

**AMENDMENT TO H.R. 4078, AS REPORTED
OFFERED BY MRS. LUMMIS OF WYOMING**

Add after title VII the following new title (and conform the table of contents accordingly):

1 **TITLE VIII—TRACKING THE**
2 **COST TO TAXPAYERS OF FED-**
3 **ERAL LITIGATION**

4 **SEC. 801. SHORT TITLE.**

5 This title may be cited as the “Tracking the Cost to
6 Taxpayers of Federal Litigation Act”.

7 **SEC. 802. MODIFICATION OF EQUAL ACCESS TO JUSTICE**
8 **PROVISIONS.**

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

11 (1) in subsection (c)(1), by striking “, United
12 States Code”; and

13 (2) by striking subsections (e) and (f) and in-
14 serting the following:

15 “(e)(1) The Chairman of the Administrative Con-
16 ference of the United States, after consultation with the
17 Chief Counsel for Advocacy of the Small Business Admin-
18 istration, shall report annually to the Congress on the
19 amount of fees and other expenses awarded during the

1 preceding fiscal year pursuant to this section. The report
2 shall describe the number, nature, and amount of the
3 awards, the claims involved in the controversy, and any
4 other relevant information that may aid the Congress in
5 evaluating the scope and impact of such awards. Each
6 agency shall provide the Chairman in a timely manner all
7 information necessary for the Chairman to comply with
8 the requirements of this subsection. The report shall be
9 made available to the public online.

10 “(2)(A) The report required by paragraph (1) shall
11 account for all payments of fees and other expenses
12 awarded under this section that are made pursuant to a
13 settlement agreement, regardless of whether the settle-
14 ment agreement is sealed or otherwise subject to non-
15 disclosure provisions, except that any version of the report
16 made available to the public may not reveal any informa-
17 tion the disclosure of which is contrary to the national se-
18 curity of the United States.

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

23 “(f) The Chairman of the Administrative Conference
24 shall create and maintain online a searchable database

1 containing the following information with respect to each
2 award of fees and other expenses under this section:

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

5 “(2) The name of each counsel of record rep-
6 resenting each party to whom the award was made.

7 “(3) The agency to which the application for
8 the award was made.

9 “(4) The name of each counsel of record rep-
10 resenting the agency to which the application for the
11 award was made.

12 “(5) The name of each administrative law
13 judge, and the name of any other agency employee
14 serving in an adjudicative role, in the adversary ad-
15 judication that is the subject of the application for
16 the award.

17 “(6) The amount of the award.

18 “(7) The names and hourly rates of each expert
19 witness for whose services the award was made
20 under the application.

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

24 “(g) The online searchable database described in sub-
25 section (f) may not reveal any information the disclosure

1 of which is prohibited by law or court order, or the dislo-
2 sure of which is contrary to the national security of the
3 United States.”.

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

7 “(5)(A) The Chairman of the Administrative Con-
8 ference of the United States shall report annually to the
9 Congress on the amount of fees and other expenses award-
10 ed during the preceding fiscal year pursuant to this sub-
11 section. The report shall describe the number, nature, and
12 amount of the awards, the claims involved in each con-
13 troversy, and any other relevant information which may
14 aid the Congress in evaluating the scope and impact of
15 such awards. Each agency shall provide the Chairman
16 with such information as is necessary for the Chairman
17 to comply with the requirements of this paragraph. The
18 report shall be made available to the public online.

19 “(B)(i) The report required by subparagraph (A)
20 shall account for all payments of fees and other expenses
21 awarded under this subsection that are made pursuant to
22 a settlement agreement, regardless of whether the settle-
23 ment agreement is sealed or otherwise subject to non-
24 disclosure provisions, except that any version of the report
25 made available to the public may not reveal any informa-

1 tion the disclosure of which is contrary to the national se-
2 curity of the United States.

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 name of each party to whom the
22 award was made.

23 “(B) The name of each counsel of record rep-
24 resenting each party to whom the award was made.

25 “(C) The agency involved in the case.

1 “(D) The name of each counsel of record rep-
2 resenting the agency involved in the case.

3 “(E) The name of each judge in the case, and
4 the court in which the case was heard.

5 “(F) The amount of the award.

6 “(G) The names and hourly rates of each ex-
7 pert witness for whose services the award was made.

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

11 “(7) The online searchable database described in
12 paragraph (6) may not reveal any information the dislo-
13 sure of which is prohibited by law or court order, or the
14 disclosure of which is contrary to the national security of
15 the United States.

16 “(8) The Attorney General of the United States shall
17 provide to the Chairman of the Administrative Conference
18 of the United States in a timely manner all information
19 necessary for the Chairman to carry out the Chairman’s
20 responsibilities under this subsection.”.

21 (c) CLERICAL AMENDMENT.—Section 2412(e) of title
22 28, United States Code, is amended by striking “of section
23 2412 of title 28, United States Code,” and inserting “of
24 this section”.

