



### Comments of the Regulatory Action Center

RE: Guidelines and Limitations for Settlement Agreements Involving Payments to  
Non-Governmental Third Parties

RIN 1105-AB62

Docket No. OAG 177

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rulemaking process of government agencies to which they are entitled to contribute.

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On behalf of our activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the Department of Justice's (DOJ or Department) proposed revocation of 28 CFR 50.28, which generally prohibits settlement agreements that direct payments to non-governmental entities that are not parties to the lawsuit. We strongly oppose revoking this regulation and respectfully urge the Department to reconsider.

The Trump Administration adopted the regulation at issue to put a stop to the practice of providing slush funds to activist groups as part of legal settlements. After the 2008 financial crisis, for example, the Obama DOJ directed big banks to funnel part of the settlement funds to leftist activist groups. The banks received double credit for these "donations," while credit for consumer relief was only dollar-for-dollar. This is but one example. Over the last two decades, these "donations" to activist groups are estimated to have deprived taxpayers of, at a minimum, almost \$700 million.<sup>1</sup>

Revoking this regulation and returning to the practice of providing slush funds to activist groups is unconstitutional and unethical. This settlement money is *taxpayer money*. Our Constitution gives the power to appropriate taxpayer money only to the Congress,<sup>2</sup> and Congress enacts excruciatingly detailed appropriations measures each fiscal year directing executive branch agencies on how to spend the money. Agencies are not given lump sums to spend as they see fit. If DOJ believes that a particular group deserves taxpayer funding, it should submit that request to Congress as part of its budget request.

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<sup>1</sup><https://regproject.org/paper/improper-third-party-payments-in-u-s-government-litigation-settlements/> (accessed July 7, 2022).

<sup>2</sup> U.S. Const. art. I, sec. 9, cl. 7.

The Department of Justice represents the taxpayers when it brings a lawsuit, and any damages belong to the client—that is, the taxpayers. Imagine what would happen to a lawyer in private practice who won a judgment for his client, but directed the defendant to pay part of the judgment to a third-party “public interest” group. No matter how worthy the mission of the public interest group, the lawyer would be disbarred for violating ethics rules. These same ethics rules apply to government lawyers, and DOJ’s taxpayer-clients certainly are entitled to no less.

It is axiomatic that elections have consequences. Stealing from the taxpayers, however, should not be one of those consequences.

Respectfully submitted,

Beverly McKittrick  
Director, Regulatory Action Center  
FreedomWorks Foundation