U.S. PIRG
Federation of State PIRGs

218 D Street, SE
Washington, DC 20003
www.uspirg.org • info@uspirg.org
Phone: (202) 546-9707
Fax: (202) 546-2461

Federal Agency Settlements with Corporations Lack Transparency

Failure to publicly disclose settlement agreements prevents executive agencies and corporations from being held accountable for the deals they sign.

- Federal agencies are charged with holding companies accountable when they break the law. Their investigations regularly end in out-of-court settlement agreements rather than trials.
- No standards require transparency for settlement agreements negotiated and signed by executive agencies on behalf of the American people.
- The details of settlement agreements often remain hidden from the public, even declared "confidential" without explanation.
- The actual value of settlements may be obscured when agencies allow companies to use settlements as a tax deduction. The GAO has found that settlements will typically become tax write offs unless they include specific language to indicate that settlements payments are not an ordinary business cost.
- The value of many settlements can be further obscured when agencies grant "credits" for activities that can be for routine conduct.

The Truth in Settlements Act: a bipartisan and bicameral legislative solution that would shine light on settlements

- The Truth in Settlements Act (S. 1898), was jointly introduced in the Senate by Senators Warren (D-MA) and Coburn (R-OK).
- The House counterpart bill (H.R. 4324) was introduced by Reps. Cole (R-OK4) and Cartwright (D-PA17), and has been joined by 9 bipartisan cosponsors.
- The bill has passed without opposition through the Homeland Security and Governmental Affairs Committee in Senate

The Truth in Settlements Act requires that for all settlements worth $1 million or more:

- Executive agencies must publicly post the text of the settlement to their websites, along with basic information about the settlement, including classification of any payments.
- Executive agencies must clearly explain in written public statements the after-tax value of the settlement, and the value of any "credits" that are included in the settlement payment.
- Executive agencies must justify why a "confidential" settlement is classified as such.
- Companies must disclose in their SEC filings whether they have deducted any settlement payments from their taxes.

The Truth in Settlements Act would increase public and Congressional scrutiny of settlement agreements between executive agencies and corporations

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Below are three examples in which unannounced tax windfalls greatly changed the real value of the settlement agreement. Each dollar written off in these agreements must be shouldered by taxpayers in the form of higher tax rates, program cuts, or more national debt.

Settlement resolving allegations of illegal mortgage activities includes a $4 billion tax break

The Justice Department settled with Bank of America to resolve allegations of illegal mortgage activities that may have led to the 2008 financial crisis. A significant portion of the announced $17 billion settlement was "soft dollar relief" in the form of payments the bank would have had to make regardless of the settlement. Furthermore, the Justice Department's failure to specify that the amount could not be treated as ordinary business expense will likely lead to a $4 billion tax windfall for the bank.

The details of this settlement were not clearly outlined in the public press release. The press release failed to specify that large portions of the settlement could be deducted from taxes and was not clear about whether the "credits" would be new payments, or would even specifically need to be paid by the bank.

Violating sanctions with Iran and enabling drug cartel money laundering yields a $420 million tax break

HSBC admitted to charges of violating sanctions against Iran, and enabling Mexican drug cartels to move money through HSBC accounts. Rather than face criminal prosecution, HSBC signed a deferred prosecution agreement and agreed to pay $1.9 billion. But only $700 million of that payment was not tax deductible, leaving the door open for HSBC to claim a $420 million tax windfall on the remaining $1.2 billion.

The Justice Department still has not publicly disclosed the settlement and its press statements failed to disclose that the settlement could be tax deductible.

BP's gross negligence leading to the Deepwater Horizon Disaster could create a $6.3 billion tax windfall

BP has been found grossly negligent in its role in the Deepwater Horizon Disaster, and could face up to $18 billion in payments to resolve violations of the Clean Water Act.

However, this settlement payment could yield a $6.3 billion tax windfall unless agencies specifically include language denying BP any tax deductions for the payment.

BP has already written off the cost of its cleanup effort after the spill, earning a tax windfall of $10 billion. Federal agencies made no effort to prevent this giveback through the tax system.