

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Walter M. Shaub, Jr.  
Director

SUBJECT: Interpretive Guidance on the STOCK Act

Earlier this week, the U.S. Office of Government Ethics (OGE) submitted responses to questions contained in a letter from a Member of Congress requesting information about legal authorities applicable to the President. To the extent that OGE's responses discuss the Stop Trading on Congressional Knowledge Act (STOCK Act), they also apply to the Vice President and certain executive branch employees. To ensure that White House and agency ethics officials are aware of OGE's interpretation of the STOCK Act, OGE is providing this interpretive guidance.<sup>1</sup>

The STOCK Act imposes a number of ethics-related restrictions on the President, the Vice President, and certain executive branch employees.<sup>2</sup> The STOCK Act bars the President, the Vice President, and all executive branch employees from: using nonpublic information for private profit;<sup>3</sup> engaging in insider trading;<sup>4</sup> or intentionally influencing an employment decision or practice of a private entity solely on the basis of partisan political affiliation.<sup>5</sup>

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<sup>1</sup> Previous Legal Advisories provide additional information about specific STOCK Act provisions. OGE Advisory LA-16-06 (2016); OGE Advisory LA-15-07 (2015); OGE Advisory LA-14-02 (2014); OGE Advisory LA-13-09 (2013); OGE Advisory LA-13-06 (2013); OGE Advisory LA-13-03 (2013); OGE Advisory LA-13-01 (2013); OGE Advisory LA-12-04 (2012); OGE Advisory LA-12-02 (2012); OGE Advisory LA-12-01 (2012).

<sup>2</sup> Unlike a number of other statutes, the STOCK Act defines "[e]xecutive branch employee" to include the President and the Vice President. *See* STOCK Act, Pub. L. No. 112-105, § 2(3)(B), 126 Stat. 291 (2012), as amended.

<sup>3</sup> *See* STOCK Act, Pub. L. No. 112-105, § 9(a), 126 Stat. 291 (2012). OGE construes § 9(a) of the STOCK Act as establishing the same prohibition and having the same effect as the prohibition on the use of nonpublic information under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct): "An 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." *See* 5 C.F.R. § 2635.703(a) (2016). OGE also construes the term "nonpublic information" in § 9 of the STOCK Act as having the same definition established under the Standards of Conduct. *See* 5 C.F.R. § 2635.703(b).

<sup>4</sup> *See* STOCK Act, Pub. L. No. 112-105, § 9(b), 126 Stat. 291 (2012).

<sup>5</sup> *See* STOCK Act, Pub. L. No. 112-105, § 18, 126 Stat. 291 (2012) (codified at 18 U.S.C. § 227 (2012)). Note, however, that the Ethics in Government Act does not authorize OGE to make any finding that a criminal law has been violated. 5 U.S.C. app. § 402(f)(5).

The STOCK Act establishes additional prohibitions applicable only to the President, the Vice President, and any employee occupying a position subject to public financial disclosure reporting requirements under the Ethics in Government Act.<sup>6</sup> Specifically, the STOCK Act prohibits these individuals from participating in an initial public offering.<sup>7</sup> The STOCK Act also prohibits these individuals from participating in a particular matter directly and predictably affecting the financial interests of any person with whom the official has, or is negotiating for, an agreement of future employment or compensation.<sup>8</sup> In addition, the STOCK Act requires these individuals to file periodic public financial disclosure reports for covered transactions<sup>9</sup> occurring while they serve in positions subject to public financial disclosure requirements by the earlier of 45 days after the transaction or 30 days after receiving notification of the transaction.<sup>10</sup>

Finally, the STOCK Act establishes a requirement that the public financial disclosure reports of the President, the Vice President, and any executive branch employee occupying a position for which the pay is set at Level I or Level II of the Executive Schedule will be posted online.<sup>11</sup>

Most agency ethics officials are likely already aware of these requirements and this interpretive guidance may serve to reinforce that awareness. However, as always, agency ethics officials should contact their OGE Desk Officers with any questions they may have regarding these requirements.

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<sup>6</sup> These individuals are identified in section 101 of the Ethics in Government Act. *See* 5 U.S.C. app. § 101(f)(1)-(9) (2012).

<sup>7</sup> *See* STOCK Act, Pub. L. No. 112-105, § 12, 126 Stat. 291 (2012). However, note that, except for identifying and advising covered executive branch officials, OGE is not involved in interpreting section 12 because that section amends the Securities Exchange Act of 1934, 15 U.S.C. § 78u-1. *Cf.* OGE LA-14-02 (2014).

<sup>8</sup> *See* STOCK Act, Pub. L. No. 112-105, § 17, 126 Stat. 291 (2012). Note that OGE has interpreted future employment or compensation as employment or compensation that will commence after a covered individual's government service has ended. *See* OGE LA-13-06 (2013); OGE LA-12-01 (2012).

<sup>9</sup> Covered transactions are transactions of stocks, bonds, commodities futures, and other forms of securities. 5 U.S.C. app. § 103(l) (2012).

<sup>10</sup> *Id.*

<sup>11</sup> *See* STOCK Act, Pub. L. No. 112-105, 126 Stat. 291, § 11(b) (2012), as amended by Pub. L. No. 113-7, § 1(b)(2) (2013). Note that the public posting requirement applies equally to periodic transaction reports. *Id.*