

Financial Disclosure and the Supreme Court

April 14, 2023

The [Ethics in Government Act of 1978](#) (EIGA) established financial disclosure reporting requirements for many high-level government officials and employees, including the Chief Justice of the United States and the Associate Justices of the Supreme Court. Supreme Court Justices must file publicly available financial disclosure statements that report certain financial transactions. A [recent article](#) detailing undisclosed trips by an Associate Justice has increased interest in Supreme Court ethics and the interpretation of the EIGA’s reporting requirements.

This Legal Sidebar provides an overview of financial disclosure requirements under the EIGA and how they apply to the judicial branch. It also examines recent statutory and regulatory updates to judicial branch financial disclosure requirements. The Sidebar concludes with a discussion of potential congressional action on Supreme Court ethics and highlights legal considerations regarding Congress’s authority to regulate the Supreme Court.

Federal Financial Disclosure Laws

The EIGA was enacted, in part, to “preserve and promote the integrity of public officials and institutions.” To help achieve this goal, the EIGA [requires](#), among other things, that covered employees file annual financial disclosure statements reporting:

- income from any source (other than from current employment by the federal government) including honoraria; payments made to charity in lieu of honoraria; and any dividends, rents, interest, and capital gains that exceed \$200;
- gifts and reimbursements (although filers do not have to report gifts received from relatives or food, lodging, or entertainment “received as personal hospitality of an individual”);
- interests in property;
- liabilities exceeding \$10,000 owed to any creditor other than a close family member (with certain exceptions such as mortgages for personal residences);
- transactions that exceed \$1,000 in real property (other than a personal residence) and securities;
- positions with outside entities and major sources of compensation;

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The Constitution of the United States
The Bill of Rights
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- agreements or arrangements relating to other employment; and
- qualified blind trusts.

Covered filers must also report certain financial transactions of their spouses and dependent children. These financial disclosure reports [assist in identifying](#) real or perceived conflicts of interest held by government officials.

Financial disclosure reports are submitted annually to each individual's designated agency ethics official, and reports must be made available to the public (unless the covered individual qualifies as a [confidential filer](#)). Additionally, under the [Stop Trading on Congressional Knowledge](#) (STOCK) Act of 2012, certain filers must also submit periodic transaction reports (PTRs). Covered individuals must file PTRs when they, their spouses, or their dependent children make a sale or exchange of a security that exceeds \$1,000 within 45 days of the transaction. The PTR requirements do not apply to a “widely held investment fund”—such as a mutual fund—so long as the fund is publicly traded, the assets of the fund are widely diversified, and the reporting individual does not exercise control over the fund.

The EIGA provides [remedies](#) for failure to file or for filing false reports. The Attorney General may bring civil actions against individuals who knowingly and willfully falsify or fail to file or report required information and may assess fines up to \$50,000. Individuals who fail to file or report information or who falsify information may also face criminal penalties including fines and imprisonment.

Application to the Judicial Branch

Financial disclosure requirements apply to judicial employees and officers. The EIGA defines [judicial officer](#) to include the Chief Justice of the United States and the Associate Justices of the Supreme Court. The [Judicial Conference of the United States](#), which is the “[principal policy making body](#)” for the federal courts, has authority under the EIGA to administer the financial disclosure requirements for judicial officers and employees. Covered judicial officers and employees file their reports with the Judicial Conference, which then reviews filings for compliance. While judicial branch financial disclosure reports must be made available for public inspection, the law does not require the immediate and unconditional availability of judicial branch reports if personal and sensitive information might endanger a covered individual or his or her family.

The Judicial Conference is permitted to delegate its authority to an “ethics committee” of its creation, and in 1990 it [delegated its authority](#) under the EIGA to the Committee on Financial Disclosure. In 2017, [the committee approved](#) a revised set of financial disclosure regulations that govern the filing of, and access to, financial disclosure reports by judicial employees and judicial officials under the EIGA.

Recusal Statutes

Transparency regarding the financial transactions of federal judges may be relevant to the operation of other federal laws that govern the judiciary. For example, [28 U.S.C. § 455](#) requires federal judges (including Supreme Court Justices) to “disqualify” themselves in any proceeding in which their “impartiality might reasonably be questioned.” The law also requires recusal in specific circumstances, including when the judge knows he or she “has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.”

There are no [official written rules](#) governing the recusal process. However, long-standing Supreme Court practice allows the justices to decide themselves whether to recuse from a matter. While the Justices do periodically recuse themselves from cases, including for [financial reasons](#), they are under no obligation to explain their recusal decisions, nor is there [any mechanism](#) for requiring recusal or for reviewing Justices’

recusal decisions. Another federal law that governs judicial discipline, the [Judicial Councils Reform and Judicial Conduct and Disability Act of 1980](#), authorizes anyone to file a complaint alleging that a federal judge has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” The law, however, does not apply to Supreme Court Justices.

Recent Changes to Supreme Court Financial Disclosure Requirements

Statutory Updates

On May 13, 2022, President Biden signed the [Courthouse Ethics and Transparency Act](#), which requires online publication of financial disclosure reports of judicial officers (including Supreme Court Justices), bankruptcy judges, and magistrate judges. While the EIGA always mandated public access to judicial officer financial disclosure reports, there was no central database to access the filings, and reports were [available](#) only “in paper documents or on thumb drives.” The new law directed the Administrative Office of the United States Courts (AO) to establish a “searchable internet database to enable public access to any report required to be filed” under the EIGA. The [AO launched](#) the public database on November 7, 2022, and the public [can now access](#) electronic versions of federal judges’ reports. The EIGA’s allowance for security-related redactions in judicial branch financial disclosure reports remains unchanged.

The Courthouse Ethics and Transparency Act also extended the STOCK Act’s PTR requirements to judicial officers (including Supreme Court Justices), bankruptcy judges, and magistrate judges. Under the provisions discussed above, federal judges are now required to report any purchase, sale, or exchange of securities that exceeds \$1,000 within 45 days of the transaction. The new public database includes access to all of these periodic transaction reports.

Regulatory Updates

Interpretation of the EIGA’s financial disclosure requirements as applied to judicial officers and employees has also recently changed. As mentioned above, the Committee on Financial Disclosure within the Judicial Conference prescribes rules regarding financial disclosure by judicial officers. Those rules are found in [Volume 2, Part D, of the Guide to Judiciary Policy](#).

As noted above, as part of their financial disclosure reports, all covered individuals are statutorily required to report gifts received from any source other than a relative with the exception of “food, lodging, or entertainment received as *personal hospitality*.” The EIGA [defines](#) *personal hospitality of any individual* as “hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the individual’s family or on property or facilities owned by that individual or the individual’s family.”

According to a [March 2023 letter](#) from the director of the AO, the Committee on Financial Disclosure revised its regulations, effective March 14, 2023, specifically regarding the definition of *personal hospitality*. These [updated regulations](#) appear in the notes that accompany the definition of *personal hospitality*:

(1) The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, non-business nature. Therefore, the reporting exemption does not include:

gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation;

gifts extended for a business purpose;

gifts extended at property or facilities owned by an entity, rather than by an individual or an individual's family, even if the entity is owned wholly or in part by an individual or an individual's family;

gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or

gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.

The notes also clarify that judicial officers and employees are never permitted “to solicit or accept anything of value from a person seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judge's official duties.”

There is [some uncertainty](#) as to whether these regulations apply to the Supreme Court. Although the regulations explicitly include Justices in the definition of *judicial officer*, some have questioned whether the Judicial Conference has authority over the Supreme Court. In his [2011 Year-End Report](#), the Chief Justice explained that because the “Judicial Conference is an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body.” Nonetheless, at least one Associate Justice has [indicated his intention](#) to follow the 2023 guidance going forward.

Considerations for Congress

[Financial disclosure laws](#) are used to identify potential or actual conflicts of interest in order to promote integrity in the federal government. Congress may consider options to modify or clarify current financial disclosure requirements for judicial officers. For example, the [Supreme Court Ethics, Recusal, and Transparency Act](#) would, among other things, “[improve disclosure of travel and hospitality for judges](#)” by requiring the counselor to the Chief Justice (with approval of the Chief Justice) to adopt rules regarding disclosure of gifts, travel, and income that are “at least as rigorous as the House and Senate disclosure rules.” Requiring the Supreme Court to establish its own rules may alleviate potential issues with the applicability of the Judicial Conference's financial disclosure rules to the Supreme Court.

Financial disclosure is only one facet of a wider theme of government ethics. The EIGA, as amended, includes not only the financial disclosure requirements discussed above but also [gift](#) and [outside earned income](#) and [employment](#) limitations that apply to all officers and employees of the government. The Judicial Conference's implementing regulations for these laws, however, exclude Supreme Court Justices from coverage. One question that Congress may consider is whether the Judicial Conference, pursuant to its rulemaking authority under EIGA, has adequately applied these laws to the Supreme Court.

Although the Judicial Conference has statutory authority to implement the EIGA, including the provisions that apply to the Supreme Court, questions as to the [Judicial Conference's authority](#) over the Supreme Court remain unanswered. Although it is not federal law, the Judicial Code of Conduct—also promulgated by the Judicial Conference—currently applies only to lower court judges. There is debate as to whether the Judicial Conference could make the code's provisions binding on the Justices. Despite this, Congress has introduced legislation such as the [Supreme Court Ethics Act](#), which would require the Judicial Conference to create a code of ethics applicable to the Supreme Court. For more on legal issues surrounding the Judicial Code of Conduct, see this [Legal Sidebar](#).

Proposed legislation about Supreme Court financial disclosure and other ethics requirements also raises the separate question of [Congress's authority to regulate the Supreme Court](#). Some scholars [have suggested](#) that Chief Justice Roberts in his 2011 Year-End Report [questioned](#) whether Congress may

impose ethical requirements on the Supreme Court. [Other scholars](#) have argued that while constitutional obstacles—such as separation-of-powers issues—may exist, the constitution does provide Congress with authority to regulate Supreme Court ethics. This authority, however, is untested, leaving a wide array of questions unanswered regarding the validity of current law and the bounds to which Congress may impose future regulations.

Despite his potential doubts as to congressional authority, Chief Justice Roberts acknowledged that the Justices file “the same financial disclosure reports as other federal judges” and “observe the same limitations on gifts and outside income as apply to other federal judges,” signaling that compliance with federal ethics laws may be left to the discretion of the Justices.

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