

September 6, 2016

Re: Oppose H.R.5063, The “Stop Settlement Slush Funds Act of 2016”

Dear Members,

We write to voice our strong opposition to H.R. 5063. This bill would prohibit settlement agreements where the United States is a party from including certain payment terms to non-federal actors, also known as third-party payments. Settlement terms that result from a federal enforcement action can sometimes include payments to third parties to advance programs that assist with recovery, benefits, and relief for communities harmed by lawbreakers, to the extent such payments further the objectives of the enforcement action. H.R. 5063 will handcuff federal enforcement officials’ ability to negotiate appropriate relief for harm caused to the public by parties that are the subject of the federal prosecution by cutting off any kind of payment to third parties, other than individualized restitution and other direct forms of payment for “actual harm.” This legislation is not only irresponsible, its consideration by the House exhibits woefully misplaced priorities.

This bill intends to prevent federal law enforcement agencies from negotiating forms of relief that would address injuries to the public that may be either non-quantifiable or indeterminate. These provisions of relief are crucial when harm is difficult to monetize, such as the ecological impact or public health hazards caused by violations of environmental laws, the collateral consequences to communities resulting from predatory lending by financial institutions, or unknown health outcomes to individuals resulting from chemical exposures in the workplace. For these kinds of harm, this measure would undermine law enforcement goals by reducing the availability of suitable remedies to address these kinds of injuries to the public caused by illegal conduct. This bill is a gift to lawbreakers that comes at the expense of families and communities impacted by injuries that cannot be addressed by direct restitution.

Contrary to what the backers of this bill say, third-party settlement payments to non-federal actors are permissible remedies to the extent they bear a nexus to the prosecutorial objectives of the agency. Comptroller opinions and agencies have been clear on this point.¹ While there should be guideposts on the use of third-party payments, such as rules on scope, purpose, and permissible use of such payments, developing guidelines appropriately lies with the executing agency, which has the benefit of expertise and experience.

Finally, proponents’ use of this measure as a bully pulpit to attack so-called “activist groups” is shameful. Oftentimes, third-party payments are remitted to the nonprofit sector, community organizations, or trusts or foundations established in furtherance of the public good. In a variety of contexts, such institutions may offer the best opportunity to provide important services, engage affected communities, or provide redress. House proponents of this measure have called out by name civil rights organizations such as the National Council of La Raza and the National Urban League, which, as HUD-certified housing counselors, provide needed services to communities that have borne the worst impact of Wall Street’s recklessness. The bill’s focus on

¹ CONGRESSIONAL RESEARCH SERVICE, MONETARY RELIEF TO THIRD PARTIES AS PART OF FEDERAL LEGAL SETTLEMENTS (Apr. 26, 2016).

curtailing settlement “donations” shows a lack of understanding on the role of these service organizations in communities around the country. Members of Congress should applaud the good work done by these organizations to assist struggling communities and serve the public good, rather than vilifying these groups simply because their missions do not align with their ideological interests.

This bill is nothing more than a cynical endeavor aimed at blocking federal law enforcement agencies from using the settlement process to craft appropriate remedies in order to protect business interests at the expense of the health and wellbeing of the American people. Congress should not spend its time trying to weaken the negotiating position of the United States or reducing flexibility in crafting appropriate remedies through settlement agreements. We urge you to oppose this amendment.

Respectfully,

Americans for Financial Reform
California Reinvestment Coalition
Center for NYC Neighborhoods
Clean Water Action
Consumer Action
Consumer Federation of America
Earthjustice
Empire Justice Center
Greenpeace
League of Conservation Voters
National Association of Consumer Advocates
National Council of La Raza
National Employment Lawyers Association
National Fair Housing Alliance
Natural Resources Defense Council
National Urban League
Public Citizen
Sierra Club