

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART II - DEPARTMENT OF JUSTICE
CHAPTER 31 - THE ATTORNEY GENERAL

§ 530D. Report on enforcement of laws

(a) Report.—

(1) In general.— The Attorney General shall submit to the Congress a report of any instance in which the Attorney General or any officer of the Department of Justice—

(A) establishes or implements a formal or informal policy to refrain—

(i) from enforcing, applying, or administering any provision of any Federal statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer on the grounds that such provision is unconstitutional; or

(ii) within any judicial jurisdiction of or within the United States, from adhering to, enforcing, applying, or complying with, any standing rule of decision (binding upon courts of, or inferior to those of, that jurisdiction) established by a final decision of any court of, or superior to those of, that jurisdiction, respecting the interpretation, construction, or application of the Constitution, any statute, rule, regulation, program, policy, or other law whose enforcement, application, or administration is within the responsibility of the Attorney General or such officer;

(B) determines—

(i) to contest affirmatively, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law; or

(ii) to refrain (on the grounds that the provision is unconstitutional) from defending or asserting, in any judicial, administrative, or other proceeding, the constitutionality of any provision of any Federal statute, rule, regulation, program, policy, or other law, or not to appeal or request review of any judicial, administrative, or other determination adversely affecting the constitutionality of any such provision; or

(C) approves (other than in circumstances in which a report is submitted to the Joint Committee on Taxation, pursuant to section 6405 of the Internal Revenue Code of 1986) the settlement or compromise (other than in bankruptcy) of any claim, suit, or other action—

(i) against the United States (including any agency or instrumentality thereof) for a sum that exceeds, or is likely to exceed, \$2,000,000, excluding prejudgment interest; or

(ii) by the United States (including any agency or instrumentality thereof) pursuant to an agreement, consent decree, or order (or pursuant to any modification of an agreement, consent decree, or order) that provides injunctive or other nonmonetary relief that exceeds, or is likely to exceed, 3 years in duration: Provided, That for purposes of this clause, the term “injunctive or other nonmonetary relief” shall not be understood to include the following, where the same are a matter of public record—

(I) debarments, suspensions, or other exclusions from Government contracts or grants;

(II) mere reporting requirements or agreements (including sanctions for failure to report);

(III) requirements or agreements merely to comply with statutes or regulations;

(IV) requirements or agreements to surrender professional licenses or to cease the practice of professions, occupations, or industries;

(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison; or

(VI) agreements to cooperate with the government in investigations or prosecutions (whether or not the agreement is a matter of public record).

(2) **Submission of report to the congress.**— For the purposes of paragraph (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

(A) the majority leader and minority leader of the Senate;

(B) the Speaker, majority leader, and minority leader of the House of Representatives;

(C) the chairman and ranking minority member of the Committee on the Judiciary of the House of Representatives and the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

(D) the Senate Legal Counsel and the General Counsel of the House of Representatives.

(b) **Deadline.**— A report shall be submitted—

(1) under subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

(2) under subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but in no event later than 30 days after the making of each determination; and

(3) under subsection (a)(1)(C), not later than 30 days after the conclusion of each fiscal-year quarter, with respect to all approvals occurring in such quarter.

(c) **Contents.**— A report required by subsection (a) shall—

(1) specify the date of the establishment or implementation of the policy described in subsection (a)(1)(A), of the making of the determination described in subsection (a)(1)(B), or of each approval described in subsection (a)(1)(C);

(2) include a complete and detailed statement of the relevant issues and background (including a complete and detailed statement of the reasons for the policy or determination, and the identity of the officer responsible for establishing or implementing such policy, making such determination, or approving such settlement or compromise), except that—

(A) such details may be omitted as may be absolutely necessary to prevent improper disclosure of national-security- or classified information, of any information subject to the deliberative-process-, executive-, attorney-work-product-, or attorney-client privileges, or of any information the disclosure of which is prohibited by section 6103 of the Internal Revenue Code of 1986, or other law or any court order if the fact of each such omission (and the precise ground or grounds therefor) is clearly noted in the statement: Provided, That this subparagraph shall not be construed to deny to the Congress (including any House, Committee, or agency thereof) any such omitted details (or related information) that it lawfully may seek, subsequent to the submission of the report; and

(B) the requirements of this paragraph shall be deemed satisfied—

(i) in the case of an approval described in subsection (a)(1)(C)(i), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the legal and factual basis or bases for the settlement or compromise (if not apparent on the face of documents provided); and

(ii) in the case of an approval described in subsection (a)(1)(C)(ii), if an unredacted copy of the entire settlement agreement and consent decree or order (if any) is provided, along with a statement indicating the injunctive or other nonmonetary relief (if not apparent on the face of documents provided); and

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

(3) in the case of a determination described in subsection (a)(1)(B) or an approval described in subsection (a)(1)(C), indicate the nature, tribunal, identifying information, and status of the proceeding, suit, or action.

(d) Declaration.— In the case of a determination described in subsection (a)(1)(B), the representative of the United States participating in the proceeding shall make a clear declaration in the proceeding that any position expressed as to the constitutionality of the provision involved is the position of the executive branch of the Federal Government (or, as applicable, of the President or of any executive agency or military department).

(e) Applicability to the President and to Executive Agencies and Military Departments.— The reporting, declaration, and other provisions of this section relating to the Attorney General and other officers of the Department of Justice shall apply to the President (but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order), to the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) that establishes or implements a policy described in subsection (a)(1)(A) or is authorized to conduct litigation, and to the officers of such executive agency.

(Added Pub. L. 107–273, div. A, title II, § 202(a), Nov. 2, 2002, 116 Stat. 1771.)

References in Text

Section 6405 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(C), is classified to section 6405 of Title 26, Internal Revenue Code.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(A), is classified to section 6103 of Title 26, Internal Revenue Code.

Report on Policies and Determinations Made Prior to Enactment of Section

Pub. L. 107–273, div. A, title II, § 202(b)(3), (4), Nov. 2, 2002, 116 Stat. 1774, provided that:

“(3) Not later than 30 days after the date of the enactment of this Act [Nov. 2, 2002], the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5, United States Code) of the enactment of this section [enacting this section and amending sections 130f and 288k of Title 2, The Congress].

“(4)(A) Not later than 90 days after the date of the enactment of this Act [Nov. 2, 2002], the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 28, United States Code, as added by subsection (a)) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

“(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

“(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

“(B) If a determination described in subparagraph (A)(ii) relates to any judicial, administrative, or other proceeding that is pending in the 90-day period beginning on the date of the enactment of this Act [Nov. 2, 2002], with respect to any such determination, then the report required by this paragraph shall be submitted within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in the proceeding, but not later than 30 days after the date of the enactment of this Act.”