

# DOJ'S SLUSH FUND

## *Instead of collecting fines and penalties from defendants, DOJ will utilize settlements to require donations to favor third-party interest groups*

Over the last few years, DOJ has utilized settlements with defendants, particularly defendant corporations, to compel payments to third-party groups without permission from Congress.<sup>390</sup> Here is how this works: DOJ prosecutes a person or company, generally larger companies. Then when that company reaches a settlement with the government that includes fines or payments, DOJ induces the company to pay at least part of the fine to an outside group instead of to the government.<sup>391</sup> As an example, after a banking settlement in 2011, DOJ directed \$30 million to left-leaning non-profit groups like the National Community Reinvestment Coalition and NeighborWorks America.<sup>392</sup>

According to DOJ policy, the payments are normally intended for a group that was either affected by the action leading to prosecution or to repair the harm done.<sup>393</sup> The problem here is that it is not DOJ's role to determine how to spend money. Financial settlements with the government should be paid to Treasury and then appropriated through the regular process. The House Judiciary and Financial Services Committees discovered the settlements can be paid—and likely are paid—to favored activist groups that would not otherwise receive federal money as DOJ leadership would like.<sup>394</sup> In fact, there is concern that DOJ utilizes the settlements to supplement a decrease in federal funding when Congress has purposefully and specifically chosen not to fund a project or issue.<sup>395</sup> For instance, though Congress decided to reduce funding for HUD's housing counseling program from \$88 to \$45 million, DOJ has utilized settlements to bring in an additional \$30 million to restore funding to nearly its previous level.<sup>396</sup>

In fact, there is evidence that a group working toward "revolutionary social change" and that operates a school "described as a school for professional radicals" met with DOJ to request that the settlement language leading to donations to outside groups be made a mandatory part of all future settlements.<sup>397</sup> Just two months later, DOJ released settlements with both Citigroup and Bank of America that included mandatory donations to outside groups.<sup>398</sup>

## **RECOVERY**

While a football coach may allow the quarterback some leeway to change plays at the line of scrimmage, it is the coach's prerogative to determine the overall game plan. Similarly, Congress cannot allow DOJ to utilize settlements to funnel money to favored activists and groups without congressional appropriations. Rep. Bob Goodlatte introduced the Stop Settlement Slush Funds Act in April 2016. This bill, which passed the House and awaits consideration in the Senate, would prohibit DOJ from entering into settlement agreements that require donations to third-party groups.<sup>399</sup> DOJ would still be allowed to utilize settlements to compensate a party injured by the defendant, but that money would go directly to the injured person, not to an outside activist group.<sup>400</sup> In 2015 Sens. Warren and Lankford introduced the Truth in Settlements Act, a bill that would require federal agencies to make public basic information about settlements reached, including the dollar amount, so that American taxpayers and Congress can better monitor the activities of federal agencies.<sup>401</sup>