

112TH CONGRESS
2D SESSION

S. 2096

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

FEBRUARY 9, 2012

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

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Research Pub-
5 lic Access Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Federal Government funds basic and
9 applied research with the expectation that new ideas

1 and discoveries that result from the research, if
2 shared and effectively disseminated, will advance
3 science and improve the lives and welfare of people
4 of the United States and around the world; and

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

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

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

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

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

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

22 (1) submission to the Federal agency of an elec-
23 tronic version of the author’s final manuscript of
24 original research papers that have been accepted for
25 publication in peer-reviewed journals and result from

1 research supported, in whole or in part, from fund-
2 ing by the Federal Government;

3 (2) the incorporation of all changes resulting
4 from the peer review publication process in the
5 manuscript described under paragraph (1);

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

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

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

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

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

20 (6) long-term preservation of, and free public
21 access to, published research findings—

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

24 (B) if consistent with the purposes of the
25 Federal agency, in any repository meeting con-

1 ditions determined favorable by the Federal
2 agency, including free public access, interoper-
3 ability, and long-term preservation.

4 (c) APPLICATION OF POLICY.—Each Federal re-
5 search public access policy shall—

6 (1) apply to—

7 (A) researchers employed by the Federal
8 agency whose works remain in the public do-
9 main; and

10 (B) researchers funded by the Federal
11 agency;

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

14 (A) marked as being public domain mate-
15 rial when published; and

16 (B) made available at the same time such
17 works are made available under subsection
18 (b)(4); and

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

24 (d) EXCLUSIONS.—Each Federal research public ac-
25 cess policy shall not apply to—

1 (1) research progress reports presented at pro-
2 fessional meetings or conferences;

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

6 (3) classified research, research resulting in
7 works that generate revenue or royalties for authors
8 (such as books) or patentable discoveries, to the ex-
9 tent necessary to protect a copyright or patent; or
10 (4) authors who do not submit their work to a
11 journal or works that are rejected by journals.

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

15 (f) REPORT.—

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

20 (A) the Committee on Homeland Security
21 and Governmental Affairs of the Senate;

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

1 (C) the Committee on Science and Tech-
2 nology of the House of Representatives;

3 (D) the Committee on Commerce, Science,
4 and Transportation of the Senate;

5 (E) the Committee on Health, Education,
6 Labor, and Pensions of the Senate; and

7 (F) any other committee of Congress of
8 appropriate jurisdiction.

9 (2) CONTENT.—Each report under this sub-
10 section shall include—

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

15 (B) a list of papers published in peer-re-
16 viewed journals that report on research funded
17 by the Federal agency;

18 (C) a corresponding list of papers made
19 available by the Federal agency as a result of
20 the Federal research public access policy; and

21 (D) a summary of the periods of time be-
22 tween public availability of each paper in a
23 journal and in the online repository of the Fed-
24 eral agency.

1 (3) PUBLIC AVAILABILITY.—The Federal agen-
2 cy shall make the statement under paragraph (2)(A)
3 and the lists of papers under subparagraphs (B) and
4 (C) of paragraph (2) available to the public by post-
5 ing such statement and lists on the website of the
6 Federal agency.

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