

[H.R. 712, Sunshine for Regulatory Decrees and Settlements Act of 2015](#)

FLOOR SITUATION

On Thursday, January 7, 2016, the House will consider [H.R. 712](#), the Sunshine for Regulatory Decrees and Settlements Act of 2015, under a [structured rule](#). The bill was introduced on February 4, 2015, by Rep. Doug Collins (R-GA) and was referred to the Committee on Judiciary, which ordered the bill reported by a vote of 20 to 11 on March 24, 2015. The Rules Committee print combines the texts of [H.R. 712](#) and [H.R. 690](#), the Providing Accountability Through Transparency Act of 2015, as reported by the Committee on Judiciary, and [H.R. 1759](#), the All Economic Regulations are Transparent (ALERT) Act of 2015, as reported by the Committees on Oversight and Government and Judiciary; with conforming changes.

SUMMARY

H.R. 712 increases accountability and transparency in the federal regulatory process by providing increased scrutiny of sue-and-settle rulemaking cases, mandating increased reporting requirements for planned rulemaking, and providing for simplified summaries of proposed rules.

Title I—The Sunshine for Regulatory Decrees and Settlements Act (H.R. 712, as reported by the Judiciary Committee)

The bill would increase transparency and judicial scrutiny of sue-and-settle consent decrees¹ and settlements, and ensure that sue-and-settle rulemakings observe proper rulemaking procedure. Provisions in title I include:

Improved Transparency and Accountability—The bill requires that any proposed consent decree or settlement agreement requiring a federal agency to undertake new rulemaking be published in the Federal Register for 60 days for public comment prior to filing with the court. The bill also requires agencies to publish intent-to-sue notices within 15 days after receipt.

¹ A consent decree is an agreement to resolve a dispute between two parties without admission of liability.

Motions to Intervene—The bill enhances the ability of affected parties to file motions to intervene in an action prior to the entry of a consent decree or settlement agreement that requires new rulemaking.

Senior Level Official Approval—The bill requires the Attorney General (for cases litigated by the Department of Justice), or the head of a federal agency that independently litigates a case, to certify to the court his or her approval of certain types of settlement agreements and consent decrees.

Greater Flexibility for Modifications—The bill allows courts to more flexibly review consent decrees when agencies seek to modify them due to changed circumstances.

Title II—The All Economic Regulations are Transparent (ALERT) Act (H.R. 1759)

The bill requires federal agencies to submit monthly regulatory updates to the Office of Information and Regulatory Affairs (OIRA) for all rules expected to be proposed or released in the upcoming year. The bill requires that most regulations must be published in such reports at least six months before becoming effective.

Title III— The Providing Accountability Through Transparency Act (H.R. 690)

The bill requires agencies to post on the regulations.gov website an abbreviated summary of proposed rules. Specifically, summaries would be required to be no more than 100 words in length. According to the Judiciary Committee, “This requirement will facilitate public understanding of new proposed rules and help to inform public comments offered in response to notices of proposed rulemaking.”²

BACKGROUND

Background on Title I— the Sunshine for Regulatory Decrees and Settlements Act (H.R. 712, as reported by the Judiciary Committee)

In recent years, federal regulatory agencies have commonly used judicial consent decrees or settlement agreements to issue new regulations, while claiming that they were forced into it by the courts. This tactic, commonly referred to as “sue-and-settle,” occurs when a federal agency agrees to a consent decree or settlement agreement, in a lawsuit generally filed by pro-regulation special interest groups, to create rules outside of the normal rulemaking process. Under the Obama Administration, federal agencies have issued more than 100 new regulations using this process with over \$100 billion in estimated annual costs.³

According to the Committee, “it has become common in these cases for pro-regulatory plaintiffs to approach vulnerable federal agencies with threats of lawsuits, negotiate consent decrees or settlement agreements in secret in advance of suit, and propose the decrees or settlements to the courts contemporaneously with the filing of the plaintiffs’ complaints.

“These decrees and settlements often provide short timelines for agency action, particularly the proposal and promulgation of new regulations. The lack of advance notice and judicially backed, minimal timeframes for proposal and promulgation allow defendant agencies to undercut the public

² See [House Report 114-183](#) at 2.

³ See U.S. Chamber of Commerce Report, [“Sue-and-Settle—Regulating Behind Closed Doors.”](#) May 20, 2013.

participation and analytical requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and other regulatory process statutes.”⁴

Title I is similar to title IV [H.R. 2804](#), the Achieving Less Excess in Regulation and Requiring Transparency (ALERT) Act of 2014, which passed the House by a vote of [236 to 179](#) on February 27, 2014. Title I is also similar to Title IV of H.R. 4, the Jobs for America Act, which passed the House by a vote of [253 to 163](#) on September 18, 2014.

According to the bill sponsor, “Special interests and federal bureaucrats are agreeing to economically harmful regulations without consulting affected employers and employees. Like-minded environmentalists are speeding regulations they know would die in the light of day. Their collusion is another example of executive overreach that I’m determined to stop. [This bill] open[s] the doors on so-called ‘sue-and-settle’ agreements that they’re abusing to avoid public scrutiny.”⁵

Background on Title II—The All Economic Regulations are Transparent Act (ALERT) Act (H.R. 1759)

The Regulatory Flexibility Act and Executive Order 12866 require a semi-annual Unified Agenda of Regulatory and Deregulatory Actions report and an annual, agency-specific Regulatory Plan report to detail government-wide regulation plans. According to the Judiciary Committee, in recent years, “the Unified Agenda has not provided significant detail about planned regulations, such as precise information on how much planned regulations are expected to cost the economy. [And the Administration] has consistently sought to restrict the amount of information provided in the Unified Agenda.”⁶ The bill seeks to increase transparency in the regulatory process by requiring monthly reporting on and more useful information about the timing and costs of planned regulatory action.

According to Judiciary Committee Chairman Bob Goodlatte, “The path to real regulatory reform passes through the gate of transparency. Americans deserve to know what new laws regulatory agencies plan to send their way through new regulation. They deserve to know earlier and better what those new laws will look like, how much they will cost, and when they may be imposed. The ALERT Act answers these needs with real, simple and common-sense transparency reform.”⁷

Background on Title III— The Providing Accountability Through Transparency Act (H.R. 690)

According to Judiciary Committee Chairman Bob Goodlatte, “Main Street Americans and small business owners throughout the Nation know from first hand-experience one of the most maddening facts about our federal regulatory system. Not only do federal regulators issue too many regulations that cost too much. Too often those regulations are impossible for an ordinary citizen to understand. [This bill] requires federal agencies to publish online a 100-word summary of any new, proposed regulation.”⁸

COST

The Congressional Budget Office (CBO) [estimates](#) enacting H.R. 712, as reported by the Judiciary Committee (Title I), would increase annual direct spending by an insignificant amount. Enacting the bill would not affect revenues.

⁴ See [House Report 114-184](#) at 3-4.

⁵ See Rep. Doug Collins Press Release, [“Judiciary Committee Approves Collins Bill to Prevent Sue and Settle Abuse.”](#) March 30, 2015.

⁶ See [House Report 114-238 Part 2](#) at 2.

⁷ See Rep. Bob Goodlatte Statement, [“Markup of H.R. 1759.”](#) April 15, 2015.

⁸ See Rep. Bob Goodlatte Statement, [“Markup of H.R. 690.”](#) March 24, 2015.

CBO [estimates](#) that any net increase in spending by enacting H.R. 1759, as reported by the Committees on Oversight and Government Reform and Judiciary (Title II), would be insignificant. Enacting the bill would not affect revenues.

CBO [estimates](#) that any net increase in spending by enacting H.R. 690, as reported by the Judiciary Committee (Title III), would be insignificant. Enacting the bill would not affect revenues.

AMENDMENTS

1. Rep. Bob Goodlatte (R-VA)—the [manager's amendment](#) includes a small number of revisions in the nature of technical and conforming changes to clarify provisions that state deadlines, reformat section nomenclature and headings, and improve typography or grammar.
2. Rep. Hank Johnson (D-GA)—the [amendment](#) inserts an exception for any rule, consent decree, or settlement agreement that the Director of the Office of Management and Budget determines would result in net job creation and whose benefits exceeds its costs.
3. Rep. Elijah Cummings (D-MD)—the [amendment](#) strikes section 653 as created by Title II of the bill (Requirement for Rules to Appear in Agency-Specific Monthly Publications).
4. Rep. Stephen Lynch (D-MA)—the [amendment](#) amends Title II of H.R. 712 by requiring federal agencies to provide an estimate of the benefits of proposed regulations. Would also require the Office of Information and Regulatory Affairs to include the total benefits of proposed and final agency rules in the annual cumulative assessment of agency rule making required by the bill.
5. Rep. Virginia Foxx (R-NC)—the [amendment](#) requires monthly reporting of unfunded mandates by agencies to OIRA; requires reporting of unfunded mandates imposed in OIRA's annual cumulative assessment of agency rule making.
6. Rep. Sheila Jackson Lee (D-TX)—the [amendment](#) clarifies that the exception to the rule should take effect in the event that there is a threat to health or safety or other emergency and not only when such threat is imminent.
7. Rep. Elijah Cummings (D-MD)—the [amendment](#) exempts independent establishments from the requirements of Title II of the bill.

STAFF CONTACT

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