

Government Executive

The federal government is likely to receive a record number of FOIA requests again in 2024

By Amy Hilbert

October 15, 2024

In recent years, the federal government has seen a sharp rise in the volume of Freedom of Information Act requests, creating an overwhelming challenge for government agencies.

In fiscal year 2023, the federal government received an all-time high of 1,199,644 FOIA requests — a staggering 29% increase from the previous year. According to preliminary data from FOIA.gov, this surge shows no signs of slowing down. In the first three quarters of FY 2024, the federal government has already received more than 928,000 requests — an increase of more than 18% from the same period in the previous year. If the final quarter follows a similar pattern, the number of FOIA submissions will easily surpass 1.3 million for the year.

This rising volume underscores the public's increasing desire for transparency and accountability. However, the sheer number of requests is only part of the story. The complexity of these requests is also evolving, posing further challenges for government agencies already struggling with reduced staffing levels and outdated technologies.

This perfect storm of expanding demand and stagnant capabilities has created significant backlogs across many agencies and significantly increased processing and litigation costs. These trends are forcing agencies to rethink how they handle public information requests, with many looking to advanced technologies such as artificial intelligence to alleviate the burden.

Increased Complexity of FOIA Requests

Today's FOIA requests are more complex than ever. They often encompass large volumes of documents across multiple formats, including emails, PDFs, spreadsheets, and other file types. These requests can span years of data and involve multiple departments, agencies, and offices.

Sorting through vast quantities of information, much of it sensitive or confidential, requires both time and specialized knowledge. The ballooning amount of data can quickly overwhelm government agencies, especially those that rely on manual document review processes.

Many federal agencies are dealing with understaffing and outdated technologies that were never designed to handle the current FOIA workload. These limitations have led to mounting backlogs and delayed responses. While agencies are required by law to respond to FOIA requests within 20 working days, meeting this deadline has become increasingly difficult.

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(govexec.com)

I created an earned media campaign for the client using preliminary reporting numbers from the government to create a news hook about anticipated increases in FOIA requests for the current fiscal year. One of the leading trade media for federal government audiences liked the pitch, and I created this bylined article for a key Caspoint executive.

In FY 2022, there were 206,720 backlogged FOIA requests. While FY 2023 saw a slight drop in backlogs to 200,843, the backlog surged again in the third quarter of FY 2024, reaching 222,328. This marks an increase of more than 10% and suggests that agencies are falling further behind, struggling to process requests quickly enough to meet demand.

The costs of these delays extend beyond administrative burdens. Backlogs often result in litigation, as requesters who feel their FOIA requests are being unjustly delayed turn to the courts for redress. Increased litigation leads to higher legal costs for the government and further strains agency resources.

Technology as a Solution

Despite the challenges presented by the rising number and complexity of FOIA requests, this trend can also be viewed as a positive sign. It indicates a public that is actively engaged in the democratic process, seeking information to hold their government accountable. As agencies seek solutions, “end-to-end” solutions that harness the power of AI to help manage and track requests and securely collect relevant information show the most promise in easing the burden of FOIA compliance.

Manual document review — which involves reading, categorizing, and redacting sensitive information — is labor-intensive and slow. AI-driven tools, such as natural language processing (NLP) and machine learning, can greatly speed up this process by automating the search and analysis of vast datasets.

AI tools can group and prioritize documents based on their relevance to the FOIA request, helping teams find the necessary information faster. They can also flag potentially responsive documents, reducing the need for manual searches. With AI, agencies can automate much of the document sorting and categorization work, allowing them to respond more quickly to FOIA requests and reduce backlogs.

Moreover, AI can assist in maintaining the security of sensitive and confidential information, a critical concern for government agencies. Many FOIA requests involve documents that contain classified, personal, or legally protected information. AI systems can be trained to recognize these types of content and apply redactions automatically, helping ensure that sensitive information is not inadvertently released.

Looking Forward: The Future of FOIA Processing

As the federal government braces for what could be another record-breaking year of FOIA requests in FY 2024, the need for innovative solutions is clear. With the volume of requests expected to surpass 1.3 million and backlogs on the rise, agencies must adopt more efficient, technologically driven processes. Integrating AI-powered tools into FOIA processing could be a game changer, reducing backlogs, lowering costs, and improving accuracy.

In a world where data continues to grow in size and complexity, leveraging technology is not just an option — it is a necessity for the future of government transparency.

Amy Hilbert is Executive Vice President, Government at Casepoint, LLC., bringing 20+ years of experience supporting federal civilian and Department of Defense clients. Casepoint is a leading provider of data discovery and end-to-end FOIA solutions for government agencies.

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How AI-Powered Technologies Can Transform FOIA Compliance

By Mitchell Reyes

The Freedom of Information Act (FOIA) empowers citizens to access government records, shedding light on what is being done, and how agencies are performing. But for federal agencies tasked with fulfilling these requests, FOIA can be a challenge.

Freedom of Information Act (FOIA) requests to U.S. government entities have poured in at historic rates in recent years. In 2022, the stakes are high. When a government agency receives a FOIA request, it must respond. If an agency needs an extension to collect requested records or consult with other agencies, the requester may sue. To fulfill these obligations, the requestor can file a lawsuit in federal court. Failure to comply promptly can also result in costly sanctions and reputational damage.

Needless to say, many public agencies are struggling to combat the growing volume – and complexity – of FOIA requests. Government agencies face mounting pressure to fulfill FOIA duties, including logging requests, searching for relevant records, analyzing them for disclosure, applying exemptions, and communicating with requesters.

Oudated processes and technologies are only making things worse. Manual processing methods and legacy systems are sinking federal agencies into a sea of records. Clunky workflows, excessive costs, and processing delays become unwelcome companions. It all adds up to countless hours wasted on tedious tasks, the risk of appeals and litigation due to redaction errors, and missed deadlines that can erode public trust.

As government agencies attempt to process FOIA requests more quickly and accurately – while upholding transparency and accountability – it's critical for them to work smarter. New AI-powered FOIA management tools offer integrated solutions that draw from the sophisticated eDiscovery platforms already used by most law firms, significantly expediting and enhancing FOIA request processing workflows.

Simplifying the Process of Submitting and Tracking FOIA Requests

An integrated FOIA solution makes it easier for citizens to submit and track requests online, which means staff won't have to spend hours answering phone calls and updating citizens about their FOIA request applications.

With unified and transparent workflows, agencies can work within a single environment to create and track communications with requestors and collaborate with internal offices and external agencies in locations across the country.

These new platforms also create defensible audit trails that capture the entire FOIA process workflow – creating a record for any legal actions and seamlessly generating the required reports for DOJ overview of FOIA compliance.

Handle Large-Scale Volumes of Data

Data management becomes easier when you have structured data in a single place. With a FOIA software solution, government agencies won't have to refer to different files stored in different folders in geographically distinct locations. Within minutes, the request will be processed, the case will be reviewed, and the documents will be released.

The right FOIA solution should be able to handle complex cases with large-scale volumes of data. With this capability, government agencies will be able to scan, import, produce, and deduplicate the information needed to fulfill a FOIA request. After the documents have been appropriately reviewed and redacted, it should be able to deliver the final version to the requester.

With automated collections and AI-powered search functionalities, FOIA management tools can streamline information collection among hundreds of file types (documents, images, etc.).

Advanced search and analysis capabilities – such as natural language processing and machine learning – help teams find relevant information faster. These tools can group and prioritize documents based on relevance and responsiveness, allowing agencies to efficiently maneuver through vast volumes of data and extract critical insights while saving valuable time and resources.

Enhanced Data Security and Privacy Controls

Government agencies often need to redact information to protect sensitive or protected information in response to FOIA requests. FOIA management platforms enable agencies to efficiently and accurately redact classified, sensitive, or protected information. By leveraging advanced algorithms, these platforms help ensure consistent redaction – thus reducing the risk of human error and ensuring compliance with regulations. This automation not only expedites the declassification process but also keeps sensitive data as safe and secure as possible.

[FOIA Management.pdf](#)

Conclusion

With a record high number of FOIA requests pouring in, manual, legacy solutions and processing methods simply aren't capable of managing the volume and complexity of FOIA requests. Integrated FOIA management platforms can empower federal agencies to work smarter to meet the challenges of processing FOIA requests more efficiently than ever while emphasizing transparency and user experience.

About the Author

Mitchell Reyes is the FOIA Solutions Manager at Casepoint, which helps government agencies, corporations, and law firms meet their complex eDiscovery, investigations, and compliance needs. Powered by cutting-edge AI and advanced analytics, Casepoint FOIA is an integrated solution designed to transform the handling of FOIA requests for federal agencies. Casepoint FOIA is built on Casepoint's secure, FedRAMP-authorized cloud platform.

Client: Casepoint

February 2024

Published on G2XChange – a subscription intelligence service for the federal contracting sector.

I wrote this article for the client SME to highlight the company's knowledge of FOIA issues as they were bringing a new FOIA software solution to market.

JANUARY 30, 2024 · SARAH JOHNSTON

LINKEDIN BEST PRACTICES

Key Insights and Strategies from Comprehensive User Polls



Client: Briefcase Coach
Published on LinkedIn – January 2024

I drafted this white paper for an executive career coach, based on research she conducted. The final article was sent to her 20K+ newsletter subscribers and promoted to 900K+ LinkedIn followers.

The full article is available here:
<https://www.briefcasetcoach.com/linkedin-best-practices/>

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Client: Constangy
Legal Management Magazine

I wrote this 2023 article for the firm's administrative partner (COO) on how the legal industry is shaping up in a post-pandemic world.



TERESA BULT

Administrative Partner and General Counsel
Constangy, Brooks, Smith & Prophete

From Remote Work to Remote Firm: Are We Going to Keep Doing This Forever?

At the start of the COVID-19 pandemic, we all assumed temporary, remote measures were short-term. Remember when we all thought this would only be for six weeks?

Three years later, the pandemic is (mostly) behind us, but the way we work — and the way our people expect to work — has undergone a fundamental shift. Hybrid and remote work arrangements have become the norm, and few seem willing to return to the world of five-day office weeks.

In an informal survey, Law.com recently polled attorneys on their firms' hybrid work policies and how they felt about them. Most of the more than 350 respondents indicated they would not work at law firms mandating more than three days of in-office attendance. Roughly half said three required days of attendance would negatively impact their decision to stay at a firm.

A September 2022 survey by the American Bar Association (ABA) found that 44% of younger lawyers (those practicing for fewer than 10 years) said they would leave their current jobs for ones that offered greater remote work opportunities. Similar surveys of law firm professional staff indicate a strong preference for hybrid or remote work.

“With women comprising the majority of law firm graduates every year since 2014, offering options for remote work will be a key component in recruiting and retaining talent.”

So yes, in many ways, it does seem as though we are going to be doing this forever. As we settle into this new normal, law firms both large and small are now looking to formalize the emergency arrangements created over the past three years and devise workable structures for the future. But as temporary tax and regulatory measures created during the pandemic expire, here are a few pros and cons for the future of remote and hybrid work.

THREE REASONS WHY REMOTE WORK IS GREAT FOR LAW FIRMS

1. Expanding the talent pool in a competitive market.

Even with all the talk of a downturn and layoffs here and there, competition is still strong for experienced attorneys. Embracing remote work lets you look outside of the commuting range of a traditional brick-and-mortar office.

For midsize firms that serve national clients and compete with BigLaw firms for both business and talent, it can be a real bonus to consider talented attorneys living in smaller markets where the competitive salary range can be lower than in the top-tier markets. Expanding recruiting efforts to new markets can also be extremely helpful in recruiting diverse candidates, who remain in high demand as firms look to expand their rosters of attorneys from traditionally underrepresented groups.

2. Meeting the expectations of work-life balance.

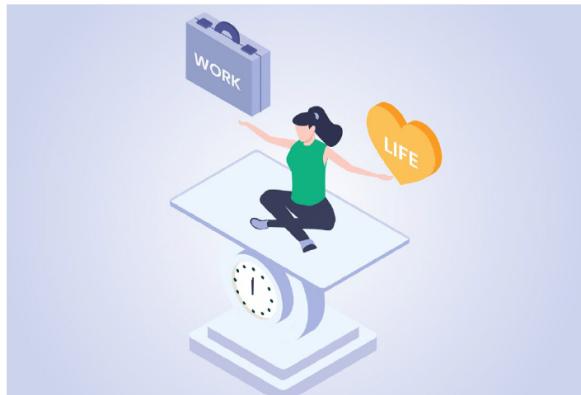
Working from home saves Americans 60 million hours of commute time each day, according to an analysis by the Federal Reserve Bank of New York. Even before the pandemic, it was clear that Millennial attorneys and Gen Zs just entering their careers placed a strong value on work-life balance. As well, the added stressors of the pandemic increased attention on mental health and burnout across all generations.

In the most recent ABA survey on women in the legal profession, caretaking commitments were noted as the No. 1 reason (58%) why experienced female attorneys leave law firms. As a law firm leader and a mother of four teenagers, I speak from firsthand experience in saying that the flexibility my firm has offered me in helping to meet the combined demands of work and family has been critical to my success.

But I know that other firms aren't as accommodating. With women comprising the majority of law school graduates every year since 2014, offering options for remote work will be a key component in recruiting and retaining talent.

3. Reducing overhead costs.

Clients and courts alike have embraced virtual meetings, saving costs on travel, and law firm conference rooms all over the country are quietly gathering dust. Most larger law firms are downsizing office space or abandoning it altogether for remote work and contracts with shared co-working facilities when needed.



After an initial scramble to provide additional technology support, most firms settled quickly into remote work and were able to function seamlessly. The pandemic taught us that instead of pricey real estate, investing in technology that helps attorneys and staff work efficiently from any location is likely the better investment moving forward.

It can also make it easier to facilitate the movement of groups of attorneys. Our firm recently brought on more than 40 attorneys and staff who are working remotely across 15 states — many in areas where we did not already have a presence. The fact that we didn't need to put time and resources into building physical office spaces made the decision to move forward much easier and greatly simplified the onboarding process.

THREE REASONS WHY IT'S GOING TO BE HARDER THAN WE THINK

1. Negotiating salaries and pay transparency.

Should you pay a San Francisco salary for someone who will be considered part of your San Francisco office but is working remotely from a less expensive market? For firms that have rigid salary bands, this can be a difficult and sensitive question. And with pay transparency laws popping up in places such as California, Colorado and New York City, this is where remote work can create potential legal hiccups as well.

If you are recruiting an attorney who would work mostly on California-based matters but might be working remotely from another state, are you required to post the salary range during the recruiting process? The laws are tricky here and have not yet been fully tested in the courts, so even law firms may wish to seek outside counsel on this issue.

2. Navigating tax and legal complications.

Hiring remote workers in states where you don't have a physical presence can be complicated from a tax and legal perspective. What creates a physical nexus for an employer and which tax rules will apply can vary by state and city. Many states (and some cities) created temporary safe havens during the pandemic, but these provisions are rapidly expiring, and businesses are struggling to keep up with addressing a wide range of tax issues and business licensing requirements. Remote work can also create challenges in complying with various state and local employment statutes relating to issues such as overtime and workers' compensation.

3. Managing relationships and measuring performance and productivity.

For three years, there was a sense that we were all pitching in together to do what needed to be done during a really strange time. Moving forward, law firms that continue with hybrid or remote work need to think carefully about how to manage for optimal productivity, client service and professional development. Setting clear goals and expectations, providing the tools to meet those goals and measuring progress against them is critical across areas including client service, associate development and staff performance evaluations.

The key is to be open and transparent, provide opportunities for feedback and really listen to what your attorneys and

staff are saying. Culture is the key. People working from home may feel isolated, and new employees may struggle to connect. Smart firms understand that relationships among colleagues are equally as important as relationships with clients — and are actively creating robust opportunities for interaction and collaboration.

In many ways, the pandemic pushed us in a direction that many of us were heading already. It's been a bumpy ride, and it's certainly not over yet. But the past few years have also shown us that when we lead with careful planning, transparency, trust and thoughtful communication, we can innovate and adapt to create firms that will thrive in any environment.

ABOUT THE AUTHOR

Teresa Bult is an Administrative Partner and General Counsel to Constangy, Brooks, Smith & Prophete. She is both a mediator and a relationship partner for her corporate clients in the employment defense space and in both roles, a very practical problem solver. She is constantly trying to figure out how to connect clients to resources that can make their jobs easier and help them navigate through tricky employment litigation and HR issues. In her 25-plus years of practice as a defense-side employment litigation attorney, she has litigated cases and counseled clients on almost every conceivable employment-related issue.

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Keeping the Mailbox Open for Business

December 19, 2006

622 words

By John A. Greco, Jr.

President & CEO

Direct Marketing Association

Client: Direct Marketing Association
Need for Postal Reform Legislation

This is an op-ed I drafted that was placed in
DIRECT, a national marketing trade magazine.

The 109th Congress has been unfavorably compared to the infamous “Do-Nothing Congress” of 1948. But prior to adjourning in the wee hours of the morning on December 9th, leaders in the House and Senate stepped up to the plate and did something big for American businesses and consumers alike.

Among the bills that are now making their way to the President’s desk is a piece of legislation that will, for the first time since the Nixon Administration, provide for a substantive overhaul of the United States Postal Service – a multibillion-dollar enterprise that would, if in the private sector, make it into the top 20 of the Fortune 500.

But unlike its would-be companions on that prestigious list, the Postal Service has been hindered for years by an operating structure that is woefully inadequate for meeting the challenges of the 21st century. Challenges that include a slow but steady decline in first-class mail volumes, an ever-increasing number of delivery points to serve, and a rapidly changing technological and competitive environment sparked by the expansion of online communications.

From catalogs to monthly billing statements to the millions of packages delivered to homes and businesses every day, the Postal Service continues to play a key role in the success and sustainability of America’s economy. All told, more than \$900 billion in commerce depends each year on the viability of our nation’s postal service.

Over the past decade, technological advances have opened up new channels of communications. As the Internet has grown, many predicted the death of the postal service. This has not proven to be the case. Rather, interactive and print channels have converged to create an increasingly seamless, integrated marketplace for the exchange of goods, services and ideas.

So for large and small businesses across the country, direct mail remains an important channel for reaching current and prospective customers. Nonprofits also use direct mail extensively, spending millions of dollars, even with reduced rates, to reach out to donors, recruit volunteers and educate the public about their important missions.

These “bulk” mailings account for a substantial portion of the commercial and first-class mail streams. And like their advertising counterparts in television, radio or newspapers, mail advertising provides a significant portion of the revenue that keeps this affordable, reliable communications channel open for all Americans.

In recent years, the financial constraints on the Postal Service have meant frequent and unpredictable postage rate increases. And while a penny or two probably wouldn’t make a difference for a person deciding whether or not to send a birthday card, for the businesses that send large volumes of mail, a two-cent increase can add up to millions of dollars in additional costs.

Those costs are either passed along to consumers in the form of higher prices for goods and services, or else lead to even more losses for the USPS as businesses curb mailings and seek less expensive forms of communication. It is a vicious cycle that could ultimately force steep

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cuts in postal services, such as the closing of local post offices or a loss of six-day-a-week delivery services.

Fortunately, the reforms enacted this month will help the Postal Service avoid such a bleak future. For the USPS, new financial systems mean that the organization will be relieved of pension payments for retirees who previously served in the military. That alone will free up about \$78 billion over the next decade. For businesses, new rate-setting procedures will streamline the rate-setting process, making it more nimble and predictable – and most importantly, keeping future rate increases at or below the level of inflation.

These desperately needed reforms – 12 years in the making – will allow the Postal Service to become more flexible and responsive to the needs of today's changing communications landscape.

That's doing something. Something for the leaders in Congress who helped forge the eleventh-hour compromise that made this bill possible. Something for the 9 million Americans whose jobs are tied to postal operations. And something for the businesses and consumers who rely on the Postal Service to provide reliable, affordable and timely delivery to addresses across the country.

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Congressional Testimony

W. Henson Moore

President & Chief Executive Officer, American Forest & Paper Association
Submitted To The Committee On Energy And Commerce, Subcommittee On Energy And Air Quality, U.S. House of Representatives

June 8, 2001

Client: American Forest & Paper Association
Biomass & self-generated energy

I researched and drafted this Congressional testimony about how the forest products industry was working to turn waste products into fuel to power paper mills.

On behalf of America's forest products community, I appreciate the opportunity to provide testimony to today's meeting of the Subcommittee on Energy and Air Quality. The American Forest & Paper Association represents more than 240 member companies and related associations that engage in or represent the manufacturers of pulp, paper, paperboard and wood products. America's forest and paper industry ranges from state-of-the-art paper mills to small, family-owned sawmills and some nine million individual woodlot owners.

The U.S. forest products industry is vital to our nation's economy. We employ 1.5 million people and rank among the top ten manufacturing employers in 42 states, with an estimated payroll of \$51 billion. Sales of U.S. forest and paper products top \$250 billion annually in the U.S. and export markets. We are the world's largest producer of forest products.

Products from America's forest and paper industry represent more than eight percent of our country's manufacturing output. Ranking sixth among domestic manufacturing sectors, the forest products industry is the nation's most capital-intensive manufacturing industry and one of the country's most energy-intensive.

As the former Deputy Secretary of Energy involved in developing the last National Energy Strategy in 1991, and the Energy Policy Act of 1992, I know the challenges that you face and appreciate the opportunity to share my views, as well as my industry's particular concerns, as they relate to future decisions you will have before you in developing a sound energy policy that will ensure adequate resources to meet present and future demands.

As the head of a trade association for an industry that is both a major energy producer and consumer, I see how energy shortages and price increases are hurting the competitiveness of the forest products industry and putting additional pressure on the already strained financial resources of our member companies. However, this situation would be far worse, had it not been for our industry's commitment to fuel efficiency and energy independence over the past three decades. Since 1972, we have reduced our average total energy usage by 30 percent (per ton of product produced). In addition, we have reduced fossil fuel and purchased energy consumption by 53 percent and dramatically increased energy self-sufficiency. The strong emphasis by our member companies on research and development into cleaner, more efficient technologies has been crucial to this success.

One of the areas where we have seen the greatest success is in onsite electricity generation. Currently, the forest products industry meets nearly 60 percent of our own energy needs. At many mills, self-generated electricity goes beyond serving onsite production needs to provide supplemental electricity to the surrounding electric power grid. Indeed, the forest products industry produces nearly 43 percent of our nation's total self-generated electricity - more than any other manufacturing sector.

Even more laudable, 85 percent of the energy generated by the forest products industry comes from renewable "biomass" sources such as wood chips, bark, sawdust and pulping liquors. Cogeneration processes allow the industry to turn these waste materials into a renewable energy source that diverts waste from landfills, reduces reliance on fossil fuels and offsets greenhouse gas emissions by substituting carbon-neutral biomass for fossil fuels. It is worth

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noting that the forest product industry's use of renewable fuels represents the equivalent of about 205 million barrels of oil per year - and offsets the carbon dioxide emissions of approximately 16 million automobiles annually.

The industry's next goal is to add biomass gasification to its energy portfolio. Black liquor is one biomass fuel created during the chemical pulping process. Gasification converts these pulping extractives into combustible gases that can be efficiently burned like natural gas. If fully commercialized, these technologies could produce enormous energy and environmental benefits. Biomass gasification could make the U.S. forest products industry totally energy self-reliant and generate a surplus of 22 gigawatts of power to the grid- the equivalent of one-half of California's peak summertime electric use.

The first commercial-scale biomass (black liquor) plant is being built by Georgia-Pacific Corp. in Big Island, Virginia. It is slated to go on-line in 2003. We hope to pursue other commercialization tests over the next several years. Yet as with any investment with great potential for positive return, biomass gasification research and development is costly and risky. The forest products industry is moving forward, but we can't succeed alone. The industry needs a consistent and committed partner to ensure successful commercialization.

The Big Island project is part the Agenda 2020 program, a voluntary partnership with the Department of Energy that fosters cost-shared research and development projects. Forest product industry participants are putting up 50 percent of the investment capital for these demonstration projects. Partnerships such as this promise new energy efficiency and other technological innovations. We believe this sort of industry-government partnership should remain an important component of our national energy policy and should be adequately funded.

As research and development projects yield more efficient and environmentally friendly production methods, our attention must also turn to making it easier for facilities to adopt these new technologies. Right now, forest product industry facilities are hindered in their adoption of cogeneration and self-generation technologies by inefficient and counterproductive permitting restrictions.

With its expensive 18-month permitting process, EPA's New Source Review Program has a pernicious impact on our economy and our environment. It forces companies to continue using fuels that are high in price and short in supply while discouraging new investment in energy-efficient and environmentally-friendly technologies and processes.

As natural gas prices continue to spiral upward, forest products manufacturers desperately need the flexibility to substitute lower-cost alternative fuels - such as coal, biomass and shredded tires - to run their boilers. The one-two punch of increased fuel prices combined with an economic downturn is wreaking havoc on the competitiveness of American pulp and paper producers. American firms can't afford to be locked into a single high-cost fuel source when they are literally fighting for survival in a global market characterized by unregulated competitors and razor-thin profit margins.

Therefore, Mr. Chairman, we believe there is clearly an immediate need for policy reforms that will accelerate - not hinder - projects to increase energy efficiency and conservation. Research and development of new technologies should be encouraged and fully funded. Streamlined permitting processes should allow for maximum flexibility for facilities to meet energy needs in the most efficient, cost-effective and environmentally sound manner possible.

We all know that reliable and cost-effective energy is vital to our economy. Achieving a successful energy strategy requires us to confront difficult policy decisions and find resolution.

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The Memphis Commercial Appeal
Thursday, March 21, 2002
Commentary, p.B5

America's in the midst of a class action crisis

By Kenneth Masterson

Every two seconds in the United States, a lawsuit is filed. Ours is the world's most litigious society.

Behind the inevitable barrage of lawyer jokes, a real crisis looms. The cost of the U.S. civil justice system is growing at four times the rate of the economy, largely because of a skyrocketing increase in class action lawsuits.

Class actions with merit serve a useful purpose by permitting the efficient resolution of multiple claims. However, our courts are clogged with frivolous suits, the sole purpose of which is to enrich the plaintiffs' lawyers who file them.

In fact, victims often receive little or no compensation. In a case against manufacturers of computer monitors, the lawyers netted \$6 million in fees — while the plaintiffs got to choose between a \$13 credit on a new monitor and \$6 in cash.

Incredibly, class actions can even end up costing class members. Account holders at a major U.S. bank filed suit over certain interest charges. After a settlement, the lawyers received \$8.5 million in fees, while the plaintiffs received less than \$10 each.

The kicker: The customers subsequently were charged a fee of about \$100 to cover legal costs.

From the ridiculous to the brazen, these cases get in the way of simple, fair and fast justice for those who truly need help. Between 1988 and 1998, class action filings in state courts increased by more than 1,000 percent. That has left the judicial system badly overloaded, often forcing those who have suffered legitimate injury to wait years to get their day in court.

Most Americans believe these

abuses cry out for reform. This month, the U.S. House of Representatives passed and sent to the Senate the Class Action Fairness Act. This important legislation would reduce excessive and frivolous litigation, safeguard consumers and restore balance and fairness to the nation's civil justice system.

The measure would create a "plaintiffs' bill of rights" that would:

■ Require that all settlement notices be written in plain English.

■ Ensure that judges review the fairness of proposed settlements that provide only coupons to the plaintiffs.

■ Prevent higher settlement payments to plaintiffs recruited to file the lawsuit.

■ Ban settlements that actually impose costs on class members.

The bill includes provisions to close loopholes that have allowed plaintiffs' lawyers to file large, multi-state class actions in carefully chosen state and local jurisdictions, rather than in federal courts where they belong.

Otherwise, a single state court can trump the laws of the other 49 states, even though that may not be in the best interest of the vast majority of class members.

The Class Action Fairness Act would streamline the legal process for people who have been truly injured, while reining in the outrageous abuses of the system that are placing a choke hold on the American economy.

The Senate should pass this legislation now. Our legal system should be simpler, fairer and faster for everyone.

Guest columnist Kenneth R. Masterson is executive vice president, general counsel and secretary of FedEx Corp.

Client: U.S. Chamber of Commerce
Class Action Reform Campaign

I drafted this op-ed for FedEx General Counsel Kenneth Masterson as part of a successful effort to convince Congress to pass the Class Action Fairness Act.