuing "cloud computing" opportunities?

   As the largest consumer of Information Technology, the federal government is uniquely positioned to lead all aspects of the sustainability discussion including the power and cloud questions considered here.

   The very concept of cloud computing -- a model[1] for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources that can be rapidly provisioned and released with minimal management effort or service provider interaction -- essentially means fewer resources are required on every level, from infrastructure to energy.

   In addition to a "Cloud" sourcing approach to IT services, we note that the United States private sector has invested substantially in research to further improve data center energy efficiency. For example, alternative data center location siting strategies have been put forth that take advantage of local climates with natural cooling capabilities or readily available renewable electricity. These kinds of innovations have been tried in countries such as Switzerland, Sweden and Finland.

   Along with a "cloud first" strategy, we have an agency wide Green Purchasing Plan which includes how we plan to incorporate environmental considerations into our internal contracting process.

[1] http://csrc.nist.gov/publications/drafts/800-145/Draft-SP-800-145_cloud-definition.pdf

MINORITY HIRING AND CONTRACTING

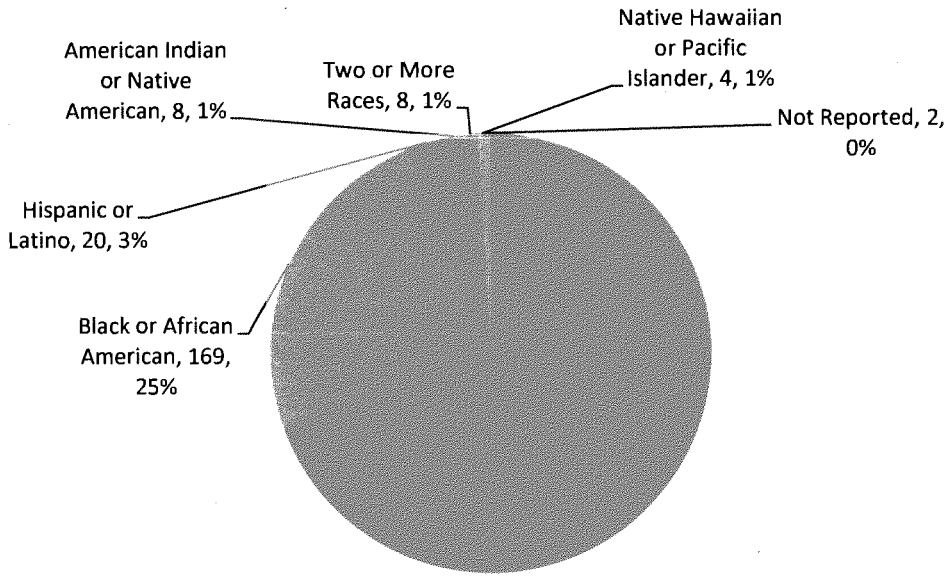
6. Can GSA and OMB provide for the Subcommittee detailed breakdowns of diversity in your federal information technology staffs? Please provide as much detail as possible along both pay scale, job categories and management hierarchy.

The information below includes data on diversity, pay plan, job category, and management hierarchy which was aggregated by the General Services Administration's (GSA), Office of Human Capital Management, Office of the Chief People Officer to provide current quantitative and qualitative data on GSA's Information Technology workforce.

U.S. General Services Administration
Information Technology Workforce Demographics
As of March 31, 2011

Pay Plan/ Grade	Total Employees	Number of Males	Number of Females	Number of Minorities	Preference Eligible Employees	Employees with Targeted Disabilities
ES	4	3	1	0	0	0
GS-15	54	34	20	11	10	0
GS-14	237	159	78	75	45	1
GS-13	264	168	96	123	61	4
GS-12	103	64	39	57	14	0
GS-11	13	10	3	7	5	0
GS-09	13	9	4	8	1	0
GS-07	1	0	1	1	0	0
Total	**689**	**447**	**242**	**282**	**136**	**5**

U.S. General Services Administration
Information Technology Workforce by Race and National Origin
As of March 31, 2011



U.S. General Services Administration
Information Technology Workforce by Race & National Origin and Gender
As of March 31, 2011

Pay Plan/ Grade	White		Black or African American		Hispanic or Latino		Asian		American Indian or Native American		Native Hawaiian or Pacific Islander		Two or More RNO Categories		Not Reported	Total
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
ES	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	4
GS-15	26	17	7	1	0	0	0	2	0	0	0	0	1	0	0	54
GS-14	113	49	27	21	3	1	14	6	2	1	0	0	0	0	0	237
GS-13	103	38	27	40	8	2	22	13	4	1	1	1	3	1	0	264
GS-12	33	13	18	19	3	1	7	5	0	0	0	1	1	0	2	103
GS-11	6	0	2	2	1	0	0	0	0	0	1	0	0	1	0	13
GS-09	4	1	3	1	0	1	1	1	0	0	0	0	1	0	0	13
GS-07	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Total	**288**	**119**	**84**	**85**	**15**	**5**	**44**	**27**	**6**	**2**	**2**	**2**	**6**	**2**	**2**	**689**

U.S. General Services Administration
Supervisory Information Technology Workforce – Race & National Origin and Gender by Grade Level
As of March 31, 2011

Pay Plan/ Grade	White		Black or African American		Hispanic or Latino		Asian		American Indian or Native American		Native Hawaiian or Pacific Islander		Two or More RNO Categories		Total Male	Total Female	Grand Total	Percent Female	Percent Minority
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female					
ES	3	1													3	1	4	0.98%	0%
GS-15	20	13	6	1				2					1		27	16	43	15.69%	9.80%
GS-14	22	9	4	8		1	2	2	1						29	20	49	19.61%	17.65%
GS-13	3		1												4	0	4	0%	0.98%
GS-12										1					0	1	1	0.98%	0.98%
GS-11	1														1	0	1	0%	0%
Total	**49**	**23**	**11**	**9**	**0**	**1**	**2**	**4**	**1**	**1**	**0**	**1**	**1**	**0**	**64**	**38**	**102**	**37.26%**	**29.41%**

U.S. General Services Administration
Information Technology Workforce
Supervisory Ratio
As of March 31, 2011

Supervisory Status	Total
Non Supervisory	587
Supervisors/Managers	102
Total Workforce	689
Supervisory Ratio	1:6.75

7. What is being done to ensure that there are robust efforts across the IT programs across the federal government to promote the recruiting and hiring of a diverse staff including individuals from different races and ethnicities?

GSA can only speak to our efforts to promote the recruiting and hiring of a diverse staff including individuals from different races and ethnicities within the General Services Administration. GSA strongly supports equal opportunity principles in its recruitment efforts as required by 5 U.S.C 7201. GSA's Federal Equal Opportunity Recruitment Program (FEORP) initiatives and activities are an integral part of the agency's Human Capital Strategic Plan (HCSP). GSA's ability to attract, motivate, develop, retain, and reward our employees has a direct impact on GSA mission accomplishment and business success. GSA understands the importance of an inclusive workforce and has made diversity a high priority.

Information Technology is one of GSA's mission critical occupations that are always in demand for highly skilled employees; GSA offers career opportunities to experienced federal and private sector employees and to students and recent graduates. GSA also offers internships and development programs that provide invaluable, career-defining experience. These programs range from paid summer internships to career development programs that may lead to a permanent job to include, but limited to:

- The Presidential Management Fellows (PMF) Program offers exceptional students the opportunity to bring their writing, interpersonal, analytic, and leadership skills to a career in public service. At the end of the fellowship, you have invaluable and prestigious experience - and a permanent position at GSA.
- Internships offer a chance to gain experience in the workforce, build skills, and get a leg up on the competition.

8. For instance how many agencies have outreach programs that offer internships or fellowships at any of the Historically Black Colleges and Universities?

While GSA does not have an agency specific outreach program with specific Historically Black Colleges and Universities, GSA provides Federal employment opportunities information to students, faculty, women, and minorities at Historically Black Colleges and Universities around the country.

9. On the procurement and contracting side, can you also provide information regarding the amount and percent of contracts, with small and disadvantaged business enterprises, particularly women and minority owned firms?

General Services Administration **FY 2010 Procurement Data – September 30, 2010** Source: Federal Procurement Database System	**Dollars**	**Percentage**
Total Agency Procurements	$9,044,069,021	
Total Small Business Procurements:	$3,144,194,993	34.77%
Total Minority Business	$942,977,493	10.43%
Total Small Disadvantaged Business	$663,437,129	7.34%
Total Women Owned Business	$411,527,933	4.55%
Total Women Owned Small Business	$375,858,980	4.16%

THURSDAY, MARCH 10, 2011.

EXECUTIVE OFFICE OF THE PRESIDENT

WITNESS

ALLYSON LAACKMAN, CHIEF FINANCIAL OFFICER, EXECUTIVE OFFICE OF THE PRESIDENT

Mrs. EMERSON. This hearing will come to order. Thank you so much for being here today.

And because Mr. Womack has to leave, I am going to let you go ahead and open it up. If you would like to make a statement or something, go ahead.

Mr. WOMACK. I apologize, Madam Chairwoman, because I have got three meetings that I am involved in that all start right now.

Mrs. EMERSON. I understand.

Mr. WOMACK. I have been accused of being able to do a lot of things, but splitting myself three ways is just simply not one of those.

Thank you very much in advance for your testimony this morning. I just have a couple of questions, and then I will excuse myself.

IMPACT OF SPENDING REDUCTION PROPOSALS

But you know we are cutting. It is a well-known fact that we are attempting to cut spending back to 2008 levels or below, with emphasis on the "or below," because I think that is a direction that a lot of my colleagues would like to have. As far as the Executive Office of the President, how does that level of funding affect you?

Ms. LAACKMAN. A 2008 level would actually be very challenging for the Executive Office of the President for a variety of reasons. The President relies on the Executive Office of the President as his primary support in fulfilling his constitutional duties. That support includes things such as protecting national security and economic interests, working with Congress, all the way to providing secure and reliable IT systems that ensure we have adequate communication data and records management processes. The level of funding that is proposed by the 2008 level would impair our ability to deliver on those responsibilities.

Things have changed a lot since 2008. Some of our budget categories have costs built into them that we can't just reverse. For example, our career staff have wage rates that now include 2 years of COLA adjustments and 3 years of within-grade increases that can't be reversed.

We are also faced with rent costs that are locked in at least a year in advance, and they have certainly gone up since 2008.

Additionally, our investment in our IT infrastructure, which Congress has been wonderful in supporting to address problems no-

ticed in previous administrations, has grown significantly. It is now about 12 percent of our budget.

And then the third impact of the 2008 scenario, as we understand it, is that it would revert back to the component-specific budgets which would not take into consideration the realignment we have done within the EOP to make sure we have addressed changing priorities.

For example, given the current national security environment and the economic conditions, we have shifted some of our funding among the components to make sure all the priorities are met. As a result, even though 2008 levels would overall be an average 8.1 percent cut, in addition to what we have already taken in our 2012 request, it would actually hit the National Security Council and Homeland Security Council at a 33.9 percent reduction level.

It would also impact the Office of Administration which supports, among other things, the secure IT environment, at a 20.8 percent level, as opposed to the average of 8.1 percent that we would take overall.

So when you combine that with our basically static cost structure, 61 percent of our costs are for personnel, 10.7 percent has to do with rent, and 12 percent is for IT systems, it would be really challenging to be able to still support the President at a level commensurate with his constitutional responsibilities.

FY 2012 BUDGET REQUEST

Mr. WOMACK. I have a great deal of respect for the Office of the President. I don't want anything said in this hearing to infer anything otherwise. But having served in the executive branch of government, albeit at a municipal level—and there is a huge difference between a mayor and the President, I recognize that completely—when faced with serious budgetary and/or other fiscal issues, I always found that in order for me to adequately challenge or motivate my subordinate levels of government to make the hard choices and take those cuts, I always subscribed to the philosophy of leading by example.

And I think if there is one thing that concerns me is we are asking Americans across the country to do with significantly less, to expect less from their government. And yet, if I remember correctly—and I don't have the number in front of me—that the budget request is—what—a point and a half lower than previous budget, is that——

Ms. LAACKMAN. It is actually 4.2 percent for the financial services components, including our programs.

Mr. WOMACK. Okay. But the overall—the White House budget is $58 million.

Ms. LAACKMAN. That is the White House-specific budget.

Mr. WOMACK. The White House-specific budget. And I believe that we should expect more leadership in the reduction of costs arena if we can find it.

So, you know, I just say that. That is just a matter of personal feeling that I have that the chief executive officer of the organization should do everything they can to lead by example and do a complete analysis of all of the programs—and I realize a lot of it is personnel, and you have got some IT structure in there that is

very important and costly. I mean, Congress cut its budget by 5 percent. The Appropriations Committee cut its budget by 9 percent. We are doing the things at the committee level and in the congressional office level that I think are sending that statement to Americans that we, too, are having to do more with less. So I challenge your office to continue looking in that environment.

CLIMATE CHANGE BUDGET

How much of the Executive Office of the President's budget is geared toward climate change, to combating climate change?

Ms. LAACKMAN. We don't actually assign costs to specific offices within the White House in particular. And recently, I think there was an article in the paper that announced this as well, but we have done a reorganization that has been a while in the planning. So all of the efforts related to policy development and other matters related to climate change are now within our Domestic Policy Council, so we don't specifically have an office dedicated to that.

Mr. WOMACK. Is it significant?

Ms. LAACKMAN. It is part of a multitude of functions that the people are responsible for within there. So we have a Domestic Policy Council, and that is one of the areas for which they are responsible for developing policy.

ECONOMIC ADVISORS

Mr. WOMACK. And then, according to my information, the intent is to hire and fund another economic advisor. In what area of responsibility are we talking about? And is it necessary?

Ms. LAACKMAN. You know, I am sorry. I don't know specifically about a hiring plan for an economic advisor. I am happy to take that back to the White House and find out what their specific hiring plan is.

Mr. WOMACK. Okay. Fair enough.

[The information follows:]

President Obama was faced with an unprecedented economic crisis when he took office in 2009—the worst since the Great Depression—which has put corresponding demands on the staff and resources of the Council of Economic Advisers (the Council or CEA). The Council's mission is to provide the President with objective analysis and advice on the development and implementation of a wide range of domestic and international economic policy issues. In addition to CEA's regular functions, such as preparation of the annual Economic Report of the President and analytical assistance preparing the President's annual Budget proposals, the Council now has additional responsibilities as a result of the crisis, including producing quarterly reports to Congress on the economic impact of the Recovery Act. An additional $203,000 is requested in the FY 2012 Budget Submission to provide additional staff to aid in the preparation of such reports, as well as conduct necessary research and analysis as economic policy shifts from crisis to recovery and fostering growth. This staff will likely join CEA through temporary fellowships from universities and research institutions, which allows CEA to draw highly qualified economists at a relatively low cost.

DEFICIT REDUCTION

Mr. WOMACK. I would just go back, as I conclude my remarks. As everyone knows, these are very difficult times. And in your testimony I have picked up on the fact that you remind us that the President is wishing to aggressively get after deficit reduction. I firmly believe that, with all respect to the Office of the President,

that that is where Americans look very closely to, what we can do from the chief executive down, to impart this sense of fiscal responsibility and accountability so that Americans know that it is happening at every level of government; and, respectfully, I would like for that message to be articulated to the highest level of our government.

Thank you very much.

Ms. LAACKMAN. I will make sure that happens. Thank you very much.

Mrs. EMERSON. Thank you, Mr. Womack.

Mr. WOMACK. Thank you, Mrs. Emerson.

Mrs. EMERSON. What I will do is submit my formal opening remarks for the record.

[The information follows:]

Opening Statement

The hearing will come to order.

Today's hearing is on the budget request for the Executive Office of the President. The President's fiscal year 2012 budget request for Executive Office programs under the jurisdiction of this subcommittee totals $739 million. This includes $356 million for the Office of National Drug Control Policy and $92 million for the Office of Management and Budget. We will have hearings with the OMB and ONDCP directors later this year. So today's hearing will focus on the budgets for the White House, the Office of Administration, the National Security Council, the Council of Economic Advisors and the Vice President.

As each of you have heard me say before, we must begin to address our unsustainable Federal debt and I am committed to making significant reductions in spending in the Financial Services bill. The Bowles-Simpson Fiscal Commission recommends reducing funding for the White House by 15 percent. Today, I would like to get a better understanding of how much funding can be reduced within the Executive Office of the President without having a significant impact on White House operations.

Our witness today is Allyson Laakman, the Chief Financial Officer at the White House Office of Administration. This is Ms. Laakman's first time testifying and we welcome you.

IMPACT OF SPENDING REDUCTION PROPOSALS

Mrs. EMERSON. And let me just say for my colleagues, because we are going to have a separate hearing with the Office of Management and Budget and the Office of National Drug Control Policy, we are not going to talk about those pieces today. We will just talk about the White House, the Office of Administration, the National Security Council, the Council of Economic Advisers, and the Vice President.

I also just want to just say one thing about Mr. Womack's remarks. Having not totally finished reading the Simpson-Bowles Commission report, I did note, however, that they suggested a 15 percent cut in the White House Executive Office of the President; and I am assuming, based on your remarks to Mr. Womack, that that would be quite problematic.

Ms. LAACKMAN. It would be similarly challenging, especially in the near term. We support the concepts and the objectives of the fiscal commission's findings. To do that within the Executive Office of the President in the near term could have actually a negative impact in supporting deficit reduction by creating the loss of personnel that are actually geared toward helping develop those solutions. We would have a disproportionate cut to the number of staff and IT systems that in the short term could reduce our efficiency and effectiveness to deal with these responsibilities disproportionately compared to the short-term savings it could generate.

Mrs. EMERSON. Okay. And I thank you for that.

I am going to let Mr. Serrano, our ranking member, speak for a minute. I am sort of doing this loosey-goosey because we are in this room.

Mr. SERRANO. Yes, very much so.

We have a request similar to Mr. Womack's.

Mrs. EMERSON. Ms. Lee, then you go. As long as it is fine with Joe, it is fine with me. Please go on ahead.

Ms. LEE. Thank you very much, and thank you very much for yielding. I have another meeting to attend.

Mrs. EMERSON. I know. It is crazy.

Ms. LEE. So thank you, Madam Chair. Thank you very much. It is good to see you.

Ms. LAACKMAN. Thank you.

FY 2012 BUDGET REQUEST

Ms. LEE. You know, I appreciate the administration demonstrating their commitment to reducing the deficit by this proposed 4.2 percent budget cut. But we have to also remember what caused this deficit in the first place: the two wars, tax cuts for the very wealthy, also failing to restrain Wall Street by really gambling the future of the entire economy on other people's money. So we can't forget that.

And I personally believe that, of course, the White House should not even come in with a proposal to cut. To me, that is unacceptable. I think you should have a boost. Because I know the staff changes that have taken place. I know you are trying to consolidate and, you know, have a White House that is efficient, but I also

know the challenges are enormous. So I personally think you guys should not request that cut. But that is my personal opinion.

A couple of things I wanted to ask you. One is, just in terms of the organization of the White House now—and I have got to relate this to the whole State of the Union speech and just how that is organized, knowing that there are policy recommendations in the speech.

EARMARKS

But the lines in the speech that said the President will veto any bill that comes to him with earmarks, I am kind of interested in how that evolved over there, if you know, because—and I am saying this every chance I get, that cutting congressionally directed funding, banning earmarks now has created a huge hole especially in communities that I know the President cares about, in communities of color, the African American, Latino, and Asian Pacific American communities, community clinics, educational programs, after-school programs. You know, these organizations thrive and survive on seed money to help them leverage additional funds to be able to create the jobs and provide the services that the Federal Government won't provide. So now they are left in a lurch, a total lurch.

So I am curious about how that was put together over there, staff-wise, and how that recommendation came out and if, in fact, impacts on communities were considered and what you intend—we have written a letter on this—to backfill those resources that were lost.

OFFICE OF NATIONAL AIDS POLICY

Secondly, let me just ask you about the Office of National AIDS Policy within the Executive Office. I am really pleased that the President is moving forward with the national aids strategy. How does that fit into the overall budget recommendations now and will that office be fully funded so that we really can begin to effectively implement this overall HIV/AIDS strategy?

OFFICE OF MINORITY AND WOMEN INCLUSION

And the new Office of Minority and Women Inclusion, how does the White House see its role in making sure that the financial services companies will be more inclusive and diverse, given the financial regulatory reform bill that we passed and he signed into law. How is that happening?

Thank you very much.

Ms. LAACKMAN. Thank you. Those are wonderful questions.

EARMARKS

As it relates to earmarks, though, and specific objectives of an office, those are more policy questions; and so in my role as the financial person at EOP I wouldn't really be able to speak to that.

Ms. LEE. Would you ask someone to respond?

Ms. LAACKMAN. I will definitely pass it back to the appropriate people at the EOP. And I understand you have a letter out, and

I am sure you will hear back. But I will make sure that they know that the request was made today.

Ms. LEE. Thank you.

OFFICE OF NATIONAL AIDS POLICY

Ms. LAACKMAN. As far as the Office of National AIDS Policy, we didn't specifically ask for the set-aside amounts or the targeted amount of $1.4 million which we have used for the last couple of years; and that is not because we didn't have any intention of meeting that budget. We spent almost a full $1.4 million last year, within $20,000 of that amount; and we have no plans to reduce that.

I think our reason for not specifically isolating that funding is to allow for the most flexibility to support all of the objectives of all of the offices within not just the White House budget but then also within the specific components. We are very proud of the work that has taken place so far and ONAP can help in those efforts.

OFFICE OF MINORITY AND WOMEN INCLUSION

Ms. LEE. Okay. And the Office of Minority and Women Inclusion which was included in the Frank-Dodd reform Act, how does the White House ensure that the best practices in all of these agencies are going to be implemented?

Ms. LAACKMAN. As to their specific workings, I couldn't speak to that, because that is more the policy arena and the responsibility of the people running those offices.

I could just tell you in general that the way the White House runs its budget is to make sure all of our initiatives and priorities are properly staffed and funded with support, and I can assure you that there are no plans to do less than that for an initiative such as that.

Ms. LEE. But someone within your budget will have that responsibility as part of their responsibilities?

Ms. LAACKMAN. Staff? I don't know this specifically. I am happy to go back and check and get the particulars on that. I don't know specifically every initiative that is within the White House.

Ms. LEE. I would like to, within the context, so that we can look at the budget and see how this function is going to be overseen by the White House. I would like to see——

Ms. LAACKMAN. You are looking towards staffing levels for this initiative?

Ms. LEE. Yes, in the White House. Or if there are no staffing levels in your budget, is, say, 50 percent of X staff time allotted to overseeing this new financial regulatory reform Office of Minority and Women Inclusion? Or is it hands off, just leave it to the agencies or how that fits.

Ms. LAACKMAN. I will find out. Thank you.

Ms. LEE. Thanks very much. Thank you very much.

[The information follows:]

The Dodd-Frank legislation mandated the establishment of an Office of Minority and Women Inclusion (OMWI) within the Treasury Department and independent financial regulators including the Federal Reserve, FDIC, and the SEC. Pursuant to the statute, the director of the office must be a career SES individual. Otherwise,

each applicable agency is responsible for determining how the office will be staffed; what the office's budget will be; and how the office will be run.

Because the agencies, rather than the White House, are responsible for the standup of these offices and related agency policy directives, no separate budget has been identified within the White House for the OMWI initiative. However, staff from the White House Office of Public Engagement, the White House Office of Intergovernmental Affairs, and the National Economic Council have communicated with agencies to learn the status of agency OMWI efforts. In addition, OMB staff review the progress on establishing and implementing these offices as part of their regular oversight.

Mrs. EMERSON. Thank you so much. I am glad we could work it out. Mr. Serrano.

Mr. SERRANO. Well, I had a statement.

Mrs. EMERSON. Feel free to go ahead and make it.

Mr. SERRANO. Well, we are doing things strangely different, so I just won't read the statement.

Mrs. EMERSON. You will submit it for the record?

Mr. SERRANO. Yes, I guess.

[The information follows:]

Opening Statement of Congressman José E. Serrano

Financial Services and General Government Subcommittee
Hearing on the Executive Office of the President

March 10, 2011

Thank you, Chairwoman Emerson, and I too would like to welcome Allyson Laackman, the Chief Financial Officer for the Executive Office of the President, to this hearing of the Financial Services and General Government Subcommittee.

The budget request for the Executive Office of the President that is funded by this Subcommittee is $739.8 million which is a $32.1 million reduction from the FY 2010 level. Specifically this request includes important funding for Salaries and Expenses, for the White House, the Executive Residence, Office of Administration, National Security Council and Homeland Security Council, Council of Economic Advisors, Special Assistance of the President, and the Vice President's residence. Also, included in this request is funding for the Office of National Drug Control Policy Programs, and the Office of Management and Budget.

While I welcome the opportunity to hold this hearing today, I am concerned that this is just another opportunity to attack the President's budget because there are those in this Congress who disagree with his policy choices. We all remember our long debate on the Continuing Resolution, where many amendments proposed under the guise of budget discipline were actually attempts to embarrass the President and hamper him from being able to do his job. During that debate, there were amendments proposed concerning funding for White House plumbing repair, the ability of our President to use a teleprompter, and even to remove funding for some of the President's staff based solely on their title. Those amendments had little budgetary value, even less substantive value, and I think, reflected poorly on Congress as a whole. Although it is appropriate for us to exercise vigorous oversight and to ask questions today, I think we all must be mindful that The White House should have the ability to conduct repairs and routine operations. Regardless of who

the President is at any given time – there are ongoing operational expenses that need to be funded by Congress.

I look forward to talking to you today in more depth about funding for some of the specific aspects of this overall budget request and learning more about the progress that is being made in some of these areas.

Again, welcome, Chief Financial Officer, Laackman.

Mrs. EMERSON. Would you like to go ahead and ask your questions?

Mr. SERRANO. No. That is fine with me. You can start it.

STAFFING LEVELS

Mrs. EMERSON. Well, playing a little bit off of Ms. Lee, I am not going to go into any policy issues, but I am curious, because the fiscal year 2012 budget request does not propose any staffing reductions. In other words, even if you have a position that has suddenly been vacated, is it something that you intend to fill? And I realize that working at the White House is tougher on your personal life, on your family time, much more so than even the demands that our congressional constituents put on us. But I am just curious that you haven't proposed any staff reductions. And while you said that going back to 2008 levels would be very difficult, would it not be possible to absorb some staff reductions in your accounts?

Ms. LAACKMAN. So because we are so heavily focused on personnel, we focused on the overall requirements of each of the offices.

I think our staffing levels, which you see in our submission, are basically our FTE estimates, not necessarily where we will be at in actuality for the year. It is our best estimate based on the full budget that we are requesting, and it is actually a little bit lower. But I also don't want to mislead you. It is about 43 people lower than our 2010 estimate. But that is really more of a reflection of not using the ceiling concept as much as it is an estimate of where we think we are really going to be.

Our budget approach was actually a rigorous zero-based budget approach. So we asked each of our components to go back and look at exactly what their mission was and then start from ground zero and build up to what they needed to fulfill their mission.

We then took a look at all of their individual priorities, as well as the priorities EOP-wide, to make sure that the resulting cost savings and efficiencies that we identified still allowed us to support the President. So it wasn't done specifically to say we can eliminate X person. We actually built it from ground zero up to say here is what we need to do to fully achieve our responsibilities in supporting the President.

Mrs. EMERSON. Okay. It will be interesting to hear if you think that the way that you all have realigned things will be more efficient. Perhaps we will know that in the 2013 budget. But I appreciate it.

TRAVEL

Last year, there were several allegations—and I want to get this on the table and try to get this cleared up once and for all. There were many allegations that the President's trip to India cost $200 million per day and involved over 2,000 staff. Now I will admit personally that that sounded ridiculous to me. But it was out there, and obviously we heard a lot about it. And I believe that those estimates are probably exaggerated.

But we haven't ever been provided with information on the actual cost of the President's trip to India or any President's overseas travel. I am not just specifically talking about President Obama.

And I also understand that there are a lot of agencies involved, whether it is the State Department, Defense Department, Secret Service, and they also incur expenses; and I assume that those are classified for national security reasons. So let me just say that.

But will you explain to us just how is the President's international travel funded, number one? Who decides which staff accompany the President? And can you just tell us those first?

Ms. LAACKMAN. Specifically as it relates to international?

Mrs. EMERSON. Yes.

Ms. LAACKMAN. Actually, international is not within our budget. So our total White House budget for traveling in support of the President is projected at about $2.2 million.

Mrs. EMERSON. Okay.

Ms. LAACKMAN. Official international trips, are really outside of our budget completely. And much of the planning—actually, I believe all of the planning is done specifically outside of our travel office. I don't know who in the administration works with State and whoever else decides the need for a trip. But as far as the funding for it, it is completely outside of our $2.2 million budget.

Mrs. EMERSON. Okay. I wonder if it would be possible—and then I want to ask you a little bit about the domestic travel. Would it be possible for you to make a request on behalf of the committee, and understanding that we would have to have a classified discussion about this, about the cost of the President's trip to India?

Ms. LAACKMAN. I can certainly take that request back.

Mrs. EMERSON. Yes, take that request back.

Ms. LAACKMAN. I don't know anything more than that. Of course, I can bring that request back. Absolutely.

Mrs. EMERSON. So the $2.2 million that you have requested for domestic travel, tell us how those funds will be spent? Does that fund the President's travel? Or is that the staff's travel? And how that exactly works.

Ms. LAACKMAN. I am happy, if you want something written up for the record, to do that as well.

But I can tell you, basically, that covers our domestic official travel. And what we pay for in that are the staff who travel with the President. So, obviously, military is not part of our budget, but we have got advance teams and other official travelers that travel to support a trip.

It also includes a limited number of those official travelers for personal trips as well. It doesn't include overnight accommodations on a personal trip. The President would reimburse us for that. And then, it does not include the out-of-pocket costs for political or personal costs.

[The information follows:]

TRAVEL BUDGET DETAIL

The White House Travel Budget, estimated at approximately $2.2 million for fiscal Year 2012, includes the following types of expenses:

- International Official Trips (President or First Lady in Attendance)—None.
- Domestic Official Trips (President or First Lady in Attendance)—Overnight accommodations and meals and incidental expenses for the President and/or First

Lady. Commercial common carrier transportation costs, overnight accommodations, meals and incidental expenses, and local transportation costs for staff traveling in an official capacity (including advance staff, advisors and others supporting the President and/or First Lady) and for official guests.

• Official Expenses Related to Non-Offical Trips (President or First Lady in Attendance)—Commercial common carrier transportation costs, overnight accommodations, meals and incidental expenses, and local transportation costs for staff traveling in an official capacity to support the official functions of the principal when the principal is otherwise on non-official travel. (Note: If trip is mixed Political/Official, cost allocations are determined pursuant to hard time allocation formula and all non-official costs are reimbursed. If trip is mixed Personal/Official, all personal costs are reimbursed personally.)

• Domestic and International Official Staff Trips (President and First Lady not in attendance)—Commercial common carrier transportation costs, overnight accommodations, meals and incidental expenses, and local transportation costs. (Note: If trip is mixed Political/Official, cost allocations are determined pursuant to hard time allocation formula and all non-official costs are reimbursed.

• Motor Pool Vehicles

EVENT REIMBURSEMENT

Mrs. EMERSON. Okay. But any kind of political event that is actually held in the White House, there is a formula, if you will. So with either party in the White House, the party committee puts a deposit down and then the President, whomever he—since we have only had he so far—the President then reimburses afterwards for the cost? Or is it all done in advance?

Ms. LAACKMAN. You are talking about events at the White House?

Mrs. EMERSON. Yes.

Ms. LAACKMAN. No, it is actually done in advance. So we have a sitting deposit, and I think that has been the same for a number of years. And then what we do for a political event at the White House is we come up with a cost estimate and have them actually fund that in advance, and then we settle up once the bills have all come in. There could be small amounts that we owe back. Typically, it is that we owe back—it is conceivable that there could be a small amount that they owe us but typically not, because of the deposit we have on hand.

Mrs. EMERSON. I appreciate that.

Mr. Serrano.

FY 2012 BUDGET REQUEST

Mr. SERRANO. Thank you.

I appreciate that the President is leading by example on fiscal responsibility in cutting the budget of the Executive Office of the President by $32.1 million, or 4.2 percent. You have outlined in your testimony where these cuts are proposed. Would you characterize these cuts as true savings or are we just deferring costs and adding to the budgets of future years?

Ms. LAACKMAN. I will look at my statement, if you don't mind.

What we did was use a combination of ways that we could save the money. Part of it is cross-agency collaborations, and that is where you are going to see that the Office of National Drug Control Policy has some savings, given the fact that they have realigned how the Federal drug control program agency budgets are being funded and they are reverting more of their efforts toward over-

seeing and managing those programs. We have also identified operational savings to the extent possible.

So all of those are real savings. We are actually putting those in place right now. It is important, not knowing how 2011 is going to end, to look for as many ways as we can to economize, trying to reduce travel costs, other than in support of the President. We are looking for ways to do teleconferencing. Printing is down about 30 percent from our 2008 level. We are looking for more ways of going electronic, and last year we even posted the EOP's budget online. In the last 2 years, that has been a change. Those are all real savings.

The only potential part that—I can't say is necessarily a true savings—is the IT budget, but we expect that there will be.

All but the most critical IT systems are being deferred for this year. We need to make sure that our systems are strong. So it doesn't incorporate things that we think will harm us, but we will be deferring some of those costs.

Mr. SERRANO. Now when you say "with other agencies", you are talking about other departments in the White House or——

Ms. LAACKMAN. No. Federal agencies.

Mr. SERRANO. Federal agencies. And how do you coordinate with them?

Ms. LAACKMAN. Well, we look for things that they are already doing to make sure that we are not making redundant efforts. We are also leveraging our policy advisors to make sure that, if they have a larger-scale operation, that we advise if certain things could be done better in those agencies.

REPAIR AND RESTORATION

Mr. SERRANO. Now on the floor we discussed during the debate on the CR that there are old systems at the White House that need to be upgraded. In fact, the plumbing system apparently has not been updated since the Eisenhower administration. Is the request of $1 million in the repairs and restoration accounts sufficient? So the question is, is $1 million sufficient? You know, that was a big debate on the floor. In fact, I was shamelessly quoting that they hadn't seen a plumber since the Nixon administration at the White House.

Mrs. EMERSON. That was a good line, too.

Mr. SERRANO. Yeah, but it got me into a lot of trouble.

Ms. LAACKMAN. I enjoyed reading your statement.

We feel it was a reasonable request. We have a lot of projects that are still under way. And, given the importance of being fiscally responsible in this day and age, we shifted the approach for funding it to $1 million for whatever emerging or required needs appear that are still in line with the legislation which is to protect the safety of the occupants, which is not just the First Family but everyone visiting as an official visitor or a tour guest.

You specifically are referring to the plumbing, and that was part of our 2011 request, which was larger. We think we have got enough projects under way that, rather than taking on a new one now, we just wanted to make sure we could address the critical needs, as any good homeowner would do.

Mr. SERRANO. You know, the part that just comes to mind now is the White House a national monument?

Ms. LAACKMAN. Yes, it is.

Mr. SERRANO. Not only in our belief, but it is, right? It falls under which agency?

Ms. LAACKMAN. It falls under a lot of agencies. The National Park Service takes cares of the grounds, GSA takes care of the outside of the building, and we take care of the inside.

Mr. SERRANO. Oh, you take care of the inside? So there is no agency that could be taking care of that out of their budget?

Ms. LAACKMAN. The East and the West Wing are separate. So there are a lot of different players in our complex.

UNANTICIPATED NEEDS

Mr. SERRANO. Now the budget also requests $1 million in an account called Unanticipated Needs. We know that is not a trip to India, obviously. So can you give us some examples of how this account has been used in the past?

Ms. LAACKMAN. Sure. We actually file with Congress every year. So there is good public information about how that has been used.

Last year, we used money for the Fiscal Commission. You will see a little bit. So part of that was last year's budget. Part of it will be this year's budget. Beyond that, I know it is for things like the funeral of President Reagan. You know, it really just gives the President a reasonable amount of flexibility to address something that is not otherwise appropriated for.

PARTNERSHIP FUND FOR PROGRAM INTEGRITY INNOVATION

Mr. SERRANO. Another issue is the President's budget requests $20 million for the Partnership Fund for Program Integrity Innovation. Now this program began in fiscal year 2010 with $37.5 million. What has the program accomplished so far, in your opinion?

Ms. LAACKMAN. This is actually an OMB-managed program, so I don't have a lot of details specifically on what they have been able to achieve. I understand, though, that they will have obligated that full amount by the end of fiscal year 2011.

Mr. SERRANO. So it is an OMB program?

Ms. LAACKMAN. It is an OMB-managed program. It is government-wide but managed through OMB.

Mr. SERRANO. My next question was going to be, what are the plans for the coming year?

Ms. LAACKMAN. As I understand it—I am certainly not an expert on that one, so I would be happy to give you more information. That is the best answer. I could give you more detail about what they do.

But, for example, one of their projects was to help the IRS reduce errors in the earned income credit. So they are looking for ways to help shore up the different methods of both benefits that are given out in the Federal Government and other cost savings in the agencies. But I am happy to provide more specific information about how that program works.

[The information follows:]

The Partnership Fund for Program Integrity Innovation (Partnership Fund) was established by the Consolidated Appropriations Act of 2010 (P.L. 111–117) to fund

pilot projects to streamline administration and strengthen program integrity in Federal assistance programs administered through state and local governments or where Federal-state cooperation could be beneficial. The Partnership Fund will award most of its intial $37.5 million appropriation to Federal agencies by the end of FY 2011. In the aggregate, pilots must save at least as much as they cost. However, OMB targets high return on investment pilots likely to demonstrate significant savings. For example, the Partnership Fund awarded its first pilot to the Department of the Treasury to test a new way to reduce the annual $12 billion of improper payments associated with the Earned Income Tax Credit program (EITC). Treasury believes that there is an opportunity to avoid as much as $100 million or more in improper payments by cooperating with states to access data such as income and child dependency from state-administered benefit programs. Thus, this $2 million investment from the Partnership Fund could ultimately yield a 50 times annual return if the pilot is enacted at scale. The Partnership Fund's small investments will yield savings far beyond their costs.

OMB consults with an interagency council of Federal, state and other stakeholders to develop innovative pilot proposals that refelct stakeholder needs and concerns. This council, the "Collaborative Forum," is a self-directed stakeholder group led by state and local governments. All ideas that OMB consider for funding are either generated by Forum work groups or submitted to the Forum for open consultation by all participating members. The Forum's web site is found at www.collaborativeforumonline.com. In addition, OMB consults with a Federal steering committee, which consists of senior policy officials from the Federal agencies that administer benefits programs. The steering committee meets to review pilot proposals generated either by the Forum or by a participating agency before the Forum consults on the proposal. Finally, the public is invited to submit ideas direct to OMB through www.partner4solutions.gov.

In February, OMB received six pilot proposals from the Collaborative Forum as well as a proposal from the Centers for Medicare and Medicaid Services (CMS). These proposals can be found at http://collaborativeforumonline.com/concept-papers. OMB expects to make funding decisions on the submitted pilot proposals in late March or early April.

OMB will continue to conduct periodic rounds of funding decisions. The next round of pilot submissions is expected to be submitted to OMB by the Collaborative Forum in April.

Mr. SERRANO. Please. Because I would be interested in finding out why you are assisting the IRS.

Ms. LAACKMAN. It is not us. It is an OMB-managed program. It is government-wide. So we are looking for efficiencies and improvements government-wide. These projects should be at least self-supporting. You know, the one project that was mentioned is anticipated to have a 50 times cost payback.

TOUR NUMBERS

Mr. SERRANO. Do we know how many people come as tourists to the White House every year?

Ms. LAACKMAN. I can tell you in fiscal year 2010 it was over 900,000. That is a significant increase from the past. They have put in a lot of improvements in their systems to make sure that the tours times are more accommodating. They even have a Members program now for Congress. We have got a great focus on customer service. So our tour percentage has gone up significantly. We are excited about opening the House up more.

Mrs. EMERSON. I have got so many constituents who want to come on White House tours. And you know, of course, then they get mad when they call you the day before, hey, I am going to be in Washington, and I want to go to the White House. Can you get me a tour?

Ms. LAACKMAN. I face that, too. I always tell my friends, 4 weeks notice. Otherwise, don't call.

REPAIR AND RESTORATION

Mrs. EMERSON. I know it is very, very frustrating.

So how does it work? Just following up on Mr. Serrano's question about, you know, repairs, plumbing, that sort of thing. Do people within the White House who have certain responsibilities, whether it is plumbing or wiring, do they have to come to you and say, this is what I want to do? How does that even work? I am just curious, more than anything.

MS. LAACKMAN. I am centralized financial management, so I actually am the CFO for that account. But they have their own fund manager in that account who makes sure that the projects fall within the appropriations language. If it is a minor repair, we do have a plumber on staff. We are talking about major repairs. And, in that case, we have an architect who works there, in another role, but he also has the architectural experience. So he manages that to make sure there are good plans and that it falls within the budget estimate that he had for that project. In the past, these were always appropriated based on a specific estimate for a project.

Mrs. EMERSON. Okay. That is interesting, how it happens.

PRESIDENTIAL ADVISORS

I have to bring this issue up on behalf of several of our colleagues, and it has to do with the special assistants to the White House, otherwise known as czars. And this is not something that is simply an Obama White House. It was a Bush White House. It was a Clinton White House. It was a Bush I White House. So those positions exist.

And, unfortunately, I think it frustrates a lot of colleagues, because the folks who hold those positions have a lot of responsibility and perhaps really have a little more power than some of the department heads but yet they don't have to go before the Senate for confirmation. So there is tugging and pulling.

In some cases, you need to have a central person, I understand, to do things. But can you comment just generically perhaps about the administration's use of these czars to lead what executive branch activities? Or is this too much of a policy question?

Ms. LAACKMAN. Well, I can speak to it in general, but I won't veer too far into the policy end.

I would start with saying that we actually disagree with the term "czar" as it relates to any of our staff. We contend that the President hires all advisors that he needs for critical subject matter, which is similar to, as you have mentioned, previous administrations.

Our staff doesn't have the powers of a Cabinet head, a Cabinet secretary. They really are just the staff that are there to help the President coordinate and collaborate in enacting his agenda with all of the Cabinet.

Some of the positions that are called czars are in fact things that Congress has put in our office, for example, the intellectual property enforcement coordinator and the leader of ONAP. So we understand that that term is out there, but it is not one that we would refer to or even could identify as being any position that we have on board at this time.

Mrs. EMERSON. Right. And I think it all kind of began with the Office of National Drug Control Policy, and perhaps the first director of that office referred to himself as a czar or something.

Ms. LAACKMAN. I understand it was someone the first President Bush appointed.

Mrs. EMERSON. Yes. And that is kind of where it all began.

And I think, too, just to make a general comment on it, as the frustration level of colleagues is, you know, the person that you see hoping to drive policy decisions among our caucuses up on the Hill often are those staff people, or czars, as opposed to, for example, Secretary Sebelius with HHS or someone like that. Now she may come in later. So there is just that general perception.

And I will make another comment. Obviously, when there is a head of the Environmental Protection Agency who, regardless of whether I agree with her, is doing a fine job of running that place, you know, to have that person directing, if you will, or perhaps acting almost as a director of an interagency task force, it makes people very uncomfortable. So I appreciate the fact that you all are actually moving at least the climate change person and the health care person, neither of whom will remain in those jobs, into the Domestic Policy Council which is where I think that all of those positions perhaps more adequately belong and then we can get rid of the czar title forever.

ECONOMIC ADVISORS

Let me ask you specifically about the Council of Economic Advisors, where you are actually requesting the addition of several economists. I guess there is no way to know exactly how many you needed. But the Dodd-Frank Wall Street reform bill created the Financial Stability Oversight Board, which includes the Treasury Secretary, the Federal Reserve, FDIC, SEC, FTC, and several other agencies. And then there is another new Office of Financial Research to support that Board and then other new offices in Treasury, the SEC, and a new Consumer Financial Protection Bureau.

So, given all of these new entities, I guess I am a little confused or concerned about the need to add even more economic advisors to that office in the White House, as opposed to utilizing those who already exist throughout all of these other financial-related institutions.

Ms. LAACKMAN. I would mention that their requested increase is for about $200,000. So it is not a large number of people, and it actually is—we get a lot of advisors from different universities on a limited-term basis and at a reasonable cost. The CEA has a responsibility for helping monitor what is going on as an advisor to the President. So we are monitoring the economic environment and providing certain reports that he gets as part of his briefing. That is really their function.

So I do appreciate what you are saying about other areas, but their focus very much is in the advisory role for the President, the direct advisory support.

Mrs. EMERSON. No, I understand. But wouldn't they rely on other people within the Federal Government for some of that information? Or you are not in the position——

Ms. LAACKMAN. I don't know that one. That would be outside of my area of knowledge. I apologize.

Mrs. EMERSON. No, no, no. That is all right. And I assume that $200,000 isn't going to buy you much more than a senior person and perhaps a——

Ms. LAACKMAN. I think they are looking for a couple of people because of the way they are able to have short-term employees come from universities to help.

Mrs. EMERSON. Yes. And, quite frankly, they should be excited to come and offer to do it for nothing in a fellowship capacity, because I know you all have a fellowship program as well.

Ms. LAACKMAN. Yes.

Mrs. EMERSON. All right. Let me turn it over to Mr. Serrano.

FY 2012 BUDGET REQUEST

Mr. SERRANO. Yes. I want to, first of all thank you, Mrs. Emerson, for the way in which you handled this questioning. I don't know if I hurt you or help you by saying in public that you don't behave like some other folks when it comes to our President.

And we have to understand that this bill may not be the biggest bill of 2012. But I assure you, if this bill hits the floor in the way bills should hit the floor and in the way they used to in the past, you are going to see a lot of debate, one on Washington, D.C., and social riders, everything from abortion to gay marriage to things that men and women can't do back home so they do in D.C. to prove that they are very good on those issues.

And then the second one will be the White House expenses, and it has nothing to do with White House expenses. Just for the record, we have to remind ourselves that it has to do with the fact that there is an unfortunate small group but very vocal in this country who just can't accept that this President is legitimate, that he was born where he told us he was born, that he is of the faith he tells us he is, and that he is a good American.

I mean, someone even suggested recently that he is not like us because he never played baseball. Well, I happen to adore baseball, but I know that basketball is right there with American sports. And so what do we need him to do, wear a Yankee uniform or Chicago uniform and play nine innings?

Mrs. EMERSON. Or a Cardinals uniform.

Ms. LAACKMAN. I think he meant White Sox.

Mr. SERRANO. He is an intelligent President. He will never wear a Cardinals uniform.

And you are going to see pettiness which has nothing to do with the budget. I mean, the plumbing stuff on the House floor, and that was only the prelude. The teleprompter. So what? You take away the teleprompter, he is still a better speaker than anybody that is coming up in 2012, I assure you of that, with or without the teleprompter. But it gets petty, and it gets silly. And Jo Ann Emerson is not that way. But there are some, and they are going to make it that way, so you have to be ready for it. Or just let it be. It will happen, and what will happen will happen.

So I think it is important for the White House always to have its facts and figures together but not to lose too much sleep over the fact that there are some people in this country who just cannot

accept that Barack Obama is the President. And it is going to be a nasty debate when it comes to the White House expenditures. It will get pretty bad. And you have to be ready for it, to be able to defend that which you know is correct. Some of us will be on the floor basically saying that, you know, we have never done this in the past.

We have always had problems with the President. You know, I remember once there was a picture of me shaking hands with George Bush. And somebody in my district said, but you don't agree with him. I said, so what? He is the President. I have to show him that respect and admiration because he is the President.

It doesn't hold any longer with a lot of folks, and so you have to be ready for that.

But, in the meantime—I have no further questions. I just want to tell you not to be shy about putting forth that which you need at the White House, not to be shy about saying that you have to do a certain job in support of the President of the United States, and you need these dollars to do them. You know, don't overspend. But don't be shy about saying we have to do this. Because this is not, you know, a city council in some small community. This is the Presidency, and it has to be respected. It has to be supported.

And that building, which will be occupied by someone else in 2016, belongs to all of us, and it has to be taken care of. It has to be preserved, and it has to be respected, and it has to be kept in good shape.

So I applaud the efforts you are making. And don't lose hope. The attacks will be tough, but you have some friends and some folks who won't attack in a nasty way. And I thank you for your service.

Mrs. EMERSON. Thank you, Mr. Serrano. I just have a couple more quick questions to ask. And I appreciate your comments, Joe. Thank you very much.

EXECUTIVE RESIDENCE

Let me ask you about the executive residence. The budget request for it is $13.7 million, which is about 1.3 percent below fiscal year 2010, and that does fund repairs and the utilities—or the minor repairs. And just following up with what Joe said, $13.7 million isn't an insignificant amount when you add it all up together, especially given the fact that you have got the Park Service maintaining the grounds and others doing other things. How much of the funds requested for the executive residence is mandatory money, like utilities—I mean, there is no way you can't pay utilities—and also for day-to-day operations versus how much is really for discretionary types of things?

Ms. LAACKMAN. I don't have that detail at my fingertips. I am happy to give you something more official for that.

Mrs. EMERSON. Okay.

Ms. LAACKMAN. We have actually managed that as an overall budget to make sure that all of the needs are met, but I can certainly give you some of the details on some of the components.

Mrs. EMERSON. Yes, I would appreciate that. Thank you very much.

[The information follows:]

The Executive Residence at the White House ("EXR" or "Executive Residence") provides service to and support for the President, the First Family, their guests, and all visitors to the Executive Residence (including the American public), and also preserves and protects the building and its historic collection for this and future generations. EXR operations and related budget are designed to accomplish each of these unique, official responsibilities, including performing the following functions:

- Maintaining and operating the Executive Residence as a home to the President and First Family.
- Providing support services for the First Family and their guests, including meal preparation and housekeeping. (Note: the cost of food is personally reimbursed by the First Family.)
- Providing operational support for the President and First Lady in their official capacity.
- Maintaining and operating the Executive Residence as a national landmark and an accredited museum with an historic collection, including providing tours to the American public.
- Producing official and ceremonial events ("events"). **Note**: The Executive Residence appropriation language also provides authority to collect costs specifically incurred for reimbursable events (including certain official and ceremonial events and all political events) and for certain other reimbursable expenses.

We do not consider expenses incurred to perform these functions to be "discretionary" in nature (although from a budgetary perspective they are considered discretionary resources), because they are used to fund official activities required to accomplish the Executive Residence's mission of supporting the President.

It would be extremely challenging and possibly misleading to allocate costs separately to any of the above activities, since the majority of the costs incurred support multiple functions. Consider personnel costs, which at $10.9 million or 80% of the $13.7 million FY 2012 budget request, represent the single largest expense within the EXR budget. Most of the EXR staff perform a variety of functions. For example, household staff responsibilities range from supporting the First Family's needs to helping with events and maintaining the Private and State floors. "Shop" staff, such as carpenters, electricians, and engineers address the routine maintenance needs of the Residence, set up for tours, and support the physical requirements of events. Chefs prepare food for events and for the First Family. Management oversees all of the intersecting activities within the Executive Residence. This operating structure allows considerable flexibility, in recognition that Residence priorities continually evolve. Costs are not "locked" by category or type or function.

Within these caveats, however, expenses can be generally be categorized as follows:

"Day-to-Day Operating" Expenses: These costs, estimated at approximately $12.6 million for FY 2012, typically account for over 90% of total annual expenses. Examples of these types of expenses include personnel costs, food, flowers, kitchen, housekeeping, and other supplies needed in providing the functions listed above, including supporting the President and First Family, conducting events, and running a National museum.

"Mandatory" Costs: These costs, estimated at approximately $1 million in FY 2012, typically account for less than 10% of total annual expenses. Examples include utilities, annual maintenance contracts, and art insurance. However, from a budgetary perspective, these are still considered discretionary resources.

Reimbursable Expenses: It is a time-honored and well-accepted practice for the Executive Residence to host official and ceremonial events on behalf of other Executive Branch entities (such as State Dinners for the State Department), as well as events for non-governmental organizations and political events. Costs incurred specifically for these events, estimated at up to $3.5 million for FY 2012, are reimbursed to the EXR by the sponsoring entity, and are not funded by the Executive Residence appropriation. Note: the cost of these events is provided annually in a report to the Congress.

RENT

Mrs. EMERSON. And my last question has to do with the GSA rental payments. In addition to the Old and New Executive Office Buildings, how many locations does the Executive Office of the President occupy?

Ms. LAACKMAN. Currently—East Wing, West Wing, the Eisenhower Executive Office Building, the New Executive Office Building, as you mentioned. We have space at the Winder Building. We have space at 1800 G. There is office space for ONDCP that is in a different location. We have some town homes in Jackson Place. So we are in a variety of locations. It has been more spread out since 2001.

Mrs. EMERSON. Have you looked to—just in order to save money on rent and because I am not quite sure of the formula by which the GSA determines what rent is going to be—but that is another discussion and, fortunately, it doesn't have to do with you. Is there any way to consolidate—with the exception, I would say, of Jackson Place and, obviously, the two Executive Office Buildings? Is there any way to consolidate that so that you get more bang for the buck in budgets having everybody in one space?

Ms. LAACKMAN. That probably is more in the GSA area. I do know that when we finish the third phase in the renovation of the EEOB, there will be the ability to consolidate and move out of some of the space that is out there. The goal is to have us as close as we can be together, but there were obviously some more urgent space needs that happened in the previous administration and we had to do some shoring up. So until some of that is resolved, they put us where they needed to put us.

Mrs. EMERSON. When is that renovation going to be finished?

Ms. LAACKMAN. I don't know specifically the latest. We have it in our 2012 request. So at some point in fiscal year 2012. There are other projects that may affect the exact timeline.

TELEWORK

Mrs. EMERSON. And, finally, does the use of mobile technologies increase the use of telework and reduce space needs at all? I mean, it may not in—just because of the singular interests of the Executive Office of the President, as opposed if you work for the IRS or another agency.

Ms. LAACKMAN. As it relates to what I have seen in our budget, it doesn't generate savings, because it is not meant to be done on a full-time basis. But it has helped us with our work-life balance and has certainly helped us during snowstorms. So it has helped to keep productivity going. To the extent that there is not lost productivity, it is not necessarily a savings, but it is a good use of our dollars.

Mrs. EMERSON. Well, thank you. And that is understandable. I appreciate so much you being here.

I want to have your formal testimony submitted for the record.

[The information follows:]

OPENING STATEMENT FOR THE RECORD OF
ALLYSON LAACKMAN, CHIEF FINANCIAL OFFICER
EXECUTIVE OFFICE OF THE PRESIDENT
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

Good morning, Chairwoman Emerson and members of the Subcommittee. Thank you for giving me the opportunity to appear before you to present the Fiscal Year 2012 Budget Submission for the Executive Office of the President (EOP). As the Chief Financial Officer of the EOP, I am responsible for financial management oversight of the components located within the Executive Office of the President, including developing the EOP Congressional Budget Submission.

The consolidated fiscal year 2012 budget request for EOP Financial Services and General Government (FSGG) components is $739.8 million, which represents *a decrease of $32.1 million or 4.2 percent* from the FY 2010 enacted level. As the Nation works to rebuild and grow the economy, the Administration is committed to aggressively pursuing deficit control. Reducing domestic non-security discretionary spending in FY 2012 is an important step in this on-going effort. The FY 2012 Congressional Budget Submission demonstrates the EOP's commitment to responsibly reduce spending without compromising our ability to support the President in carrying out his Constitutional duties as the head of the Executive Branch of the Federal Government. This budget also supports the Vice President and policy advisors within the EOP, including those involved with national security, economic growth initiatives, oversight of Federal Government programs, and collaboration with the Congress.

In arriving at the EOP's total budget request, we required zero-based budgeting justifications from each component, analyzing their needs in relation to both the component-specific mission and the overall mission of the EOP. In most cases, funding levels were able to be reduced without negatively impacting that component's ability to fulfill its mission. For certain components, critical and unavoidable increases were identified, which necessitated requesting additional funding. The resulting net 4.2 percent reduction across FSGG components is a responsible approach toward long-term deficit reduction goals.

Specifically, the Fiscal Year 2012 budget request for the FSGG components in the EOP consists of:

- ***Salary and Expenses (S&E)*** *- $327.5 million, which represents a decrease of 2.5 percent or $8.5 million from the Fiscal Year 2010 enacted budget (the last year for which there is an enacted budget).*
- ***Office of National Drug Control Policy (ONDCP) Programs*** *- $332.3 million, which is a decrease of 16.6 percent or $66.1 million from the Fiscal Year 2010 enacted budget.*
- ***Office of Management and Budget (OMB)-Managed Programs*** *- $60 million for the Integrated, Efficient, and Effective Uses of Information Technology Initiative; and $20 million to continue funding the Partnership Fund for Program Integrity Innovation.*

This budget request supports approximately 1,552 EOP personnel, information technology, and other infrastructure needs, as well as critical drug control programs and long-term cost savings initiatives.

In addition to the funding for components under this Subcommittee's jurisdiction, the total EOP budget includes $57.9 million for two components which are under the jurisdiction of the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee: the Office of Science and Technology Policy and the Office of the United States Trade Representative. It also includes $3.4 million for the Council on Environmental Quality, which is under the jurisdiction of the Interior, Environment and Related Agencies Appropriations Subcommittee.

My presentation today will address the Fiscal Year 2012 funding requirements for each of the EOP Financial Services and General Government components and related accounts.

To highlight the Executive Office of the President's Financial Services and General Government components' FY 2012 budget submission, I offer the following remarks:

Compensation of the President: The Fiscal Year 2012 budget request of $450,000 includes $400,000 for the President's salary and $50,000 for the President's expense account. This represents no change from the Fiscal Year 2010 enacted budget.

The White House: The Fiscal Year 2012 request of $58.4 million and approximately 465 Full Time Equivalent staff (FTE) represents a decrease of $769,000 or 1.3 percent from the Fiscal Year 2010 enacted budget. This decrease represents a commitment to reduce spending associated with operations.

Executive Residence: The Fiscal Year 2012 request of $13.7 million and approximately 96 FTE represents a decrease of $180,000 or 1.3 percent from the Fiscal Year 2010 enacted budget. Similar to The White House account, this decrease represents a commitment to reduce spending associated with operations.

White House Repair and Restoration: The Fiscal Year 2012 request of $1.0 million represents a decrease of $1.5 million or 60.0 percent from the Fiscal Year 2010 enacted budget. The requested budget will be used to fund essential and emerging projects associated with the required maintenance, safety and health issues, and continued preventative maintenance of the White House.

Office of Administration (OA): The Fiscal Year 2012 request of $115.8 million, including $10.7 million for Capital Investment Plan (CIP) expenditures and approximately 225 FTE, represents a net increase of $568,000 or 0.5 percent from the Fiscal Year 2010 enacted budget. This net increase reflects an increase in S&E of $6.7 million which is offset in large part by a reduction of $6.1 million in CIP expenditures.

The increase in OA's S&E requirements is due primarily to moving expenses and space rent increases related to the completion of the various phases of the Eisenhower Executive Office Building modernization project, as well as to increases in contracted services, particularly for information technology. Also contributing to the increase in OA's Fiscal Year 2012 S&E requirement is the assumption by OA of Enterprise Services cost elements from the Special Assistance to the President (Office of the Vice President or OVP) account. The Enterprise Services initiative is the centralized management oversight of various "enterprise," or common services cost elements, including space rent, landline telephone services, and various payroll benefits (such as transit subsidies). The Office of Administration has successfully been managing many elements of Enterprise Services for the majority of EOP offices. Moving Enterprise Services previously funded in the OVP account to OA would further enhance EOP-wide

administrative operating efficiencies associated with centralized management oversight.

OA also completed a reprioritization of pending Information Technology (IT) projects within their Capital Investment Plan, deferring to future years those projects considered less critical, in an effort to reduce spending requirements for FY 2012. As a result, $6.1 million in projects previously planned for FY 2012 will be deferred to the out-years, allowing the CIP funding reduction to offset, in part, anticipated FY 2012 S&E operational cost increases previously mentioned.

CIP projects planned for FY 2012 can be grouped in three categories of initiatives:

- Operational Agility - $8.0 million to replace outdated and unsupported technologies with technology capable of supporting EOP requirements and to upgrade the EOP's IT Infrastructure with a focus on solutions that reduce the operational footprint and long-term costs to the EOP.
- Mobilization - $1.3 million to continue EOP's transition to a mobile-centric architecture by expanding the ability of users to access EOP systems and data through a variety of devices while ensuring compliance with security and records management requirements.
- Vigilant Information Security - $1.3 million to develop infrastructure that enhances continuous monitoring of the EOP network, with a focus on solutions that improve network security and tools that assist the EOP in adopting emerging and cost-efficient technologies.

National Security Council and Homeland Security Council: The Fiscal Year 2012 request of $13.1 million and approximately 86 FTE represents an increase of $843,000 or 6.9 percent from the Fiscal Year 2010 enacted budget. This increase is needed to fund staffing requirements commensurate with supporting the President's efforts on Cybersecurity, Weapons of Mass Destruction terrorism and Transborder Security, Information Sharing, Resilience Policy (including preparing for and responding to manmade or natural disasters), and Global Engagement.

Council of Economic Advisers: The Fiscal Year 2012 request of $4.4 million and approximately 29 FTE represents an increase of $203,000 or 4.8 percent from the Fiscal Year 2010 enacted budget. This increase is needed to fund additional staffing requirements for monitoring the state of the economy and assisting the President in developing economic policies promoting the growth of the economy, creating jobs, and increasing incomes and standards of living for all Americans.

Special Assistance to the President (OVP): The Fiscal Year 2012 request of $4.3 million and approximately 23 FTE represents a decrease of $276,000 or 6.0 percent from the Fiscal Year 2010 enacted budget. This net decrease reflects decreases associated with the proposed move of Enterprise Services costs, such as space rent, from the Special Assistance to the President account to the Office of Administration account, as discussed earlier, which is partially offset by modest increases in operations needed to support the mission and activities of the Vice President.

Official Residence of the Vice President: The Fiscal Year 2012 request of $307,000 and 1 FTE represents a decrease of $23,000 or 7.0 percent from the Fiscal Year 2010 enacted budget. This decrease represents a commitment to reduce spending associated with operations.

Unanticipated Needs: The Fiscal Year 2012 requirement of $1.0 million represents no change from the Fiscal Year 2010 enacted budget.

Office of Management and Budget:

- The Fiscal Year 2012 requirement for OMB S&E of $91.7 million and approximately 529 FTE represents a decrease of $1.2 million or 1.3 percent from the Fiscal Year 2010 enacted level. This decrease reflects various reductions in internal budget requirements offset in part by expected increases in other operating expenses such as rent.
- The Fiscal Year 2012 requirement for OMB-Managed Programs consists of $20 million, authorized through FY 2014, for a continuation of the Partnership Fund for Program Integrity Innovation (a decrease of $17.5 million or 46.7 percent from the Fiscal Year 2010 enacted budget) and $60 million to fund the Integrated, Efficient, and Effective Uses of Information

Technology Initiative, to be used for turning around troubled Federal IT projects, and promoting Federal data center consolidation and migrations to cloud-computing.

Office of National Drug Control Policy:

- The Fiscal Year 2012 requirement for ONDCP S&E is $23.4 million and approximately 98 FTE, including $250,000 for Policy Research. This request reflects a decrease of 20 FTE and $6.2 million or 20.8 percent from the Fiscal Year 2010 enacted budget.
- The Fiscal Year 2012 requirement for ONDCP Programs consists of $200 million for the High Intensity Drug Trafficking Areas Program and $143.6 million for Other Federal Drug Control Programs, less a rescission of $11.3 million for the Counterdrug Technology Assessment Center program. Together this request nets to $332.3 million, a decrease of $66.1 million or 16.6 percent from the Fiscal Year 2010 enacted budget.

ONDCP Director Kerlikowske will provide the Subcommittee further information concerning ONDCP's budget request in his testimony.

Chairwoman Emerson, I look forward to working with you and the other members of the Subcommittee as the budget process proceeds.

Allyson Laackman, Chief Financial Officer, Executive Office of the President

Allyson Laackman joined the Administration on January 21, 2009, as the Chief Financial Officer the Executive Officer of the President (EOP). As CFO, Laackman oversees the financial management of the EOP and provides financial and operational briefings and advice to senior management. She also directs the development and execution of the EOP's $800 million annual budget, and manages the EOP's procurement, travel, accounting, and financial policy and oversight activities.

Prior to her appointment in the Obama Administration, Laackman served as the Finance Director for the Obama-Biden Presidential Transition, where she directed the financial management and reporting for both non-profit and federally funded activities supporting the Transition's operations. She also served as the Controller for the Obama for America National Presidential Campaign.

Laackman's private sector experience included serving for eight years as a Chief Financial Officer, first at IFX, Corporation, a publicly registered capital markets firm, and then with French American Securities, a privately held stock brokerage firm. She also worked for over ten years at the former public accounting and consulting firm, Arthur Andersen, where she was a manager specializing in financial markets audits and business process consulting.

Laackman, a registered CPA, is a graduate of the University of Illinois, with an AB in Finance and a Masters in Accountancy Science. She and her husband Don have two college-aged children.

Mrs. EMERSON. I am sorry that I cut off everything. But, fortunately, Barbara got to get her questions in, too. And so we will submit all of our testimonies for the record.

And, really, thanks very much for what you do. I know that it is a tough job. And I always said that if you were a CPA—it was to young people specifically—it is a great opportunity. You never know where you may find yourself.

Ms. LAACKMAN. I appreciate that. It is a wonderful job, and it is a great opportunity, and it is a pleasure to be here today. Thank you.

Mrs. EMERSON. Thank you very much.

Mr. SERRANO. Thank you.

Mrs. EMERSON. We are done.

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