



Financial Disclosure by Federal Officials and Publication of Disclosure Reports

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Summary

High-level officials in all three branches of the federal government are required to publicly disclose detailed information concerning their financial holdings and transactions in income-producing property and assets, such as stocks, bonds, mutual funds, and real property, as well as information on income, gifts, and reimbursements from private non-governmental sources. Covered federal officials must disclose this information not only for themselves, but also must disclose much of the same required financial information with regard to their spouses and dependent children.

Public financial disclosure and reporting requirements, originally adopted in the Ethics in Government Act of 1978, apply to the President, Vice President, all Members of Congress (as well as to candidates for President, Vice President, or Congress), federal judges and justices, and to employees in all three branches of the federal government who are compensated at a rate of pay over a particular amount (generally, 120% of the base salary of a GS-15) for more than 60 days in a calendar year.

Covered officers and employees of the federal government must file detailed financial reports on an annual basis by May 15, setting out information for the previous year on income, gifts, reimbursements, financial holdings and assets, financial transactions, outside positions held, and any agreements or understandings for future private employment.

In addition to the annual May 15 reports, all covered public filers must file more frequent public reports throughout the year concerning financial transactions of over \$1,000 in assets such as stocks or bonds. Such periodic reports on financial transactions must be filed within 30 days of the receipt of notice of any such covered purchase or sale (but not later than 45 days of the actual transaction).

For the highest-level officials in the executive and legislative branches of government—the President, Vice President, Members of Congress, and executive officials compensated on Level I of the Executive Schedule (Cabinet officials) and Level II of the Executive Schedule (including sub-Cabinet officials and heads of executive branch and independent agencies)—all of the public reports required to be filed, including the annual report and the periodic transaction reports, are to be posted on the Internet for public availability, searching, and downloading. For all other covered employees in the federal government, the financial disclosure reports remain publicly available to individuals and the press at the employee's agency.

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The public disclosure of the details of one's personal finances, ownerships, investments, and income is required from high-level elected and appointed officials in all three branches of the federal government under the provisions of law originally enacted as the Ethics in Government Act of 1978.¹ Such public disclosure requirements in federal law were enacted in the wake of the "Watergate" scandal to facilitate supervision, regulation, and deterrence of conflicts of interest between the *private* financial interests and the official *public* duties of federal officers, and to increase the confidence of the public in the integrity of their elected and appointed officials in the federal government.²

The public reports mandated by the Ethics in Government Act of 1978 have always been available to the public and the press at the ethics office of the employee's agency.³ Provisions of law more recently adopted by Congress in the so-called "STOCK Act" now require that the personal financial disclosure reports by the highest-level officials in the government—the President, Vice President, Members of and candidates to Congress, and executive officials compensated on the Executive Schedule at level I (Cabinet officials) and level II (Under Secretaries of departments and heads of many executive branch and independent regulatory agencies)—are also to be posted on the Internet for public access and searching.⁴ The disclosure reports for other government employees who are required to file public reports will remain publicly available at the employee's agency.

Reporting under the disclosure law is made annually by May 15 of each year by all federal officials covered by the law, and must also be made periodically during the course of the year by such covered officials and employees with respect to certain securities transactions over \$1,000.

In addition to the public disclosure reports from high-level officials and employees, there may also be required from other federal employees (who are not required to file public reports) *confidential* financial disclosure reports that are made to the employee's agency.

Public Disclosure Reports

Who Is Required to File

The law requiring public disclosure of personal financial information applies to the President, the Vice President, all Members of Congress (as well as candidates for President, Vice President, and Congress), federal judges and justices, and to high-level staff in the executive, legislative, and judicial branches of the federal government.⁵

¹ P.L. 95-521, 92 Stat. 1824 (October 26, 1978), as amended; see now 5 U.S.C. app. §§ 101 *et seq.*

² S. Rept. 95-170, 95th Congress, 1st Sess. 21-22 (1977), Senate Committee on Governmental Affairs, Report to Accompany S. 555, "Public Officials Integrity Act of 1977." *Duplantier v. United States*, 606 F.2d 654, 670-671 (5th Cir. 1979), *reh'g den.*, 608 F.2d 1373 (5th Cir. 1979), *cert. denied*, 449 U.S. 1076 (1981).

³ 5 U.S.C. app. § 105.

⁴ P.L. 112-105, §§ 8(a)(1) and 11(a)(1), as amended by P.L. 113-7, 127 Stat. 438 (April 15, 2013); 5 U.S.C. app. § 105, note.

⁵ 5 U.S.C. app. § 101(c),(d), and (f)(1) - (12).

For those federal officials and employees not in positions specifically named in the law, whether such employee is required to file public financial disclosure statements is generally determined, in the first instance, by the rate of compensation that the employee is entitled to receive from the federal government, and then, secondly, by the number of days such employee works for the federal government at that salary rate.

In the executive branch, any officer or employee of the government who “occupies a position classified above GS-15,” or, if not on the General Schedule, is in a position compensated at a “rate of basic pay ... equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15,” and who is compensated at that rate for at least 60 days in a calendar year, is required to file public financial disclosure reports.⁶ In a somewhat similar manner in the judicial and legislative branches, employees are generally covered if they earn a salary greater than 120% of the base salary of a GS-15 (regardless of whether they are on the General Schedule or not) and if they work at that rate of pay on more than 60 days in a calendar year.⁷

In addition to incumbent federal officials, persons who are nominated by the President to a position for which Senate confirmation is required must also file a public financial disclosure report within five days of transmittal by the President to the Senate of such nomination.⁸ This financial disclosure statement is filed with the designated agency ethics officer of the agency in which the nominee will serve,⁹ and copies of the report are transmitted by the agency to the Director of the Office of Government Ethics (OGE).¹⁰ The Director of OGE then transmits a copy to the Senate committee which is considering the nomination of that individual.¹¹ A presidential nominee must file an updated report to the Senate committee reviewing his or her nomination at or before the commencement of hearings, updating the information through the period “not more than five days prior to the commencement of the hearing,” concerning information specifically related to honoraria and outside earned income.¹² Committees of the Senate may require any additional information from a nominee that they deem necessary or desirable, and may further require ethics agreements from the nominee as to the disposition of particular assets, or the intention to recuse himself or herself from certain governmental matters.¹³

⁶ 5 U.S.C. app. § 101(f)(3).

⁷ 5 U.S.C. app. §§ 101(f)(10), (11) and (12), and §§ 109(8), (10), and (13). For employees on the personal staff of Members of Congress, at least one staff employee (a principal assistant expressly designated) must file the disclosure report if the Member “does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.” 5 U.S.C. app. § 109(13)(B)(iii).

⁸ 5 U.S.C. app. § 101(b); 5 C.F.R. § 2634.602(c)(1). The disclosure report form is provided to the nominee by the Executive Office of the President. 5 C.F.R. § 2634.605(c)(1).

⁹ 5 C.F.R. § 2634.602(a).

¹⁰ 5 U.S.C. app. § 103(c), 5 C.F.R. § 2634.602(c)(1)(vi).

¹¹ 5 U.S.C. app. § 103(c), 5 C.F.R. § 2634.602(c)(3).

¹² 5 U.S.C. app. § 101(b); 5 C.F.R. § 2634.606(a).

¹³ 5 U.S.C. app. § 101(b); see 5 C.F.R. § 2634.803(a)(2).

What Information Is Disclosed

Annual Disclosure Reports

The annual financial disclosure statements mandated under the Ethics in Government Act of 1978—to be filed by May 15 of each year by incumbent officials—require the public reporting and disclosure of detailed financial information about the private financial interests, assets, ownerships, and financial and business associations of the public official, as well as certain financial information relative to the official's spouse and dependent children. The disclosure statement requires public listing of the identity and/or the value (generally in “categories of value”) of such items as the following:

- Income—the official's private income of \$200 or more (including earned and unearned income such as dividends, rents, interest, and capital gains) and the source of such income
- Gifts—gifts received from private sources over a certain amount (including reimbursements for travel over threshold amounts)
- Assets—the identification of all assets and income-producing property (such as stocks, bonds, mutual funds, other securities, rental property, etc.) of over \$1,000 in value (including savings accounts over \$5,000)
- Liabilities—liabilities owed to creditors exceeding \$10,000. Information on mortgages on personal residences must be disclosed by the President, Vice President, Members of Congress, and nominees and incumbents in most presidentially appointed and Senate-confirmed positions
- Transactions—financial transactions, including purchases, sales, or exchanges exceeding \$1,000 in value, of income-producing property, stocks, bonds, mutual funds, exchange traded funds, or other securities
- Outside Positions—positions held in outside businesses and organizations
- Agreements—agreements for future employment or leaves of absence with private entities, continuing payments from or participation in benefit plans of former employers
- Blind Trusts—the cash value of the interests in any blind trusts¹⁴

Information in the reports concerning the finances of the spouse and dependent children of covered federal officials is to include particular disclosures with regard to the income, gifts, assets, liabilities, and financial transactions of such individuals.¹⁵

Although the identity of financial assets and of income-producing property over \$1,000 in value must generally be disclosed by federal officials, even if such assets are held in “trusts” for the

¹⁴ 5 U.S.C. app. § 102(a)(1)-(8). In the executive branch of government, the annual public disclosure reports are generally made on form OGE-278 (formerly Standard Form, SF 278). In the House and Senate, forms substantially similar to OGE-278 have been promulgated for Members and staff. See <http://ethics.house.gov/forms/information-and-forms>; and <http://www.ethics.senate.gov/public/index.cfm/forms>.

¹⁵ 5 U.S.C. app. § 102(e)(1).

benefit of the official or the official's spouse or dependent children,¹⁶ the identity of the underlying assets need not be disclosed if held in a "qualified blind trust," or in a trust not established by the official (when the official and his or her spouse and children have no knowledge of the holdings in such trust).¹⁷ The conflict of interest theory under which the "blind trust" provisions operate is that since the government officer will eventually not know the identity of the specific assets in the trust (there cannot be any restrictions on the sale or disposition of assets in a "qualified" blind trust and the trustee must be independent of the official), those financial interests could not act as influences on the officer or employee's official decisions, thus avoiding real or apparent conflicts of interests.¹⁸ Assets originally placed into the trust will, of course, be known to the official, and therefore will generally continue to be "financial interests" of the public official for conflict of interest purposes, when applicable, until the trustee notifies the official "that such asset has been disposed of, or has a value of less than \$1,000."¹⁹

More Prompt, Periodic Financial Transaction Reports

Under the provisions of the "STOCK Act," signed into law on April 4, 2012, all federal officials who are required to file annual public financial disclosure statements must also file periodic reports during the year which detail financial transactions of \$1,000 or more taken by or for the official.²⁰ These more frequent, periodic transaction reports must be filed within 30 days after the official is notified of a covered transaction in stocks, bonds, or other such securities (but no later than 45 days after the date of the transaction). The requirement for more frequent filing applies generally to transactions in stocks and bonds of individual companies, but does not apply to most mutual funds or to exchange traded funds (ETFs), nor to transactions in real property. The requirement for more frequent and prompt reporting of transactions was adopted as part of the so-called STOCK Act as an adjunct to the existing prohibition on the use of "inside information" by public officials, and was intended to apply to trading in securities whose value could be affected by such information.

Where Filings Are Made

Federal officials generally file copies of their financial disclosure reports with their designated agency ethics official in the agency in which the reporting official is employed.²¹ In the executive branch of government, the President and Vice President file their reports with the Office of Government Ethics (OGE), while all other financial disclosure reports are to be filed with the designated agency ethics officer within the agency or department in which the officer serves. In the legislative branch of government, Members and covered staff of the House of Representatives file their disclosure reports to the Clerk of the House, who forwards a copy to the House Ethics

¹⁶ 5 U.S.C. app. § 102(f)(1).

¹⁷ 5 U.S.C. app. § 102(f)(2).

¹⁸ S. Rpt. 95-639, 95th Cong., 2d Sess., Report of the Committee on Governmental Affairs, "Blind Trusts," at 2-5, 13 (1978); 5 C.F.R. § 2634.401(b).

¹⁹ 5 U.S.C. app. § 102(f)(4)(A); 5 C.F.R. § 2634.401(a)(ii). An exception to this rule is provided in certain circumstances for well-diversified, marketable assets placed in a trust when the assets are not in the primary area of official responsibility of the government officer. *Note* other requirements for this exception at 5 U.S.C. app. § 102(f)(4)(B)(i)(I) - (V).

²⁰ P.L. 112-105, Section 6; 5 U.S.C. app. § 103(l).

²¹ 5 U.S.C. app. § 103(a).

Committee for review. Senators and covered Senate staff file copies of their reports to the Secretary of the Senate, who forwards a copy to the Senate Select Committee on Ethics. In the judicial branch of government, judges, justices, and judicial staff file copies of their reports with the Judicial Conference.

Availability to the Public

The public financial disclosure reports required to be made by officers and employees of the federal government under the Ethics in Government Act of 1978 have always been available to the public and the press for copy or inspection from the official's agency (the designated ethics office) within 30 days after the May 15 filing deadline.²²

Under more recent legislation known as the STOCK Act, reports for the highest-level officials in the government, including the President, Vice President, Members of and candidates to Congress, and executive officials compensated at level I of the Executive Schedule (Cabinet officials), and level II of the Executive Schedule (which includes Deputy Secretaries of the departments as well as the heads of many executive and independent agencies)²³ are now also required to be posted on the Internet by their respective agencies.²⁴

The public availability or Internet publication of the disclosure reports include, in addition to the annual May 15 reports, the more frequent periodic transaction reports concerning purchases or sales of securities of \$1,000 or more in value.

As originally adopted, the STOCK Act would have required the Internet posting of all the public financial disclosure reports required from nearly 30,000 employees in the executive and legislative branches of government.²⁵ Concerns over potential identity theft, the increased opportunities for malicious data mining, and public safety concerns for many federal employees in law enforcement or for those employed overseas, as well as constitutional concerns over financial privacy,²⁶ led to a study and re-examination of the issue of Internet publication of the detailed financial reports by lower-level federal officials. In a study by the independent National Academy of Public Administration (NAPA), that organization concluded that “the online posting requirement does little to help detect conflicts of interest and insider trading, but that it can harm federal missions and individual employees.”²⁷ Congress responded by amending the STOCK Act to require the Internet posting of the disclosure reports filed by the highest-level officials in the government, but leaving in place the existing public availability of the disclosure reports for all other employees in the executive and legislative branches.

²² 5 U.S.C. app. § 105(b). Requesters are required to certify that they will not use the reports for prohibited commercial, credit rating, or solicitation purposes.

²³ See 5 U.S.C. §§ 5312 and 5313 for a listing of all officials compensated at levels I and II of the Executive Schedule.

²⁴ P.L. 112-105, 126 Stat. 291 (April 4, 2012), Sections 8(a)(1) and 11(a)(1), as amended by P.L. 113-7, 127 Stat. 438 (April 15, 2013).

²⁵ P.L. 112-105, §§ 8(a)(1), 11(a)(1).

²⁶ *Senior Executives Association v. United States*, Civil Action No. 8:12-cv-02297 (S.D. Md. March 27, 2013).

²⁷ National Academy of Public Administration, *The STOCK Act: An Independent Review of the Impact of Providing Personally Identifiable Financial Information Online*, at i, 53-61 (March 2013).

Confidential Disclosure Reports

In addition to the legislative and regulatory scheme for *public* financial disclosure for certain federal officials, there is in place a requirement for *confidential* disclosure reports to be filed with an employee's agency by some lower-level federal officers and employees.

The confidential reporting requirements are intended to complement the public disclosure system, and apply to those employees who do not have to file under the public reporting provisions of the Ethics in Government Act.²⁸ Generally, the confidential reporting requirements apply to certain "rank and file" employees who are compensated below the threshold rate of pay for public disclosures (GS-15 or below, or less than 120% of the basic rate of pay for a GS-15), *and* who are determined by the employee's agency to perform duties or exercise responsibilities in regard to government contracting or procurement, government grants, government subsidies or licensing, government auditing, or other governmental duties which may particularly require the employee to avoid financial conflicts of interest.²⁹ Such a person may be required to file a confidential report if he or she performs the duties of such a position "for a period in excess of 60 days during the calendar year."³⁰

Additionally, unless required to file *public* reports, confidential reports are required from all "special Government employees" in the executive branch (those employees who are employed by the government for not more than 130 days in a year), including those who serve on advisory committees.³¹ With respect to advisory committees, it should be emphasized, however, that the disclosure provisions of federal law and regulation apply only to persons who are "officers or employees" of the federal government, and thus do not apply to private individuals who are serving on advisory committees as "representatives" of outside, private, or other non-federal entities.³²

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²⁸ 5 U.S.C. app. § 107; see also 5 C.F.R. § 2634.901(a). Supplemental information, however, may be requested by an agency even from employees filing *public* disclosures. 5 C.F.R. § 2634.901(c).

²⁹ 5 C.F.R. § 2634.904(a). Confidential filing in the executive branch is done on form OGE-450, optional form 450-A, or with the approval of OGE, in an alternative procedure using an agency-specific form. 5 C.F.R. § 2634.905.

³⁰ 5 C.F.R. § 2634.903(a).

³¹ 5 C.F.R. § 2634.904(a)(2), 5 C.F.R. § 2634.901(e).

³² 5 C.F.R. § 2634.904(a)(2). See Office of Government Ethics [OGE], DO-05-012, Memorandum to Designated Agency Ethics Officials, "Federal Advisory Committee Appointments," August 18, 2005; DO-04-022, "SGEs and Representatives on Federal Advisory Committees," July 19, 2004; and Advisory Opinion 82 x 22, "Members of Federal Advisory Committees and the Conflict-of-Interest Statutes," July 9, 1982.

By Bradford Fitch

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