

113TH CONGRESS  
1ST SESSION

# H. R. 2919

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2013

Mrs. LUMMIS (for herself, Mr. COHEN, Mr. GARCIA, and Mr. COLLINS of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend titles 5 and 28, United States Code, to require annual reports to Congress on, and the maintenance of databases on, awards of fees and other expenses to prevailing parties in certain administrative proceedings and court cases to which the United States is a party, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Book on Equal  
5 Access to Justice Act”.

1 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE**  
2 **PROVISIONS.**

3 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,  
4 United States Code, is amended—

5 (1) in subsection (c)(1), by striking “, United  
6 States Code”;

7 (2) by redesignating subsection (f) as sub-  
8 section (i); and

9 (3) by striking subsection (e) and inserting the  
10 following:

11 “(e)(1) The Chairman of the Administrative Con-  
12 ference of the United States, after consultation with the  
13 Chief Counsel for Advocacy of the Small Business Admin-  
14 istration, shall report to the Congress, not later than  
15 March 31 of each year, on the amount of fees and other  
16 expenses awarded during the preceding fiscal year pursu-  
17 ant to this section. The report shall describe the number,  
18 nature, and amount of the awards, the claims involved in  
19 the controversy, and any other relevant information that  
20 may aid the Congress in evaluating the scope and impact  
21 of such awards. The report shall be made available to the  
22 public online.

23 “(2)(A) The report required by paragraph (1) shall  
24 account for all payments of fees and other expenses  
25 awarded under this section that are made pursuant to a  
26 settlement agreement, regardless of whether the settle-

1 ment agreement is sealed or otherwise subject to non-  
2 disclosure provisions.

3 “(B) The disclosure of fees and other expenses re-  
4 quired under subparagraph (A) does not affect any other  
5 information that is subject to nondisclosure provisions in  
6 the settlement agreement.

7 “(f) The Chairman of the Administrative Conference  
8 shall create and maintain online a searchable database  
9 containing the following information with respect to each  
10 award of fees and other expenses under this section:

11 “(1) The case name and number of the adver-  
12 sary adjudication, if available, hyperlinked to the  
13 case, if available.

14 “(2) The name of the agency involved in the  
15 adversary adjudication.

16 “(3) A description of the claims in the adver-  
17 sary adjudication.

18 “(4) The name of each party to whom the  
19 award was made.

20 “(5) The amount of the award.

21 “(6) The basis for the finding that the position  
22 of the agency concerned was not substantially justi-  
23 fied.

1 “(g) The online searchable database described in sub-  
2 section (f) may not reveal any information the disclosure  
3 of which is prohibited by law or court order.

4 “(h) The head of each agency shall provide to the  
5 Chairman of the Administrative Conference in a timely  
6 manner all information requested by the Chairman to  
7 comply with the requirements of subsections (e), (f), and  
8 (g).”.

9 (b) COURT CASES.—Section 2412(d) of title 28,  
10 United States Code, is amended by adding at the end the  
11 following:

12 “(5)(A) The Chairman of the Administrative Con-  
13 ference of the United States shall submit to the Congress,  
14 not later than March 31 of each year, a report on the  
15 amount of fees and other expenses awarded during the  
16 preceding fiscal year pursuant to this subsection. The re-  
17 port shall describe the number, nature, and amount of the  
18 awards, the claims involved in each controversy, and any  
19 other relevant information that may aid the Congress in  
20 evaluating the scope and impact of such awards. The re-  
21 port shall be made available to the public online.

22 “(B)(i) The report required by subparagraph (A)  
23 shall account for all payments of fees and other expenses  
24 awarded under this subsection that are made pursuant to  
25 a settlement agreement, regardless of whether the settle-

1 ment agreement is sealed or otherwise subject to non-  
2 disclosure provisions.

3 “(ii) The disclosure of fees and other expenses re-  
4 quired under clause (i) does not affect any other informa-  
5 tion that is subject to nondisclosure provisions in the set-  
6 tlement agreement.

7 “(C) The Chairman of the Administrative Conference  
8 shall include and clearly identify in the annual report  
9 under subparagraph (A), for each case in which an award  
10 of fees and other expenses is included in the report—

11 “(i) any amounts paid from section 1304 of  
12 title 31 for a judgment in the case;

13 “(ii) the amount of the award of fees and other  
14 expenses; and

15 “(iii) the statute under which the plaintiff filed  
16 suit.

17 “(6) The Chairman of the Administrative Conference  
18 shall create and maintain online a searchable database  
19 containing the following information with respect to each  
20 award of fees and other expenses under this subsection:

21 “(A) The case name and number, hyperlinked  
22 to the case, if available.

23 “(B) The name of the agency involved in the  
24 case.

1           “(C) The name of each party to whom the  
2           award was made.

3           “(D) A description of the claims in the case.

4           “(E) The amount of the award.

5           “(F) The basis for the finding that the position  
6           of the agency concerned was not substantially justi-  
7           fied.

8           “(7) The online searchable database described in  
9           paragraph (6) may not reveal any information the dislo-  
10          sure of which is prohibited by law or court order.

11          “(8) The head of each agency shall provide to the  
12          Chairman of the Administrative Conference of the United  
13          States in a timely manner all information requested by  
14          the Chairman to comply with the requirements of para-  
15          graphs (5), (6), and (7), including the Attorney General  
16          of the United States and the Director of the Administra-  
17          tive Office of the United States Courts.”.

18          (c) CLERICAL AMENDMENTS.—Section 2412 of title  
19          28, United States Code, is amended—

20                 (1) in subsection (d)(3), by striking “United  
21                 States Code,”; and

22                 (2) in subsection (e)—

23                         (A) by striking “of section 2412 of title  
24                         28, United States Code,” and inserting “of this  
25                         section”; and

1 (B) by striking “of such title” and insert-  
2 ing “of this title”.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by  
5 subsections (a) and (b) shall first apply with respect  
6 to awards of fees and other expenses that are made  
7 on or after the date of the enactment of this Act.

8 (2) INITIAL REPORTS.—The first reports re-  
9 quired by section 504(e) of title 5, United States  
10 Code, and section 2412(d)(5) of title 28, United  
11 States Code, shall be submitted not later than  
12 March 31 of the calendar year following the first  
13 calendar year in which a fiscal year begins after the  
14 date of the enactment of this Act.

15 (3) ONLINE DATABASES.—The online databases  
16 required by section 504(f) of title 5, United States  
17 Code, and section 2412(d)(6) of title 28, United  
18 States Code, shall be established as soon as prac-  
19 ticable after the date of the enactment of this Act,  
20 but in no case later than the date on which the first  
21 reports under section 504(e) of title 5, United States  
22 Code, and section 2412(d)(5) of title 28, United  
23 States Code, are required to be submitted under  
24 paragraph (2) of this subsection.

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