



June 28, 2023

Re: Oppose H.R. 788, the Stop Settlement Slush Funds Act of 2023

Dear Representative,

The Coalition for Sensible Safeguards (CSS), which includes more than 160 diverse labor, environmental, consumer, public health, food safety, financial reform, faith, and scientific integrity groups representing millions of Americans, strongly urges you to oppose H.R. 788, the Stop Settlement Slush Funds Act of 2023.

This bill would needlessly prohibit a widely respected and effective enforcement tool. Specifically, it would block many agencies from including certain terms providing for payment to third parties in settlement agreements to which the United States is a party.

In the past, agencies have sometimes opted to work with entities that have violated regulatory requirements to agree to alternative forms of remediation. These efforts have resulted in settlement agreements that include payments by those entities to third parties to advance programs that assist with recovery, benefits, or relief for communities harmed by the wrongdoing addressed in the enforcement action. In this way, H.R. 788 would thwart federal enforcement officials' ability to negotiate appropriate relief for harm caused to the public by parties that are the subject of the enforcement action.

The criticisms of third-party settlements are misplaced: they do not unduly undermine congressional appropriation power, and they must satisfy basic requirements to be used. The Congressional Research Service has found settlement payments to non-federal actors are permissible remedies to the extent they bear a nexus to the prosecutorial objectives of the agency.¹ Moreover, developing guidelines on appropriate scope, purpose, and use of third-party payments appropriately lie with the executing agency, which has the benefit of expertise and experience.

One of the most common forms of these settlement provisions are the Supplemental Environmental Projects (SEPs), which are used by the Environmental Protection Agency (EPA) in enforcement actions arising from violations of environmental and public health regulations. Entities responsible for the violation agree to SEPs because these forms of remediation offer a chance to rebuild goodwill with the communities that have been harmed. Affected communities agree to SEPs because these forms of remediation help to meaningfully address injuries to the

¹ Congressional Research Service, "Monetary Relief to Third Parties as Part of Federal Legal Settlements," (April 26, 2016).

public that the payment of fines ordinarily cannot achieve. Such injuries could include the ecological impact or public health hazards caused by or related to the regulatory violation at issue. Given the value of SEPs, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling recommended that they be included as part of any settlement agreement reached between the United States and the parties responsible for the oil spill.²

Beyond undermining effective enforcement, this bill is likely to prove difficult to implement, given that many of its key terms are broad and vague. For instance, this bill purports to cover all settlement agreements in which the United States is a party and where federal agencies have particular subject matter expertise on mitigation and remediation efforts. As such, it would also seem to include instances in which the United States is a defendant, which pose different issues from cases in which the government is prosecuting a civil claim.

In addition, the bill's language purporting to exempt payments that constitute a form of restitution is likely to be unworkable in practice, as SEPs illustrate. In the case of environmental harm arising from a regulatory violation, it will not always be clear which harms are "directly and proximately" caused by the underlying regulatory violation. Indeed, one of the reasons why SEPs are so important is because they do offer a means for restorative justice in the face of such uncertainty. For instance, one of the settlement agreements to resolve criminal and civil liability in the wake of the BP oil spill dedicated \$20 million to SEPs aimed at restoring the health of the Gulf of Mexico.³ In implementing these programs, it would be difficult to discern which harms were attributable to the BP oil spill and which were not.

In sum, this bill is counterproductive and would undermine law enforcement goals by reducing the availability of effective remedies to address injuries to individuals and communities caused by illegal conduct. We therefore urge you to oppose H.R. 788, the Stop Settlement Slush Funds Act of 2023.

Sincerely,



Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards

² National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, "Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling," Recommendations, at <https://www.govinfo.gov/content/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION-1.pdf>, p. 41 (January, 2011).

³ Congressional Research Service, "Deepwater Horizon Oil Spill: Recent Activities and Ongoing Developments," at <https://sgp.fas.org/crs/misc/R42942.pdf>, p. 10, (April 17, 2015).