

# Calendar No. 566

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1898

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2014

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

SEPTEMBER 16, 2014

Reported by Mr. CARPER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## 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 2014*”.

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, the  
5                   amount the settling party is obligated  
6                   to pay that has been designated as a  
7                   civil penalty or fine, or otherwise spec-  
8                   ified as not tax deductible under the  
9                   covered settlement agreement; and

10                  “(ii) a copy of each covered settlement  
11                  agreement entered into by the Executive  
12                  agency.

13                  “(B) CONFIDENTIALITY PROVISIONS.—The  
14                  requirement to disclose information or a copy of  
15                  a covered settlement agreement under subpara-  
16                  graph (A) shall apply to the extent that the in-  
17                  formation or copy (or portion thereof) is not  
18                  subject to a confidentiality provision that pro-  
19                  hibits disclosure of the information or copy (or  
20                  portion thereof).

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

23                         “(A) information regarding a covered set-  
24                         tlement agreement is publicly available on the  
25                         list described in paragraph (1)(A)(i) until at

1 least the date that is 5 years after the date of  
2 the covered settlement agreement; and

3 “(B) a copy of a covered settlement agree-  
4 ment made available under paragraph (1)(A)(ii)  
5 is publicly available until—

6 “(i) at least the date that is 1 year  
7 after the date of the covered settlement  
8 agreement; or

9 “(ii) for a covered settlement agree-  
10 ment under which a non-Federal person is  
11 required to pay not less than \$50,000,000,  
12 at least the date that is 5 years after the  
13 date of the covered settlement agreement.

14 “(e) PUBLIC STATEMENT.—If the head of an Execu-  
15 tive agency determines that a confidentiality provision in  
16 a covered settlement agreement, or the sealing of a covered  
17 settlement agreement, is required to protect the public in-  
18 terest of the United States, the head of the Executive  
19 agency shall issue a public statement stating why such ac-  
20 tion is required to protect the public interest of the United  
21 States, which shall explain—

22 “(1) what interests confidentiality protects; and

23 “(2) why the interests protected by confiden-  
24 tiality outweigh the public’s interest in knowing

1 about the conduct of the Federal Government and  
 2 the expenditure of Federal resources.

3 ~~“(d) REQUIREMENTS FOR WRITTEN PUBLIC STATE-~~  
 4 ~~MENTS.—Any written public statement issued by an Exec-~~  
 5 ~~utive agency that refers to an amount to be paid by a~~  
 6 ~~non-Federal person under a covered settlement agreement~~  
 7 ~~shall—~~

8 ~~“(1) specify which portion, if any, of the~~  
 9 ~~amount to be paid under the covered settlement~~  
 10 ~~agreement by a non-Federal person—~~

11 ~~“(A) is a civil or criminal penalty or fine~~  
 12 ~~to be paid for a violation of Federal law; or~~

13 ~~“(B) is expressly specified under the cov-~~  
 14 ~~ered settlement agreement as not deductible for~~  
 15 ~~purposes of the Internal Revenue Code of 1986;~~  
 16 ~~and~~

17 ~~“(2) describe in detail any actions the non-Fed-~~  
 18 ~~eral person shall take under the covered settlement~~  
 19 ~~agreement—~~

20 ~~“(A) in lieu of payment to the Federal~~  
 21 ~~Government or a State or local government; or~~

22 ~~“(B) in addition to such a payment.~~

23 ~~“(e) REPORTING.—~~

24 ~~“(1) IN GENERAL.—Not later than January 15~~  
 25 ~~of each year, the head of an Executive agency that~~

1 entered into a covered settlement agreement during  
 2 the previous fiscal year shall submit to each com-  
 3 mittee of Congress with jurisdiction over the activi-  
 4 ties of the Executive agency a report indicating—

5 “(A) how many covered settlement agree-  
 6 ments the Executive agency entered into during  
 7 that fiscal year;

8 “(B) how many covered settlement agree-  
 9 ments the Executive agency entered into during  
 10 that fiscal year had any terms or conditions  
 11 that are required to be kept confidential; and

12 “(C) how many covered settlement agree-  
 13 ments the Executive agency entered into during  
 14 that fiscal year for which all terms and condi-  
 15 tions are required to be kept confidential.

16 “(2) AVAILABILITY OF REPORTS.—The head of  
 17 an Executive agency that is required to submit a re-  
 18 port under paragraph (1) shall make the report pub-  
 19 lically available in a searchable format in a promi-  
 20 nent location on the Web site of the Executive agen-  
 21 cy.”.

22 (2) TECHNICAL AND CONFORMING AMEND-  
 23 MENT.—The table of sections for chapter 3 of title  
 24 5, United States Code, is amended by adding at the  
 25 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, 78o(d)) shall describe in such a report  
7 any claim filed for a deduction under the Internal  
8 Revenue Code of 1986 during the reporting period  
9 that relates to a payment required under a covered  
10 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. 78e).

22 (c) REVIEW OF CONFIDENTIALITY OF SETTLEMENT  
23 AGREEMENTS.—Not later than 6 months 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.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Truth in Settlements*  
 11 *Act of 2014”.*

12 **SEC. 2. INFORMATION REGARDING SETTLEMENT AGREE-**  
 13 **MENTS ENTERED INTO BY FEDERAL AGEN-**  
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15 (a) **REQUIREMENTS FOR SETTLEMENT AGREE-**  
 16 **MENTS.—**

17 (1) **IN GENERAL.—***Chapter 3 of title 5, United*  
 18 *States Code, is amended by adding at the end the fol-*  
 19 *lowing:*

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

21 **“(a) DEFINITIONS.—***In this section—*

22 *“(1) the term ‘covered settlement agreement’*  
 23 *means a settlement agreement (including a consent*  
 24 *decree) that—*

1           “(A) is entered into by an Executive agen-  
2           cy;

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

5           “(C) requires the payment of a total of not  
6           less than \$1,000,000 by one or more non-Federal  
7           persons;

8           “(2) the term ‘entity within the Federal Govern-  
9           ment’ includes an officer or employee of the Federal  
10          Government acting in an official capacity; and

11          “(3) the term ‘non-Federal person’ means a per-  
12          son that is not an entity within the Federal Govern-  
13          ment.

14          “(b) *INFORMATION TO BE POSTED ONLINE.*—

15                 “(1) *REQUIREMENT.*—

16                         “(A) *IN GENERAL.*—Subject to subpara-  
17                         graph (B), the head of each Executive agency  
18                         shall make publicly available in a searchable for-  
19                         mat in a prominent location on the Web site of  
20                         the Executive agency—

21                                 “(i) a list of each covered settlement  
22                                 agreement entered into by the Executive  
23                                 agency, which shall include, for each covered  
24                                 settlement agreement—

1           “(I) the date on which the parties  
2 entered into the covered settlement  
3 agreement;

4           “(II) the names of the parties that  
5 settled claims under the covered settle-  
6 ment agreement;

7           “(III) a description of the claims  
8 each party settled under the covered  
9 settlement agreement;

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

14          “(V) the total amount the settling  
15 parties are obligated to pay under the  
16 settlement agreement; and

17          “(VI) for each settling party—

18               “(aa) the amount, if any, the  
19 settling party is obligated to pay  
20 that is expressly specified under  
21 the covered settlement agreement  
22 as a civil or criminal penalty or  
23 fine; and

24               “(bb) the amount, if any,  
25 that is expressly specified under

1                    *the covered settlement agreement*  
2                    *as not tax deductible; and*

3                    *“(ii) a copy of each covered settlement*  
4                    *agreement entered into by the Executive*  
5                    *agency.*

6                    *“(B) CONFIDENTIALITY PROVISIONS.—The*  
7                    *requirement to disclose information or a copy of*  
8                    *a covered settlement agreement under subpara-*  
9                    *graph (A) shall apply to the extent that the in-*  
10                    *formation or copy (or portion thereof) is not sub-*  
11                    *ject to a confidentiality provision that prohibits*  
12                    *disclosure of the information or copy (or portion*  
13                    *thereof).*

14                    *“(2) PERIOD.—The head of each Executive agen-*  
15                    *cy shall ensure that—*

16                    *“(A) information regarding a covered settle-*  
17                    *ment agreement is publicly available on the list*  
18                    *described in paragraph (1)(A)(i) until at least*  
19                    *the date that is 5 years after the date of the cov-*  
20                    *ered settlement agreement; and*

21                    *“(B) a copy of a covered settlement agree-*  
22                    *ment made available under paragraph (1)(A)(ii)*  
23                    *is publicly available until—*

1           “(i) at least the date that is 1 year  
2           after the date of the covered settlement  
3           agreement; or

4           “(ii) for a covered settlement agreement  
5           under which a non-Federal person is re-  
6           quired to pay not less than \$50,000,000, at  
7           least the date that is 5 years after the date  
8           of the covered settlement agreement.

9           “(c) *PUBLIC STATEMENT.*—If the head of an Executive  
10          agency determines that a confidentiality provision in a cov-  
11          ered settlement agreement, or the sealing of a covered settle-  
12          ment agreement, is required to protect the public interest  
13          of the United States, the head of the Executive agency shall  
14          issue a public statement stating why such action is required  
15          to protect the public interest of the United States, which  
16          shall explain—

17                 “(1) what interests confidentiality protects; and

18                 “(2) why the interests protected by confiden-  
19          tiality outweigh the public’s interest in knowing  
20          about the conduct of the Federal Government and the  
21          expenditure of Federal resources.

22           “(d) *REQUIREMENTS FOR WRITTEN PUBLIC STATE-*  
23          *MENTS.*—Any written public statement issued by an Execu-  
24          tive agency that refers to an amount to be paid by a non-

1 *Federal person under a covered settlement agreement*  
2 *shall—*

3           “(1) *specify which portion, if any, of the amount*  
4 *to be paid under the covered settlement agreement by*  
5 *a non-Federal person—*

6                   “(A) *is expressly specified under the covered*  
7 *settlement agreement as a civil or criminal pen-*  
8 *alty or fine to be paid for a violation of Federal*  
9 *law; or*

10                   “(B) *is expressly specified under the covered*  
11 *settlement agreement as not deductible for pur-*  
12 *poses of the Internal Revenue Code of 1986;*

13           “(2) *if no portion of the amount to be paid*  
14 *under the covered settlement agreement by a non-Fed-*  
15 *eral person is expressly specified under the covered*  
16 *settlement agreement as a civil or criminal penalty or*  
17 *fine, include a statement specifying that is the case;*  
18 *and*

19           “(3) *describe in detail—*

20                   “(A) *any actions the non-Federal person*  
21 *shall take under the covered settlement agreement*  
22 *in lieu of payment to the Federal Government or*  
23 *a State or local government; and*

24                   “(B) *any payments or compensation the*  
25 *non-Federal person shall make to other non-Fed-*

1           *eral persons under the covered settlement agree-*  
2           *ment.*

3           “(e) *CONFIDENTIALITY.*—*The requirement to disclose*  
4 *information under subsection (d) shall apply to the extent*  
5 *that the information to be disclosed (or portion thereof) is*  
6 *not subject to a confidentiality provision that prohibits dis-*  
7 *closure of the information (or portion thereof).*

8           “(f) *REPORTING.*—

9           “(1) *IN GENERAL.*—*Not later than January 15*  
10 *of each year, the head of an Executive agency that en-*  
11 *tered into a covered settlement agreement during the*  
12 *previous fiscal year shall submit to each committee of*  
13 *Congress with jurisdiction over the activities of the*  
14 *Executive agency a report indicating—*

15           “(A) *how many covered settlement agree-*  
16 *ments the Executive agency entered into during*  
17 *that fiscal year;*

18           “(B) *how many covered settlement agree-*  
19 *ments the Executive agency entered into during*  
20 *that fiscal year had any terms or conditions that*  
21 *are required to be kept confidential; and*

22           “(C) *how many covered settlement agree-*  
23 *ments the Executive agency entered into during*  
24 *that fiscal year for which all terms and condi-*  
25 *tions are required to be kept confidential.*

1           “(2) *AVAILABILITY OF REPORTS.*—*The head of*  
 2           *an Executive agency that is required to submit a re-*  
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 5           *nent location on the Web site of the Executive agen-*  
 6           *cy.*”.

7           (2) *TECHNICAL AND CONFORMING AMEND-*  
 8           *MENT.*—*The table of sections for chapter 3 of title 5,*  
 9           *United States Code, is amended by adding at the end*  
 10          *the following:*

          “307. *Information regarding settlement agreements.*”.

11          (b) *SECURITIES REPORTING.*—

12               (1) *IN GENERAL.*—*Each issuer of securities that*  
 13               *is required to file annual or other periodic reports*  
 14               *with the Commission under section 13 or 15(d) of the*  
 15               *Securities Exchange Act of 1934 (15 U.S.C. 78m,*  
 16               *78o(d)) shall describe in such a report any claim filed*  
 17               *for a deduction under the Internal Revenue Code of*  
 18               *1986 during the reporting period that relates to a*  
 19               *payment required under a covered settlement agree-*  
 20               *ment.*

21               (2) *DEFINITIONS.*—*As used in this subsection—*

22                       (A) *the term “Commission” means the Se-*  
 23                       *curities and Exchange Commission;*

24                       (B) *the term “covered settlement agreement”*  
 25                       *has the meaning given that term in section 307*



1           *of title 5, United States Code, as added by sub-*  
2           *section (a); and*

3                   *(C) the term “issuer” has the same meaning*  
4           *as in section 3 of the Securities Exchange Act of*  
5           *1934 (15 U.S.C. 78c).*

6           *(c) REVIEW OF CONFIDENTIALITY OF SETTLEMENT*  
7    *AGREEMENTS.—Not later than 6 months after the date of*  
8    *enactment of this Act, the Comptroller General of the United*  
9    *States shall submit to Congress a report regarding how Ex-*  
10   *ecutive agencies (as defined under section 105 of title 5,*  
11   *United States Code) determine whether the terms of a settle-*  
12   *ment agreement or the existence of a settlement agreement*  
13   *will be treated as confidential, which shall include rec-*  
14   *ommendations, if any, for legislative or administrative ac-*  
15   *tion to increase the transparency of Government settlements*  
16   *while continuing to protect the legitimate interests that con-*  
17   *fidentiality provisions serve.*

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**A BILL**

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Reported with an amendment