

Calendar No. 384

114TH CONGRESS
2^D SESSION

S. 779

[Report No. 114–224]

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2015

Mr. CORNYN (for himself, Mr. WYDEN, Mr. MARKEY, Mr. SCHATZ, Mr. JOHNSON, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MARCH 8, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

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 “Fair Access to Science
3 and Technology Research Act of 2015”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Federal Government funds basic and
7 applied research with the expectation that new ideas
8 and discoveries that result from the research, if
9 shared and effectively disseminated, will advance
10 science and improve the lives and welfare of people
11 of the United States and around the world;

12 (2) the Internet makes it possible for this infor-
13 mation to be promptly available to every scientist,
14 physician, educator, and citizen at home, in school,
15 or in a library; and

16 (3) the United States has a substantial interest
17 in maximizing the impact and utility of the research
18 it funds by enabling a wide range of reuses of the
19 peer-reviewed literature that reports the results of
20 such research, including by enabling computational
21 analysis by state-of-the-art technologies.

22 **SEC. 3. DEFINITION OF FEDERAL AGENCY.**

23 In this Act, the term “Federal agency” means an Ex-
24 ecutive agency, as defined under section 105 of title 5,
25 United States Code.

1 **SEC. 4. FEDERAL RESEARCH PUBLIC ACCESS POLICY.**

2 **(a) REQUIREMENT TO DEVELOP POLICY.—**

3 (1) **IN GENERAL.**—Not later than 1 year after
4 the date of enactment of this Act, each Federal
5 agency with extramural research expenditures of
6 over \$100,000,000 shall develop a Federal research
7 public access policy that is consistent with and ad-
8 vances the purposes of the Federal agency.

9 (2) **COMMON PROCEDURES.**—To the extent
10 practicable, Federal agencies required to develop a
11 policy under paragraph (1) shall follow common pro-
12 cedures for the collection and depositing of research
13 papers.

14 **(b) CONTENT.**—Each Federal research public access
15 policy shall provide for—

16 (1) submission to the Federal agency of an elec-
17 tronic version of the author's final manuscript of
18 original research papers that have been accepted for
19 publication in peer-reviewed journals and that result
20 from research supported, in whole or in part, from
21 funding by the Federal Government;

22 (2) the incorporation of all changes resulting
23 from the peer review publication process in the
24 manuscript described under paragraph (1);

25 (3) the replacement of the final manuscript
26 with the final published version if—

1 (A) the publisher consents to the replace-
2 ment; and

3 (B) the goals of the Federal agency for
4 functionality and interoperability are retained;

5 (4) free online public access to such final peer-
6 reviewed manuscripts or published versions as soon
7 as practicable, but not later than 6 months after
8 publication in peer-reviewed journals;

9 (5) providing research papers as described in
10 paragraph (4) in formats and under terms that en-
11 able productive reuse, including computational anal-
12 ysis by state-of-the-art technologies;

13 (6) production of an online bibliography of all
14 research papers that are publicly accessible under
15 the policy, with each entry linking to the cor-
16 responding free online full text; and

17 (7) long-term preservation of, and free public
18 access to, published research findings—

19 (A) in a stable digital repository main-
20 tained by the Federal agency; or

21 (B) if consistent with the purposes of the
22 Federal agency, in any repository meeting con-
23 ditions determined favorable by the Federal
24 agency, including free public access, interoper-
25 ability, and long-term preservation.

1 ~~(c) APPLICATION OF POLICY.—Each Federal re-~~
 2 ~~search public access policy shall—~~

3 ~~(1) apply to—~~

4 ~~(A) researchers employed by the Federal~~
 5 ~~agency whose works remain in the public do-~~
 6 ~~main; and~~

7 ~~(B) researchers funded by the Federal~~
 8 ~~agency;~~

9 ~~(2) provide that works described under para-~~
 10 ~~graph (1)(A) shall be—~~

11 ~~(A) marked as being public domain mate-~~
 12 ~~rial when published; and~~

13 ~~(B) made available at the same time such~~
 14 ~~works are made available under subsection~~
 15 ~~(b)(4); and~~

16 ~~(3) make effective use of any law or guidance~~
 17 ~~relating to the creation and reservation of a Govern-~~
 18 ~~ment license that provides for the reproduction; pub-~~
 19 ~~lication; release; or other uses of a final manuscript~~
 20 ~~for Federal purposes.~~

21 ~~(d) EXCLUSIONS.—Each Federal research public ac-~~
 22 ~~cess policy shall not apply to—~~

23 ~~(1) research progress reports presented at pro-~~
 24 ~~fessional meetings or conferences;~~

1 (2) laboratory notes, preliminary data analyses,
2 notes of the author, phone logs, or other information
3 used to produce final manuscripts;

4 (3) classified research, research resulting in
5 works that generate revenue or royalties for authors
6 (such as books) or patentable discoveries, to the ex-
7 tent necessary to protect a copyright or patent; or

8 (4) authors who do not submit their work to a
9 journal or works that are rejected by journals.

10 (e) PATENT OR COPYRIGHT LAW.—Nothing in this
11 Act shall be construed to affect any right under the provi-
12 sions of title 17 or 35, United States Code.

13 (f) REPORT.—

14 (1) IN GENERAL.—Not later than October 1 of
15 each year, the head of each Federal agency shall
16 submit a report on the Federal research public ac-
17 cess policy of that Federal agency to—

18 (A) the Committee on Homeland Security
19 and Governmental Affairs of the Senate;

20 (B) the Committee on Oversight and Gov-
21 ernment Reform of the House of Representa-
22 tives;

23 (C) the Committee on Science and Tech-
24 nology of the House of Representatives;

1 ~~(D)~~ the Committee on Commerce, Science,
2 and Transportation of the Senate;

3 ~~(E)~~ the Committee on Health, Education,
4 Labor, and Pensions of the Senate; and

5 ~~(F)~~ any other committee of Congress of
6 appropriate jurisdiction.

7 ~~(2)~~ **CONTENT.**—Each report under this sub-
8 section shall include—

9 ~~(A)~~ a statement of the effectiveness of the
10 Federal research public access policy in pro-
11 viding the public with free online access to pa-
12 pers on research funded by the Federal agency;

13 ~~(B)~~ the results of a study by the Federal
14 agency of the terms of use applicable to the re-
15 search papers described in subsection ~~(b)~~(4), in-
16 cluding—

17 ~~(i)~~ a statement of whether the terms
18 of use applicable to such research papers
19 are effective in enabling productive reuse
20 and computational analysis by state-of-the-
21 art technologies; and

22 ~~(ii)~~ an examination of whether such
23 research papers should include a royalty-
24 free copyright license that is available to
25 the public and that permits the reuse of

1 those research papers, on the condition
 2 that attribution is given to the author or
 3 authors of the research and any others
 4 designated by the copyright owner;

5 (C) a list of papers published in peer-re-
 6 viewed journals that report on research funded
 7 by the Federal agency;

8 (D) a corresponding list of papers made
 9 available by the Federal agency as a result of
 10 the Federal research public access policy; and

11 (E) a summary of the periods of time be-
 12 tween public availability of each paper in a
 13 journal and in the online repository of the Fed-
 14 eral agency.

15 ~~(3)~~ PUBLIC AVAILABILITY.—A Federal agency
 16 shall make the statement under paragraph ~~(2)~~(A)
 17 and the lists of papers under subparagraphs (B) and
 18 ~~(C)~~ of paragraph ~~(2)~~ available to the public by post-
 19 ing such statement and lists on the website of the
 20 Federal agency.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Fair Access to Science*
 23 *and Technology Research Act of 2015”.*

24 **SEC. 2. FINDINGS.**

25 *Congress finds that—*

1 (1) *the Federal Government funds basic and ap-*
2 *plied research with the expectation that new ideas*
3 *and discoveries that result from the research, if shared*
4 *and effectively disseminated, will advance science and*
5 *improve the lives and welfare of people of the United*
6 *States and around the world;*

7 (2) *the Internet makes it possible for this infor-*
8 *mation to be promptly available to every scientist,*
9 *physician, educator, and citizen at home, in school, or*
10 *in a library;*

11 (3) *the United States has a substantial interest*
12 *in maximizing the impact and utility of the research*
13 *it funds by enabling a wide range of reuses of the*
14 *peer-reviewed literature that reports the results of*
15 *such research, including by enabling computational*
16 *analysis by state-of-the-art technologies;*

17 (4) *the Office of Science and Technology Policy*
18 *issued a policy memorandum dated February 22,*
19 *2013, which established the commitment of the execu-*
20 *tive branch of the Federal Government to ensuring*
21 *that “the direct results of Federally funded scientific*
22 *research are made available to and useful for the pub-*
23 *lic, industry, and the scientific community”;* and

1 (5) *the executive branch advises that such public*
 2 *access should be implemented “with the fewest con-*
 3 *straints possible”.*

4 **SEC. 3. DEFINITION OF FEDERAL AGENCY.**

5 *In this Act, the term “Federal agency” means an Exec-*
 6 *utive agency, as defined under section 105 of title 5, United*
 7 *States Code.*

8 **SEC. 4. FEDERAL RESEARCH PUBLIC ACCESS POLICY.**

9 (a) *REQUIREMENT TO DEVELOP POLICY.—*

10 (1) *IN GENERAL.—Not later than 1 year after*
 11 *the date of enactment of this Act, each Federal agency*
 12 *with annual extramural research expenditures of over*
 13 *\$100,000,000 shall develop a Federal research public*
 14 *access policy that is consistent with and advances the*
 15 *purposes of the Federal agency.*

16 (2) *COMMON PROCEDURES.—To the extent prac-*
 17 *ticable, Federal agencies required to develop a policy*
 18 *under paragraph (1) shall follow common procedures*
 19 *for the collection and depositing of research papers.*

20 (b) *CONTENT.—Each Federal research public access*
 21 *policy shall provide for—*

22 (1) *submission to a digital repository designated*
 23 *or maintained by the Federal agency of an electronic*
 24 *version of the author’s final manuscript of original*
 25 *research papers that have been accepted for publica-*

1 *tion in peer-reviewed journals and that result from*
2 *research supported, in whole or in part, from funding*
3 *by the Federal Government;*

4 *(2) the incorporation of all changes resulting*
5 *from the peer review publication process in the manu-*
6 *script described under paragraph (1);*

7 *(3) the replacement of the final manuscript with*
8 *the final published version if—*

9 *(A) the publisher consents to the replace-*
10 *ment; and*

11 *(B) the goals of the Federal agency for*
12 *functionality and interoperability are retained;*

13 *(4) free online public access to such final peer-*
14 *reviewed manuscripts or published versions within a*
15 *time period that is appropriate for each type of re-*
16 *search conducted or sponsored by the Federal agency,*
17 *not later than 12 months after publication in peer-*
18 *reviewed journals, preferably sooner, or as adjusted*
19 *under established mechanisms;*

20 *(5) a means, using established mechanisms for*
21 *making requests to the applicable Federal agency, for*
22 *members of the public and other stakeholders to re-*
23 *quest to adjust the period before such a final peer-re-*
24 *viewed manuscript or published version is made pub-*
25 *licly available by presenting evidence demonstrating*

1 *that the period is inconsistent with the objectives of*
 2 *the Federal research public access policy or the needs*
 3 *of the public, industry, or the scientific community;*

4 (6) *providing research papers as described in*
 5 *paragraph (4) in formats and under terms that en-*
 6 *able productive reuse of the research and computa-*
 7 *tional analysis by state-of-the-art technologies;*

8 (7) *improving the ability of the public to locate*
 9 *and access research papers made accessible under the*
 10 *Federal research public access policy; and*

11 (8) *long-term preservation of, and free public ac-*
 12 *cess to, published research findings—*

13 (A) *in a stable digital repository main-*
 14 *tained by the Federal agency; or*

15 (B) *if consistent with the purposes of the*
 16 *Federal agency, in any repository meeting condi-*
 17 *tions determined favorable by the Federal agen-*
 18 *cy, including free public access, interoperability,*
 19 *and long-term preservation.*

20 (c) *APPLICATION OF POLICY.—Each Federal research*
 21 *public access policy shall—*

22 (1) *apply to—*

23 (A) *researchers employed by the Federal*
 24 *agency whose works remain in the public do-*
 25 *main; and*

1 (B) researchers funded by the Federal agen-
2 cy;

3 (2) provide that works described under para-
4 graph (1)(A) shall be—

5 (A) marked as being public domain mate-
6 rial when published; and

7 (B) made available at the same time such
8 works are made available under subsection
9 (b)(4); and

10 (3) make effective use of any law or guidance re-
11 lating to the creation and reservation of a Govern-
12 ment license that provides for the reproduction, publi-
13 cation, release, or other uses of a final manuscript for
14 Federal purposes.

15 (d) *EXCLUSIONS.*—Each Federal research public access
16 policy shall not apply to—

17 (1) research progress reports presented at profes-
18 sional meetings or conferences;

19 (2) laboratory notes, preliminary data analyses,
20 notes of the author, phone logs, or other information
21 used to produce final manuscripts;

22 (3) classified research, research resulting in
23 works that generate revenue or royalties for authors
24 (such as books) or patentable discoveries, to the extent
25 necessary to protect a copyright or patent; or

1 (4) *authors who do not submit their work to a*
2 *journal or works that are rejected by journals.*

3 (e) *PATENT OR COPYRIGHT LAW.*—*Nothing in this Act*
4 *shall be construed to affect any right under the provisions*
5 *of title 17 or 35, United States Code.*

6 (f) *GAO REPORT.*—*Not later than 3 years after the*
7 *date of enactment of this Act, and every 5 years thereafter,*
8 *the Comptroller General of the United States shall submit*
9 *to Congress a report that—*

10 (1) *includes an analysis of the period between*
11 *the date on which each paper becomes publicly avail-*
12 *able in a journal and the date on which the paper is*
13 *in the online repository of the applicable Federal*
14 *agency; and*

15 (2) *examines the effectiveness of the Federal re-*
16 *search public access policy in providing the public*
17 *with free online access to papers on research funded*
18 *by each Federal agency required to develop a policy*
19 *under subsection (a)(1), including—*

20 (A) *whether the terms of use applicable to*
21 *such research papers in effect are effective in en-*
22 *abling productive reuse of the research and com-*
23 *putational analysis by state-of-the-art tech-*
24 *nologies; and*

1 *(B) examines whether such research papers*
2 *should include a royalty-free copyright license*
3 *that is available to the public and that permits*
4 *the reuse of those research papers, on the condi-*
5 *tion that attribution is given to the author or*
6 *authors of the research and any others designated*
7 *by the copyright owner.*

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114TH CONGRESS
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S. 779

[Report No. 114-224]

A BILL

To provide for Federal agencies to develop public access policies relating to research conducted by employees of that agency or from funds administered by that agency.

MARCH 8, 2016

Reported with an amendment