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114TH CONGRESS
1ST SESSION

S. 1109

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

APRIL 28, 2015

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Settlements Act of 2015".

SEC. 2. INFORMATION REGARDING SETTLEMENT AGREEMENTS ENTERED INTO BY FEDERAL AGENCIES.

(a) REQUIREMENTS FOR SETTLEMENT AGREEMENTS.—

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

"§ 307. Information regarding settlement agreements

"(a) DEFINITIONS.—In this section—

"(1) the term 'covered settlement agreement' means a settlement agreement (including a consent decree) that—

"(A) is entered into by an Executive agency;

"(B) relates to an alleged violation of Federal civil or criminal law; and

"(C) requires the payment of a total of not less than $1,000,000 by 1 or more non-Federal persons;

"(2) the term 'entity within the Federal Government' includes an officer or employee of the Federal Government acting in an official capacity; and

"(3) the term 'non-Federal person' means a person that is not an entity within the Federal Government.

"(b) INFORMATION TO BE POSTED ONLINE.—

"(1) REQUIREMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), the head of each Executive agency shall make publicly available in a searchable format in a prominent location on the Web site of the Executive agency—

"(i) a list of each covered settlement agreement entered into by the Executive agency, which shall include, for each covered settlement agreement—

"(I) the date on which the parties entered into the covered settlement agreement;

"(II) the names of the parties that settled claims under the covered settlement agreement;

"(III) a description of the claims each party settled under the covered settlement agreement;

"(IV) the amount each party settling a claim under the covered settlement agreement is obligated to pay under the settlement agreement;

"(V) the total amount the settling parties are obligated to pay under the settlement agreement; and

"(VI) for each settling party—

"(aa) the amount, if any, the settling party is obligated to pay that is expressly specified under the covered settlement agreement as a civil or criminal penalty or fine; and

"(bb) the amount, if any, that is expressly specified under the covered settlement agreement as not deductible for purposes of the Internal Revenue Code of 1986; and

"(ii) a copy of each covered settlement agreement entered into by the Executive agency.

"(B) CONFIDENTIALITY PROVISIONS.—The requirement to disclose information or a copy of a covered settlement agreement under subparagraph (A) shall apply to the extent that the information or copy (or portion thereof) is not subject to a confidentiality provision that pro-

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

"(2) PERIOD.—The head of each Executive agency shall ensure that—

"(A) information regarding a covered settlement agreement is publicly available on the list described in paragraph (1)(A)(i) for a period of not less than 5 years, beginning on the date of the covered settlement agreement; and

"(B) a copy of a covered settlement agreement made available under paragraph (1)(A)(ii) is publicly available—

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

"(ii) for a covered settlement agreement under which a non-Federal person is required to pay not less than $50,000,000, for a period of not less than 5 years, beginning on the date of the covered settlement agreement.

"(c) PUBLIC STATEMENT.—If the head of an Executive agency determines that a confidentiality provision in a covered settlement agreement, or the sealing of a covered settlement agreement, is required to protect the public in-

terest of the United States, the head of the Executive agency shall issue a public statement stating why such action is required to protect the public interest of the United States, which shall explain—

"(1) what interests confidentiality protects; and

"(2) why the interests protected by confidentiality outweigh the public's interest in knowing about the conduct of the Federal Government and the expenditure of Federal resources.

"(d) REQUIREMENTS FOR WRITTEN PUBLIC STATEMENTS.—Any written public statement issued by an Executive agency that refers to an amount to be paid by a non-Federal person under a covered settlement agreement shall—

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

"(A) is expressly specified under the covered settlement agreement as a civil or criminal penalty or fine to be paid for a violation of Federal law; or

"(B) is expressly specified under the covered settlement agreement as not deductible for purposes of the Internal Revenue Code of 1986;

"(2) if no portion of the amount to be paid under the covered settlement agreement by a non-Federal person is expressly specified under the covered settlement agreement as a civil or criminal penalty or fine, include a statement specifying that is the case; and

"(3) describe in detail—

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

"(B) any payments or compensation the non-Federal person shall make to other non-Federal persons under the covered settlement agreement.

"(e) CONFIDENTIALITY.—The requirement to disclose information under subsection (d) shall apply to the extent that the information to be disclosed (or portion thereof) is not subject to a confidentiality provision that prohibits disclosure of the information (or portion thereof).

"(f) REPORTING.—

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

(b) SECURITIES REPORTING.—

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

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

(A) the term ''Commission'' means the Securities and Exchange Commission;

(B) the term ''covered settlement agreement'' has the meaning given that term in section 307 of title 5, United States Code, as added by subsection (a); and

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

(c) REVIEW OF CONFIDENTIALITY OF SETTLEMENT AGREEMENTS.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report regarding how Executive agencies (as defined under section 105 of

title 5, United States Code) determine whether the terms of a settlement agreement or the existence of a settlement agreement will be treated as confidential, which shall include recommendations, if any, for legislative or administrative action to increase the transparency of Government settlements while continuing to protect the legitimate interests that confidentiality provisions serve.

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