

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL VETERANS LEGAL  
SERVICES, et al.,

*Plaintiffs,*

v.

UNITED STATES OF AMERICA

*Defendant.*

Civil Action No. 16-745 (ESH)

**NOTICE**

Pursuant to the Court’s request, Defendant hereby provides this Notice addressing questions raised at the March 23, 2018 Motions Hearing in the above-captioned matter. Specifically, the Court asked Defendant to provide support for the contention that members of the Appropriations Committees engage in similar oversight of both how agencies spend user fee receipts and how agencies spend discretionary appropriations.<sup>1</sup>

As outlined below, a sampling of enacted law and committee reports confirms that Congress—as well as members of the Appropriations Committees—provides express directives to agencies about both the use of discretionary appropriations and receipts from user fees.

- Exhibit A: H. Rep. 115-234 at 36: Here, the House Appropriations Committee expressly demonstrated that both the House and Senate Appropriations Committees exercise close oversight of how the Judicial Conference uses receipts from PACER fees: “The Judiciary shall provide to the House and Senate Committees on Appropriations a report addressing (1) trends in [PACER] revenues since passage of

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<sup>1</sup> During the Motions Hearing, counsel for the Defendant and the Court addressed these questions by referring to an apparent difference between “appropriated funds” and “non-appropriated funds.” For clarity, it is worth noting that all such funds are “appropriated” whether they are discretionary appropriations or receipts from user fees. *See, e.g.,* Gov’t Accountability Office, 4. *Appropriations: The Enactment of Budget Authority* at \*6-\*7 (2016), 2016 WL 1275439; *see also* U.S. Const. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law[.]”). And, as noted in the other attachments to this Notice, the use of such fees is subject to oversight from the congressional appropriations committees.

- the E-Government Act of 2002; (2) sources of PACER revenues broken out by general types of users, such as federal government, corporations, and individuals, over a five fiscal year period; (3) an itemization of how PACER revenues are spent ... over the same five fiscal year period; and (4) initiatives planned or underway by the Judiciary to improved PACER technology, operations, or management for the purpose of providing greater functionality, and improved user experience, or greater efficiency.”
- Exhibit B: Pub. L. 110-161, Sec. 304: This Appropriations Act demonstrates that Congress identified the Appropriations Committees as the responsible authority for reviewing and approving the Administrative Office’s use of *both* discretionary appropriations and user fees: “Within 90 days after the date of the enactment of this Act, the Administrative Office of the U.S. Courts shall submit to the Committees on Appropriations a comprehensive financial plan for the Judiciary allocating *all* sources of available funds, including appropriations, *fees collections* and carryover balances[.]” (emphasis added)
  - Exhibit C: Pub. L. 115-31, Sec. 608: This Appropriations Act demonstrates that Congress uses appropriations laws to direct how receipts from fees are used, stating that “none of the funds provided in this Act, ... *or provided from any accounts in the Treasury of the United States derived by the collection of fees* and available to the agencies funded by this Act, shall be available for obligation or expenditures for an agency ... which (1) creates new programs; (2) eliminates a program, project, or responsibility center ... unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate.” (emphasis added)
  - Exhibit D: H. Rep. 114-668 at 78-79: This House Appropriations Committee Report demonstrates that appropriators exercise oversight of how receipts from fees are used, stating that a provision was added to “direct[ ] that none of the fees collected, including any deposits into the Immigrations Examinations Fee Account, may be obligated to expand the existing Deferred Action for Childhood Arrivals program[.]”
  - Exhibit E, H. Rep. 114-205 at 27: This House Appropriations Committee Report demonstrates that appropriators exercise oversight of how fees are set, expressing the Committee’s “concerns about the proposed rules regarding adjustment to fees for [Agricultural Quarantine and Inspection] services and overtime reimbursement rates.” Specifically, the appropriators expressed concern regarding “significant” changes to existing fees that “will affect a wide variety of industries[.]”
  - Exhibit F, H. Rep. 114-170 at 8: This House Appropriations Committee Report demonstrates that appropriators exercise oversight of how fees are established, expressly “reject[ing] the [Bureau of Land Management’s] proposal to impose new grazing fees.” *See also id.* at 10 (rejecting “proposal to increase onshore inspection fees”).
  - Exhibit G, S. Rep. 114-75 at 136: This Senate Appropriations Committee Report demonstrates that appropriators exercise oversight of how fees are set, where the Committee rejected the Federal Housing Administration’s (“FHA”) request to assess

new fees, stating that “[t]he Committee is disappointed that the budget request proposing a new fee to offset administrative costs is the same language as in fiscal year 2015 ... [and] the Committee does not include any authority for [the United States Department of Housing and Urban Development] to charge a fee to provide additional funds for FHA’s administrative costs.”

March 24, 2018

Respectfully submitted,

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