

At a Glance

S. 2614, Open Courts Act

As reported by the Senate Committee on the Judiciary on March 15, 2022

By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	262	381
Revenues	0	189	304
Increase or Decrease (-) in the Deficit	0	73	77
Spending Subject to Appropriation (Outlays)	0	152	493

Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold

The bill would

- Require the Administrative Office of the U.S. Courts and the General Services Administration to develop a centralized, cloud-based case management system for all federal court records that is accessible to the general public at no cost
- Authorize the judiciary to temporarily increase some fees for access to court documents, and to eliminate those fees entirely in 2026
- Authorize a new fee structure in 2026 for filing civil and bankruptcy cases in federal courts
- Impose mandates on entities that file federal cases or use the case management system

Estimated budgetary effects would mainly stem from

- Payments to vendors to develop, deploy, and maintain the new case management system
- Savings generated from modernizing the case management system
- Fees collected from system users and litigants
- Spending of appropriated amounts

Areas of significant uncertainty include

- Projecting the total cost of modernization, the number of contractors needed, and the duration of the work
- Identifying total systemwide savings and how quickly those savings would accrue
- Predicting how much the judiciary would raise fees and which entities would be subject to the new charges

Detailed estimate begins on the next page.

Bill Summary

S. 2614 would require the Administrative Office of the U.S. Courts (AOUSC), working with technology experts at the General Services Administration (GSA), to establish a centralized, cloud-based case management system for all public court records that is accessible to the general public at no cost. That system would consolidate the dozens of case management systems currently in use throughout the federal judiciary.

To cover the system’s costs, S. 2614 would authorize the AOUSC to revise its fee structure in two phases: Over the first three years, fees would increase for high-volume users of the Public Access to Court Electronic Records (PACER) service—those users that now pay more than \$25,000 per quarter in fees. Starting in 2026, PACER user fees would be eliminated, providing access to legal documents to the general public at no charge. The costs of the judiciary’s case management system would instead be funded by higher filing fees for civil and bankruptcy cases.

Estimated Federal Cost

The estimated budgetary effect of S. 2614 is shown in Table 1. The costs of the legislation fall within budget function 750 (administration of justice).

Table 1. Estimated Budgetary Effects of S. 2614													
By Fiscal Year, Millions of Dollars												2022-	2022-
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2027	2032
Increases in Direct Spending													
Estimated Budget Authority	0	22	29	23	95	70	48	29	20	16	15	239	367
Estimated Outlays	0	20	40	41	103	58	35	31	21	17	15	262	381
Increases in Revenues													
Estimated Revenues	0	17	23	23	63	63	63	13	13	13	13	189	304
Net Increase or Decrease (-) in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	0	3	17	18	40	-5	-28	18	8	4	2	73	77
Increases in Spending Subject to Appropriation													
Estimated Authorization	0	0	0	0	82	76	73	70	68	65	62	158	496
Estimated Outlays	0	0	0	0	76	76	74	71	68	65	63	152	493

Basis of Estimate

For this estimate, CBO assumes that the bill will be enacted by the end of calendar 2022 and that the first budgetary effects will occur in 2023. CBO also assumes that appropriations of the estimated amounts will be provided starting in 2026.

Background

The federal judiciary consists of 204 courts spread across 94 districts. Judiciary officials and staff, as well as public- and private-sector litigants, access legal documents and other information through the PACER service, an online portal to the judiciary's broader Case Management/Electronic Case Files (CM/ECF) system. Under the umbrella of the CM/ECF system, individual courts contract with private-sector vendors to operate dozens of separate and specialized systems.

Over the 2017-2021 period, the courts collected \$150 million annually, on average, in PACER fees. In each year of the same period, the federal judiciary spent an average of \$50 million to operate the current CM/ECF system and \$80 million to provide an array of other electronic public-access services that are currently funded by PACER fees. Collections are recorded in the federal budget as reductions in direct spending and deposited into the Judiciary Information Technology Fund (JITF), from which they are spent without further appropriation.

CBO's estimates of the resources required under the bill were made on the basis of information provided by the AOUSC, GSA, and software experts and on an examination of cost data from similar recent projects undertaken by federal agencies. Significant uncertainty surrounds CBO's estimates, however. The costs of implementing S. 2614 could be higher or lower depending on factors that include contracting decisions made by the AOUSC, the pace of development work, and the length and complexity of the transitional period for migrating courts to the new system.

Direct Spending

Under S. 2614, the modernization effort would increase direct spending to cover the costs of developing and deploying the new system; eliminating PACER fees also would increase direct spending, beginning in 2026. Those costs would be partially offset by reductions in spending on the current CM/ECF system and on other electronic services that are currently funded by PACER fees. On net, CBO estimates the legislation would increase direct spending by \$381 million over the 2022-2032 period (see Table 2).

**Table 2.
Estimated Changes to Direct Spending and Revenues Under S. 2614**

	By Fiscal Year, Millions of Dollars											2022-2027	2022-2032	
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032			
Increases or Decreases (-) in Direct Spending														
Modernization Costs^a														
Estimated Budget Authority	0	22	30	30	42	26	20	15	15	16	16	150	232	
Estimated Outlays	0	20	41	47	42	12	6	15	15	16	16	162	230	
Offsetting Savings From Phasing Out the Current CM/ECF System														
Estimated Budget Authority	0	0	-1	-7	-14	-24	-41	-56	-65	-71	-72	-46	-351	
Estimated Outlays	0	0	-1	-6	-13	-23	-40	-54	-64	-70	-72	-43	-343	
Eliminating PACER Fees														
Estimated Budget Authority	0	0	0	0	152	153	155	157	158	160	161	305	1,096	
Estimated Outlays	0	0	0	0	152	153	155	157	158	160	161	305	1,096	
Eliminating Use of PACER Fees to Fund Public Access to Other Electronic Services														
Estimated Budget Authority	0	0	0	0	-85	-85	-86	-87	-88	-89	-90	-170	-610	
Estimated Outlays	0	0	0	0	-78	-84	-86	-87	-88	-89	-90	-162	-602	
Total Changes in Direct Spending														
Estimated Budget Authority	0	22	29	23	95	70	48	29	20	16	15	239	367	
Estimated Outlays	0	20	40	41	103	58	35	31	21	17	15	262	381	
Increases or Decreases (-) in Revenues														
PACER Fee Increases														
Estimated Revenues	0	22	30	30	0	0	0	0	0	0	0	82	82	
Filing Fee Increases														
Estimated Revenues	0	0	0	0	85	85	85	17	17	17	17	170	323	
Indirect Tax Effects														
Estimated Revenues	0	-5	-7	-7	-22	-22	-22	-4	-4	-4	-4	-63	-101	
Total Changes in Revenues														
Estimated Revenues	0	17	23	23	63	63	63	13	13	13	13	189	304	
Net Increase or Decrease (-) in the Deficit From Changes in Direct Spending and Revenues														
Effect on the Deficit	0	3	17	18	40	-5	-28	18	8	4	2	73	77	

CM/ECF = Case Management/Electronic Case File; PACER = Public Access to Court Electronic Records.

a. CBO estimates that total spending on the new system would total \$260 million over the 2023-2032 period, of which \$30 million would be paid from existing balances in the Judiciary Information Technology Fund that have been allocated for the modernization. Because CBO estimates that S. 2614 would accelerate the spending of those balances, enacting the bill would result in a shift in the timing of when those amounts are spent, but would not increase total spending of those balances over the 2022-2032 period.

Modernization Costs. S. 2614 would require the AOUSC, in coordination with technology experts at GSA, to develop a centralized case management system for all federal courts.¹ The system would need to meet modern data and security standards and include common features and services. The costs of operating the system would be paid from the JITF and funded by higher PACER and filing fees.

CBO estimates that developing and operating the new system would increase spending over the 2022-2032 period by \$230 million. In addition, CBO expects that about \$30 million of existing balances for electronic services in the JITF, which the AOUSC has already allocated for the modernization, would be spent on those activities. New direct spending would be funded with new revenue generated by higher fees (see Table 2).

Based on conversations with information technology (IT) staff from the AOUSC and GSA as well as private-sector experts, CBO anticipates that over the next ten years, about 70 percent of the costs of developing and maintaining the new system (about \$180 million) would stem from compensation for programmers, engineers, designers, project managers, and others employed by private-sector contractors and the AOUSC IT offices. The remaining costs (about \$80 million) would cover data storage, software licensing, hardware, and similar costs.

Private Vendors. The labor costs attributable to private vendors would come from a series of short-term, renewable contracts. Labor costs for software development are commonly measured on the basis of the number of teams needed, with each team typically consisting of 8 to 10 people whose average annual compensation is about \$240,000—an annual cost of roughly \$2 million per team.

CBO expects that the number of development teams under contract would peak at 12 in 2024 and 2025, and that those teams would work in parallel to develop case-filing, management, and search modules, among other aspects of the system. As parts of the system are completed and incrementally deployed, CBO expects that the number of teams would decline to 6 by 2028. Using information about timelines from major software development projects undertaken by other federal agencies, CBO expects that the new system would be fully migrated and in use by nearly all federal courts by 2029. In that year and going forward, CBO expects that the judiciary would contract with four development teams to provide support for operation and maintenance. In total, over the 2022-2032 period, CBO estimates that contracts with private vendors would cost \$161 million.

1. The new system would cover 204 district courts (which try civil, criminal, and bankruptcy cases); 13 appellate courts; and courts of special jurisdiction, including the Court of Federal Claims and the Court of International Trade. The system would be used by nearly 2,000 federal judges, over 25,000 judiciary staff, and thousands of other public and private entities.

Judiciary IT Staff. CBO expects that the judiciary also would require additional staff to manage the development and deployment of the system. Using information from the AOUSC, CBO estimates that the equivalent of 20 additional staff would be needed in 2024 and an additional 5 needed in 2028 to manage the modernization effort at a cost of \$17 million over the 2022-2032 period.

Other Costs. In addition to labor costs, CBO expects that vendors and the AOUSC would incur costs for cloud storage, software licenses, database management, hardware, and migrating existing data from old databases to the new system. Using information from the AOUSC and GSA, and based on conversations with private-sector experts, CBO estimates those costs would peak at \$13 million in 2024 and total about \$82 million over the 2022-2032 period.

In developing this estimate, CBO analyzed information about comparably-sized projects undertaken by several large executive branch agencies to estimate the resources that would be needed to implement S. 2614, including the Federal Bureau of Investigation, the Centers for Medicaid Services, the Centers for Disease Control, and the U.S. Patent and Trademark Office. Information from those projects indicates that, on average, core development takes five to seven years; in general, ongoing contracts for operation and maintenance cost less than the original development contracts. CBO also examined the development of the Tax Court's case management system, which lasted from 2018 to 2020, at an annual cost of about \$3 million. The system required under S. 2614 would be similar to the Tax Court's system although significantly more expensive because of its larger scale and complexity.

Offsetting Savings From Phasing Out the Current CM/ECF System. Using budget projections provided by the AOUSC and information from GSA and private-sector experts, CBO expects that modernization eventually would result in operating costs that are lower than the cost to operate the current CM/ECF system (estimated at \$64 million in 2022). CBO anticipates that the savings would accrue principally from consolidating the judiciary's software systems, which would increase operating efficiency and significantly reduce payments to contractors.

CBO expects that core modernization work would be completed by 2029 when the new system would begin operating at an annual cost of \$15 million—about one-fifth of the annual projected cost to operate the current system in that year. Over the 2022-2032 period, CBO estimates, the phaseout of the old system would generate savings of \$343 million.

Eliminating PACER Fees. S. 2614 would require all PACER fees to be eliminated in 2026, making access to documents in the new system free to the general public. CBO estimates that the elimination of those fees, which are recorded as offsets to spending from the JITF, would increase direct spending by \$150 million annually, or by about \$1.1 billion from 2026 through 2032.

Eliminating Use of PACER Fees to Fund Public Access to Other Electronic Services.

The judiciary also uses PACER fees to fund public access to an array of other electronic services, including maintaining courts' communications infrastructure, cybersecurity, and providing bankruptcy notices electronically. Based on historical spending amounts, CBO estimates that eliminating PACER fees would reduce direct spending on those services by \$602 million over the 2022-2032 period. Beginning in 2026, CBO expects that the AOUSC would require additional appropriations to continue providing those services at current-law levels (see Spending Subject to Appropriation).

Revenues

S. 2614 would authorize the AOUSC to revise existing fee structures in two phases to cover the costs of the new case management system. Large law firms and other users with significant volumes of PACER transactions would be subject to higher fees from 2023 to 2025. Beginning in 2026, the legislation would eliminate PACER fees and authorize higher fees for filing civil and bankruptcy cases in federal courts. In total, over the 2022-2032 period, CBO estimates that S. 2614 would increase net revenues by \$304 million, after accounting for offsetting effects from other types of taxes.

PACER Fee Increases. CBO estimates that over the 2023-2025 period the judiciary would incur net costs of \$110 million for modernization. Using information from the AOUSC, CBO expects that the courts would raise fees for high-volume users by 50 percent in the second quarter of 2023, generating a total of \$82 million over the period. Under S. 2614, the AOUSC would be permitted to increase fees by more or less than the estimated amounts.

Filing Fee Increases. To fund any operating expenses of the new system not covered by appropriations, the judiciary would be authorized, beginning in 2026, to increase the court fees paid by most litigants who file federal civil and bankruptcy cases. The Judicial Conference of the United States would be required to restructure the fee schedule primarily on the basis of the extent to which litigants use the new system.

All additional amounts collected would be deposited into the JITF and would be available only to meet the cost of developing and operating the new case management system and to support the CM/ECF system until it is phased out.

Over the 2017-2021 period, roughly 360,000 civil cases were filed annually, on average, in federal district and circuit courts, and an average of 675,000 entities filed for bankruptcy. Filing fees range from \$350 to \$500 for civil cases and from \$200 to \$1,167 for various chapters of the bankruptcy code. All told, the judiciary collected \$230 million annually, on average, over the 2017-2019 period. (For this estimate, CBO excluded data from 2020 and 2021 because collections declined markedly during the coronavirus pandemic and public health emergency.)

To cover the total costs of instituting the new system and phasing out the CM/ECF system, CBO estimates that the judiciary would increase filing fees in 2026 by 40 percent, on average, to generate an additional \$85 million in annual revenue.

Because S. 2614 would authorize increases only as necessary to cover the costs of case management, CBO expects that the judiciary would reduce filing fees in 2029 to reflect the completion of the new system and the phaseout of the CM/ECF system. CBO estimates that the additional revenues attributable to this bill would total \$17 million annually beginning in 2029.

In total, CBO estimates that the new filing fee structure under S. 2614 would increase revenues by \$323 million over the 2026-2032 period.

Indirect Tax Effects. When indirect taxes or fees are imposed on goods and services, the taxable income of businesses and workers tends to decline, resulting in lower collections of income and payroll taxes. To approximate that effect for this bill, CBO estimated that new fee collections would be offset by an annual reduction in other tax collections of about 25 percent of the gross fees collected each year. Thus, CBO estimates, the fee and revenue increases under S. 2614 would reduce other tax collections by about \$100 million over the 2022-2032 period.²

Spending Subject to Appropriation

Because S. 2614 would eliminate PACER fees in 2026 and dedicate all new revenue generated under the bill to the case management system, CBO expects that the AOUSC would require additional appropriations to continue to provide public access to certain electronic services at the same levels as under current law. Those services include maintaining courts' communications infrastructure, cybersecurity, and providing bankruptcy notices electronically. Over the 2017-2021 period, the judiciary provided those services at an average cost of \$80 million annually. CBO expects that those expenses would decline by one-third over the next decade because of efficiencies created by the new system, among other factors. Using information from the AOUSC, and after accounting for inflation, CBO estimates that the AOUSC would require appropriations of \$82 million in 2026 and \$496 million over the 2022-2032 period (see Table 1) to continue to provide those services.

Uncertainty

CBO's cost estimate for S. 2614 reflects considerable uncertainty in several areas. Most costs of modernizing the case management system would be attributable to labor, particularly services provided by private vendors. The costs of implementing the legislation could be higher or lower than estimated here, depending on many factors, including contracting decisions made by the AOUSC, the pace of development work, and the length

2. See Congressional Budget Office, *The Role of the 25 Percent Revenue Offset in Estimating the Budgetary Effects of Legislation* (January 2009), www.cbo.gov/publication/20110.

and complexity of the transitional period for migrating courts to the new system. If work was completed more slowly than assumed in this estimate, the costs of the bill would increase. Conversely, if federal courts transitioned to the new system more quickly than expected, estimated savings from phasing out the old system would be larger, and the net cost of implementing the bill would be lower. CBO’s estimate reflects an assessment of the most likely middle outcome of many scenarios that vary by cost and duration of work.

Under the bill, some fees would rise temporarily and others would be permanently increased to pay for the new system. For this estimate, CBO assumed that the judiciary would increase fees by amounts necessary to cover the costs of the modernization, and that no additional appropriations would be required for the case management system. Depending on the size of those increased fees and actual revenue generated, the judiciary would require higher or lower appropriations.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 3.

Table 3.
CBO’s Estimate of the Statutory Pay-As-You-Go Effects of S. 2614, the Open Courts Act, as Reported by the Senate Committee on the Judiciary on March 15, 2022

	By Fiscal Year, Millions of Dollars											2022-2027	2022-2032
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
	Net Increase or Decrease (-) in the Deficit												
Pay-As-You-Go Effect	0	3	17	18	40	-5	-28	18	8	4	2	73	77
Memorandum:													
Changes in Outlays	0	20	40	41	103	58	35	31	21	17	15	262	381
Changes in Revenues	0	17	23	23	63	63	63	13	13	13	13	189	304

Increase in Long-Term Deficits

CBO estimates that enacting S. 2614 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2033.

Mandates

S. 2614 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by increasing PACER user fees and federal court

filing fees to cover the cost of modernizing and making the federal courts' case management system free to the public by 2026.

Current law authorizes the courts to charge private and public entities for using the PACER service. The bill would expand the existing mandate by temporarily increasing fees for some private-sector, high-volume users of the system. Based on information from the Department of Justice, GSA, and industry experts, CBO estimates that federal courts would increase fees for some users by \$27 million annually, on average, during the first three years after enactment. (That is also reflected in the estimate of increased federal revenues for PACER fee increases in Table 2.) In 2026, however, the bill would eliminate all PACER system fees, eventually providing savings for users of the system.

Also in 2026, the bill would impose a second mandate by increasing the fees on private and public entities filing cases in federal courts. CBO estimates that those fees would increase by \$85 million a year in 2026 and by \$17 million a year beginning in 2029.

The total cost of the intergovernmental and private-sector mandates alike would fall below the thresholds established in UMRA (\$92 million and \$184 million in 2022, respectively, adjusted annually for inflation).

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