

Congressional Ethics Committees and OGE Disagree on the Scope of STOCK Act Transaction Reports

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Effective July 3, 2012, all Members and employees of the House and Senate who are required to file annual public financial disclosure forms and all officials and employees of the executive branch in positions requiring public financial disclosure, must now also file public "periodic transaction reports" on the purchase, sale or exchange of any stock, bond, commodities future or other securities if the transaction exceeds \$1,000. This new financial reporting requirement is mandated by amendments made by the Stop Trading on Congressional Knowledge (STOCK) Act of 2012 to the financial disclosure provisions of the Ethics in Government Act of 1978 (EIGA).

In June 2012, the House Committee on Ethics, the Senate Select Committee on Ethics and the executive branch Office of Government Ethics (OGE) issued advisory memoranda providing detailed guidance on the content, coverage and filing of these periodic transaction reports (referred to by the House Ethics Committee as "PTRs"). In their respective advisory memos, the three ethics offices addressed and applied identical statutory language. Nonetheless, the three offices came out with some widely varying interpretations of this statutory language in a number of important areas.

For example, with regard to whether the STOCK Act's amendment of EIGA requires periodic reporting of securities transactions, not only by the covered, member, official or employee, but also by that individual's spouse and dependent children, the House Ethics Committee (in its June 7, 2012, memo) and OGE (in its June 20, 2012, memo) give the unequivocal answer, "No." The House and the executive branch ethics offices maintain that the section of EIGA

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amended by the STOCK Act to impose the periodic transaction reporting requirement does not apply to holdings of a filer's spouse or children and, therefore the new periodic reporting requirement cannot apply to transactions of a spouse or child. This reading of the statutory language itself is beyond dispute. But the Senate Ethics Committee (in its June 15, 2012, memo) provides precisely opposite guidance, stating that "filers must disclose not only their own transactions . . . but they must also disclose those of their spouse or dependent children." The Senate committee presumably came to this conclusion so that the scope of the new requirements for periodic transaction reporting would conform with the clear requirements under EIGA for disclosure of transactions of a spouse and of a dependent child on the *annual* form. (The Senate Ethics Committee may also have been looking to the version of the STOCK Act that originally passed the Senate for legislative intent. That version—S. 2038—unlike the final House version passed without amendment in an expedited fashion by the Senate, clearly applied to spouses and dependent children.)

On two other important requirements relating to periodic transaction reporting, however, the House and Senate ethics committees concur, leaving OGE as the odd ethics office out. The House and Senate committees both advise that no extensions may be granted in connection with the filing of a required periodic report. The two offices base this approach on the statutory language providing that a periodic transaction report must be filed "[n]ot later than 30 days after receiving notification of any transaction . . . *but in no case later than 45 days after such transaction . . .*" (Emphasis added.) As the House Ethics Committee puts it, the periodic transaction reporting window is "capped by the 45-day limit." But the OGE disagrees. On the question of whether executive branch agencies may "grant extensions of filing deadlines," OGE states in its June 20, 2012, memo "Yes. . . . EIGA provides for reasonable extension for filing 'any report,' but limits the total length of extensions to 90 calendar days."

Finally, on the question of whether transactions reported on a periodic report must also be reported on a filer's annual disclosure report, the House and Senate ethics committees agree that any transaction disclosed on a periodic transaction report must also be disclosed on the annual form. Here too, however, the OGE takes a more pragmatic—and less burdensome—approach. In its advisory memo, OGE makes clear that a covered employee does not "need to make duplicate filings of transactions in both periodic transaction reports and subsequent annual and termination reports" "unless the employee's agency requires duplicate filing."