



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3433

Subject: Restoring and Modernizing Transparency and Accountability in Consent Decrees, Settlement Agreements, and Litigation Payments

Sec. 1. **Purpose.** The Department of the Interior (Department) reaffirms its commitment to transparency, accountability, and the responsible use of taxpayer dollars in the settlement of legal disputes. This Order reinstates and modernizes Secretary's Order (SO) 3368, titled "Promoting Transparency and Accountability in Consent Decrees and Settlement Agreements," issued on September 11, 2018; rescinds SO 3408, issued on June 17, 2022; and updates Departmental procedures to reflect current best practices and the policy priorities of the Trump administration in 2025.

This Order supports the regulatory reform principles in the following Executive orders (EO):

- **EO 13771**, titled "Reducing Regulation and Controlling Regulatory Costs" (2017, reinstated in 2025).
- **EO 14215**, titled "Ensuring Accountability for All Agencies" (2025), which mandates greater transparency and responsiveness from all Federal agencies, including independent bodies.

Sec. 2. **Background.** Between 2012 and 2017, the Department entered into more than 460 consent decrees and settlement agreements, obligating over \$4.4 billion in public funds. From 2009 to 2012 alone, Federal agencies paid more than \$53 million in attorney's fees to environmental litigants, as documented by watchdog groups and congressional testimony. Many of these payouts were made under the Equal Access to Justice Act (EAJA) and the Judgment Fund, often with limited transparency or public notification.

In response to concerns about the growth of "sue-and-settle" tactics, where legal settlements result in significant policy outcomes without public input, SO 3368 was issued in 2018 under the Trump administration. It directed the Department to establish public reporting mechanisms, notify affected States and Tribes of major lawsuits, and limit attorney's fee agreements unless legally justified.

SO 3368 built upon legislation such as the Open Book on Equal Access to Justice Act (signed into law in March 2019), which requires disclosure of EAJA payments in a searchable public database. It also aligned with congressional oversight findings that Federal agencies had not

consistently tracked or disclosed these payments for decades, leaving the public and Congress unable to evaluate the cost or beneficiaries of such litigation.

In June 2022, SO 3408 rescinded SO 3368, citing redundancy and inefficiency. However, that action effectively eliminated critical transparency and reporting requirements, including those that had previously led to the creation of a publicly accessible litigation webpage within the Office of the Solicitor (SOL).

Given the Department's statutory obligations, fiduciary responsibility to taxpayers, and commitment to sound governance, the Department's policy is to restore these safeguards. Reinstating and modernizing SO 3368 will ensure that all consent decrees and settlement agreements are subject to appropriate public oversight, intergovernmental coordination, and fiscal accountability.

Sec. 3. Authority. This Order is issued under section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262); 5 U.S.C. §§ 301–302; EO 13771 (January 30, 2017, reinstated 2025); and EO 14215 (February 18, 2025).

Sec. 4. Policy. The Department's policy is that all consent decrees and settlements involving the Department, its Bureaus and Offices, or its officers acting in official capacity shall be subject to public disclosure, intergovernmental notification, and internal policy review before execution.

Attorney's fees and costs paid as a result of litigation shall be tracked, disclosed, and subject to heightened scrutiny. No settlement shall create obligations beyond what is authorized by law or circumvent notice-and-comment rulemaking processes.

Sec. 5. Directives.

- a. **Rescission of Prior SO.** SO 3408 is rescinded in full.
- b. **Reinstating and Expanding SO 3368.** The full provisions of SO 3368 are reinstated and incorporated by reference into this Order, with the following summary and updates:
 1. Establishment of a publicly accessible "Litigation" webpage maintained by SOL and the Office of the Chief Information Officer (OCIO).
 2. Posting of all ongoing and resolved consent decrees and settlement agreements that govern Departmental actions.
 3. Identification of case details, including parties, court, filing date, statutory authority, and monetary terms (including attorney's fees).
 4. Notification to States and Tribes within 15 days of receiving service of a complaint that may directly affect their interests.
 5. Publication of proposed settlements in the Federal Register if they:

- Commit the Department to seek new appropriations or reprogram funds.
 - Create obligations lasting more than 5 years.
 - Commit the Department to specific regulatory actions.
6. Posting of finalized agreements and supporting materials within 15 days of execution.
 7. Prohibition on recommending agreements that convert discretionary duties to mandatory ones, require unappropriated funds, or restrict public disclosure (except to protect trade secrets or as required by law).
 8. Attorney's fees may only be agreed to where a strong legal basis exists, and such payments must be transparently disclosed.

These requirements form the foundation of this Order and are reaffirmed and updated in the sections that follow.

c. **Transparency Website and Data Requirements.** SOL, in coordination with OCIO, shall:

1. Maintain a publicly accessible Litigation Transparency Portal on the Department's main website.
2. Within 30 days, post a searchable list of all ongoing and resolved consent decrees and settlements (from fiscal year 2012 onward), associated attorney's fee payments, and litigant names and case information.
3. Include the following for each case:
 - Case name, number, and court jurisdiction.
 - Date of filing and resolution.
 - Statutory authority cited.
 - Amount paid in fees or costs (including source—EAJA, Judgment Fund, or appropriated funds).
 - Whether the Department admitted liability.

Public Notification and Comment. Before entering into any settlement or consent decree that commits the Department to seek a new appropriation or reprogram funds; creates binding obligations exceeding 5 years; and/or requires future regulatory action or limits the Department's discretionary authority, SOL shall:

- Publish a Federal Register notice with at least 30 days of public comment.

- Post the proposed agreement on the Litigation Transparency Portal.
 - Notify all affected States, local governments, and Tribal entities.
 - Provide the Department of Justice with a written summary of public comments prior to executing the agreement.
 - Within 15 days of execution, post a summary and link to the final agreement on the Litigation Transparency Portal and make it available in the Departmental Library Reading Room.
- d. **Attorney's Fees Restrictions.** The Department shall not agree to pay attorney's fees unless plaintiffs have demonstrated a strong likelihood of prevailing under law and the fees are statutorily authorized.

Payments over \$10,000 must be reviewed and certified by the Associate Solicitor for Administration. These requirements shall not apply to de minimis payments under \$10,000 or to attorney's fees arising from personnel matters, tort claims, or contract disputes, including bid protests. No fee agreement shall include nondisclosure clauses, except where mandated by law.

- e. **Prohibited Terms in Settlement Agreements.** The Department shall not recommend or support any settlement or consent decree that:
- Converts into a mandatory duty any discretionary authority of the Secretary or designees to revise, amend, or promulgate regulations.
 - Interferes with rulemaking processes governed by the Administrative Procedure Act.
 - Commits the Department to expend funds not appropriated by Congress or budgeted for the action.

Sec. 6. Exceptions and Waivers. This Order does not apply to personnel matters, tort claims, or contract disputes (e.g., bid protests). The Secretary, Deputy Secretary, or Solicitor may waive these requirements, in whole or in part, upon a written determination that such a waiver is necessary due to unanticipated circumstances and is consistent with the Department's statutory authority, sound principles of democratic accountability, and constitutional separation of powers. Any such determination shall be posted within 15 days on the Litigation Transparency Portal.

Sec. 7. Effect of the Order. This Order improves internal management and transparency but does not create enforceable rights or obligations. In the event of conflict with law or judicial orders, the latter shall control.

Nothing in this Order shall be construed to supersede legal or judicial mandates requiring confidentiality, though the Department shall seek to disclose all agreements to the fullest extent permitted by law.

Sec. 8. **Effective Date.** This Order is effective immediately and shall remain in force until superseded or revoked.



Secretary of the Interior

Date: **JUNE 23 2025**