

DECEMBER 15, 2015

RULES COMMITTEE PRINT 114-37
TEXT OF H.R. 712, SUNSHINE FOR REGULATORY
DECREES AND SETTLEMENTS ACT OF 2015

[Showing the texts of H.R. 712 and H.R. 690 as reported by
the Committee on the Judiciary, and H.R. 1759 as reported
by the Committees on Oversight and Government and the
Judiciary; with conforming changes.]

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Sunshine for Regula-
3 tions and Regulatory Decrees and Settlements Act of
4 2016”.

5 SEC. 2. TABLE OF CONTENTS.

6 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

**TITLE I—SUNSHINE FOR REGULATORY DECREES AND
SETTLEMENTS**

Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. Consent decree and settlement reform.
Sec. 104. Motions to modify consent decrees.
Sec. 105. Effective date.

TITLE II—ALL ECONOMIC REGULATIONS ARE TRANSPARENT

Sec. 201. Short title.
Sec. 202. Office of information and regulatory affairs publication of informa-
tion relating to rules.

**TITLE III—PROVIDING ACCOUNTABILITY THROUGH
TRANSPARENCY**

Sec. 301. Short title.
Sec. 302. Requirement to post a 100 word summary to regulations.gov.

1 **TITLE I—SUNSHINE FOR REGU-**
2 **LATORY DECREES AND SET-**
3 **TLEMENTS**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Sunshine for Regula-
6 tions and Regulatory Decrees and Settlements Act of
7 2016”.

8 **SEC. 102. DEFINITIONS.**

9 In this title—

10 (1) the terms “agency” and “agency action”
11 have the meanings given those terms under section
12 551 of title 5, United States Code;

13 (2) the term “covered civil action” means a civil
14 action—

15 (A) seeking to compel agency action;

16 (B) alleging that the agency is unlawfully
17 withholding or unreasonably delaying an agency
18 action relating to a regulatory action that would
19 affect the rights of—

20 (i) private persons other than the per-
21 son bringing the action; or

22 (ii) a State, local, or tribal govern-
23 ment; and

24 (C) brought under—

1 (i) chapter 7 of title 5, United States
2 Code; or

3 (ii) any other statute authorizing such
4 an action;

5 (3) the term “covered consent decree” means—

6 (A) a consent decree entered into in a cov-
7 ered civil action; and

8 (B) any other consent decree that requires
9 agency action relating to a regulatory action
10 that affects the rights of—

11 (i) private persons other than the per-
12 son bringing the action; or

13 (ii) a State, local, or tribal govern-
14 ment;

15 (4) the term “covered consent decree or settle-
16 ment agreement” means a covered consent decree
17 and a covered settlement agreement; and

18 (5) the term “covered settlement agreement”
19 means—

20 (A) a settlement agreement entered into in
21 a covered civil action; and

22 (B) any other settlement agreement that
23 requires agency action relating to a regulatory
24 action that affects the rights of—

- 1 (i) private persons other than the per-
2 son bringing the action; or
3 (ii) a State, local, or tribal govern-
4 ment.

5 **SEC. 103. CONSENT DECREE AND SETTLEMENT REFORM.**

6 (a) PLEADINGS AND PRELIMINARY MATTERS.—

7 (1) IN GENERAL.—In any covered civil action,
8 the agency against which the covered civil action is
9 brought shall publish the notice of intent to sue and
10 the complaint in a readily accessible manner, includ-
11 ing by making the notice of intent to sue and the
12 complaint available online not later than 15 days
13 after receiving service of the notice of intent to sue
14 or complaint, respectively.

15 (2) ENTRY OF A COVERED CONSENT DECREE
16 OR SETTLEMENT AGREEMENT.—A party may not
17 make a motion for entry of a covered consent decree
18 or to dismiss a civil action pursuant to a covered set-
19 tlement agreement until after the end of proceedings
20 in accordance with paragraph (1) and subpara-
21 graphs (A) and (B) of paragraph (2) of subsection
22 (d) or subsection (d)(3)(A), whichever is later.

23 (b) INTERVENTION.—

24 (1) REBUTTABLE PRESUMPTION.—In consid-
25 ering a motion to intervene in a covered civil action

1 or a civil action in which a covered consent decree
2 or settlement agreement has been proposed that is
3 filed by a person who alleges that the agency action
4 in dispute would affect the person, the court shall
5 presume, subject to rebuttal, that the interests of
6 the person would not be represented adequately by
7 the existing parties to the action.

8 (2) STATE, LOCAL, AND TRIBAL GOVERN-
9 MENTS.—In considering a motion to intervene in a
10 covered civil action or a civil action in which a cov-
11 ered consent decree or settlement agreement has
12 been proposed that is filed by a State, local, or tribal
13 government, the court shall take due account of
14 whether the movant—

15 (A) administers jointly with an agency that
16 is a defendant in the action the statutory provi-
17 sions that give rise to the regulatory action to
18 which the action relates; or

19 (B) administers an authority under State,
20 local, or tribal law that would be preempted by
21 the regulatory action to which the action re-
22 lates.

23 (c) SETTLEMENT NEGOTIATIONS.—Efforts to settle
24 a covered civil action or otherwise reach an agreement on
25 a covered consent decree or settlement agreement shall—

1 (1) be conducted pursuant to the mediation or
2 alternative dispute resolution program of the court
3 or by a district judge other than the presiding judge,
4 magistrate judge, or special master, as determined
5 appropriate by the presiding judge; and

6 (2) include any party that intervenes in the ac-
7 tion.

8 (d) PUBLICATION OF AND COMMENT ON COVERED
9 CONSENT DECREES OR SETTLEMENT AGREEMENTS.—

10 (1) IN GENERAL.—Not later than 60 days be-
11 fore the date on which a covered consent decree or
12 settlement agreement is filed with a court, the agen-
13 cy seeking to enter the covered consent decree or
14 settlement agreement shall publish in the Federal
15 Register and online—

16 (A) the proposed covered consent decree or
17 settlement agreement; and

18 (B) a statement providing—

19 (i) the statutory basis for the covered
20 consent decree or settlement agreement;
21 and

22 (ii) a description of the terms of the
23 covered consent decree or settlement agree-
24 ment, including whether it provides for the

1 award of attorneys' fees or costs and, if so,
2 the basis for including the award.

3 (2) PUBLIC COMMENT.—

4 (A) IN GENERAL.—An agency seeking to
5 enter a covered consent decree or settlement
6 agreement shall accept public comment during
7 the period described in paragraph (1) on any
8 issue relating to the matters alleged in the com-
9 plaint in the applicable civil action or addressed
10 or affected by the proposed covered consent de-
11 cree or settlement agreement.

12 (B) RESPONSE TO COMMENTS.—An agency
13 shall respond to any comment received under
14 subparagraph (A).

15 (C) SUBMISSIONS TO COURT.—When mov-
16 ing that the court enter a proposed covered con-
17 sent decree or settlement agreement or for dis-
18 missal pursuant to a proposed covered consent
19 decree or settlement agreement, an agency
20 shall—

21 (i) inform the court of the statutory
22 basis for the proposed covered consent de-
23 cree or settlement agreement and its
24 terms;

1 (ii) submit to the court a summary of
2 the comments received under subparagraph
3 (A) and the response of the agency to the
4 comments;

5 (iii) submit to the court a certified
6 index of the administrative record of the
7 notice and comment proceeding; and

8 (iv) make the administrative record
9 described in clause (iii) fully accessible to
10 the court.

11 (D) INCLUSION IN RECORD.—The court
12 shall include in the court record for a civil ac-
13 tion the certified index of the administrative
14 record submitted by an agency under subpara-
15 graph (C)(iii) and any documents listed in the
16 index which any party or amicus curiae appear-
17 ing before the court in the action submits to the
18 court.

19 (3) PUBLIC HEARINGS PERMITTED.—

20 (A) IN GENERAL.—After providing notice
21 in the Federal Register and online, an agency
22 may hold a public hearing regarding whether to
23 enter into a proposed covered consent decree or
24 settlement agreement.

1 (B) RECORD.—If an agency holds a public
2 hearing under subparagraph (A)—

3 (i) the agency shall—

4 (I) submit to the court a sum-
5 mary of the proceedings;

6 (II) submit to the court a cer-
7 tified index of the hearing record; and

8 (III) provide access to the hear-
9 ing record to the court; and

10 (ii) the full hearing record shall be in-
11 cluded in the court record.

12 (4) MANDATORY DEADLINES.—If a proposed
13 covered consent decree or settlement agreement re-
14 quires an agency action by a date certain, the agen-
15 cy shall, when moving for entry of the covered con-
16 sent decree or settlement agreement or dismissal
17 based on the covered consent decree or settlement
18 agreement, inform the court of—

19 (A) any required regulatory action the
20 agency has not taken that the covered consent
21 decree or settlement agreement does not ad-
22 dress;

23 (B) how the covered consent decree or set-
24 tlement agreement, if approved, would affect

1 the discharge of the duties described in sub-
2 paragraph (A); and

3 (C) why the effects of the covered consent
4 decree or settlement agreement on the manner
5 in which the agency discharges its duties is in
6 the public interest.

7 (e) SUBMISSION BY THE GOVERNMENT.—

8 (1) IN GENERAL.—For any proposed covered
9 consent decree or settlement agreement that con-
10 tains a term described in paragraph (2), the Attor-
11 ney General or, if the matter is being litigated inde-
12 pendently by an agency, the head of the agency shall
13 submit to the court a certification that the Attorney
14 General or head of the agency approves the proposed
15 covered consent decree or settlement agreement. The
16 Attorney General or head of the agency shall person-
17 ally sign any certification submitted under this para-
18 graph.

19 (2) TERMS.—A term described in this para-
20 graph is—

21 (A) in the case of a covered consent decree,
22 a term that—

23 (i) converts into a nondiscretionary
24 duty a discretionary authority of an agency

1 to propose, promulgate, revise, or amend
2 regulations;

3 (ii) commits an agency to expend
4 funds that have not been appropriated and
5 that have not been budgeted for the regu-
6 latory action in question;

7 (iii) commits an agency to seek a par-
8 ticular appropriation or budget authoriza-
9 tion;

10 (iv) divests an agency of discretion
11 committed to the agency by statute or the
12 Constitution of the United States, without
13 regard to whether the discretion was
14 granted to respond to changing cir-
15 cumstances, to make policy or managerial
16 choices, or to protect the rights of third
17 parties; or

18 (v) otherwise affords relief that the
19 court could not enter under its own au-
20 thority upon a final judgment in the civil
21 action; or

22 (B) in the case of a covered settlement
23 agreement, a term—

24 (i) that provides a remedy for a fail-
25 ure by the agency to comply with the

1 terms of the covered settlement agreement
2 other than the revival of the civil action re-
3 solved by the covered settlement agree-
4 ment; and

5 (ii) that—

6 (I) interferes with the authority
7 of an agency to revise, amend, or
8 issue rules under the procedures set
9 forth in chapter 5 of title 5, United
10 States Code, or any other statute or
11 Executive order prescribing rule-
12 making procedures for a rulemaking
13 that is the subject of the covered set-
14 tlement agreement;

15 (II) commits the agency to ex-
16 pend funds that have not been appro-
17 priated and that have not been budg-
18 eted for the regulatory action in ques-
19 tion; or

20 (III) for such a covered settle-
21 ment agreement that commits the
22 agency to exercise in a particular way
23 discretion which was committed to the
24 agency by statute or the Constitution
25 of the United States to respond to

1 changing circumstances, to make pol-
2 icy or managerial choices, or to pro-
3 tect the rights of third parties.

4 (f) REVIEW BY COURT.—

5 (1) AMICUS.—A court considering a proposed
6 covered consent decree or settlement agreement shall
7 presume, subject to rebuttal, that it is proper to
8 allow amicus participation relating to the covered
9 consent decree or settlement agreement by any per-
10 son who filed public comments or participated in a
11 public hearing on the covered consent decree or set-
12 tlement agreement under paragraph (2) or (3) of
13 subsection (d).

14 (2) REVIEW OF DEADLINES.—

15 (A) PROPOSED COVERED CONSENT DE-
16 CREES.—For a proposed covered consent de-
17 cree, a court shall not approve the covered con-
18 sent decree unless the proposed covered consent
19 decree allows sufficient time and incorporates
20 adequate procedures for the agency to comply
21 with chapter 5 of title 5, United States Code,
22 and other applicable statutes that govern rule-
23 making and, unless contrary to the public inter-
24 est, the provisions of any Executive order that
25 governs rulemaking.

1 (B) PROPOSED COVERED SETTLEMENT
2 AGREEMENTS.—For a proposed covered settle-
3 ment agreement, a court shall ensure that the
4 covered settlement agreement allows sufficient
5 time and incorporates adequate procedures for
6 the agency to comply with chapter 5 of title 5,
7 United States Code, and other applicable stat-
8 utes that govern rulemaking and, unless con-
9 trary to the public interest, the provisions of
10 any Executive order that governs rulemaking.

11 (g) ANNUAL REPORTS.—Each agency shall submit to
12 Congress an annual report that, for the year covered by
13 the report, includes—

14 (1) the number, identity, and content of covered
15 civil actions brought against and covered consent de-
16 crees or settlement agreements entered against or
17 into by the agency; and

18 (2) a description of the statutory basis for—

19 (A) each covered consent decree or settle-
20 ment agreement entered against or into by the
21 agency; and

22 (B) any award of attorneys fees or costs in
23 a civil action resolved by a covered consent de-
24 cree or settlement agreement entered against or
25 into by the agency.

1 **SEC. 104. MOTIONS TO MODIFY CONSENT DECREES.**

2 If an agency moves a court to modify a covered con-
3 sent decree or settlement agreement and the basis of the
4 motion is that the terms of the covered consent decree or
5 settlement agreement are no longer fully in the public in-
6 terest due to the obligations of the agency to fulfill other
7 duties or due to changed facts and circumstances, the
8 court shall review the motion and the covered consent de-
9 cree or settlement agreement de novo.

10 **SEC. 105. EFFECTIVE DATE.**

11 This title shall apply to—

12 (1) any covered civil action filed on or after the
13 date of enactment of this Act; and

14 (2) any covered consent decree or settlement
15 agreement proposed to a court on or after the date
16 of enactment of this Act.

17 **TITLE II—ALL ECONOMIC REGU-**
18 **LATIONS ARE TRANSPARENT**

19 **SEC. 201. SHORT TITLE.**

20 This title may be cited as the “All Economic Regula-
21 tions are Transparent Act of 2016” or the “ALERT Act
22 of 2016”.

1 **SEC. 202. OFFICE OF INFORMATION AND REGULATORY AF-**
2 **FAIRS PUBLICATION OF INFORMATION RE-**
3 **LATING TO RULES.**

4 (a) AMENDMENT.—Title 5, United States Code, is
5 amended by inserting after chapter 6, the following new
6 chapter:

7 **“CHAPTER 6A—OFFICE OF INFORMATION**
8 **AND REGULATORY AFFAIRS PUBLICA-**
9 **TION OF INFORMATION RELATING TO**
10 **RULES**

“Sec. 651. Agency monthly submission to office of information and regulatory affairs.

“Sec. 652. Office of information and regulatory affairs publications.

“Sec. 653. Requirement for rules to appear in agency-specific monthly publication.

“Sec. 654. Definitions.

11 **“SEC. 651. AGENCY MONTHLY SUBMISSION TO OFFICE OF**
12 **INFORMATION AND REGULATORY AFFAIRS.**

13 “On a monthly basis, the head of each agency shall
14 submit to the Administrator of the Office of Information
15 and Regulatory Affairs (referred to in this chapter as the
16 ‘Administrator’), in such a manner as the Administrator
17 may reasonably require, the following information:

18 “(1) For each rule that the agency expects to
19 propose or finalize during the following year:

20 “(A) A summary of the nature of the rule,
21 including the regulation identifier number and
22 the docket number for the rule.

1 “(B) The objectives of and legal basis for
2 the issuance of the rule, including—

3 “(i) any statutory or judicial deadline;
4 and

5 “(ii) whether the legal basis restricts
6 or precludes the agency from conducting
7 an analysis of the costs or benefits of the
8 rule during the rule making, and if not,
9 whether the agency plans to conduct an
10 analysis of the costs or benefits of the rule
11 during the rule making.

12 “(C) Whether the agency plans to claim an
13 exemption from the requirements of section 553
14 pursuant to section 553(b)(B).

15 “(D) The stage of the rule making as of
16 the date of submission.

17 “(E) Whether the rule is subject to review
18 under section 610.

19 “(2) For any rule for which the agency expects
20 to finalize during the following year and has issued
21 a general notice of proposed rule making—

22 “(A) an approximate schedule for com-
23 pleting action on the rule;

24 “(B) an estimate of whether the rule will
25 cost—

1 “(i) less than \$50,000,000;

2 “(ii) \$50,000,000 or more but less
3 than \$100,000,000;

4 “(iii) \$100,000,000 or more but less
5 than \$500,000,000;

6 “(iv) \$500,000,000 or more but less
7 than \$1,000,000,000;

8 “(v) \$1,000,000,000 or more but less
9 than \$5,000,000,000;

10 “(vi) \$5,000,000,000 or more but less
11 than \$10,000,000,000; or

12 “(vii) \$10,000,000,000 or more; and

13 “(C) any estimate of the economic effects
14 of the rule, including any estimate of the net ef-
15 fect that the rule will have on the number of
16 jobs in the United States, that was considered
17 in drafting the rule. If such estimate is not
18 available, a statement affirming that no infor-
19 mation on the economic effects, including the
20 effect on the number of jobs, of the rule has
21 been considered.

22 **“SEC. 652. OFFICE OF INFORMATION AND REGULATORY AF-**
23 **FAIRS PUBLICATIONS.**

24 “(a) AGENCY-SPECIFIC INFORMATION PUBLISHED
25 MONTHLY.—Not later than 30 days after the submission

1 of information pursuant to section 651, the Administrator
2 shall make such information publicly available on the
3 Internet.

4 “(b) CUMULATIVE ASSESSMENT OF AGENCY RULE
5 MAKING PUBLISHED ANNUALLY.—

6 “(1) PUBLICATION IN THE FEDERAL REG-
7 ISTER.—Not later than October 1 of each year, the
8 Administrator shall publish in the Federal Register,
9 for the previous year the following:

10 “(A) The information that the Adminis-
11 trator received from the head of each agency
12 under section 651.

13 “(B) The number of rules and a list of
14 each such rule—

15 “(i) that was proposed by each agen-
16 cy, including, for each such rule, an indica-
17 tion of whether the issuing agency con-
18 ducted an analysis of the costs or benefits
19 of the rule; and

20 “(ii) that was finalized by each agen-
21 cy, including for each such rule an indica-
22 tion of whether—

23 “(I) the issuing agency conducted
24 an analysis of the costs or benefits of
25 the rule;

1 “(II) the agency claimed an ex-
2 emption from the procedures under
3 section 553 pursuant to section
4 553(b)(B); and

5 “(III) the rule was issued pursu-
6 ant to a statutory mandate or the rule
7 making is committed to agency discre-
8 tion by law.

9 “(C) The number of agency actions and a
10 list of each such action taken by each agency
11 that—

12 “(i) repealed a rule;

13 “(ii) reduced the scope of a rule;

14 “(iii) reduced the cost of a rule; or

15 “(iv) accelerated the expiration date
16 of a rule.

17 “(D) The total cost (without reducing the
18 cost by any offsetting benefits) of all rules pro-
19 posed or finalized, and the number of rules for
20 which an estimate of the cost of the rule was
21 not available.

22 “(2) PUBLICATION ON THE INTERNET.—Not
23 later than October 1 of each year, the Administrator
24 shall make publicly available on the Internet the fol-
25 lowing:

1 “(A) The analysis of the costs or benefits,
2 if conducted, for each proposed rule or final
3 rule issued by an agency for the previous year.

4 “(B) The docket number and regulation
5 identifier number for each proposed or final
6 rule issued by an agency for the previous year.

7 “(C) The number of rules and a list of
8 each such rule reviewed by the Director of the
9 Office of Management and Budget for the pre-
10 vious year, and the authority under which each
11 such review was conducted.

12 “(D) The number of rules and a list of
13 each such rule for which the head of an agency
14 completed a review under section 610 for the
15 previous year.

16 “(E) The number of rules and a list of
17 each such rule submitted to the Comptroller
18 General under section 801.

19 “(F) The number of rules and a list of
20 each such rule for which a resolution of dis-
21 approval was introduced in either the House of
22 Representatives or the Senate under section
23 802.

1 **“SEC. 653. REQUIREMENT FOR RULES TO APPEAR IN AGEN-**
2 **CY-SPECIFIC MONTHLY PUBLICATION.**

3 “(a) IN GENERAL.—Subject to subsection (b), a rule
4 may not take effect until the information required to be
5 made publicly available on the Internet regarding such
6 rule pursuant to section 652(a) has been so available for
7 not less than 6 months.

8 “(b) EXCEPTIONS.—The requirement of subsection
9 (a) shall not apply in the case of a rule—

10 “(1) for which the agency issuing the rule
11 claims an exception under section 553(b)(B); or

12 “(2) which the President determines by Execu-
13 tive order should take effect because the rule is—

14 “(A) necessary because of an imminent
15 threat to health or safety or other emergency;

16 “(B) necessary for the enforcement of
17 criminal laws;

18 “(C) necessary for national security; or

19 “(D) issued pursuant to any statute imple-
20 menting an international trade agreement.

21 **“SEC. 654. DEFINITIONS.**

22 “‘In this chapter, the terms ‘agency’, ‘agency action’,
23 ‘rule’, and ‘rule making’ have the meanings given those
24 terms in section 551.”.

25 (b) TECHNICAL AND CONFORMING AMENDMENT.—

26 The table of chapters for part I of title 5, United States

1 Code, is amended by inserting after the item relating to
2 chapter 5, the following:

“6. The Analysis of Regulatory Functions 601
“6A. Office of Information and Regulatory Affairs Publication of In-
formation Relating to Rules 651”.

3 (c) EFFECTIVE DATES.—

4 (1) AGENCY MONTHLY SUBMISSION TO THE OF-
5 FICE OF INFORMATION AND REGULATORY AF-
6 FAIRS.—The first submission required pursuant to
7 section 651 of title 5, United States Code, as added
8 by subsection (a), shall be submitted not later than
9 30 days after the date of the enactment of this Act,
10 and monthly thereafter.

11 (2) CUMULATIVE ASSESSMENT OF AGENCY
12 RULE MAKING.—

13 (A) IN GENERAL.—Subsection (b) of sec-
14 tion 652 of title 5, United States Code, as
15 added by subsection (a), shall take effect on the
16 date that is 60 days after the date of the enact-
17 ment of this Act.

18 (B) DEADLINE.—The first requirement to
19 publish or make available, as the case may be,
20 under subsection (b) of section 652 of title 5,
21 United States Code, as added by subsection (a),
22 shall be the first October 1 after the effective
23 date of such subsection.

1 (C) FIRST PUBLICATION.—The require-
2 ment under section 652(b)(2)(A) of title 5,
3 United States Code, as added by subsection (a),
4 shall include for the first publication, any anal-
5 ysis of the costs or benefits conducted for a
6 proposed or final rule, for the 10 years before
7 the date of the enactment of this Act.

8 (3) REQUIREMENT FOR RULES TO APPEAR IN
9 AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section
10 653 of title 5, United States Code, as added by sub-
11 section (a), shall take effect on the date that is 8
12 months after the date of the enactment of this Act.

13 **TITLE III—PROVIDING AC-**
14 **COUNTABILITY THROUGH**
15 **TRANSPARENCY**

16 **SEC. 301. SHORT TITLE.**

17 This title may be cited as the “Providing Account-
18 ability Through Transparency Act of 2016”.

19 **SEC. 302. REQUIREMENT TO POST A 100 WORD SUMMARY**
20 **TO REGULATIONS.GOV.**

21 Section 553(b) of title 5, United States Code, is
22 amended—

23 (1) in paragraph (2) by striking “; and” and in-
24 serting “;”;

1 (2) in paragraph (3), by striking the period at
2 the end and inserting “; and”; and

3 (3) by inserting after paragraph (3) the fol-
4 lowing:

5 “(4) the internet address of a summary of not
6 more than 100 words in length of the proposed rule,
7 in plain language, that shall be posted on the inter-
8 net website under section 206(d) of the E-Govern-
9 ment Act of 2002 (44 U.S.C. 3501 note) (commonly
10 known as regulations.gov);”.

