

**APPENDIX 2 - ELECTRONIC PUBLIC ACCESS
PROGRAM**

GENERAL STATEMENT AND INFORMATION

The Electronic Public Access (EPA) program provides electronic public access to court information in accordance with federal statutes, judiciary policies, and user needs. The internet-based Public Access to Court Electronic Records (PACER) service provides courts, litigants, and the public access to court dockets, case reports, and the more than one billion documents filed with the courts through the Case Management/Electronic Case Files (CM/ECF) system. PACER is a portal to CM/ECF, making both systems integral to effective public access. In fiscal year (FY) 2021 alone, PACER processed nearly 534 million requests for case information.

Currently, there are more than 3.8 million PACER user accounts; approximately 15 percent of all user accounts were active in FY 2021. In addition to court staff, users include members of the bar; city, state, and federal employees; private companies; non-profit organizations; academic researchers; members of the media; and the general public. During FY 2021, the judiciary's PACER Service Center established 285,921 new PACER accounts and responded to more than 262,000 telephone and email inquiries.

Pursuant to statute, the EPA program is funded through user fees set by the Judicial Conference of the United States. Fees are deposited in a special account in the U.S. Treasury and are then used exclusively to fund the cost of the judiciary's EPA program. The components of this program are listed in Table A-2.1 and include activities such as operations of the PACER Service Center; electronic bankruptcy noticing; and the telecommunications, replication, archiving, development, and maintenance costs associated with CM/ECF, including a study being conducted in partnership with the General Services Administration to inform the modernization of CM/ECF and PACER.

The judiciary continues to improve electronic public access to its records, with new initiatives to broaden public access, including:

- *Conducting a PACER User Assessment.* In 2021, the judiciary conducted a PACER User Assessment to measure user satisfaction with PACER services and identify areas for improvement. Two similar surveys were conducted in 2009 and 2012. The results of the 2021 assessment show that 84 percent of users are satisfied with the PACER services offered and the value of the services for the fees charged. The assessment's findings point to areas that could have a significant positive impact on user satisfaction, including improved search capabilities and greater awareness of available services. The judiciary plans to use the results of the survey to inform future improvements to public access services.

- *Increasing Free Access to Court Records.* To make court documents free for more users, the Judicial Conference approved an increase in the quarterly waiver from \$15.00 to \$30.00, effective January 1, 2020. No fee is owed for electronic access to court data or audio files via PACER until an account holder accrues charges of more than \$30.00 in a quarterly billing cycle. In FY 2021, the first full fiscal year of the new fee waiver, approximately 80 percent of active PACER users accessed court records for free as a result of the fee waiver.

- *New PACER Case Locator Application Programming Interface (API).* In December 2020, the Administrative Office (AO) hosted a virtual town hall meeting for public users to discuss the release of the PACER Case Locator API and asked for volunteers to assist with testing the API. The new API, which was released on September 19, 2021, makes it easier for those using automated scripts to consume data from the PACER Case Locator.

- *Facilitating an Electronic Public Access User Group.* In 2020, the AO established an EPA Public User Group to collect advice and provide feedback on ways to improve PACER and other public access related services. The group is composed of 12 non-judiciary members who represent the legal sector, media, academia, government agencies, and other entities that regularly use PACER. The EPA Public User Group conducted three teleconferences in FY 2021. The Group has made several recommendations for improving public access services. The AO has analyzed each recommendation to determine appropriate actions consistent with Judicial Conference policy and technical, legal, and financial feasibility and to determine best approaches for implementation. The following recommendations have been executed:
 - Implemented enhanced Case Title and Party Name fields in the PACER Case Locator, allowing the public to search using one character in combination with a wildcard character.
 - Resolved issues with viewing PDFs on iPads (for District CM/ECF) in NextGen CM/ECF Release 1.7 in Fall 2021.
 - Added “coverage dates” available by court to the PACER Case Locator, providing the date range of cases that users can find when searching each court’s CM/ECF database.
 - Released a Pro Se User page on PACER.gov, making it easier for the public to understand how to access and use PACER.
 - Encouraged increased court use of Really Simple Syndication (RSS) feeds in CM/ECF through outreach to help courts overcome obstacles with, and raise awareness of the public access benefits of, using RSS feeds more fully.

These benefits include providing timely notifications about court filings to keep public subscribers apprised of case activity in various jurisdictions of interest.

SIGNIFICANT ISSUES FOR FISCAL YEAR 2023

Case Management/Electronic Case Files Modernization

CM/ECF, first introduced in early 2001, revolutionized the way federal courts and the bar manage cases and documents. Far more than just a repository of documents, CM/ECF is the program that manages the operations of the entire federal court system. It manages documents, deadlines, hearing schedules, and trials. It handles the docketing for every federal court, and it processes transactions at every step along the way in the progression of a case, from collecting filing fees, to determining deadlines for motions, to sharing vital information among litigants, judges, and court staff.

The transition to a Next Generation of CM/ECF (NextGen CM/ECF) is well underway. The first NextGen CM/ECF release was implemented in the Second and Ninth Circuit Courts of Appeals in the fall of 2014. Since that time, an additional 180 courts have gone live on NextGen CM/ECF. Implementation in all courts is expected to be achieved by the end of FY 2022.

While significant improvements were made to CM/ECF over the past decade through the development and implementation of NextGen CM/ECF, the judiciary is committed to revamping and modernizing the system for the future. In 2021, the judiciary partnered with 18F, a government consultancy housed within the General Services Administration's Federal Acquisition Service, to assess the status of CM/ECF and to develop a path forward for modernizing the system. The purpose of the assessment was to conduct user-centric research, identify user pain points, recommend improvements, and provide a roadmap for the judiciary to move forward. The partnership began with an initial path analysis phase (Phase One) and continued with an Experiment and Iterate phase (part of Phase Two).

In Phase One, 18F interviewed more than 100 participants in appellate, district, and bankruptcy courts across the country, including judges, court unit executives, court operational and IT staffs, and AO leadership and staff. 18F found that the current CM/ECF system is outdated, unsustainable, and requires replacement, and recommended that the judiciary build a modern case management system that will serve the judiciary's needs and enhance public access to electronic court case records. The Judiciary agrees with 18F's assessment and recommendations.

In Phase Two, 18F sought to gain a deeper understanding of CM/ECF user needs and to refine its recommendations for how the judiciary can move forward. 18F spoke with numerous judiciary and public stakeholders. It also explored potential first steps toward modernizing CM/ECF data architecture, aligning CM/ECF database schemas, and prototyping development, deployment, and operations workflows. The AO formed a cross-functional and cross-departmental team that has been working with 18F to assess how to incorporate security and operational concerns earlier in the software development process. An initial report on this Phase Two work was shared with the judiciary in October 2021.

During the latter half of its Phase Two work, 18F developed specific recommendations to the judiciary so that it can better position itself to engage in more modern software development, acquisition, and maintenance practices. A report on this work will be completed in February 2022. The judiciary will consider all of the reports produced by 18F as it proceeds toward a more modern case management and electronic filing system.

Legislation Impacting PACER and the Case Management/Electronic Case Files (CM/ECF) System

On August 4, 2021, and November 3, 2021, the Senate and House of Representatives, respectively, reintroduced legislation to eliminate PACER fees while requiring a complete overhaul of the judiciary’s backbone case management and electronic filing system. The “Open Courts Act of 2021,” S. 2614 and H.R. 5844, would direct the AO, in coordination with the General Services Administration (GSA), to consolidate CM/ECF into one unified system and, no later than three years after enactment, make all documents on PACER available free of charge.

The Judicial Conference of the United States opposes legislation that would eliminate the judiciary’s statutory authority to charge user fees for access to the PACER system without providing a workable alternative funding mechanism to finance the programs funded by the current fees and for any related new requirements in the legislation.

The bill would authorize the Judicial Conference to create a new schedule of filing fees to pay for the costs of establishing, operating, and maintaining the new consolidated court records system and for costs related to implementing the legislation. The judiciary opposes measures that shift the costs of providing access to PACER to litigants filing cases in federal courts, unduly hindering access to justice. Additionally, other proposed funding mechanisms in the bill are novel and untested, making it difficult to accurately estimate revenue and determine if they would be sufficient to build the new system, integrate it with the current system to keep court

operations running while it is being built, and sustain the new system into the future.

On December 9, 2021, the Senate Judiciary Committee advanced S. 2614 with bipartisan support, by voice vote. The Committee adopted a manager's amendment that made edits to the underlying bill, attempting to address the Conference's access to justice concerns by barring additional filing fees for first-time filers and parties subject to financial hardship. The amended bill also authorizes appropriations for the purposes of carrying out the legislation and specifies that filing fee increases in the bill should only be implemented to cover costs not met through the appropriations process.

The judiciary is concerned that implementation of the Open Courts Act would create a substantial budget shortfall for the branch. It imposes significant and unknown costs that are funded by untested, inconsistent, or unreliable new revenue streams. If these funding sources are insufficient to cover expected costs, the judiciary will have to seek additional appropriations to implement this legislation. This would force the public access program, including the critically important case management and filing system, into direct competition for funds with other core judiciary operations. In an environment of constrained resources, this could lead to devastating reductions in basic court services and the loss of necessary court staff.

The judiciary shares Congress' bipartisan interest in a modern, effective, fair, and successfully funded system and is committed to working collaboratively with the 117th Congress to improve its systems for filing, storing, managing, and making available to the public all relevant court records. The judiciary, through its new effort to modernize CM/ECF (described on page 2.4 above), will consider alternative funding mechanisms to reduce fees for many users.

Obligation of Funds from Electronic Public Access Receipts

EPA receipts (i.e., PACER fees) fund operations, maintenance, and improvements in EPA programs. Access to case information via PACER remains at \$0.10 per page and the cost to access a single document (regardless of length) is capped at \$3, the equivalent of 30 pages. As a result of the higher quarterly fee waiver that took effect January 1, 2020, PACER revenue declined. Revenue is projected to total approximately \$142 million in both FY 2022 and FY 2023. The FY 2022 revenue is supplemented by \$152.5 million in carryforward funding from FY 2021, which includes \$109.8 million in unencumbered carryforward and \$42.7 million in encumbered carryforward funding. At this time, obligations are projected to total \$219.3 million in FY 2022 and \$182.2 million in FY 2023.

The obligation of EPA program receipts has been impacted in recent fiscal years by a ruling of the District Court for the District of Columbia in *NVLSP, et al. v. U.S.* In its ruling, the court upheld the judiciary's use of EPA program funds for the vast majority of its public access programs, but determined that several other services, including courtroom technology, eJuror, and the Crime Victims Notification System, were impermissible because they lacked a sufficient nexus to information available to the public on the federal court's CM/ECF docketing system. The judiciary filed an interlocutory appeal with the Court of Appeals for the Federal Circuit, which affirmed the District Court's ruling in August 2020, and remanded the case back to the District Court, where it is still active.

After the D.C. District Court's original ruling, the judiciary shifted the funding source for the three disallowed categories from the EPA program to the Salaries and Expenses (S&E) appropriation, beginning in FY 2018, at a cost of approximately \$30 million to the S&E account.¹ Final appropriations for the S&E account in FY 2018 and subsequent fiscal years were sufficient to cover the full cost of both the judiciary's standard S&E requirements as well as these resources shifted from the EPA program, but this could change going forward. If the annual S&E appropriation is below the requested level, the judiciary could be forced to make trade-offs between continuing to support these disallowed categories at full funding versus funding them at a reduced level in order to provide additional funds for court support staffing (including probation and pretrial services offices, as well as appellate, bankruptcy and district court clerks' offices) to handle necessary workload. For FY 2021, the judiciary fully funded the disallowed categories, but the tradeoff between standard S&E program requirements and the disallowed EPA expenditures will continue to challenge the judiciary in any fiscal year in which enacted appropriations constrain the judiciary from fully funding its entire request.

Consistent with longstanding practice, and as upheld by the District Court, the judiciary will continue to use Electronic Public Access funds for the CM/ECF system and electronic bankruptcy noticing among other appropriate expenses. Litigation is ongoing, and the judiciary will keep the Committees updated on the progress of this litigation and any resulting decisions about the use of EPA program funding.

The current FY 2022 EPA program requirements are shown in Table A-2.1 on page 2.8. In FY 2022, requirements increased significantly in three program funding categories: Public Access Services; CM/ECF Development Operations and Maintenance; and Communications Infrastructure, Services, and Security. The higher costs are due to several factors, including: the incorporation of necessary security updates, tools, and protocols; other changes associated with the system's

¹ The removal of these activities from the EPA program contributed, in part, to the accumulation of the unusually high unobligated EPA balances referenced on page 2.8. The judiciary will continue to monitor the balance of revenue and requirements in the EPA program and will keep the Committees apprised of any necessary changes in policy or practice.

infrastructure, including cloud hosting; anticipated funding needed to begin the modernization of CM/ECF; and slippage for requirements not able to be executed in FY 2021, but still required in FY 2022.

In FY 2023, requirements decrease to a midpoint level between FY 2021 and FY 2022 requirements. This decrease is due to the anticipated completion of NextGen CM/ECF implementation without the added requirements needed for the modernization effort, as those costs are currently unknown. It is anticipated, however, that final FY 2023 requirements will increase, pending the outcome of the 18F assessment and anticipated subsequent cost analyses. The judiciary will keep the Committees updated on the 18F assessment's impact on FY 2023 requirements

The judiciary is examining ways to better align anticipated annual fee revenue with program requirements, as well as to ensure planned requirements are obligated, while improving electronic public access to court information.

The table below provides obligation data by program and financing for FYs 2021, 2022, and 2023.

Table A-2.1 Utilization and Financing of Electronic Public Access Receipts & Prior Year Recoveries (\$000)¹

Program Category	FY 2021 Actual	FY 2022 Plan	FY 2023 Request⁴
Public Access Services	19,907	45,060	28,725
CM/ECF Development, Operations, and Maintenance	56,202	72,927	69,505
Communications Infrastructure, Services, and Security	39,724	69,015	61,290
Electronic Bankruptcy Noticing	4,944	5,550	5,661
Allotments to the Courts	7,966	26,744	17,059
Prior Year Obligation Adjustments ²	897		
TOTAL	129,640	219,297	182,240
Unobligated Balance, Start of Year	(136,512)	(152,481)	(77,684)
Estimated Receipts	(143,153)	(142,000)	(142,000)
Prior Year Recoveries and Exchanges (Projected FY22 & FY23)	(2,456)	(2,500)	(2,500)
Unobligated Balance, End of Year ³	152,481	77,684	39,944

^{1/} Electronic Public Access revenues are deposited into the Judiciary Information Technology Fund (JITF). See chapter 11 for more information on the JITF.

^{2/} “Prior Year Obligation Adjustments” refers to obligations that were in process at the end of FY 2020 but not executed until FY 2021.

^{3/} The unobligated balance at the end of FY 2021 includes \$109.8 million in unencumbered carryforward and \$42.7 million in encumbered carryforward. This \$42.7 million in encumbered carryforward (or project slippage) includes \$8.5 million for allotments to the courts for the implementation of NextGen of CM/ECF; \$1.1 million for CM/ECF development, operations, and maintenance; \$4.8 million for communications infrastructure, services, and security; and \$20.2 million for public access services, which includes funds to begin the CM/ECF modernization effort in anticipation of completion of the 18F assessment and subsequent cost analysis.

^{4/} Funds for the CM/ECF modernization effort are not included in the FY 2023 request because the 18F assessment is ongoing and, therefore, a cost analysis has not yet been performed. The final FY 2023 plan may include costs associated with the CM/ECF modernization effort, if more information about those costs becomes available before the plan is finalized.