

114TH CONGRESS
1ST SESSION

H. R. 3279

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2015

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. MODIFICATION OF EQUAL ACCESS TO JUSTICE**
5 **PROVISIONS.**

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

8 (1) in subsection (c)(1), by striking “, United
9 States Code”;

10 (2) by redesignating subsection (f) as sub-
11 section (i); and

12 (3) by striking subsection (e) and inserting the
13 following:

14 “(e)(1) The Chairman of the Administrative Con-
15 ference of the United States, after consultation with the
16 Chief Counsel for Advocacy of the Small Business Admin-
17 istration, shall report to the Congress, not later than
18 March 31 of each year through the sixth calendar year
19 beginning after the initial report under this subsection is
20 submitted, on the amount of fees and other expenses
21 awarded during the preceding fiscal year pursuant to this
22 section. The report shall describe the number, nature, and
23 amount of the awards, the claims involved in the con-
24 troversy, and any other relevant information that may aid
25 the Congress in evaluating the scope and impact of such

1 awards. The report shall be made available to the public
2 online.

3 “(2)(A) The report required by paragraph (1) shall
4 account for all payments of fees and other expenses
5 awarded under this section that are made pursuant to a
6 settlement agreement, regardless of whether the settle-
7 ment agreement is sealed or otherwise subject to non-
8 disclosure provisions.

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

13 “(f) The Chairman of the Administrative Conference
14 shall create and maintain, during the period beginning on
15 the date the initial report under subsection (e) is sub-
16 mitted and ending 1 year after the date on which the final
17 report under that subsection is submitted, online a search-
18 able database containing the following information with
19 respect to each award of fees and other expenses under
20 this section:

21 “(1) The case name and number of the adver-
22 sary adjudication, if available.

23 “(2) The name of the agency involved in the
24 adversary adjudication.

1 “(3) A description of the claims in the adver-
2 sary adjudication.

3 “(4) The name of each party to whom the
4 award was made, as such party is identified in the
5 order or other agency document making the award.

6 “(5) The amount of the award.

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

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

13 “(h) The head of each agency shall provide to the
14 Chairman of the Administrative Conference in a timely
15 manner all information requested by the Chairman to
16 comply with the requirements of subsections (e), (f), and
17 (g).”.

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

21 “(5)(A) The Chairman of the Administrative Con-
22 ference of the United States shall submit to the Congress,
23 not later than March 31 of each year through the sixth
24 calendar year beginning after the initial report under this
25 paragraph is submitted, a report on the amount of fees

1 and other expenses awarded during the preceding fiscal
2 year pursuant to this subsection. The report shall describe
3 the number, nature, and amount of the awards, the claims
4 involved in each controversy, and any other relevant infor-
5 mation that may aid the Congress in evaluating the scope
6 and impact of such awards. The report shall be made
7 available to the public online.

8 “(B)(i) The report required by subparagraph (A)
9 shall account for all payments of fees and other expenses
10 awarded under this subsection that are made pursuant to
11 a settlement agreement, regardless of whether the settle-
12 ment agreement is sealed or otherwise subject to non-
13 disclosure provisions.

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

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

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

24 “(ii) the amount of the award of fees and other
25 expenses; and

1 “(iii) the statute under which the plaintiff filed
2 suit.

3 “(6) The Chairman of the Administrative Conference
4 shall create and maintain, during the period beginning on
5 the date the initial report under paragraph (5) is sub-
6 mitted and ending 1 year after the date on which the final
7 report under that paragraph is submitted, online a search-
8 able database containing the following information with
9 respect to each award of fees and other expenses under
10 this subsection:

11 “(A) The case name and number.

12 “(B) The name of the agency involved in the
13 case.

14 “(C) The name of each party to whom the
15 award was made, as such party is identified in the
16 order or other court document making the award.

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

18 “(E) The amount of the award.

19 “(F) The basis for the finding that the position
20 of the agency concerned was not substantially justi-
21 fied.

22 “(7) The online searchable database described in
23 paragraph (6) may not reveal any information the disclo-
24 sure of which is prohibited by law or court order.

1 “(8) The head of each agency (including the Attorney
2 General of the United States) shall provide to the Chair-
3 man of the Administrative Conference of the United
4 States in a timely manner all information requested by
5 the Chairman to comply with the requirements of para-
6 graphs (5), (6), and (7).”.

7 (c) CLERICAL AMENDMENTS.—Section 2412 of title
8 28, United States Code, is amended—

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

11 (2) in subsection (e)—

12 (A) by striking “of section 2412 of title
13 28, United States Code,” and inserting “of this
14 section”; and

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

17 (d) EFFECTIVE DATE.—

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

22 (2) INITIAL REPORTS.—The first reports re-
23 quired by section 504(e) of title 5, United States
24 Code, and section 2412(d)(5) of title 28, United
25 States Code, shall be submitted not later than

1 March 31 of the calendar year following the first
2 calendar year in which a fiscal year begins after the
3 date of the enactment of this Act.

4 (3) ONLINE DATABASES.—The online databases
5 required by section 504(f) of title 5, United States
6 Code, and section 2412(d)(6) of title 28, United
7 States Code, shall be established as soon as prac-
8 ticable after the date of the enactment of this Act,
9 but in no case later than the date on which the first
10 reports under section 504(e) of title 5, United States
11 Code, and section 2412(d)(5) of title 28, United
12 States Code, are required to be submitted under
13 paragraph (2) of this subsection.

Passed the House of Representatives November 30,
2015.

Attest:

KAREN L. HAAS,
Clerk.