

**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 with 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 integral to effective public access. In fiscal year (FY) 2019 alone, PACER processed nearly 550 million requests for case information.

Currently, there are more than 3.2 million PACER user accounts; approximately one-quarter of all user accounts are active in a given year. Besides court staff, users include members of the bar; city, state, and federal employees; and the general public. Nine of the ten biggest users are major commercial enterprises or financial institutions, with the Department of Justice being the only non-commercial user in the top ten. In fact, approximately 87 percent of all PACER revenue is attributable to less than 3 percent of active users. During FY 2019, the judiciary's PACER Service Center established 314,946 new PACER accounts and responded to more than 285,700 telephone and email requests.

Pursuant to Congressional directives, the EPA program is generally 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 entire EPA program. The components of this program are listed on page Appendix 2.5 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.

The judiciary continues to improve electronic public access to its records, with new initiatives that have been put into place to broaden public access, including:

- *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. So now, 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. Doubling the quarterly fee waiver will allow approximately 77 percent of active PACER users to access court

records for free.

- *Enhancing Public Outreach.* PACER.gov is the public presence of the PACER service where users register an account, manage their account, and get information on the various ways of accessing court information. As part of the judiciary's effort to enhance its public outreach, the PACER.gov website is being redesigned. The new web site will improve the user experience, provide mobile compatibility, and incorporate plain language. The new website is expected to be released in early 2020.
- *Establishing an Electronic Public Access User Group.* The EPA Public User Group has been formed to collect advice and provide feedback on ways to improve PACER and other public access related services in the future. The recently formed group has 12 non-judiciary members who represent the legal sector, media, academia, government agencies, and other entities that use PACER. The EPA Public Users Group will have its first in-person meeting in early 2020.

SIGNIFICANT ISSUES FOR FISCAL YEAR 2021

Case Management/Electronic Case Files

CM/ECF, first introduced in early 2001, revolutionized the way federal courts and the bar managed cases and documents. The transition to a Next Generation of CM/ECF (NextGen CM/ECF) is well underway. The requirements-gathering phase of the project concluded in March 2012, as groups of judges, chambers staff, clerks of court, court staff, and Administrative Office staff identified and prioritized hundreds of functional requirements. The project also received input from the bar, academia, government agencies, and others through interviews, focus groups, and surveys of approximately 10,000 of the judiciary's stakeholders. 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 66 courts have gone live on NextGen CM/ECF. Implementation of NextGen CM/ECF is done in quarterly waves, with approximately 15 courts in each wave. The last wave (Wave 12) begins in January 2021.

Obligation of Funds from Electronic Public Access Receipts

The EPA receipts fund operations, maintenance, and improvements in EPA programs. Access to case information via PACER remains at .10 cents per page and the cost to access a single document 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 is expected to decline slightly. Revenue is projected to total approximately \$142 million in both FY 2020 and FY 2021.

At this time, obligations are projected to total \$184.1 million in FY 2020 and \$175.2 million in FY 2021. The FY 2020 revenue is supplemented by \$123.3 million in carryforward funding from FY 2019, which includes \$105.8 million in unencumbered carryforward and \$17.5 million in encumbered carryforward funding.

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 did determine that several other services, including courtroom technology, eJuror, and the Crime Victims Notification System, were impermissible because they lacked a sufficient nexus to information on the federal court's CM/ECF docketing system. The judiciary disagrees with this interpretation and has filed an appeal with the Court of Appeals for the Federal Circuit.

However, in an abundance of caution, pending the outcome of the case on appeal, the judiciary provisionally shifted approximately \$30 million in funding for those disallowed categories from the EPA program to the Salaries and Expenses (S&E) appropriation, beginning in FY 2018. Final appropriations for the S&E account in both FYs 2018 and 2019 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 dynamic changed in FY 2020. With final S&E appropriations below the requested level, the judiciary was forced to make trade-offs between continuing to support these disallowed categories at full funding versus funding them at a reduced level and providing additional funds for court support staffing (including probation and pretrial services offices, as well as appellate, bankruptcy and district court clerks offices) to handle increasing workload. For FY 2020, the judiciary is fully funding the disallowed categories, but the tension 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, the judiciary will continue to use Electronic Public Access funds for the CM/ECF system and electronic bankruptcy noticing among other appropriate expenses. The judiciary will keep the Committees updated on the progress of this litigation and any resulting decisions about the use of Electronic Public Access program funding.

The current FY 2021 EPA program requirements are shown in Table A-2.1 on page 2.5. The judiciary continues to carefully examine all EPA program requirements for optimal utilization of available resources to improve public access to court information. In FY 2020 and continuing into FY 2021, requirements for CM/ECF are projected to increase significantly. The higher costs are due to several factors, including: the incorporation of necessary security protocols, the ongoing resolution of “technical debt” (e.g., correcting coding errors, re-writing inefficient code) associated with the system’s infrastructure, the complexity of maintaining many different instances of the application, and the rapidly evolving IT environment.

The table below provides obligation data by program and financing for FYs 2019, 2020, and 2021.

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

Program Category	FY 2019 Actual	FY 2020 Plan	FY 2021 Request
Public Access Services	16,827	29,495	23,024
CM/ECF Development, Operations, and Maintenance	48,603	73,016	73,630
Courtroom Technology	0	0	0
Communications Infrastructure, Services, and Security	50,308	51,885	59,140
Electronic Bankruptcy Noticing	6,040	6,243	8,565
Allotments to the Courts	5,341	23,467	10,888
Web-based Juror Services	0	0	0
Violent Crime Control Act Notification	0	0	0
TOTAL	127,119	184,106	175,247
Unobligated Balance, Start of Year	(95,505)	(123,278)	(83,672)
Estimated Receipts	(146,594)	(142,000)	(142,000)
Prior Year Recoveries and Exchanges (Projected FY20 & FY21)	(8,298)	(2,500)	(2,500)
Unobligated Balance, End of Year ²	123,278	83,672	52,925

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

^{2/} The unobligated balance at the end of FY 2019 includes \$105.8 million in unencumbered carryforward and \$17.5 million in encumbered carryforward. This \$17.5 million in encumbered carryforward (or project slippage) includes \$12.6 million for allotments to the courts; \$2.6 million for communications infrastructure, services, and security; \$1.2 million for CM/ECF development, operations, and maintenance; and \$1.1 million for public access services.