



June 6, 2023

The Honorable Jim Jordan
Chair
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Nadler:

The U.S. Chamber of Commerce supports H.R. 788, the “Stop Settlement Slush Funds Act of 2023,” and urges the Committee to favorably report this bill without any amendments that might weaken or otherwise limit this bill’s application.

H.R. 788 prohibits the executive branch from using “enforcement slush funds,” the practice where funds paid under settlement agreements are sent to third party groups rather than the federal government. On May 5, 2022, Attorney General Merrick Garland issued a memorandum to the heads of DOJ components and United States Attorneys entitled, “Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties.” This memorandum revoked a DOJ policy, in place since 2017, which generally prohibited DOJ components from entering into settlement agreements that direct defendants to make payments to non-governmental third parties.¹ These payments are made outside of the standard appropriations process, lack meaningful oversight, and present considerable separation of powers concerns.² In fact, a year-long investigation by the House Judiciary Committee in 2016 uncovered that the Department of Justice had circumvented the appropriations process to divert \$880 million of settlement proceeds to third-party organizations over the course of a few years.³

The purpose of government enforcement actions is to stop violations of law and compensate victims and taxpayers for losses stemming from a defendant’s actions, not to fund or subsidize private organizations that are favored by unelected government officials. Proponents of directing settlement money to third-party organizations argue that it is sometimes difficult to provide a remedy to those who are adversely impacted by improper conduct, therefore directing settlement money to third-party groups is the only option. This simply is not true. The appropriate solution in such situations is to follow the law by depositing the funds in the U.S. Treasury for Congress to appropriate in a manner reflecting its spending priorities or pass on the savings to the taxpayer, as it chooses.

¹ See 87 Fed. Reg. 27,936 (May 10, 2022).

² John Allison et al., [Improper Third-Party Payments in U.S. Government Litigation Settlements](#), Regulatory Transparency Project, Feb. 22, 2021

³ <https://www.congress.gov/congressional-report/114th-congress/house-report/694/1>

A basic principle of our system of government is that a representative and politically accountable Congress decides how federal money is spent. Allowing unelected federal officials to use “enforcement slush funds” to provide funding to pet projects or special interest groups raises myriad constitutional issues that should not be ignored.⁴ H.R. 788 would put a stop to this troubling practice by prohibiting unelected officials from requiring a defendant to fund an outside group of their choosing as a condition of the government agreeing to settle an enforcement matter. Notably, the bill expressly allows payments that provide restitution or otherwise directly remedy actual harm, including to the environment, that is caused by the settling party.

The Chamber supports H.R. 788 and urges your Committee to favorably report this important bill.

Sincerely,



Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce

cc: Members of the House Committee on the Judiciary

⁴ See H. Rep. 114-694, at 3 (July 18, 2016) (“Congress’ spending power is its most effective tool for oversight and reining in Executive overreach.”).