

117TH CONGRESS
2D SESSION

S. 3900

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

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2022

Mr. LANKFORD introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 2022”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EXECUTIVE AGENCY.—The term “Executive
9 agency” has the meaning given the term in section
10 105 of title 5, United States Code.

1 (2) SETTLEMENT AGREEMENT.—The term
2 “settlement agreement” has the meaning given the
3 term in section 307 of title 5, United States Code,
4 as added by section 3(a) of this Act.

5 **SEC. 3. INFORMATION REGARDING SETTLEMENT AGREE-**
6 **MENTS ENTERED INTO BY FEDERAL AGEN-**
7 **CIES.**

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

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

12 “(a) DEFINITIONS.—In this section:

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

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

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

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

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

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

5 “(b) SETTLEMENT AGREEMENT INFORMATION
 6 DATABASE.—

7 “(1) EXECUTIVE AGENCY REQUIREMENT.—

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

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

19 “(I) the order type of the settle-
 20 ment agreement;

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

24 “(III) a list of specific violations
 25 that specify the basis for the action

1 taken, with a description of the claims
2 each party settled under the settle-
3 ment agreement;

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

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

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

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

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

24 “(IX) the projected duration of
25 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 which 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:

“307. Information regarding settlement agreements.”.

15 (c) DEADLINE TO ESTABLISH DATABASE.—Not later
16 than 1 year after the date of enactment of this Act, the
17 Director of the Office of Management and Budget shall—

18 (1) issue the guidance required under section
19 307(b)(2) of title 5, United States Code, as added
20 by subsection (a); and

21 (2) establish the settlement agreement informa-
22 tion database required under section 307(b)(3) of
23 title 5, United States Code, as added by subsection
24 (a).

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

7 **SEC. 4. AMENDMENTS TO THE FREEDOM OF INFORMATION**
8 **ACT.**

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

11 (1) in paragraph (2)—

12 (A) by redesignating subparagraphs (B)
13 through (E) as subparagraphs (C) through (F),
14 respectively;

15 (B) by inserting after subparagraph (A)
16 the following:

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 (C) in subparagraph (F), as so redesign-
23 ated, by striking “subparagraph (D)” and in-
24 serting “subparagraph (E)”; and

1 (D) in the flush text following subpara-
2 graph (F), as so redesignated—

3 (i) by striking “subparagraph (D)”
4 and inserting “subparagraph (E)”; and

5 (ii) by striking “subparagraph (E)”
6 and inserting “subparagraph (F)”; and

7 (2) in paragraph (4)(B), by striking “para-
8 graph (2)(C)” and inserting “paragraph (2)(D)”.

9 **SEC. 5. RULE OF CONSTRUCTION.**

10 Nothing in this Act, or the amendments made by this
11 Act, shall be construed to require the disclosure of infor-
12 mation or records that any agency may properly withhold
13 from public disclosure under section 552 of title 5, United
14 States Code (commonly known as the “Freedom of Infor-
15 mation Act”).

16 **SEC. 6. EFFECTIVE DATE; APPLICABILITY.**

17 This Act shall—

18 (1) be effective on the date that is 180 days
19 after the date of enactment of this Act; and

20 (2) apply—

21 (A) with respect to any settlement agree-
22 ment entered into on or after the date of the
23 enactment of this Act; and

1 (B) to the extent practicable, any such set-
2 tlement agreement that remains in effect on or
3 after the date of enactment of this Act.

4 **SEC. 7. DETERMINATION OF BUDGETARY EFFECTS.**

5 The budgetary effects of this Act, for the purpose of
6 complying with the Statutory Pay-As-You-Go Act of 2010,
7 shall be determined by reference to the latest statement
8 titled “Budgetary Effects of PAYGO Legislation” for this
9 Act, submitted for printing in the Congressional Record
10 by the Chairman of the House Budget Committee, pro-
11 vided that such statement has been submitted prior to the
12 vote on passage.

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