

Union Calendar No. 476

114TH CONGRESS
2^D SESSION

S. 1109

[Report No. 114–613]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2015

Referred to the Committee on Oversight and Government Reform

JUNE 9, 2016

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To require adequate information regarding the tax treatment of payments under settlement agreements entered into by Federal agencies, 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 “Truth in Settlements
 5 Act of 2015”.

6 **SEC. 2. INFORMATION REGARDING SETTLEMENT AGREE-**
 7 **MENTS ENTERED INTO BY FEDERAL AGEN-**
 8 **CIES.**

9 (a) REQUIREMENTS FOR SETTLEMENT AGREE-
 10 MENTS.—

11 (1) IN GENERAL.—Chapter 3 of title 5, United
 12 States Code, is amended by adding at the end the
 13 following:

14 **“§ 307. Information regarding settlement agreements**

15 “(a) DEFINITIONS.—In this section—

16 “(1) the term ‘covered settlement agreement’
 17 means a settlement agreement (including a consent
 18 decree)—

19 “(A) that is entered into by an Executive
 20 agency; and

21 “(B)(i) that—

22 “(I) relates to an alleged violation of
 23 Federal civil or criminal law; and

1 “(II) requires the payment of a total
 2 of not less than \$1,000,000 by 1 or more
 3 non-Federal persons; or

4 “(ii) that—

5 “(I) relates to the rule making process
 6 of the Executive agency or an alleged fail-
 7 ure by the Executive agency to engage in
 8 a rule making process; and

9 “(II) requires the payment of a total
 10 of not less than \$200,000 in attorney fees,
 11 costs, or expenses by the Executive agency
 12 or entity within the Federal Government to
 13 a non-Federal person;

14 “(2) the term ‘entity within the Federal Gov-
 15 ernment’ includes an officer or employee of the Fed-
 16 eral Government acting in an official capacity;

17 “(3) the term ‘non-Federal person’ means a
 18 person that is not an entity within the Federal Gov-
 19 ernment; and

20 “(4) the term ‘rule making’ has the meaning
 21 given that term under section 551(5).

22 “(b) INFORMATION TO BE POSTED ONLINE.—

23 “(1) REQUIREMENT.—

24 “(A) IN GENERAL.—Subject to subpara-
 25 graph (B), the head of each Executive agency

1 shall make publicly available in a searchable
2 format in a prominent location on the Web site
3 of the Executive agency—

4 “(i) a list of each covered settlement
5 agreement entered into by the Executive
6 agency, which shall include, for each cov-
7 ered settlement agreement—

8 “(I) the date on which the par-
9 ties entered into the covered settle-
10 ment agreement;

11 “(II) the names of the parties
12 that settled claims under the covered
13 settlement agreement;

14 “(III) a description of the claims
15 each party settled under the covered
16 settlement agreement;

17 “(IV) the amount each party set-
18 tling a claim under the covered settle-
19 ment agreement is obligated to pay
20 under the settlement agreement;

21 “(V) the total amount the set-
22 tling parties are obligated to pay
23 under the settlement agreement;

24 “(VI) for each settling party—

1 “(aa) the amount, if any,
2 the settling party is obligated to
3 pay that is expressly specified
4 under the covered settlement
5 agreement as a civil or criminal
6 penalty or fine; and

7 “(bb) the amount, if any,
8 that is expressly specified under
9 the covered settlement agreement
10 as not deductible for purposes of
11 the Internal Revenue Code of
12 1986; and

13 “(VII) a description of where
14 amounts collected under the covered
15 settlement agreement will be depos-
16 ited, including, if applicable, the de-
17 posit of such amounts in an account
18 available for use for 1 or more pro-
19 grams of the Federal Government;
20 and

21 “(ii) a copy of each covered settlement
22 agreement entered into by the Executive
23 agency.

24 “(B) CONFIDENTIALITY PROVISIONS.—The
25 requirement to disclose information or a copy of

1 a covered settlement agreement under subpara-
2 graph (A) shall apply to the extent that the in-
3 formation or copy (or portion thereof) is not
4 subject to a confidentiality provision that pro-
5 hibits disclosure of the information or copy (or
6 portion thereof).

7 “(2) PERIOD.—The head of each Executive
8 agency shall ensure that—

9 “(A) information regarding a covered set-
10 tlement agreement is publicly available on the
11 list described in paragraph (1)(A)(i) for a pe-
12 riod of not less than 5 years, beginning on the
13 date of the covered settlement agreement; and

14 “(B) a copy of a covered settlement agree-
15 ment made available under paragraph (1)(A)(ii)
16 is publicly available—

17 “(i) for a period of not less than 1
18 year, beginning on the date of the covered
19 settlement agreement; or

20 “(ii) for a covered settlement agree-
21 ment under which a non-Federal person is
22 required to pay not less than \$50,000,000,
23 for a period of not less than 5 years, be-
24 ginning on the date of the covered settle-
25 ment agreement.

1 “(c) PUBLIC STATEMENT.—If the head of an Execu-
 2 tive agency determines that a confidentiality provision in
 3 a covered settlement agreement, or the sealing of a covered
 4 settlement agreement, is required to protect the public in-
 5 terest of the United States, the head of the Executive
 6 agency shall issue a public statement stating why such ac-
 7 tion is required to protect the public interest of the United
 8 States, which shall explain—

9 “(1) what interests confidentiality protects; and

10 “(2) why the interests protected by confiden-
 11 tiality outweigh the public’s interest in knowing
 12 about the conduct of the Federal Government and
 13 the expenditure of Federal resources.

14 “(d) REQUIREMENTS FOR WRITTEN PUBLIC STATE-
 15 MENTS.—Any written public statement issued by an Exec-
 16 utive agency that refers to an amount to be paid by a
 17 non-Federal person under a covered settlement agreement
 18 shall—

19 “(1) specify which portion, if any, of the
 20 amount to be paid under the covered settlement
 21 agreement by a non-Federal person—

22 “(A) is expressly specified under the cov-
 23 ered settlement agreement as a civil or criminal
 24 penalty or fine to be paid for a violation of Fed-
 25 eral law; or

1 “(B) is expressly specified under the cov-
2 ered settlement agreement as not deductible for
3 purposes of the Internal Revenue Code of 1986;

4 “(2) if no portion of the amount to be paid
5 under the covered settlement agreement by a non-
6 Federal person is expressly specified under the cov-
7 ered settlement agreement as a civil or criminal pen-
8 alty or fine, include a statement specifying that is
9 the case; and

10 “(3) describe in detail—

11 “(A) any actions the non-Federal person
12 shall take under the covered settlement agree-
13 ment in lieu of payment to the Federal Govern-
14 ment or a State or local government; and

15 “(B) any payments or compensation the
16 non-Federal person shall make to other non-
17 Federal persons under the covered settlement
18 agreement.

19 “(e) CONFIDENTIALITY.—The requirement to dis-
20 close information under subsection (d) shall apply to the
21 extent that the information to be disclosed (or portion
22 thereof) is not subject to a confidentiality provision that
23 prohibits disclosure of the information (or portion there-
24 of).

25 “(f) REPORTING.—

1 “(1) IN GENERAL.—Not later than January 15
2 of each year, the head of an Executive agency that
3 entered into a covered settlement agreement or that
4 entered into a settlement agreement that involves
5 regulatory action or regulatory changes during the
6 previous fiscal year shall submit to each committee
7 of Congress with jurisdiction over the activities of
8 the Executive agency a report indicating—

9 “(A) how many covered settlement agree-
10 ments the Executive agency entered into during
11 that fiscal year;

12 “(B) how many covered settlement agree-
13 ments the Executive agency entered into during
14 that fiscal year that had any terms or condi-
15 tions that are required to be kept confidential;

16 “(C) how many covered settlement agree-
17 ments the Executive agency entered into during
18 that fiscal year for which all terms and condi-
19 tions are required to be kept confidential;

20 “(D) the total amount of attorney fees,
21 costs, and expenses paid to non-Federal persons
22 under settlement agreements (including consent
23 decrees) of the Executive agency during that
24 fiscal year; and

1 “(E) the number of settlement agreements
2 (including consent decrees) between the Execu-
3 tive agency and non-Federal persons that in-
4 volve regulatory action or regulatory changes,
5 including the promulgation of new rules, during
6 that fiscal year.

7 “(2) AVAILABILITY OF REPORTS.—The head of
8 an Executive agency that is required to submit a re-
9 port under paragraph (1) shall make the report pub-
10 licly available in a searchable format in a prominent
11 location on the Web site of the Executive agency.”.

12 (2) TECHNICAL AND CONFORMING AMEND-
13 MENT.—The table of sections for chapter 3 of title
14 5, United States Code, is amended by adding at the
15 end the following:

“307. Information regarding settlement agreements.”.

16 (b) REVIEW OF CONFIDENTIALITY OF SETTLEMENT
17 AGREEMENTS.—Not later than 6 months after the date
18 of enactment of this Act, the Comptroller General of the
19 United States shall submit to Congress a report regarding
20 how Executive agencies (as defined under section 105 of
21 title 5, United States Code) determine whether the terms
22 of a settlement agreement or the existence of a settlement
23 agreement will be treated as confidential, which shall in-
24 clude recommendations, if any, for legislative or adminis-
25 trative action to increase the transparency of Government

- 1 settlements while continuing to protect the legitimate in-
- 2 terests that confidentiality provisions serve.

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