

115TH CONGRESS
2D SESSION

H. R. 6777

IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2018

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To amend chapter 3 of title 5, United States Code, to require
the publication of settlement agreements, 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 “Settlement Agreement
3 Information Database Act of 2018”.

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

7 (a) REQUIREMENTS FOR SETTLEMENT AGREE-
8 MENTS.—Chapter 3 of title 5, United States Code, is
9 amended by adding at the end the following new section:
10 **“§ 307. Information regarding settlement agreements**

11 **“(a) DEFINITIONS.—In this section:**

12 **“(1) LOCAL GOVERNMENT.—**The term ‘local
13 government’ has the meaning given that term in sec-
14 tion 6501 of title 31.

15 **“(2) ORDER TYPE.—**The term ‘order type’
16 means the type of action or instrument used to set-
17 tle a civil or criminal judicial action.

18 **“(3) SETTLEMENT AGREEMENT.—**The term
19 ‘settlement agreement’ means a settlement agree-
20 ment (including a consent decree) that—

21 **“(A) is entered into by an Executive agen-**
22 **cy; and**

23 **“(B) relates to an alleged violation of Fed-**
24 **eral civil or criminal law.**

25 **“(4) STATE.—**The term ‘State’ means each of
26 the several States, the District of Columbia, each

1 territory or possession of the United States, and
2 each federally recognized Indian Tribe.

3 “(b) SETTLEMENT AGREEMENT INFORMATION
4 DATABASE.—

5 “(1) EXECUTIVE AGENCY REQUIREMENT.—

6 “(A) IN GENERAL.—Subject to subpara-
7 graph (B), the head of each Executive agency
8 shall, in accordance with guidance issued pursu-
9 ant to paragraph (2), submit the following in-
10 formation to the database established under
11 paragraph (3):

12 “(i) A list of each settlement agree-
13 ment, in a categorized and searchable for-
14 mat, entered into by the Executive agency,
15 as a party to a lawsuit, which shall in-
16 clude, for each settlement agreement—

17 “(I) the order type of the settle-
18 ment agreement;

19 “(II) the date on which the par-
20 ties entered into the settlement agree-
21 ment;

22 “(III) a list of specific violations
23 that specify the basis for the action
24 taken, with a description of the claims

1 each party settled under the settle-
2 ment agreement;

3 “(IV) the amount of attorneys’
4 fees and other litigation costs award-
5 ed, if any, including a description of
6 the statutory basis for such an award;

7 “(V) the amount each party set-
8 tling a claim under the settlement
9 agreement is obligated to pay under
10 the settlement agreement;

11 “(VI) the total amount the set-
12 tling parties are obligated to pay
13 under the settlement agreement;

14 “(VII) the amount, if any, the
15 settling party is obligated to pay that
16 is expressly specified under the settle-
17 ment agreement as a civil or criminal
18 penalty or fine;

19 “(VIII) any payment made under
20 the settlement agreement, including a
21 description of any payment made to
22 the Federal Government;

23 “(IX) the projected duration of
24 the settlement agreement, if available;

1 “(X) a list of State or local gov-
2 ernments that may be directly af-
3 fected by the terms of the settlement
4 agreement;

5 “(XI) a brief description of any
6 economic data and methodology used
7 to justify the terms of the settlement
8 agreement;

9 “(XII) any modifications to the
10 settlement agreement, when applica-
11 ble;

12 “(XIII) notice and comments,
13 when applicable; and

14 “(XIV) whether the settlement
15 agreement is still under judicial en-
16 forcement and any period of time by
17 which the parties agreed to have cer-
18 tain conditions met.

19 “(ii) A copy of each—

20 “(I) settlement agreement en-
21 tered into by the Executive agency;
22 and

23 “(II) statement issued under
24 paragraph (4).

1 “(B) NONDISCLOSURE.—The requirement
2 to submit information or a copy of a settlement
3 agreement under subparagraph (A) shall not
4 apply to the extent the information or copy (or
5 portion thereof)—

6 “(i) is subject to a confidentiality pro-
7 vision that prohibits disclosure of the infor-
8 mation or copy (or portion thereof); and

9 “(ii) would not be disclosed under sec-
10 tion 552, if the Executive agency provides
11 a citation to the applicable exemption.

12 “(C) CLARIFICATION OF RESPONSIBLE
13 AGENCY.—In a case in which an Executive
14 agency is acting at the request or on behalf of
15 another Executive agency (referred to as the
16 originating agency), the originating agency is
17 responsible for submitting information under
18 subparagraph (A).

19 “(2) GUIDANCE.—The Director of the Office of
20 Management and Budget shall issue guidance for
21 Executive agencies to implement paragraph (1).
22 Such guidance shall include the following:

23 “(A) Specific dates by which submissions
24 must be made, not less than twice a year.

1 “(B) Data standards, including common
2 data elements and a common, nonproprietary,
3 searchable, machine-readable, platform inde-
4 pendent format.

5 “(C) A requirement that the information
6 and documents required under paragraph (1)
7 are publicly available for a period starting on
8 the date of the settlement through not less than
9 5 years after the termination of the settlement
10 agreement.

11 “(3) ESTABLISHMENT OF DATABASE.—The Di-
12 rector of the Office of Management and Budget, or
13 the head of an Executive agency designated by the
14 Director, shall establish and maintain a public,
15 searchable, downloadable database for Executive
16 agencies to directly upload and submit the informa-
17 tion and documents required under paragraph (1)
18 for immediate publication online.

19 “(4) STATEMENT OF CONFIDENTIALITY.—If
20 the head of an Executive agency determines that a
21 confidentiality provision in a settlement agreement,
22 or the sealing of a settlement agreement, is required
23 to protect the public interest of the United States,
24 the head of the Executive agency may except the
25 settlement agreement from the requirement in para-

1 graph (1) and shall issue a written public statement
2 stating why such action is required to protect the
3 public interest of the United States, which shall ex-
4 plain—

5 “(A) what interests confidentiality pro-
6 tects; and

7 “(B) why the interests protected by con-
8 fidentiality outweigh the public’s interest in
9 knowing about the conduct of the Federal Gov-
10 ernment and the expenditure of Federal re-
11 sources.”.

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

“307. Information regarding settlement agreements.”.

16 (c) DEADLINE TO ESTABLISH DATABASE.—Not later
17 than 1 year after the date of the enactment of this Act,
18 the Director of the Office of Management and Budget
19 shall issue guidance required by section 307(b)(2) of title
20 5, United States Code, as added by subsection (a), and
21 establish the settlement agreement information database
22 required by section 307(b)(3) of title 5, United States
23 Code, as added by subsection (a).

24 (d) DEADLINE FOR FIRST SUBMISSION.—Not later
25 than 90 days after the Director issues guidance under sec-

tion 307(b)(2) of title 5, United States Code, as added by subsection (a), the head of each Executive agency (as defined in section 105 of title 5, United States Code) shall begin submitting information to the database established under such section 307.

SEC. 3. AMENDMENTS TO THE FREEDOM OF INFORMATION

ACT.

Section 552(a)(2) of title 5, United States Code, is amended—

(1) by redesignating subparagraphs (B) through (E) as subparagraphs (C) through (F), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) each settlement agreement (as defined in section 307) entered into by an Executive agency, with redactions for information that the agency may withhold under paragraph (8) and subsections (b) and (c) of this section;”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, shall be construed to require the disclosure of information or records that any agency may properly withhold from public disclosure under section 552 of title 5, United

1 States Code (commonly known as the “Freedom of Infor-
2 mation Act”).

3 **SEC. 5. EFFECTIVE DATE; APPLICABILITY.**

4 This Act shall be effective 180 days after the date
5 of the enactment of this Act and shall apply—

6 (1) with respect to any settlement agreement
7 (as such term is defined in section 307 of title 5,
8 United States Code, as added by section 2), entered
9 into on or after the date of the enactment of this
10 Act; and

11 (2) to the extent practicable, any such settle-
12 ment agreement (as such term is defined in section
13 307 of title 5, United States Code, as added by sec-
14 tion 2) that remains in effect on or after the date
15 of the enactment of this Act.

Passed the House of Representatives November 29,
2018.

Attest:

KAREN L. HAAS,

Clerk.