

**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) 2024 alone, PACER processed slightly over 619 million requests for case information.

Currently, there are more than 4.48 million PACER user accounts; approximately 14.0 percent of these accounts were active in FY 2024. In addition to court staff, users include members of the bar; city, state, and federal employees; private companies; nonprofit organizations; academic researchers; members of the media; and the general public. During FY 2024, the judiciary's PACER Service Center established 371,963 new PACER accounts and responded to more than 309,000 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 the Judiciary Information Technology Fund (JITF) as an offsetting collection to reimburse the fund for the cost of the judiciary's EPA program. The components of this program are listed in Table A-2.1 on page 2.8 and include activities such as operations of the PACER Service Center; electronic bankruptcy noticing; the telecommunications, replication, archiving, development, and maintenance requirements associated with the current CM/ECF systems and PACER services; and the ongoing 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:

- *Improving Search Functionality.* To address one of the primary issues identified through the 2021 PACER User

Assessment, the Administrative Office of the U.S. Courts (AO) has undertaken a project, more fully described below in the CM/ECF Modernization section, to greatly improve the search functionality in PACER. The goal of this project is to provide a modern, intuitive, user-friendly search interface, allowing the public user to easily search across the federal judiciary for near real-time court data, documents, and docket entries. The AO solicited offers from vendors for this effort and anticipates making an award in calendar year (CY) 2025. This functionality will be transferrable to the modernized case management system in development.

- *Increasing Free Access to Court Records.* To make court documents free for more users, 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 in a quarterly billing cycle. In FY 2024, approximately 84.0 percent of active PACER users accessed court records for free as a result of the fee waiver. Also, in 2022, the Judicial Conference determined to make all searches free of charge for all noncommercial users of any future new modernized case management, electronic filing, and public access systems implemented by the judiciary. That change will be implemented with the release of the new PACER interface to be developed by the Unified Search project and will go into effect as it is rolled out to the courts.
- *Continued Engagement of the Electronic Public Access Public User Group.* In 2020, the AO established the EPA Public User Group to collect advice and provide feedback on ways to improve PACER and related public access services. The Group is composed of 12 individuals who represent the legal sector, media, academia, government agencies, and other entities that regularly use PACER. The second iteration of the EPA Public User Group concluded its term in December 2024. Members of this Group provided detailed feedback via individual interviews about their experiences with the current PACER search functionality and the potential features that would be valuable in a new search system. Throughout their term, they assisted with refining requirements for the new system, including the case number format to be displayed and the Case Preview feature for each court type. Additionally, the EPA Public User Group has been responsible for some public access services improvements, such as enhancing functionality of the PACER Case Locator, resolving an issue with viewing PDF files on iPads in a previous version of District CM/ECF, and adding a pro se user page on the PACER website.

The AO reconstituted the EPA Public User Group with 12 new members for a two-year term beginning January 2025. The AO is engaging the User Group in requirements development for the new PACER unified search functionality, referenced above and discussed more fully in the next section, and to examine additional ways to improve public access services.

## SIGNIFICANT ISSUES FOR FISCAL YEAR 2026

### *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 federal courts. It manages documents, deadlines, hearing schedules, and trials. It handles the docketing for every federal court, and it processes transactions at every step of a case, from collecting filing fees, to determining deadlines for motions, to sharing vital information among litigants, judges, and court staff.

In 2014, the judiciary began implementation of its first effort to update and improve CM/ECF through the Next Generation (NextGen) CM/ECF project. As of September 2022, all courts have transitioned to and are now live on NextGen CM/ECF. Courts continue to upgrade to the latest two supported versions of NextGen CM/ECF. These upgrades improve the judiciary's CM/ECF security posture. NextGen CM/ECF is currently in "lights on" mode where resources will be available only to continue its secure operation, with changes or improvements being limited to security vulnerability fixes as well as mandatory changes required by new laws.

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 modernizing the system for the future. In 2021, it partnered with 18F, a government consultancy in the General Services Administration's (GSA) Federal Acquisition Service, to assess the status of CM/ECF and develop a path forward for modernizing the system. 18F delivered its final report on this work in March 2022. The judiciary agreed with 18F's assessment and recommendations, most notably a recommendation to replace the existing CM/ECF with a new, modernized cloud-based system. While 18F recommended building "a new, open source system with modern technology and architecture," the AO believed it was also important to explore commercial off the shelf (COTS) products, which might allow the judiciary to implement a new case management and electronic case filing system much more quickly than if it built one from scratch. The AO conducted market research by gathering feedback from multiple sources, including user representatives, and shared the results of their findings in December 2022. The judiciary considered all the reports produced by the market research effort to build certain features in

the proof of concept and prototype for the user-friendly case management system. This proof of concept and prototype will inform the judiciary if these COTS products can help accelerate development. The AO is adopting a hybrid model, using COTS in areas where it will help accelerate development and custom building the rest of the case management system. To reduce the risks to the case management modernization (CMM) effort, the AO is currently engaged in a proof of concept/prototype phase during which the product development team will develop working software that will help identify important considerations and test proposed approaches. This process will allow a panel of users to evaluate a set of features/solutions for the product from both business and technical perspectives and inform key decisions to reduce the risks associated with, for example, architecture/design, configurability of events, Application Program Interfaces (APIs), performance, scalability, etc. before making investments in specific technical solutions. Further, CMM is adopting an incremental replacement approach where new functionality in the modernized system will slowly replace the functionality in NextGen CM/ECF. The first release will be the Minimum Viable Product, after which functionality will be released incrementally in subsequent releases—through this process, users will organically start using the new modernized system and stop using NextGen CM/ECF.

One of the key 18F recommendations was to engage with “hands-on-keyboard” users to guide decisions about the design and function of the modernized case management system. More than 235 volunteer User Representatives (URs) drawn from various federal court types, sizes, and locations have been involved to date. Some of these URs played key roles in the market research, unified search, and proof of concept activities described above, as well as conducted a comprehensive analysis of all the complex case management tasks routinely performed in their courts. Additionally, the members of the EPA Public User Group are engaged in refining requirements for new features and enhancements to be provided by the new PACER interface and will continue to be actively engaged as the AO progresses through the Unified Search project. This user-centered design is a critical part of ensuring the effectiveness and adoption of the new system.

The CM/ECF modernization effort is funded by EPA fee revenue. Delivery of the first CMM products to pilot courts will begin in FY 2026 and will continue in increments through FY 2027. The estimated development costs during that time period are

approximately \$200.0 million. Total project costs and schedules are still being determined.

### ***Legislation Impacting PACER and the Case Management/Electronic Case Files System***

In prior Congresses, the Judiciary Committees have repeatedly considered legislation to eliminate PACER fees while requiring a complete overhaul of the judiciary's backbone case management and electronic filing system. Often introduced under the name "the Open Courts Act", these bills have directed the AO to consolidate CM/ECF into one unified system and, no later than a designated number of years after enactment, make all documents accessed through PACER available free of charge.

The Judicial Conference 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 revenues and for any related new requirements in the legislation.

Prior versions of the Open Courts Act authorized 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. However, 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 were 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.

Although the Open Courts Act has not yet been enacted, the judiciary expects that it (or similar legislation) will continue to be pursued. The judiciary is concerned that implementation of the Open Courts Act or similar legislation 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 (or, in the case of current EPA services that are related to, but separate from, the CM/ECF system itself, there are no available funding streams provided at all). For any cost that is not covered by the available funding mechanisms in the bill, the judiciary will have to seek additional appropriations to implement the legislation, forcing the public access program, including the

critically important case management and filing system, into direct competition for appropriated funds allocated for other core judiciary operations. In an environment of constrained resources, this outcome could lead to devastating reductions in basic court services and the loss of necessary court staff.

The judiciary shares Congress's bipartisan interest in a modern, effective, fair, and successfully funded system and is committed to improving its systems for filing, storing, managing, and making available to the public all relevant court records. The judiciary, through its effort to modernize CM/ECF and PACER (described beginning on page 2.3), will also consider alternative funding mechanisms to reduce fees for many users, consistent with the branch's longstanding commitment to providing the widest possible access to electronic records at free or minimal cost.

### ***Obligation of Funds from Electronic Public Access Collections***

EPA collections (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. Revenue is projected to total approximately \$142.0 million in both FY 2025 and FY 2026. The FY 2025 revenue is supplemented by \$162.0 million in carryforward funding from FY 2024. At this time, obligations are projected to total \$238.8 million in FY 2025 and \$231.0 million in FY 2026.

The obligation of EPA program collections has been impacted in recent fiscal years by a 2018 ruling of the District Court for the District of Columbia in *National Veterans Legal Services Corp. v. United States*. In its ruling, which was affirmed by the Court of Appeals for the Federal Circuit in 2020, the district court upheld the judiciary's use of EPA program funds for the vast majority of its public access programs, but determined that the use of EPA program funds for some other services was impermissible.<sup>1</sup> The parties

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<sup>1</sup> Beginning in FY 2018, the judiciary stopped funding the impermissible activities through the EPA program, contributing, in part, to the accumulation of the unusually high unobligated EPA balances referenced on page 2.8. However, these resources are projected to be depleted by the increase in costs for existing requirements and additional requirements for the modernization project. The judiciary will continue to monitor the balance of revenue and requirements in the EPA program and will keep the Appropriations Committees apprised of any necessary changes in policy or practice.

subsequently settled the case, with the United States agreeing to pay the plaintiffs \$125.0 million. The District Court approved the settlement in March 2024, but an individual who objected to the settlement filed an appeal, which remains pending. No settlement payouts will occur until the appeal is resolved. The settlement does not impact the judiciary's FY 2026 budget request or future budget requests,<sup>2</sup> and it does not impact the judiciary's cost estimate for implementation of the Open Courts Act, CM/ECF modernization, or other budget initiatives of the EPA program.

The planned FY 2025 EPA program requirements and projected resources are shown in Table A-2.1 on page 2.8. In FY 2025, requirements increased most in three program funding categories: CM/ECF Development Operations and Maintenance; Modernization of CM/ECF; 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 infrastructure, including cloud hosting; anticipated funding needed for the modernization of CM/ECF and PACER; and slippage for requirements not able to be executed in FY 2024, but still required in FY 2025.

In FY 2026, requirements total approximately \$231.0 million, with \$177.9 million needed to maintain current critical public access services, and \$53.1 million required exclusively for the modernization project.<sup>3</sup>

The table below provides obligation data by program and financing for FYs 2024, 2025, and 2026.

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<sup>2</sup> The costs of the settlement will be paid from the Department of the Treasury's Judgment Fund, not judiciary appropriations.

<sup>3</sup> Due to the agile approach being used for development of the modernized CM/ECF and PACER system, requirement costs for the modernization project will be refined as the project progresses. Currently, \$53.1 million is estimated for the modernization of CM/ECF and PACER in FY 2026, based on a six-year timeline for initial development. Once the new modernized system is fully operational, it is estimated that approximately \$55.1 million in current annual requirements for NextGen CM/ECF will be replaced by the operations and maintenance (O&M) costs of the new system along with other current EPA requirements that will be needed to operate and maintain the modern system and services.

**Table A-2.1 Utilization and Financing of EPA Receipts and Prior Year Recoveries (\$000)**

| <b>Program Category</b>                               | <b>FY 2024<br/>Actual</b> | <b>FY 2025<br/>Plan</b> | <b>FY 2026<br/>Request</b> |
|---|---------------------------|-------------------------|----------------------------|
| Public Access Services <sup>1</sup>                   | 19,460                    | 53,411                  | 42,978                     |
| CM/ECF Development, Operations, and Maintenance       | 51,591                    | 58,657                  | 55,083                     |
| Modernization of CM/ECF                               | 20,312                    | 44,267                  | 53,102                     |
| Communications Infrastructure, Services, and Security | 58,347                    | 63,374                  | 63,109                     |
| Electronic Bankruptcy Noticing                        | 5,066                     | 5,443                   | 5,579                      |
| Allotments to the Courts                              | 6,842                     | 13,678                  | 11,152                     |
| Prior Year Obligation Adjustments                     | 33                        | -                       | -                          |
| <b>TOTAL</b>  | <b>161,651</b>            | <b>238,830</b>          | <b>231,003</b>             |
| Unobligated Balance, Start of Year                    | 149,434                   | 161,987                 | 80,157                     |
| Estimated Receipts                                    | 147,916                   | 142,000                 | 142,000                    |
| Prior Year Recoveries (Projected FY 2025 and FY 2026) | 26,288                    | 15,000                  | 24,000                     |
| Unobligated Balance, End of Year                      | 161,987                   | 80,157                  | 15,154                     |

<sup>1</sup> EPA revenues are deposited in the JITF. See chapter 11 for more information on the JITF.