

APPENDIX 2 - ELECTRONIC PUBLIC ACCESS PROGRAM

ELECTRONIC PUBLIC ACCESS PROGRAM

GENERAL STATEMENT AND INFORMATION

The Electronic Public Access 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 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) 2018 alone, PACER processed 507,646,883 requests for case information.

Currently, there are more than 2.9 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. During FY 2018, the judiciary's PACER Service Center established 294,013 new PACER accounts and responded to more than 248,000 telephone and email requests.

Pursuant to Congressional directives, the Electronic Public Access program is funded entirely 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 electronic public access program. The components of this program are listed on page Appendix 2.4 and include activities such as operations of the PACER Service Center; electronic bankruptcy noticing; and the telecommunications, telecommunications, replication, archiving, development and maintenance costs associated with CM/ECF.

Revenue from user fees has remained flat since FY 2013 and is projected to total approximately \$145 million in FY 2019. Although registered PACER users recently exceeded 2.9 million, this increase is not expected to impact revenue projections. Due to waivers and exemptions, on average only 34 percent of active users are actually billed in any given quarter. The majority of fee revenue continues to come from a handful of users, with two percent of accounts generating more than 87 percent of the revenue.

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

- *Improved PACER Search Tool.* Upgrades to the PACER Case Locator (PCL) in 2017 simplified the search process for federal cases and allowed users to more efficiently narrow their search results across all courts. The PCL serves as a search tool for

PACER and is a database that contains more than 51 million court cases and 310 million party records, which date to the 1950s. The updated PCL allows users to save preferred cases and searches so that they can quickly access a case or easily re-run a search anytime. The PCL also provides simplified search screens and makes it possible to perform searches from mobile devices.

- *Notification of Case Activity.* Six appellate courts, 75 district courts, and 92 bankruptcy courts have implemented an internet tool, Really Simple Syndication (RSS), to “push” notification of docket activity to the public free of charge, much like a Congressional committee might notify its RSS users of press releases, hearings, or markups. The public can easily stay informed of new case openings, filings, and docketed events provided by a court's RSS feed. The RSS feed includes automatic notification of activity in all cases including summarized text, such as the name of the document filed, with links to the document and docket in PACER.
- *Electronic Bankruptcy Noticing.* Electronic Public Access program funding supports Electronic Bankruptcy Noticing (EBN), which electronically transmits bankruptcy notices to those who register for EBN (instead of transmitting the notices by U.S. Mail). In FY 2018, over 33 million notices were transmitted electronically, saving approximately \$7.6 million in postage and printing costs. The judiciary established a program in 2014, known as Debtor Electronic Bankruptcy Noticing (DeBN), to provide debtors with electronic court notices and orders upon request. DeBN is a noticing improvement for debtors that reduces the cost of debtor noticing. Currently, 59 bankruptcy courts are offering electronic noticing to debtors through the DeBN program.

SIGNIFICANT ISSUES FOR FISCAL YEAR 2020

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, 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 40 courts have gone live on NextGen CM/ECF. Implementation of NextGen CM/ECF will be done in quarterly waves, with approximately 15 courts in each wave. The last wave (Wave 12) begins in January 2021.

Obligations of Funds from Electronic Public Access Receipts

The Electronic Public Access receipts fund operations, maintenance, and improvements in Electronic Public Access programs. Revenue is projected to total approximately \$145 million in both FY 2019 and FY 2020. Obligations are projected to total \$138.4 million in FY 2019 and \$141.0 million in FY 2020. The FY 2019 revenue is supplemented by \$71.6 million in unencumbered carryforward funding from FY 2018¹.

The obligation of Electronic Public Access 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 Electronic Public Access program funds for the vast majority of its public access program but did determine that several ancillary 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. In response to the ruling and pending the outcome of the case on appeal, the judiciary provisionally shifted funding for those disallowed categories from the Electronic Public Access program to the Salaries and Expenses (S&E) appropriation, beginning in FY 2018². Given the importance of these programs, the judiciary sought funding from the S&E appropriation for these activities in FY 2019. The total amount of these requirements in FY 2020 is approximately \$30 million, which is included in the appropriations request for the S&E account. The reallocation of courtroom technology, eJuror, and the Crime Victims Notification System to the S&E account removed requirements from the Electronic Public Access program without a corresponding reduction in revenue. This has resulted in the temporary increases in Electronic Public Access balances, which will be held pending the outcome of the appeal and then utilized as necessary and appropriate. Consistent with longstanding practice, the judiciary will continue to use Electronic Public Access funds for the CM/ECF system and EBN 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 2020 Electronic Public Access program requirements are shown in Table A-2.1. The judiciary continues to carefully examine all Electronic Public Access program requirements for optimal utilization of available resources to improve public access to court information.

¹ The projections for obligations and revenue in FY 2019 do not include \$23.8 million in encumbered carryforward from FY 2018 to FY 2019.

² In FY 2018, there was a partial shift of these requirements from the Electronic Public Access program to the Salaries and Expenses appropriation. Specifically, approximately \$8.4 million was shifted in FY 2018.

The table below provides obligation data by program and financing for FYs 2018, 2019, and 2020.

**Table A-2.1 Utilization and Financing of Electronic Public Access Receipts & Prior Year Recoveries
(\$000)³**

Program Category	FY 2018 Actual	FY 2019 Plan	FY 2020 Request
Public Access Services	13,039	18,639	20,555
CM/ECF Development, Operations, and Maintenance	44,288	54,235	55,287
Courtroom Technology	1,424	0	0
Communications Infrastructure, Services, and Security	43,146	47,370	47,529
Electronic Bankruptcy Noticing	5,300	6,243	6,243
Allotments to the Courts	6,422	11,947	11,346
Web-based Juror Services	718	0	0
Violent Crime Control Act Notification	125	0	0
TOTAL	114,462	138,434	140,960
Unobligated Balance, Start of Year	58,126	71,647	80,913
Estimated Receipts	145,764	145,200	145,200
Prior Year Recoveries and Exchanges (Projected FY 2019 & FY 2020)	6,077	2,500	2,500
Unobligated Balance, End of Year ⁴	-71,647	-80,913	-87,653

³ Electronic Public Access revenues are deposited into the Judiciary Information Technology Fund (JITF). See chapter 11 for more information on the JITF.

⁴ The FY 2018 Unobligated Balance, End of Year does not include \$23.8 million in encumbered carryforward funding.