

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**



FISCAL YEAR 2025 BUDGET ESTIMATE
February 5, 2024

FISCAL YEAR 2025 BUDGET ESTIMATE

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INTRODUCTION

The United States Court of Appeals for Veterans Claims (Court) is a national court of record established by the Veterans Judicial Review Act, Pub. L. No. 100–687, Division A (1988) (Act). The Act, as amended, is codified in part at 38 U.S.C. §§ 7251–7299. The Court is located in Washington, D.C., but as a national court may sit anywhere in the United States.

The Court is part of the federal judicial system and has a permanent authorization for seven judges, one of whom serves as chief judge. Under Public Law No. 116-159, Congress extended the temporary authorization that expands the Court to nine active judges, and currently all nine positions are filled. Judges are appointed by the President, by and with the advice and consent of the Senate, for 15-year terms. Upon retirement, a judge may choose to be recall eligible, and thus willing to be recalled to service by the Chief Judge. Nine of the Court's retired judges are recall eligible, and three are currently in recall status. Recall-eligible retired judges may elect full retirement at any time.

The Court has exclusive jurisdiction to review decisions made by the Department of Veterans Affairs Board of Veterans' Appeals (Board) that adversely affect a person's entitlement to VA benefits. This judicial review, although specialized in scope, is the same as that performed by all other United States Courts of Appeals. In cases before it, the Court has the authority to decide all relevant questions of law; to interpret constitutional, statutory, and regulatory provisions; and to determine the meaning or applicability of actions/decisions by the Secretary of Veterans Affairs. The Court may affirm, set aside, reverse, or remand those decisions as appropriate. Additionally, the Court has class action authority, has jurisdiction under 28 U.S.C. § 1651 to issue all writs necessary or appropriate in aid of its jurisdiction, and acts on applications under 28 U.S.C. § 2412(d), the Equal Access to Justice Act (EAJA). Certain decisions by the Court are reviewable by the United States Court of Appeals for the Federal Circuit and, if *certiorari* is granted, by the Supreme Court of the United States. For management, administration, and expenditure of funds in areas beyond the bounds of Chapter 72 of Title 38, the Court may exercise the authorities provided for such purposes applicable to other courts as defined in Title 28, U.S. Code.

In 1992, Congress authorized the Court to transfer funds from its appropriation that year to the Legal Services Corporation (LSC), for the purpose of providing, facilitating, and furnishing legal and other assistance, through grant or contract, to veterans and others seeking recourse in the Court. That program, often called the pro bono representation program, has been ongoing since that time, with LSC responsible for oversight and grant distribution responsibilities. The Appropriations Subcommittees consider LSC's budget request separately from the Court's budget request, although both are submitted together. The fiscal year (FY) 2025 LSC request for \$3,800,000, is attached at Appendix A.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

**APPROPRIATION LANGUAGE
GENERAL AND SPECIAL FUND**

SALARIES AND EXPENSES

A total of [~~\$47,200,000~~] **\$47,300,000**, of which [~~\$44,200,000~~] **\$43,500,000** will be used by the United States Court of Appeals for Veterans Claims for operations as authorized by 38 U.S.C. §§ 7251-7299. Provided further, that [~~\$3,000,000~~] **\$3,800,000** shall be transferred to the Legal Services Corporation to facilitate the furnishing of legal and other assistance in accordance with the process and reporting procedures set forth under this heading in Public Law No. 102-229.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS PROGRAM JUSTIFICATION

Court Caseload Trends and Variations

The U.S. Court of Appeals for Veterans Claims (Court) remains one of the busiest federal appellate courts based on the number of filings per active judge. Each active judge on the Court carries a substantial workload that includes rendering decisions on appeals, petitions, motions, applications filed pursuant to 28 U.S.C. § 2412 (the Equal Access to Justice Act), and a relatively new class action caseload.

Appeals to the Court come from the pool of cases in which the Board of Veterans' Appeals (Board) has denied some or all benefits sought by claimants. From FY 1999 through FY 2004, when the Court had seven judges, approximately 200 appeals per month were filed. Starting in FY 2007, the Court saw a sustained increase in that number, with an average of 376 cases filed per month. In late 2009, the Court's active judge authorization was temporarily increased to nine judges to respond to that caseload increase. A more recent surge in appeals that started in FY 2018 continued upward in FY 2019, with an average of 706 appeals filed per month. In FY 2020, that increase continued even further with nearly 750 appeals filed per month. In 2020, Congress renewed the temporary authorization for nine judges. Since FY 2020, the Court has continued to receive, on average, between 650-750 appeals per month—more than double the numbers from ten years prior.

Historically, the number of Court appeals per year correlate to about 8% of the number of Board decisions per year, and when final Board decision numbers increase or decrease, Court appeal numbers likewise generally rise or fall. The chart below tracks that data over the past ten years. In FY 2023 the Board issued 103,245 decisions, their highest number ever, and the Court received 7,528 appeals, roughly 200 more than the prior year. With minor fluctuations, the percentage of Board decisions appealed to the Court has remained steady, and the number of Court appeals remains historically high when compared with FY 2017 and earlier.

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Board Final Decisions	55,532	55,713	52,011	52,661	85,288	95,089	102,663	99,721	95,294	103,245
Board Members	88	88	88	94	92	96	100	108	125	Unavail.
Board Staff Attorneys	410	450	450	671	806	800	850	770	873	Unavail.
Appeals to CAVC	3,745	4,506	4,140	4,040	6,802	8,470	8,954	8,266	7,344	7,528
Number of CAVC Judges Authorized	9	9	9	9	9	9	9	9	9	9

Two factors make it difficult to predict whether the 8% average appeal rate to the Court will continue in coming years. The Veteran Appeals Improvement and Modernization Act of 2017 gave claimants an additional separate review option when they disagree with a Board decision. Additionally, the 2022 Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act has yielded more than a million new VA benefits claims, which is expected to surge appeals to the Board and the Court. The Court is monitoring these factors in an effort to identify trends in future Court appeals numbers.

To date, the Court has been able to keep pace with the sustained growth in appeals numbers without the need for additional judges because a higher percentage of appeals are resolving via mediation prior to reaching chambers. But even if this higher pre-chamber resolution rate is maintained going forward, the Court expects an increase in appeals numbers due to expanded Board staffing and decision production goals. Appropriations necessary to expand the Court to eleven judges were provided in FY 2023, but authorizations have not yet followed suit.

Staffing Requirements

The Court requests funding for 161 full-time equivalent (FTE) positions in FY 2025. This represents an increase of 3 FTE positions over the FY 2024 request. The new requested positions are a staff attorney for the Court's Central Legal Staff, a docket clerk for the Court's Public Office, and an associate attorney to the Court's General Counsel's office. The Court also requests funding to convert the Chief Judge's grade CS-10 second secretary position to a CS-14 staff attorney for the Counsel to the Board of Judges' office. All positions are necessitated by the current and projected growth in the Court's workload.

FISCAL YEAR 2023 PROGRAM

The Court's FY 2023 program accomplished the following:

Opened 7,744 new cases, including appeals from decisions of the Board of Veterans' Appeals and petitions for extraordinary relief directed to the Court. During the same period, the Court disposed of 7,839 cases (petitions and appeals) through a combination of panel opinions, single judge decisions, and court orders. In addition, the Court ruled on thousands of motions and acted on approximately 6,410 applications for attorney fees filed under the Equal Access to Justice Act. The Court also had six cases in which a Request for Class Certification and Class Action was filed.

Expended funds as necessary to staff and support the operations of the Court and ensured its continued proper functioning throughout the fiscal year.

Hired two additional staff attorneys for the Court's Central Legal Staff, two additional docket clerks for the Court's Public Office, and one additional judicial law clerk to support the Court's recalled-retired (Senior) judges.

Funded tech refresh of the Court's wireless system, and necessary life cycle equipment replacement.

Obligated funding to GSA to reconfigure existing Court space to accommodate two additional judicial chambers.

Received an Unmodified Opinion following its FY 2023 financial audit, which is the highest level of assurance that can be expressed. The Unmodified Opinion states that the financial statements are presented fairly in all material respects.

Continued agreements with the United States Marshals Service and the Federal Protective Service for Court security; the Department of Agriculture's National Finance Center for payroll/personnel services; the U.S. Department of the Treasury Bureau of the Fiscal Service for administrative payments, credit card, travel, and financial accounting and reporting services; and the Administrative Office of the U.S. Courts for Case Management/Electronic Case Filing (e-filing) system support.

Paid benefits from the Court of Appeals for Veterans Claims Retirement Fund (Judges' Retirement Fund) to retired judges and one survivor annuitant. Pursuant to 38 U.S.C. § 7298, funded the Judges' Retirement Fund in accordance with independent actuarial assessments.

Transferred appropriations to Legal Services Corporation for pro bono representation services in accordance with Public Law No. 102-229.

FISCAL YEAR 2024 PROGRAM

The Court's FY 2024 budget request reflects the following:

Funding to staff and support the operations of the Court to ensure its continued proper functioning throughout the fiscal year, including funding for 11 active judges with support staff and two new positions – an additional staff attorney for the Court's Central Legal Staff, and an additional docket clerk for the Court's Public Office. Also, the necessary funding for scheduled step increases, time-in-grade promotions for eligible employees, employee benefits, and a cost of living allowance.

Funding for the Court's 16th Judicial Conference, a judicial retreat, and associated travel expenses.

Funding for a new Visitor Management System (software and equipment) to track and conduct background checks on all Court visitors.

Funding for information technology services and updates, to include migration of the Court's remote data storage backup facility to the cloud, tech refresh of the Court's wireless system, and necessary life cycle equipment replacement.

Funding to audit the Court's financial statements.

Funding to continue the agreements with the United States Marshals Service and the Federal Protective Service for Court security; the Department of Agriculture's National Finance Center for payroll/personnel services; the U.S. Department of the Treasury Bureau of the Fiscal Service for administrative payments, credit-card, travel, and financial accounting and reporting services; and the Administrative Office of the United States Courts for Case Management/Electronic Case Filing (e-filing) system support.

Funding to reduce any unfunded liability in the Judges' Retirement Fund.

Funding to transfer to Legal Services Corporation for pro bono representation services in accordance with Public Law No. 102-229.

FISCAL YEAR 2025 PROGRAM

The Court's FY 2025 budget request reflects the following:

Funding to staff and support the operations of the Court to ensure its continued proper functioning throughout the fiscal year, including funding for 11 active judges with support staff and three new positions – a staff attorney for the Court's Central Legal Staff, a docket clerk for the Court's Public Office, and an associate attorney for the Court's General Counsel's office. Funding to convert the Chief Judge's grade CS-10 second secretary position to a CS-14 staff attorney for the office of the Counsel to the Board of Judges. Funding for scheduled step increases, time-in-grade promotions for eligible employees, employee benefits, and a possible cost of living allowance.

Funding for electronic case management system modernization.

Funding for information technology services and updates, to include finalizing the Court's migration of data from a remote data storage backup facility to the cloud, beginning the infrastructure and application systems migration to the cloud, and enhancing overall IT security.

Funding to implement the Daniel Anderl Judicial Security and Privacy Act.

Funding to audit the Court's financial statements.

Funding to continue the agreements with the United States Marshals Service and the Federal Protective Service for Court security; the Department of Agriculture's National Finance Center for payroll/personnel services; the U.S. Department of the Treasury Bureau of the Fiscal Service for administrative payments, credit-card, travel, and financial accounting and reporting services; and the Administrative Office of the United States Courts for Case Management/Electronic Case Filing (e-filing) system support.

Funding to reduce any unfunded liability in the Judges' Retirement Fund.

Funding to transfer to Legal Services Corporation for pro bono representation services in accordance with Public Law No. 102-229.

SUMMARY OF FISCAL YEAR 2025 BUDGET REQUEST
(in thousands of dollars)

The FY 2025 budget request of \$47,300,000 reflects an increase of \$100,000 over the Court's FY 2024 budget request. A summary of the FY 2025 funding request compared with the FY 2024 request follows:

	FY 2024 Budget Request	FY 2025 Budget Estimate	Change
FTE Positions	158	161	+3
Personnel Compensation and Benefits	\$29,483	\$30,725	+\$1,242
Other Objects (Operating Expenses)	\$10,417	\$10,775	+\$358
Judges' Retirement Fund	\$4,300	\$2,000	-\$2,300
Pro Bono Representation Services (Grant)	\$3,000	\$3,800	+\$800
Budget Authority/Appropriation	\$47,200	\$47,300	+\$100

SUMMARY OF FISCAL YEAR 2025 PROGRAM FUNDING CHANGES
(in thousands of dollars)

Personnel Compensation and Benefits: + \$1,242

The Court is requesting funding to cover compensation and benefits for 161 FTEs, to include eleven judicial chambers with support staff and three new FTE positions for FY 2025—an additional staff attorney for the Court's Central Legal Staff, an additional docket clerk for the Court's Public Office, and an associate attorney for the Court's General Counsel's office. The Court is also requesting funding to convert a current FTE from a grade CS-10 secretary position to a CS-14 staff attorney for the Counsel to the Board of Judges' office. The increase in funding requested is necessary to accommodate the salary and benefits expenses for 161 FTEs, as well as scheduled step increases, time-in-grade promotions for eligible employees, and an anticipated 3% cost of living allowance for all Court employees.

All Other Objects (Operating Expenses):+ \$35

The increase in this category is primarily attributable to the costs associated with modernizing the Court's electronic case management system. The Court's current case management system is based on outdated platforms and lacks modern security evolutions. It must be replaced with a contemporary system to allow the Court to continue processing cases efficiently and securely.

Contribution to Judges' Retirement Fund: (- \$2,300)

This decrease results from a reduction in the actuarial projection of the deposit necessary to fully fund the Judges' Retirement Fund pursuant to 38 U.S.C. § 7298.

Pro Bono Representation Services (Legal Services Corporation Grant):+ \$800

See Appendix A.

TOTAL CHANGES: + \$100

DETAILS OF FISCAL YEAR 2025 PROGRAM FUNDING CHANGES
(in dollars)

The following information provides details of the funding changes from FY 2024:

PERSONNEL COMPENSATION & BENEFITS **+ \$1,242,000**

The Court is requesting funding to cover compensation and benefits for 161 FTEs, to include eleven judicial chambers. The increase in funding requested is necessary to accommodate the salary and benefits expenses for 161 FTEs, to include three new FTEs for FY 2025, and the conversion of the Chief Judge's grade CS-10 second secretary position to a CS-14 staff attorney for the Office of the Counsel to the Board of Judges. This funding request also provides for scheduled step increases, time-in-grade promotions for eligible employees, and an anticipated 3% cost of living allowance for all Court employees. The three new positions are: (1) a Staff Attorney for the Central Legal Staff—the office responsible for conducting all pre-briefing conferences, preparing orders, memoranda, and vote sheet packets, and analyzing case trends; (2) a Docket Clerk in the Court's Public Office responsible for case opening, case closing, and all docket entries; and (3) an Associate Attorney for the Court's General Counsel's office – the office responsible for providing legal and ethical oversight, guidance, and training, to the Court as a whole, as well as to individual Judges and Court staff.

OTHER OBJECTS (OPERATING EXPENSES) **+358,000**

Travel **(- \$20,000)**

The Court will not convene a judicial conference in FY 2025. The decrease in this category is associated with reduced travel spending in non-conference years.

Transportation of things **+ \$0**

This category remains static.

Rental payment to GSA **+ \$0**

This request reflects the General Services Administration (GSA) rent estimate.

Rental payment to others **(- \$40,000)**

The decrease in this category is associated with reduced rental payments in non-conference years.

Communications, utilities, and miscellaneous charges **(-\$75,000)**

The decrease in this category is associated with reduced communications expenses in non-conference years.

Printing & reproduction**(- \$2,000)**

The decrease in this category is associated with reduced printing expenses in non-conference years.

**Purchases of Goods and Services
from Government and Other Sources****+ \$395,000**

Funding in this category is used generally to maintain existing Court services and also covers the costs of necessary Court inter-agency agreements with the United States Marshals Service and the Federal Protective Service for Court and judicial security; the Department of Agriculture's National Finance Center for payroll/personnel services; the U.S. Department of the Treasury Bureau of the Fiscal Service for administrative payments, credit-card, travel, and financial accounting and reporting services; and the Administrative Office of the United States Courts for Case Management/Electronic Case Filing (e-filing) technical support. Funding in this category also covers the costs of technical support to complete migration of the Court's remote data storage backup facility to the cloud and begin transitioning the infrastructure and application systems to the cloud. Funding is also requested for augmented judicial security for judges and a writing seminar/training for Court attorneys.

The increase in this category is primarily attributable to the costs associated with modernizing the Court's electronic case management system. The Court's current case management system, CMECF, is antiquated and a new system is needed to continue processing cases efficiently and securely. The CMECF software was developed and built in the 1990s by the Administrative Office of U.S Courts (AO). According to a report issued by the General Services Administration (GSA) in 2021: "The foundational technology is outdated, and some components are becoming obsolete; it is not sustainable." The AO is currently undergoing case management modernization, and the Court is consulting with the AO and the Second and Ninth Circuits in exploring options to adopt or develop a successor system that will be wholly or partially cloud-based, increasing security and efficiency.

Supplies & Materials**+ \$0**

This category remains static.

Equipment**+ \$100,000**

The increase in this category includes equipment costs associated with developing and modernizing a new electronic case management system; overall security equipment for the Court's network to allow enhanced external vulnerability assessments and privacy assuredness; and new cable wiring and network drops throughout the Court, in particular for two new chambers and three new FTEs. The increased expenses in this category are partially offset by the absence of the FY 2024 request of specific life cycle technology replacements (5-year tech refresh).

CONTRIBUTION TO JUDGES' RETIREMENT FUND (- \$2,300,000)

This decrease results from a reduction in the actuarial projection of the deposit necessary to fully fund the Judges' Retirement Fund pursuant to 38 U.S.C. § 7298.

PRO BONO REPRESENTATION SERVICES
(LEGAL SERVICES CORPORATION GRANT) + \$800,000

See Appendix A.

TOTAL CHANGES + \$100,000