LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
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March 20, 2014

Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair
House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Testimony on S.B. No. 2682, S.D. 1, H.D. 1, Relating to Financial Disclosure Statements

Hearing: Friday, March 21, 2014 @ 2:00 p.m.

## Position: Request for Agency Exemption

The Labor and Industrial Relations Appeals Board ("LIRAB") offers the following comments for the Committee's consideration.

1. LIRAB supports initiatives to increase accountability and transparency in government.

LIRAB believes that this bill is well-intended, but it does not address or provide safeguards for the security issues and potential misuse of information that may arise from public disclosure of financial and other personal information, including, but not limited to:

- The personal physical safety of board and commission members and their families;
- Using information for purposes other than identifying potential conflicts of interest;
- Phishing;
- The risk of identity theft; and
- The confidentiality and privacy concerns for the spouses and dependent children of board and commission members.

2. The fact that information can be obtained and misused locally, nationally, and internationally must be acknowledged and addressed.

- Modernization should be approached responsibly, and with all relevant information being considered.

- In 2013, Congress acknowledged such potential misuse and repealed the requirements for the public online disclosure of certain public officials.

- Attached is a copy of a March 2013 Report by a Panel of the National Academy of Public Administration that discusses some of the unintended risks and consequences of online disclosures to be considered.

  - Page 55:

    "Given the potential risks in the evolving online environment, considerations must be made for balancing transparency and privacy needs appropriately and in a way that does not expose federal employees to unnecessary risk.

    Considerations must also be made for non-employees, such as spouses and dependent children of federal employees, who may also be placed at increased risk by posting the financial disclosure forms online."

  - Page 58:

    "Online posting of personal financial information offers little added value for detecting conflicts of interest and insider trading according to ethics officials in the executive branch."

  - Page 60:

Re: Testimony on S.B. No. 2682, S.D. 1, H.D. 1, Relating to Financial Disclosure Statements

Hearing: Friday, March 21, 2014 @ 2:00 p.m.

> "The online posting requirement is seen as affecting senior-level recruitment and retention in the executive branch."

- The March 2013 Report by a Panel of the National Academy of Public Administration also includes some suggestions

  - Page 64:

    > "Determine how online posting requirements add to the growing threat to individuals from accumulative data found on the Internet"
    >
    > * * *
    >
    > "Balance the findings relative to damage to mission safety and individual privacy rights against *identifiable* benefits of online posting."

3. LIRAB is a board that primarily adjudicates workers' compensation matters.

   - The reality of such litigation is that approximately 50% of LIRAB's customers are unhappy with the outcome of a case that proceeded to a decision and order.

4. As such, LIRAB is particularly concerned with the personal and physical safety of the board members.

   - On more than one occasion, the members of LIRAB have been subjected to threatening and intimidating conduct by some very emotional and volatile litigants.

   - Homicidal and/or suicidal ideations, while rare, are not necessarily uncommon references in cases.

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Hearing: Friday, March 21, 2014 @ 2:00 p.m.

5. Security must be considered and addressed, in this age of advanced technology.

- Federal administrative judges have US Marshals to address safety/cyber concerns.
- Judiciary has Sheriffs.
- Our own security is limited to a security guard who requests identification of most, but not all, individuals entering the building, and a roaming Sheriff.
- It is unknown what type of security support is available to other boards and commissions.
- While the financial disclosure of one particular individual may not be a great cause of State security, requiring the financial disclosures of all members of boards and commissions (and their families, as relevant) together with those of the top officials of government requires more consideration as to its consequences.

- Putting more information in the public realm gives such data miners and those with nefarious intents, a more complete profile of the board and commission members and family, which may lead to identify theft and other security and safety issues.
- It is true that there is a lot of information online, and it is not an easy task to remove, change, or correct, such information from data mines.
- Assuming there is some information online, putting additional information online regarding not only the employee, but of his/her spouse and/or family members gives cyber criminals that much more ammunition.

Re: Testimony on S.B. No. 2682, S.D. 1, H.D. 1, Relating to Financial Disclosure Statements

Hearing: Friday, March 21, 2014 @ 2:00 p.m.

6. The Hawaii State Ethics Commission, not the public, is in the best position to identify potential conflicts by providing for a systematic review as to whether financial interests of certain State employees create a conflict of interest.

- The goal is to prevent conflicts and address any potential conflicts before it interferes in the decisions to be made.

- A decision of LIRAB requires at least two concurring members. One member cannot issue an order or decision and order.

- Making information public may also lead to an increased, not decreased workload for the Hawaii State Ethics Commission.

    - A member of the general public may have difficulty analyzing whether a potential conflict exists, but may file complaints or concerns, which the Hawaii State Ethics Commission will be tasked to investigate and evaluate.

7. There is a State Constitutional right of privacy.

- Requiring that information be made public, particularly regarding information of people that are not on the board or commission, may violate such right of privacy.

- There is no compelling state interest for the financial disclosures, as now required, to be made public.

8. LIRAB understands that like many government offices, the Hawaii State Ethics Commission has finite resources with which to meet its statutory mandates. Our office, itself, has met with such challenges.

- Since 2008, our office has lost three positions - two attorneys and one clerk.

Re: Testimony on S.B. No. 2682, S.D. 1, H.D. 1, Relating to Financial Disclosure Statements

Hearing: Friday, March 21, 2014 @ 2:00 p.m.

- For the last several months, we have also been operating with two less staff members, including a chairperson.

- The above results in a current staff of only about 58% of "normal" levels, but doing our best to meet our statutory mandates.

- Requiring public disclosure of such information may discourage qualified candidates, thereby affecting recruitment.

- It may also discourage qualified employees from continuing in those positions, thereby affecting retention.

9. Some suggested considerations for safeguards:

    - Provide the Hawaii State Ethics Commission with the resources needed to evaluate the information provided.

    - The financial disclosures, even if public, should not be made available online.

    - Public access to financial disclosures should be made available only through the Hawaii State Ethics Commission, by complying with HAR § 12-3-2, and verifying that it is being used solely to evaluate for a conflict of interest.

    - Any requestor of such information should have a legitimate purpose for reviewing such information.

    - Information made available to the public should have redacted:

        - Account numbers, addresses, telephone numbers, and any other personal information that, if provided, could be used to steal identity, stalk, or put the person or their family members in physical or other danger.

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- The requestor should be prohibited from further transmitting or distributing the financial disclosure.
- Electronic transmission or posting of the financial disclosure should be prohibited.
    - Once information is published online, it must be assumed that it will be online forever.

Thank you for this opportunity to provide our comments.

David A. Pendleton,
Member, LIRAB

Melanie S. Matsui,
Member, LIRAB

Enclosure

A Report by a Panel of the

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

*Submitted to the Congress and the President of the United States*

# THE STOCK ACT:

## *AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE*

March 2013

National Academy of Public Administration

# ABOUT THE ACADEMY

The National Academy of Public Administration is a non-profit, independent organization of top public management and organizational leaders who tackle the nation's most critical and complex public management challenges. With a network of over 750 distinguished Fellows and an experienced professional staff, the Academy is uniquely qualified and trusted across government to provide objective advice and practical solutions based on systematic research and expert analysis. Established in 1967 and chartered by Congress in 1984, the Academy continues to make a positive impact by helping federal, state and local governments respond effectively to current circumstances and changing conditions. Learn more about the Academy and its work at www.NAPAwash.org.


**March 2013**

# The STOCK Act

## An Independent Review of the Impact of Providing Personally Identifiable Financial Information Online

## Submitted to the Congress and the President of the United States

**PANEL**

David S. C. Chu, Ph.D.*

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**Academy Fellow*

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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* *Academy Fellow*

# FOREWORD

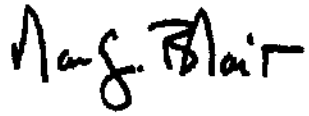
*"A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; ar perhaps both."*

James Madison

Public service is a public trust. As a nation, we must ensure that our public servants adhere to the highest ethical standards while protecting their rights as individuals. A body of law has developed over the years to prevent insider trading, conflicts of interest, abuse of authority, and other ethical violations. In April 2012, Congress passed the Stop Trading on Congressional Knowledge (STOCK) Act to address concerns about reported insider trading in the federal government. This Act included a provision requiring that the financial disclosures of Members of Congress, legislative staff, and certain executive branch officials be made available in a searchable, sortable, online database. Groups representing senior federal employees strongly objected to this online posting requirement and they assert it places agency missions, employees, and families at risk. This requirement is currently the subject of a federal lawsuit.

Recognizing the need to balance the promotion of transparency and openness in government with the protection of employee privacy, Congress directed that the National Academy of Public Administration (the Academy) conduct a review of the Act's online posting provisions for senior federal officials. The Academy formed an independent, five-member Panel to analyze the potential effects of this provision and to report its findings and recommendations to Congress and the President. The Panel determined that the Act's online posting requirement does little to help detect conflicts of interest and insider trading, but that it can harm federal missions and individual employees. As a result, the Panel recommended that the online posting requirement be indefinitely suspended while continuing implementation of all other provisions of the STOCK Act.

As a Congressionally chartered non-partisan and non-profit organization with over 750 distinguished Fellows, the Academy brings knowledgeable experts together to help public organizations address their most critical challenges. I am especially pleased that the Academy has had the opportunity to assist Congress and the President to address this important topic. I appreciate the support the Academy received from both the Congress and Executive Branch agencies during the conduct of this study. I want to especially thank our Panel, led by the Honorable David Chu, who provided invaluable expertise and thoughtful analysis to this undertaking, and the professional study team, under the direction of Joe Thompson, that provided critical research support. This review could not have been conducted without their dedicated service.



Dan G. Blair
President and CEO

# TABLE OF CONTENTS

## FIGURES AND TABLES

## APPENDICES TO THE REPORT

## ACRONYMS AND ABBREVIATIONS LIST

| | |
|---|---|
| Academy | National Academy of Public Administration |
| AFL-CIO | American Federation of Labor and Congress of Industrial Organizations |
| AFSA | American Foreign Service Association |
| CFR | Code of Federal Regulations |
| CLC | Central Labor Council |
| DAEO | Designated Agency Ethics Official |
| DOJ | Department of Justice |
| EIGA | Ethics in Government Act of 1978 |
| FDR | financial disclosure report |
| FIPP | Fair Information Practice Principles |
| GAO | Government Accountability Office |
| GS | General Schedule |
| IG | Inspector General |
| IT | Information Technology |
| LLP | limited liability partnership |
| NAPA | National Academy of Public Administration |
| OCE | Office of Congressional Ethics |
| OGE | Office of Government Ethics |
| OPM | Office of Personnel Management |
| OPR | Office of Public Records |
| PAS | Political Appointee after confirmation by the Senate |
| PDF | portable document format |
| PII | Personal Identifiable Information |
| PTR | periodic transaction report |
| Pub. L. | Public Law |
| SES | Senior Executive Service |
| SF 278 | Standard Form 278 (or OGE Form 278), Executive Branch Personnel Public Financial Disclosure Report |
| SF 278-T | Standard Form 278-T (or OGE Form 278-T), Executive Branch Personnel Public Financial Disclosure Report: Periodic Transaction Report |
| SL | Senior Level |
| ST | Senior Technical |
| STOCK Act | Stop Trading on Congressional Knowledge Act |
| U.S.C. | United States Code |

# EXECUTIVE SUMMARY

The Stop Trading on Congressional Knowledge (STOCK) Act, signed by President Obama on April 4, 2012, was designed to deter insider trading by government officials and employees within the federal government. Although the Ethics in Government Act of 1978 (EIGA) has long required filing publically-available annual financial disclosures by senior officials in all three branches of the federal government, an amendment added to the STOCK Act required the financial disclosures of members of the executive and legislative branches to now be posted online in searchable, sortable, downloadable databases available to the public.

Concerns about the potential impact of the STOCK Act's online posting provisions related to national security, law enforcement, privacy, and personal and family safety prompted Congress to delay certain of those online posting requirements and to direct the Office of Personnel Management (OPM) to contract with the National Academy of Public Administration (the Academy) to:

> *"Examine the nature, scope, and degree of risk, including risk of harm to national security, law enforcement, or other Federal missions and risk of endangerment, including to personal safety and security, financial security (such as through identity theft), and privacy, of officers and employees and their family members, that may be posed by website and other publication of financial disclosure forms and associated personal information."*

The Academy named an independent Panel of Fellows to oversee this work. [1]

Views range widely on the risks and benefits of posting personal financial information online in publicly-available searchable, sortable, downloadable databases, including those who believe such a requirement to be appropriately transparent as well as those who have concerns about potential negative impacts. Ethics officials and senior leaders in all branches of the federal government share a widespread understanding that the filing of financial disclosures is a necessary and important element of their federal service even though some find the disclosure filing process itself unnecessarily burdensome.[2] The main focus of this report is on the risks and benefits associated with the online posting of the personal financial information required by the STOCK Act.

One of the fundamental issues addressed by this study involves the balance between the public benefits associated with making the personal finances of government officials more transparent

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[1] Panel and study team members' names and biographies are listed in Appendix A.

[2] Although that burden was not the focus of this study, a number of recommended improvements are mentioned in this report as well as suggestions on improving the forms themselves which were suggested by ethics officials and are outlined in Appendix B.

and the risk to both individual and public institutions of so doing. Although personal financial information on career federal executives is currently publicly available,[3] it is "available with hurdles," which limits access and thereby reduces risk. These limits seem to have provided some organizations and individual filers with a degree of confidence that adequate safeguards against widespread misuse of the information are in place.

The Panel notes the dearth of quantitative data to document any harm (individual or institutional) having arisen from the existing disclosure of personal financial information, either in paper form or online. Consequently, assessments of the costs, benefits and risks associated with the act's additional online posting requirements are largely based on qualitative evidence and opinion, expert and otherwise. **However, when considering the totality of the information gathered in this research, the Panel finds that the preponderance of the testimony presented by agency cybersecurity, national security, ethics, human resources and other experts supports the conclusion that posting personal financial information as required by the act does indeed impose unwarranted risk to national security and law enforcement, as well as threaten agency missions, individual safety, and privacy.** The Panel believes that establishing the searchable databases the STOCK Act envisions may equate to a "boiling the frog"[4] scenario in that it adds to the extensive information already available about federal employees and could result in significant unintended consequences. In other words, this forthcoming increment in available data could become the fatal temperature change that goes undetected by the hapless frog.

Although the STOCK Act raised a number of concerns about its online posting requirements, the Academy's examination also surfaced a number of important issues that indicate a need for revising the government's ethics reviews with a goal of strengthening the reviews and improving the transparency of federal government processes. A summary of the Panel's findings and recommendations follows. A more complete discussion can be found in Chapters 4 and 5:

**FINDING 1**

**The growth of publicly available, easily accessible data on almost every aspect of an individual's personal life has radically changed the privacy landscape, with potential negative consequences for both the institutions of government and the individual public servants (and their families) who serve them.** The unprecedented availability of personal information on the Internet has been well documented. This, coupled with the ever-increasing

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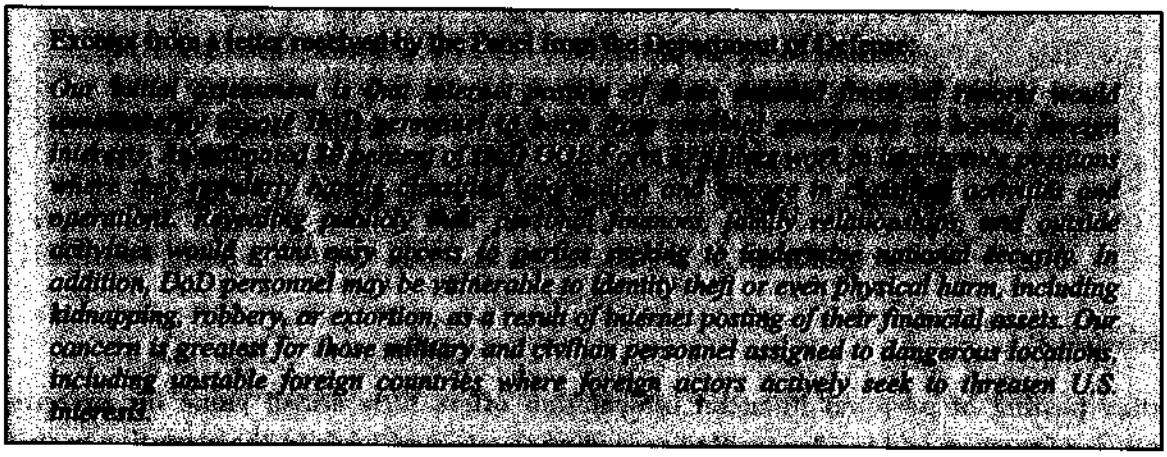
[3] See Chapter 2 for a more complete discussion of how financial disclosures are processed and made available to the public in all three branches of the federal government.

[4] The parable of the boiled frog is simple: if you put a frog in boiling water, it will jump out; but if you put it in cold water and gradually turn up the heat, it will let itself be slowly boiled to death because it does not perceive any immediate danger. Technically, the premise is scientifically inaccurate, but its power as a parable is well established. Peter Senge, in his book *The Fifth Discipline: The Art & Practice of the Learning Organization* (1990], used it as a metaphor for the failure of people and institutions to react to impactful changes that develop gradually.

capabilities of organizations and individuals, some with malicious or nefarious intent, to use these data to discern important patterns of behavior and other information, signals a dramatic change in the landscape from what was possible in 1978 when the Ethics in Government Act was originally drafted.[5] As technology speeds ahead, such changes will continue to occur at an exponential rate.

**FINDING 2**

**An open, online, searchable, and exploitable database of personal financial information about senior federal employees will provide easy access to "high quality" personal information on "high value" targets.** The argument has been made that posting financial disclosure information online in a searchable, sortable, publically accessible database is simply using a different medium to publish already publicly available information. However, virtually all the cybersecurity, national security, and law enforcement experts interviewed during this study noted that making this information available in this fashion fundamentally transforms the ability (and the likelihood) of others—individuals, organizations, nation-states—to exploit that information for criminal, intelligence, and other purposes. Posting this information online in a searchable, exploitable database adds an important new element to the equation: specific, verified personal information about individual assets and holdings—high value information—which, coupled with existing information on the Internet, can be used to develop powerful profiles of individuals and organizations that can be reused and repurposed in damaging ways. The Panel believes the federal government has a responsibility to ensure that by its own actions and policies, its employees are not adversely impacted by virtue of their public service.


Excerpt from a letter received by the Panel from the Department of Defense:

*Our initial assessment is that releasing portions of these reports [financial disclosure reports] would [illegible] DoD personnel [illegible] DoD personnel, sometimes in hostile foreign [illegible]. Information in many of these reports could be used to target DoD personnel who work in intelligence positions where their identity could generate [illegible] and targeted in classified activities and operations. Releasing publicly their personal financial, family relationships, and outside activities would grant easy access to parties seeking to compromise national security. In addition, DoD personnel may be vulnerable to identity theft or even physical harm, including kidnapping, robbery, or extortion, as a result of Internet posting of their financial assets. Our concern is greatest for those military and civilian personnel assigned to dangerous locations, including unstable foreign countries where foreign actors actively seek to threaten U.S. interests.*

[5]This was clearly illustrated by the recent posting of the Social Security numbers, home addresses, and other personal information for Vice President Biden, First Lady Michelle Obama, Beyoncè Knowles, and other notables. "Web Site Investigated for Posting Private Data" *New York Times*: March 12, 2013. In addition, a recent commentary in the *New York Times* "Opened and Closed" (March 17, 2013) also speaks to this issue: *"Likewise, "open government"—a term once reserved for discussing accountability—today is used mostly to describe how easy it is to access, manipulate and "remix" chunks of government information. "Openness" here doesn't measure whether such data increase accountability, only how many opps can be built on top of it, even if those apps pursue trivial gools."*

## FINDING 3

**National security and law enforcement officials have serious concerns about posting this information online.** Throughout the interview process, study team members were provided with stark examples of potential negative outcomes to the missions of national security and law enforcement agencies and their staff members. A letter sent to congressional leaders by former senior law enforcement, diplomatic, and national security officials, said the release of such information: *"would be a jackpot for enemies of the United States intent on finding security vulnerabilities they can exploit...(and) will jeopardize the safety of executive branch officials..."*[6] Current officials expressed similar concerns. Specific examples of actions that could be taken to target national security officials, particularly those stationed overseas, were provided to the Panel and study team by both current and former national security and law enforcement officials and are summarized in the report. They fear the posting of personal financial information as required by the act could potentially put certain covered employees—for example, those who are deployed or assigned overseas, who have access to classified information, or who are engaged in law enforcement missions—and their families at risk.[7]

> **Excerpt from a letter received by the Panel from the Department of State:**
>
> ***"Criminals and foreign intelligence services would undoubtedly welcome receiving the expansive, detailed information contained on OGE-278 reports about the finances of the Department's Foreign Service and Civil Service personnel, as well as the personnel of other agencies whom the Department hosts abroad at U.S. embassies and consulates. This information, which would be readily available to any and all, would provide a helpful roadmap for those wishing to target employees, particularly those who are relatively affluent or in difficult financial situations. Falling into either category, seen through another culture's financial realities, would be enough to make our employees targets of opportunity. As such, the information can be expected to be used in efforts to harass, campromise, and steal from U.S. personnel both domestically and abroad."***

## FINDING 4

**Online posting of personal financial information offers little added value for detecting conflicts of interest and insider trading according to ethics officials in the executive branch.** There was little disagreement among ethics officials interviewed for the study about the limited value of posting financial disclosure information online in terms of detecting conflicts of interest

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[6] Letters from Richard Armitage, et al, and from other organizations, to congressional leaders. See Appendix C.

[7] "...public posting of financial information will also make it readily accessible to criminal actors and, as a result, may make employees and their family members more vulnerable to kidnapping, robbery, theft, extortion, and identity theft." See Appendix D.

or insider trading. Financial disclosure is decentralized to agencies that conduct comprehensive reviews of financial disclosure forms. Because the process is conducted inside the agencies by designated ethics officials, it permits reviewing officials to connect a filer's personal financial information with his or her specific duties and responsibilities within the agency, an essential element in the determination of conflict of interest. In addition to these internal agency processes, the Office of Government Ethics (OGE) provides another level of oversight by conducting periodic reviews of the agencies to ensure compliance.

**FINDING 5**

**Existing executive branch financial disclosure reviews are extensive and effective (but not efficient) at identifying potential conflicts of interest.** Given the complexity of ethics laws and regulations and relevant standards of conduct, financial disclosure reviews are of necessity, extensive—the guide for reviewers of the financial disclosure forms exceeds 350 pages[8]—and reliably identify potential conflicts of interest. Thus, the potential incremental benefits for posting information online in order to prevent or detect conflicts of interest are at best, negligible. The Panel found that although the current process used by the executive branch could use some modernizing and updating, it is fundamentally sound. A limitation of the current executive branch review is the system's overreliance on "eyeballs to paper" reviews. Although a number of agencies have electronic filing systems, the reviews themselves are largely the same as they were when the ethics review process began 35 years ago. The Panel also notes there are data currently collected on the financial disclosure forms that are not necessary for ensuring compliance with ethic requirements just as there are elements that could be added that would add value to the ethics reviews.

**FINDING 6**

**Legislative branch reviews are process focused and disclosures come under greater third party scrutiny than in the executive branch.** Legislative branch financial disclosure reviews tend to focus less on identifying potential conflicts of interest and more towards ensuring that all the required procedural steps were followed. A different form of accountability has developed for the legislative branch, as noted in a recent paper addressing the STOCK Act requirements:

> *"...For legislators the primary function of these forms is political accountability: assisting the public in assessing whether the financial interests of elected legislators are politically acceptable. Legislators stand for reelection on a regular basis, and their constituents can take into account whether the financial interests of a member (or a nonincumbent candidate) are acceptable when deciding how to vote."*[9]

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[8] http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/

[9] Kathleen Clark and Cheryl Embree, "Too Much Transparency? Ethics, Privacy and the STOCK Act's Massive Online Disclosure of Employees' Finances." Draft Publication for *International Handbook on Transparency*, edited by Padideh Ala'l and Robert Vaughn (forthcoming 2013), p. 11.

Voters can review the elected official's or candidate's holdings and decide how the filer's financial position may potentially affect his or her fitness for the office. The degree of third-party reviews (the press, government reform groups, political opponents, interested citizens, etc.) for the financial disclosures of the legislative branch is extensive.

**FINDING 7**

**The online posting requirements are seen as affecting recruitment and retention for senior-level positions in the executive branch.**[10] Virtually every agency met with during this study reported instances of senior executives covered under the new STOCK Act online disclosure requirements who were considering downgrades or retirement to avoid the online posting. Stated reasons centered on the desire to protect privacy, fear of identity theft or other financial harm, and sometimes, fear of harassment or physical harm. Although very few data are available to substantiate the impact of these concerns on recruitment and retention, agencies that often hire people from outside the federal government at the senior level (i.e., who would be covered by the online posting provision) provided examples of prospective new hires turning down jobs because of the requirement. This was cited more often by agencies with a strong science and technology focus such as the National Institutes of Health, the National Science Foundation, and the National Aeronautics and Space Administration. Overall, officials are worried that if the STOCK Act's provisions for online posting stay as they are, there will be serious, long-term negative consequences for the federal government in terms of attracting and retaining the talent it needs for its senior-most jobs.

**FINDING 8**

**It is time to update and strengthen the 35-year-old ethics system in light of current technology and its impact on the security and privacy of federal agencies and employees.** Congress and the executive branch should conduct a comprehensive review of the STOCK Act and the Ethics in Government Act with the goal of bringing their ethics review regimens in line with 21st century realities. This review has found ample evidence that the entire process requires a substantive assessment that considers:

- the expected outcomes for ethics reviews
- the information necessary to be disclosed to achieve those outcomes
- how each type of filer's information should be available for public access
- the application of modern technology to collect and review disclosure form data

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[10] See Chapter 3 for more information about the kinds of senior-level executive branch positions not in the Senior Executive Service.

Based on the above findings, the Panel proposes the following recommendations:

**RECOMMENDATION 1**

**Congress should indefinitely suspend the online posting requirements that are due April 15, 2013, and the unrestricted access to searchable, sortable, downloadable databases, currently planned for October 2013, while continuing implementation of other requirements of the STOCK Act.**

Based on its findings, the Panel recommends that the STOCK Act's requirements for online posting of personal financial information not be implemented beyond current coverage under existing law.[11] The Panel believes the federal government should not create public searchable, sortable, downloadable databases for any filer. At the same time, the Panel believes that *the other requirements of the act should continue to be implemented.* Those requirements include:

- filing reports on covered transactions (periodic transaction reports)
- modernizing the financial disclosure process through transition to electronic filing, which would allow development of "smart forms"[12] to aid in the completion and review of financial disclosure forms

**RECOMMENDATION 2**

**The federal government should use the suspension period to update and strengthen the 35-year-old government ethics system.**

In the process of its inquiry, the Panel found that the federal financial disclosure system, in both its statutory requirements and operational procedures, is in need of modernization and strengthening. With that in mind it recommends the following specific steps be taken:

- Conduct a comprehensive review of the Ethics in Government Act of 1978, as amended, and the STOCK Act of 2012, as amended
- Develop a broad understanding of the landscape for filing and accessing financial disclosure forms, which has changed fundamentally in terms of:
    - the threats to both individuals and organizations
    - the types and complexity of investments held
    - the technologies available for reporting and assessing holdings.

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[11] Section 1 of Pub. L. 112-178 requires that the financial disclosure forms of the President, the Vice President, members of congress, candidates for congress, and executive level I and II individuals be posted online.

[12] A Web-based form that can be designed to guide the user through the process of completing the form and can alert the user to errors. http://www.termwiki.com/EN:smart_form

- Reach agreement on 21st century goals for the Ethics in Government Act and the STOCK Act.
- Rationalize the Ethics in Government Act and STOCK Act disclosure, filing, and availability requirements. Should different groups, such as Members of Congress, congressional staff, staff of legislative organizations, PAS,[13] other political appointees, Senior Foreign Service, senior military, career senior executives and other senior-level career employees, administrative law judges, judicial officers and employees, confidential filers and others be treated similarly or differently? The Panel believes *online posting risks apply to all these individuals.*

**In undertaking these preliminary steps, the Panel recommends that Congress and the executive branch expand on the findings of this report as follows:**

- Develop additional data on the risk to federal missions and individuals resulting from the misuse of personally identifiable information. The Panel was unable to find any evidence of such data being collected systematically.
- Determine how online posting requirements add to the growing threat to individuals from accumulative data found on the Internet.
- Balance the findings relative to damage to mission safety and individual privacy rights against *identifiable* benefits of online posting.
- Consider the value and costs of a redaction system, possibly similar to the system used in the judicial branch.
- Synchronize Stock Act provisions with other government policies on publishing individual data. Relevant federal requirements and guidelines are the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, Internal Revenue Code, and the Fair Information Practice Principles.

**In considering a modernization of the federal government's ethics system, Congress should undertake the following:**

- In consultation with the Office of Government Ethics and other experts, improve the questions asked of filers to identify and reduce potential conflicts of interest. Consider allowing the Office of Government Ethics, the House and Senate Ethics Committees, and the Judicial Conference of the United States some flexibility to modify on their own initiative the financial disclosure questions asked on the financial disclosure forms, subject to congressional notification.

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[13] PAS denotes an officer occupying a position having been nominated by the President and confirmed by the Senate; sometimes referred to as "Senate-confirmed Presidential Appointee"

- Determine what data must be collected to ensure thorough financial disclosure reviews and compliance with all statutory and regulatory requirements, and go no further.
- Determine whose data should be publicly available and how they may be accessed.
- Assess costs relative to needs.
- Conduct an independent evaluation of the process the Office of Government Ethics uses to review federal agencies' ethics programs. The Government Accountability Office is a strong candidate for this task.
- Ensure the ethics *process* is fully transparent.

# CHAPTER 1: BACKGROUND

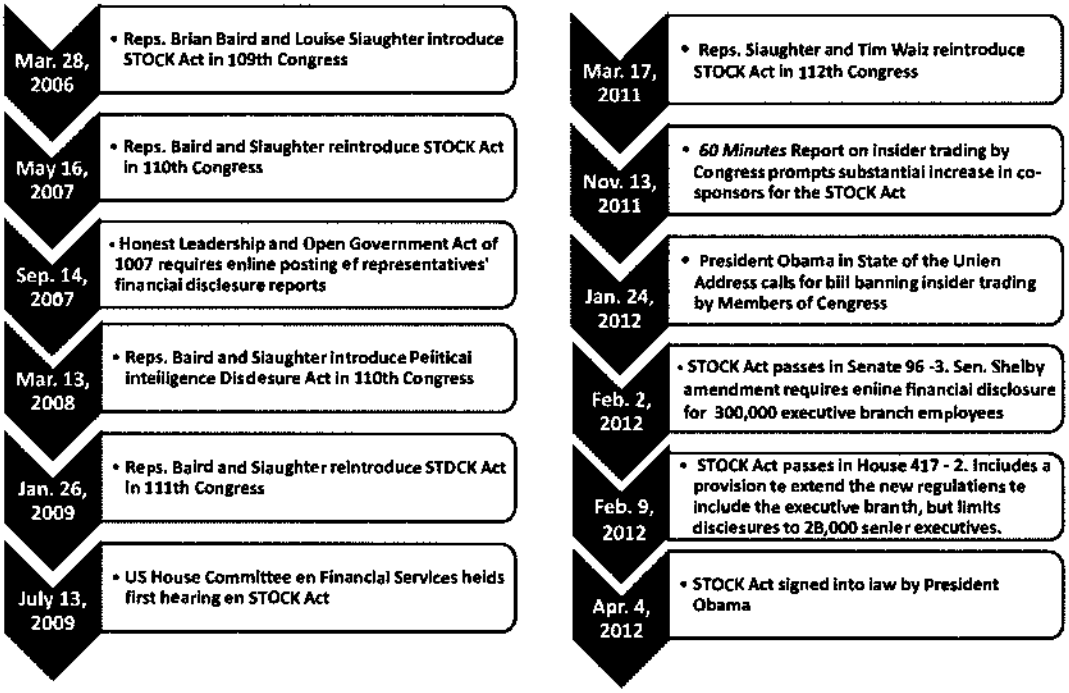
## THE STOCK ACT

The Stop Trading on Congressional Knowledge (STOCK) Act, signed by President Obama on April 4, 2012, was intended to combat insider trading in the federal government. The act had been introduced in earlier sessions of Congress but was not passed until 2012 (see Figure 1–1). Although the Ethics in Government Act of 1978 (EIGA) has long required the filing of publically-available annual financial disclosures by senior officials in all three branches of the federal government, an amendment added to the STOCK Act required the disclosures of members of the executive and legislative branches to now be posted online in a searchable, sortable, and downloadable public database. The central focus of this Academy study is not on the STOCK Act in its entirety, but more specifically, the latest amendment that would require this online posting of executive and legislative branch officials' financial forms, effective April 15, 2013, as well as the searchable, sortable, downloadable public database expected in October 2013.

Some online posting of federal officials financial disclosures had already been done prior to the passage of the STOCK Act, including for members of the House of Representatives (since 2008) and some executive branch employees, mostly political appointees (since 2009). Even though amendments to the act delayed the online posting requirements for federal officials until April 15, 2013, certain officials were not included in this delay including the President, the Vice President, any Member of Congress, any candidate for Congress and Executive Level I and Executive Level II officials. The information is posted in portable document format (PDF). For several years prior to passage of the STOCK Act, non-govemment organizations have posted PDF copies of the disclosure reports of Members of Congress, senior legislative staff and judges on their websites.

**Figure 1–1**

**STOCK Act History**




Source: ProCon.org

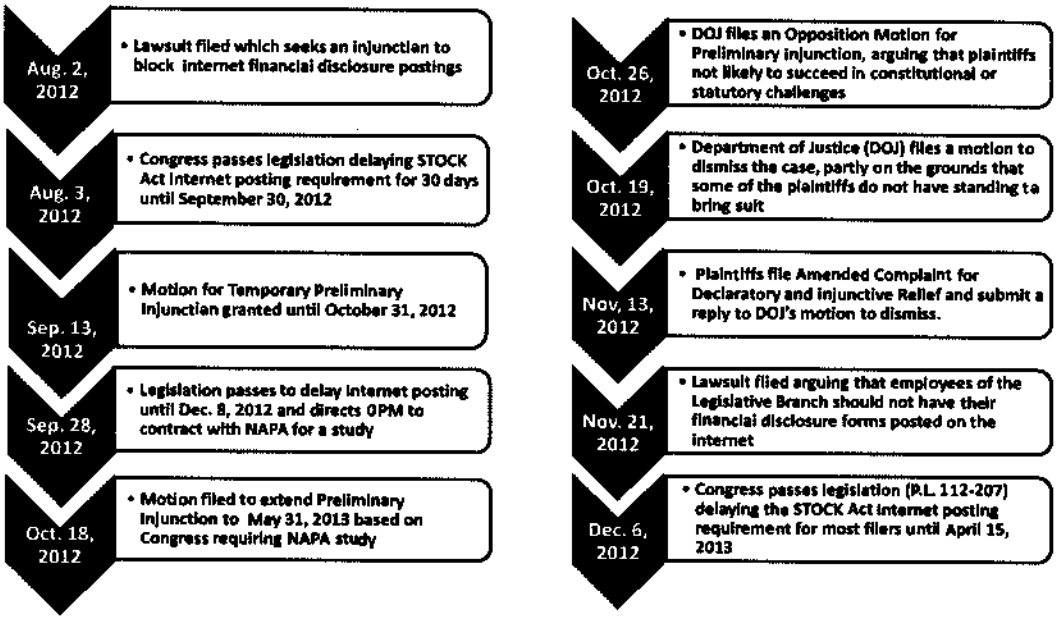
This online posting requirement for career civil servants has been strongly opposed by a number of entities representing federal employees and has also been challenged in federal court (see Figure 1–2).[14] The concerns expressed about the potential risks posed by disclosing this information online focused on threats to national security and law enforcement as well as to the privacy and safety of individual employees and their families. As authors Kathleen Clark and Cheryl Embree note in their draft article "Too Much Transparency? Ethics, Privacy and the STOCK Act's Massive Online Disclosure of Employees' Finances": *"Never before have the*

[14] Case 8:12-cv-02297-AW, In the United States District Court for the District of Maryland. Plaintiffs: Senior Executives Association, American Foreign Service Association, Assembly of Scientists, National Association of Immigration Judges, Joshua Zimmerberg, Evelyn Upchurch, Michael Ryschkewitsch, Janice Caramanica, Jane Doe 1, Jane Doe 2, Jane Doe 3

*private financial holdings of so many government officials been made so easily accessible to anyone in the world with an Internet connection."*[15]

**Figure 1–2**

**STOCK Act Legislation and Lltigation**




Prior to the online posting provision of the latest STOCK Act amendment, the public had access to financial disclosure forms provided they complied with agency ethics office protocols. Pre-STOCK Act executive branch disclosure forms were available to members of the public provided they made a formal request in writing to the employee's agency ethics office and included their name, address and occupation. They also had to state they would not use the information for illegal, commercial or fundraising purposes. Employees could also find out who was seeking financial information about them. This system was seen as having provided adequate safeguards against misuse of employee financial information. Some believe the STOCK Act's online posting of financial disclosure—ultimately in a searchable, sortable, downloadable public database—would provide no safeguards and put agency missions and

[15] Clark, op. cit., p. 1.

individual safety at risk. A number of concerned organizations representing current and former senior federal officials expressed this concern to Members of Congress and their staffs.[16]

## THE ACADEMY STUDY

In response to the concerns raised about online posting required by the STOCK Act, Congress delayed the online posting requirements and mandated that the National Academy of Public Administration (the Academy) conduct an independent review of the impact of providing financial disclosures online for Members of Congress, congressional, staff and executive branch senior career and political appointees. The Academy named a Panel of Fellows to oversee this review as well as a study team to conduct the research.[17]

This review, which was conducted from December 2012 to March 2013, considered a range of issues, including how to most effectively manage the balance between transparency of government operations and the privacy and security risks associated with providing individual financial information on the Internet. This report details the findings and recommendations from that review.

### Study Methodology

The review also included efforts to gather data and metrics regarding any harm that may have arisen from the current online availability of financial disclosure forms and associated personal information of employees of the legislative and executive branches.

The Academy's assessment focused on soliciting the perspectives from all parties involved, including independent subject-matter experts. The primary methods the study team used for collecting information as well as verifying the Academy's understanding of the STOCK Act were to conduct targeted interviews with stakeholders and interested parties, including representatives from all three branches of the federal government as well as subject matter experts from the private sector and academia:

- The interviews were conducted in-person or by phone, all with the explicit understanding that interviews were not for attribution.
- The study team conducted 80 interviews involving over 150 executives, stakeholders and subject matter experts[18] representing 59 organizations
    - Executive branch—Twenty-five agencies participated in the interviews. Participants included ethics officials, senior executives, and inspectors general staff.

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[16] See Appendix C for copies of the letters sent to Congressional leaders
[17] See Appendix A for a listing of the Panel and study team members
[18] See Appendix E for a list of individuals and organizations contacted during the study

- Legislative branch—The study team met with six committee staffs, staff from thirteen Congressional members' offices as well as the Government Accountability Office (GAO) and representatives from the offices of the Secretary of the Senate, the Senate Sergeant at Arms and the Clerk of the House.
- Judicial branch—The study team interviewed the Administrative Office of the U.S. Courts to learn about their experience using an authority to redact financial disclosure reports.
- Private sector—The study team interviewed five identity theft/cybersecurity organizations, three former national security officials, PricewaterhouseCoopers LLP, the Sunlight Foundation, the Partnership for Public Service, the American Foreign Service Association, and the Senior Executives Association
- The study team also sent nine letters seeking data and comments from a coalition of reform groups[19] who had supported the original STOCK Act provisions. No responses were received following the initial request. After a follow-up letter, four organizations provided comments for the Panel to consider.

- The review also considered existing reports, studies, documentation, news articles and online commentary regarding the STOCK Act, ethics policy and practice, and issues surrounding the security of personally identifiable information.

**Report Organization**

Chapter 2 presents an overview of ethics reviews in government, including the Ethics in Government Act, the STOCK Act, the current financial disclosure process in the federal government, and changes to that process resulting from the STOCK Act. Chapter 3 outlines the results of the research, including the reasons cited both in support of and in opposition to the online posting requirements, as well as a discussion of private sector and foreign government experiences. Chapter 4 summarizes the Panel's findings and conclusions. Chapter 5 lists the Panel's recommendations for moving forward with the STOCK Act.

[19] See Appendix F for the letters sent to Congressional leadership from the coalition of reform groups urging passage of the STOCK Act

# CHAPTER 2: ETHICS REVIEWS IN GOVERNMENT

## OVERVIEW

This brief review of the 150-year history of legislative and administrative developments in federal government ethics policy and practice may be better understood in the context of a contemporaneous evolution in that policy and practice. Consistent with the anti-corruption concerns that have motivated past ethics regimens worldwide, at least with respect to financial disclosure and reporting, income and asset disclosure has long been a principal driver of the questions asked and public availability of information provided, especially for elected officials. Even now, developing countries that seek to establish or restore public trust in government often focus on asset disclosure to detect and deter illicit enrichment by government officials. Some rely on public access to and scrutiny of financial information to identify situations, help ensure accountability and, as needed, launch investigations.

The United States and many Western democracies have come to focus more on detecting and preventing conflicts of interest as an effective means of assuring integrity and accountability. Over time, emphasis has shifted from prosecution to prevention.[20] This is particularly true for the executive branch. The Office of Government Ethics (OGE) is the agency that provides overall direction, oversight, and accountability of executive branch policies designed to prevent and resolve conflicts of interest. Such conflict of interest review is complemented by explicit executive branch-wide standards of conduct that clarify expectations and restrictions for employees.

Scholars examining the ebb and flow of ethics reforms in the United States throughout its history note the onset of significant reforms at the end of the 19th century with the passage of the Pendleton Act of 1883 and development of the "science of administration."[21] The former occurred as a reaction to the corruption of the "spoils system" and marked the beginning of an era where administration was separated from politics and a professionalized public service based on a merit principle developed. Currently the relevance of distinguishing political accountability from legal accountability when examining our branches of government is part of the discourse on ethics policy and practice. For this study, that political and administrative distinction carried some resonance.

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[20] Jane S. Ley, "Managing Conflict of Interest in the Executive Branch: The Experience of the United States," in *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (Paris, France: Organisation for Economic Co-Operation and Development, 2003).

[21] Steven Cohen and William B. Eimicke, "Trends in 20th Century United States Government Ethics" (New York: School of International and Public Affairs, Columbia University, February 19, 1998) www.columbia.edu/~sc32//ethicIsurl.pdf

The interaction of ethics and merit is relevant as well. To this day the U.S. civil service is built on merit system principles. Entry into the service includes competitive examining and a suitability determination to assure the public that its civil servants are qualified and of good character and integrity and will be held accountable. For the purposes of this study, two of the merit system principles codified by the Civil Service Reform Act of 1978 (the same year as the Ethics in Government Act) are noteworthy:

> ***All employees...should receive fair and equitable treatment in all aspects of personnel management...with proper regard for their privacy and constitutional rights.*** **—5.U.S.C. 2301(b)(2)**
>
> ***All employees should maintain high standards of integrity, conduct, and concern for the public interest.*** **—5 U.S.C. 2301(b)(4)**

Many of the initiatives that result in increased disclosures by government officials are grounded in calls for increased government transparency and accountability as a means of sustaining public trust and promoting ethical behavior. Open government and transparency efforts seek to illuminate government operations and decision making.

Recent initiatives in the executive and legislative branches demonstrate the current extensive commitment to establishing accountability by making information publicly available on the Internet. On his first day in office, President Obama signed the *Memorandum on Transparency and Open Government*,[22] which directed the heads of departments and agencies to "take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public." Websites throughout the executive branch include links to agencies' databases and public reports.

In the legislative branch, similar transparency efforts have developed in recent years. Some have been generated by requirements in federal statute or in House or Senate Rules to file and post data (e.g., lobbying disclosures, travel reports). The Committee on House Administration makes available online the monthly committee disbursement reports.

These transparency efforts by and large provide information about government operations and the obligation and disbursement of public funds, rather than personally identifiable information. Currently, the data the public may examine online[23] that do include personal financial

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[22] http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/

[23] Copies of financial disclosures for all federal public filers under EIGA are available to the public at the respective places of employment of the employees whose records are being sought, i.e., federal agencies, each house of Congress and the judicial Financial Disclosure Committee. The specific steps for obtaining copies of these disclosures are outlined in this chapter.

information are the financial disclosure forms the STOCK Act requires to be posted for Members of Congress, candidates for Congress, and the most senior executive branch officials. (Current posting requirements are discussed in greater detail below.)

## HISTORY OF THE ETHICS IN GOVERNMENT ACT

The Ethics in Government Act of 1978 (EIGA) was enacted as one of several government reform efforts to restore public faith in government that developed in the wake of the Watergate scandal in the 1970s. Prior to that time, ethics programs in the federal government were largely decentralized and involved criminal statutes and proceedings. Over the previous century, since the Civil War era corruption and conflicts of interest scandals, statutes focused on outlawing the use of public office for private gain had been enacted periodically to address specific agencies and circumstances. Administering these laws produced a variety of federal employee codes of conduct and enforcement approaches.

One centralized expression of expectations for ethical conduct did emerge near the end of this period. In 1958, the 85th Congress adopted a code of ethics for all government employees, including officeholders (see Figure 2–1 below). Also, the U.S. Civil Service Commission (now the Office of Personnel Management) provided a model regulation that agencies could use in their own regulatory standards of conduct. Although the Commission had a limited role, no centralized authority existed to provide leadership or direction for ethics programs across agencies.

This strongly decentralized era ended with the passage of the Ethics in Government Act of 1978 (Pub. L. 95–521, Oct. 26, 1978). EIGA established requirements for filing financial disclosures by senior officials and employees across the legislative, executive, and judicial branches. The information requested was consistent with an overall anti-corruption, asset disclosure approach, although it also provided the basis for detecting conflicts of interest.

EIGA has always included a provision allowing public access to the financial disclosures. Each supervising ethics office across the three branches had an obligation to allow inspection or furnish a copy of a report requested by a member of the public. (Requirements for accessing these reports are described later in this chapter.) Reports filed by individuals in the intelligence agencies are not available to the public.

The 1978 legislation also established an Office of Government Ethics (OGE) within the Office of Personnel Management. In 1988, OGE was reauthorized as an independent agency.

**Figure 2–1**

**CODE OF ETHICS FOR GOVERNMENT SERVICE**

*Any person in Government service should:*

*I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.*

*II. Uphold the Constitution, laws, and regulatians of the United States and of all governments therein and never be a party to their evasion.*

*III. Give a full day's labor for a full doy's pay; giving earnest effort and best thought to the performance of duties.*

*IV. Seek to find and employ more efficiency.*

*V. Never discriminate unfairly by the dispensing af special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself ar for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of gavernmental duties.*

*VI. Make no private promises of any kind binding upon the duties of office, since a Governmental employee has no private word which can be binding on public duty.*

*VII. Engage in no busIness with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.*

*VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making a private profit.*

*IX. Expose corruption wherever discavered.*

*X. Uphold these principles, ever conscious that public office is a public trust.*

— House Concurrent Resolution No. 175, July 11, 1958, Stat. B12

The Ethics Reform Act of 1989 (Pub. L. 101-194, Nov. 30, 1989), based on recommendations of the President's Commission on Federal Ethics Law Reform and the report of the House Bipartisan Ethics Task Force, amended EIGA to consolidate disclosure requirements across the three branches, under the respective leadership and guidance of OGE, the relevant congressional entities, and the Judicial Conference of the United States. This legislation added a $200 late filing fee. Otherwise, the financial reporting and filing requirements remained largely the same as in the original EIGA. Filers had to report the following kinds of information in their financial disclosures:

- Assets and income
- Transactions (i.e., property, stocks, bonds)
- Gifts, reimbursements, travel
- Liabilities

- Agreements or arrangements (with former and/or future employers)
- Positions held outside government
- Sources of compensation over $5,000

A provision was added to require persons requesting access to a filed report to make written application, provide identifying information and attest awareness of prohibitions on the use of the information. The written application itself could also be disclosed to the public.

The 1989 legislation added a provision authorizing a supervising ethics office to establish requirements for employees not otherwise covered by EIGA to file confidential financial disclosure reports. For the executive branch, this led to OGE issuing regulations to set filing requirements for lower-level employees (e.g., those involved in procurement, managing money, administering grants and other benefits, etc.). More than 250,000 executive branch employees now file confidential financial disclosures, which may not be released to the public.

The Ethics Reform Act of 1989 added significant post-employment restrictions for executive and legislative employees and clarified issues with respect to gifts and travel. In keeping with the growing emphasis on resolving conflicts of interest, it also amended criminal statutes to include enforcement options beyond pursuing criminal prosecution.

During this same period, President George H. W. Bush by executive order directed OGE to establish comprehensive standards of conduct for the executive branch as a means of achieving better consistency in ethics programs and practices across the agencies. The Standards of Ethical Conduct for Employees of the Executive Branch (codified at 5 CFR §2635) became effective in 1993. Other developments included establishment of agency-specific supplemental regulations, issued jointly with OGE, to cover additional restrictions in such areas as outside employment and prohibited assets.

In the years since the Ethics Reform Act of 1989 modified EIGA, additional amendments have generally been technical in nature. For example, language establishing the minimum salary threshold for coverage was changed to 120% of the GS-15 minimum pay rate after the GS-16, GS-17, and GS-18 grades were abolished. One notable substantive exception occurred in 1998 with the Identity Theft and Assumption Deterrence Act (Pub. L. 105-318, Oct. 30, 1998), wherein Congress established for the judicial branch an authority to redact reports when the Judicial Conference, in consultation with the U.S. Marshals Service, determines that revealing personal and sensitive information could endanger an individual filer. This redaction authority will be discussed in more detail in the section below on the judicial branch review process.

Separate legislation that did not amend EIGA is relevant to this study. The Honest Leadership and Open Government Act of 2007 (Pub. L. 110-81, Sept. 14, 2007) established a requirement for posting on the website of the Clerk of the House in a "format that is searchable, sortable, and downloadable, to the extent technically practicable," reports filed under EIGA by Members of the House of Representatives, but not staff. House Members' financial disclosure forms in PDF

format have been available on the Clerk's searchable website since 2008. The same legislation established requirements for posting and creating searchable, sortable databases for lobbying disclosure reports and reports of reimbursable travel by Members of Congress and senior congressional staff.

**THE STOCK ACT OF 2012**

As a consequence of reports that Members had misused nonpublic information in making stock transactions for their personal gain, efforts arose to increase transparency and prohibit such insider trading. During the 109th Congress, H.R. 5015 was introduced in the House in March 2006 as the Stop Trading on Congressional Knowledge Act, or STOCK Act. Its purpose was "to prohibit securities trading based on nonpublic information relating to Congress, and to require additional reporting by Members and employees of Congress of securities transaction." In addition to prohibiting the use of material nonpublic information, the proposed legislation also amended EIGA to require that Members and staff of Congress who otherwise file disclosures under EIGA report any securities transaction of at least $1000 within 30 days of the transaction with the Clerk of the House or Secretary of the Senate, respectively. The bill was referred to committee, with no further action taken.

Similar bills were introduced in the House in the 110th Congress (May 2007—H.R. 2341), 111th Congress (January 2009—H.R. 682), and 112th Congress (March 2011—H.R. 1148). Each required reporting transactions, but different bills had different filing deadlines and coverage of employee groups. None required online posting of financial disclosures. None were enacted, although H.R. 682 was the subject of a hearing before the subcommittee on oversight and investigations of the House Committee on Financial Services.

On November 13, 2011, the CBS News program *60 Minutes* aired a report on insider trading by Members of Congress, which prompted intense media interest. Legislation in both houses gained numerous sponsors, and a hearing before the Senate Committee on Homeland Security and Governmental Affairs was held on December 1, 2011.

Early in 2012, legislative action was spurred further when the President, in his State of the Union Address on January 24, stated the following: "Send me a bill that bans insider trading by members of Congress; I will sign it tomorrow."

On January 26, 2012, Senator Joseph Lieberman, Chairman of the Senate Committee on Homeland Security and Governmental Affairs, introduced S. 2038, a bill "to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes." The legislation advanced rapidly after that. On January 27, a coalition of government reform groups supporting increased government transparency sent House and Senate leadership a letter urging prompt passage of S. 2038, the STOCK Act. (See Appendix F).

No hearings were conducted in the House or the Senate. Floor debate in the Senate included the introduction of an amendment on February 2 that extended to the executive branch the requirement for employees who file disclosures under EIGA, either public or confidential, to also file a periodic transaction report (PTR) that would be made available on the Internet, as well as the requirement for OGE, the Clerk of the House, and the Secretary of the Senate to establish electronic filing and a searchable, sortable, downloadable database. The Senate passed the bill by a 96–3 vote.

Action in the House amended the bill further, again with no hearings and limited debate, and removed some accountability and enforcement provisions the Senate had added. Ultimately, executive branch coverage for filing PTRs and online posting of all financial disclosure forms was limited to those employees who already file the annual public financial disclosure report (FDR). On February 9, the House passed the bill by a 417–2 vote. On March 22, the Senate agreed to the House amendment. Thus, the bill was enacted without a conference committee that might have permitted further consideration of the differences between the earlier Senate and House approaches.

On March 28, the STOCK Act was presented to the President, and he signed it on April 4, 2012. The STOCK Act became Public Law 112-105. In his remarks at the STOCK Act bill signing, the President said:

> *"The STOCK Act makes it clear that if members of Congress use nonpublic information to gain an unfair advantage in the market, then they are breaking the law. It creates new disclosure requirements and new measures of accountability and transparency for thousands of federal employees. That is a good and necessary thing. We were sent here to serve the American people and look out for their interests—not to look out for our own interests."*

To summarize the provisions of the STOCK Act, as originally enacted:

- Section 6 amends EIGA to establish a new requirement for PTRs of securities transactions of at least $1000 to be filed, within 30 days of notice of the transaction or no later than 45 days after the actual transaction, by legislative branch and executive branch employees who are required to file FDRs. (PTRs did not need to include transactions by spouses and dependent children.)

- Sections 8 and 11 establish requirements for the Clerk of the House, the Secretary of the Senate, and executive branch agencies to make financial disclosure forms (FDRs, PTRs, and notices of extension) available on their respective websites as of August 31, 2012.

- Sections 8 and 11 also establish requirements for the Clerk of the House, the Secretary of the Senate, and OGE to:

- develop systems to enable electronic filing, and
- make the data in FDRs and PTRs, as well as notices of extensions, amendments, and blind trusts, available to the public in searchable, sortable, downloadable databases maintained on the official websites of the House, the Senate, and OGE, respectively, 18 months after enactment.[24]

- Other STOCK Act provisions:
  - Prohibit the use of nonpublic information for private profit (i.e., insider trading) by Members and employees of Congress
  - Affirm a prohibition on the use of nonpublic information for private profit (i.e., insider trading) by executive and judicial branch employees
  - Amend the Securities Exchange Act of 1934 to clarify duties of Members and employees of Congress (i.e., prohibition of insider trading)
  - Amend the Commodity Exchange Act to clarify applicability to legislative and judicial branches
  - Prohibit financial information filers from participating in initial public offerings in any manner that is not otherwise generally available to the public
  - Require mortgage disclosure by the President, the Vice President, Members of Congress, and nominees and appointees to positions requiring confirmation by the Senate (other than Foreign Service Officers below the rank of ambassador, uniformed service members paid below the O-7 level, and a special government employee as defined under section 202 of title 18, United States Code)
  - Require GAO to report on political intelligence activities by April 4, 2013

**STOCK Act Amendments**

The initial start date for posting financial disclosure forms online was August 31, 2012. On August 3, Congress enacted Pub. L. 112-173 delaying STOCK Act Internet posting requirement by 30 days until September 30, 2012. That legislation also established a requirement for filers who file their reports with the Clerk of the House to include spouse and dependent transactions on their PTRs.

Another delay was sought and achieved on September 28, when Pub. L. 112-178 delayed posting forms online until December 8, 2012, for all reporting individuals as required by Sections 8 and 11, except:

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[24] The STOCK Act allows for extension of the 18-month deadline if relevant congressional committees are notified.

- the President
- the Vice President
- any Member of Congress
- any candidate for Congress
- any officer listed in section 5312 (Executive Level I) or section 5313 (Executive Level II) of title 5, United States Code, having been nominated and confirmed by the Senate to that position[25]

This legislation also established the requirement for this Academy Study and Report due 6 months after enactment and extended PTR filing requirements concerning spouses and dependents to executive branch and other legislative branch filers.

Finally, on December 7, Pub. L. 112-207 extended the effective date for Internet posting of financial disclosure forms to April 15, 2013.

**Litigation**

During the months that amendments and extensions were made to the STOCK Act, legal proceedings were also underway to block the online posting provision. The STOCK Act had required agencies to begin posting financial disclosure forms on August 31, 2012. As that date approached, in a lawsuit filed by the American Civil Liberties Union on August 2, the Senior Executives Association, the American Foreign Service Association, the Assembly of Scientists, and other plaintiffs from the executive branch sought an injunction to block posting financial disclosures on the Internet. The judge accepted the plaintiffs' arguments that they would be likely to prevail, that they would suffer irreparable harm without an injunction, that the balance of harms tips markedly in their favor, and that the public interest favors issuance of an injunction. The judge found that the STOCK Act "directly and indirectly erodes" the barriers that had been in place to protect filers' privacy. On September 13, the judge granted a temporary preliminary injunction. On November 21, legislative branch plaintiffs (e.g., employees of the Government Accountability Office and Congressional Research Service and their employee organization, the International Federation of Professional and Technical Engineers, AFL-CIO & CLC) also filed a lawsuit seeking relief from online posting.

**Online Availability of Financial Disclosure Forms**

For at least some categories of employees, public availability via posting financial disclosure forms online is not new. Some online posting is required by laws other than the STOCK Act.

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[25] Executive Level I and Executive Level II positions include cabinet secretaries, other cabinet members, deputy secretaries, heads of other major independent agencies, and some deputy directors and under secretaries.

Since 2008, House Members' annual FDRs have been posted in PDF format by the Clerk of the House under the Honest Leadership and Open Government Act of 2007. That law did not require requesters to provide identifying information. The Clerk's Financial Disclosure Reports Database website provides some information about House Members' forms that can be sorted (e.g., name, district, type of report, date filed).

Under Pub. L. 112-178, which delayed the general online posting required by the STOCK Act, FDRs and PTRs from the President, the Vice President, Members of Congress, candidates for Congress, and executive branch officials paid at Executive Level I and Executive Level II are already being posted online in PDF format. Until electronic filing systems are implemented and operational, forms from these federal filers are available as PDF facsimiles of financial disclosure forms; the data are not in digitized form, suitable for searching, sorting, and downloading.

- Reports for the House are available on the Clerk's Financial Disclosure Reports Database website. No request for access must be submitted, although the webpage does display the prohibitions on use of the information established by Sec. 105(c)(1),(2) of EIGA.

- Reports for the Senate are available under Public Disclosure in the Legislation and Records section of the Senate website. The Senate Public Financial Disclosure Database website requires no request for access to be submitted, although to obtain a report a requester must indicate acknowledgement of the prohibitions on use of the information established by Sec. 105(c)(1),(2) of EIGA, which are displayed on the webpage.

- Reports for the executive branch[26] are available on the OGE website, where an automated OGE Form 201: *Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records* must be filled out and submitted.

Some additional online posting had been effected by executive action. The OGE website noted above also provides access upon request to forms in PDF format for executive branch officials appointed or nominated by President Obama to positions requiring confirmation by the Senate. A similar process of submitting an automated request is available at the White House website for disclosure forms in PDF format filed by White House officials dating back to 2009.

For several years, outside groups have been obtaining and posting in PDF format FDRs for Members of Congress, senior congressional staff, and federal judges. For example, LegisStorm has sent representatives to the Hill, photocopied the disclosure forms for Members and senior

[26] In the interests of transparency, the White House makes the financial disclosures of the President and Vice President openly available on the White House website without requiring a request for access.

congressional staff, converted them to PDF format, and posted them on its website. Judicial Watch has submitted an omnibus request to the Administrative Office of the U.S. Courts and posted the FDRs of federal judges after converting them to PDF format.

## CURRENT ETHICS PROCESSES IN THE THREE BRANCHES OF GOVERNMENT

Under EIGA, each branch of government has an established ethics regimen. In many respects they are the same, and each is certainly rooted in the objective of supporting the public trust through open transparent systems that assure the integrity of public officials. For example, each branch has established codes of conduct as well as processes for implementing the reporting, filing, review, and public access requirements of EIGA. Each branch includes appropriate programs and activities to educate and counsel its employees in interpreting and applying ethical standards and requirements. The advice and counsel role is particularly important to ethics officials for successfully preventing conflicts of interest from developing. They are conscientious about maintaining an open and cooperative relationship with filers who are encouraged to ask questions and avoid problems.

In some respects, the branches quite properly differ. For example, the executive and judicial branches maintain a strong focus on preventing, detecting, and resolving conflicts of interest. Although detecting and resolving conflicts of interest are certainly part of the legislative branch's regimen, its processes tend to serve more strongly a public transparency objective, with the reasonable expectation that external third-party scrutiny is essential to maintaining political accountability.

### Executive Branch

Under OGE's leadership and oversight, and subject to the criminal conflicts of interest laws and OGE regulations governing executive branch employees, each executive branch agency is responsible for implementing its own ethics program. This largely decentralized approach reflects both tradition and the practicality of managing ethics reviews across the enormous diversity of missions and operations in the federal government. Detecting conflicts of interest or other ethical violations is most successful where the reviewers are better informed about the issues and activities with which filers are dealing. Some agencies have specific considerations and requirements and, subject to OGE's approval, may tailor their programs to meet agency-specific needs. EIGA's decentralized framework permits this tailoring, for example, through supplemental regulations issued jointly by an agency and OGE. Such interagency differences notwithstanding, OGE exercises its leadership, oversight and accountability in a manner that unifies the executive branch ethics regimen.

Each executive agency has a Designated Agency Ethics Official (DAEO) and Alternate DAEO, appointed by the agency head. In most agencies, the DAEO serves in the Office of General Counsel. In some agencies (e.g., the Federal Bureau of Investigation), the DAEO reports

directly to the agency head. OGE regulations at Subpart B of 5 CFR §2638 delineate DAEO responsibilities, which include the following:

1. Review the public (OGE Form 278 and 278-T)[27] and confidential (OGE Form 450) financial disclosure reports submitted by officers or employees within the agency, assessing the application of conflict of interest laws and regulations to the information reported and counseling those officers or employees with regard to resolving actual or potential conflicts of interests, or appearances thereof;
2. Review the financial disclosure reports submitted by Presidential appointees for confirmation purposes and counsel those appointees with regard to resolving potential conflicts of interest, or appearances thereof, before the confirmation hearing;
3. Counsel agency personnel concerning ethics standards and programs;
4. Counsel departing and former agency officials on post-employment conflict of interest standards;
5. Assist managers and supervisors in understanding and implementing agency ethics programs;
6. Administer a system for periodic evaluation of the ethics program; and
7. Select deputy ethics officials if necessary and manage the ethics program through them.

Across agencies the specifics of ethics program operations vary somewhat. For example, the Senate Armed Services Committee precludes Department of Defense senior officials nominated by the President and confirmed by the Senate from holding stock in a defense contractor that annually does more than a threshold dollar amount of business (e.g., $25,000) with the department.

In general, however, the agency ethics programs are designed and maintained under centralized OGE control. By regulation at 5 CFR §2638.203(b), OGE specifies the elements each program must include (see Figure 2–2), and OGE conducts its agency management reviews to evaluate the effectiveness of these elements in each agency. When OGE finds an agency ethics program deficient in some way, it will order a correction and follow-up on implementation. Reports of these management reviews are posted on the OGE website. OGE also conducts annual surveys of agency officials to solicit their views on ways to enhance the government-wide ethics program.

This study focused in particular on the process used in filing, reviewing, and certifying the required financial disclosure forms, as well as the process the public may use to access reports.

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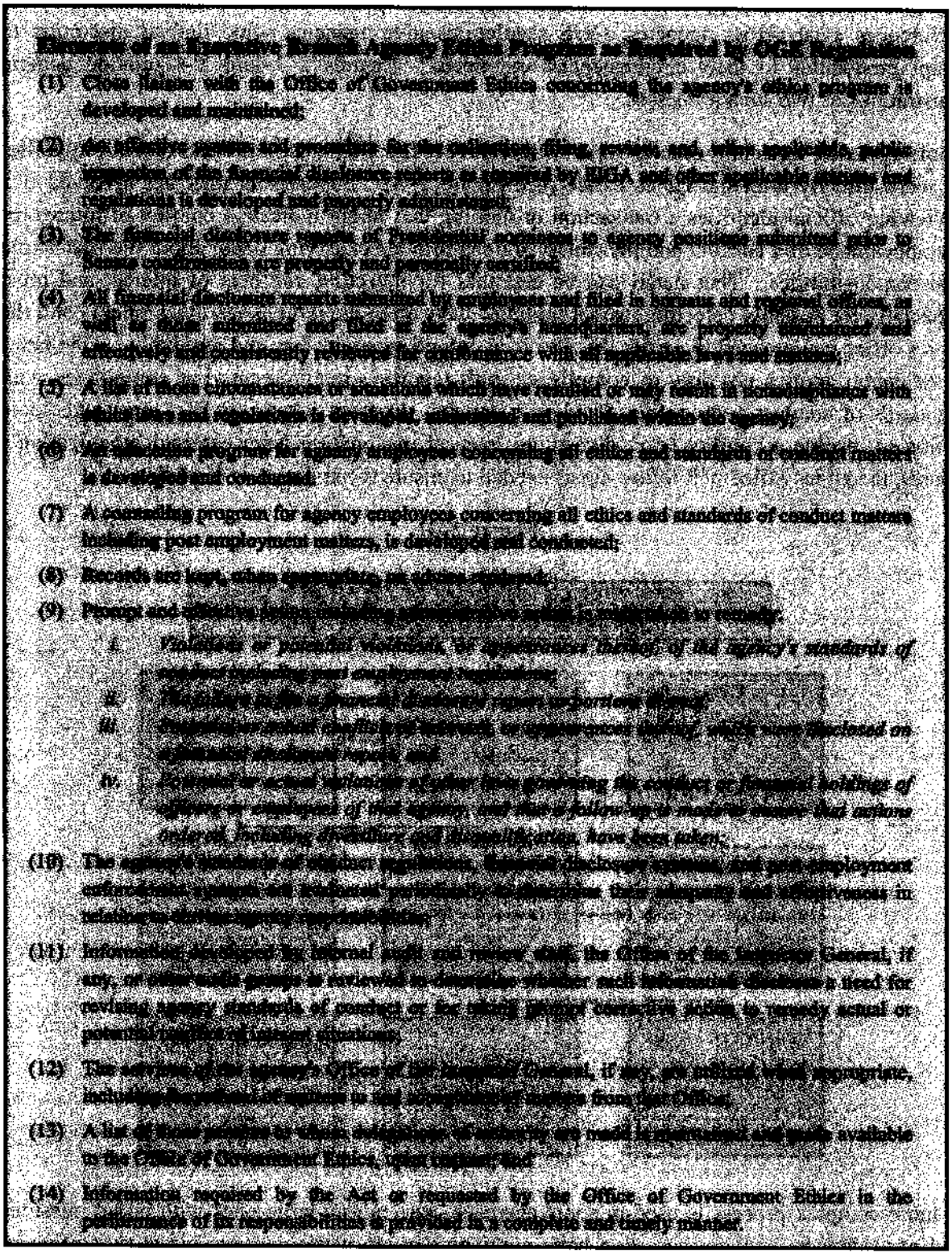
[27] OGE Form 278 and OGE Form 278-T are also referred to as SF 278 and SF 278-T.

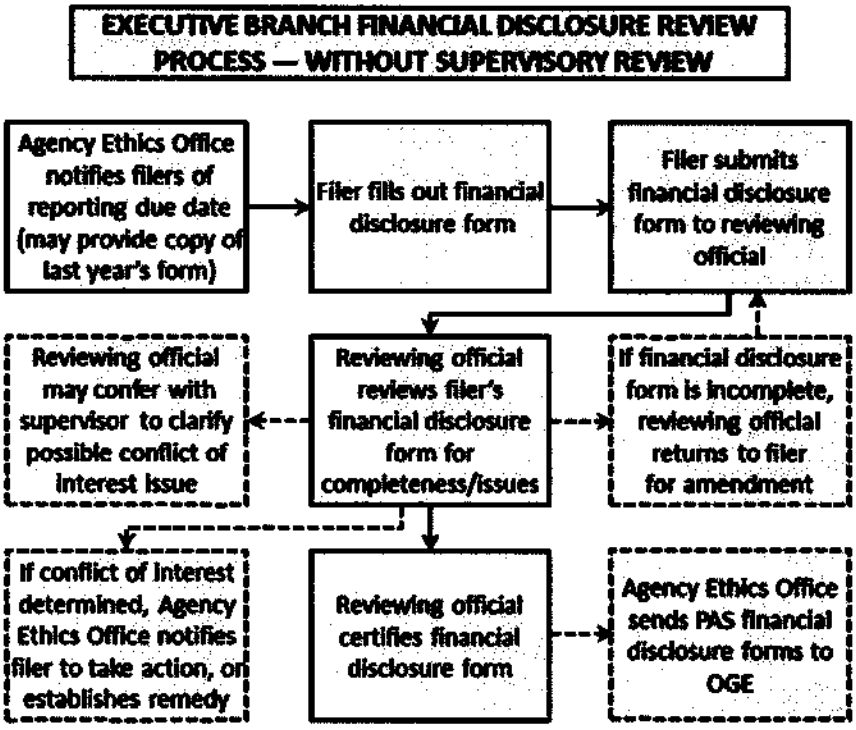
**Figure 2–2**


Elements of an Executive Branch Agency Ethics Program as Required by OGE Regulations
(1) Close liaison with the Office of Government Ethics concerning the agency's ethics program is developed and maintained;
(2) An effective system and procedure for the collection, filing, review, and, when applicable, public disposition of the financial disclosure reports as required by EIGA and other applicable statutes and regulations is developed and properly administered;
(3) The financial disclosure reports of Presidential nominees to agency positions submitted prior to Senate confirmation are properly and promptly received;
(4) All financial disclosure reports submitted by employees and filed in bureaus and regional offices, as well as those submitted and filed at the agency's headquarters, are properly maintained and effectively and consistently reviewed for conformance with all applicable laws and regulations;
(5) A list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations is developed, maintained and published within the agency;
(6) An effective program for agency employees concerning all ethics and standards of conduct matters is developed and conducted;
(7) A counseling program for agency employees concerning all ethics and standards of conduct matters including post employment matters, is developed and conducted;
(8) Records are kept, when appropriate, on advice rendered;
(9) Prompt and effective [illegible] including disciplinary action, if appropriate to remedy:
i. *Violations or potential violations of the agency's standards of conduct including post employment regulations;*
ii. *Violations of the financial disclosure report requirements; and*
iii. *Employees' actual conflicts of interests or appearances thereof, which were disclosed on financial disclosure reports; and*
iv. *Failures or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and also a follow-up to monitor to ensure that actions ordered, including disciplinary and remedial action, have been taken;*
(10) The agency's procedure of ensuring regulations, financial disclosure reports, and post employment enforcement actions are conducted consistently throughout the agency and ensuring uniformity in relationships among agency organizations;
(11) Information developed by internal audit and review staffs, the Office of the Inspector General, if any, or other audit groups as reviewed in determining whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential employee or agency situations;
(12) The advice of the agency's Office of the Inspector General, if any, was solicited when appropriate, including the results of actions in and investigative findings from that Office;
(13) A list of those positions to which assignments of employees are made is maintained and made available to the Office of Government Ethics, upon request; and
(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

Agency Review Processes. The goal of the filing and review process is to certify the filer is in compliance with all applicable laws and regulations. Not surprisingly, some procedural differences exist across agencies; OGE regulations give agencies some limited discretion to adapt procedures to their circumstances and needs. Figures 2–3 and 2–4 provide generic illustrations of two such processes.

Some agencies, especially smaller ones with relatively few filers, use a process that allows a filer to work directly with the ethics office (see Figure 2–3). Supervisors may get involved if a reviewing official identifies a transaction or holding that might indicate a conflict of interest or the appearance of a conflict and the supervisor can provide clarifying detail about the filer's role and responsibilities. That detail can be essential for detecting conflicts of interest and most especially for possibly detecting insider trading. Very often the issue is resolved quickly and the ethics office can proceed to certify the filer is in compliance with law and regulation. That latter certification applies not only to compliance with reporting requirements but compliance with standards of conduct and conflict of interest statutes. In cases where the filer must take some action to resolve a conflict (e.g., divestiture, recusal, resignation from external organization's board), the ethics office will follow-up as needed to ensure the situation is remedied.

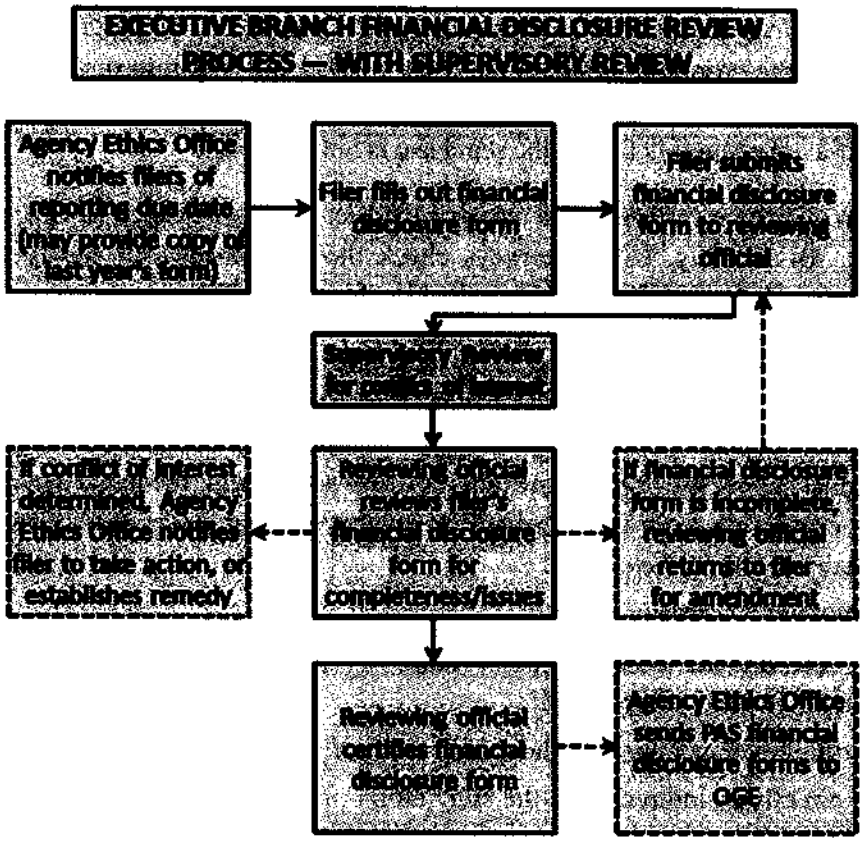
**Figure 2–3**




A more complex process is used in some agencies, particularly large ones with broad missions and operations as well as those that have missions that are particularly sensitive to conflict of

interest concerns. Figure 2–4 illustrates this situation. The principal difference is the immediate involvement of the filer's supervisor in reviewing the form. Supervisors are in the best position to stay on top of changing assignments and responsibilities that may affect the filer's compliance with standards of conduct and rules about avoiding prohibited assets. OGE gives agencies discretion over whether to require supervisory review before submission to the ethics office. Also, to prevent conflicts from developing, some agencies will provide a "cautionary" letter to a filer when an issue falls short of presenting an actual conflict of interest. A cautionary letter might advise a filer for example that a particular financial holding is an entity that does business with the agency, and the filer should therefore not participate in any particular matters involving that entity.

**Figure 2–4**




In the past, filers were permitted to attach brokerage statements as a means of supplying necessary transaction information. Many agencies have discontinued that practice as the statements were the source of so much over-reporting and would be highly inappropriate to include in publicly accessible reports.

The reviews themselves can be quite onerous, especially if the agency is still relying wholly on paper copies of prior year forms and lists of vendors, prohibited assets, etc., as many are. In effect, the reviewing official may have to do a double review, once for completeness and to find "over-reporting" (inclusion of unnecessary and inappropriate information like account numbers and children's names that should be removed), and one to examine for potential conflicts of interest. The addition of the PTRs has added to the review burden for ethics office staff and some fear it will cut into the time needed for their other reviewing duties (e.g., of confidential disclosure reports filed by non-executive level employees—typically at the GS-14 and GS-15 levels—involved in procurement, managing money, administering grants and other benefits, etc.)

Some agencies have developed what might be considered auxiliary conflict of interest monitoring and review systems. The Securities and Exchange Commission has a system that allows its employees to pre-clear a security transaction, in conformance with SEC's own supplemental standards of conduct regulations. Using an electronic program, they enter the name or symbol of the proposed purchase and their own identifying information. This program cross-checks that purchase against their unit's activity and the entities that may be under audit or investigation. If a connection is found, the purchase is not approved.

The Department of Justice carries out an ongoing conflict of interest check as U.S. Attorneys are assigned cases. Bi-annually, U.S. Attorneys check their caseloads and certify they have no conflict of interest. These certifications are vetted by the ethics office.

Public Access to Financial Disclosures. By law, the public may have access to financial disclosure forms if they provide basic identifying information, generally using OGE Form 201: Request to Inspect or Receive Copies of OGE Form 278/SF 278s or Other Covered Records. The requester must supply his or her name, address, and occupation; the name and address of any other person or organization on whose behalf the request is being made; and affirmation that the information obtained will not be used:

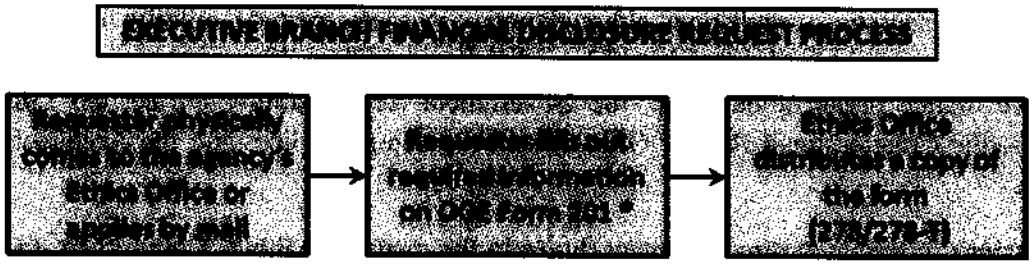
- for any unlawful purpose
- for any commercial purpose, other than by news and communications media for dissemination to the general public
- for determining or establishing the credit rating of any individual
- for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

EIGA does not provide authority or a mechanism for verifying the information supplied.

Agencies may use slightly different procedures to respond to requests for financial disclosure forms, but the typical process is depicted in Figure 2–5. Some agencies routinely inform a filer when a report has been requested; others do not. One agency requires a filer to submit his or her own OGE Form 201 to obtain a copy of the original requester's OGE Form 201. A member of

the public may come in person to a specified location to inspect or receive the form, or may have it mailed and the agency may charge a reasonable fee for copying and handling.

**Figure 2–5**



**Depending on the agency, Ethics Office may or may not notify the employee that their 278 was requested*

Agencies report that very few financial disclosure forms are requested by the public. Executive branch nominees' and Senate-confirmed Presidential appointees' disclosures are requested most often, although now they are available at the OGE website and requesters may be referred there. OGE also posts the financial disclosure forms from Presidential candidates, for which numerous requests are made during the Presidential election period. A few agencies routinely get requests for the forms from media and government reform public interest groups.

Enforcement. It is important to note that the executive branch's ethics regimen has been effective at uncovering and resolving conflicts of interest among filers and non-filers at their agencies, and pursuing criminal prosecutions when necessary. Each year OGE publishes a report of successful prosecutions by the Department of Justice, based on a survey each agency submits. These reports are published on the OGE website and provide a clear record that when wrongdoing is uncovered in the executive branch, it is pursued appropriately. OGE also requires agencies to submit an OGE Form 202: Notice of Conflict of Interest Referral, to report to OGE any alleged ethics violations that they referred to the Department of Justice for prosecution. DAEOs also refer issues to their agency inspector general for further investigation.

Insider trading violations are rare in the executive branch, but they have been found and successfully prosecuted. However, they almost never surface through ethics office reviews of EIGA financial disclosure forms. Insider trading allegations are more commonly reported to the inspector general as a tip. IG staff will often confer with the DAEO, especially to inspect financial disclosure forms for the individual under investigation. As a matter of fact, filing a false financial disclosure form to conceal the proceeds of insider trading is often one of the criminal violations that may be successfully prosecuted in an insider trading case.

The ethics community in the executive branch takes its role very seriously. DAEOs and their staffs are dedicated to ensuring the integrity of their workforce and sustaining the public trust in their agencies' operations. They work hard to establish and maintain cooperative working relationships with filers and all agency employees who may have concerns about ethics issues.

**Legislative Branch**

As with many other matters in the legislative branch, the ethics regimens in the Senate and the House of Representatives are distinct, although many issues are treated similarly. Each chamber, in addition to its own Members and staff, also handles the ethics filing and reporting for other legislative branch organizations (e.g., the Government Accountability Office, the Library of Congress, the Congressional Budget Office, the U.S. Capitol Police, and the Architect of the Capitol).

EIGA assigns oversight and management duties to the respective Ethics Committees, the Clerk of the House, and the Secretary of the Senate. The Committees are responsible for forms development and review, certification, education, and counseling.

The House and the Senate each have a Code of Official Conduct incorporated in their Rules. They both have extensive material available on their websites to educate Members and staff about duties and responsibilities for ethical conduct. Under EIGA and their respective Rules, the House and the Senate also have extensive, specific limitations on gifts, travel, and post-Congressional employment.

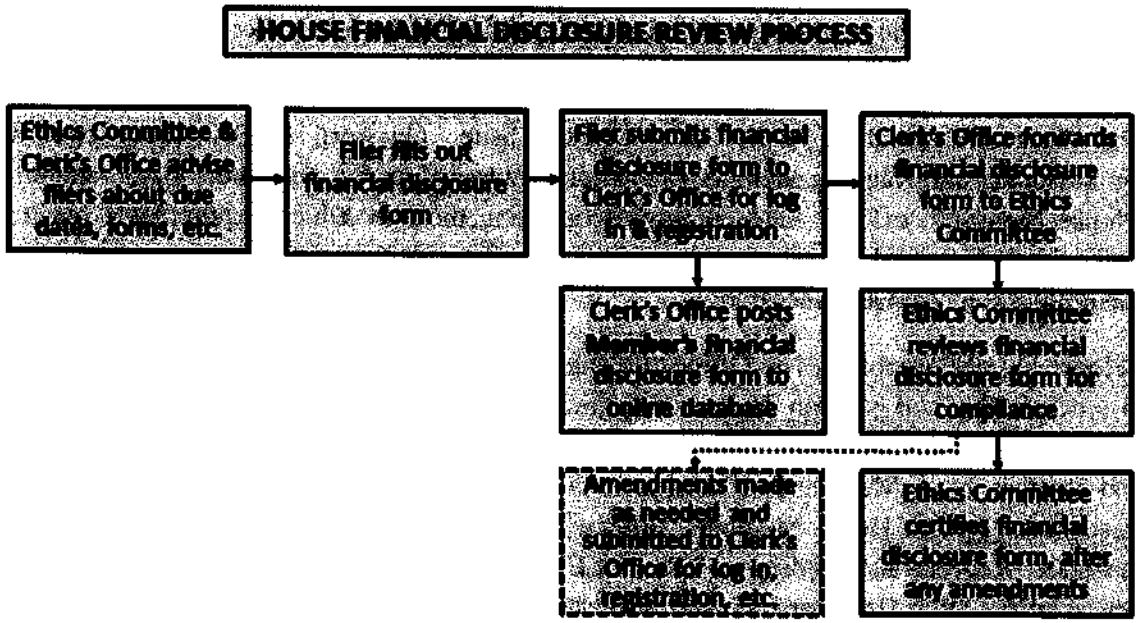
Reviewing financial disclosure forms for conflicts of interest has always been particularly challenging in the legislative branch owing in large part to the breadth of issues and interests the Congress must address as a matter of course. Public financial disclosures create a tool the public can use to monitor possible conflicts of interest. The disclosures also give constituents a means to judge official conduct in light of possible financial conflicts with private holdings.

House Process

For the House of Representatives, EIGA designates the Committee on Ethics as the "supervising ethics office" for the House. As such, it is responsible for financial disclosures and for advice and education for about 3,000 filers.[28] The House Committee administers, oversees, and interprets the financial disclosure process, including creating the forms, providing training, and answering questions. Figure 2–6 depicts the House financial disclosure review process. Financial disclosure forms are filed by Members, employees of Congress paid at or above 120% of the minimum GS-15 pay rate, and candidates for Congress. In the event no staff in a Member's office is paid at or above that rate, the Member must designate one principal assistant to file financial disclosures.

[28] The number of filers may vary from year-to-year, depending on the number of new filers, departing filers, and candidates.

**Figure 2–6**




The Clerk of the House is responsible for receiving, logging, forwarding forms to the Ethics Committee for review and certification, and retaining the forms after review, including converting them to PDF files, as well as responding to requests for copies of the reports. The Clerk receives very few requests for copies of staff reports; however, as noted earlier, a private organization posts copies of staff members' forms on their website. Since 2008, under the provisions of Honest Leadership and Open Government Act of 2007, the Clerk has posted Members' and candidates' financial disclosure forms online in PDF format in the Financial Disclosure Reports Database. That database is searchable and sortable to the extent that the requester can search for specific Members, candidates, States, Districts, and years. Those forms can be retrieved by the public at kiosks in the Legislative Resource Center or at the website of the Clerk of the House. The 2007 legislation did not establish a requirement that requesters provide identifying information to obtain an online report, so none is required for accessing the database. However, at that web page, the prohibitions on use of the information set forth in EIGA are repeated. The Clerk's website also provides yearly searchable, sortable, downloadable databases containing limited information from the financial disclosure forms (i.e., name, state, district, form type, year, filing date, and document reference number).

According to the House Ethics Manual (2008), the Committee reviews forms to "determine whether the reports have been filed in a timely manner, appear substantially accurate and complete, and comply with applicable conflict of interest laws and rules." When a positive determination is made, staff certifies compliance. If review of a form surfaces a problem, the Committee will request amendment, and, as needed, make a referral to the Department of Justice. They also determine whether a late filing fee is required and whether a fee may be waived.

Several legislative branch organizations (e.g., Library of Congress, Congressional Budget Office, Architect of the Capitol, U.S. Capitol Police) file their financial disclosure forms through the Clerk of the House. Their forms are reviewed and certified by the Ethics Committee.

The Ethics Committee provides periodic advisories, referred to as "Pink Sheets," on various topics. These are available on the Committee's website. On April 4, 2012, then-Committee Chair Jo Bonner and Ranking Member Linda Sánchez issued such a pink sheet memorandum to all House Members, officers, and employees outlining the new ethics requirements resulting from the STOCK Act, clarifying coverage of the provisions and providing interpretive guidance on the prohibition against insider trading.

The House has also established an Office of Congressional Ethics (OCE). Established in 2008, it is an independent, non-partisan organization governed by an eight-member Board of Directors. The mission of the OCE and its Board is to assist the House in upholding high standards of ethical conduct for its Members, officers, and staff. OCE is charged with reviewing allegations of misconduct against House Members, officers, and staff. It may refer matters to the Ethics Committee. Reports and findings of the OCE Board generally must be publicly released. Members of the OCE Board are private citizens and cannot serve as Members or work for the federal government. Under House Rule XXVI, they are required to file a modified financial disclosure report (similar to the report required of confidential filers in the executive branch), which is available to the public.

Senate Process

EIGA designates the Senate Select Committee on Ethics as the "supervising ethics office" for the Senate. As such, it is responsible for financial disclosures and for advice and education for about 1,300–1,600 filers.[29] The Committee administers, oversees, and interprets the financial disclosure process, including creating the forms, providing training, and answering questions. Figure 2–7 depicts the Senate financial disclosure review process. Financial disclosure forms are filed by Senators, officers of the Senate, employees of the Senate paid at or above 120% of the minimum GS-15 pay rate, candidates for the Senate, and Political Fund Designees.[30]

The Secretary of the Senate's Office of Public Records (OPR) is responsible for accepting, logging, scanning, and converting to PDF format the financial disclosure forms for the Senate. OPR receives very few requests for copies of staff reports; however, as noted earlier, a private organization posts copies of staff members' forms on their website. Since September 2012, in

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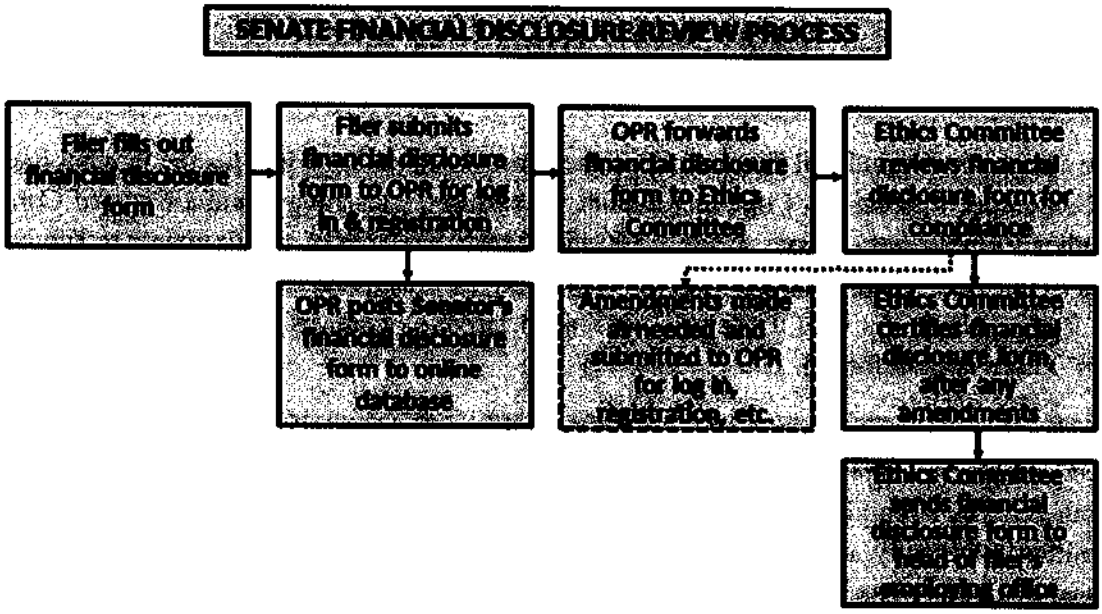
[29] The number of filers may vary from year-to-year, depending on the number of new filers, departing filers, and candidates.

[30] Each Senator designates up to three assistants as Political Fund Designees (PFDs) who may receive, solicit, be the custodian of, or distribute funds in connection with a political campaign. Under Senate Rules XXXIV and XLI, PFDs must file the financial disclosure forms required by EIGA.

accordance with the provisions of the STOCK Act and Pub. L. 112-178, OPR has posted Senators' and candidates' financial disclosure forms online in PDF format in the Senate Public Financial Disclosure Database. They can be retrieved without having to provide identifying information. To gain access, however, one must acknowledge awareness of the prohibitions on obtaining and use of FDRs, which are displayed. The database is searchable and sortable to the extent that the requester can search for the forms of specific Senators or candidates by name, state, or date received.

**Figure 2–7**




The Committee staff review financial disclosures for completeness and year-to-year consistency and to identify and eliminate over-reporting of nonessential information, so that the report can be certified as complying with law and regulation. To the extent resources allow, the Committee offers an opportunity for filers to have their forms reviewed in advance of a filing deadline to assure better completeness and compliance. They also offer advice and counsel as needed.

With respect to conflicts of interest and insider trading, on December 4, 2012, the Ethics Committee issued guidance on "Restrictions on Insider Trading Under Securities Laws and Ethics Rules." It provides an extensive review of the applicability to insider trading of securities laws, the federal government ethics standards established by concurrent resolution in 1958, and pertinent Senate Rules.

The Honest Leadership and Open Government Act of 2007 established new requirements for the Ethics Committee to provide ongoing ethics training and awareness programs for Senators and Senate staff. It also required the Committee to issue an annual report of the number of violations of Senate Rules from any source, the number of alleged violations that were dismissed and the

reasons therefore; the number of alleged violations and matters that led to an inquiry, adjudicatory review, or disciplinary sanction; the number of private and public letters of admonition; and any other information deemed by the Committee to be appropriate to describe its activities in the preceding year. Those reports are available on the Committee's website.

The Government Accountability Office (GAO), the largest of the legislative branch agencies, files and maintains its financial disclosure forms through the Secretary of the Senate. Otherwise its review and certification process is handled internally. As the chief federal audit agency, GAO has elaborate standards of conduct. The July 2007 revision of *Government Auditing Standards* includes a chapter on Ethical Principles in Government, which includes specific sections on Integrity and Proper Use of Government Information, Resources, and Position.

**Judicial Branch**

EIGA designates the Judicial Conference as the supervising ethics office for the judicial branch. The Conference maintains a Code of Conduct for United States Judges and a Code of Conduct for Judicial Employees. About 4,200–4,500 individuals meet EIGA requirements to file public FDRs; about half of all filers are judges. The STOCK Act includes no provision for posting these forms online. As with the legislative branch, private organizations post copies of federal judges' FDRs in PDF format.

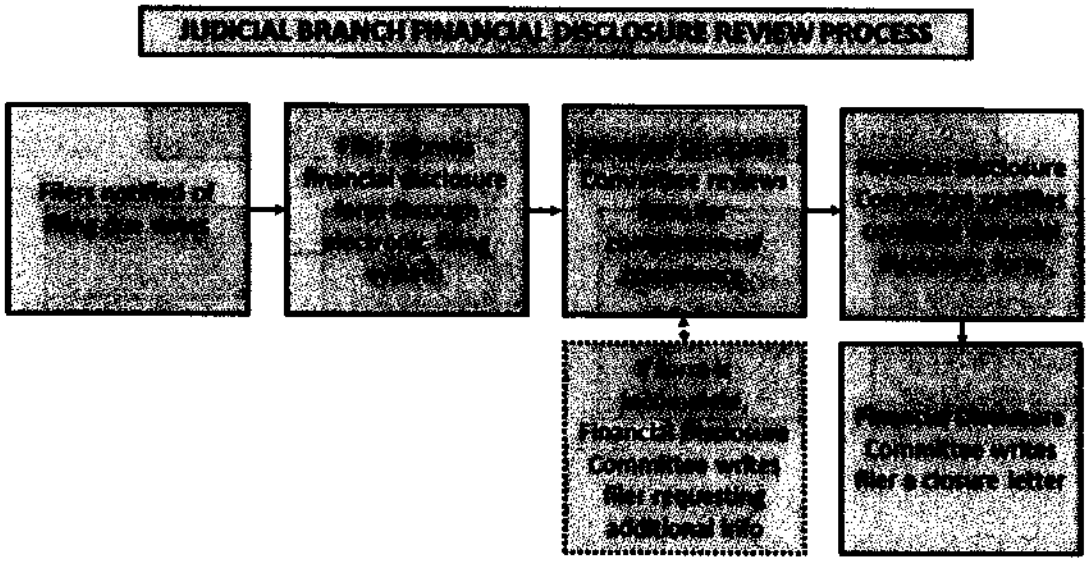
The Judicial Conference is organized into Committees of Federal Judges appointed by the Chief Justice, including a specific Committee on Financial Disclosure and a Codes of Conduct Committee. The Administrative Office of the U.S. Courts provides administrative support to the Committees. Recently, an electronic filing system was introduced that has greatly enhanced the financial disclosure reporting process.

The Committee on Financial Disclosure approves and modifies all reporting forms and instructions. They respond to inquiries regarding financial disclosure matters from judges, employees, and the public.

The Committee reviews all the disclosure reports, principally for completeness and consistency. Figure 2–8 depicts the judicial branch review process. The Committee issues a closure letter to a filer when they have certified it in compliance with law and regulation.

This compliance orientation reflects to some degree the different nature of the work and environment of the judicial branch. With respect to monitoring and preventing conflicts of interest, the judicial branch has its own separate and sophisticated "auxiliary" system for recusal. The Judicial Conference has mandated that judges use software to screen for financial conflicts. They enter their own information, and the case management system can assist the judges in determining whether they should recuse themselves.

**Figure 2–8**




The breadth of their cases and the interests they entail are extreme and cannot be predicted, so reviewing judges' point-in-time snapshot of financial holdings would almost be futile. Judges and judicial employees are counseled to be mindful of their codes of conduct. They know to seek advice and counsel from the Committee if they have a question about a particular situation. They understand that making these reports available to the public supports transparency and the integrity of the judicial system and the government in general.

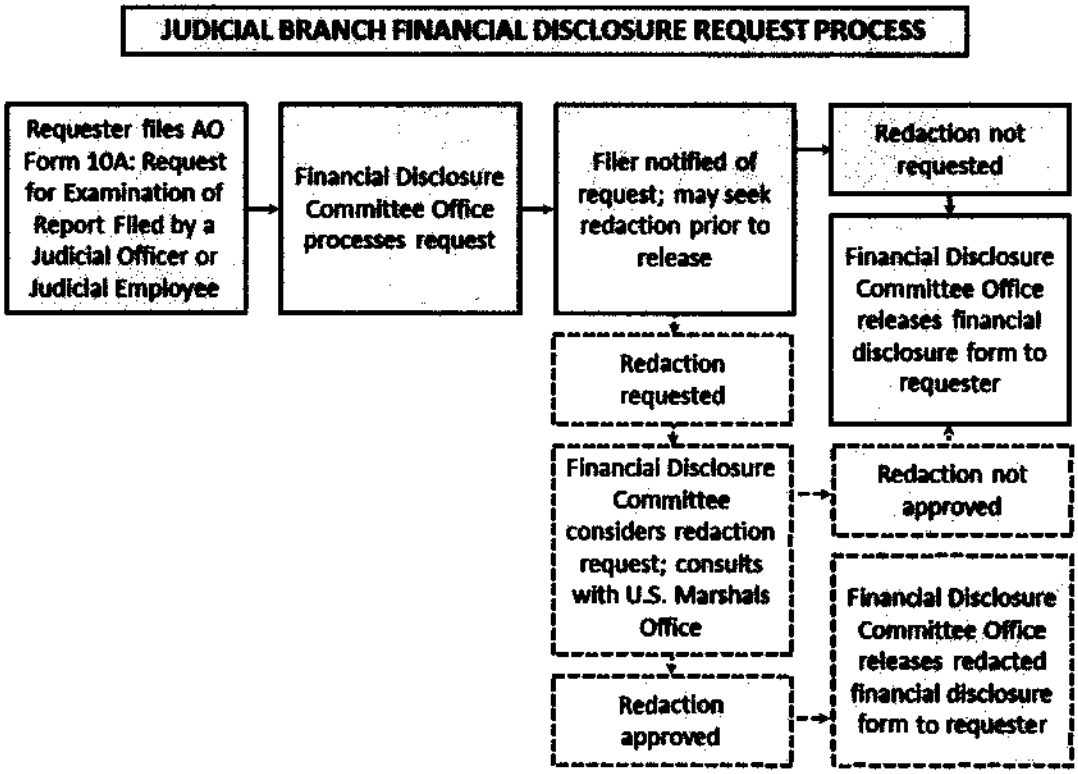
The Administrative Office of the U.S. Courts handles maintenance and release of the forms. Figure 2–9 depicts the process for requesting a form. Periodically bulk omnibus requests for all judges come in from services like Judicial Watch, an organization that provides an online compendium of information about judges.

A unique feature of the judicial branch financial disclosure program is their having the authority to redact an FDR if the Committee makes a finding, in consultation with the U.S. Marshals Service, that revealing personal and sensitive information could endanger that filer or a family member. A report may be redacted only to the extent necessary to protect the filer and family and only for so long as the threat exists. The Committee has developed standards for determining what a threat is and the appropriate redaction to allow. Authority is granted for a year and it may be renewed if the threat continues. The Committee files annual reports with both houses of Congress concerning its limited use of this authority.

Consultation with the Marshals is critical because they can work with local law enforcement to assess the local situation around the courthouse and chambers, the nature of threats there, and how best to manage them. In many ways, this is a somewhat closed system with a community of judicial branch employees and their partners working together to take appropriate, prudent and

educated steps to address dangerous situations. The threats to judges are very real, and Congress recognized that in granting this authority.

**Figure 2–9**




The Judicial Conference also provides educational material for judges and judicial employees, for example, through *The Third Branch News* website, which covers a wide range of topics. In his 2012 Annual Report, the Director of the Administrative Office of the U.S. Courts noted that the STOCK Act included provisions that affect judicial branch filers with respect to negotiating agreements with private entities for post-judicial employment or compensation. The Director also reported:

> *The Judiciary's existing ethics rules already cover, in general terms, the specific items addressed in the STOCK Act. Existing ethics rules also provide guidance concerning potential conflicts of interest related to post-judicial employment. The Committee on Codes of Conduct is developing recommendations on implementation of the STOCK Act.*[31]

[31]http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2012/accountability.aspx

## SUMMARY

Current ethics policy and practice in the federal government reflect a decades-long evolution. Many aspects of ethics reviews and disclosures have a long tradition, and those who file and review disclosure forms have developed a valuable experience base to facilitate these important programs for assuring transparency and the integrity of federal officials. Other aspects, such as online posting and availability, are still new in many ways. In the executive branch, OGE's central leadership and guidance have resulted in branch-wide consistency blended with programs tailored to agencies' differing needs and missions, to the extent that statutory requirements permit such adaptations.

The legislative developments of the past 35 years can be instructive as their impacts are examined further. Clearly, Congress has revisited some of these requirements over time and made some appropriate changes. For example, concerns about the physical security and safety of federal judges led to a well-controlled redaction authority to protect individuals against threats. Congress made distinctions among categories of filers and the degree and nature of disclosure required when it limited initial online posting of financial disclosure forms to Members of Congress and only very senior federal officials. One area that has not changed very much is the kind of financial information that must be reported. Occasionally new requirements will be added for certain categories of employees (e.g., Members and PAS officials must report mortgages on their personal residence). Generally, however, in the past Congress has taken a more process-oriented than substantive approach to refining ethics policy and practice.

# CHAPTER 3: RESEARCH

## OVERVIEW

During the course of this study, it became apparent that limited quantitative data are available to assess the potential impacts of the STOCK Act's new searchable online disclosure requirements. This results from three factors:

- the lack of a systematic process or repository for gathering information about negative outcomes that might have come about as a result of current online disclosures;
- the general inability for someone who was "harmed" (e.g., had their identity stolen) to trace the source of the harm; and
- the prospective nature of the STOCK Act's most controversial elements (e.g., searchable, sortable, downloadable online data).

This lack of empirical data made answering fundamental questions about possible outcomes difficult, but not impossible. To better understand the issues, the study team conducted extensive, in-depth interviews with stakeholders and interested parties holding a broad range of perspectives and views, including those who support as well as those who oppose these provisions. The study team conducted 80 interviews involving over 150 executives, stakeholders and subject matter experts representing 59 organizations:

- twenty-five executive branch agencies
- six committee staffs, staff from thirteen Congressional members' offices, as well as GAO, representatives from the offices of the Secretary of the Senate, the Senate Sergeant at Arms and the Clerk of the House
- the Administrative Office of the U.S. Courts
- five identity theft/cybersecurity organizations, three former national security officials
- other entities, including PricewaterhouseCoopers LLP, the Sunlight Foundation, the Partnership for Public Service, the American Foreign Service Association, and the Senior Executives Association

The review also considered existing reports, studies, documentation, news articles and online commentary regarding the STOCK Act, ethics policy and practice, and issues surrounding the security of personally identifiable information.

The following section outlines the major elements of these arguments.

## REASONS CITED IN FAVOR OF POSTING DISCLOSURES ONLINE

### Congressional Discussions

Initial legislative discussions of the STOCK Act focused exclusively on the Congress and senior legislative staff members. The section of the STOCK Act mandating online disclosures for executive branch employees was added by an amendment proposed on February 1, 2012 by Senator Richard Shelby (R. AL), who noted at the time:

> *"My amendment merely expands the enhanced disclosure requirement under the STOCK Act to these current (executive branch) filers. Without this amendment, it would be impossible for the public to know whether the executive branch officials are complying with the STOCK Act."*[32]

Although there was a limited discussion on the floor of the Senate that day, no hearings were held on this amendment or its potential impacts. Discussions held with senior congressional staff members noted that the intention of this amendment was to achieve parity between the branches regarding the filing of financial disclosure forms. Many senior congressional staff were negative to neutral in their personal perceptions of the value the STOCK Act disclosures or databases offered. However, a few felt strongly that complete transparency was the only way to ensure the public trust and that the equally important principle of parity compelled full coverage for both the legislative and executive branches. It should be noted that the Senate-passed version of the act would have required the online posting of financial disclosures of confidential filers, which would have brought the estimated total of online disclosures to 300,000. This provision was dropped in the House version which limited executive online posting to public filers only.

### Presidential Statements

During his 2012 State of the Union Address, President Obama made reference to the STOCK Act then being considered by the Congress when he said: "Send me a bill that bans insider trading by members of Congress; I will sign it tomorrow." The bill that arrived on his desk also included the provision for online posting of executive branch employees financial disclosure forms. On that occasion, he noted in his signing statement that: "The STOCK Act...creates new disclosure requirements and new measures of accountability and transparency for thousands of federal employees. That is a good and necessary thing. We were sent here to serve the American people and look out for their interests—not to look out for our own interests."

### Other Reasons Cited in Favor of Posting Disclosures Online

A number of other reasons have been offered as to why the online posting of federal executive financial disclosure forms is a good idea, including:

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[32] *Congressional Record*, 112th Cong., 2d sess., 2012, Vol. 158, pt. 16:240–241

Transparency is increased. Government transparency can be understood as the concept that "information about government actions should be available to the public unless there is a good reason to withhold it."[33] A key question to answer in the research in this study is whether the benefit from the increase in transparency is greater than the "good reason" to withhold it.

A coalition of reform groups[34] came out strongly in support of the passage of the STOCK Act, but much of that the support was provided before executive branch employees were added to the act's online disclosure provisions. One organization's executives interviewed by the study team stated that the addition of executive branch employees was a positive development and argued that this amendment adding the executive branch should remain as part of the legislation.

The study team wrote to the other members of the coalition to solicit their views about the executive branch inclusion in the STOCK Act provisions. Four of those organizations provided comments that were neutral in their views on this inclusion The Academy did not receive a response from the other organizations despite follow-up inquiries.

Filings will be more honest. Some research suggests that posting information online leads to more honesty on the part of the person reporting the information. This may indeed prove to be true for certain types of postings. However, executive branch financial disclosures are 100% audited for potential conflicts of interest by at least two, and often more, levels of reviewers and carry potential criminal penalties if completed falsely. This lowers the likelihood that online filing, in and of itself, would promote more honesty and accuracy.

Searchable, sortable data allows for meta-analyses. The ability to conduct more comprehensive reviews of financial disclosures filed by federal officials would definitely be a feature of the proposed online, searchable, sortable downloadable system required by the STOCK Act. The ability to sort through and comprehensively analyze the private financial holdings of federal officials would be available to anyone with an Internet connection and the capacity to conduct such analyses.

This financial information is already widely available on the Internet; therefore, there is no harm in posting it. The widespread growth of Personally Identifiable Information (PII) on the Internet is cited as a reason to not be concerned about posting financial disclosure information because it would not add anything of significance to what is already available. Cybersecurity experts interviewed by the study team stated that although a great deal of information about individuals can be gleaned by a sophisticated Internet user, financial disclosure forms contain important information pertaining to both filers and their families that is not typically available through Internet searches

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[33] Clark, op. cit., p.1.

[34] The following organizations were contacted as part of this research: Public Citizen, Common Cause, Sunlight Foundation, Citizens for Responsibility and Ethics in Washington, Democracy 21, U.S. PIRG, Bureau of National Affairs, Progressives United, Campaign Legal Center

Posting precludes charging for access to information that is already publicly available. It has been argued that if financial disclosure data are not available online (for free) someone will 'monetize' the information and charge for access. Any organization attempting to monetize public disclosure form data would first have to overcome the legal prohibition against using this information: *"for any commercial purpose, other than by news and communications media for dissemination to the general public."* There are inherent difficulties in making a profit from executive branch financial disclosures. Although legislative branch financial disclosure forms for senior staff are available in centrally located offices in the House and the Senate and can be photocopied for a nominal fee, it is difficult to determine the degree of interest in following a similar process for executive branch disclosures if the pre-STOCK Act regimen continued to be followed. Agencies interviewed for the study reported limited requests for such information. Couple this with the difficulty in obtaining disclosures from scores of different locations as well as the potential costs, and the likelihood that this information will be systematically collected and published online for profit diminishes.

Whistleblowing will improve. With financial disclosure information available online, subordinate employees as well as those regulated by the executive filer or seeking contracts or grants from the agency could consider decisions the filer made in light of his or her financial holdings to see whether there are improprieties. On the other hand, ethics offices fear having to field numerous allegations of impropriety ("false positives") that would be based solely on an appearance of impropriety because a filer's job title seems to imply responsibilities in an area in which he or she has holdings.

There are no reviews of the (executive branch) reviewers. Although the original EIGA called for the Government Accountability Office (GAO) to conduct periodic reviews, none have been done since the early 1990's. This was pointed out as a weakness in the current system in that there are no third-party audits of the reviews being conducted. Therefore public scrutiny (via online posting) would serve as a substitute.

## REASONS CITED IN OPPOSITION TO POSTING DISCLOSURES ONLINE

The overwhelming majority of interviewees spoken to during this review expressed a high degree of concern about the online posting of financial disclosures. As noted earlier, very limited data are available to support these concerns but many of the interviewees carry particular expertise in the areas under review. The Panel has received letters from three federal agencies that have major national security roles: the Department of Defense, the State Department and the Federal Bureau of Investigation. Each letter (See Appendix D) detailed specific concerns about the online posting provisions of the STOCK Act.

**General Concerns**

Making so much valuable information so easily accessible exacerbates existing dangers. Cybersecurity interviewees noted that as crime becomes more digital, information becomes more valuable and the value of that information is not merely based on the financial or other returns it can generate, but also on the quality of the information and the cost and risks of acquiring it. The unfettered addition of this specific, verified financial information to what is already available on the Internet increases the risk that this information will be misused.

The criminal underworld and sophisticated criminal gangs will exploit this information. These groups have created member-only online forums and clandestine "criminal bazaars" where stolen identities and personal information are bought and sold. In this case, the criminal need not steal it; the federal government will have made it readily available. Given the value of the information contained in the STOCK Act financial disclosure, it is likely that this 'free' personal and financial information will make it to these forums where it will survive, and be propagated, combined with other bits of personal information (stolen and otherwise), and repurposed for criminal intent.

Control of the information is lost permanently and irretrievably. Cybersecurity experts also noted that when this information is released "into the ether," it survives forever.

**Mission Concerns**

Harms national security. National security and law enforcement officials and experts have expressed specific and strong concerns about the potential impacts of the STOCK Act. If the identities and sensitive personal information of employees serving across the nation and around the world are posted on the Internet, it could expose their families as well as intelligence, counterintelligence and national security missions to harm with no concomitant benefit to the public warranting such risks.

Could help suborn federal employees. One senior official described the information posted on an FDR as capable of "creating a path to treason" because financial information about excess debt, falling income or sustained financial losses can be used to identify individuals who may be vulnerable to financial inducements to compromise their official duties. According to experts, those inducements often start off as 'harmless' (and seemingly innocuous) offers of financial assistance from sources not directly connected to a criminal or foreign intelligence organization.

Makes our enemies' job easier. FBI and intelligence community personnel are often targeted by foreign state actors seeking to fashion composite profiles, as is now being done in the identity theft world, for the purpose of developing and recruiting assets. This information could save these foreign actors months and years of effort.

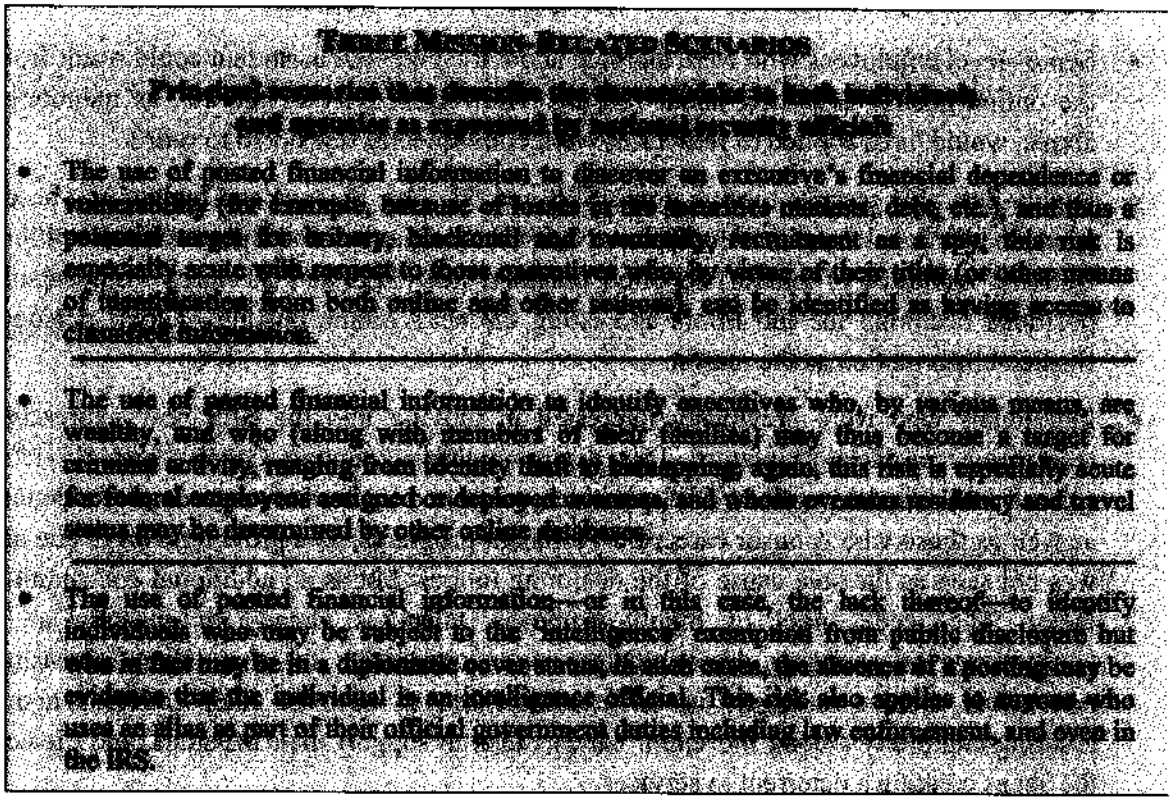
May expose intelligence and other officers working undercover. Interviews with officials of the law enforcement, intelligence, and diplomatic communities disclosed that the reporting requirements create an issue for intelligence and law enforcement filers who may be operating under a pseudonym (a number of Federal agencies, including the Bureau of Prisons and IRS, authorize their employees to do so) and/or under cover as fictitious employees in other Federal agencies. According to officials interviewed, while 'covered' intelligence officers are exempt from STOCK Act reporting, the *absence* of a financial disclosure form under their true/cover identity may reveal their status, and a false report created to mask that status may have discrepancies that have the same result. That status may also be revealed via the financial disclosure of a federally employed spouse of a "cover" employee, who would still be required to list joint assets that could indirectly expose his or her intelligence or law enforcement officer spouse.

Puts law enforcement personnel at risk. Interviews with law enforcement officials underscored the concerns they have that this information could be exploited by criminals (some of whom may even be incarcerated) and criminal organizations to either harm or try to gain an advantage against these officials. Law enforcement officials report many examples of prisoners who have Internet access in prison and use that access to retaliate against federal officials who helped put them behind bars by filing false mortgage liens against their homes and properties. The officials we interviewed feared that unrestricted online access to additional detailed personal financial information of law enforcement officials will materially worsen the existing situation.

Puts employees on missions overseas (and their families) at risk. Officials were especially concerned that unrestricted online access to the personal financial information of employees stationed overseas, as well as their families, would subject them to greater risk of kidnapping. Indeed, prior to an overseas posting, State Department employees and their families are officially warned to avoid any discussion of their finances—in person, online, or by telephone—while posted overseas, because of the very real possibility that this would single them out as potential targets of kidnappers (a common criminal practice even in countries that are friendly to the US); this also apples to Federal employees on temporary duty/travel overseas. Employees are also warned that foreign officials could also use personal financial information to identify and influence those who may be involved in important negotiations. According to those officials, the STOCK Act posting would negate all of those precautions and add to the risk that is already associated with overseas postings and/or official travel.

To help give these risks more substance, the study team culled from the interviews and experts three plausible and persuasive scenarios entailing the impact of easily available, easily exploitable online financial information (see Figure 3–1 ).

**Figure 3–1**



Produce serious misgivings that impact recruitment and retention for senior-level positions[35] in the executive branch, especially for the Senior Executive Service (SES). Each of the executive branch agencies interviewed for this study was asked about any discernible impacts on SES recruitment and retention resulting from the online posting requirement. Overwhelmingly, interviewees mentioned experiences with one or more of the following situations:

- Senior-level employees who were alarmed about the potential harm that could result from the online posting of their financial disclosure forms inquiring about taking downgrades. Because the effective date of act was retroactive to January 1, 2012, any SES member

[35] Senior-level positions in the executive branch include:

- Senior Executive Service (SES) positions,
- Senior-Level (SL) positions (i.e., positions that are not executive positions, but that are properly classified above the GS–15 grade level),
- Scientific or Professional Positions (ST) (i.e., non-executive positions classified above the GS-15 level that involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field)
- Senior Foreign Service positions
- FBI/DEA Senior Executive Service positions

who took a downgrade would still have his or her 2012 FDR included in the online posting for six years. Because of this, few opted for the downgrade.

- Senior-level employees who were alarmed about the potential harm that could result from the online posting inquiring about retiring. The retroactivity of the act, as mentioned above, would have applied to retirees as well; consequently few opted to retire.
- Highly-desirable recruits turning down SES and ST jobs. Science and technology-based agencies (National Science Foundation, National Aeronautics and Space Administration, National Institutes of Health) reported potential new SES and ST hires from outside positions declining the job offers and citing the act's online posting of their personal financial information as the reason.
- Individuals who were previously interested in moving into the SES now expressing reservations or lack of interest. This declining interest among GS-14's and GS-15's, typically the "feeder pool" for SES positions, was cited by human resource professionals as well as those who sponsor career development programs, as a growing worry. The act was not seen as the sole cause of the declining interest but as an additional contributing factor. The feeder pool of highly-competent talent is already diminishing as a consequence of changing demographics, with competition for that talent increasing nationwide. Senior managers in the executive branch reported their concerns about assuring continuity among the senior career ranks to support their missions, and viewed the act as creating a deterrent to service.

It is important to note that the reasons given by these employees usually centered on the desire to protect their privacy, fear of identity theft or other financial harm and sometimes, fear that such information could be used to harass or physically harm themselves or their families. For those who work in national security and law enforcement, the concerns extend across both their professional responsibilities, as noted above, and their personal and family's well-being.

**Individual Concerns**

Identity theft. This was easily the fear most widely held or reported among the individuals interviewed for this review. Cybersecurity experts pointed out that although the information contained in a financial disclosure form would not in and of itself, lead to identity theft, it would (1) make identity theft easier, and (2) make it easier to identify more vulnerable or lucrative targets. Although it is relatively easy for identity thieves and other criminals to find a target's name, home address, date of birth, and even Social Security Number, the personal financial information contained in a financial disclosure form is rarely if ever available in any other single location.

Phishing. A number of interviewees cited the dangers of "phishing" which is a tool to help criminals steal identities by tricking a recipient into revealing sensitive information they might not normally provide. In this situation, information gleaned from the financial disclosure form

could be used to construct a believable email from a trusted source that the filer might be more likely to accept and respond to. Phishing emails can also trick recipients into clicking on links that lead to malware infecting the recipient's home or work computer and stealing personal information as well as logins and passwords.

Threats and intimidation. Threats and intimidation against public servants, federal employees, and their families are nothing new, but there is concern that the amount of personal information revealed online will not only make it easier to target these individuals, it may also highlight individuals and families whose personal wealth inspires or triggers unprecedented new threats.

Fear and anxiety. Even if identity theft's final financial cost to victims can be quite low, usually in the hundreds of dollars, the emotional damage can be significant. Studies by the Identity Theft Resource Center have found that victims consider the long-term impact of identity theft comparable to a serious assault. Victims report extended periods of worry, stress, feelings of violation and invasion of privacy.

Possible use to identify and target family members. Agency officials reported a number of instances of individual federal employees expressing concerns about the online posting provisions because it may direct unwanted attention and risks to family members, including minor children.

**Concerns of Ethics Officials**

Periodic transaction reports are ineffective for detecting or deterring insider trading. The STOCK Act's new financial reporting requirement, the periodic transaction report (PTR), provides information that is intended to be useful in detecting whether employees of the legislative and executive branches have used nonpublic information derived from their official positions for their personal benefit, i.e., have engaged in "insider trading." Rather than or in addition to reporting their securities transactions once a year in their annual FDRs, filers must now report any transaction in an amount of at least $1000 of any stock, bond, commodity future, or other form of security.

The scope of information required for a PTR is about the same as must be reported for securities transactions on the FDR—just name, position, security identifier, purchase/sell/choice, and categories of values. OGE has created a new periodic transaction reporting form, the OGE-278-T: Periodic Transaction Report; the House uses a Periodic Transaction Report (PTR) form; and the Senate uses a Periodic Disclosure of Financial Transactions form. The new reporting requirements do not apply to the judicial branch.

OGE issued the following instructions to reviewing officials for examining 278-T reports:

> "The analysis should normally be prospective in nature, with the aim of preventing conflicts of interest from occurring. However, if the review of a periodic transaction

report raises a concern about a possible violation of 18 U.S.C. § 208 or related laws and regulations, the ethics official may need to inquire further or, consistent with existing practice, refer the matter to an investigative authority."[36]

To be useful in detecting insider trading, a PTR reviewer—or member of the public inspecting a PTR—would have to have sufficient information about the filer's role and responsibilities, including current assignments, to be able to judge whether a specific transaction might constitute insider trading. In some settings, the reviewing officials can reasonably be expected to stay current about a filer's circumstance. In the executive branch, agency-specific requirements to have the filer's supervisor serve as an intermediate reviewer for the PTR might also facilitate insider trade detection. The likelihood that a member of the public would reliably have an accurate frame of reference for a given filer at a given time appears minimal.

Implementing the new PTRs has brought an added burden for the ethics community that reviewing and posting these periodic reports represent. Also the risk of significant numbers of "false positive" alerts from the public that an online database might provoke is another concern. More resources may well be required for the ethics offices.

One consequence of the STOCK Act that has caused considerable concern for legislative branch ethics officials is the mismatch between (1) the 30-day deadline for online posting of financial disclosure forms by the Secretary and Sergeant at Arms of the Senate and the Clerk of the House respectively, and (2) the 60-day deadline for reviewing and certifying forms by the Ethics Committees. Committee review will frequently identify reporting problems (e.g., missing information, inconsistent information, unnecessary information). When that occurs after the forms have already been made available online, amendments must also be filed, reviewed and posted. The information originally posted will remain available to the public in its incorrect form.

To some degree, the new periodic transaction reporting has proven problematic for filers. Complying with the requirement to file by the earlier of 45 days after the transaction or 30 days after notification of the transaction is sometimes difficult. Some filers have had to pay special fees to their investment management services to obtain investment statements on a more frequent basis than quarterly. Some purchases, such as automatic dividend reinvestments, may easily reach the $1000 threshold. By their nature, these ought not to be reasonably construed as insider trading, but they must be reported anyway.

Questions arose as to whether multiple transactions on a single PTR that was filed late would trigger multiple $200 late filing fees. To facilitate education and understanding during this

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[36] Office of Government Ethics Legal Advisory-12-04: Public Financial Disclosure—Periodic Transaction Reports, June 20, 2012.

startup phase, OGE has waived the late filing fee requirement for transactions that occur before July 3, 2013, except where a DAEO determines the failure to file was intentional.[37] Ethics officials in both branches have done their best to educate and work with periodic transaction report filers to make this process as smooth as possible.

It is worth noting that although insider trading by federal employees has been successfully prosecuted, their FDRs and reviews had almost never set the process in motion. No such instances were identified in this study.

It has been suggested that this new periodic transaction reporting requirement is overly burdensome and has an extremely low probability of offering any benefit for detecting and deterring insider trading. The costs and potential benefits appear severely out of balance.

Executive branch ethics regimen is extensive and effective, but not efficient. Over the 35-year history of EIGA, a dedicated and largely effective ethics community has developed across the executive branch. These practitioners take seriously their mission to prevent and resolve conflicts of interest. Under the leadership of OGE, the DAEOs and their staffs consider their counseling and education role just as important as their role in collecting, reviewing and certifying financial disclosure forms and establishing ethics agreements.

Being able to serve as the advisor cum counselor who is so essential to preventing conflicts of interest from ever arising can be jeopardized to some degree by significant changes in the administrative duties ethics officials are called upon to perform. Filing deadlines take precedence over all else. In times of growing austerity, ethics programs have to compete for severely limited resources. Ethics officers expressed concern about their ability to maintain an effective balance across their duties. Some agencies also have traditionally experienced high turnover among ethics staff. Here, leadership from the very top of the organization is important in setting a tone that ethics work is important and valuable and should not be considered a backwater assignment.

Discussions of the review process with many agencies made clear that the fundamental filing and review process could be much more efficient than it is. The desirability of moving to electronic filing and review was strongly expressed by many agencies. Some have already made inroads on this issue, but a great deal of the filing and review process remains paper driven. Reviewing officials believe it would be helpful to use and query agency databases (e.g., vendors lists, prohibited assets), rather than do a tedious cross check from multiple paper documents. They believe they could recapture substantial time if filing software helped prevent what is kindly termed "over-reporting"; i.e. the inclusion on the disclosure of information that need not and should not be disclosed (e.g., children's names, account numbers).

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[37] Ibid.

The process can also be frustrating owing to the outdated nature of the statutorily defined information that is to be reported. In 1978, financial products like financial derivative instruments and hedge funds were not even contemplated. Aligning the available data for more recent complex instruments against the statutory language of EIGA creates dilemmas for filers, DAEOs and OGE. Furthermore, the dollar value thresholds and ranges, which have not changed since 1978, do not correspond to the ranges the Department of Justice uses in investigating and prosecuting insider trading cases, and are confusing as they differ for different categories of items to be reported.

Each year, OGE reports an annual survey of prosecutions involving the conflict of interest criminal statutes (18 U.S.C. §§ 202-209). The survey uses information on the prosecutions by U.S. Attorneys' offices and the Public Integrity Section of the Department of Justice's Criminal Division provided to OGE with the assistance of the Executive Office for U. S. Attorneys at the Department of Justice. That survey represents only a small fraction of the measures that successfully resolve conflicts of interest that do arise throughout the year (e.g., divestiture, formal waiver, and reassignment). Bad actors do get caught and are dealt with.

OGE's Agency Program Reviews are a substantial reason why the governmentwide program is as effective as it is. OGE's Program Review Division examines several ethics program elements in their reviews, including:

- Ethics program structure and staffing
- Public financial disclosure
- Confidential financial disclosure
- Ethics education and training
- Ethics counseling and advice
- Outside employment and activities

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with the ethics requirements found in the various statutes, regulations, and policies, and (2) ethics-related systems, processes, and procedures in place for administering the program. Program reviews provide insight into the operations of ethics programs and provide OGE a mechanism for taking corrective action to bring a program back into compliance.

Agencies are selected for review based on their apparent risk for noncompliance. This risk potential is determined primarily through a Resource Allocation Model (RAM) but can also be determined based on anecdotal information or by the results of analyzing an agency's responses to OGE's annual survey of agency ethics officials, which solicits information about resources and program operations. Factors affecting agency selection also include date of last review, type of agency, management requests and reviewer judgment. The Director of OGE—based on

knowledge of ethics program operations and experience—may designate an agency for review or concentrate review efforts in specific areas.[38]

Appendix G provides a description of the program review cycle. Particularly through their follow-up efforts, the Division has been successful at underscoring the need to find solutions and holding the agencies accountable for making needed changes.

## OTHER RESEARCH PERSPECTIVES

### President's Executive Order on Improving Critical Cybersecurity Infrastructure

In his 2013 State of the Union Address, President Obama made a statement regarding the escalating threat U.S. citizens and institutions face from the manipulation of cyberspace by those with nefarious intentions. The President acknowledged: "We know hackers steal people's identities and infiltrate private emails. We know that foreign countries and companies swipe our corporate secrets. Now our enemies are also seeking the ability to sabotage our power grid, our financial institutions, our air traffic control systems."

To combat this rapidly growing cyber threat, on February 12, 2013, the President signed Executive Order 13636, Improving Critical Infrastructure Cybersecurity.[39] It calls for strengthening cyber defenses by increasing information sharing and developing standards to protect national security, jobs and privacy. The goal of such measures is, among other things, "to protect individual privacy and civil liberties." The Order also mandates that regular assessments of the impact of such measures on privacy and civil liberties shall be conducted and made public so that appropriate safeguards will be maintained and updated. Such assessments will include evaluation of agencies' activities against the Fair Information Practice Principles (FIPPs), which are rooted in the tenets of the Privacy Act of 1974.[40]

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[38] Excerpted from OGE's Program Review Lifecycle Narrative—http://www.oge.gov/Program-Management/Program-Review/Program-Review/

[39] Executive Order 13636—http://www.gpo.gov/fdsys/pkg/DCPD-201300091/pdf/DCPD-201300091.pdf

[40] FIPPs provide a framework of privacy compliance policies and procedures governing the use of personally identifiable information (PII). They have evolved over the years since their inception in the 1970s. An early version of FIPPs included one about "Secondary Usage," which stated: *There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.* Another more recent formulation outlines these principles as: (continued on next page)

- Transparency
- Individual Participation
- Purpose Specification
- Data Minimization
- Use Limitation
- Data Quality and Integrity
- Security
- Accountability and Auditing

Panel members have taken note that dissemination of government employee financial disclosure information as called for under the STOCK Act should be considered in light of this new emphasis on cybersecurity threats, as well as FIPPs.

**Asset Disclosure Regimens for Public Officials in Other Countries**

No consensus has developed among countries regarding the issue of public disclosure of government officials' financial and other personal asset disclosure. Even Western countries have vastly different programs concerning the financial disclosure requirements of government officials, including the types of information requested and the audience and method by which it can be disclosed. Most countries have some requirement calling for the disclosure of personal assets and interests by government officials to a governmental office whose mandate is ethics. Few countries publicly disseminate the information collected from their employees for the purpose of conflicts of interest review. For those countries that do make financial and other personal interest information of its employees available to the public, typically the constituency of affected/exposed employees is limited to very senior officials. Even fewer are the number of countries that appear to have launched electronic platforms by which to publicly disclose their officials and employees financial and other personal asset information. Lastly, the type of electronic platform currently contemplated under the STOCK Act, by which all subject government employees' financial disclosure forms would be collected and easily searchable, does not appear to exist elsewhere.

The Organisation for Economic Co-operation and Development (OECD)[41] and the World Bank[42] have undertaken extensive research and program development to assist the international community in addressing ethics, accountability, asset disclosure, and conflicts of interest review. Their tools and guidelines offer a framework for considering the appropriate fit of program elements and approaches. The shift to managing (i.e., preventing and resolving) conflicts of interest has become a common characteristic of many countries' regimens over recent decades. Finding the right balance of privacy and accountability is generally recognized as one of the more challenging issues in program design and implementation.

Table 3–1 below provides examples of the financial disclosure practices of some foreign governments:

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[41] Organisation for Economic Co-Operation and Development. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (Paris, France: OECD, 2003)

[42] Stolen Asset Recovery Initiative. *Public Office, Private Interests: Accountability Through Income and Asset Disclosure* (Washington, D.C.: The World Bank, 2012).

**Table 3–1**

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|---|---|
| ***SWEDEN*** ***RANK: 4*** | *Law on Registration of Members of Parliament's Commitments and Economical Interests. The Parliament Administration keeps a register of disclosure information for Members of Parliament, the Deputy Speaker, Cabinet Members and Deputies assigned as Members of Parliament and wha are expected to serve for a minimum of three consecutive months. Reporting is voluntary.* |
| ***NORWAY*** ***RANK: 7*** | *Asset declaration regulated by "Rules for Members of Parliament." Only the existence and type of the various interests need be disclosed, not the sum, value or quantity.* |
| ***GERMANY*** ***RANK: 13*** | *Asset disclosure regimen regulated by the "Act on German Bundestag" (1977) that specifies the develapment of a code of conduct for MPs.*<br>*Declaration system in Legislative (not Executive & Judicial); civil servants not required to declare assets* |
| ***UNITED KINGDOM*** ***RANK: 17*** | *Asset declaration by public officials is regulated by the Code of Conduct (1995), and the House of Lords' Code of Conduct (2001), providing asset disclosure regulations for MPs and Members of the House of Lords. No formal asset disclosure regulations exist for the Head of State or civil servants. Adopted 1974 -Declarations systems across Legislative & Executive (no data on Judicial). However, separate arrangements are provided for in the Ministerial Code and rules that apply to civil servants; civil servants not required to declare assets.* |
| ***FRANCE*** ***RANK: 22*** | *Asset disclosure is required for the President; Ministers must also comply with certain asset disclosure provisions; asset disclosure required for certain civil servants.*<br>*Declaration systems across Legislative & Executive (not Judicial); civil servants not required to declare assets.* |
| ***CHINA*** ***RANK: 80*** | *Contradictory data involving asset disclosure of Chinese government officials exists. According to the Act on Property Declaration (1993), Head of State, Ministers, MPs and certain civil servants must comply with asset disclosure requirements; public officials must declare assets af their spouses and underage children* |

[43] http://cpi.transparency.org/cpi2012/results/

| | |
|---|---|
| ***ARGENTINA***<br><br>*RANK: 102* | *Act on Ethics in Public Office requires state officials, including members of the judiciary, to file a declaration of assets and information, in order to control possible conflicts of interest. In 2000 the government of Argentina launched an electronic platform for disclosing public officials' personal assets. Level of public officials' compliance with the obligation to declare assets has increased from 67% to 96% (according to a 2012 report by Mexico-based organization FUNDAR).*<br><br>*The highest authorities of all branches of Federal Government, highest authorities of armed and security forces, officers or employees with rank or function not lower than that of a Director or equivalent, all public officials who manage private or public funds, or control or oversee public incomes – are obligated to submit financial disclosures statements* |
| ***MEXICO***<br><br>*RANK: 105* | *Federal Law on the Administrative Responsibilities of Civil Servants requires that information be disclosed relating to spouses, common-low partners, and economic dependents. A study conducted in 2004 found that over 100,000 public reports of financial disclosures are filed every year in Mexico.* |
| ***RUSSIA***<br><br>*RANK: 133* | *Asset disclosure regulated by Anti-Corruption Law (2008) and subsequent decrees 557, 558, 599, 561 which establish the procedure for asset disclosure. Additional laws provide for asset disclasure requirements of Chairman, Deputy Chairmen and Ministers, as well as disclosure requirements for civil servants, presidential candidates, and candidates to deputies to Federal Assembly. Declaration systems in Legislative & Executive (nat Judicial)* |
| ***KENYA***<br><br>*RANK: 139* | *The Public Officer Ethics Act, 2003 states, "Every public officer shall, annually...submit to the responsible Commission for the public officer a declaration of the income, assets and liahilities of himself, his spouse or spouses and his dependent children under the age of 18 years." However, according to the Public Officer Ethics Act (2003) section 30, asset declarotions ore confidential.* |

**Multilateral Organization Approach to Conflicts of Interest**

The multilateral organizations—United Nations, World Bank, International Monetary Fund, Inter-American Development Bank, etc.—do not require public disclosure of employee financial and/other personal information submitted to the organization as part of the ethics/conflicts of interest process. Certain organizations that entertained the idea of doing so, have in consultation with major accounting/consulting/advisory firms, chosen not to mandate public disclosure of such information owing to confidentiality concerns related to employee physical security, privacy, and identity theft. While one multilateral development bank did institute a voluntary public financial disclosure process for senior staff, it fell short of the intended objective as few

senior staff chose to make their forms available to the public. With respect to those officials who did agree to do so, the information was substantially redacted so that any publicly disclosed and available information was indecipherable.

Efforts to improve public confidence in multilateral organizations have included independent, third-party reviews of the financial disclosure/outside interest process in a least one large international development bank and one global development organization. The third-party approach was taken in order to improve the compliance programs associated with the organizations' risk management of their employees' potential conflicts of interest included the following:

- program design and implementation guidance focused on effective distribution, administration, collection and review of financial disclosure forms;
- creation of an analytical review framework in order to evaluate each item disclosed in every financial disclosure form;
- analysis of submitted financial disclosure information in order to evaluate if a conflict of interest existed and if so what type; and
- ongoing, independent review of the process.[44]

Such independent reviews of the conflicts of interest processes at multilateral organizations have contributed to positive shifts in the compliance mind-set of certain organizations.

**Corporate-Sector Approach to Managing Conflicts of Interest**

The accounting industry has implemented robust systems to manage conflicts of interest. Although this is a heavily regulated sector, accounting firms' ethics and compliance systems attempt to proactively identify and mitigate individual conflicts of interest to prevent costly financial and reputational damage to their companies in addition to ensuring compliance with regulations. They also advise countless public companies from other sectors as well as multilateral organizations on how best to avoid conflicts of interest issues when faced with pressure and scrutiny from regulators, shareholders, the media and the public.

The experience of "Big Four" accounting firms. An interview with representatives from one of the "Big Four" audit firms yielded important information regarding how conflicts of interest and disclosure issues are dealt with in publicly listed companies. Conflicts of interest are seen as arising when an individual's ability to perform his or her duties is potentially affected by holdings and/or relationships. Typically, four types of conflicts of interest are recognized:

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[44] "Fs – Viewpoint: A matter of trust: Managing individual conflicts of interest for financial institutions" PricewatershouseCoopers, June 2012.

- An *actual conflict of interest* is when there is a conflict between the official responsibilities and private interests of an individual, possibly impeding the individual's ability to perform one's duties impartially;
- An *apparent conflict of interest* scenario can arise when a reasonable person, who is armed with the relevant facts, would have concerns about the impartiality of the individual in a specific situation.
- A *potential conflict of interest* situation is when the facts as presented could result in a conflict in the future;
- A *political*[45] *conflict of interest* situation happens when the use of business contacts/relationships result in personal gain.[46]

Any one of these conflicts may impair an individual's objectivity or job effectiveness; create an unfair personal or organizational competitive advantage; result in personal financial gain from access to nonpublic information; and, damage an organization's reputation and credibility. Individual conflicts of interest are most frequently discovered after an individual exploits them for financial or other type of personal gain.[47]

Corporate approach to conflicts of interest and financial disclosures. Although independent public accounting firms and other leading institutions have sought to manage and mitigate potential conflicts of interest, public disclosure of employee individual personal financial data is not mandated nor is such transparency deemed critical to ensuring public trust. It has been the experience of these firms that the development of clear analytics and reporting frameworks can protect employee confidential personal information used by the organization to assess conflicts of interest while at the same time providing appropriate information to ensure public confidence in the organization.

By disseminating the methodology and metrics used to monitor, identify and address conflicts of interest within an organization, leading corporate institutions provide assurances to Boards, regulators, and the public. The private sector institutions employing best practices in the conflicts of interest area have utilized technology as a powerful tool in the monitoring, escalation and remediation of individual conflicts of interest. IT solutions allow organizations to facilitate communication and training, recordkeeping and reporting, maintenance and tracking of potential conflicts, and provide appropriate safeguarding of confidential personal information.

Many private sector leaders, including representatives from one of the "Big Four" accounting firms, do not see the risk-reward benefit from public disclosure of personally identifiable

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[45] In this context, "political" does not refer to partisan politics
[46] "Fs Viewpoint: A Matter of Trust: Managing individual conflicts of interest for financial institutions" PricewaterhouseCoopers, June 2012, pp. 5-8.
[47] Ibid.

financial information. Moreover, they see inherent risk for not only the individual, but also the organization, from the public disclosure of such information. The corporate-sector conflicts of interest programs and processes are considered to be appropriate and balanced responses to calls for transparency from organizations that play public roles requiring public trust. One corporate official noted that public disclosure of employee personal and financial data is not meaningful to the ethics process other than its being a symbolic gesture. Although corporate officials interviewed did not see the value in or benefit from the public disclosure of employee personal financial data, they did agree comprehensive disclosure of the process, including all checks and balances, should be a reasonable and sufficient alternative.

**SUMMARY**

Supporters of the online posting of government employees' financial disclosure forms cite the need for increased accountability and transparency in government as adequate justification for the public revelation of such private personal information. Moreover, backers of this legislation believe that the amendment to the original version of this bill, calling for new financial disclosure requirements for Members of Congress and their senior staff, to include certain executive branch officials and employees, achieves reasonable parity between the branches of government with respect to financial disclosure requirements.

Opponents of the STOCK Act's online posting of financial disclosure forms believe the implementation of the online disclosure of financial and personal information is dangerous because of the risk it poses to individual personal and physical security as well as the threat it presents to national security. Recent cyber-security threats to our government, businesses and citizens being perpetrated by domestic, foreign and unknown adversaries have only exacerbated the misgivings of law enforcement and national security experts about the implementation of the STOCK Act online posting requirements.

The private sector and global community may have valuable insights concerning best practices for evaluating conflicts of interest and creating effective and efficient programs to do so. Highly regulated industries have found a balance between the level of transparency needed to maintain public trust and addressing employees' privacy concerns through the establishment of appropriate safeguards for their most sensitive personal information.

Certain multilateral organizations have sought to improve public confidence in their conflicts of interest processes through third-party review, recommendation and validation. These organizations determined that public dissemination of employee financial data was not a necessary part of their transparency and governance efforts, unless individuals elected to voluntarily disclose such information.

Other countries have reached no consensus with respect to best practices related to asset disclosure by public officials. Most countries require some form of financial and other personal asset disclosure for certain government officials however few countries publicly release such

information. Those governments that do disclose such information publicly do so for at most a select group of senior officials, and none appear to utilize an electronic platform and searchable database as contemplated under the STOCK Act.

# CHAPTER 4: FINDINGS

## OVERVIEW

During the conduct of this research, there was widespread understanding by interviewees, including ethics officials and senior leaders in both the executive and legislative branches, that filing financial disclosures was a necessary element of their federal service. Although many found the disclosure filing process unnecessarily burdensome, they nonetheless acknowledged the importance of it. Objections focused almost exclusively on the online posting requirement.

As noted in Chapter 3, the notion of posting financial disclosures online in a searchable, sortable public database elicits a wide range of views. Some believe it is an entirely proper thing to do, while others have concerns about the potential impacts on national security, law enforcement, privacy, and personal and family safety. The Panel had noted the dearth of empirical data to document any harm having arisen from existing online postings of federal officials' financial disclosures and that expected costs, benefits and risks are largely speculative. In part this rests on the difficulty of documenting the initial source of "harm" such as identity theft (e.g., did harm result from an online financial disclosure or from "phishing," malware, etc.?), as well as the absence of any existing mechanism for collecting information about federal officials who have experienced some type of harm resulting from disclosure. The prospective nature of the STOCK Act online requirements also is a barrier to documenting "harm"—no institution that the study has found has ever posted such financial information about its senior officials in a searchable, sortable, downloadable public database.

Although financial information on career federal executives is currently publicly available, it is available with hurdles (as noted in Chapter 2), which limit access. These limits heretofore have provided adequate safeguards against misuse of the information and are seen by ethics officials as a good balance between transparency and the need to ensure mission safety and protect individual privacy.

## FINDING 1

**The growth of publicly available, easily accessible data on almost every aspect of an individual's personal life has radically changed the privacy landscape, with potential negative consequences for both the institutions of government and the individual public servants (and their families) who serve them.**

The growing availability of personal information on the Internet has been well documented. This, coupled with the ever-increasing capabilities of organizations and individuals to use these data to discern important, but unposted, information, signals a dramatic environmental change from what was possible in 1978 when the Ethics in Government Act was originally drafted. As a result, the privacy landscape has been altered.

The prevalence of increasingly sophisticated and easy-to-use search engines and databases such as Google put an immense wealth of information at the fingertips of any individual in the world with Internet access. A wide range of actors have capitalized on this access in a variety of ways. For example, commercial entities now use sophisticated analytic software and complex algorithms to aggregate pieces of data gleaned from an individual's online activity, purchasing history, and a wealth of other information to develop personalized consumer profiles and more effectively market to these consumers.[48]

Just as this gleaned information can be used as a relatively benign marketing tool by major retail companies, so too can malicious actors—petty criminals, organized criminal syndicates, prisoners, terrorists, or foreign intelligence services—use these data to create a "mosaic" of high-value federal employees for exploitation or other nefarious purposes. This is an example of "social engineering,"[49] by which pieces of information about an individual are collected to make it easier to manipulate or exploit that person. The Federal Trade Commission, whose mission covers privacy and identity protection, believes that social engineering efforts have been a long-persistent threat against federal agencies and their employees.

While the information on the financial disclosure forms in and of themselves may not lead directly to harm, more information being available online about an individual contributes to this larger mosaic and the susceptibility of that person to social engineering by nefarious actors. The frightening reality is that once personal information is posted on the Internet, it can never be completely removed.

Just as the privacy landscape has been altered, so too have considerations for what level of privacy can reasonably be expected by individuals and how privacy can be protected in this new environment. As trusted public servants and stewards of the taxpayers' dollar, federal employees and elected officials are held to certain unique accountability standards by virtue of their work. These unique standards are made evident by the well-established ethics regimens in the legislative, executive and judicial branches of government. These ethics regimens serve the purpose of assuring the public of the accountability of federal employees and providing a degree of transparency as proof.

While advances in information technology have made viewing government data on the Internet much more prevalent than in years past, one must be cognizant of the many perceived risks of posting the financial information of thousands of federal employees online in a searchable and sortable fashion. Transparency does not necessarily equate to unrestricted accessibility when it

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[48] Charles Duhigg, "How Companies Learn Your Secrets." *The New York Times*, February 16, 2012. *http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?pagewanted*=all&_r=1&

[49] Manipulating people into performing actions or divulging confidential information. http://en.wikipedia.org/wiki/Social_engineering_(security)

comes to thousands of federal employees' sensitive financial information. Given the potential risks in the evolving online environment, considerations must be made for balancing transparency and privacy needs appropriately and in a way that does not expose federal employees to unnecessary risk.

Considerations must also be made for non-employees, such as spouses and dependent children of federal employees, who may also be placed at increased risk by posting the financial disclosure forms online. Based on the perceived risks associated with the increased accessibility of information, some executive branch agencies—particularly those involved in national security or law enforcement missions—counsel their employees to be particularly wary of posting personal information on social media sites, or to post nothing at all.

**FINDING 2**

**An open, online, searchable, and exploitable database of personal financial information about senior federal employees will provide easy access to "high quality" personal information on "high value" targets.**

The argument has been made that posting financial disclosure information online in a searchable, sortable, publically accessible database is simply using a different medium to publish already publicly available information.[50] The Panel believes this position discounts the view of cybersecurity experts who note that making such information available in this fashion fundamentally transforms the utility of the information itself and significantly enhances the capability to repurpose and capitalize on it.

As characterized by cybersecurity experts, posting this information online in a searchable, sortable database adds an important new element to the equation: specific, verified information about individual assets and holdings—high value information—that coupled with existing information on the Internet can be used to develop powerful profiles of individuals and organizations.

The courts too, have long recognized the potential threat posed by the increasing power of technology to threaten individuals:

> *"In the past few decades, technological advances have provided society with the ability to collect, store, organize, and recall vast amounts of information about individuals in sophisticated computer files....although some of this information can be useful and even necessary to maintain order and provide communication and convenience in a complex society, we need to be ever diligent to guard against misuse."*[51]

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[50] This was the Justice Department's argument in the suit brought by SEA et al.; Case 8:12-cv-02297-AW

[51] Walls v. City of Petersburg, 895 f.2d 188, 194-95 (4th Cir.1990)

The second important element in this finding is the "value" of the potential targets to anyone with bad intentions. This includes those who seek to target individuals for economic gains or those who seek out senior officials' financial information as a mechanism for harassment or harm. As noted in Chapter 3, senior federal officials are sometimes the targets of those who are unhappy with some decision made by the official or who harbor a grudge for any number of reasons.

In noting that the plaintiffs challenging the STOCK Act[52] had shown a likelihood of prevailing on the merits of their right to privacy claim, the Court noted:

> "*That the EGA* (Ethics in Government Act) *already mandates the disclosure of such* (financial disclosure) *data does not change this conclusion. As outlined above, section 11 of the Act directly and indirectly erodes key EGA safeguards to disclosure. Abandoning this relatively transparent application process, the Act ushers in a scheme of unfettered Internet access to the same sensitive information.*"

The Panel believes the federal government has a responsibility to ensure that by its own actions and policies, its employees are not adversely impacted by virtue of their public service.

**FINDING 3**

**National security and law enforcement officials have serious concerns about posting this information online.**

Throughout the interview process, study team members were provided with examples of potential negative outcomes to the missions of national security and law enforcement agencies and staff members. A letter sent to congressional leaders by former senior law enforcement, diplomatic, and national security officials, said the release of such information: *"would be a jackpot for enemies of the United States intent on finding security vulnerabilities they can exploit....(and) will jeopardize the safety of executive branch officials..."*[53] Specific examples of actions that could be taken to target national security officials, particularly those stationed overseas, were provided to the study team. It is feared that posting the financial disclosures could potentially put these officials' families at risk as well. Two examples of how this could happen were provided to the study team and are summarized in Figure 4–1:

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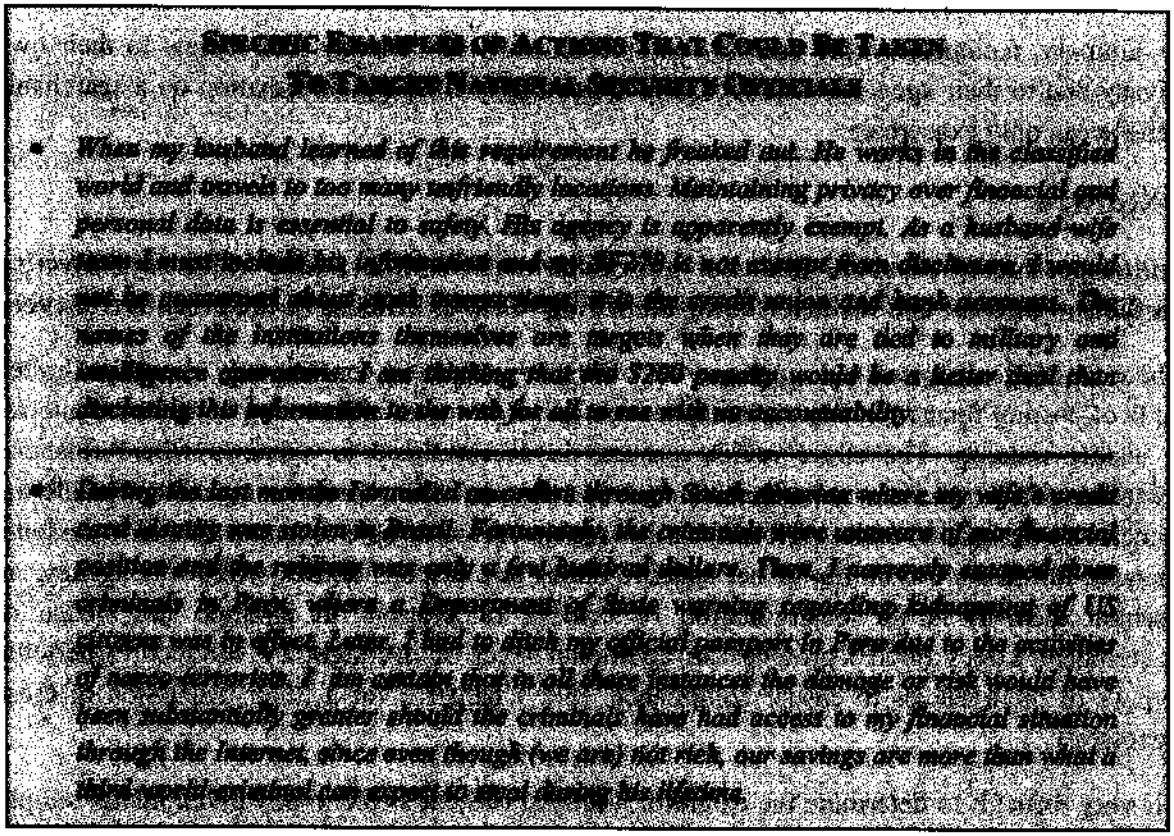
[52] Case 8:12-cv-02297-AW, SEA et al., Plaintiffs
[53] Armitage, et al., Loc. Cit.

**Figure 4–1**



Law enforcement agencies have serious concerns as well. Officials at these agencies often deal with some of the most dangerous criminals and crime enterprises in the nation. They already have ample evidence of the threats posed by these individuals and groups. For example, filing liens against the property of federal law enforcement officials as a way to harass them for carrying-out their responsibilities was described as a "cottage industry" run by prisoners who were put in jail by the efforts of those same officials. Adding important information about finances, it is believed, can only exacerbate the situation. The ability to use this financial disclosure information to gain leverage in criminal cases was also suggested as a possible concern.

A good description of these concerns can be captured in this excerpt from a letter sent to Academy Panel Chair David Chu by Sean Joyce, the Deputy Director of the Federal Bureau of Investigation:

> *"Posting the financial disclosure forms of senior officials on the Internet will immediately expose their names, assets, financial institutions, liabilities, associations and other personal information. Using such information, our*

*adversaries can and will quickly and easily garner additional information and attempt to use it to target, harass, embarrass, expose, neutralize, recruit and otherwise compromise these officials."* [54]

In summary, national security and law enforcement officials already face threats to their own privacy and to their agencies' missions, which posting of financial information on a searchable website can only exacerbate.

**FINDING 4**

**Online posting of personal financial information offers little added value for detecting conflicts of interest and insider trading according to ethics officials in the executive branch.**

There was little disagreement among ethics officials interviewed for the study about the limited value of posting financial disclosure information online in terms of detecting conflicts of interest or insider training. The ethics review process is decentralized to agencies where financial disclosure forms receive comprehensive reviews. Because the process is conducted inside the agencies by designated ethics officials, it allows reviewers to be able to connect a filer's personal financial information with his or her specific duties and responsibilities within the agency, an essential element in the determination of conflict of interest. In addition the Office of Government Ethics (OGE) provides an additional level of oversight by conducting periodic reviews of the agencies to ensure compliance. (See Chapter 2 for a fuller discussion of these processes.)

It is very difficult to determine the extent of a federal official's role in any given matter simply by considering his or her job title. The ability to detect a potential conflict by looking at the job title in an online record and matching that against potential conflict of interest (awarding of contracts, pending regulations, etc.) would be a difficult undertaking, one more likely to produce unproductive leads ("false positives"). The Panel believes that it is extremely unlikely that external reviewers of financial disclosure forms could make significant improvements to the existing regimens. This need not foreclose the possibility that federal regulatory and enforcement agencies could make effective use of the records of securities transactions in a digitized form by including them among the records they systematically monitor in their market surveillance activities.

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[54] Sean Joyce, Deputy Director, FBI, in a letter to Academy Panel Chair David Chu

**FINDING 5**

**Existing executive branch financial disclosure reviews are extensive and effective (but not efficient) at identifying potential conflicts of interest.**

As documented in Chapter 2, the executive branch process is focused on preventing and detecting potential conflicts of interest. These reviews can be focused tightly because the responsibilities and areas of potential conflicts of interest for these executive officials can be clearly delineated. As noted in one paper:

> *"In the executive branch, the primary function of these forms is legal accountability: assisting the employee and the government ethics official reviewing the form to evaluate legal compliance with conflict of interest standards. A criminal statute prohibits executive branch employees from participating in any "particular matter" that could affect their personal financial interests."*[55]

Given the complexity of ethics laws and regulations and relevant standards of conduct, financial disclosure reviews are of necessity, extensive—the guide for reviewers of the financial disclosure forms runs over 350 pages[56]—and reliably identify potential conflicts of interest. Criminal penalties can be imposed for filing false statements. Some agencies subject each disclosure form to three or more levels of review with certifications required at each level.

Ethics officials interviewed for the study pointed out a number of steps that could be taken to make their reviews more efficient and effective. The first has to do with the financial disclosure form itself. Some data currently collected on the form are not necessary for ensuring compliance with ethics requirements. In addition, elements could be added that would add value to the ethies reviews, particularly regarding the use of complex financial instruments. For a comprehensive listing of changes that were suggested to the study team for consideration in any revision of the existing ethics review process, see Appendix B.

A fundamental limitation with the current executive branch review is the system's overreliance on "eyeballs to paper" reviews. Although a number of agencies have electronic filing systems, the reviews themselves are largely the same as they were when the ethics review process began 35 years ago. The STOCK Act called for the development of electronic tools and efforts are underway, led by OGE (in cooperation with the House and Senate ethics staffs) to develop these tools. The ability to have electronic applieations that use rules-based systems that are automatieally matched against prohibited asset lists and other forms of automated reviews will go a long ways toward both strengthening the process and providing assurance to concerned parties (eitizens, Congress, watchdog groups, etc.) that ethics reviews are well done and efficient.

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[55] Clark, op. cit., p. 7.
[56] http://www.oge.gov/Financial-Disclosure/Docs/Financial-Disclosure-Guide/

In short, although the current process used by the executive branch could use some improvements, the Panel believes it is fundamentally sound, and that the potential benefits for posting information in order to prevent or detect conflicts of interest are at best, negligible.

**FINDING 6**

**Legislative branch reviews are process-focused and disclosures come under greater third-party scrutiny than in the executive branch.**

Legislative branch financial disclosure reviews tend to focus less on identifying potential conflicts of interest and more towards ensuring that all the required procedural steps were followed. A different form of accountability has developed for the legislative branch, as noted in a recent paper addressing the STOCK Act requirements:

> *"...For legislators the primary function of these forms is political accountability: assisting the public in assessing whether the financial interests of elected legislators are politically acceptable. Legislators stand for reelection on a regular basis, and their constituents can take into account whether the financial interests of a member (or a nonincumbent candidate) are acceptable when deciding how to vote."*[57]

Voters can review the elected official's or candidate's holdings and decide how the filer's financial position may potentially affect his or her fitness for the office. The degree of third-party reviews (by the press, government reform public interest groups, political opponents, interested citizens, etc.) for the legislative branch is extensive.

**FINDING 7**

**The online posting requirement is seen as affecting senior-level recruitment and retention in the executive branch.**

Virtually every agency the study team met with provided examples of senior executives covered under the STOCK Act who visited their respective human resources offices stating that they wished to take a downgrade to GS-15 (and become exempt from online posting) or in some cases, retire or otherwise leave federal service. These were rare outcomes, however, because the act's provisions are retroactive to January 1, 2012, and therefore, anyone leaving federal service or taking a downgrade would still have his or her information posted online for 6 years. It is important to note that the reasons given by these employees usually centered on the desire to protect their privacy, fear of identity theft or other financial harm and sometimes, fear that such information could be used to harass or physically harm them or their families.

Agencies that often hire people at the senior level (SES/SL/ST, etc.) who would be covered by the online posting provision provided the study team with examples of prospective new hires

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[57] Clark, op. cit., p. 7.

turning down jobs because of the provision. This was more often cited by agencies with a strong science and technology focus and who often hire scientists, academics, and researchers as SL and ST personnel, often on shorter-term, rotational appointments. Agencies particularly impacted are the National Institutes of Health, the National Science Foundation, and the National Aeronautics and Space Administration.

There are also indications that pay compression and other issues are impacting the career aspirations of GS-14 and GS-15 personnel who are now less inclined to see themselves as future members of the SES. The online posting requirement of the STOCK Act seems to be contributing to the problem. Both human resource professionals as well as organizations that train senior leaders confirmed this perspective. For many, the difference between the salary of a senior GS-15 and a member of the SES is not worth the loss of privacy and security concerns for themselves and their families, in addition to taking on a significant increase in role and responsibilities.

Overall, officials are worried that if the STOCK Act's provisions for online posting stay as they are, there will be serious, long-term negative consequences for the federal government in terms of attracting and retaining the talent it needs for its senior-most jobs.

**FINDING 8**

**It is time to update and strengthen the 35-year-old ethics review system in light of current technology and its impact on the security and privacy of federal agencies and employees.**

Congress and the executive branch should conduct a comprehensive review of the STOCK Act and Ethics in Government Act with the goal of bringing their ethics review regimens in line with 21st century realities. This review has found ample evidence that the entire process could benefit from a substantive assessment that considers:

- the expected outcomes for ethics reviews;
- the information necessary to be disclosed to achieve those outcomes;
- how each type of filer's information should be available for public access, and
- the application of modern technology to collect and review financial disclosure form data.

Although the STOCK Act has raised a number of concerns about its online posting requirements, it has also surfaced a number of important issues and provided an opportunity for a new approach to ethics reviews that can strengthen the system and improve the transparency of federal government processes.

# CHAPTER 5: RECOMMENDATIONS OF THE ACADEMY PANEL

## RECOMMENDATION 1

**Congress should indefinitely suspend the online posting requirements that are due April 15, 2013, and the unrestricted access to searchable, sortable, downloadable databases, currently planned for October 2013, while continuing implementation of other requirements of the STOCK Act.**

Based on its findings, the Panel recommends that the STOCK Act's requirements for online posting of personal financial information not be implemented beyond current coverage under existing law. The Panel believes the federal government should not create public searchable, sortable, downloadable databases for any filer. At the same time, the Panel believes that *the other requirements of the act should continue to be implemented.* Those requirements include:

- filing reports on covered transactions (periodic transaction reports)
- modernizing the financial disclosure process through transition to electronic filing, which would allow development of "smart forms" to aid in the completion and review of financial disclosure forms

## RECOMMENDATION 2

**The federal government should use the suspension period to update and strengthen the 35-year-old government ethics system.**

In the process of its inquiry, the Panel found that the federal financial disclosure system, in both its statutory requirements and operational procedures, is in need of modernization and strengthening. With that in mind it recommends the following specific steps be taken:

- Conduct a comprehensive review of the Ethics in Government Act of 1978, as amended, and the STOCK Act of 2012, as amended
- Develop a broad understanding of the landscape for filing and accessing financial disclosure forms, which has changed fundamentally in terms of:
    - the threats to both individuals and organizations
    - the types and complexity of investments held
    - the technologies available for reporting and assessing holdings.
- Reach agreement on 21st century goals for the Ethics in Government Act and the STOCK Act.
- Rationalize the Ethics in Government Act and STOCK Act disclosure, filing, and availability requirements. Should different groups, such as Members of Congress, congressional staff, staff of legislative organizations, PAS, other political appointees,

Senior Foreign Service, senior military, career senior executives and other senior-level career employees, administrative law judges, judicial officers and employees, confidential filers and others be treated similarly or differently? The Panel believes *online posting risks apply to all these individuals.*

**In undertaking these preliminary steps, the Panel recommends that Congress and the executive branch expand on the findings of this report as follows:**

- Develop additional data on the risk to federal missions and individuals resulting from the misuse of personally identifiable information. The Panel was unable to find any evidence of such data being collected systematically.
- Determine how online posting requirements add to the growing threat to individuals from accumulative data found on the Internet.
- Balance the findings relative to damage to mission safety and individual privacy rights against *identifiable* benefits of online posting.
- Consider the value and costs of a redaction system, possibly similar to the system used in the judicial branch.
- Synchronize Stock Act provisions with other government policies on publishing individual data. Relevant federal requirements and guidelines are the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, Internal Revenue Code, and the Fair Information Practice Principles.

**In considering a modernization of the federal government's ethics system, Congress should undertake the following:**

- In consultation with the Office of Government Ethics and other experts, improve the questions asked of filers to identify and reduce potential conflicts of interest. Consider allowing the Office of Government Ethics, the House and Senate Ethics Committees, and the Judicial Conference of the United States some flexibility to modify on their own initiative the financial disclosure questions asked on the financial disclosure forms, subject to congressional notification.
- Determine what data must be collected to ensure thorough financial disclosure reviews and compliance with all statutory and regulatory requirements, and go no further.
- Determine whose data should be publicly available and how they may be accessed.
- Assess costs relative to needs.
- Conduct an independent evaluation of the process the Office of Government Ethics uses to review federal agencies' ethics programs. The Government Accountability Office is a strong candidate for this task.
- Ensure the ethics *process* is fully transparent.

# APPENDICES TO THE REPORT

# APPENDIX A: THE ACADEMY PANEL AND STUDY TEAM

## PANEL

**David S. C. Chu, Ph.D., Chair*** – President and Chief Executive Officer, Institute for Defense Analyses. Former Senior Fellow, RAND; Under Secretary of Defense for Personnel and Readiness, U.S. Department of Defense. Former positions with RAND Corporation: Vice President, Army Research Division; Director, Arroyo Center; Director, Washington Research Department; Associate Chairman, Research Staff; Economist. Former Assistant Secretary of Defense for Program Analysis and Evaluation, Office of the Secretary of Defense, U.S. Department of Defense; Assistant Director for National Security and International Affairs, Congressional Budget Office.

**Janice M. Lachance, Esq.*** – Chief Executive Officer, Special Libraries Association. Former Management Consultant, Analytica; Director, Deputy Director, Chief of Staff, Director of Communications and Policy, U.S. Office of Personnel Management; Director of Communications, Congressional and Political Affairs, American Federation of Government Employees, AFL-CIO; Communications Director, U.S. Representative Tom Daschle; Administrative Assistant, U.S. Representative Katie Hall; Staff Director and Counsel, Subcommittee on Antitrust and Restraint of Trade, House Committee on Small Business, U.S. House of Representatives; Legislative Assistant, U.S. Representative Jim Mattox.

**Martha Kumar, Ph.D.*** – Dr. Martha Joynt Kumar is a professor in the Department of Political Science at Towson University. As a scholar with a research focus on the White House, she is interested in presidential – press relations, White House communications operations, and presidential transitions. Her most recent book, *Managing the President's Message: The White House Communication Operation,* won a 2008 Richard E. Neustadt Award from the presidency section of the American Political Science Association. Her previous books include *White House World: Transitions, Organization, and Office Operations* edited with Terry Sullivan and *Portraying the President: The White House and the News Media* with Michael Grossman. Her forthcoming book on the 2008-2009 presidential transition, *Mapping the Glide Path to Power: The 2008 Presidential Transition,* is under contract with the Johns Hopkins University Press. She is director of the White House Transition Project, which is a nonpartisan effort by presidency scholars to provide information on presidential transitions and White House operations to those who came into the White House in January 2009 as the group did in 2001. The project builds on the earlier White House 2001 Project, which was designed to create an institutional memory for seven White House offices in order to provide the information to new staff coming into the selected positions in 2001. Kumar was elected as a fellow of the National Academy of Public Administration in 2008. Kumar is currently on the board of directors and the executive committee of the White House Historical Association and the board of the National Coalition for History.

**Ronald Sanders, Ph.D.*** – Senior Executive Advisor, Booz, Allen, Hamilton. Former Associate Director, National Intelligence for Human Capital, Office of the Director of National Intelligence; Chief Human Capital Officer, Office of the Director of National Intelligence; Associate Director, Strategic Human Resource Policy, U.S. Office of Personnel Management; Chief Human Resources Officer, Internal Revenue Service, U.S. Department of the Treasury; Director of Civilian Personnel, U.S. Department of Defense.

**Vice Admiral Lewis Crenshaw (Ret.)*** – Principal, Grant Thornton LLP. Former Executive Director, Defense and Intelligence, Global Public Sector, Grant Thornton LLP. Former positions with the U.S. Navy: Deputy Chief of Naval Operations for Resources, Requirements and Analysis (N8); Commander, Navy Region Europe; Deputy Commander, U.S. Naval Forces Europe; Director, Assessment Division (N81), Navy Staff, The Pentagon.

## STAFF

**Joseph P. Mitchell, III, Ph.D.,** *Director of Project Development* – Leads and manages the Academy's studies program and previously served as Project Director for past Academy studies for USAID/Management Systems International, the National Park Service's Natural Resource Stewardship and Science Directorate, and the USDA Natural Resources Conservation Service. Served on the study team for past Academy studies for the Government Printing Office, Federal Emergency Management Agency, Office of National Drug Control Policy, Centers for Disease Control, National Aeronautics and Space Administration, and the Federal Bureau of Investigation, National Marine Fisheries Service, Patent and Trademark Office, National Institutes of Health, Department of the Interior, and Forest Service. Former Adjunct Professor at the Center for Public Administration and Public Policy, Virginia Polytechnic Institute and State University. Holds a Ph.D. from the Virginia Polytechnic Institute and State University, a Master of Public Administration from the University of North Carolina at Charlotte, and a BA in History from the University of North Carolina at Wilmington. Pursuing a Master of International Public Policy with a concentration in American Foreign Policy at the Johns Hopkins University School of Advanced International Studies.

**Joseph Thompson**, *Project Director* – President, Aequus, Inc. Undersecretary for Benefits, U.S. Department of Veterans Affairs, Washington, DC. Director, VA Regional Office, NY, NY. Assistant Director, VA Regional Office and Insurance Center, Philadelphia, PA. Administrative Officer, VA Central Office, Washington, DC. Claims Examiner, VA Regional Office, NY.

**Doris Hausser, Ph.D.***, *Senior Advisor* – retired in 2007 after 30 years of federal career service, most recently as Senior Policy Advisor to the Director of the U.S. Office of Personnel Management (OPM). She served on the personal staff of three successive OPM Directors in two Presidential administrations and played a key advisory and execution role in the planning, coordination, development, and implementation of OPM policy and program matters across the full range of human resources management systems within the federal government. She supported a variety of legislative and administrative initiatives to establish alternative personnel systems. She also served as OPM's first Chief Human Capital Officer. She was awarded the rank of Distinguished Executive and was elected a Fellow of the National Academy of Public Administration, where she is a member of several Academy Standing Panels and has served on

Academy Study Panels as well. Her B.A. degree is from Albion College and her M.A. and Ph.D. degrees in organizational psychology are from the University of Michigan. She is also a Certified Compensation Professional (CCP).

**Hannah Sistare*,** *Senior Advisor* – Hannah Sistare is a Fellow of the National Academy of Public Administration. She is an attorney and has worked on public administration and public policy as a U.S. Senate staff member, an executive with non-profit institutions and an adjunct professor at George Washington University and American University. Ms. Sistare has served on U.S. Senate staffs as Staff Director and Counsel of the Senate Governmental Affairs Committee, as Minority Staff Director and Counsel of that Committee, as a Senate Chief of Staff and as Legislative Director to the Senate Minority Leader. In these positions she worked on numerous government reform and oversight efforts. Following her Senate service, Ms. Sistare was Executive Director of the National Commission on the Public Service, chaired by former Federal Reserve Board Chairman Paul A. Volcker. This bi-partisan commission and its work were sponsored by the Center for Public Service at the Brookings Institution. The Volcker Commission issued a set of recommendations for reform and renewal of the organization, operations and leadership of the executive branch. Ms. Sistare subsequently established the Volcker Commission Implementation Initiative at the National Academy of Public Administration, working to educate public policy and public administration leaders about the Commission's findings and recommendations.

**Suzanne Rich Folsom**, *Senior Advisor* – Suzanne Rich Folsom, Esq. is an internationally recognized expert in corporate governance, legal and regulatory compliance, ethics, anti-corruption practices, and crisis risk management. Mrs. Folsom has established award-winning and industry-leading corporate governance and compliance programs at Fortune 500 and private companies as well as at multinational organizations. She is a frequent commentator on corporate ethics and compliance, and is a strenuous advocate for global anti-corruption initiatives. Previously she also served as Special Assistant to Mrs. Barbara Bush, Private Secretary to Queen Noor of Jordan, and as the Chief of Staff to the Co-Chairman of the Republican National Committee, the late Maureen Reagan. Mrs. Folsom practiced law with O'Melveny & Myers LLC and Cadwalader, Wickersham & Taft LLC. She is a graduate of Duke University and the Georgetown University Law Center.

**Neal O'Farrell,** *Senior Advisor* – Neal O'Farrell has spent 30 years fighting cybercrime and identity theft around the world. He is currently Executive Director of the Identity Theft Council, an award-winning, non-profit based in the San Francisco bay area. The Council is a national partnership that includes the Council of Better Business Bureaus, the Community Bankers of America, the Online Trust Alliance, the Identity Theft Resource Center, and the Elder Financial Protection Network. Neal also leads the Small Business Identity Task Force as part of the Center for Identity at the University of Texas in Austin, the nation's center for excellence on all things identity. He is also a member of the Federal Communications Commission's Cybersecurity Roundtable Working Group, where he helped create the FCC's Small Business Cybersecurity Planning Tool. Neal has authored more than 150 articles on security and has appeared in numerous publications around the world including CNN Money, BusinessWeek, SmartMoney, CNET, Information Week, the National Law Journal, Today.com, Fox Business, and the South China Morning Post. He is the author of "Double Trouble - Protecting Your Identity in an Age of

Cybercrime," used as an education tool by numerous organizations including three of the top five U.S. banks. He is also a former columnist with SearchSecurity.com, and Technical Editor for the "Hack Proofing" series of security guides from Elsevier Publishing.

**Andrew Price,** *Research Associate* – Andrew Price is a Research Associate at the National Academy of Public Administration. Andrew worked with the Academy as a project development intern prior to officially joining the Academy staff in August 2011. Since that time, Andrew has worked on Academy studies for the Department of Defense, Senate Sergeant at Arms, and the Department of Energy. His academic background and research interests are in the areas of U.S. national security, intelligence, and defense policy. Andrew earned his Master of Public Policy degree from the Maryland School of Public Policy (UMD-College Park) in 2012, where he specialized in International Security and Economic Policy. In 2010, Andrew received his Bachelor of Arts degree in Political Science from Wake Forest University.

# APPENDIX B: SUGGESTED CHANGES TO FINANCIAL DISCLOSURES FROM EXECUTIVE ETHICS OFFICIALS RELATIVE TO THE CURRENT SYSTEM

Note: The Panel is not taking a position on the suggestions listed in this appendix but is providing them as testament to the extent to which ethics officials have already identified problems and areas for improvement in the existing process.

**Proposed Disclosure Form Changes**

1. Eliminate the requirement to report the amount of investment income from publicly traded assets. Filers would continue to disclose the asset (e.g., name of a stock), the value of the asset, and the type of income received (e.g., dividends).

Rationale: If an asset creates a conflict of interest for a filer, it is the mere ownership of the asset that creates the conflict, regardless of whether the asset generates income. Information about amounts of passive investment income from publicly traded assets is useless to an ethics official in performing a conflicts of interest analysis.

2. Increase the reporting threshold for all investment income to $1,000 to match the threshold for reporting assets.

Rationale: Under the existing law, a filer must report an asset if either (a) the asset's value exceeds $1,000 or (b) the asset generated more than $200 in income during the report period. The law establishes a variety of dollar thresholds, creating unnecessary confusion for filers. Reducing the number of different thresholds would reduce confusion.

3. Change and reduce the number of valuation categories to the following:

   No longer held

   Not more than $15,000

   $15,001-$25,000

   $25,001-$50,000

   over $50,000

Rationale: Under the existing law, the valuation categories are, as follows:

   Not more than $15,000

   $15,001 - $50,000

   $50,001 - $100,000

   $100,001 - $250,000

$250,001 - $500,000

$500,001 - $1,000,000

(Over $1,000,000—This category applies only if the asset is solely that of the filer's spouse or dependent child)

$1,000,001 - $5,000,000

$5,000,001 - $25,000,000

$25,000,001 - $50,000,000

Over $50,000,000

Rationale: These existing categories are not useful to the conflicts of interest analysis. Under the primary criminal conflict of interest statute, the executive branch has established regulatory thresholds for conflicts of interest at $15,000; $25,000; and $50,000. The existing categories fail to provide ethics officials with the information they need to distinguish between assets valued below $25,000 and above $25,000. Instead, the existing categories provide useless information about the extent to which assets exceed $50,000. The fact that an asset exceeds $50,000 may in some cases establish a conflict of interest, but the degree to which an asset exceeds that threshold is irrelevant to the existence of that conflict of interest. New thresholds recognizing the regulatory breakpoints would be helpful to ethics officials and would balance the need for information with privacy concerns of the filer's family.

4. Eliminate the requirement to disclose underlying holdings of an investment fund when the filer establishes satisfactorily that he or she has no right or ability to receive information about the underlying holdings.

Rationale: A true black box investment fund will not present a conflict of interest if the filer genuinely has no access to information about its holdings. Under the existing law, filers have been unable to comply with the requirement of disclosing underlying holdings of such investment funds, but this disclosure requirement is not linked to the conflicts of interest analysis.

5. Eliminate the requirement to report cash deposit accounts (e.g., savings account, checking account, fixed rate certificate of deposit, and money market account).

Rationale: This information is not generally useful for conflicts analyses.

6. Increase the income threshold for reporting earned income to $1,000 to match the value threshold for reporting investments.

Rationale: The law establishes a variety of dollar thresholds, creating unnecessary confusion for filers. Making all such thresholds the same for all types of income and assets would reduce confusion. In addition, the current threshold of $200 was established in 1978 and has never been adjusted for inflation.

7. Eliminate the requirement that filers report assets they (a) no longer hold and (b) did not hold during federal government service.

Rationale: An asset could not have posed a conflict of interest with a filer's government position if the filer never held the asset while in government.

8. Eliminate the requirement to report the value of defined benefit pension plans. The filer would continue to disclose that the filer has a defined benefit pension plan. The filer would also continue to disclose the identity of the sponsoring employer.

Rationale: The identity of the sponsor of a defined benefit pension plan is the only information that ethics officials need to perform conflicts analyses. Not only is information about the value of the plan unhelpful to the conflicts of interest analysis, this information is often burdensome for filers to gather. Filers normally are not able to determine the value of defined benefit pension plans unless the sponsors of the plans provide them with actuarial calculations, which need to be performed by professionals.

9. Eliminate the requirement to report state and local government sponsored defined benefit plans.

Rationale: Defined benefit plans for state and local government employees are covered by a regulatory exemption to the conflicts of interest statute. In the extremely unlikely circumstanee that a particular matter could cause the insolvency of a state or local defined benefit plan, agency ethics officials could consult individually with involved employees to ensure that none has an interest in that specific plan.

10. Eliminate the requirement to report a defined contribution plan maintained by a state or local government.

Rationale: The underlying assets of state and local government plans do not pose eonflicts of interest because they qualify for a regulatory exemption to the criminal conflicts of interest statute. Therefore, information about state and local government defined contribution plans is not useful for confliets analyses.

11. Eliminate the requirement to report the value of liabilities.

Rationale: The focus of conflicts of interest analyses for liabilities is on the terms of the loans and the parties involved. However, the value of the liability is personal and is not generally useful for conflicts analyses.

12. Eliminate the requirement to report revolving charge accounts on terms made available to the general public.

Rationale: This information is personal and is not generally useful for conflicts analyses.

13. Eliminate the requirement to report student loans on terms made available to the general public.

Rationale: This information is personal and is not generally useful for conflicts analyses.

14. Eliminate the requirement to report loans to and from grandchildren.

Rationale: The statute currently does not require filers to report loans to or from children, step-children, and other family members. There is no reason for heightened concerns as to grandchildren.

15. Increase the threshold for reporting liabilities from $10,000 to $20,000.

Rationale: The liability reporting threshold of $10,000 was set in 1978 and has not been adjusted for inflation.

16. Increase the threshold for reporting certain sources of compensation from $5,000 to $10,000. (This information is currently reported on Schedule D, Part II of the executive branch public financial disclosure report.)

Rationale: The current $5,000 threshold for reporting such sources of compensation was established in 1978. The combination of inflation and increasing fees for personal services, such as attorney fees, weigh in favor of raising this threshold.

17. Allow supplemental financial disclosure requirements for individual agencies.

Rationale: Some financial disclosure requirements are relevant only to certain agencies. Allowing those agencies to retain those requirements would address agency-specific issues while permitting the elimination of burdensome executive branch-wide requirements.

**Complex Financial Instruments**

In addition to the above recommendations, ethics officials also noted difficulties in reviewing complex financial instruments which can delay prompt and complete disclosure:

- Hedge funds
- Investment partnerships
- Family trusts
- Financial derivative instruments (credit default swaps, interest rate swaps)
- Structured instruments (securitization of mortgages, credit card receivables, auto loans, etc.)
- Stock options

Filers are required to report the value of an asset as of the end of a certain reporting period (e.g., 12/31). Furthermore, filers must disclose the type and amount of income earned from an asset throughout the reporting period (e.g., 1/1—12/31). Hedge funds and investment partnerships managers are typically reluctant to disclose such sensitive and proprietary information with the public. The strategy and holding positions of these types of investments are generally kept private.

Family trusts are usually organized for the benefit of multiple generations. Typically, trust property is controlled by a trustee and trust beneficiaries are not privy to the trust assets. If a trustee or beneficiary has a vested beneficial interest in a trust (or receives distributions from the trust), they are required to disclose underlying assets of the trust. Trust assets are not always disclosed to beneficiaries. Typically, grantors intentionally withhold trust assets from all beneficiaries.

Lastly, investments are held by spouses and dependent children of filers. Generally, all information required relative to a filer's financial interests is also required from the financial interests of the filer's spouse and dependent children. There is a general exemption for separateness in the statute, if applicable, will allow the filer to omit the reporting of the assets and liabilities of their spouse and dependent children. However, this exemption is rarely applicable as the three factors are rather hard to meet.

# APPENDIX C: LETTERS TO CONGRESSIONAL LEADERS

UPDATED VERSION

The Honorable Harry Reid
Majority Leader
United States Senate

The Honorable Mitch McConnell
Minority Leader
United States Senate

The Honorable Carl Levin
Chairman of the Senate Committee on Armed Services
United States Senate

The Honorable John McCain
Ranking Member of the Senate Committee on Armed Services
United States Senate

The Honorable John Kerry
Chairman of the Senate Committee on Foreign Relations
United States Senate

The Honorable Richard Lugar
Ranking Member of the Senate Committee on Foreign Relations
United States Senate

The Honorable Joe Lieberman
Chairman of the Senate Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Susan Collins
Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Dianne Feinstein
Chairman of the Senate Select Committee on Intelligence
United States Senate

The Honorable Saxby Chambliss
Ranking Member of the Senate Select Committee on Intelligence
United States Senate

The Honorable Patrick Leahy
Chairman of the Senate Committee on the Judiciary
United States Senate

The Honorable Chuck Grassley
Ranking Member of the Senate Committee on the Judiciary
United States Senate

The Honorable Eric Cantor
Majority Leader
House of Representatives

The Honorable Nancy Pelosi
Minority Leader
House of Representatives

The Honorable Buck McKeon
Chairman of the House Committee on Armed Services
House of Representatives

The Honorable Adam Smith
Ranking Member of the House Committee on Armed Services
House of Representatives

The Honorable Ileana Ros-Lehtinen
Chairman of the House Committee on Foreign Affairs
House of Representatives

The Honorable Howard Berman
Ranking Member of the House Committee on Foreign Affairs
House of Representatives

The Honorable Peter King
Chairman of the House Committee on Homeland Security
House of Representatives

The Honorable Bennie Thompson
Ranking Member of the House Committee on Homeland Security
House of Representatives

The Honorable Mike Rogers
Chairman of the House Permanent Select Committee on Intelligence
House of Representatives

The Honorable Dutch Ruppersberger
Ranking Member of the House Permanent Select Committee on Intelligence
House of Representatives

The Honorable Lamar Smith
Chairman of the House Committee on the Judiciary
House of Representatives

The Honorable John Conyers, Jr.
Ranking Member of the House Committee on the Judiciary
House of Representatives

# APPENDIX C

July 19, 2012 (Updated Version, 3:30 PM)

RE: Application of Section 11 af the STOCK Act ta National Security Officials

Dear Cangressional Leaders:

We are writing to express concern ahaut section 11 of the Stop Trading in Congressional Knowledge Aet (the STOCK Aet), which requires that the financial disclosure forms of senior executive branch officials be posted on the Internet hy August 31. While we agree that the gavernment should have access ta the financial information of its senior officials to ensure the integrity of government decisiaa making, we strongly urge that Congress immediately pasa legislation allowiag an exception from the Internet posting requirement for certain executive branch officials, in order ta protect the national security and the personal safety nf these officials and their families.

The STOCK Act was intended to stop insider trading hy Members of Congress. However, section 11 of the Act, which was added without any puhlic hearings or consideratiaa of national security or personnel safety implications, requires that financial data af over 28,000 executive branch officials throughout the U.S. government, including members of the U.S. military and career diplomats, law enforcement officials, and afficials in sensitive national security jobs in the Defense Department, State Department and other agencies, be posted on their agency wehsites.

It is not clear whxt puhlic purpose is served hy inclusion of Section 11. Wc are not aware that any transparency concerns have been raised about the adequacy of thc existing review process for executive hranch officials, mast of whom have devoted their careers to public service. Far several decades, executive branch officials have prepared and aubmitted SF-278 financial disclosure forms ta their employing agencies. The completed forms and the extensive financial dsta they contain are carefully reviewed by agency ethics officers in light of the specific responsihilities of the nfficials suhmitting them in order to idenufy and eliminate potential conflicts of interest. Although the forms may be requested by members of the public, they are not published in hard-copy or on the laternet. Moreover, individuals requesting copies of thc forms must provide their names, occupation, and contact informatiaa. Agencies generally aotify the filing officials about whn has requested their personal financial information.

In contrast, Sectioa 11 af the STOCK Act would require that the financial disclasure forms af executive hranch nfficiala be posted on each agency's website and that a government-wide database be created containing the SF-278s that wnuld be searchable and sortahlc withaut the use of a login ar any ather screening process to control or monitar accesa ta this personal information.

We believe that this new uncontrolled disclasure scheme for executive branch afficials will create significant threats to the national security and to the persanal safety and financial security of executive branch offieials and their families, especially career emplayees. Flacing complete personal financial informatian of all senior nfficials on the Internet would he a jackpot for enemies of the United States intent on finding security vulnerabilities they can exploit. SF-278 forms include a treasure trove af personsl fiaancial information: the locaiion and valuc of emplayees' savings and checking accounts and certificatcs of deposit; a full valuation and listing of their investment portfalio; a listing of real estate assets snd their value; a listing of debts, debt amounts, and creditors; and the signatures of the filers. SF-278s include financial infarmatinn not only about the filing employee, but also about the employee's spouse and dependent children.

Fosting this detailed financial infarmatiaa on the Internet will jeopardize the safety af executive hranch nfficials — includiag military, diplamatic, law enforcement, and potentisily intelligence offieials — and their families who are posted or travel ia dangerous areas, especially in certain countries in Asia, Africa, and Latin America. Embassy and military security officers already advise these officials ta past

no personal identifying information on the Internet. Publishing the financial assets of these officials will allow foreign governments, and terrorist or criminal groups to specifically target these officials or their families for kidnapping, harassment, manipulation of financial assets, and other abuse.

Equally important, the detailed personal financial information -- particularly detailed information about debts and creditors — contained in the SF-278s of senior officials is precisely the information that foreign intelligence services and other adversaries spend billions of dollars every year to uncover as they look for information that can be used to harass, intimidate and blackmail those in the government with access to classified information. Yet under the STOCK Act, these SF-278s will be placed on the Internet for any foreign government or group to access without disclosing their identity or purpose and with no notice to the employees or their agencies. We should not hand on a silver platter to foreign intelligence services information that could be used to compromise or harass career public servants who have access to the most sensitive information held by the U.S. government.

Section 11 could also jeopardize the safety and security of other executive branch officials, such as federal prosecutors and others who are tracking down and bringing to justice domestic organized crime gangs and foreign terrorists. Crime gangs could easily target the families of prosecutors with substantial assets or debts for physical attacks or threats.

Finally, publishing detailed banking and brokerage information of executive branch officials, especially with their signatures, is likely to invite hacking, financial attacks, and identity theft of these officials and their families, particularly by groups or individuals who may be affected by their governmental work.

Given these inevitable adverse national security consequences, we urge you to amend the STOCK Act to protect U.S. national security interests and the safety of executive branch officials by creating an exception from the requirements of Section 11 for senior executive branch officials with security clearances. The exception should also apply to other officials based on a determination by an agency head that an exception is necessary to protect the safety of the official or the official's family. At the very minimum, Congress should act to delay implementation of Section 11 until the national security and personal safety implications can be fully evaluated.

If the financial disclosure forms of senior executive officials are actually posted on the Internet in August, there will be irreparable damage to U.S. national security interests, and many senior executives and their families may be placed in danger. This issue is too important to be trapped in partisan politics. We urge Congress to act swiftly, before the Congress goes on its summer recess on August 6.

Sincerely,

Richard Armitage
Deputy Secretary of State, 2001-2005

John B. Bellinger III
Partner, Arnold & Porter LLP; Legal Adviser, U.S. Department of State, 2005-2009; Legal Adviser, National Security Council, The White House, 2001-2005

Joel Brenner
National Counterintelligence Executive, 2006-2009; Inspector General, National Security Agency, 2002-2006

Michael Chertoff
Secretary of Homeland Security, 2005-2009

Jamie Gorelick
Deputy Attorney General, 1994-1997; General Counsel, Department of Defense, 1993-1994

John Hamre
Deputy Secretary of Defense, 1997-2000

# APPENDIX C

Michael Hayden
General USAF (RET); Director af the Ceatral Intelligence Agency 2006-2009; Director of the National Security Agency 1999-2006

Mike McConnell
Vice Admiral USN (RET); Director of National Intelligence, 2007-2009; Director of the National Security Agency, 1992-1996

Michael B. Mukasey
Partner, Debevoise & Plimpton; Attorney General, 2007-2009; U.S. District Judge, Southern District of Naw Yark, 1988-2006

John Negroponte
Deputy Secretary af State, 2007-2009; Director af National Intelligence, 2005-2007

Thomas Pickering
Under Secretary of State for Political Affairs, 1997-2000; Former U.S. Ambassador

Frances Tawnsend
Assistant ta the President for Homeland Security and Counterterrorism, 2004-2008

Kenneth L. Wainstein
Assistant to the President far Homeland Security and Counterterrorism, 2008-2009; Assistant Attorney General for National Security, Department af Justice, 2006-2008

Juan Zarate
Deputy National Security Advisor, Combating Terrorism, 2005-2009; Assistant Secretary af the Treasury, Terrorist Ftoancing and Financial Crimes, 2004-2005

Senior Executives Association

the voice of career federal executives since 1980

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February 16, 2012

The Honorable Harry Reid
Senate Majority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Reid and Minority Leader McConnell:

The Senior Executives Association (SEA) represents the interests of career federal executives in government, including those in the Senior Executive Service (SES) and in equivalent positions, such as Senior Level and Scientific and Professional positions. We write to express strong concern with the provisions in S. 2038 (the STOCK Act), as amended by the House, that would unnecessarily and detrimentally affect career Senior Executives.

In the version of S. 2038 as passed by the House, career Senior Executives would be subject to prompt reporting of financial transactions and their financial disclosure forms would be made public through a website maintained by the Office of Government Ethics (OGE). Section 6 of the bill requires that not later than 30 days after receiving notification of a transaction, Senior Executives must file a report of the transaction. Section 11 (b) requires OGE to create a public website and database of financial disclosure reports filed by executive branch employees. Each of these provisions is troubling and unnecessarily applicable to career federal employees.

One of SEA's primary concerns with the STOCK Act is its attempt to equate career federal employees with Members of Congress, or even political appointees. SEA is unaware of instances where career Senior Executives have been subject to insider trading accusations. While we cannot guarantee that it has not occurred, we believe that overall, career Senior Executives have little desire or opportunity to engage in the activities addressed by the legislation. Moreover, current reporting requirements are sufficient to address, remedy and prosecute any wrong-doing that may occur.

SEA understands the desire to bring transparency to the financial disclosures of publicly elected officials. What we do not agree with is applying such broad standards to career federal employees. Currently, Senior Executives and equivalent senior level employees are required to file annually financial disclosure reports (OGE Form 278). Although not available on a public website, members of the public can access this information through a requesting process to

OGE. On that form, they are already required to report purchase, sales and exchange of stocks, bonds, commodity futures and other securities when the amount exceeds $ 1,000.

As far as SEA is aware, there are no documented problems with access to this information or with the disclosures themselves. The current system provides the necessary oversight and transparency to ensure career Senior Executives are making proper financial disclosures. Attempts to broaden public access as dictated through the STOCK Act appear to be a solution in search of a problem.

Requiring financial disclosure forms to be publicly accessible and searchable through a website raises a host of issues. First and foremost, it appears to be a gross violation of the spirit of the Privacy Act. As you know, the Privacy Act of 1974 was promulgated to regulate federal government record keeping and disclosure and recognizes instances where information should be exempt from disclosure. While the public can access OGE Form 278, we can envision legitimate reasons why making financial disclosure forms of federal employees so readily available to the public could not only hurt an individual's right to privacy, but could also prove outright harmful. For instance, Foreign Service officers or other federal employees serving abroad could come under easy scrutiny by foreign interests, including terrorists. And supervisors within a federal agency could be subject to unwarranted personal scrutiny by their subordinates, causing tension and problems in the workplace.

Other concerns with a disclosure website are more technical. It appears to SEA that it would be a complex undertaking for OGE to create the type of website proposed in the legislation. Further, we suspect that extensive resources (both funding and personnel) would be required to create such a database. Given the current budget climate, we question whether this is an appropriate use of OGE's resources. Finally, we believe these new requirements and the database itself would engender an increased level of requests for ethics guidance by federal employees to OGE, putting a strain on OGE's ethics officials and designated agency ethics officials. With diminishing resources, this requirement will undoubtedly lack the capacity for full or effective compliance.

In terms of the 30 day reporting requirement for financial transactions, we also question the necessity and rationale for expanding coverage to career federal employees. As with the financial disclosures, it does not appear that a lack of reporting on each financial transaction has led to documented insider trading problems within the career SES. Furthermore, such reporting requirements are burdensome and complex. Senior Executives could easily fall afoul of the requirements without realizing they have done so. If a Senior Executive uses a financial advisor or portfolio manager, he or she might not get word of individual financial transactions within the 30 day window, or have the ability to receive the necessary information to make reports on individual transactions.

Overall, SEA believes that such extensive, burdensome and public reporting requirements will have a chilling effect on those employees considering entering the SES. We question why anyone would want to subject themselves to such broad, unnecessary scrutiny. If the intent of

this legislation is to increase public confidence in government, we believe that including career Senior Executives within the scope of S. 2086's requirements does not help achieve that goal.

We encourage you to reconsider the House amendments and narrowly tailor this legislation to only apply to Members of Congress, their staff, and political appointees and ask you to remove the provisions in Section 6 and Section 11 that would cover career federal employees.

Sincerely,

Carol A. Bonosaro

CAROL A. BONOSARO
President

William L. Bransford

WILLIAM L. BRANSFORD
General Counsel

AOS
assembly of scientists
1025 Connecticut Avenue, NW, Suite 601, Washington, DC 20036

June 19, 2012

The Honorable Joseph Lieberman, Chairman
Committee on Homeland Security and Governmental Affairs
706 Hart Senate Office Building Washington, D.C. 20510

The Honorable Susan Collins, Ranking Member
Committee on Homeland Security and Governmental Affairs
413 Dirksen Senate Office Building Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins,

We are writing to you on behalf of the Assembly of Scientists, which represents NIH scientists and physicians engaged in the pursuit of research - ranging from basic science to clinical trials - to express our profound concern that unforeseen ramifications of the STOCK Act will have a negative impact on the generation of new knowledge, which we believe is one the most important long-term investments of the US government. The Assembly of Scientists supports the STOCK Act's stand against insider trading, which is illegal and immoral, but we are very concerned that the STOCK Act creates burdens that we believe are deleterious to the ability of NIH and other US institutions of science to best accomplish their missions.

The STOCK Act's requirement that financial disclosure statements be available online means that scientists' personal financial information will be accessible to everyone anywhere in the world; we believe that this indiscriminate disclosure puts filers at the mercy of anyone who wishes to harm or defraud us or our families. Many senior employees, faced with diminished privacy rights, are discussing leaving the government for the private sector. Colleagues at universities are concerned and less likely to accept positions at national laboratories, thereby putting US institutions at a disadvantage in recruiting and retaining the nation's most prominent and creative scientists.

Importantly, the fundamental issue of insider trading is already addressed by current practices. First, the public's "right to know" is already properly met by the ability to contact designated staff at each agency and to request a copy of an employee's OGE-27B financial disclosure report. Second, because NIH scientists and physicians are limited to *de minimis* financial transactions and holdings in companies connected to their work, this added disclosure is unwarranted as insider trading cannot occur if one is limited from significant financial transactions and holdings. Third, the employee's OGE-27B financial disclosure reports are scrutinized and approved in each case by NIH ethics authorities. Moreover, we believe that the STOCK Act removes a filer's Constitutional right to privacy as most recently reaffirmed by the Supreme Court in *NASA v. Nelson*, 131 S. Ct. 746 (2011).

Several provisions of the STOCK Act are of grave concern. Section 11(a) requires employees' financial disclosure forms to be publicly posted on agency websites by August 31, 2012. Section

11(b) establishes a public database that will allow the public to "search, sort, and download data" for all financial holdings and transactions that affected employees have beginning in 2012. In addition to increased vulnerability to cybercrime and other fraud, other unanticipated adverse consequences may occur. It may also be dangerous to allow untraceable access of such information to professional colleagues, potential partners for legitimate business or investment, or criminals who are looking for targets for identity theft, other cyber crime, or even potentially kidnapping or ransom. It provides criminal elements a ready list of targets that could endanger our families. Section 6 of the STOCK Act requires an unusually high frequency of reporting, which would take time away from work and adds additional administrative burdens. Since none of the above restrictions hold for non-Federal peers, the combined weight of burdens greatly diminishes the attractiveness of remaining in or joining government service. Of particular concern is that the well being of the covered employee's family is directly threatened because these indiscriminate disclosures hold equally for our children and spouses.

In sum, we strongly object to the irrevocable publication on the World Wide Web of personal financial information of career civil servants who have neither the power of the public purse nor are themselves public figures. We seek a narrowing of the STOCK Act to remove those who cannot be involved in insider trading simply because they cannot trade significantly on even marginally affected companies. The STOCK Act represents an unwarranted invasion of personal privacy with no commensurate public benefit; such public disclosure represents an unwarranted seizure of personally identified information of the scientists, their spouses, and their children that does not serve the public interest. When the Congress wrote the STOCK Act, it seems unlikely that they had in mind scientists and physicians who are barred from consulting for industry, who do not make policy that would affect industry, and who do not regulate industry. On this basis, we believe that the STOCK Act is redundant of current disclosure requirements and stock ownership restrictions and does harm without doing good.

The STOCK Act was passed without hearings; there was never time for the unforeseen consequences of its provisions to be voiced. At the least, a temporary delay is warranted for the careful study of the issues raised above. We urge your committee to consider pausing application of the STOCK Act to the Executive Branch for a year to be able to fully assess its impact and to make technical corrections. Once the STOCK Act's required disclosure is implemented, making scientists' and their families' personal financial information publicly available on the World Wide Web, the potential for harm will be irrevocable. Please help us prevent what we believe will be a decline in the recruitment and retention of the best and the brightest scientists at federal laboratories. We look forward to your comments and would welcome your support in this endeavor.

Very truly yours,

Florence P Haseltine, PhD, MD
President, Assembly of Scientists
http://www.assemblyofscientists.org/
fhaseltine@assemblyofscientists.org
(240) 476-7837

December 4, 2012

The Honorable Harry Reid
Majority Leader
United States Senate

The Honorable Mitch McConnell
Minority Leader
United States Senate

The Honorable John Boehner
Speaker
U.S. House of Representatives

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives

Dear Congressional Leaders:

As former heads of Federal agencies, former senior government officials and former Members of Congress, we are writing to express concern with the provision of the recently enacted STOCK Act that requires financial disclosure reports of career federal employees to be posted on the Internet. Others have noted that such posting has severe implications for those in national security positions; we agree, however, we strongly believe that it will also hinder government operations generally and place all affected individual employees and their families at risk due to the nature of their jobs.

Although we understand the reasons underpinning the STOCK Act, we believe the need to ensure that federal employees can meet their responsibilities without fear of their personal financial information being used unlawfully or to influence them or retaliate against them outweighs any benefit of broad public disclosure via the Internet. This is especially true since any legitimate need for such information can be met under the procedures currently in place. Therefore, we strongly urge Congress to permanently repeal the Internet reporting requirements for federal employees.

The STOCK Act was intended to prevent Members of Congress from engaging in insider trading, and the release of their financial disclosure data on the Internet presumably was offered as a way of assuring the public that such trading is not taking place. Career federal employees have been and continue to be subject to strict ethics rules that include vigorous oversight of their financial disclosures by designated agency ethics officials, who will also review their stock trades. Career federal employees are also covered by conflict of interest, divestiture and recusal laws and regulations that already prevent them from engaging in the type of insider trading that the STOCK Act purports to address. Current laws require financial disclosure forms be available to the public through a formal request process – a system that has allowed transparency while ensuring that the information is being requested for legitimate, lawful purposes.

In passing a 30-day delay, Congress acknowledged the need to carefully consider the implications of posting financial disclosures on the Internet. It is our understanding that some may argue to simply exempt national security personnel from the Internet posting requirements. This is an incomplete solution and does not adequately address the many unintended consequences affecting non-national security personnel that arise from Internet posting. Furthermore, such exceptions would be extremely difficult to administer. The challenges that stem from national security exceptions are numerous and include difficulties with determining precisely how to define national security positions, which agency

or agencies would implement the exception process, and how the employees who would be exempted would be identified.

The approximately 28,000 career federal employees who are required to file public financial disclosure forms include Senior Executives, Senior Foreign Service Officers, judges, scientists, and law enforcement officials, among others. These employees oversee major federal programs, handle sensitive information, work and travel in foreign (often unstable) countries, and preside over law enforcement efforts and contentious court cases. In the course of their work, some of these employees have already received threats to their personal safety. Designating only some of these employees as exempt from the posting requirement would have far-reaching unintended consequences.

One such unintended consequence is the barrier to mobility the Internet reporting requirement poses. Employees at senior levels of government are meant to be mobile across agencies. If employees in certain positions are exempt from the Internet filing requirement based on exceptions either defined or authorized by Congress, then mobility will be affected. For an employee who works at an agency or in a position that requires public internet posting, who later moves to a job or agency where the posting is not required for security reasons, his or her records from the previous position or positions will still be available on the Internet for six years, putting the employee at risk in the new position. The public trail of information could also make these employees less attractive to agencies that need to fill sensitive positions.

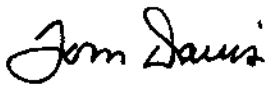
In our view, the STOCK Act's Internet posting requirement unnecessarily applies to career federal employees. Given our former positions, we know firsthand the work that these individuals provide for the American people and the threats that can sometimes occur due to that work. If this requirement is left for the majority of those required to file financial disclosure forms, government operations stand to be affected – when employees face threats to their security, job performance suffers; sensitive programs can be compromised; and, agencies could experience difficulty recruiting and retaining personnel for crucial positions. We have already heard of cases of top career federal employees leaving their positions due to this requirement. These employees serve in mission critical positions and their loss to the government is unacceptable at this time when we require the very best talent in these positions. The recruitment and retention problems, combined with the other problems mentioned above can have a strong effect on whether or not government can operate effectively.

Given the enormous impact that the Internet posting requirement will have on the federal government and career federal employees, we urge Congress to permanently repeal the Internet posting requirement.

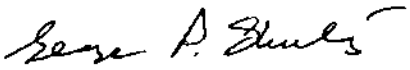
Sincerely,

The Honorable Ryan Crocker
US. Ambassador to Afghanistan, 2011-2012
U.S. Ambassador to Iraq, 2007-2009

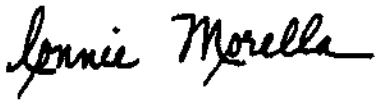
Constance Berry Newman
Assistant Secretary of State for African Affairs, 2004 to 2005
Director, Office of Personnel Management, 1989-1991



The Honorable Tom Davis
Former Representative from Virginia, 199S-2008



George Shultz
Secretary of Labor, 1969-1970
Secretary of the Treasury, 1972-1974
Secretary of State, 1982-1989



The Honorable Connie Morella
Former Representative from Maryland, 1987-2003
Permanent Representative to the Organization for Economic Co-operation and Development, 2003-2007

Larry D. Thompson
Deputy Attorney General, 2001-2003

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December 4, 2012

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Darrell Issa
Chairman
Committee on Oversight
and Government Reform
United States House
of Representatives
Washington, D.C. 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight
and Government Reform
United States House
of Representatives
Washington, D.C. 20515

Re: The STOCK Act and Career Federal Employees

Greetings:

The undersigned Chairs of four entities within the American Bar Association write you to urge the prompt repeal of the website disclosure and transaction reporting provisions of the Stop Trading on Congressional Knowledge Act of 2011 (the STOCK Act or the Act) to the extent they apply to career federal employees. The entities we lead all share deep interests in two important public values: the effective and efficient administration of government, and the professional well-being of Federal employees. For the reasons set forth below, we are deeply concerned that these provisions of the STOCK Act (Section 11 and portions of Sections 8 and 6) have already begun to substantially impair both of those values and should be repealed.

The views expressed in this letter are presented on behalf of the ABA entities listed below. In addition, the views expressed herein have been reviewed and are supported by the National Conference of the Administrative Law Judiciary.[1] These views have not been approved by the House of Delegates or the Board of

[1] The National Conference of the Administrative Law Judiciary (NCALJ) of the ABA Judicial Division is the largest organization serving administrative judges and adjudicators at all levels of government. NCALJ includes Federal and state Administrative Law Judges, Administrative Judges, Board of Contract Appeals Judges, Hearing Officers and other administrative adjudicators within the executive branches of Federal, state, and local governments.

Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

- **The ABA Government & Public Sector Lawyers Division**. Representing public sector lawyers at every level of government, the mission of the Division is to provide specially targeted publications, programming, and services; to voice the concerns and interests of public sector lawyers in policy deliberations throughout the ABA; and to promote professionalism within the public sector.
- **The ABA Section of Administrative Law & Regulatory Practice**. The Section is composed of specialists in administrative law. Both politically and geographically diverse, they include private practitioners, government attorneys, judges, and law professors.
- **The ABA Section of Public Contract Law**. This Section is made up of both government and private sector attorneys who promote best practices and improvements in public procurement.
- **The ABA Section of International Law** is the ABA gateway to international law and practice. The Section advances the professional excellence of our worldwide membership; bridges the U.S. and non-U.S. legal communities; helps members serve the international needs of their clients; promotes diverse international substantive expertise; and strengthens the rule of law.

The STOCK Act extends its reporting and disclosure provisions to a variety of nonpolitical executive branch employees, including career Senior Executive Service employees and Article I judges. It also encompasses career legislative branch employees beyond congressional office and committee staff, such as those working at the Government Accountability Office (GAO), and military officers. For simplicity, these employees are referred to hereafter collectively as "career Federal employees." Such individuals make up a significant portion of the membership of our four entities.

We are aware that Congress has postponed the effective date of the internet posting requirements of Sections 8 and 11, as they apply to career Federal employees, until December 8, 2012 – although it did not postpone the effective date of Section 6. Before the December date arrives, Congress should repeal Section 11 and those aspects of Sections 6 and 8 applicable to career Federal employees.

## I. The STOCK Act Should Remain Focused on Members and Their Employees, Not Career Federal Employees

The STOCK Act was originally intended to redress a problem involving Members of Congress: there was no clear prohibition on Members of Congress using nonpublic information gained in the course of their legislative duties to engage in transactions that benefited them financially. A similar question existed regarding the congressional employees who can gain similar nonpublic information in the course of their work in the personal offices of Members of Congress and on committee staffs. Accordingly, the STOCK Act as introduced was focused on clarifying that such activities are unethical and not immune from the insider trading prohibitions of federal securities and commodities laws. The Act as introduced also required internet disclosure of Members' and their employees' financial interests to enable constituents and other members of the public to police those new provisions and, more generally, to assess the actions of Members and their staff in light of their financial holdings.

This congressional focus of the legislation persisted through committee consideration. As the bill was brought to the Senate floor, however, it was amended to apply to career Federal employees. Of greatest concern, it was expanded to require (i) such employees to report covered financial transactions to the Office of Government Ethics (OGE) within 30-45 days of the transaction, and (ii) disclosure on public websites of such employees' OGE financial disclosure forms.

The reporting and disclosure provisions of what are now Sections 6, 8 and 11 of the STOCK Act were initially intended to serve two functions:

- First, as just noted, they assist members of the public in judging the compliance by covered persons with new ethical and legal prohibitions against trading on nonpublic information.
- Second, and arguably just as important, they allow the public to assess the extent to which Members of Congress are enacting legislation from which they will personally benefit. Indeed, information of the sort required to be made more timely available and accessible by the STOCK Act is already being used for precisely this purpose.[2]

As to the former, there was never any question that career Federal employees are subject to the insider trading prohibitions of Federal securities laws. And Federal ethics rules also prohibit career Federal employees from trading on nonpublic information.[3]

As to the latter, compared with the roles played by Members of Congress, the job responsibilities of career Federal employees create qualitatively lower risks of self-dealing, risks that are adequately addressed by preexisting ethics laws and rules. In equating the two, the STOCK Act intrudes substantially and excessively on the privacy of career Federal employees and actually threatens their personal and financial well-being.

Fundamentally, Members of Congress make law. Other career Federal employees only implement those laws or adjudicate cases involving those laws. While it is true that some executive branch employees have limited authority, within the bounds of congressional delegations, to develop binding rules, their authority is far narrower in scope than that of Members of Congress, who have plenary power to enact laws, limited only by the Constitution. Many other covered career Federal employees, including agency adjudicators, are limited to issuing decisions applying the law. The majority do neither – their jobs are simply to carry out the law. Career Federal employees thus present far less basis for concern about self-dealing. Contrary to the asserted basis for extending the STOCK Act to career Federal employees via Sections 6, 8 and 11, the goose and the gander are not similarly situated and do not warrant the same sauce.[4]

Moreover, career Federal employees are already subject to one or more of the Ethics in Gov't Act,[5] the conflict of interest provisions of the Federal criminal code,[6] OGE rules under these authorities,[7] and

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[2] *See, e.g., Capitol Assets: A Washington Post Investigation*, available at http://www.washingtonpost.com/capitolassets.

[3] *See* 5 U.S.C. § 2635.703.

[4] *Senate Approves Ban on Insider Trading by Members of Congress*, NEW YORK TIMES, Feb. 2, 2012, at A-17, available at http://www.nytimes.com/2012/02/03/us/politics/senate-approves-ban-on-insider-trading-by-congress.html (quoting Senator Shelby).

[5] 5 U.S.C. app. 4 §§ 101-111.

[6] 18 U.S.C. § 208.

[7] 5 C.F.R. Part 1635, Subpart D.

governing rules and regulations issued by ethics committees and employing agencies. We are unaware of any evidence – or even assertions – that these authorities are inadequate to address concerns about self-dealing.

The legislative history of the STOCK Act contains no evidence of insider trading or self-dealing involving career Federal employees – to the contrary, arguments in favor of enactment highlighted the importance of subjecting Members of Congress to the same sorts of prohibitions that already applied unquestionably to career Federal employees. It is unnecessary – and as shown below, will be counterproductive – to apply Sections 6, 8 and 11 of the STOCK Act to career Federal employees.

**II. The Reporting Required by Section 6 is Unwarranted for Career Federal Employees**

Career Federal employees should not be required to report covered transactions within the 30 to 45-day period imposed by Section 6. The reporting period is simply too short, as a practical matter, for career Federal employees who do not have, and the great majority of whom cannot afford to hire, accountants or other consultants who can monitor or evaluate transactions, determine reportability, and file the required reports on a timely basis. Widespread, inadvertent noncompliance seems inevitable – a result that rational legislation should not produce. Given the qualitatively lower level of concern regarding potential insider trading or self-dealing on the part of career Federal employees, as compared with Members of Congress and their employees, it is sufficient to retain the annual reporting that applied under prior OGE rules.

**III. Internet Publication of OGE Disclosure Forms for Career Federal Employees is Excessive**

Career Federal employees have long filed OGE Form 278, and that form has always been publicly available to anyone who perceived a reason to examine the financial disclosures of a specific employee. But the undersigned ABA entities submit that the degree and manner of that disclosure should be commensurate with the level of potential public interest and concern.

Members of Congress write laws on the full range of topics enumerated by Article I of the Constitution; they can also authorize and appropriate vast sums of money. Members of Congress are also self-supervising, except to the extent that Ethics Committee oversight is triggered – an unusual event – and are individually responsible for supervising their staff.

Career Federal employees, by contrast, have much more limited delegations of authority involving narrower subject matters, far less discretion, and limited if any ability to spend Federal dollars. They have much less access to nonpublic information upon which they could trade and much less ability to take actions that would benefit their self-interest. These employees also have managers and ethics officers who police their conduct, including ensuring compliance with OGE requirements

Based on these differences, Internet disclosure may be arguably appropriate for Members of Congress and their employees. But, some lesser degree of disclosure should be adequate for the lower risks posed by career Federal employees. In particular, those risks do not warrant immediate, global access to

information regarding any employee with only a few computer keystrokes. Rather, the current, non-internet level of disclosure is adequate.

**IV. Sections 11, 8 and 6 of the Stock Act Are Already Deleteriously Affecting Career Federal Employees and, by Extension, Federal Administration**

The undersigned sections fear that the website disclosure and transaction reporting requirements of Sections 11, 8 and 6 will adversely affect the performance of career Federal employees and diminish the overall quality of the Federal workforce. As the Senior Executives Association, the American Foreign Service Association, the Assembly of Scientists, and similar organizations have detailed at great length, the distraction and anxiety associated with complying (or not complying) with 30-45 day reporting obligations, and with having their personal financial details published online, worldwide, can only harm the morale of covered employees and distract them from their jobs. A letter from an extraordinary bipartisan group of former senior officials of multiple departments and agencies also has emphasized the "inevitable national security consequences" of Section 11.[1] These same concerns will encourage many employees, particularly those with many years of service or the most marketable skills, to leave the Federal workforce. They will also discourage well-qualified people from applying for those jobs.

There is already widespread anecdotal evidence that both of these are occurring. In its short tenure, therefore, the STOCK Act has already diminished the quality of the senior executive branch work force by prompting seasoned individuals to leave the government or opt not to join it.

The drawbacks associated with Federal service at senior levels, and the growing opprobrium attached to "bureaucrats," are already significant. Congress should not exacerbate them as revenge for being compelled by public outcry to impose new ethics-related requirements on Members and their staff.

**V. The New Requirements of the STOCK Act Are Especially Inappropriate for the Administrative Law Judiciary**

Among the career Federal employees who are subject to the STOCK Act are the Article I judges who adjudicate administrative matters such as benefits claims, immigration status, and enforcement cases, and the Article II judges in the GAO who adjudicate government contract disputes. The application of the Act to these individuals implies Congress's belief that doing so would improve the integrity of the administrative judicial system or enhance due process for litigants. The Act's provisions are completely unnecessary to accomplish those goals in the case of most members of the administrative law judiciary, however, and are an overly intrusive and burdensome tool to address any judges whose financial interests could be affected by matters within their jurisdiction. The benefit, if any, that would be obtained through application of Sections 8 and 11 of the STOCK Act to administrative judges is far outweighed by the grave harm that could be caused to their safety, and the safety of their families, by the internet posting requirements of the STOCK Act.

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[1] Letter to Congressional leadership from former national security officials (July 19, 2012), available at http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2012/07/26/National-Politics/Graphics/stockactformerofficials%20(1).pdf.

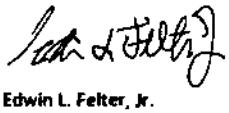
Most administrative law judges adjudicate matters that, by their nature, are not directly or indirectly influenced or affected by the financial interests held by the judge or the judge's family members. However, even for those judges who do adjudicate cases of a regulatory nature, the STOCK Act is a poor tool for seeking to prevent bias and prejudice from influencing decisions. A more effective and inclusive method would be for Congress to make administrative judges subject to, and accountable under, appropriate standards for ethical conduct adapted from the ABA Model Code of Judicial Conduct, which specifically addresses when a judge should disqualify himself or herself from a matter. Since judges already consider themselves subject to the highest professional ethical responsibilities and standards, adoption of the Model Code of Judicial Conduct would strengthen and formalize the practice most judges voluntarily follow in addressing potential conflicts.

Application of the STOCK Act to the administrative judiciary invites abuse of the required information, including actions to intimidate and threaten judges and their families, and places onerous reporting requirements on judges without significam benefit. The purposes of the STOCK Act would be better served through the adoption end application of the Model Code of Judicial Conduct.

**VI. Conclusion**

For the reasons set forth above, Congress should repeal Section 11 and those aspects of Sections 6 and 8 applicable to SES and equivalent-level Federal employees. it should do so as soon as possible, but in any event before December 8, 2012.

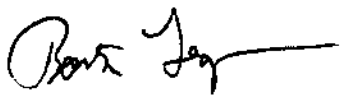
Sincerely,



Edwin L. Felter, Jr.
Chair, ABA Government
& Public Sector Lawyers Division

James W. Conrad, Jr.
Chair, ABA Section of Administrative Law
& Regulatory Practice Section
202-822-1970; jamie@conradcounsel.com

Mark D. Colley
Chair, ABA Section of Public Contract Law



Oarton Legum
Chair, ABA Section of International Law

cc: Ira Sandron, Chair, ABA National Conference of the Administrative Law Judiciary
Thomas M. Susman, Director, ABA Governmental Affairs Office

# National Security and the STOCK Act

- AFSA has deep concerns about certain provisions (sections 6 & 11) in the Stop Trading on Congressional Knowledge (STOCK) Act that create national security, operational and personal risks for federal employees in general but uniquely so for Foreign Service personnel who serve overseas as the frontline of our diplomatic service. In order to protect Foreign Service employees from additional risks when they serve overseas and to prevent potential national security risks, AFSA supports a legislative correction to the STOCK Act that would exempt the Foreign Service from the section 6 and 11 requirements for online posting of annual financial reports.

- Foreign Service personnel often serve in posts where kidnapping for ransom is a real and growing danger. Making personal financial information publically available provides criminal organizations information that makes it easier to target members of the Foreign Service and their families.

- Foreign Service Officers and specialists are targets for foreign intelligence services that hope to gain access to classified or sensitive information. We know that foreign governments and potentially hostile intelligence agencies are actively building databases on American government employees and ntioual security personnel. AFSA is deeply concerned that the information required to be made public under the STOCK Act would be used by foreign governments and intelligence agencies as a resource against American personnel and our allies overseas.

- AFSA respects the intent of the STOCK Act, and Foreign Service employees have long complied with existing financial disclosure requirements. The current system for requesting financial disclosure documents balances the need for government transparency with a layer of protection against criminal organization and foreign iotelligence services that would exploit a publically available database of personal information about thousands of Foreign Service employees in embassies, consulates, and missions around the world. Publically posting a vast database of personal information of Foreign Service personnel endangers both individuals and American national security.

American Foreign Service Association
2101 E Street NW
Washington, DC 20037
(202) 338-4045

# APPENDIX D: LETTERS TO THE ACADEMY FROM NATIONAL SECURITY AND LAW ENFORCEMENT AGENCIES

Dr. David S. C. Chu
Chair, STOCK Act Impact Study Panel
National Academy of Public Administration
900 7th Street, N.W., Suite 600
Washington, D.C. 20001

Dear Chairman Chu:

Thank you for the opportunity to share the views of the Department of Defense on the potential adverse consequences of the "Stop Trading on Congressional Knowledge" (STOCK) Act's requirement to post the financial disclosure reports of 28,000 Executive Branch employees on the internet. These views supplement the information and expert opinions the Department's representatives provided your investigators on January 11, 2013. We appreciate your team's consideration of our substantial concerns about the detrimental effects of the STOCK Act's public posting requirement on Department of Defense personnel.

Fundamentally, the STOCK Act's one-dimensional approach to financial disclosure (i.e., subjecting Executive Branch personnel to the same requirements as Members of Congress) places DoD civilian employees and military personnel at risk without a meaningful gain in ethical accountability or transparency. Applying the internet posting requirement to all public financial disclosure filers across both Legislative and Executive Branches fails to recognize the substantially different functions served by financial disclosure in each branch. This is one instance when what is "good for the goose" is ***not*** "good for the gander." For Congress and its staff, the primary purpose of financial disclosure is political accountability. Making their personal finances available to voters allows constituents to evaluate elected leaders and their staffs. For Executive Branch officials, the principal reason for reporting finances is to avoid conflicts of interest between their financial holdings and performance of their official duties. Understanding this critical difference follows logically from the fact that the criminal conflict of interest statute, 18 U.S.C. § 208, applies to Executive Branch officials (except the President and Vice President), but not to Members of Congress or their staffs. Legislative Branch financial disclosures inform voters of their representatives' interests, so that the voters can hold them accountable for their actions - - actions for which they would not otherwise be accountable. Executive Branch disclosures alert ethics officials (and in DoD, supervisors) to potential conflicts of interest.

This key distinction in the aims of the two financial reporting regimes drives everything from the extent of financial disclosure, nature of legal review, and even certifications on the forms. These fundamental differences suggest that the calculus used to balance the need for transparency with individual privacy and risk of harm to individual filers is also different. Because a DoD filer's financial interests receive extensive review by supervisors and ethics officials (and potentially, inspector general or criminal investigators, in cases where reviewers identify potential conflicts),

the additional benefit from widespread public scrutiny is much less than that of Legislative Branch reports, which are reviewed for technical accuracy and thoroughness, not for conflicts of interest. This is especially true in the case of senior civilian and military officials who hold their positions because of many years of public service, rather than election to office or appointment from private life by an elected official.

We acknowledge the value in making Executive Branch financial disclosure reports available to members of the public, and at DoD, we have responded to all public requests for these reports in a timely fashion. We emphasize that, under current law, public financial disclosure forms, which the STOCK Act would post on the internet, are already available to the public ***upon submission of a written request, after the requester affirms that he or she will not use the financial information for illegal, commercial, or fundraising purposes***. This approach is far preferable to the wholesale publication of detailed personal financial information on the internet. This existing approach provides necessary transparency to members of the public who are truly interested in the ethical accountability of Executive Branch financial disclosure filers, while minimizing the risk of identity theft or other harm to these filers. Ironically, DoD records reveal that the vast majority of those who would be harmed by the STOCK Act's indiscriminate publication of financial information on a website have never been the subject of a request for their financial disclosure report by a member of the public, much less a determination that they have engaged in unethical or illegal conduct.

Paradoxically, the new requirement to provide unbounded access to Executive Branch public financial disclosure reports, though touted as promoting "transparency," may in fact be counterproductive to this goal. Certainly, transparency in official Government matters is almost always a good thing, *except when transparency reveals facts without context*. The STOCK Act is likely to have such a result, in that the public will have unfettered access to the detailed financial data of over 28,000 Executive Branch employees without a corresponding understanding of the individual employee's official duties and the legal parameters under which he or she may own financial assets. Without this critical context and specialized expertise, the public will be permitted to engage in ill-informed speculation or worse, to explore this highly personal information simply for prurient interest or nefarious purposes. Worse still, implementation of the STOCK Act would create national security and personal security risks for many DoD personnel. Our initial assessment is that internet posting of these detailed financial reports would unnecessarily expose DoD personnel to harm from criminal enterprises or hostile foreign interests. An estimated 30 percent of DoD OGE Form 278 filers work in intelligence positions where they regularly handle classified information and engage in classified activities and operations. Revealing publicly their personal finances, family relationships, and outside activities would grant easy access to parties seeking to undermine national security.

In addition, DoD personnel may be vulnerable to identity theft or even physical harm, including kidnapping, robbery, or extortion, as a result of internet posting of their financial assets. Our concern is greatest for those military and civilian personnel assigned to dangerous locations, including unstable foreign countries where foreign actors actively seek to threaten U.S. interests. We know of cases where we have reason to believe that a hostile foreign entity is attempting to build a database of U.S. Government personnel, and their job titles, and locations. As a broader threat to the Department, foreign counterparts can be expected to routinely gather

OGE Form 278 reports as part of preparation for any meeting with DoD officials and use data from these reports to inappropriately inform their interactions. While other groups of Executive Branch filers might share this concern, given our operational footprint, it is DoD military and civilian officials who are generally most at risk for harm related to their financial or physical security.

We also worry about those OGE Form 278 filers who have already been victims of identity theft, stalking, or other forms of bona fide harassment, including frivolous lawsuits, rendering them uniquely threatened by internet posting. We owe these valued personnel protection from re-victimization, but without congressional or judicial action we have no legal authority to waive the internet posting requirement. With the large number of DoD filers affected by the Act, we have officials expressing a breadth of concerns--from misuse of information in marital separations to disruption of estate plans when beneficiaries prematurely learn of trusts established for them. Each instance indicates an imbalance between privacy and transparency interests. For each of these public servants, their individual rights appear sacrificed without much public good in return.

Further, the data that would be readily available on-line certainly would be used to tailor "spear-phishing" attacks that will exacerbate the cyber security threats the Department faces every day. Defending the security of important DoD networks would become harder, and those networks (and the national security) would become more at risk as a result.

These internet publication concerns summarized above are not comprehensive. In fact, while we applaud the original intent of the STOCK Act, its ambitious implementation date for internet posting has not allowed sufficient time to evaluate carefully the potential unintended consequences of publishing the detailed financial reports of thousands of military and civilian personnel.

Thank you for your efforts to identify the implications of posting OGE Form 278 and OGE Form 278-T reports on a public website. Please feel free to contact us to discuss this matter further or your staff may contact Leigh Bradley, Director of the DoD Standards of Conduct Office, who is responsible for STOCK Act implementation in DoD.

Sincerely,

Robert S. Taylor
**Robert S. Taylor**
**Acting General Counsel**

Jessica L. Wright
**Jessica L. Wright**
**Acting Under Secretary of Defense (P&R)**

**UNDER SECRETARY OF STATE**
**FOR MANAGEMENT**
**WASHINGTON**
MAR 14 2013

Dear Mr. Chu:

We appreciated the opportunity to meet with you and other National Academy of Public Administration (NAPA) Panel members and staff on January 24 and March 4, in connection with NAPA's study of the risks posed by online posting of financial disclosure reports of U.S. Government personnel. As we explained, in our classified and unclassified briefings, the Department of State is greatly concerned about the grave risks posed by the widespread publication of financial disclosure reports contemplated by the STOCK Act. Having had an opportunity to review the Act's on-line posting requirement for federal employees, which was added relatively late in the legislative process, we have concluded that it would, if implemented, jeopardize national security and the personal safety and privacy of our employees and their families.

Criminals and foreign intelligence services would undoubtedly welcome receiving the expansive, detailed information contained on OGE-278 reports about the finances of the Department's Foreign Service and Civil Service personnel, as well as the personnel of other agencies whom the Department hosts abroad at U.S. embassies and consulates. This information, which would be readily available to any and all, would provide a helpful roadmap for those wishing to target employees, particularly those who are relatively affluent or in difficult financial situations. Falling into either category, seen through another culture's financial realities, would be enough to make our employees targets of opportunity. As such, the information can be expected to be used in efforts to harass, compromise, and steal from U.S. personnel both domestically and abroad.

Personal information is exploited by malicious actors already; the data points provided in OGE-278 reports provide an inordinate amount of information that would surely exacerbate such threats. For example, the Department recently became aware that PII of a former senior official was compromised and published on-line from a foreign domain, suggesting that there is active

The Honorable
David S. C. Chu, Chairman,
STOCK Act Impact Study Panel,
National Academy of Public Administration,
900 7th Street, N.W., Suite 600,
Washington, D.C. 20001.

interest in mining and exploiting Department officials' personal information. In February 2012, malicious actors customized spam messages that distributed "Gameover Zeus" or "Bugat" trojans that steal online banking credentials and credit card numbers to target multiple individuals within one U.S.-based organization. In April 2012, malicious actors also were observed using publicly available lists of U.S. Government contractors to develop specified target lists. Such targeted, malicious cyber activity, when coupled with publicly available information in a STOCK Act database, could be used to steal from individuals. Further, actors affiliated with the activist hacking group "Anonymous" threatened to subject a senior Department of State official to "doxing" in early 2011. "Doxing" involves collecting any and all information available about a person or organization, and subsequently posting it to the Internet to allow other like-minded individuals to independently harass and embarrass the target. This intimidation tactic is commonly used by Anonymous-affiliated actors and has impacted those targeted not only online, but in the physical space as well. Similarly, in September 2011, hackers publicly posted stolen information, listing more than 2,000 individuals affiliated with a prominent professional organization serving the intelligence and National Security communities. This data included business and personal webmail account information, along with organizational positions and physical addresses. The contact information listed has been used to facilitate malicious e-mail based targeting of a number of individuals, including some Department of State officials.

Posting OGE-278 reports on the Internet would give foreign intelligence entities reams of financial information that can be used in their efforts to compromise and exploit U.S. personnel. When combined with other available information, the database envisioned by the STOCK Act becomes a valuable resource for a foreign intelligence entity seeking to target Department and other U.S. Government personnel. Liability disclosures will provide a view to employees who may have exploitable financial vulnerabilities. Declarations of outside positions may highlight targeting opportunities hitherto unknown or unexplored by a foreign intelligence entity. Gifts and travel reimbursements may call attention to an employee's program portfolio and regional area of responsibility. Perhaps even more disconcerting is the possibility that this information, when combined with other open-source and social media data, can provide the opposition with a very detailed profile of the potential target, well before contact is ever made or an offer is proffered. Indeed, counter-intelligence investigations within the Department often cover exploitable conduct, which includes whether the employee has exhibited financial or fiscal management irresponsibility that interferes with his or her performance of duty, or whether or not the employee has had more than one previous assignment to the same post – information that would be available via archival STOCK Act postings. *See* 12 FAM 263.3-2(b)(1)-(13).

The concern that access to personal information, like that contained on the OGE 278, will provide additional leverage to those seeking to intimidate and/or exploit U.S. personnel is particularly pronounced in certain critical intelligence threat countries, where our personnel already face elevated levels of harassment. Indeed, as evidenced by the materials we sent your

staff on February 8, posting of OGE-278 information is in direct tension with Bureau of Diplomatic Security training to employees – which directs them to avoid putting personal information on the Internet, citing, among other reasons, its potential for misuse by foreign intelligence agencies to exploit employees and undermine the Department's foreign affairs mission. Further, because rotational assignments and TDY travel are features of Senior Foreign Service and Senior Executive Service careers at the State Department, such concerns apply not only to those currently serving abroad or in particularly sensitive positions.

As noted above, public posting of financial information will also make it readily accessible to criminal actors and, as a result, may make employees and their family members more vulnerable to kidnapping, robbery, theft, extortion, and identity theft. For example, in addition to telling whether a filer is wealthy or not, an OGE-278 report can be used to confirm whether an employee has young children and, in some instances, where a child goes to school (*e.g.*, an employee's OGE Form 278 may include an outside position on a school board). At a number of diplomatic posts around the world, personnel are already cautioned that they face elevated risks of criminal activity. Moreover, the Department's Bureau of Consular Affairs advises all U.S. citizens, through Tips for Traveling Abroad, Messages, and Travel Warnings, to avoid displaying evidence of wealth that might draw attention and to limit the sharing of personal information. These are common-sense precautions.

From the Department's perspective, the potential benefits of publishing OGE-278 reports on-line are marginal at best and, in any event, could not justify the increased national and personal risks. Executive branch employees have long been subject to ethics laws and regulations addressing insider trading activity. Section 208 of Title 18 of the U.S. Code already prohibits employees from owning interests in entities that are directly affected by their official duties. The Standards of Conduct for Executive Branch Employees state that "[a]n employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure." 5 C.F.R. § 2635.703(a). Further, the Department works actively to promote an ethical workplace, free from conflict of interest. We have refined the process for internal review of OGE-278 reports to ensure that multiple reviewers are checking for potential conflicts of interest. Those conducting these reviews are in the best positions to know what assets might conflict with an individual employee's actual duties.

Widespread concern about the STOCK Act's on-line publishing requirement has been raised by the Department's OGE-278 filers. These concerns have been voiced at a Town Hall meeting at the Department, in writing, and through in-person appeals. These are not the voices of employees who are complaining about bureaucratic requirements; rather they are our most senior officials, with years of dedicated public service, who are raising real alarm about the needless compromise of information and the potential increased threats to their personal security and that of their family members. Once published, this information cannot be taken back; it will be available long after the employee leaves government service.

Ironically, assessing the potential impacts of the STOCK Act's on-line posting regime has caused the Department to look afresh at the financial disclosure regime in the underlying Ethics in Government Act of 1978. We believe that it could well be time for a a studied reassessment of the executive branch ethics process.

Thank you for the opportunity to share the Department of State's views regarding the national security and personal security implications of on-line posting.

Sincerely,

for Patrick F. Kennedy

**APPENDIX D**

January 29, 2013

Mr. David S. C. Chu
Chairman, STOCK Act Impact Study Panel
National Academy of Public Administration
900 7th Street, N.W., Suite 600
Washington, D.C. 2001

Dear Chairman Chu:

This follows up the conversation of January 17th with members of your staff regarding the impact of the "Stop Trading on Congressional Knowledge" (STOCK) Act's requirement to post on the Internet the financial disclosure reports of Executive Branch senior employees. We appreciate the opportunity to make our views known and trust that the members of the Study Panel will find them useful in determining how best to manage the balance between promoting accountability in government while protecting individual employee privacy and security as well as the nation's security.

To be clear, it is our view that, without some form of relief from the Act's publication requirements, the identities and sensitive personal information of more than 400 FBI employees serving across the nation and around the world will be posted on the Internet exposing them, their families, and the FBI's intelligence, counterintelligence and national security missions to harm with no concomitant benefit to the public warranting such risks. When Congress first passed the Act in 1978, it recognized that public disclosure of the financial reports of employees in certain intelligence agencies or engaged in intelligence activities might pose grave dangers to the national security. The risk about which Congress was then concerned is greater today given the unprecedented ability that the Internet provides to gather and exploit information about our personnel. Posting the financial disclosure forms of senior officials on the Internet will immediately expose their names, assets, financial institutions, liabilities, associations and other personal information. Using such information, our adversaries can and will quickly and easily garner additional information and attempt to use it to target, harass, embarrass, expose, neutralize, recruit and otherwise compromise these officials.

The symbolic roles of the Attorney General, the FBI Director, and their executive leadership teams have historically made them targets for retaliation by individuals and organizations whose activities have been disrupted by the United States judicial system. Within the past year, seven FBI executives have been targeted multiple times, most commonly through sophisticated "spear phishing" electronic mail attacks. In 2012, the hacker group "Anonymous" posted a list of personal information which the group represented as pertaining directly to two high-ranking DOJ executives. Such information could have been used by our adversaries to launch computer intrusions to compromise the integrity and confidentiality of the information if it had been accurate. Fortunately, it was not. In another recent example, an illegal drug organization obtained personal information and exploited it to locate an FBI executive's home address, work location, telephone numbers (cell, work, and home), and names of family

members. The organization contacted the FBI executive via telephone and informed him of the personal information that they had in their possession and attempted to leverage it to seek dismissal of certain criminal charges. Threats were made, "drive-by(s)" of the executive's home were conducted, and the family's movements were observed over the course of two days. Three members of the organization were observed sitting outside the executive's home. These incidents demonstrate that the threat is real and that the need to safeguard the personal information of FBI personnel from unwarranted disclosure is great.

Further, FBI and U.S. Intelligence Community personnel are often targeted by foreign state actors seeking to develop composites for the purpose of development and recruitment. As I told your staff, if the situation was reversed and the senior intelligence officers of our adversaries presented us with such readily available information about themselves, we would not only save months and years of effort in trying to obtain it but we would set about exploiting it at once. We would seek immediately to identify and leverage vulnerabilities, be they financial, organizational or personal.

Ironically, to guard against such action, we work closely with internal and external partners, including credit bureaus, DMV officials, and data aggregators both to determine when attempts at penetration might occur and to put into place mitigation measures to minimize unnecessary disclosures. Further, all FBI personnel are instructed upon entry on duty to be circumspect about disclosing the identity of their employer, to safeguard their personal data, and to report anyone who seeks such information without apparent justification. The STOCK Act would fatally undermine these efforts. Threats against law enforcement and intelligence community personnel and their families would undoubtedly increase, resulting in the expenditure of scarce resources to protect them, and creating a chilling effect on recruitment.

These adverse consequences are not outweighed by any perceived advantages. During the discussion with your staff, we noted that Executive Branch personnel are already subject to a detailed, multi-faceted ethics protocol designed to identify and remedy potential conflicts-of-interests. All Senior Level (SL) and Senior Executive Service (SES) career employees and all politically appointed personnel must file the Office of Government Ethics (OGE) 278 financial disclosure form. (Additionally, employees below those grades who are appointed on an "acting" basis to SL or SES positions are also required to file.) Each such report is reviewed carefully by the employee's supervisor and the agency's ethics official. These reviews compare and contrast the employee's official duties and responsibilities with his or her personal financial interests, liabilities, associations and outside affiliations to determine whether potential or actual conflicts exist. For example, last year we carefully reviewed 415 forms filed by FBI personnel and issued 130 cautionary letters. These letters serve to remind filers with non-diversified financial interests or positions of authority in outside organizations that Section 208, of Title 18, United States Code, prohibits them from taking any official action that might affect those interests or organizations and that they must, consequently, recuse themselves from all such matters.

Additionally, in the Intelligence Community, all employees holding a Top Secret security clearance with access to Sensitive Compartmented Information (SCI) are required to file an annual Security Financial Disclosure Form (SFDF) that is separate and apart from the OGE-

278 form. The SFDF contains detailed employee financial data that is reviewed internally to ensure that employee financial anomalies are detected and addressed. The basis for the SFDF is the SF-714 Financial Disclosure Report, which has been approved by the Office of Management and Budget and is available on the Internet.

Further, in the FBI we established an office dedicated specifically to enhancing our ethical culture and our compliance with the myriad of laws and regulations governing FBI operations and programs. The compliance program this office oversees involves all levels of FBI management and encompasses our entire organizational structure. While few other Executive Branch agencies have formal compliance programs such as ours, we believe that all are equally committed to maintaining the public's trust and upholding the Standards of Ethical Conduct for the Executive Branch.

We are not seeking to exempt FBI employees from the requirement to file with the FBI financial disclosure reports under the Act. If the STOCK Act's posting requirement is rescinded, FBI personnel who are required to file now would continue to do so, their reports would continue to be reviewed and scrutinized for conflicts of interests, and appropriate follow-up action would continue to be taken. Further, the entire process would continue to be subject to the oversight of the Department of Justice (DOJ), the DOJ Inspector General, the Intelligence Community Office of the Inspector General, the Office of Government Ethics, and Congress. Thus, repealing the Act's posting requirement is as consistent with the ethical principles embodied in the original Ethics in Government Act as it is with the dictates of national security. Adherence to the one will do no violence to the other if our request is granted.

Mr. Chairman, thank you for your attention and continued consideration of our views. Please let me know if you have any questions.

Sincerely,

Sean Joyce
Deputy Director

Mr. Price,

Pursuant to the telephone conversation we had with NAPA officials on March 11, 2013, this email provides additional input from the U.S. Department of Commerce incorporating additional responses received from Department personnel after we sent you our original input on February 28, 2013 regarding implementation of the provisions of the Stop Trading on Congressional Knowledge Act (STOCK Act). .

Since our last submission, we received additional input from the Department's Bureau of Industry and Security (BIS) and from the Department's Foreign Commercial Service. This input is provided below.

I want to also point out that some items in the news have highlighted the increasing problems with invasion of privacy through use of the internet, including reported identity theft against the Vice President. The threats to the financial and personal wellbeing of employees are not just hypothetical.

If you need to speak with a technical expert, Matthew Scholl of the National Institute of Standards and Technology (NIST) is available. He is the Deputy Chief of the Computer Security Division in the Information Technology Laboratory of NIST.

Bureau of Industry and Security Responses

BIS has an Export Enforcement function, and some of the comments below reflect issues raised by enforcement personnel.

From an Export Enforcement law officer perspective, the bad guys in cyber threat cases may also be primary targets. Consider that 60% of all of Export Enforcement cases involve [country A] and [country B]. Placing the enforcement personnel's financial information in a public forum only makes them more vulnerable to attack and may compromise their investigative work.

The posting of financial disclosure information on-line is likely to greatly increase the risk that an employee's financial records will be hacked and assets stolen. On-line access to banking and securities accounts already poses enough risks and career employment in the U.S. Government should not result in those risks being even further magnified.

The posting of financial data online makes BIS Senior Executive Service (SES) employees more susceptible to retaliatory cyber-attacks in response to specific policy or enforcement actions if foreign governments and terrorist groups know which specific financial institutions to target. With the concerted cyber security threat by foreign governments and private individuals to compromise both government and commercial business information systems, online posting of financial disclosure reports removes an existing layer of privacy that would enhance the cyber threat by providing a resource to both identify a person by name and enable the targeting of specific financial assets of that individual. Additionally, BIS SES officials frequently negotiate with foreign officials, and foreign and domestic industry representatives. The ability of BIS SES officials to most effectively conduct those negotiations can be compromised by public disclosure

of their financial disclosure reports. Foreign officials could use that information to inform their own positions and undercut the positions of the BIS officials.

One BIS employee stated that he would probably serve on the Board of Directors for the Department of Commerce's on-site daycare facility called Commerce Kids. This would be an outside position he would list on his public financial disclosure form, and making that information available to the public will reveal to those he investigated and the terrorist networks he targeted, the daily location of his child.

Also, since BIS employees perform a significant amount of travel, the posting of financial records could provide an incentive for certain elements to target either the individual, or family members, while the employee is traveling or living abroad. Lastly, another BIS employee shared a concern that the posting of his personal financial data poses potential problems for his family given his roles as guardian, financial conservator and power of attorney for a handicapped son and elderly mother.

Employees Serving Overseas in the Foreign Commercial Service

The Department of Commerce has numerous employees overseas in the Foreign Commercial Service serving in various locations and embassies. The input below raises concerns shared by those employees in addition to those previously provided to NAPA.

One employee stated that he has served in the Commercial Service for twenty years and over the years personal privacy and security has been a major concern. Not only did he serve in countries . . . where [police] could use the online posting of financial reports for nefarious purposes that could result in major personal harm and financial damage or even potential threats, but the online posting of this information could leave officers susceptible to other risks. Serving in [a specific country] leaves one at risk for slanderous attacks by the government services and the press. The publically available information could be used to even accuse Commercial Service employees of corruption. In [Multinational Region], this information could be used by organizations and agents that want to cause Commercial Service employees personal harm or risk. Even just identifying their names on the internet may leave them in a dangerous situation because they would be identified as U.S. Government employees. All over the world, they shred out-of-date Embassy phonebooks to keep their names and identities private, so why would the U.S. Government post their names on the internet and leave them at risk?

Another Commercial Service employee stated that Congress is endangering his financial security because the public can see his stock ownership and banking relationships. He doesn't want to be prey for swindlers, etc. who will review this information in searching for their next target. Additionally, it makes the employees targets for every financial institution who wants to make money by taking over their banking and investment relationships.

The general consensus was that the public posting of Financial Disclosure Reports from diplomatic officers serving overseas exposes these officers and their extended families to unreasonable and unnecessary financial risks. The public posting of these financial disclosure

reports creates new, unreasonable and unnecessary risks to the health and well-being of U.S. diplomats serving overseas, as well as to their extended families.

It is believed that the posting of financial disclosure data online for public access will pose a direct credible threat to Commercial Officers overseas, and Foreign Service Officers in general, who work in countries with host country intelligence services that target U.S. diplomats. All of those employees have secret or top secret clearances which makes them targets. In many overseas countries there is a long and sad history of U.S. diplomats being targeted through harassment, intimidation, psychological pressure, bribes and threats to family members that has lead to many curtailments from post and untimely ends to careers. Occasionally, some employees have had to leave a foreign post precipitously as a result of this hostile environment. By making this information public, adversaries are given another tool to effectively pressure and intimidate U.S. diplomats-local services will exploit financial information on areas to rank vulnerability and assessment recruitment targets.

One Commercial Service employee pointed out that in [a particular country] everyone uses a VPN to connect to the internet, and the Department's Office of the Chief Information Officer requires all Department of Commerce visitors to have their Blackberries "cleaned" after a trip to [that country]. If those steps are taken in regards to electronics, then how can putting up financial information for all to see be justified?

Another employee pointed out that on the Office of Government Ethics (OGE's) own website regarding the OGE Form 278, http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/OGE-Form-278/OGE-Form-278/, it states that "The purpose of this report is to assist employees and their agencies in avoiding conflicts between duties and private financial interests or affiliations. Agency ethics officials will use the information filers provide to determine whether any potential conflicts exist. The form also will be made available if it is requested by a member of the public. Public requesters are prohibited, however, from using the information on an individual's form for any unlawful or commercial purpose, or from using it as a basis to establish a credit rating or to solicit any money from the filer." Note that the website contains a warning on the misuse of the information-this shows that even OGE understands that there is a risk of the data being misused. Once this information is freely available online, any ability to control its misuse by those outside U.S. jurisdiction would be very problematic.

*Examples* . . . Below are some examples provided by [employees] citing possible consequences of posting financial disclosure data online. One issue is that disclosure essentially allows anyone to see, at a glance, the net worth of Commercial Service officers–not just the assets owned, but the value of those assets, which creates additional problems.

(1) In Country X kidnapping threats are a real and growing problem. A primary concem is that a Commercial Service officer's wife and children would become explicit targets of opportunity for kidnappers. This risk is serious enough that the Commercial Officer he has been talking with the American Foreign Service Association (AFSA) about legal challenges to the implementation of this law for Foreign Service Officers. He understands that the law was passed with the best of intentions, but without factoring in the threat in the developing world from kidnapping of officers based overseas.

(2) In Country Y Commercial Officers would face the same kinds of security risks as outlined above. There have been reports that officers are often targeted due to their postings on Facebook. An open book to financial holdings is a green light for high security risks for American officers located in Country Y. The threat may actually be higher in Country Y given the extensive in-country travel that American Commercial Service Officers undertake to cities where they do not have the oversight of a Regional Security Officer as one would have in a capital city.

(3) Country Z presents its own peculiar risks. Financial crime has historically been a problem activity in that society. Additionally, Country Z is not routinely cooperative with international efforts to stop financial crime. For example, recent press reports highlight that this country no longer pursues leads sent to it by international bodies but merely files them away until they have hard evidence of a crime committed on local soil. Given less-than-assiduous investigation by local authorities many crimes will go unnoticed. In addition, common crime is on the increase in that country, so any online reporting of finances could make any diplomat a target. Americans stand out and are easily identified. Those with extensive public engagement, such as commercial officers, are especially vulnerable due to their high profile.

As stated earlier, the Department of Commerce has strong concerns regarding the posting of public financial disclosure data online. We appreciate the opportunity to provide input and welcome any future opportunity to be involved in any ongoing discussions regarding this matter.

David Maggi
Chief, Ethics Law and Programs Division
Office of the General Counsel
U.S. Department of Commerce

# APPENDIX E: INDIVIDUALS AND ORGANIZATIONS CONTACTED

## EXECUTIVE BRANCH AGENCIES

**Department of Agriculture**
Stuart Bender, Director, Office of Ethics
Michael Edwards, Deputy Director, Office of Ethics
Andrew Tobin, Senior Ethics Specialist
Ryan Wolfe, Senior Ethics Specialist

**Department of Commerce**
Barbara Fredericks, Assistant General Counsel for Administration, Office of the General Counsel
David Maggi, Chief, Ethics Law and Programs Division

**Department of Defense**
Leigh Bradley, Director, Standards of Conduct Office
Erica Dornburg, Senior Attorney, Standards of Conduct Office
Capt. Allen Edmiston, J-6, Joint Staff
Patricia Franklin, Supervisory Management Analyst for Ethics, Standards of Conduct Office
Jeff Green, Senior Attorney, Standards of Conduct Office
BG Rich Gross, Legal Counsel to the Chairman of the Joint Chiefs of Staff
Linda Neilson, Deputy Director, Defense Acquisition Regulation System
Lt. Gen. Mark Ramsay, USAF, J-8 Joint Staff
Eric Rishel, Senior Attorney, Standards of Conduct Office
Pat Tamburrino, Chief of Staff to the Under Secretary of Defense (Personnel & Readiness)
Susan Yarwood, Director, Human Resources, Washington Headquarters Service

**Department of Education**
Susan Winchell, Assistant General Counsel for Ethics

**Department of Energy**
Susan Beard, Assistant General Counsel for General Law
Donald Cook, Deputy Administrator for Defense Programs, National Nuclear Security Administration

**Department of Health and Human Services**
Holli Beckerman Jaffe, Director, Ethics Office, National Institutes of Health
Elizabeth Fischmann, Deputy Associate General Counsel for Ethics Advice and Financial Disclosure and Alternate Agency Ethics Official
Randall Hall, Team Leader, Senior Financial Disclosure Counsel
Stanley Olesh, Financial Disclosure Counsel
Edgar Swindell, Associate General Counsel and Designated Agency Ethics Official
Lawrence Tabak, Principal Deputy Director, National Institutes of Health
Gretchen Weaver, Senior Ethics Counsel, National Institutes of Health

**Department of Homeland Security**
Susan Heller, Associate General Counsel for Ethics, Office of the General Counsel
Ferne Mosley, Attorney-Advisor
Mike Waters, Deputy Associate General Counsel for Ethics

**Department of Housing and Urban Development**
Lindsey Allen, Deputy Assistant General Counsel for Ethics
Mike Anderson, Senior Advisor to the Deputy Secretary
Peter Constantine, Associate General Counsel for Ethics and Personnel Law
Linda Cruciani, Deputy General Counsel for Operations.
Robert Golden, Assistant General Counsel for Ethics
Jean Lin Pao, General Deputy Assistant Secretary for Policy, Development and Research

**Department of Justice**
Joseph Cappello, Senior Advisor to the CIO
Renata Cooper, Special Counsel for Policy & Legislation, U.S. Attorney's Office for the District of Columbia
Kevin Deeley, Director and DOJ Chief Information Security Officer
Richard Downing, Principal Deputy Chief, Computer Crimes and Intellectual Property Section, Criminal Division
Robin Gold, Ethics Official, Criminal Division
Janice Kaye, Ethics Official, National Security Division
Andrew Kogan, Chief, National Security, U.S. Attorney's Office for the District for New Jersey
Luke McCormack, Chief Information Officer
Thomas Reilly, Counterespionage Section, National Security Division
Janice Rodgers, Director, Departmental Ethics Office
James Rybicki, Office of Intelligence, National Security Division
Anita Singh, Deputy Chief of Staff and Counsel to the Assistant Attorney General, National Security Division
Lauren Wetzler, Civil Chief, U.S. Attorney's Office for the Eastern District of Virginia

**Department of State**
Patrick Kennedy, Under Secretary for Management
Richard Visek, Deputy Legal Advisor
Kathryn Youel Page, Assistant Legal Adviser

**Department of Treasury**
Rochelle Granat, Assistant General Counsel for General Law, Ethics and Regulation
Elizabeth Horton, Deputy Assistant General Counsel

**Department of Veterans Affairs**
Christopher Britt, Staff Attorney and Deputy Ethics Official, Office of the General Counsel
Renee Szybala, Associate General Counsel, Office of the General Counsel

**Federal Bureau of Investigations**
Sean Joyce, Deputy Director
Patrick Kelley, Assistant Director, Office of Integrity and Compliance
Andrew Weissmann, General Counsel

**Federal Trade Commission**
Kathleen Johnson, Attorney and Ethics Official, Office of General Counsel
Peter Miller, Chief Privacy Officer
Mineesha Mithal, Head of the Divisions of Privacy and Identity Protection
Paul Ohm, Senior Policy Planner
Lorielle Pankey, Attorney and Deputy Ethics Official, Office of General Counsel
Lisa Schifferle, Senior Attorney, Division of Privacy and Identity Protection
Alex Tang, Senior Attorney, Office of General Counsel

**General Services Administration**
Eugenia Ellison, Associate General Counsel for General Law and Designated Agency Ethics Official
Sara Mitchell, Senior Assistant General Counsel
Claudia Nadig, General Associate Counsel for Ethics
Kenneth Sharrett, Assistant General Counsel
Shana Vinson, Assistant General Counsel

**National Science Foundation**
Robin Clay, Deputy Ethics Official
Peggy Hoyle, Deputy General Counsel
Karen Santoro, Assistant General Counsel for Ethics

**National Aeronautics and Space Administration**
Adam Greenstone, Alternate Designated Agency Ethics Official

**Office of Government Ethics**
Rachel Dowell, Attorney-Advisor
Don Fox, General Counsel
Walter Shaub, Jr., Director

**Office of Management and Budget**
Dustin Brown, Deputy Assistant Director for Management

**Office of National Counterintelligence (NCIX)**
David Beaupre, Legislative Liaison Officer
Renn Gade, Attorney
Jennifer Hudson, Legislative Liaison
Frank Montoya, Director

**Office of Personnel Management**
J. David Cope, Assistant Inspector General for Legal Affairs
Stephen Shih, Deputy Associate Director for Senior Executive Service and Performance Management

**Office of the White House General Counsel**
Leslie Kiernan, Deputy Assistant to the President and Deputy Counsel

**Securities and Exchange Commission**
Joseph Brenner, Chief Counsel, Enforcement Division
Shira Minton, Ethics Counsel, Office of the Ethics Counsel

**United States Agency for International Development**
Angelique Crumbly, Acting Assistant to the Administrator, Bureau for Management
D. Bruce McPherson, Attorney Advisor

## JUDICIAL BRANCH AGENCIES

**Administrative Office of the US Courts**
Jack Cummins, Attorney Advisor
Robert Deyling, Assistant General Counsel
Cathie Jackson, Assistant Staff Counsel, Judicial Conference of the United States, Committee on Financial Disclosure
Peter Owen, Attorney Advisor, Office of Legislative Affairs
James Brian Randolph, Paralegal Specialist, Office of Legislative Affairs
George Reynolds, Staff Counsel, Judicial Conference of the United States, Committee on Financial Disclosure

## LEGISLATIVE BRANCH OFFICES AND AGENCIES

**Government Accountability Office**
Yvonne Jones, Director, Strategic Issues
Chris Mihm, Managing Director, Strategic Issues
Lisa Pearson, Assistant Director, Strategic Issues
Michelle Sager, Director, Strategic Issues

**House Committee on Administration**
Jamie Fleet, Minority Staff Director
Philip Kiko, Majority Staff Director
Paige Oneto, Executive Assistant

**House Committee on Ethics**
Carol Dixon, Director of Advice and Education
Heather Jones, Senior Counsel
Daniel Schwager, Staff Director & Chief Counsel

**House Committee on Oversight and Government Reform**
Mark Stephenson, Senior Policy Advisor/Legislative Director

**Office of the Clerk of the U.S. House of Representatives**
Kirk Boyle, Legal Counsel
Karen Granger, Manager of Public Information
Dale Thomas, Chief, Legislative Resource Center

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**Office of Congressman Steny Hoyer**
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**Office of Congressman Darrell Issa**
Jennifer Hemingway, Senior Professional Staff Member

**Office of Congresswoman Louise Slaughter**
Stefanie Winzeler, Legislative Assistant

**Office of Congressman Jim Moran**
Christopher Gaspar, Military Legislative Assistant

**Office of Congressman Tim Walz**
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**Office of Congressman Frank Wolf**
Mira Lezell, Legislative Assistant

**Office of the House Majority Leader Eric Cantor**
Neil Bradley, Deputy Chief of Staff

**Office of the House Minority Leader Nancy Pelosi**
Bernard Raimo, Counsel to the Minority Leader

**Office of the Senate Majority Leader Harry Reid**
Gavin Parke, Counsel and Policy Advisor

**Office of the Senate Minority Leader Mitch McConnell**
John Abegg, Legal Counsel
R. Brian Lewis, Legal Counsel

**Office of Senator Tom Coburn**
John Chapuis, Legislative Assistant

**Office of Senator Richard Shelby**
William Duhnke, Staff Director

**Secretary of the U.S. Senate**
Adam Bramwell, General Counsel
Dana McCallum, Superintendent of Public Records

**Senate Committee on Homeland Security and Government Affairs**
Larry Novey, Associate Staff Director & Chief Counsel for Governmental Affairs

**Senate Committee on Rules and Administration**
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Jean Parvin Bordewich, Staff Director
Stacy Ettinger, Senior Counsel

**Senate Select Committee on Ethics**
Tremayne Bunaugh, Counsel
John Sassaman, Chief Counsel and Staff Director
Tonia Smith, Counsel/Training Development

**Senate Sergeant at Arms**
Joseph Haughey, General Counsel
Nancy Olkewicz, Legislative Liaison
Kimball Winn, Assistant Sergeant at Arms and Chief Information Officer

**GOVERNMENT ASSOCIATIONS**

**American Foreign Service Association**
Javier Cuebas, Director of Advocacy
Keith Curtis, Foreign Commercial Service Vice President
Susan Johnson, President
Clint Lohse, Legislative Assistant

**Senior Executives Association**
Carol Bonosaro, President
William Bransford, General Counsel
Jennifer Mattingley, Legislative Assistant

**GOVERNMENT REFORM AND ACCOUNTABILITY ORGANIZATIONS**

**Partnership for Public Service**
John Palguta, Vice President for Policy

**Sunlight Foundation**
Bill Allison, Editorial Director
Daniel Schuman, Policy Counsel; Director, Advisory Committee on Transparency
John Wonderlich, Policy Director

## PRIVATE SECTOR ORGANIZATIONS

**PricewaterhouseCoopers LLP**
Dennis Chesley, Partner, PwC Global Leader of Risk Consulting
and Co-Leader of US Risk Consulting
Donald Christian, PwC Partner and Advisory Leader, East Region and Washington Metro
Christina Dixon, PwC Associate
Michael Green, PwC Senior Associate
Hang Pham-Swami, PwC Director
Glenn Ware, PwC Partner, Head of Forensics and Anti-Corruption

## INDIVIDUAL CONTACTS

John Bellinger III, Arnold & Porter LLP
Joel Brenner, Of Counsel, Cooley LLP
Kathleen Clark, Law Professor, University of Washington in St. Louis
Cheryl Embree, Ethics Official, Department of Housing and Urban Development
Jamie Gorelick, Partner, Wilmer Cutler Pickering Hale and Dorr LLP
Trip Rothschild, Associate General Counsel, Nuclear Regulatory Commission

# APPENDIX F: LETTERS TO CONGRESS FROM COALITION OF REFORM GROUPS SUPPORTING THE STOCK ACT

U.S. Senate
Washington, D.C. 20510

January 27, 2012

**Pass the "Stop Trading on Congressional Knowledge Act"**

Dear Senator:

Our organizations – Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, Democracy 21, Public Citizen, Sunlight Foundation, U.S. PIRG – strongly support passage of the "Stop Trading on Congressional Knowledge Act" (STOCK Act) designed to prevent congressional insider trading.

We strongly urge you to vote for this important reform legislation when it is brought to the Senate floor next week and to oppose any amendments to weaken the legislation.

The STOCK Act being submitted to the Senate next week clarifies for the first time that Members of Congress and their staff are subject to the same laws against insider trading that apply to the rest of America.

In addition to specifying that it is against the law for Congress to trade on non-public information gleaned through the course of official business, the STOCK Act also creates an important system of real-time transparency of stock trading activity by members and staff. These transparency provisions are an integral and very important part of the legislation.

President Barack Obama has said he will sign the legislation as soon as it gets to his desk.

We urge you to move expeditiously to enact the legislation without any undermining amendments.

Vote 'YES' on the STOCK Act.

Sincerely,
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington
Common Cause
Democracy 21
Public Citizen
Sunlight Foundation
U.S. PIRG

**APPENDIX F**

February 6, 2012

U.S. House of Representatives
Washington, D.C. 20515

**Enact "Stop Trading on Congressional Knowledge Act," Bill Sponsored by 281 Members or Nearly Two-Thirds of House**

Dear Representative:

Last week, the Senate passed the bipartisan "Stop Trading on Congressional Knowledge" (STOCK) Act by an overwhelming vote of 96 to 3. Reform groups strongly supported this legislation.

The Senate-passed bill, S. 2038, makes clear that the laws against insider trading apply to Congress and those who do business with Congress. The legislation also establishes real-time disclosure requirements for trading activity by members of Congress and the Executive Branch and closes major loopholes in the crucial honest services fraud statute and the gratuities statute so that important anti-corruption laws can again be effectively enforced.

Our organizations strongly urge the House to vote on and pass the Senate-passed bill and send it immediately to President Obama for his signature. President Obama has made clear that he will sign the STOCK Act as soon as it reaches him.

The organizations include Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, Democracy 21, League of Women Voters, OMB Watch, Project On Government Oversight, Public Citizen, Sunlight Foundation and U.S. PIRG.

In the event the House Republican leadership is not willing to schedule the Senate-passed bill for a vote, we strongly support the bipartisan House version of the STOCK Act, H.R. 1148, sponsored by Reps. Timothy Walz (D-MN) and Louise Slaughter (D-NY) and co-sponsored by 279 House members, or nearly two-thirds of the House. Absent the ability to vote on the Senate-passed bill, it is essential that the House Republican leadership provide the opportunity for a vote on H.R. 1148 on the House floor. As *The New York Times* noted in an editorial (February 4, 2012), "House leaders would be foolish to weaken or delay the reform effort."

Important provisions added on the Senate floor to strengthen the legislation should also be in order as amendments to H.R. 1148, including the legislation fixing the honest services and gratuities statutes, sponsored in the House by Representatives James Sensenbrenner (R-WI) and Mike Quigley (D-IL) and unanimously reported out by the House Judiciary Committee.

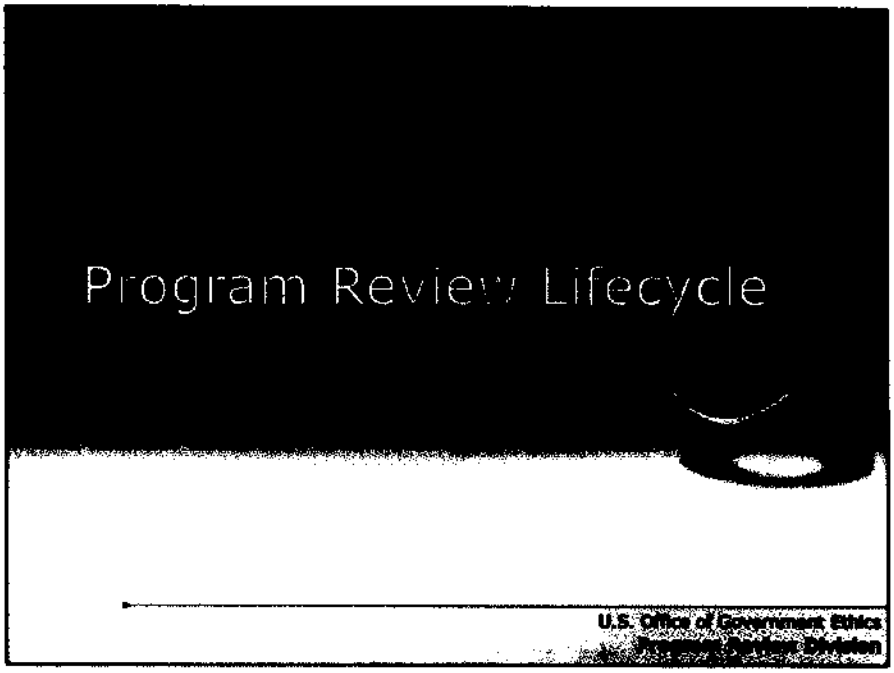
The Senate has passed important ethics and anti-corruption legislation at a time when the country is deeply skeptical about Congress and the way it is conducting its business. The House of Representatives should do no less and should move quickly to pass strong new ethics rules and anti-corruption provisions.

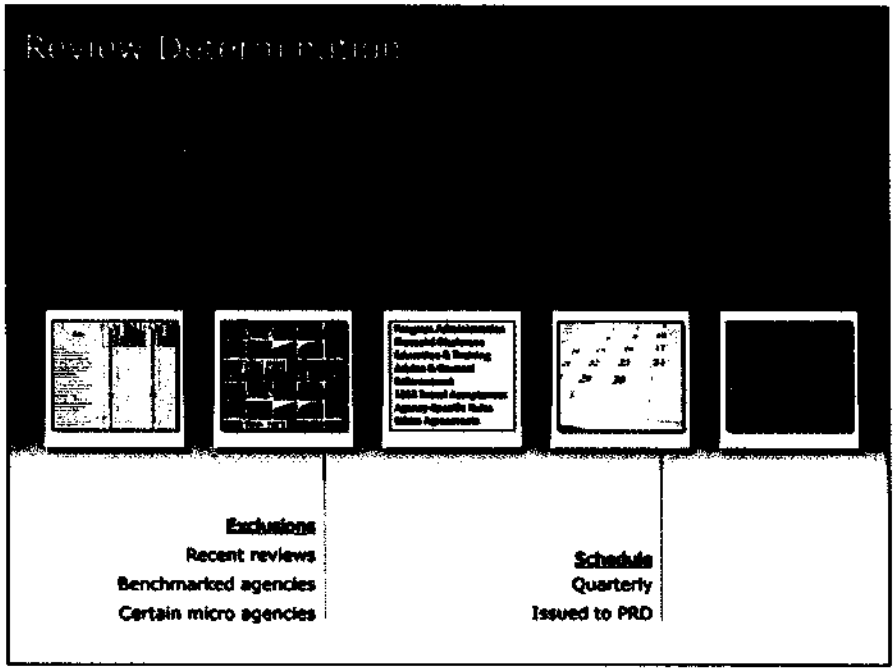
Vote 'YES' on the STOCK Act and send the legislation to President Obama.

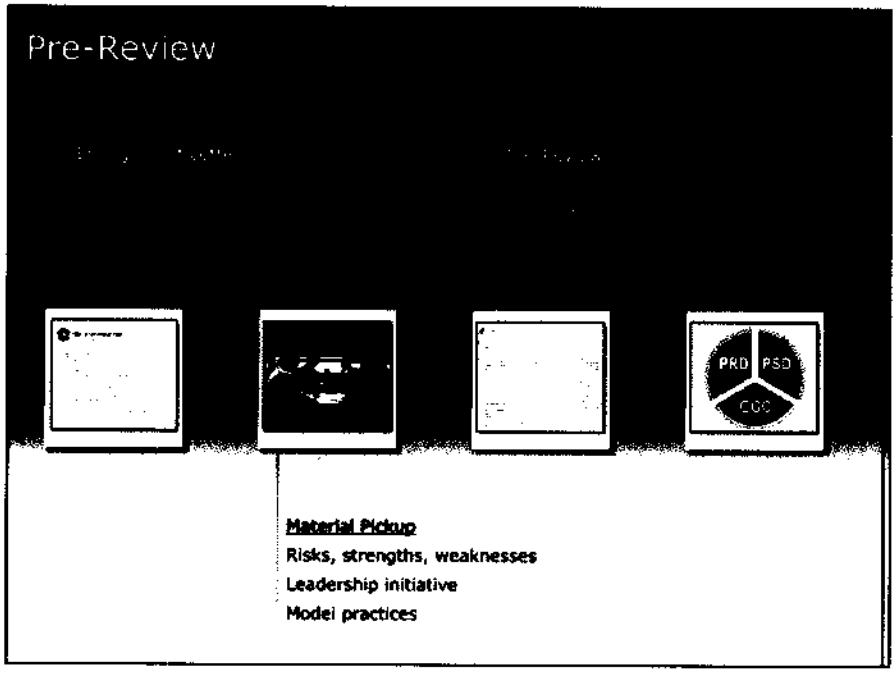
Sincerely,

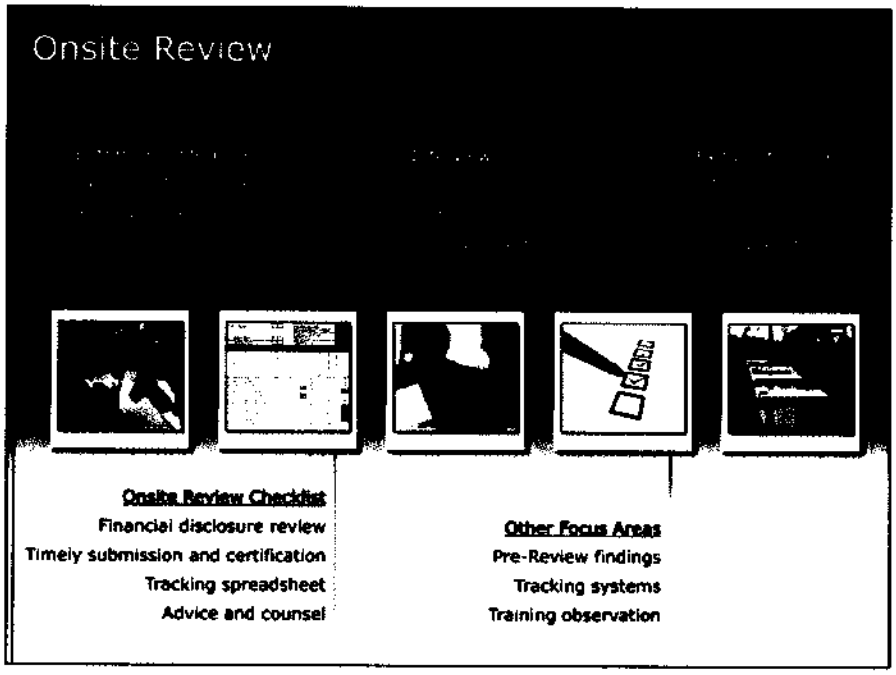
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington
Common Cause
Democracy 21
League of Women Voters
OMB Watch
Project On Government Oversight
Public Citizen
Sunlight Foundation
U.S. PIRG

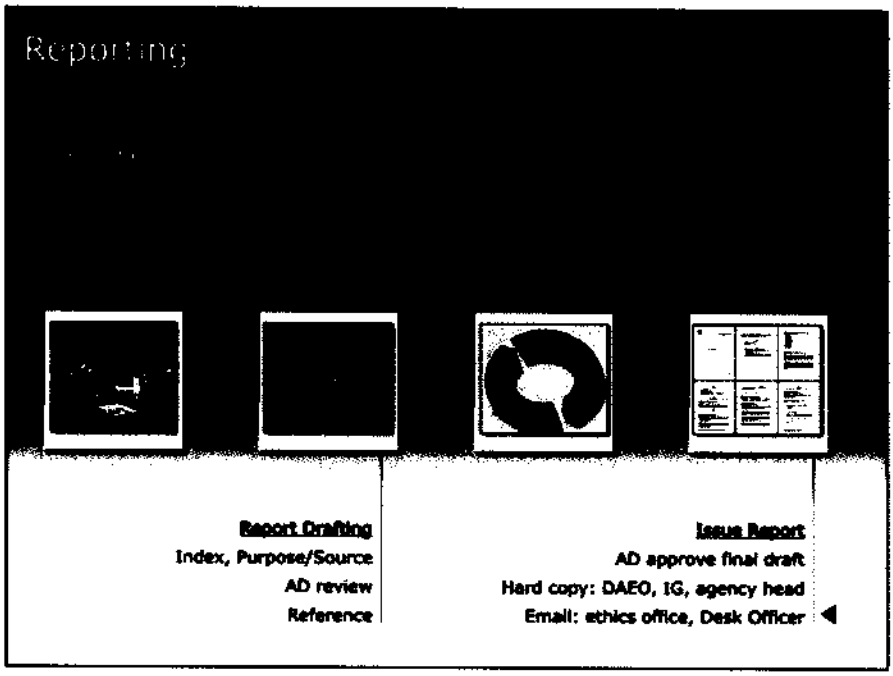
# APPENDIX G: OGE'S PROGRAM REVIEW LIFECYCLE

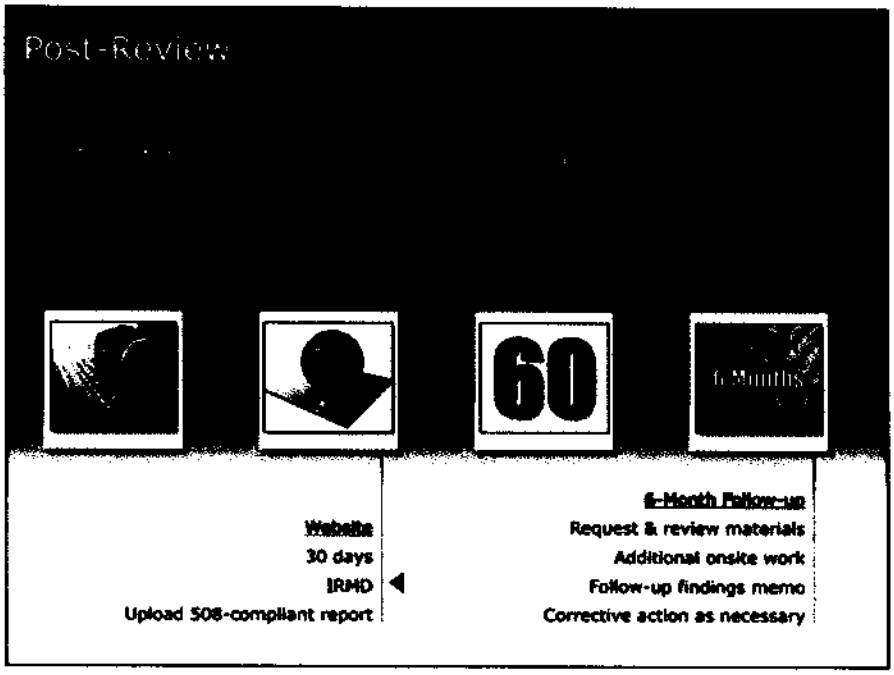



Pre-Review
PRD
PSD
COC
Material Pickup
Risks, strengths, weaknesses
Leadership initiative
Model practices


Onsite Review
Onsite Review Checklist
Financial disclosure review
Timely submission and certification
Tracking spreadsheet
Advice and counsel
Other Focus Areas
Pre-Review findings
Tracking systems
Training observation


Reporting
Report Drafting
Index, Purpose/Source
AD review
Reference
Issue Report
AD approve final draft
Hard copy: DAEO, IG, agency head
Email: ethics office, Desk Officer


Post-Review
60
6 Months
Website
30 days
IRMD
Upload 508-compliant report
6-Month Follow-up
Request & review materials
Additional onsite work
Follow-up findings memo
Corrective action as necessary

# APPENDIX H: SF-278[58]

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

**Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT** [redacted] Form Approved: OMB No. 1209-0001

| | | | | | |
|---|---|---|---|---|---|
| Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year) | **Reporting Status** (Check Appropriate Boxes) | Incumbent ☐ | Calendar Year Covered by Report | New Entrant, Nominee, or Candidate ☐ | Termination Filer ☐ Termination Date (If Applicable) (Month, Day, Year) |

**Reporting Individual's Name**

| Last Name | First Name and Middle Initial |
|---|---|
| Title of Position | Department or Agency (If Applicable) |

**Position for Which Filing**

**Location of Present Office** (or forwarding address)

| Address (Number, Street, City, State, and ZIP Code) | Telephone No. (Include Area Code) |
|---|---|

Position(s) Held with the Federal Government During the Preceding 12 Months (If Same as Above)

Title(s) and Date(s) Held

**Presidential Nominees Subject to Senate Confirmation**

| Name of Congressional Committee Considering Nomination | Do You Intend to Create a Qualified Diversified Trust? |
|---|---|
| Not Applicable | ☐ Yes ☐ No |

**Certification**

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.

| Signature of Reporting Individual | Date (Month, Day, Year) |
|---|---|
| | |

**Other Review (If Required by Agency)**

| Signature of Other Reviewer | Date (Month, Day, Year) |
|---|---|
| | |

**Agency Ethics Official's Opinion**

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments on the back of this form).

| Signature of Designated Agency Ethics Official/Reviewing Official | Date (Month, Day, Year) |
|---|---|
| | |

**Office of Government Ethics Use Only**

| Signature | Date (Month, Day, Year) |
|---|---|
| | |

Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

**Fee for Late Filing**

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fine.

**Reporting Periods**

**Incumbents.** The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

**Termination Filers.** The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

**Nominees, New Entrants and Candidates for President and Vice President:**

**Schedule A**—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

**Schedule B**—Not applicable.

**Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

**Schedule C, Part II** (Agreements or Arrangements)—Show any agreements or arrangements as of the date of filing.

**Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

**Agency Use Only**

**OGE Use Only**

[58] See http://www.oge.gov/Forms-Library/OGE-Form-278--Public-Financial-Disclosure-Report/ for instructions on filling out SF-278.

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

| Reporting Individual's Name | SCHEDULE A | Page Number |
|---|---|---|
| . | | 2 of |

| Assets and Income | Valuation of Assets at close of reporting period | | | | | | | | | | | | | Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| BLOCK A | BLOCK B | | | | | | | | | | | | | BLOCK C | | | | | | | | | | | | | | |
| For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.<br><br>For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).<br>None ☐ | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Type | | | | Amount | | | | | | | | | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) only if Honoraria |
| | | | | | | | | | | | | | | | | Dividends | Rent and Royalties | Interest | Capital Gains | None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | | |
| Examples: General Airlines Common | | | | x | | | | | | | | | | | | x | | | | | | x | | | | | | | | | |
| Examples: Doe Jones & Smith, Hometown, State | | | x | | | | | | | | | | | | | | | | | | | | | | | | | | | Law Partnership Income $130,000 | |
| Examples: Keystone Equity Fund | | | | | x | | | | | | | | x | | | | | | | | | | x | | | | | | | | |
| Examples: BIA: Heartland 500 Index Fund | | | | | | | x | | | | | | x | | | | | | | | | | | x | | | | | | | |
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* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

| Reporting Individual's Name | **SCHEDULE A** continued (Use only if needed) | Page Number of |
|---|---|---|

| **Assets and Income** BLOCK A | **Valuation of Assets** at close of reporting period BLOCK B | | | | | | | | | | | | | | **Income:** type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | | **Type** | | | | **Amount** | | | | | | | | | | | | |
| | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Excepted Investment Fund | Excepted Trust | Qualified Trust | Dividends | Rent and Royalties | Interest | Capital Gains | None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | Over $5,000,000 | Other Income (Specify Type & Actual Amount) | Date (Mo., Day, Yr.) Only if Honoraria |
| 1 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

**Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate**

| Reporting Individual's Name | SCHEDULE B | Page Number of |
|---|---|---|

## Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

| | Identification of Assets | Transaction Type (h) | | | Date (Mo., Day, Yr.) | Amount of Transaction (h) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Purchase | Sale | Exchange | | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Certificate of divestiture |
| Example | Central Airlines Common | x | | | 2/1/99 | | | x | | | | | | | | | |
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*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

## Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $350 and (2) travel-related cash reimbursements received from one source totaling more than $350. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $140 or less. See instructions for other exclusions.

[redacted] None ☐

| | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, NY, NY | Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty) | $500 |
| | Frank Jones, San Francisco, CA | Leather briefcase (personal friend) | $385 |
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OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

**Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate**

| Reporting Individual's Name | SCHEDULE B continued (Use only if needed) | Page Number of |
|---|---|---|
| . | | |

## Part I: Transactions

| | Identification of Assets | Transaction Type (x) | | | Date (Mo., Day, Yr.) | Amount of Transaction (x) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Purchase | Sale | Exchange | | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000 | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 | Certified Current |
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| 15 | | | | | | | | | | | | | | | | | | |
| 16 | | | | | | | | | | | | | | | | | | |

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

| Reporting Individual's Name | SCHEDULE C | Page Number |
|---|---|---|
| . | | of |

## Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Include** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

| | Creditors (Name and Address) | Type of Liability | Date Incurred | Interest Rate | Term if applicable | Category of Amount or Value (a) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | $10,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000* | $1,000,001 - $5,000,000 | $5,000,001 - $25,000,000 | $25,000,001 - $50,000,000 | Over $50,000,000 |
| Examples | First District Bank, Washington, DC | Mortgage on rental property, Delaware | 1991 | 8% | 25 yrs. | | | x | | | | | | | | |
| | John Jones, Washington, DC | Promissory note | 1994 | 10% | on demand | | | | | x | | | | | | |
| 1 | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | |

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

## Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

| | Status and Terms of any Agreement or Arrangement | Parties | Date |
|---|---|---|---|
| Example | Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00. | Doe Jones & Smith, Hometown, State | 7/85 |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

OGE Form 278 (Rev. 12/2011)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

| Reporting Individual's Name | SCHEDULE D | Page Number |
|---|---|---|
| . | | of |

## Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

| | Organization (Name and Address) | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|---|
| Examples | Nat'l Assn. of Rock Collectors, Mt., NY | Non-profit education | President | 6/92 | Present |
| | Doe Jones & Smith, Hometown, State | Law firm | Partner | 7/85 | 1/00 |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |

## Part II: Compensation in Excess of $5,000 Paid by One Source

**Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.**

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

| | Source (Name and Address) | Brief Description of Duties |
|---|---|---|
| Examples | Doe Jones & Smith, Hometown, State | legal services |
| | Moony University (client of Doe Jones & Smith), Moneytown, State | Legal services in connection with university construction |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |

# COVER IMAGE CREDITS

**Source: image featured in Jason Healey, "Cyber Workforce Ferris Wheel." New Atlanticist Policy and Analysis Blog. May 3, 2011 <http://www.acus.org/new_atlanticist/cyber-workforce-ferris-wheel>**

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Public Administration

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HAWAII
STATE
ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

March 21, 2014

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
Honorable Members
House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 2682, S.D. 1, H.D. 1, Relating to Financial Disclosure Statements**

Hearing: Friday, March 21, 2014, 2:00 p.m.
State Capitol, Conference Room 325

The Honorable Karl Rhoads, Chair; The Honorable Sharon E. Har, Vice Chair; and The Honorable Members of the House Committee on Judiciary:

The Hawaii State Ethics Commission ("Commission") generally supports increased public disclosure of information that allows the public to examine whether a member of a state board or commission may have a conflict of interest.

Currently, almost 1,800 state employees and members of state boards and commissions are required to file annual financial disclosure statements with the Commission. Of those, approximately 180 employees and board/commission members' disclosures are deemed to be public records, which the Commission makes available through its website. The other approximately 1,600 employees and board/commission members' disclosures are, by law, confidential and available only to the Commission.

Because of the sheer number of disclosure statements, the Commission's finite resources, and the Commission's limited knowledge about the board/commission members' official duties and their financial interests, the Commission's ability to identify potential conflicts of interest is very limited and, frankly, except in rare circumstances, unlikely. The public, especially those who are involved with and may be impacted by the board/commission member's action, is best able to identify and raise concerns about possible conflicts of interest.

The Commission, therefore, supports S.B. No. 2682, S.D. 1, H.D. 1, which amends Hawaii Revised Statutes ("HRS") section 84-17 to require that the financial disclosure statements filed by members of a number of boards and commissions, including the State Ethics Commission, be available to and accessible by the public.

The Commission is aware that the members of most of the boards and commissions identified above serve without pay and that allowing the public to view their financial interests may discourage some from volunteering to serve;[1] however, the Commission strongly suggests that there are certain responsibilities and obligations to the public that members must accept in exchange for the privilege and honor of serving. In light of the State Ethics Code's fundamental purpose --- i.e., to foster public confidence in state government --- the Commission believes that those individuals responsible for department policy and other state policies about which there is a significant public interest should be required to publicly disclose financial information from which the public can consider whether the member has a conflict of interest.

Thank you for considering the Commission's comments regarding S.B. 2682, S.D. 1.

[1] It is the Commission's understanding that the members of the Public Utilities Commission, the Hawaii Labor Relations Board, and the Labor and Industrial Appeals Board are paid state employees.

NEIL ABERCROMBIE
GOVERNOR

CRAIG K. HIRAI
EXECUTIVE DIRECTOR

**STATE OF HAWAII**
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
**Craig K. Hirai**
Hawaii Housing Finance and Development Corporation
Before the

**HOUSE COMMITTEE ON JUDICIARY**
March 21, 2014 at 2:00 p.m.
State Capitol, Room 325

In consideration of
**S.B. 2682, S.D. 1, H.D. 1**
**RELATING TO FINANCIAL DISCLOSURE STATEMENTS.**

The HHFDC ***opposes*** S.B. 2682, S.D. 1, H.D. 1, which would require annual financial disclosure statements filed by members of the Board of Directors of the HHFDC to be considered public records and available for copying. We believe that this requirement: (1) is an inappropriate burden to be placed upon unpaid volunteers; and (2) would discourage qualified individuals from volunteering to serve on the HHFDC Board.

Should S.B. 2682, S.D. 1, H.D. 1 become law, HHFDC may not be able to find Board members with the highly specialized and technical finance and development expertise necessary to make informed decisions on affordable housing project awards. This would adversely affect the agency's ability to ensure that State resources are allocated wisely to address the dire shortage of affordable housing units statewide.

For these reasons, we respectfully urge the Committee to remove the HHFDC Board of Directors from this bill. Thank you for the opportunity to testify.

LEAGUE OF WOMEN VOTERS®

49 South Hotel Street, Room 314 | Honolulu, HI 96813
**www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com**

JUDICIARY COMMITTEE
Friday, March 21, 2014, 2:00 pm Conference Room 325
SB2682 SD1, HD1
TESTIMONY
Anna Hoover, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Har, and Committee Members:

The League of Women Voters of Hawaii supports SB2682, SD1, HD1 that requires the financial disclosure statements of members of certain boards and commissions to be made available to the public.

We feel that when board and commission members are responsible for decisions on matters in the public interest the public should be able to know if any member of that body has a personal financial or economic stake in the matters before them. While the Ethics Commission lacks resources to scrutinize all financial disclosure forms members of the public who have a specific interest in issues before a board or commission as well as the members themselves should have access to the financial disclosure information to be able to identify if there is a conflict of interest.

In particular the financial disclosure statements of members of the board of regents of the University of Hawaii are in consonance with the scope and power associated with their responsibilities and authority. We support the addition of the other state boards, commissions and agencies in this measure. It is in the public interest for any person to be able to know if any member of these bodies has a personal financial or economic stake in a matter before them.

For government to work people must have faith in the integrity of its officials. We urge you to pass this bill.

Thank you for the opportunity to submit testimony.

**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jim Albertini | Malu 'Aina | Support | No |

Comments: Our organization supports SB 2682. The public deserves full financial disclosure of people in positions of government power. End the secrecy now. Mahalo. Jim Albertini

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Puanani Rogers | Ho`okipa Network - Kauai | Support | No |

Comments: No more secrets, make those secret reports public.

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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Steve Sakala | Kona Chapter, Hawaii Farmers Union United | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| barbara childers | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Brad Parsons | Individual | Support | No |

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Hardeep Kharbanda | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| George Robertson | Individual | Support | No |

Comments:

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jamie Louis | Individual | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Thomas Engle | Individual | Support | No |

Comments: I strongly support SB2682 because financial disclosure statements should be made public, so that we the people can determine if people on government boards, such as the Board of Agriculture, have conflicts of interest.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Roberts Leinau | Individual | Support | No |

Comments: Please support SB 2682. Let the sun shine in .. disclosure is important. No secrets! Mahalo, Bob Leinau 50-524 Aukauka Pl. Haleiwa, HI

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Kelly Tsutsui | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Barbara Barry | Individual | Support | No |

Comments: Dear Representatives of the Citizens of Hawaii, I am writing to ask for your support for SB 2682. Each year the Directors of the Agribusiness Development Corporation (ADC) and the Commissioners on the Board of Agriculture must file Annual Financial Disclosure statements with the Ethics Commission. According to the Ethics Commission, they do not have the time, resources or expertise necessary to look for Conflicts of Interest. Really? SB 2682 would make these Financial Disclosure statements public so we the people can take the time to see if there are any conflicts of interest. It's our right to know and your obligation to be transparent. I also want to make public, the forms for Commissioners on the LUC, BLNR, HCDA, NELHA. Mahalo, Ms. Barbara Barry

**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Wendy Arbeit | Individual | Support | No |

Comments: I strongly support this measure. We have had too many examples of board members with conflicts of interest making decisions not to the benefit of the community-at-large. Financial disclosure for these members and commissioners is essential for fair and open government.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Mitchell Evans | Individual | Support | No |

Comments: Please support SB2682 and help us keep faith in out legislators and governing boards. We are all afraid of undue corporate influence in our state. Thank you.

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Scott Middlekauff | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Adam Carlson | Individual | Support | No |

Comments:

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Christopher Conybeare | Individual | Support | No |

Comments: Dear Chair and Members of the Committee. As president of Media Council Hawaii, I fully support the requirement that members of the enumerated boards be requiresd to submit annual financial disclosure reports. Thank you for this opportunity to testify. Aloha, Chris Conybeare

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Toni Withington | Individual | Support | No |

Comments: I strongly support this bill. Transparency in government is vital to democracy. Toni Withington, Hawi

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sylvia Partridge | Individual | Support | No |

Comments: A Financial Disclosure statement is not doing its job of disclosing unless it's open to the public. Please pass this bill.

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Gene Groves | Individual | Support | No |

Comments: How could it have gotten this far without requiring disclosure? Inexcusable! We have a right to know!

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sharon Boyer | Individual | Support | No |

Comments: The People should always have the right to be informed on what is in our food and how it is grown!

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Norris Thomlinson | Individual | Support | No |

Comments: Please support SB 2682, to make public the financial disclosures of the ADC and Board of Agriculture Commissioners. This would provide important daylighting of potential conflicts of interest, and take the load off the Ethics Commission as the sole examiner of such information.

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Anne Thurston | Individual | Support | No |

Comments: Key public officials are required to submit annual financial disclosure statements. The public must be able to see these statements. We value democracy, and this information is fundamentally important to our right to know. Please support accountability and transparency and pass this bill.

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Danielle Spitz | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Geoffrey Last | Individual | Support | No |

Comments: This bill is very important to Democracy in Hawaii. Hawaii should become the leader the time is now. People have a right to know what is going on. Who spends what and how policy is formed.. Transparency in government is needed on every level. The world is dying for it. TAKE THE LEAD GOVERNMENT FOR THE PEOPLE AND BY THE PEOPLE NOT SPECIAL INTERESTS FOR PROFIT SINCERLY GEOFFREY LAST

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Dephlia Rackley | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Koohan Paik | Individual | Support | No |

Comments:

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Julian Miller | Individual | Support | No |

Comments: It is in the public interest to disclose financial information. Withholding this info from the public leads to questions and the possibilities of lawsuits. Plus it just makes total ethical sense to publish this info to reveal conflicts of interest. I support this bill.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Dave Kisor | Individual | Support | No |

Comments: If I read this correctly, there simply isn't enough time for ethics. I'm disappointed and although I'd like to claim surprise, regrettably I cannot. I do like transparency in government.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Kent Fonoimoana | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| meredith murphy | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| kalani kalima | Individual | Support | No |

Comments: To our public officials and civil servants, I urge you to pass the SB2682 so that we may participate fully in the democratic process of transparency for certain individuals that may have a conflict of interest of self service. We ask that you assist in this process to keeping all legislators honest by ensuring that agribusiness does not taint our legislator's decisions. Mahalo nui.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| daniel uppendahl | Individual | Support | No |

Comments: I strongly support this financial disclosure

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Cynthia Frith | Individual | Support | No |

Comments: Here in Hawaii we have so many documents that are almost impenetrable to the average citizen. Groups such as the Agricultural Development Corp. plus the Commissioners on the Board of Agriculture must file annual financial disclosure statements with the ethics commission. However, they are currently kept SECRET!!!-as are statements from the LUC,BLNR,HCPA and NELHA. This total lack of transparency must come to a halt. What use is the gathering of information from these various agencies if, as they suggest, the ethics commission has no man power or time to complete their mission?

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Thomas Travis | Individual | Support | No |

Comments: I support this measure. Public officials should be evaluated by the public as to the conflict of interest that they might have. Paternalism should be a thing of the past in Hawaii politics.

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| tia pearson | Individual | Support | No |

Comments: According to the Ethics Commission, they do not have the time, resources or expertise necessary to look for Conflicts of Interest. This makes it all the more necessary for these forms to NOT be secret.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Mary Lu Kelley | Individual | Support | No |

Comments: I am in support of SB2682. Each year the Directors of the Agribusiness Development Corporation (ADC) and the Commissioners on the Board of Agriculture must file Annual Financial Disclosure statements with the Ethics Commission BUT they are not made public. SB 2682 would make these Financial Disclosure statements public. It would also make public the forms for Commissioners on the LUC, BLNR, HCDA, NELHA. this is a good thing! please pass SB2682. Thank you.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Cory Harden | Individual | Support | No |

Comments: Aloha legislators, Please support SB 2682 for annual financial disclosures for the Land Use Commission, Board of Land and Natural Resources, Hawai'i Community Development Authority, Natural Energy Laboratory, Agribusiness Development Corporation, and Board of Agriculture. The Board of Ethics says they don't have time to check for conflicts of interest. But don't worry, there are many reporters and citizens who will do that. mahalo, Cory Harden

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| sally kaye | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Carol Cam | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| joy cash | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Ken Stover | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Keith & Cathie Okimoto | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Chris Mentzel | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jennifer Reschan | Individual | Support | No |

Comments:

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**B2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Avi Okin | Individual | Support | No |

Comments: Public agencies are public, and all their proceedings and financial records need to open to the public.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Ann Strong | Individual | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jennifer Reschan | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Diane Scheurell | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Leslie Larsen | Individual | Support | No |

Comments: SB 2682 would make these Financial Disclosure statements public record and I support this.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Michelle Aquino | Individual | Support | No |

Comments: Very important and highly necessary for this to be passed. Mahalo!

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Bill Collins | Individual | Support | No |

Comments: As a registered and active voter, I strongly support SB 2682.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Tad Veltrop | Individual | Comments Only | No |

Comments: Yes, by all means! Elected officials should be required to make financial disclosures to the public. How else will democracy ever be serve if our politicians are bought & paid for?

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jeannine Johnson | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Dana G. Moss | Individual | Support | No |

Comments: with this being said and stated, (Unfortunately, due to limited resources, the state ethics commission does not have the ability to search these records for potential conflicts of interest. The legislature finds that the public is in the best position to identify conflicts of interest.) It is absolutely necessary that this becomes law so at leased someone can be and more than likely will be watching. Please make it retro active for all who are in office now for the length of their present term. Because as stated above there is no one looking at all to date.

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Brian Emmons | Individual | Support | No |

Comments: Secrecy breeds mistrust! Make the disclosure statements PUBLIC!

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Paul A. komara, Jr. | Individual | Support | No |

Comments:

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Shannon Rudolph | Individual | Support | No |

Comments: Support. SB2682 SD1 HD1

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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Haydn Huntley | Individual | Support | No |

Comments: Financial disclosure statements should be made public, that way everyone can see them and discover if there is anything unethical or otherwise wrong -- sunshine is an excellent disinfectant! This way the Ethics Commission will only have to follow up on instances where something wrong has actually taken place.

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| claudia rice | Individual | Support | No |

Comments:

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| shantee brown | Individual | Support | No |

Comments: this is the epitome of democracy. politicians held accountable for their actions by the people. bribery has no place in government. people are the government. for the people by the people!

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Joanna Wheelers | Individual | Support | No |

Comments: I support transparency when it comes to the Directors of the Agribusiness Development Corporation (ADC) and the Commissioners on the Board of Agriculture filing their Annual Financial Disclosure statements with the Ethics Commission.I think that it is of the most absolute importance that this is open to the public to keep things clear and corruption free. With warmest mahalo and aloha, Joanna Wheeler Registered Voter, Kauai

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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Mary Lacques | Individual | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Julia Paul | Individual | Support | No |

Comments: I join Henry Curtis and many other voters in support of this bill which will create more transparency in our State government.

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| dhyan sandhya | Individual | Support | No |

Comments: All information should be public knowledge....

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Lynette Cruz | Individual | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Melia Leslie | Individual | Support | No |

Comments:

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Daniel Grantham | Individual | Support | No |

Comments: If the Ethics Commission cannot do its job to protect the public interest from conflicts of interest in Commissioners, then their financial disclosures need to be made available so the public can protect its own interests.

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**SB2682**
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| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Wynnie Hee | Individual | Support | No |

Comments: YES, please remove the secrecy. Make PUBLIC the annual financial disclosure statements of commissioners and directors on boards of Agribusiness Development Corporation (ADC), Board of Agriculture, LUC, BLNR, HCDA, & NELHA. These boards make decisions that affect corporate interests, big biotech interests, and land and skyscraper developers' interests, often pitted against the desires and best interests of the little people. We the public should have the right to know about any conflicts of interests and corporate moneyed influences on these directors and commissioners. FOR EXAMPLE, Richard Ha is up for reappointment to the Board of Agriculture. His Hamakua District does NOT want GMO crops -- yet Richard Ha sounds like a GMO lobbyist extolling the goodness of GMO, ignoring the intensive pesticide/herbicide use that goes with GMO crops. He makes decisions against the Hamakua Ag Plan and against the best interests of small family farms in his district-- REALLY MAKES EVERYONE WONDER if there is any "conflict of interest" secretly influencing his decisions. According to the Ethics Commission, they do not have the time, resources or expertise necessary to look for Conflicts of Interest in the SECRET financial disclosures. PLEASE MAKE the financial disclosures PUBLIC so that the public can help the Ethics Commission investigate. Please PASS SB 2682.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sandra Herndon | Individual | Support | No |

Comments: I strongly support the integrity of transparency, which this bill is written to uphold. The ADC is blatantly devious in their actions, and the citizens have a right to review their financial records, as well as those of the other commissions and boards which serve the public.

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Dr Melissa Yee | Individual | Support | No |

Comments: I commend Senator Shimabukuro for introducing this bill which attempts to make public the financial background of people in a position to make decisions regarding agriculture and other industries. Government has lost its willingness to be transparent in revealing its ties to corporations and special interests and blatantly appoints its own supporters and lobbyists to key positions. This has got to change. Therefore I strongly urge this committee to pass this bill and start some changes in cleaning up government or forever lose its credibility and standing as fair and just policymakers. It is discouraging to see the depths our officials have stooped to line their pockets, to mislead the public and implement laws and regulations that solely benefit the bottom line, not the people, not the taxpayers. Please support this bill. Respectfully submitted, Dr. Melissa Yee Honolulu, Hawaii

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Penny Levin | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Kealii Makekau | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| David M.K. Inciong, II | Individual | Support | No |

Comments: I support transparency in government. Make financial disclosure statements public and make public forms for Commissioners on the LUC, BLNR, HCDA, and NELHA in particular.

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Katarina Culina | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Unmani Cynthia Groves | Individual | Support | No |

Comments: Yes to Transparency!

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Pono Kealoha | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sherry Pollack | Individual | Support | No |

Comments: Sunshine is a very good thing!

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sandra Fujita | Individual | Support | No |

Comments: Financial disclosure statements should be open to public scrutiny.

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Karen Chun | Individual | Support | No |

Comments:

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**SB2682**
Submitted on: 3/19/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Cory Harden | Individual | Support | No |

Comments: Aloha legislators, Please support SB 2682 for annual financial disclosures for the Land Use Commission, Board of Land and Natural Resources, Hawai'i Community Development Authority, Natural Energy Laboratory, Agribusiness Development Corporation, and Board of Agriculture. The Board of Ethics says they don't have time to check for conflicts of interest. But don't worry, there are many reporters and citizens who will do that. mahalo, Cory Harden

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Beth McDermott | Individual | Support | No |

Comments: I strongly support SB 2682. It is essential that commissioners and directors of powerful bodies like the LUC and ADC and others be scrutinized for conflicts of interest. They have tremendous power to make decisions that will impact all of us in Hawaii. The public has a right to know, and participate in determining whether they are wielding that power in accordance with the charter of their commission, or doing so to benefit themselves or powerful private interests. Hawaii has a long history of corruption. It's time to turn this around with this smart, efficient solution..Make democracy work and pass this measure.

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Ann Gommers | Individual | Support | No |

Comments: These financials need to be made public please.There is no reason to keep this information from the public if there is nothing to hide.....about sources for funding etc. It is for the public GOOD that we have transparency. Thank you for your service. Sincerely, Ann Gommers Waialua, HI 96791

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| William Harris, M.D. | Individual | Support | No |

Comments:

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LATE

Hawaii
COMMON CAUSE
*Holding Power Accountable*

House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Friday 03/21/14 at 02:00PM in Room 325
SB2682 SD1 HD1– Relating to Financial Disclosures

TESTIMONY OF SUPPORT
Carmille Lim, Executive Director, Common Cause Hawaii

---

Dear Chair Rhoads, Vice Chair Har, and members of the House Judiciary Committee:

**Common Cause Hawaii strongly supports SB2682**, which requires the financial disclosure statements of members of certain boards and commissions to be made available for public inspection and duplication.

For more than 40 years, Common Cause has advocated for a more open and transparent government. We applaud this bill's attempt to provide greater transparency for certain boards and commissions, by including the boards and commissions suggested by the State Ethics Commission.

While the State Ethics Commission may lack adequate resources to comb through all financial disclosure statements filed, it is important to make this information open and accessible to the public -- particularly for the additional boards and commissions listed in the bill in the current version. As the State Ethics Commission pointed out, these boards and commissions are considered the "head" of a state department and have significant authority.

These boards and commissions consistently receive attention from the public. In order to strengthen the public's trust in these boards and commissions (and in the individuals serving on these boards and commissions) we must make sure that disclosure forms which may indicate a potential conflict of interest through financial stake is transparent and accessible to the public.

**Thank you for the opportunity to submit testimony on SB2682.**

P.O. BOX 22703, HONOLULU, HI 96823 | 808/275-6275
HAWAII@COMMONCAUSE.ORG | WWW.COMMONCAUSE.ORG/HI
TWITTER.COM/COMMONCAUSEHI | FACEBOOK.COM/COMMONCAUSEHAWAII

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Judie Hoeppner | Individual | Support | No |

Comments: I strongly support making financial disclosure public. Please vote accordingly. Mahalo.

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Patsy Nitta | Individual | Comments Only | No |

Comments: Let's just do it!!! We wish for transparency, we wish for government to be forthcoming and we wish to know the truth of things that are relevant to all the citizens of our great state, Hawaii! Please let us be able to know what is taking place, who's doing the work, etc. NO SECRETS, PLEASE!!!! mAHALO to all you who work on our behalf! A special hello to Senator Kouchi!

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**SB2682**
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Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Theodore Banta | Individual | Support | No |

Comments: Each year the Directors of the Agribusiness Development Corporation (ADC) and the Commissioners on the Board of Agriculture must file Annual Financial Disclosure statements with the Ethics Commission. They are secret. According to the Ethics Commission, they do not have the time, resources or expertise necessary to look for Conflicts of Interest SB 2682 would make these Financial Disclosure statements public It would also make public the forms for Commissioners on the LUC, BLNR, HCDA, NELHA

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Sandra Fujita | Individual | Support | No |

Comments: Financial disclosure statements should be open to public scrutiny.

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Adam Bensley | Individual | Support | No |

Comments: I strongly support this bill Mahalo

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**har3-Micah**

| | |
|---|---|
| **From:** | mailinglist@capitol.hawaii.gov |
| **Sent:** | Friday, March 21, 2014 9:22 AM |
| **To:** | JUDtestimony |
| **Cc:** | maureenlangberg@gmail.com |
| **Subject:** | Submitted testimony for SB2682 on Mar 21, 2014 14:00PM |



**SB2682**
Submitted on: 3/21/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| maureen Langberg | Individual | Support | No |

Comments: We have the right to know!

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Friday, March 21, 2014 8:59 AM
**To:** JUDtestimony
**Cc:** f88000001d@gmail.com
**Subject:** *Submitted testimony for SB2682 on Mar 21, 2014 14:00PM*

**LATE TESTIMONY**

**SB2682**
Submitted on: 3/21/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Doug Killpatrick | Individual | Support | No |

Comments:

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Friday, March 21, 2014 8:37 AM
**To:** JUDtestimony
**Cc:** JeffreyUDV@aol.com
**Subject:** Submitted testimony for SB2682 on Mar 21, 2014 14:00PM

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**SB2682**
Submitted on: 3/21/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jeffrey Bronfman | The Aurora Foundation | Support | No |

Comments: The Ethics Commission (the government charged with the responsibility of protecting the public interest) has admitted that they do not have the time, resources or expertise necessary to look for Conflicts of Interest among the appointed Directors of the Agribusiness Development Corporation and the Commissioners on the Board of Agriculture. Because of the size and power of the Corporations that these bodies are supposed to be regulating (and the potential harm to the ecosystem that many of their proposed practices could engender) their members MUST BE NEUTRAL. The current practice of having potential conflicts of interest FILED IN SECRET and not disclosed to the public, to a commission that admits it does not have the ability to address these troubling conflicts, has to be changed. These disclosures must be made public for the Health and Welfare of a well informed citizenry. This is essential element of Democracy and the need to keep business from putting IT'S profits ahead of the health and well being of island residents.

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Friday, March 21, 2014 7:53 AM
**To:** JUDtestimony
**Cc:** mark@marksheehan.com
**Subject:** Submitted testimony for SB2682 on Mar 21, 2014 14:00PM

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**SB2682**
Submitted on: 3/21/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Mark Sheehan | Individual | Support | No |

Comments: Of course we want board candidates and members of boards to submit financial information! Surely a state with a billion dollar budget can find the resources and talent to review qualifications and determine conflicts of interest. Otherwise, the foxes will always be guarding the henhouses.

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 10:08 PM
**To:** JUDtestimony
**Cc:** luanajones777@hotmail.com
**Subject:** *Submitted testimony for SB2682 on Mar 21, 2014 14:00PM*

**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Luana Jones | Individual | Support | No |

Comments:

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 8:26 PM
**To:** JUDtestimony
**Cc:** aeryn.ralha@gmail.com
**Subject:** *Submitted testimony for SB2682 on Mar 21, 2014 14:00PM*

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Aeryn Ralha | Individual | Support | No |

Comments:

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 8:12 PM
**To:** JUDtestimony
**Cc:** slwsurfing@yahoo.com
**Subject:** Submitted testimony for SB2682 on Mar 21, 2014 14:00PM

**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| sharon | Individual | Support | No |

Comments: Transparent Government!

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**har3-Micah**

**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 7:36 PM
**To:** JUDtestimony
**Cc:** haleemh@hotmail.com
**Subject:** Submitted testimony for SB2682 on Mar 21, 2014 14:00PM

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**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| haleem hamid | Individual | Support | No |

Comments: It's time to start being transparent and accountable.

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 7:33 PM
**To:** JUDtestimony
**Cc:** jessicamitchell51@yahoo.com
**Subject:** Submitted testimony for SB2682 on Mar 21, 2014 14:00PM

**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Jessica Mitchell | Individual | Support | No |

Comments: Disclosure and transparency are the only way to combat corruption..

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**From:** mailinglist@capitol.hawaii.gov
**Sent:** Thursday, March 20, 2014 6:55 PM
**To:** JUDtestimony
**Cc:** flowergitha@yahoo.com
**Subject:** *Submitted testimony for SB2682 on Mar 21, 2014 14:00PM*

**SB2682**
Submitted on: 3/20/2014
Testimony for JUD on Mar 21, 2014 14:00PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| James Hedgecock | Individual | Support | No |

Comments:

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