

115TH CONGRESS
1ST SESSION

S. 1145

To require adequate information regarding the tax treatment of payments under settlement agreements entered into by Federal agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 17, 2017

Ms. WARREN (for herself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 2017”.

1 **SEC. 2. INFORMATION REGARDING SETTLEMENT AGREE-**
 2 **MENTS ENTERED INTO BY FEDERAL AGEN-**
 3 **CIES.**

4 (a) REQUIREMENTS FOR SETTLEMENT AGREE-
 5 MENTS.—

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

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

10 “(a) DEFINITIONS.—In this section—

11 “(1) the term ‘covered settlement agreement’
 12 means a settlement agreement (including a consent
 13 decree) that—

14 “(A) is entered into by an Executive agen-
 15 cy;

16 “(B) relates to an alleged violation of Fed-
 17 eral civil or criminal law; and

18 “(C) requires the payment of a total of not
 19 less than \$1,000,000 by one or more non-Fed-
 20 eral persons;

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

24 “(3) the term ‘non-Federal person’ means a
 25 person that is not an entity within the Federal Gov-
 26 ernment.

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

2 “(1) REQUIREMENT.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graph (B), the head of each Executive agency
5 shall make publicly available in a searchable
6 format in a prominent location on the Web site
7 of the Executive agency—

8 “(i) a list of each covered settlement
9 agreement entered into by the Executive
10 agency, which shall include, for each cov-
11 ered settlement agreement—

12 “(I) the date on which the par-
13 ties entered into the covered settle-
14 ment agreement;

15 “(II) the names of the parties
16 that settled claims under the covered
17 settlement agreement;

18 “(III) a description of the claims
19 each party settled under the covered
20 settlement agreement;

21 “(IV) the amount each party set-
22 tling a claim under the covered settle-
23 ment agreement is obligated to pay
24 under the settlement agreement;

1 “(V) the total amount the set-
2 tling parties are obligated to pay
3 under the settlement agreement; and

4 “(VI) for each settling party—

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

11 “(bb) the amount, if any,
12 that is expressly specified under
13 the covered settlement agreement
14 as not deductible for purposes of
15 the Internal Revenue Code of
16 1986; and

17 “(ii) a copy of each covered settlement
18 agreement entered into by the Executive
19 agency.

20 “(B) CONFIDENTIALITY PROVISIONS.—The
21 requirement to disclose information or a copy of
22 a covered settlement agreement under subpara-
23 graph (A) shall apply to the extent that the in-
24 formation or copy (or portion thereof) is not
25 subject to a confidentiality provision that pro-

1 hibits disclosure of the information or copy (or
2 portion thereof).

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

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

10 “(B) a copy of a covered settlement agree-
11 ment made available under paragraph (1)(A)(ii)
12 is publicly available—

13 “(i) for a period of not less than 1
14 year, beginning on the date of the covered
15 settlement agreement; or

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

22 “(c) PUBLIC STATEMENT.—If the head of an Execu-
23 tive agency determines that a confidentiality provision in
24 a covered settlement agreement, or the sealing of a covered
25 settlement agreement, is required to protect the public in-

1 terest of the United States, the head of the Executive
 2 agency shall issue a public statement stating why such ac-
 3 tion is required to protect the public interest of the United
 4 States, which shall explain—

5 “(1) what interests confidentiality protects; and

6 “(2) why the interests protected by confiden-
 7 tiality outweigh the public’s interest in knowing
 8 about the conduct of the Federal Government and
 9 the expenditure of Federal resources.

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

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

18 “(A) is expressly specified under the cov-
 19 ered settlement agreement as a civil or criminal
 20 penalty or fine to be paid for a violation of Fed-
 21 eral law; or

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

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

7 “(3) describe in detail—

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

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

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

22 “(f) REPORTING.—

23 “(1) IN GENERAL.—Not later than January 15
24 of each year, the head of an Executive agency that
25 entered into a covered settlement agreement during

the previous fiscal year shall submit to each committee of Congress with jurisdiction over the activities of the Executive agency a report indicating—

“(A) how many covered settlement agreements the Executive agency entered into during that fiscal year;

“(B) how many covered settlement agreements the Executive agency entered into during that fiscal year that had any terms or conditions that are required to be kept confidential; and

“(C) how many covered settlement agreements the Executive agency entered into during that fiscal year for which all terms and conditions are required to be kept confidential.

“(2) AVAILABILITY OF REPORTS.—The head of an Executive agency that is required to submit a report under paragraph (1) shall make the report publicly available in a searchable format in a prominent location on the Web site of the Executive agency.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 3 of title 5, United States Code, is amended by adding at the end the following:

“307. Information regarding settlement agreements.”.

1 (b) SECURITIES REPORTING.—

2 (1) IN GENERAL.—Each issuer of securities
3 that is required to file annual or other periodic re-
4 ports with the Commission under section 13 or
5 15(d) of the Securities Exchange Act of 1934 (15
6 U.S.C. 78m and 78o(d)) shall describe in such a re-
7 port any claim filed for a deduction under the Inter-
8 nal Revenue Code of 1986 during the reporting pe-
9 riod that relates to a payment required under a cov-
10 ered settlement agreement.

11 (2) DEFINITIONS.—As used in this sub-
12 section—

13 (A) the term “Commission” means the Se-
14 curities and Exchange Commission;

15 (B) the term “covered settlement agree-
16 ment” has the meaning given that term in sec-
17 tion 307 of title 5, United States Code, as
18 added by subsection (a); and

19 (C) the term “issuer” has the same mean-
20 ing as in section 3 of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78c).

22 (c) REVIEW OF CONFIDENTIALITY OF SETTLEMENT
23 AGREEMENTS.—Not later than 180 days after the date
24 of enactment of this Act, the Comptroller General of the
25 United States shall submit to Congress a report regarding

1 how Executive agencies (as defined under section 105 of
2 title 5, United States Code) determine whether the terms
3 of a settlement agreement or the existence of a settlement
4 agreement will be treated as confidential, which shall in-
5 clude recommendations, if any, for legislative or adminis-
6 trative action to increase the transparency of Government
7 settlements while continuing to protect the legitimate in-
8 terests that confidentiality provisions serve.

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