

Union Calendar No. 813

115TH CONGRESS
2^D SESSION

H. R. 6777

[Report No. 115–1046]

To amend chapter 3 of title 5, United States Code, to require the publication of settlement agreements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2018

Mr. PALMER introduced the following bill; which was referred to the
Committee on Oversight and Government Reform

NOVEMBER 27, 2018

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

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Settlement Agreement
5 Information Database Act of 2018”.

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

9 (a) REQUIREMENTS FOR SETTLEMENT AGREE-
10 MENTS.—Chapter 3 of title 5, United States Code, is
11 amended by adding at the end the following new section:

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

13 “(a) DEFINITIONS.—In this section:

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

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

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

23 “(A) is entered into by an Executive agen-
24 cy; and

1 “(B) relates to an alleged violation of Fed-
2 eral civil or criminal law.

3 “(4) STATE.—The term ‘State’ means each of
4 the several States, the District of Columbia, each
5 territory or possession of the United States, and
6 each federally recognized Indian Tribe.

7 “(b) SETTLEMENT AGREEMENT INFORMATION
8 DATABASE.—

9 “(1) EXECUTIVE AGENCY REQUIREMENT.—

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

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

21 “(I) the order type of the settle-
22 ment agreement;

23 “(II) the date on which the par-
24 ties entered into the settlement agree-
25 ment;

1 “(III) a list of specific violations
2 that specify the basis for the action
3 taken, with a description of the claims
4 each party settled under the settle-
5 ment agreement;

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

10 “(V) the amount each party set-
11 tling a claim under the settlement
12 agreement is obligated to pay under
13 the settlement agreement;

14 “(VI) the total amount the set-
15 tling parties are obligated to pay
16 under the settlement agreement;

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

22 “(VIII) any payment made under
23 the settlement agreement, including a
24 description of any payment made to
25 the Federal Government;

1 “(IX) the projected duration of
2 the settlement agreement, if available;

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

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

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

14 “(XIII) notice and comments,
15 when applicable; and

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

21 “(ii) A copy of each—

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

1 “(II) statement issued under
2 paragraph (4).

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

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

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

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

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

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

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

7 “(C) A requirement that the information
8 and documents required under paragraph (1)
9 are publicly available for a period starting on
10 the date of the settlement through not less than
11 5 years after the termination of the settlement
12 agreement.

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

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

1 the head of the Executive agency may except the
2 settlement agreement from the requirement in para-
3 graph (1) and shall issue a written public statement
4 stating why such action is required to protect the
5 public interest of the United States, which shall ex-
6 plain—

7 “(A) what interests confidentiality pro-
8 tects; and

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

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

“307. Information regarding settlement agreements.”.

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

1 (d) DEADLINE FOR FIRST SUBMISSION.—Not later
2 than 90 days after the Director issues guidance under sec-
3 tion 307(b)(2) of title 5, United States Code, as added
4 by subsection (a), the head of each Executive agency (as
5 defined in section 105 of title 5, United States Code) shall
6 begin submitting information to the database established
7 under such section 307.

8 **SEC. 3. AMENDMENTS TO THE FREEDOM OF INFORMATION**
9 **ACT.**

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

12 (1) by redesignating subparagraphs (B)
13 through (E) as subparagraphs (C) through (F), re-
14 spectively; and

15 (2) by inserting after subparagraph (A) the fol-
16 lowing new subparagraph:

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

22 **SEC. 4. RULE OF CONSTRUCTION.**

23 Nothing in this Act, or the amendments made by this
24 Act, shall be construed to require the disclosure of infor-
25 mation or records that any agency may properly withhold

1 from public disclosure under section 552 of title 5, United
2 States Code (commonly known as the “Freedom of Infor-
3 mation Act”).

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

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

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

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

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