

CRS Report for Congress

Judiciary Appropriations for FY2007

Updated January 26, 2007

Lorraine H. Tong
Analyst in American National Government
Government and Finance Division



Prepared for Members and
Committees of Congress

Judiciary Appropriations for FY2007

Summary

The federal Judiciary, like the executive and legislative branches, depends on appropriated funds for its operations. Those funds — which comprise about two-tenths of 1% (0.2%) of the entire federal budget — are used to pay salaries for judges and other judicial employees, security for the courts, rent for court facilities, defender services, information technology, and other expenses to fulfill the Judiciary's mission to provide equal justice under the law. The Judiciary also receives some non-appropriated funds from fee collections and some carryover funds from prior years to pay for its operations. Changes in judiciary funding that occur year-to-year generally reflect inflation costs, priorities within each account, new laws and policies, and workload factors. From time to time, Congress may provide supplemental appropriations or enact rescissions that affect the judiciary budget.

As a co-equal branch of government, the Judiciary presents its budget request to the President, who in turn transmits the request to Congress unaltered. Appropriations for the Judiciary in FY2007 are provided under Title IV of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies appropriations bill (H.R. 5576). The FY2007 budget request for the Judiciary was \$6.26 billion — a \$540.1 million increase (9.4%) above its FY2006 appropriation of \$5.72 billion. On June 14, 2006, the House passed H.R. 5576 by a vote of 406-22. Title IV of the bill contained \$6.063 billion in funding for the Judiciary — a \$342.8 million (6.0%) increase over the FY2006 enacted amount, but \$197.3 million (3.2%) less than the FY2007 request. The House-passed levels for the Judiciary are the same as the amount reported by the House Appropriations Committee on June 9, 2006. On June 20, 2006, the Senate Appropriations Committee approved H.R. 5576, including \$6.098 billion for the Judiciary — a \$378 million (6.6%) increase over the FY2006 level, but \$162.1 million (2.6%) less than the FY2007 request. Congress did not take further action on the bill before the 109th Congress adjourned, and funding for the Judiciary is currently provided under H.J.Res. 102 (P.L. 109-383), a continuing resolution through February 15, 2007. On January 11, 2007, Chief Justice John G. Roberts, Jr., contacted congressional leaders to express concern about reports of a possible year-long continuing resolution, and to revise the FY2007 budget request to \$6.029 billion — \$231 million (or 3.7%) less than the original request of \$6.260 billion, and \$309 million (or 5.4%) more than the FY2006 enacted amount of \$5.720 billion.

This report discusses the judiciary appropriations process, including how the judiciary budget request is prepared and submitted to Congress. It then addresses the judiciary budget request for FY2007, noting changes in the overall budget and the primary factors behind the requested increases, and provides the House-passed and Senate committee-approved amounts for each account. Details about the FY2007 request by budget groups and account are provided along with comparisons with the FY2006 appropriated levels. The report concludes with a discussion of selected issues and legislation that may have a budgetary impact on the judiciary budget. It will be updated upon passage of relevant legislation, or as other events warrant.

Contents

Most Recent Developments	1
Introduction	1
Judiciary Appropriations Process	2
Judiciary Budget Request For FY2007	3
Request by Budget Groups and Account	5
Congressional Action on FY2007 Budget	7
House Committee Hearings	7
House Committee and Floor Action	7
Senate Committee Action	7
Highlights of the FY2007 Budget	8
Supreme Court	8
U.S. Court of Appeals for the Federal Circuit	9
U.S. Court of International Trade	9
Courts of Appeals, District Courts, and Other Judicial Services	9
Administrative Office of the U.S. Courts (AOUSC)	11
Federal Judicial Center	12
United States Sentencing Commission	12
Judiciary Retirement Funds	12
Administrative Provisions	13
Related Issues and Legislation	14
Judicial Pay	14
Rental Fees Paid to General Services Administration	16

List of Tables

Table 1. Judiciary Appropriations, FY2006 and FY2007	6
------------------------------------------------------------	---

Judiciary Appropriations for FY2007

Most Recent Developments

Since October 1, 2006, the Judiciary has been funded at the FY2006 level through a series of continuing resolutions. H.J.Res. 102 (P.L. 109-383), the third continuing resolution, provides funding for the Judiciary through February 15, 2007. A year-long continuing resolution is reportedly under consideration.

In his January 11, 2007, letters to the Speaker of the House and the Majority and Minority leaders in both the House and the Senate, Chief Justice John G. Roberts, Jr., expressed his concern about a possible year-long continuing resolution. The Chief Justice stated that funding at the FY2006 level for FY2007 would have “a severe impact on court operations, our judicial system, and potentially all U.S. citizens.” Specifically, he cited the Administrative Office of the U.S. Court’s calculations that “almost 2,400 probation and pretrial services officers and clerks’ offices staff currently employed by the courts would be lost. This reduction of almost 12 percent of the courts’ staff would have to be accomplished through hiring freezes, furloughs and ultimately the firing of these dedicated employees.” He emphasized that public safety would be at risk because the appropriate level of supervision would not be available for felons released from prison and for defendants during the pretrial stage. He also expressed concern that there would be no funds to pay court-appointed private attorneys for the last 10 weeks of FY2007 to ensure the timely disposition of criminal cases.

In his letter, the Chief Justice requested that the Judiciary not be subject to a budget freeze, and revised the FY2007 judiciary budget to \$6.029 billion. This amount would be \$231 million (or 3.7%) less than the original request of \$6.260 billion, but \$309 million (or 5.4%) more than the FY2006 enacted amount of \$5.720 billion. He stated that the revised amount would be needed for the federal courts to fulfill their constitutional and statutory responsibilities.¹

Introduction

The federal Judiciary, like the executive and legislative branches, depends on appropriated funds for its operations. Those funds — which comprise about two-tenths of 1% (0.2%) of the entire federal budget — are used to pay salaries for judges

¹ The Chief Justice noted that there is precedent for his request. In 1996, then-Chief Justice William Rehnquist asked Congress not to include the Judiciary and certain law enforcement agencies from a full-year continuing resolution, and Congress responded by appropriating funds above the freeze.

and other judicial employees, security for the courts, rent for court facilities, defender services, information technology, and other expenses to fulfill the Judiciary's mission to provide equal justice under the law. The Judiciary also receives some non-appropriated funds from fee collections and some carryover funds from prior years to pay for its operations. Changes in judiciary funding that occur year-to-year to reflect inflation costs, priorities within each account, new laws and policies, and workload factors. In formulating its budget request (discussed in the next section), the Judiciary also takes into consideration concerns regarding the federal budget deficit, and has stated its commitment to contain costs. From time to time, Congress may provide supplemental appropriations or enact rescissions that affect the judiciary budget.

This report discusses the judiciary appropriations process, including how the judiciary budget request is prepared and submitted to Congress. It then addresses the judiciary budget request for FY2007, noting changes in the overall budget and the primary factors behind the increases. The report proceeds to detail the FY2007 request by budget groups and account, comparing the accounts with the FY2006 budget as enacted, and provides the House-passed and Senate committee-approved amounts for the Judiciary in the Title IV of Transportation/Treasury appropriations bill. The report concludes with a discussion of selected issues and legislation that may have a budgetary impact on the judiciary budget.

Judiciary Appropriations Process

The judiciary appropriation process begins when the chairmen of program committees² of the Judicial Conference — the principal policy-making body concerned with the administration of the United States Courts — meet with the Conference's Budget Committee in June or July of the year before the President submits his budget.³ (For example, these meetings took place in July 2005 for the FY2007 budget request submitted by the President in February 2006.) At the meeting, the committees work out various program budget amounts within the judiciary overall budget. Then, at the Judicial Conference biannual meeting in September, the Budget Committee presents its judiciary budget report to the conference, which considers and then approves a judiciary budget request. As

² Program committees have jurisdiction over specific judiciary programs or functions. They include Bankruptcy System, Criminal Law, Information Technology, Judicial Resources, Magistrate Judges System, Court Administration and Case Management, Defender Services, Judicial Security, and Space and Facilities.

³ Congress created the Conference of Senior Circuit Judges in 1922, then changed the name to the Judicial Conference of the United States in 1948 (28 U.S.C., Sec. 331). The Chief Justice of the United States is the presiding officer of the Conference. Conference membership comprises the chief judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit. The Judicial Conference also supervises the Director of the Administrative Office of the U.S. Courts, who also serves as Secretary of the Conference. There are currently 20 conference committees, and each makes recommendations within its jurisdiction (e.g., budget, court administration, codes of conduct, and security). For more information about the conference and its committees, see [<http://www.uscourts.gov/judconf.html>].

required by statute,⁴ the Director of the Administrative Office of the U.S. Courts (AOUSC)⁵ transmits the judiciary budget estimate for the next fiscal year to the Office of Management and Budget (OMB) before October 16. AOUSC budget staff consult and work with an OMB budget examiner to mark up the judiciary page in the President's Budget Appendix. During this period (before the President submits his budget to Congress), the Judicial Conference Budget Committee and the AOUSC Director have authority to make technical adjustments in the judiciary budget request. The Conference Budget Committee typically meets again in January, the month prior to the President's February submission of the budget request, to recommend any needed adjustments to the request.

When the President's budget is sent to Congress, the President transmits the judiciary request unaltered because it is a co-equal branch of government.⁶ The AOUSC later delivers the *Congressional Budget Summary* and a more detailed *Judiciary Budget Justification* document to the House and Senate Appropriations committees. Funding for the Judiciary is currently provided under Title IV of the Transportation/Treasury appropriations bill, one of the regular appropriations bills that Congress considers each year.⁷

At hearings before House and Senate Appropriations subcommittees, the chair of the Judicial Conference Budget Committee and the AOUSC Director present prepared statements and answered committee questions concerning the judiciary budget request. These presentations are separate from testimony presented to the subcommittees at later hearings by a Justice or Justices regarding the Supreme Court's budget request.

Judiciary Budget Request For FY2007

The FY2007 original budget request for the Judiciary was \$6.26 billion — an increase of \$540.1 million, or 9.4%, above its FY2006 appropriation of \$5.72

⁴ 31 U.S.C., Sec. 1105(a)(32)(b).

⁵ AOUSC is the central support entity that provides administrative, management, program, and information technology to the U.S. courts. It also provides support to the Judicial Conference of the United States, and implements conference policies and applicable federal statutes and regulations.

⁶ The budget for the judicial branch is accorded some independence by 31 U.S.C. 1105(a)(32)(b), which requires the President to transmit the proposed budget request to Congress unchanged. This process has been in operation since 1939.

⁷ At the beginning of the 109th Congress, both the House and Senate Committees on Appropriations reorganized their subcommittee structures. Among the changes in jurisdiction was the transfer of judiciary appropriations from the Commerce, Justice, State, the Judiciary, and Related Agencies appropriations bill to the Transportation/Treasury appropriations bill. At the beginning of the 110th Congress, the subcommittees were again reorganized, and jurisdiction of judiciary appropriations was transferred to the Senate Appropriations Subcommittee on Financial Services and General Government, and to the House Subcommittee on Financial Services and General Government.

billion.⁸ Of the \$6.26 billion requested, \$5.87 billion would be allotted for discretionary spending,⁹ and \$0.39 billion for mandatory spending.¹⁰ The discretionary spending portion of the judiciary budget request for FY2007 increased by 9.9% over the FY2006 appropriation. In comparison, the discretionary spending request increased during the same period by 12.1% in the legislative branch and 3.2% in the executive branch.¹¹ In each of the branches, however, the overall increases include a range of increases (and sometimes decreases) for individual accounts and functions.

The FY2007 judiciary budget request includes funding for 33,631 full-time-equivalent (FTE) positions — an increase of 417 FTEs, or 1.3% over the FY2006 estimate of 33,214 FTEs. The additional positions are requested mainly to continue efforts to restore some positions lost in previous years,¹² as well as to provide for expected workload increases.

In *The Judiciary Fiscal Year 2007 Congressional Budget Summary*, the judiciary budget request acknowledged the fiscal constraints Congress faces, and reiterated its commitment to control and restrain spending by continuing to make cost containment a major priority. Of the \$540.1 million requested increase, \$461.8 million (86%) would fund pay adjustments and other inflation-related increases needed to maintain current services:

- \$181.6 million for pay and benefit rate increases, and non-pay inflationary adjustments;

⁸ In this report, the Judiciary's FY2006 appropriation includes \$18 million in supplemental appropriations and a 1% across-the-board cut enacted, as part of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, P.L. 109-148.

⁹ Discretionary spending is spending that the President and Congress control through annual appropriations bills.

¹⁰ Mandatory spending is spending controlled by permanent law, rather than annual appropriations. Budget authority may also provide for certain programs in annual appropriations acts and is treated as mandatory because the authorizing legislation obligates the government to make payment. Mandatory spending in the Judiciary comprises the pay of the U.S. Supreme Court Justices, federal judges' salaries, and payment to the Judicial Retirement Funds.

¹¹ The legislative branch's FY2007 request of \$4.3 billion for discretionary spending is about 12.1% above the \$3.8 billion appropriated for FY2006. The executive branch discretionary request for FY2007 is \$860.6 billion, or 3.2% above the FY2006 appropriation of \$834.2 billion. The size and direction of the changes among accounts and function within the executive branch is noteworthy. For example, the FY2007 request for the Corps of Engineers is a *decrease* of 11.2% and the Department of State and Other International Programs is an *increase* of 12.2% over the FY2006 appropriation. Data are from "Table S-3. Growth in Discretionary Budget Authority by Major Agency," *Budget of the United States Government Fiscal Year 2007*, p. 315, Office of Management and Budget. Table S-3 data exclude supplementals and emergencies.

¹² According to the judiciary budget request, over 1,500 court employee positions were lost from FY2003 to FY2005 due to budget constraints.

- \$138.0 million to replace non-appropriated sources of funds used to support basic requirements in FY2006 with direct appropriations;¹³
- \$50.2 million to pay for increased rent to the General Services Administration (GSA) for court facilities, and related costs;¹⁴
- \$92.0 million to pay for changes in the number of active and senior Article III judges; increases in mandatory payments to retirement trust funds for judges; workload changes in Defender Services; security related adjustments; and maintenance, support, and continued development of ongoing information technology systems.

The judiciary budget request stated that the remaining \$78.3 million (14%) of the \$540.1 million increase in the budget request is for expected workload changes and program enhancements:

- \$24.4 million for additional staff and associated costs;
- \$23.7 million for panel attorney¹⁵ rate increases;
- \$30.2 million for security-related systems and equipment, information technology, courtroom technology improvements, the Supreme Court roofing system project, additional magistrate judges and staff, and start-up costs for new federal defender organizations.¹⁶

Request by Budget Groups and Account

The judiciary appropriation in Title IV of the Transportation/Treasury appropriation bill is divided into several large groupings (e.g., Supreme Court, U.S. Courts of Appeals for the Federal Circuit, etc.), some of which are, in turn, divided into separate budget accounts. The major groupings and budget accounts in the FY2006 judiciary appropriation and the FY2007 budget request are shown in **Table 1** below. The table also shows the funding amount enacted for FY2006, the FY2007 funding request, the House-passed amount, and the Senate-committee approved amount. Details of each budget group and account follow the table.

¹³ This funding would be for replacing an expected shortfall in non-appropriated funding sources (additional fee collections, mostly from court filing fees, and carryover funds from previous years).

¹⁴ Of this increased amount, \$46.9 million is requested under the Salaries and Expenses account. The balance is divided among other accounts, such as Court Security.

¹⁵ Panel attorneys are private practice lawyers who serve on a panel of attorneys maintained by the district or appellate court. The court assigns them to represent defendants who do not have the financial means to retain their own legal counsel. Funds to pay them come from the Defender Services account.

¹⁶ AOUSC provided this information and the request breakdown.

Table 1. Judiciary Appropriations, FY2006 and FY2007

(Budget Authority, millions of dollars)

Budget Groupings and Accounts	FY2006 Enacted	FY2007 Request	FY2007 House Passed	FY2007 Senate Committee
Supreme Court				
— Salaries and Expenses	\$60.1	\$63.4	\$63.4	\$63.4
— Building and Grounds	5.6	13.0	13.0	13.0
<i>Subtotal</i>	65.7	76.4	76.4	76.4
U.S. Court of Appeals for the Federal Circuit	23.8	26.3	26.0	25.3
U.S. Court of International Trade	15.3	16.2	16.2	16.2
Courts of Appeals, District Courts, and Other Judicial Services				
— Salaries and Expenses ^a	4,330.2	4,691.2	4,560.1	4,587.3
— Court Security	368.3	410.3	400.3	397.7
— Defender Services	709.8	803.9	750.0	761.1
— Fees of Jurors and Commissioners	60.7	63.1	63.1	63.1
<i>Subtotal</i>	5,469.0	5,968.5	5,773.5	5,809.3
Administrative Office of the U.S. Courts	69.6	75.3	73.8	74.3
Federal Judicial Center	22.1	23.8	23.5	23.4
United States Sentencing Commission	14.3	15.7	15.5	15.3
Judicial Retirement Funds	40.6	58.3	58.3	58.3
Total	\$5,720.4	\$6,260.5	\$6,063.2	\$6,098.4

Source: Data for this table were provided by the Administrative Office of the U.S. Courts, and the House Appropriations Committee (*Congressional Record*, June 14, 2006, pp. H3969-H3970), and the Senate Committee on Appropriations report (S.Rept. 109-293) accompanying H.R. 5576.

Notes: The FY2006 enacted figure includes a 1% across-the-board government-wide rescission and the supplemental \$18 million contained in P.L. 109-148. Percentages and totals may not add up due to rounding. The Vaccine Injury Trust Fund (about \$4 million) is included in the Salaries and Expenses account of the Courts of Appeals. Subparts may not add up to totals due to rounding.

a. The Vaccine Injury Trust Fund (slightly less than \$4 million) is included in the Salaries and Expenses account.

Congressional Action on FY2007 Budget

House Committee Hearings

The House Appropriations Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary, and District of Columbia held a hearing on the Supreme Court's budget request on April 4, 2006. Supreme Court Justices Anthony Kennedy and Clarence Thomas presented testimony on the Supreme Court request. The following day, on April 5, the subcommittee held a separate hearing and heard testimony on the Judiciary's overall budget request for FY2007 from Judge Julia Smith Gibbons, United States Circuit Judge for the Sixth Circuit Court of Appeals and Chair of the Budget Committee of the Judicial Conference of the United States, and then-Director of the Administrative Office of the U.S. Courts Leonidas R. Mecham.

During the first hearing on the FY2007 Supreme Court budget request, Representative Joseph Knollenberg, chairman of the subcommittee, said that, "given the dangers of terrorism and the high profile of the justices and the Supreme Court building, as chairman, I think that security should be the top priority for any increases in budgetary resources." Chairman Knollenberg also said at the second hearing that that ensuring adequate funds for court security is "a top priority for me."

Among other issues raised at the hearings were judicial pay, televising Supreme Court proceedings, rent paid to GSA, the Supreme Court building modernization project, and workload.

House Committee and Floor Action

On June 6, 2006, the House Appropriations Committee approved H.R. 5576 by voice vote, including \$6.063 billion in funding for the Judiciary — a \$342.8 million (6.0%) increase over the FY2006 level, but \$197.3 million (3.2%) less than the FY2007 request. The committee also adopted an amendment to extend a temporary federal district judgeship in Wichita, Kansas. Three days later, on June 9, 2006, the committee reported H.R. 5576 (H.Rept. 109-495).

On June 14, 2006, the House passed H.R. 5576 (by a vote of 406-22) providing the same level of funding for the Judiciary as was reported by the committee.

Senate Committee Action

On July 20, 2006, the Senate Appropriations Committee approved H.R. 5576 (by a vote of 28-0), including \$6.098 billion in funding for the Judiciary — a \$378 million (6.6%) increase over the FY2006 level, but \$162.1 million (2.6%) less than the FY2007 request. In the committee report (S.Rept. 109-293), the committee expressed its concerns about several issues; among them are the following:

- **Staffing:** The committee recommended that the Judicial Conference make the retention of personnel a top priority. The committee also expressed concern about workload and staffing needs of the district

courts along the U.S. southwest border, resulting from due to increased immigration funding law enforcement activities. It directed AOUSC to provide a hiring plan (in its FY2007 financial plan) for positions that would be funded for magistrate judges and staff, and to keep the committee apprised as the positions are filled. It also directed AOUSC to examine staffing formulas to ensure that they reflect changing trends, and report to Congress.

- **Courthouse construction:**¹⁷ Noting that the self-imposed courthouse construction moratorium will end in September 2006, the committee urged the Judiciary to carefully weigh its space needs with concerns about the rent it pays to GSA. It also called for adequate checks and balances to ensure that future construction needs and requests are “subjected to the highest standards of cost-effectiveness.” It directed AOUSC to report to the committee, no later than 120 days after enactment of this bill, on the steps that have been and are being taken for more efficient use of space in the district and circuit courts. Further, it encouraged the Judiciary to continue working with GSA on fair and accurate rent charges, and also to correct any inequities.
- **Carryover funds:** The committee directed that carryover funds be used to meet current and projected needs before enhancing any program. The AOUSC is to submit separately in future financial plans, for House and Senate appropriations committees’ approval, all sources of carryover funds and their desired application.

Highlights of the FY2007 Budget

Supreme Court. For FY2007, the total request for the Supreme Court is \$76.4 million — a 16.2% increase over the FY2006 appropriation. The request is for two accounts: (1) Salaries and Expenses — \$63.4 million requested for FY2007, compared with the FY2006-appropriated amount of \$60.1 million, and (2) Care of the Building and Grounds¹⁸ — \$13.0 million requested for FY2007, compared with \$5.6 million appropriated for FY2006. The Salaries and Expenses account change includes \$390,000 in increased funding for five full-time positions (one contract specialist, two security analysts, one new server administrator, and one public information office support person). By far the largest increase was in the Buildings and Grounds account, which grew by \$7.4 million (132.7%). This request includes funds to repair the roofing system on the Supreme Court building, maintenance costs of the court building and grounds operations, and to continue the building

¹⁷ For an examination of courthouse construction issues, see CRS Report 98-527, *Federal Courthouse Construction*, by Stephanie Smith.

¹⁸ This account is for the expenditure by the Architect of the Capitol (AOC). The AOC provides for the structural and mechanical care of the Supreme Court Building and Grounds, but not for the custodial care, which is provided for under the Supreme Court Salaries and Expenses account. The AOC responsibilities are authorized in the act of May 7, 1934 (48 Stat. 668). The FY2007 request includes funding for 35 FTEs — the same as the FY2006 level.

modernization project already in progress. The House approved the full amount requested for this account. The Senate committee also approved the full amount.

U.S. Court of Appeals for the Federal Circuit. Appeals to the U.S. Court of Appeals for the Federal Circuit come from all 94 federal district courts, the U.S. Court of Federal Claims, the U.S. Court of International Trade, and the U.S. Court of Appeals for Veterans' Claims.¹⁹ The FY2007 request for this account is \$26.3 million — a \$2.5 million (10.6%) increase over the \$23.8 million appropriated for FY2006. The request provides for pay and other inflationary adjustments, increased health benefit costs, and increased rental costs related to space for senior judges. The requested increase also includes \$926,000 for information technology upgrades, infrastructure requirements for a disaster recovery plan, and the implementation of courtroom technology in two of its three courtrooms. The House approved \$26.0 million for this account — a \$2.2 million increase over the FY2006 level, but \$0.3 million less than the FY2007 request. The Senate committee approved \$25.3 million — a \$1.5 million increase over the FY2006 level, but \$1.0 million less than the FY2007 request.

U.S. Court of International Trade. This court has exclusive national jurisdiction regarding civil actions against the United States, its agencies, and officers arising from federal laws governing import transactions. It also has jurisdiction over certain civil actions brought by the U.S. related to import transactions and the administration and enforcement of federal customs and international trade laws. The FY2007 request is \$16.2 million — a \$0.9 million (5.5%) increase over the FY2006 appropriation of \$15.3 million that the judiciary budget submission ascribes largely to increases in pay and benefits. The House approved the full amount requested for this account. The Senate committee also approved the full amount.

Courts of Appeals, District Courts, and Other Judicial Services. This budget group includes 12 of the 13 courts of appeals²⁰ and 94 district judicial courts located in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the territories of Guam and the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Making up about 95% of the judiciary budget, the four accounts in the group — salaries and expenses, court security, defender services, and fees of jurors and commissioners — fund most of the day-to-day activities and operations of the federal circuit and district courts.

¹⁹ In addition, the Court of Appeals may also hear appeals on certain administrative agencies' decisions, including the U.S. Merit Systems Protection Board, the Boards of Contract Appeals, the Board of Patent Appeals and Inferences, and the Trademark Trial and Appeals Board. This court may also review the decisions of the U.S. International Trade Commission, the Office of Compliance, and the Government Accountability Office Personnel Appeals Board.

²⁰ The U.S. Court of Appeals for the Federal Circuit, one of the 13 courts of appeal, has its own budget account, as noted above.

Salaries and Expenses. The FY2007 Salaries and Expenses request²¹ for this budget group is \$4,691.2 million²² — a \$361.0 million (8.3%) increase over the FY2006 level of \$4,330.2 million. According to the budget request, about 99% of this increase is required for pay increases and other adjustments needed to maintain the courts' current services. For example, of the \$361.0 million increase requested, \$106.7 million is requested for pay and benefit adjustments for court personnel. Another \$46.9 million of the increase is requested to pay increased rent to GSA and related costs, such as equipment.²³ In addition, \$42.6 million is requested for the Judiciary Technology Fund to support existing and newly installed information technology systems, and to continue the implementation of new information systems. Another increase of \$22.1 million would fund 257 FTEs — additional support staff needed to address the courts' anticipated workload increase during the year (as a result of an expected increase in the number of immigration-related cases along the southwest border with Mexico).²⁴ Finally, according to the judiciary budget request, to maintain the same level of services provided in FY2006, a \$115.1 million increase is needed in this account for FY2007 because of an anticipated shortfall of funds from fee collections and carryover funds from previous years. The House approved \$4,560.1 million²⁵ for this account — a \$229.9 million increase over the FY2006 level, but \$131.1 million less than the FY2007 request. The Senate committee approved \$4,587.3 million — a \$257.1 million increase over the FY2006 level, but \$103.9 million less than the FY2007 request.

Court Security.²⁶ This account provides for protective guard services, security systems, and equipment for courthouses and other federal facilities to ensure the safety of judicial officers, employees, and visitors. Under this account, a major portion of the funding is transferred to the U.S. Marshal Service for administering the Judicial Facility Security Program.²⁷ The FY2007 request is \$410.3 million — a \$42.1 million (11.4%) increase over the FY2006 appropriation of \$368.3 million. This increase is reportedly driven by pay and benefit adjustments and other

²¹ According to the budget request, in addition to appropriated funds, the Salaries and Expenses account receives other funds. These funds include current year fee collections, carryover of fee balances from the prior year, and no-year appropriation balances. In FY2007, these non-appropriated funds are projected to total \$285.9 million.

²² This amount includes \$4.0 million for the Vaccine Injury Trust Fund.

²³ The Judiciary's FY2007 request for rent paid to GSA is \$997.8 million — a \$32.4 million (3.3%) increase over the \$965.5 million FY2006 appropriation.

²⁴ Workload increases are expected from cases created by an additional 1,500 border patrol agents, positions for whom have recently been funded. The additional FTEs are reportedly needed for additional probation and pretrial service officers and clerks' office staff.

²⁵ This amount includes \$4.0 million for the Vaccine Injury Trust Fund.

²⁶ For an examination of judicial security issues and legislation, see CRS Report RL33464, *Judicial Security: Responsibilities and Current Issues*, by Lorraine H. Tong, and CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 109th Congress*, by Nathan James.

²⁷ In 1983, the Judiciary established the Judicial Facility Security Program, a program that provides court security officers who are responsible for entry control, interior courthouse security, and security systems and equipment.

adjustments needed to maintain current services. The increase would also cover the costs for 34 additional court security officers expected to be needed during FY2007. Payment to the Federal Protective Service (FPS)²⁸ is also covered under this account. The FY2007 request for FPS is \$67.9 million — a \$7.4 million increase over the FY2006 appropriation of \$60.5 million. In addition, \$16.8 million is requested for security systems, perimeter (outside the building) security, and equipment for court security and for probation and pretrial service offices. An additional \$6.6 million is requested to replace VCRs with digital video recorders. The House approved \$400.3 million for this account — a \$32.0 million increase over the FY2006 level, but \$10 million less than the FY2007 request. The Senate committee approved \$397.7 million for this account — a \$29.4 million increase over the FY2006 level, but \$12.6 million less than the FY2007 request.

Defender Services. This account funds the operations of the federal public defender and community defender organizations, and the compensation, reimbursement, and expenses of private practice panel attorneys appointed by the courts to serve as defense counsel to indigent individuals accused of federal crimes. The FY2007 request is \$803.9 million — a \$94.1 million (13.3%) increase over the FY2006 appropriation of \$709.8 million. The increase requested is reportedly to provide for pay increases and other inflationary adjustments, and to fund workload increases arising from Supreme Court rulings. The request also provides for the start-up of new federal defender organizations scheduled to open in FY2007. Currently, five judicial districts are not served by a Federal Defender Office: Alabama (Northern), Georgia (Southern), Kentucky (Eastern), Mississippi (Northern), and the Commonwealth of the Northern Mariana Islands. The requested funding would provide for 80 FTEs to cope with the projected caseload increase of 5,500 cases. The House approved \$750 million for this account — a \$40.2 million increase over the FY2006 level, but \$53.8 million less than the FY2007 request. The Senate committee approved \$761.1 million for this account — a \$51.3 million increase over the FY2006 level, but \$42.8 million less than the FY2007 request.

Fees of Jurors and Commissioners. This account funds the fees and allowances provided to grand and petit jurors, and the compensation of jury and land commissioners. The FY2007 request is \$63.1 million — a \$2.4 million (3.9%) increase over the FY2006 appropriation of \$60.7 million. The increase is due mainly to inflationary increases associated with expenses paid to jurors (including meals and lodging for sequestered jurors, and transportation to crime scenes to view evidence). The House approved the full amount requested for this account. The Senate committee also approved the full amount.

Administrative Office of the U.S. Courts (AOUSC). As the central support entity for the Judiciary, the AOUSC provides a wide range of administrative, management, program, and information technology services to the U.S. courts. In addition, the AOUSC provides support to the Judicial Conference of the United

²⁸ FPS, previously under GSA jurisdiction, became a division of U.S. Immigration and Customs Enforcement of the Department of Homeland Security in March 2003. The mission of FPS officers is to provide security and law enforcement at the federal facilities nationwide. See [<http://www.ice.gov/pi/news/factsheets/fps061104.htm>] for more information about the FPS.

States, and implements conference policies and applicable federal statutes and regulations. The FY2007 request for this account is \$75.3 million — a \$5.7 million (8.3%) increase over the FY2006 level of \$69.6 million. The increase is reportedly for pay increases and other inflationary adjustments and for the anticipated reduction in non-appropriated funds.²⁹ The House approved \$73.8 million for this account — a \$4.2 million increase over the FY2006 level but \$1.5 million less than the FY2007 request. The Senate committee approved \$74.3 million for this account — a \$4.7 million increase over the FY2006 level, but \$1.0 million less than the FY2007 request.

Federal Judicial Center. As the Judiciary's research and education entity, the center undertakes research and evaluation of judicial operations for the Judicial Conference committees and the courts. In addition, the center provides judges, court staff, and others with orientation and continuing education and training. The center's FY2007 request is \$23.8 million — a \$1.7 million (7.5%) increase over the FY2006 appropriation of \$22.1 million. The increase is reportedly to fund adjustments to pay and other expenses due to inflation, and also to restore staff to the FY2005 level (nine additional FTEs). The House approved \$23.5 million for this account — a \$1.4 million increase over the FY2006 level, but \$0.3 million less than the FY2007 request. The Senate committee approved \$23.4 million for this account — a \$1.3 million increase over the FY2006 level, but \$0.4 million less than the FY2007 request.

United States Sentencing Commission. The commission promulgates sentencing policies, practices, and guidelines for the federal criminal justice system. The FY2007 request is \$15.7 million — a \$1.4 million (10.4%) increase over the FY2006 appropriation of \$14.3 million. According to the budget request, the increase would provide for pay increases and other inflationary adjustments, and five FTE positions in the research and data collection area for one year. Supreme Court decisions and recent legislation have reportedly increased the commission's workload, and the need for data collection and analytical requirements.³⁰ The House approved \$15.5 million for this account — a \$1.2 million increase over the FY2006 level, but \$0.2 million less than the FY2007 request. The Senate committee approved \$15.3 million for this account — a \$1.0 million increase over the FY2006 level, but \$0.4 million less than the FY2007 request.

Judiciary Retirement Funds. This mandatory account provides for three trust funds that finance payments to retired bankruptcy and magistrate judges, retired Court of Federal Claims judges, and spouses and dependent children of deceased

²⁹ The AOUSC also receives non-appropriated funds from fee collections and carryover balances to supplement its appropriation requirements. In addition, other judiciary accounts reimburse the AOUSC for the support it provides in information technology development and support services in direct support of the courts, the security program, and defender services.

³⁰ On Jan. 12, 2005, the Supreme Court's twin majority opinions in *United States v. Booker* and *United States v. Fanfan* made federal sentencing guidelines advisory, and also declared certain enhancements to the guidelines unconstitutional. It is expected that a significant number of inmates would likely ask district and appellate courts to reconsider sentences (imposed prior to *Booker/Fanfan*) which would result in increased workload for the courts.

judicial officers. The FY2007 request is for \$58.3 million — a \$17.7 million (43.6%) increase over the FY2006 appropriation of \$40.6 million. The requirements for this account are calculated annually by an independent actuary company.³¹ The large increase reflects a change in methodology that a new actuary company has adopted. In order to more accurately project future liabilities that had not been taken into account in the past, the new methodology included a larger population of people who are likely to join the retirement system. The House approved the full amount requested for this account. The Senate committee also approved the full amount.

Administrative Provisions

Some administrative provisions continue language that has appeared in previous years, while others are new (e.g., extension of a temporary judgeship). For various reasons, Congress has decided to reiterate the language rather than make certain provisions permanent. The House-passed bill included the following provisions:

Section 401: To permit funds in the bill for salaries and expenses for the Judiciary to be available for employment of experts and consultant services (as authorized by 5 U.S.C. 3109).

Section 402: To permit up to 5 percent of any appropriation made available for fiscal year 2007 to be transferred between Judiciary appropriations accounts — provided that no appropriation shall be decreased by more than 5 percent or increased by more than 10 percent by any such transfer except in certain circumstances. In addition, the language provides that any such transfer shall be treated as a reprogramming of funds (under sections 805 and 810 of the accompanying bill), and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

Section 403: To authorize not to exceed \$11,000 to be used for official reception and representation expenses incurred by the Judicial Conference of the United States.

Section 404: To require a financial plan for the Judiciary within 90 days of enactment of this Act.

Section 405: To amend the Judicial Improvements Act of 1990 (P.L. 101-650) (extension of a temporary federal district judgeship in Wichita, Kansas).

The Senate Appropriations Committee approved language similar to Sections 401-404 in the House-passed bill, but did not include a judgeship (see Section 405 above). The Senate committee approved the following additional provisions:

Section 405: To allow for a salary adjustment for justices and judges.

³¹ Pursuant to 31 U.S.C., Sec. 9503.

Section 406: To grant the judicial branch with the same tenant alteration authorities as the executive branch.

Section 407: To prohibit any judge from being entitled to sole use of a courtroom and to require courtrooms to be scheduled based on the needs of the circuit and district courts. (The intent of the section is to address circumstances in which courtrooms are not in full use, and the sharing of courtroom will help reduce the overburdened judicial docket.)

Related Issues and Legislation

The 109th Congress considered, but did not act upon, legislation to address several longstanding issues that could impact the judiciary budget. Two of the issues — judicial pay and rent payments to GSA — will continue to be relevant in the 110th Congress.

Judicial Pay

In the 109th Congress, on February 10, 2006, Senator Feinstein (for herself, Senators Patrick J. Leahy and John F. Kerry) introduced S. 2276, the Federal Judicial Fairness Act of 2006, to increase the salaries of federal judges salaries by 16.5%. In introducing the bill, she stated:

This legislation is needed to prevent a continuing decline in the pay of our Federal judges and prevent damage to the quality of our judiciary. Impartial, dedicated, and wise judges are critical to our justice system. Nevertheless, in the past three decades, our Federal judges have been neglected. Since 1969, the salaries of Federal judges have declined by nearly 24 percent in inflation adjusted dollars. By comparison, in the same time period the salary of the average American worker has increased over 15 percent.³²

The bill would have increased the salaries of the Chief Justice of the United States; Associate Justices of the U.S. Supreme Court; judges of U.S. circuit courts, district courts, and the U.S. Court of International Trade; bankruptcy judges; and full-time magistrate judges. In addition, S. 2276 would have ended the link between congressional and judicial salary adjustments which has prevented increases in judicial pay when Congress does not provide an annual cost of living increase to its Members. Under the bill, the annual pay increase for federal judges would have been based on the Employment Cost Index.³³ S. 2276 was referred to the Senate Judiciary Committee, but no further action was taken before the 109th Congress adjourned.

On March 28, 2006, Representative Adam B. Schiff (for himself and Representative Judy B. Biggert) introduced H.R. 5014, the Federal Judicial Fairness

³² *Congressional Record*, daily edition, vol. 152, no. 16, Feb. 10, 2006, p. S1073.

³³ According to the U.S. Bureau of Labor Statistics, the Employment Cost Index is “a measure of the change in the cost of labor, free from the influence of employment shifts among occupations and industries. The series measures changes in compensation costs (wages and salaries and employer costs for employee benefits).”

Act of 2006, a bill identical to S. 2276. In his introductory remarks, Representative Schiff said that when compared with the private sector, judges' salaries have declined so significantly that "consequently, judges have been leaving the federal bench in increasing numbers, many before reaching retirement age, and a large proportion leaving to work for private law firms." He noted that, "if Congress does not provide reasonable compensation adjustments nor address the growing pay disparity between judges and other members of the legal profession, the quality of our judiciary will be compromised."³⁴ The bill was referred to the House Judiciary Committee on the Judiciary, but no further action was taken before the 109th Congress adjourned.

The Judicial Conference, speaking on behalf of the Judiciary, has repeatedly expressed concern about inadequate judicial salaries. Chief Justice John G. Roberts, Jr., a strong advocate for higher judicial pay, devoted his *2006 Year-End Report on the Federal Judiciary* to the issue. The Chief Justice stated that the subject of judicial pay increases had been "ignored far too long and has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary." Emphasizing that judicial salaries have not kept pace with inflation over the years, he noted that, "Today, federal district judges are paid substantially less — about half — what the deans and senior law professors at top schools are paid." The retention of federal judges is a further concern for the Chief Justice. He said:

many judges who must attend to their families and futures have no realistic choice except to retire from judicial service and return to private practice. The numbers are sobering. In the past six years, 38 judges have left the federal bench, including 17 in the last two years. If judicial appointment ceases to be the capstone of a distinguished career and instead becomes a stepping stone to a lucrative position in private practice, the Framers' goal of a truly independent judiciary will be placed in serious jeopardy.³⁵

On January 8, 2007, Senator Leahy introduced (for himself, and Senators John Cornyn, Dianne Feinstein, Harry Reid, and Arlen Specter) S. 197, legislation to provide an FY2007 salary adjustment for justices and judges.³⁶ The increase would be 1.7% and would be retroactive to January 1, 2007. The Senate passed the bill by

³⁴ *Congressional Record*, vol. 152, no. 36 (Mar. 28, 2006), p. E420.

³⁵ The Chief Justice's *2006 Year-End Report on the Federal Judiciary* is available at [<http://www.uscourts.gov/newsroom/yearend06.pdf>].

³⁶ The authorization was included in H.R. 5454, and in the Senate version of H.R. 5576, as reported, but neither bill was enacted in the 109th Congress. H.R. 5454 was introduced in the House by Rep. James Sensenbrenner, Jr., on May 23, 2006, and referred to the House Judiciary Committee. The House passed the legislation, under suspension of the rules, by voice vote on Sept. 25, 2006, and was referred to the Senate Judiciary Committee. No further action occurred on the bill. The Senate version of H.R. 5576, the Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations Bill for FY2007, included the authorization (Section 405). The Senate Appropriations Committee reported the bill on July 26, 2006, but no further action was taken. (U.S. Congress, Senate Committee on Appropriations, *Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations Bill, 2007*, report to accompany H.R. 5576, 109th Cong., 2nd sess., S.Rept. 109-293 (Washington: GPO, 2006).)

unanimous consent on the same day. On the next day, the bill was referred to the House, where it is pending in the House Judiciary Committee.

On January 17, 2007, U.S. Attorney General Alberto R. Gonzales expressed his belief that higher salaries for judges would help to attract and retain the best legal talent. He also said that “he had talked with too many potential judicial nominees who have politely declined consideration precisely because they did not feel they could afford to serve. I hope that Congress will consider enacting a meaningful pay raise for judges, so that future candidates for judicial office will not be faced with that choice, and so that judicial independence will be strengthened.”³⁷

Not everyone, however, believes a substantial increase in judicial pay is warranted. Opponents of the increase assert that the current judicial pay levels are a small sacrifice judicial public servants undertake, which are offset by their perquisites associated with the prestigious positions.³⁸

Rental Fees Paid to General Services Administration³⁹

The Judiciary pays rent to GSA’s Federal Building Fund (FBF) for the use of federally owned and leased space.⁴⁰ According to the judiciary budget request, those payments will total \$997.8 million in FY2007 and have increased an average of about 5.8% each year since 1999. For FY2006, these payments will comprise about 20% of the total judiciary budget. In his *2005 Year-End Report on the Federal Judiciary*, Chief Justice Roberts stated:

During fiscal year 2005, the judiciary paid \$926 million to GSA in rent, even though GSA’s actual cost for providing space to the judiciary was \$426 million. The disparity between the judiciary’s rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair. The federal judiciary cannot continue to serve as a profit center for GSA. Escalating rents combined with across-the-board cuts imposed during fiscal years 2004 and 2005 resulted in a reduction of approximately 1,500 judicial branch employees as of mid-December when compared to October 2003.

³⁷ The text of Attorney General Gonzales’ prepared remarks at the American Enterprise Institute is available at [http://www.uscourts.gov/newsroom/Gonzales_11707.pdf].

³⁸ James C. Harrington, “No need to boost salaries,” *The National Law Journal*, vol. 28, no. 19, Jan. 16, 2006, p. 26.

³⁹ For an examination of GSA’s role as the primary federal real property and asset management agency, see CRS Report RL32368, *The General Services Administration and Federal Real Property Management: Overview and Current Legislation*, and CRS Report RL33774, *Federal Buildings Funding Limitations and Their Implications*, both by Stephanie Smith.

⁴⁰ FBF is an intragovernmental revolving fund that finances the cost of acquiring and managing federal government real estate and real property maintenance activities for properties under GSA legal custody and control. Authorized and established by the Public Buildings Amendments of 1972 (P.L. 92-313, 40 U.S.C. 592 as codified by P.L. 107-217), the FBF is financed by the rental charges that GSA assesses federal tenants for use of space.

The Judicial Conference, in a letter dated December 3, 2004, to then-GSA Administrator Stephen A. Perry, requested an exemption of \$483 million in rent relief for FY2005 to “ensure the judicial branch’s ability to maintain its operations and independence.” In February 2005, GSA denied the Judiciary’s request, but reaffirmed GSA’s commitment to help the Judiciary identify opportunities to reduce space costs.

By law, GSA is required to charge commercially equivalent rent for the space that agencies occupy.⁴¹ GSA views the judiciary request as “not consistent with its authorizing legislation,” or with OMB and congressional direction. Rent exemptions, according to the GSA, are infrequently granted, and are not permanent unless required by statute. GSA maintains that “since 1990, the Courts have received approximately 36% of benefits while paying 11% to the FBF.”⁴² According to GSA, such an exemption could erode the FBF and the rent/user charge system, and could have a negative impact on other agencies.

Congressional interest in the rent issue has led to actions in both the Senate and the House. On May 13, 2005, three months after GSA’s denial of rent relief, 11 members of the Senate Judiciary Committee — including the committee chairman, Senator Specter, and ranking member, Senator Leahy — wrote to the GSA Administrator to request that the judicial branch be exempt from all rental payments, with exception of those funds required to operate and maintain federal court buildings.⁴³ The Senate Appropriations Committee, in its July 2005 committee report on the FY2006 Transportation/Treasury bill, expressed concern about the rent increases and support for the Judiciary’s efforts to work with GSA to reduce costs. The committee also stated, however, that it “does not believe that the GSA rent charges for courthouses are the appropriate focus for financial relief by the judicial branch, especially since the Committee believes that the Federal Building Fund [FBF] is critical to the preservation and development of Federal buildings, including increased requirements for the judicial branch. In general, the GSA rent policies are appropriate and necessary.”⁴⁴

The House has also examined the rent issue. The House Transportation and Infrastructure Committee’s Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on June 21, 2005, and heard testimony from representatives of the Judicial Conference, GSA, and the Government Accountability Office (GAO) about the Judiciary’s ability to pay for current and future space needs. GAO reported that it was studying the judiciary request for a rent exemption but noted that previous exemptions had been a principal reason why the

⁴¹ 40 U.S.C., Sec. 586(b).

⁴² Based on GSA documents provided to the Senate Committee on Environment and Public Works on the Courts Rent Waiver Request and the GSA Response, dated Jan. 27, 2006.

⁴³ The letter was also signed by Senators Charles E. Grassley, Edward M. Kennedy, Orrin G. Hatch, Joseph R. Biden, Jr., Jon Kyl, Herb Kohl, Mike Dewine, Dianne Feinstein, and John Cornyn.

⁴⁴ S.Rept. 109-109, pp. 194 and 219.

FBF had accumulated insufficient funds for investment.⁴⁵ A year later, on June 22, 2006, the subcommittee held a follow-up hearing, “The Future of the Federal Courthouse Construction Program: Results of a GAO study on the Judiciary’s Rental Obligations.” The GAO report,⁴⁶ undertaken at the committee’s request, attributed judiciary rent increases to new space and the increasing costs of energy and security costs. The report found that, “Neither GSA nor the judiciary had routinely and comprehensively analyzed the factors causing rent increases, making it more difficult for the judiciary to manage increases.” GAO recommended that the Judiciary track rent trends, and improve its management of space and associated costs (such as providing incentives for efficient use and updating its criteria for space allocation). According to GAO, GSA “generally agreed” with its report. GAO also said that AOUSC “strongly disagrees” with the usefulness of the tracking rent trends, and asserts that it is already implementing incentives and updating criteria. GAO said actions the AOUSC identified “do not fully address our recommendations.”

Judge Jane Roth, testifying on behalf of the Judiciary, said that she had read the draft report, but had not had the benefit of reading the final report (which was publicly released on the day of the hearing). She said she believed the draft version was seriously flawed, and that the assessment of the reasons for the rent increases was insufficient and misleading. Judge Roth said that, since 1985, rent increased 333% (adjusted for inflation) while square footage increased by only 166%. She expressed concern that “GAO decided what challenges the Judiciary faced, without consulting judiciary officials with policy-making responsibilities.” Despite concerns with the report findings, Judge Roth said that the GAO recommendations were “consistent with efforts we already have underway to control rent costs,” which included tighter budgetary controls and rent caps on facilities decisions. Judge Roth also said that although the Judiciary would continue to enhance its facilities planning and management processes, the Judiciary still faced “the situation where mandatory rent payments to GSA have been increasing at a faster rate than the Judiciary’s appropriations increases.”⁴⁷

Representative Bill Shuster, chairman of the subcommittee, said at the hearing that the “GAO findings only solidify my, and I believe this Committee’s stance against such a rent waiver,” and that rent exemption would be “disastrous.” Among other things, he recommended that the Judiciary reevaluate its position on GSA cost-saving proposals, and also expressed concern about the Judiciary’s claims of GSA errors in rent bills and appraisal inaccuracies and that he was “eager to hear how the

⁴⁵ U.S. Government Accountability Office, *Courthouse Construction, Overview of Previous and Ongoing Work*, GAO-05-838T, June 21, 2005, p. 2.

⁴⁶ U.S. Government Accountability Office, *Federal Courthouses, Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613, June 22, 2006, available at [<http://www.gao.gov/new.items/d06613.pdf>].

⁴⁷ “House Subcommittee Won’t Back Rent Waiver,” *The Third Branch*, July 2006, vol. 38, no. 7, p. 5.

GSA is addressing these concerns and solving the problem.” Chairman Shuster said he was pleased that the FBF was “working as originally intended.”⁴⁸

Members in both the House and Senate introduced legislation in early 2006 — during the interval between the two House subcommittee hearings — which would direct GSA to establish rental fees that would not exceed the actual costs of operating and maintaining accommodations it provides the Judiciary. On February 8, 2006, Representative James F. Sensenbrenner, Jr., chairman of the House Judiciary Committee (for himself and Representative Lamar S. Smith), introduced H.R. 4710, the “Judiciary Rent Reform Act of 2006,” which was referred to the House Judiciary Committee and the House Transportation and Infrastructure Committee (and subsequently referred to the Subcommittee on Economic Development, Public Buildings and Emergency Management). On February 15, 2006, Senator Specter, chairman of the Senate Judiciary Committee, (for himself, and Senators Patrick J. Leahy, John Cornyn, Saxby Chambliss, Dianne Feinstein, Joseph R. Biden, Jr., James M. Talent, Daniel K. Inouye, Richard M. Burr, and Wayne A. Allard) introduced S. 2292 — a similar measure to provide relief for the Judiciary. S. 2292 was referred to the Senate Judiciary Committee. On April 27, 2006, the committee reported the bill. However, Congress did not take further action on either bill prior to the adjournment of the 109th Congress.

According to a CBO cost estimate of S. 2292, appropriated money would be needed for GSA to construct, operate, maintain, and repair federal buildings. CBO said that “amounts appropriated directly to GSA would have to increase to cover expenses no longer covered by the judicial branch rents, and amounts appropriated to judicial branch agencies could simultaneously decline by the same amounts to reflect lower requirements or such rents. CBO estimated that rent charges to the judicial branch would be reduced by annual amounts between \$300 and \$350 million over the next five years (reflecting net estimated changes in both the reduction in rents paid by the judicial branch and its direct payments for the costs of repairs and alterations). Assuming that GSA would perform all planned building operations, maintenance, and construction work during this period, appropriations directly to GSA would increase by the same amount. CBO said that if future appropriations to these agencies were adjusted accordingly, implementing S. 2292 would not have a significant net effect on federal spending.”⁴⁹

The Judicial Conference supported both rent relief bills. The conference also took another approach at its biannual meeting on March 14, 2006 — it voted to affirm its support to shift the responsibility from GSA to the Judiciary for the management, operation, repair, leasing, and construction of federal courthouses.⁵⁰ The vote followed recommendations contained in a Space and Facilities Committee report, but the conference left the timing of seeking and implementing such authority

⁴⁸ See [<http://www.house.gov/transportation>] for the chairman’s statement, and those of the witnesses.

⁴⁹ See [<http://www.cbo.gov/ftpdocs/73xx/doc7308/s2292sj.pdf>] for the June 16, 2006, CBO cost estimate.

⁵⁰ The Conference first supported this position in 1989. See [http://www.uscourts.gov/Press_Releases/judconf031406.html] for the Mar. 14, 2006, press release.

with its Executive Committee, in consultation with the Space and Facilities and Budget Committees. At the meeting, the conference also approved, in concept, setting an annual budget cap for space rental costs. The Budget Committee, in consultation with the Space and Facilities Committee, would determine those caps.

As noted earlier, the Senate Appropriations Committee encouraged the Judiciary to continue working with GSA on fair and accurate rent charges, and to report to the appropriations committees actions on steps for more efficient use of space in the district and circuit courts. The committee also included administrative language to prohibit any judge from being entitled to sole use of a courtroom.