



H.R. 5063—Stop Settlement Slush Funds Act of 2016 (Rep. Goodlatte, R-VA)

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FLOOR SCHEDULE:

Expected to be considered on September 7, 2016 under a structured [rule](#).

TOPLINE SUMMARY:

[H.R. 5063](#) would prevent government officials from entering into settlement agreements to resolve civil actions on behalf of the United States, or from enforcing any such agreement, if the agreement requires a donation to be made by a party to the suit to a non-victim third party. This legislation would permit payments only when made in restitution for, or directly to remedy, actual harm.

COST:

The Congressional Budget Office (CBO) is unable to [estimate](#) whether the legislation would lead to an increase or decrease in the amount of settlements.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

In addition to prohibiting donations to third parties as part of settlement agreements, H.R. 5063 would allow for the removal from office and forfeiture of owed funds to any government official or agent that violated the prohibition.

According to the Committee [report](#), a year-long investigation revealed the Department of Justice has been encouraging, and at times requiring, defendants to make donations to non-victim third parties as part of settlement agreements. Amounts are often small in relation to the entirety of the settlement amount, but frequently give the donating party double-credit toward their payment obligation. Benefitting groups have lobbied the Justice Department for these provisions, and have received upwards of \$880 million within the past two years. These payments are not subject to any Congressional appropriations or oversight, and have in certain instances, provided funding in areas where Congress has made cuts. [Because](#) these donated funds are portions of settlements that would instead go to the Treasury Department, the Justice Department is essentially appropriating money to other causes, bypassing a constitutional separation of powers.

The practice of skirting Congress's power of the purse is part of a long history on the part of the Executive and Judicial Branches. Though any official receiving money for the government is required to deposit any such funds with the Treasury, the Department of Justice has been [able](#) to use its power to set settlement terms to affect Congress's appropriations power. The Executive Branch has also structured transactions as "adjustments of penalty," meaning, a reduction in what the government is owed in an amount paid to a community service endeavor.

To help ameliorate instances of abuse, in 2008, Deputy Attorney General Mark Filip released a [memo](#) to the U.S. Attorney's Manual calling non-victim third party donations a restricted activity that could create conflicts of interest and ethical problems. According to the committee report, an exception was later made for environmental crimes at the urging of guidance issued by the Environment and Natural Resources Division. In addition to the environmental loophole, the 2008 guidance also provides little protection as it only applies to criminal matters and not civil cases, and it also provides a window for payments that are made in redress of any harm.

In 2014, the House Judiciary and Financial Services Committees through an investigation into Justice Department settlements involving major banks, like Bank of America, found that donations to non-victim third party non-profit and community programs afforded the banks double credit to their settlement obligations. In the case of Bank of America, their settlement plainly required such charitable contributions. The Justice Department remained largely uncooperative during the course of the investigation.

A report from the Judiciary Committee can be found [here](#).

AMENDMENTS:

1. [Rep. Conyers \(D-MI\)](#) – This amendment would exempt settlements pertaining to race, religion, national origin, or other protected categories from the prohibition against non-victim third party contributions.
2. [Rep. Cicilline \(D-RI\)](#) – This amendment would exempt settlement agreements that bolster the privacy of Americans from the prohibition against non-victim third party contributions.
3. [Rep. Jackson Lee \(D-TX\)](#) – This amendment would exempt settlement agreements that involve providing restitution for a State.
4. [Rep. Jackson Lee \(D-TX\)](#) – This amendment would exempt settlement agreements that would resolve potential or actual civil actions in relation to sexual harassment, violence, or discrimination in the work place.
5. [Rep. Gosar \(R-AZ\)](#) – This amendment would cap settlement payments for attorney fees as they pertain to environmental cases at \$125 per hour.
6. [Rep. Price \(R-GA\)](#) – This amendment would require the head of each federal agency to submit a quarterly report to Congress containing any settlement agreements made during the previous quarter. The report should contain parties to the agreement, the source of the settlement funds, and where and how funds were distributed.
7. [Rep. Price \(R-GA\)](#) – This amendment would require the Inspector General of each agency to annually report to Congress on settlements entered into within the previous year. The report should contain parties to the agreement, the source of the settlement funds, and where and how funds were distributed.

COMMITTEE ACTION:

H.R. 5063 was introduced on April 26, 2016, and was referred to the House Committee on the Judiciary, where it was reported by the yeas and nays, 16-8, on May 11, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found [here](#).

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, Section 9, Clause 7 of the United States Constitution, in that the legislation concerns the Appropriations Power granted to Congress by that section; Article I, Section 7, Clause 1 of the United States Constitution, in that the legislation concerns the legislative powers granted to Congress by that section; Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause ``to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'

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