

**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) 2022 alone, PACER processed nearly 551 million requests for case information.

Currently, there are more than 4.1 million PACER user accounts; approximately 14 percent of all user accounts were active in FY 2022. 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 2022, the judiciary's PACER Service Center established 287,778 new PACER accounts and responded to more than 287,000 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; the telecommunications, replication, archiving, development, and maintenance costs associated with the current CM/ECF systems and PACER services, as well as costs associated with 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 quarterly PACER User Assessments.* In 2021, the judiciary conducted a comprehensive PACER User Assessment to measure user satisfaction with PACER services and identify areas for improvement. The results of the 2021 assessment show that 84 percent of users were satisfied with the PACER services offered and the value of the services for the fees charged. However, the assessment's findings pointed to areas that could have a significant positive impact on user satisfaction, including improved search capabilities and greater awareness of available services. The results of the survey are being used to prioritize and inform improvements to public access services. As improvements are considered, the judiciary is seeking more focused input on a more frequent basis through quarterly user surveys. The results of these

surveys will be used to develop, enhance, and implement products and services designed to improve user satisfaction.

- *Improving Search Functionality.* To address one of the primary issues identified through the 2021 PACER User Assessment, the AO has undertaken a project, more fully described below in the Case Management/Electronic Case Files Modernization section, to greatly improve search functionality in PACER. The goal of this project is to provide a modern, intuitive, user-friendly search interface, allowing the user to easily search across the federal judiciary for publicly available court data, documents, and docket entries. The AO is preparing for the solicitation process, and this functionality will be transferrable to the modernized CM/ECF system in development.
- *Increasing Free Access to Court Records.* To make court documents free for more users, the Judicial Conference approved an increase in the quarterly waiver threshold 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 2022, approximately 81 percent of active PACER users accessed court records for free as a result of the fee waiver. Additionally, at its March 2022 session, the Judicial Conference endorsed making all searches free of charge for all non-commercial users of any future new modernized case management, electronic filing, and public access systems implemented by the judiciary.
- *Facilitating an Electronic Public Access Public User Group.* In 2020, the AO established the first 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 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 two teleconferences in FY 2022, concluding the membership term of the inaugural Group. The Group made several recommendations for improving public access services. 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.

In October 2022, the AO reconstituted the EPA Public User Group with 12 new members to serve a 2-year term, ending in 2024. This Group's first meeting was held in November 2022 via teleconference. The AO plans to engage these members in the development of requirements 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 2024

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 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.

In 2014, the judiciary began implementation of its first effort to update and improve CM/ECF through the Next Generation (NextGen) CM/ECF project. The first NextGen release was implemented in the Second and Ninth Circuit Courts of Appeals in the fall of 2014. As of September 2022, all courts of appeals, district, bankruptcy, and national courts have implemented NextGen CM/ECF.

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, the judiciary partnered with 18F, a government consultancy in the General Services Administration's (GSA) 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.

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. The final report on this work was delivered to the judiciary in March 2022.

The Judiciary agrees with 18F's assessment and recommendations, most notably a recommendation to replace the existing CM/ECF with a new, modernized system. While 18F recommended developing the new CM/ECF system from the ground up through open-source software, the AO believed it was also important to explore commercial off the shelf (COTS) products. Incorporating COTS products may 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 engaged the National Center for State Courts (NCSC) to conduct this market research and analysis. There is likely no single product on the market that will meet all of the judiciary's needs, so it is likely that the final solution will involve custom development work from the AO. But the hope is that COTS products could help accelerate a portion of the CM/ECF product by meeting much of the judiciary's needs, and the rest can be customized, resulting in the final system that is a hybrid of a COTS product and custom solution.

The AO is currently gathering market research and feedback from multiple sources, including user representatives, to inform our decisions about products and approach. The judiciary will consider all the reports produced by the market research effort as it proceeds toward a more modern case management and electronic filing system.

While the AO proceeds with the NCSC engagement, it is also moving forward with developing a unified search solution to replace the current PACER search feature. In March 2022, the AO released a Request for Information (RFI) on the GSA's Contract Opportunities site (at SAM.gov) seeking input from the industry about COTS solutions that provide modern Google-type search capability and can be used to build the modern unified search solution. The industry responded positively to the RFI, and over 20 companies provided responses. The AO estimates that during 2023 vendors will be selected to begin prototyping and then developing a unified search product for public use. At a later stage, the unified search product will be incorporated into the modern CM/ECF product.

The CM/ECF modernization effort is currently being funded by EPA revenue, consistent with the judiciary's historical approach to CM/ECF-related costs. Total project costs and schedules are still being determined, but, at this time, it is the expectation that fee revenue will continue to fund the modernization effort in future fiscal years. The judiciary will apprise the Congress as soon as possible if there is reason to believe that the historical funding model for CM/ECF will require adjustment in the future in order to adequately support CM/ECF modernization.

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

The 117th Congress 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, directed the AO to consolidate CM/ECF into one unified system and, no later than three years after enactment, make all documents accessed through 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 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. 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 was not enacted during the 117th Congress, the judiciary expects that it (or similar legislation) will be pursued again in the 118th Congress. 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 isn't covered by the available funding mechanisms in the bill, the judiciary will have to seek additional appropriations to implement the 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 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 above), 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 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. Revenue is projected to total approximately \$142 million in both FY 2023 and FY 2024. The FY 2023 revenue is supplemented by \$151.3 million in carryforward funding from FY 2022, which includes \$142.1 million in unencumbered carryforward and \$9.2 million in encumbered carryforward funding. At this time, obligations are projected to total \$232.3 million in FY 2023 and \$208.0 million in FY 2024.

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 some 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 open. On October 11, 2022, a court filing in the D.C. District Court provided the details of the proposed settlement in the case, intending to resolve the matter. The settlement totals \$125 million and is subject to district court approval of the settlement terms. The settlement does not impact the Judiciary's FY 2024 budget request or future budget requests,¹ 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.

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.² 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 and necessary expenses.

The current FY 2023 EPA program requirements and projected resources are shown in Table A-2.1 on page 2.9. In FY 2023, requirements increased 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 infrastructure, including cloud hosting; anticipated funding needed for unfunded requirements that arise during the fiscal year, including for the modernization of CM/ECF and PACER³; and slippage for requirements not able to be executed in FY 2022,

¹ The costs of the settlement will be paid from the Department of Treasury's Judgment Fund, not judiciary appropriations.

² 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 2.9. However, as explained herein, 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 Committees apprised of any necessary changes in policy or practice.

³ The Public Access Services category includes \$23 million in requirements to be identified within the fiscal year. It is anticipated that many of these unfunded requirements will be for the modernization project. Due to the agile approach for development, more specific requirements are identified and further refined as the system is developed.

but still required in FY 2023.

In FY 2024, requirements total approximately \$208.0 million. It is projected that \$160.1 million will be needed to maintain current critical public access services, and an additional \$47.9 million will be needed exclusively for the modernization project.⁴

The table below provides obligation data by program and financing for FYs 2022, 2023, and 2024.

⁴ Due to the agile approach for development of the modernized CM/ECF and PACER, requirement costs for the modernization project will be refined as the project progresses. Currently, \$47.9 million is estimated for the modernization of CM/ECF and PACER in FY 2024, based on a six-year timeline for initial development. Once the new modernized system is fully operational, it is estimated that approximately \$56.4 million in current annual requirements for NextGen CM/ECF will be reduced, but other current EPA requirements will still be needed to operate and maintain the modern system and services.

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

Program Component (\$000s)	FY 2022 Actuals	FY 2023 Financial Plan	FY 2024 Request
Unobligated Balance, Start of Year	\$152,482	\$151,311	\$63,549
Estimated Receipts	\$144,870	\$142,000	\$142,000
Prior Year Recoveries and Exchanges (Projected FY22 & FY23)	\$6,205	\$2,500	\$2,500
Total EPA Financing	\$303,557	\$295,811	\$208,049
Public Access Services and Applications	\$22,186	\$26,713	\$22,098
CM/ECF Development, Operations, and Maintenance	\$63,570	\$64,827	\$56,424
Modernization of CM/ECF and PACER	\$489	\$28,722	\$47,894
Communications Infrastructure, Services, and Security	\$52,704	\$86,675	\$63,738
Electronic Bankruptcy Noticing	\$4,942	\$4,910	\$5,335
Allotments to the Courts	\$8,355	\$20,415	\$12,538
Total Obligations	\$152,246	\$232,262	\$208,028
Unobligated Balance, End of Year²	\$151,311	\$63,549	\$21

^{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 2022 includes \$142.1 million in unencumbered carryforward and \$9.2 million in encumbered carryforward. This \$9.2 million in encumbered carryforward (or project slippage) includes \$2 million for allotments to the courts for the implementation of NextGen CM/ECF; \$856,000 for upgrading the design, functionality, and hosting environment of local court websites; and \$6.3 million for IT security.