



February 16, 2023
LA-23-04

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Shelley K. Finlayson
Chief of Staff and Program Counsel

SUBJECT: Summary of Ethics Legislation (117th Congress)

Members of the 117th Congress introduced more legislation that referenced the Ethics in Government Act than any Congress since the creation of the Act.¹ To assist ethics officials with navigating the outcome of the more than 200 bills that would have affected the ethics program, this legal advisory provides agency ethics officials with a high-level summary of some of the most notable legislation. Specifically, this advisory summarizes legislation (I) [enacted affecting ethics in government](#), (II) [enacted that may be of interest to the ethics community](#), and (III) [considered that is of interest to the ethics program](#).²

I. LEGISLATION ENACTED AFFECTING ETHICS IN GOVERNMENT

The 117th Congress enacted several bills affecting ethics in government, including recodifying the Ethics in Government Act. The impact of this legislation ranged from governmentwide to branch or agency-specific as described below.

Beginning with laws with governmentwide impact, Public Law 117-286 recodifies the Ethics in Government Act of 1978 (EIGA), moving EIGA from the appendix of title 5 to a new chapter.³ Earlier this year, OGE published an advisory ([PA-23-01](#)) with additional information on the impact of the recodification, including a comparison table with the previous and new code citations to assist agencies in transitioning to the new citations.⁴

Also with governmentwide impact, Public Law 117-103 and 117-328 require the head of certain agencies to submit to the Inspector General (IG), or senior ethics official for agencies without an IG, information related to a conference when the cost of the conference exceeds \$100,000.⁵ Covered agencies

¹ See Legislation Search Results, [CONGRESS.GOV](#) (searching “Ethics in Government Act”) (last visited Feb. 16, 2023).

² Although OGE tracked more than 200 bills in the 117th Congress, this Legal Advisory is intended to highlight key provisions for agency ethics officials, not exhaustively detail all provisions or bills introduced.

³ Act of Dec. 27, 2022, [Pub. L. No. 117-286](#), 136 Stat. 4196.

⁴ OGE Program Advisory [PA-23-01](#) (Jan. 5, 2023).

⁵ Consolidated Appropriations Act, 2022, [H.R. 2471](#), Pub. L. No. 117-103, 136 Stat. 49; Consolidated Appropriations Act, 2023, [H.R. 2617](#), Pub. L. No. 117-328.

must also report the date, location, and number of employees attending any conference when the cost exceeds \$20,000.⁶

Finally, Public Law 117-348, the Trafficking Victims Prevention and Protection Reauthorization Act of 2022, also has governmentwide impact. It requires human trafficking to be covered by agencies in annual ethics training.⁷ The legislation notes that it is the sense of Congress that: “(1) beginning not later than 18 months after the date of the enactment of this Act, the head of every Federal agency should incorporate a module on human trafficking into its staff training requirements and menu of topics to be covered in the annual ethics training of such agency; (2) such staff trainings should teach employees how to prevent, identify, and report trafficking in persons; (3) Federal agencies that already provide counter trafficking-in-persons training for staff should share their curricula with agencies that do not have such curricula; (4) the head of each agency should inform all candidates for employment about the anti-trafficking provisions in the Code of Conduct of the agency; (5) employees of each Federal agency should sign acknowledgment of the agency’s Code of Conduct, which should be kept in the file of the employee; and (6) a violation of the Code of Conduct should lead to disciplinary action, up to and including termination of employment.”⁸

Moving to laws affecting one branch of government, Public Law 117-125, the Courthouse Ethics and Transparency Act, specifically impacted the judicial branch ethics program by amending the Ethics in Government Act to provide for a periodic transaction reporting requirement for federal judicial officers and online publication of their reports.⁹ During debate on the bill, the House Judiciary Committee Chair in the 117th Congress noted the legislation requires “judges to abide by the same periodic transaction reporting laws already applicable to . . . senior executive branch officials.”

Finally, legislation with agency-specific ethics provisions was also enacted by the 117th Congress. For example, Public Law 117-81, the National Defense Authorization Act (NDAA) for Fiscal Year 2022, added recusal requirements for Department of Defense (DOD) officers and employees in relation to party matters involving former and prospective employers.¹⁰ In addition, Public Law 117-263, the NDAA for Fiscal Year 2023, included several agency-specific ethics provisions, detailed below.¹¹

§831 requires DOD to establish rotational assignments for up to 250 members of the acquisition workforce through the public-private talent exchange. §834 establishes a DOD pilot program, in accordance with [10 U.S.C. §1599g](#) (“Public-private talent exchange”), to arrange for temporary assignment of acquisition workforce members to a start-up business or start-up business employees to DOD.

§918 requires DOD to report on “whether existing government ethics regulations are adequate to address potential conflicts of interest for Space Component officers...”

⁶ *Id.*

⁷ Trafficking Victims Prevention and Protection Reauthorization Act of 2022, [S. 3949](#), Pub. L. No. 117-348.

⁸ *Id.*

⁹ Courthouse Ethics and Transparency Act, [S. 3059](#), Pub. L. No. 117-125, 136 Stat. 1205 (2022).

¹⁰ National Defense Authorization Act for Fiscal Year 2022, [S. 1605](#), Pub. L. No. 117-81, § 1117, 135 Stat. 1541, 1955 (2021) (“Except as provided in subsection (b), in addition to the prohibition set forth in section 208 of title 18, United States Code, an officer or employee of the Department of Defense may not knowingly participate personally and substantially in any particular matter involving specific parties where any of the following organizations is a party or represents a party to the matter: (1) Any organization, including a trade organization, for which the officer or employee has served as an employee, officer, director, trustee, or general partner in the past 2 years. (2) Any organization with which the officer or employee is seeking employment.”).

¹¹ James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, [H.R. 7776](#), Pub. L. No. 117-263 (2022).

§1073 requires a federally funded research and development center to conduct a study assessing DOD ethics requirements.

§6301 prohibits former intelligence officers and employees from performing security-related work for certain foreign governments and companies.

§9215 details post-employment restrictions on Senate-confirmed officials at the Department of State, including ambassadors.

II. LEGISLATION ENACTED THAT MAY BE OF INTEREST TO THE ETHICS PROGRAM

The 117th Congress enacted several bills that may be of interest to the ethics program, which include provisions related to presidential transition reforms and executive branch transparency.

Public Law 117-328, the Consolidated Appropriations Act, 2023, Division P includes the Presidential Transition Improvement Act, which provides guidelines for when eligible candidates for President and Vice President may receive federal resources to support their transition into office. The Presidential Transition Improvement Act amends §3(c) of the [Presidential Transition Act of 1963 \(3 U.S.C. 102 note\)](#). After the most recent presidential election, on November 23, 2020, GSA sent a [letter](#) ascertaining the apparent president-elect, allowing the incoming Biden administration to “access the post-election resources and services described in Section 3 of the Act.”¹² Following future elections, this legislation will now allow more than one candidate to receive transition resources during a period of time when the outcome of an election is reasonably in doubt.¹³ When neither candidate has conceded within five days of Election Day, both candidates may receive equal access to federal transition resources until it is substantially certain who will win the majority of electoral votes.

This could impact agencies, since during “any period in which there is more than one possible apparent successful candidate for the office of President” . . . “the Administrator, in conjunction with the Federal Transition Coordinator designated under section 4(c) and the senior career employee of each agency and senior career employee of each major component and subcomponent of each agency designated under subsection (f)(1) to oversee and implement the activities of the agency, component, or subcomponent relating to the Presidential transition, shall make efforts to ensure that each such candidate is provided equal access to agency information and spaces as requested pursuant to this Act.”¹⁴ Once there is a clear winner of the election, only one candidate is eligible.

Public Law 117-328, the Consolidated Appropriations Act, 2023, also contains numerous requirements and restrictions on the use of appropriations that ethics officials may find useful to know in implementing their programs.¹⁵ For example, Division R prohibits the use of TikTok on government devices.¹⁶

¹² Letter from U.S. General Services Administration Administrator Emily W. Murphy to the Honorable Joseph R. Biden, Jr., (Nov. 23, 2020), https://www.gsa.gov/cdnstatic/2020-11-23_Hon_Murphy_to_Hon_Biden_0.pdf (“I strongly urge Congress to consider amendments to the Act.”).

¹³ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, at Div. P, § 202(a) (2022).

¹⁴ *Id.*

¹⁵ *See id.* at Tit. VII, §§ 701-54 (e.g., § 719(b) requires that agency employees use official time in an honest effort to perform official duties).

¹⁶ *Id.* at Div. R, § 102(b) (“Prohibition on the Use of TikTok.— (1) In general.--Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Administrator of General

Finally, Public Law 117-263, the National Defense Authorization Act for Fiscal Year 2023, includes several provisions related to executive branch transparency, detailed below.¹⁷

§§5231-5237, the Integrity Committee Transparency Act broadens responsibilities of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE) and requires certain reports and notifications to Congress. For example, CIGIE must report semiannually on committee activities, and the committee must notify Congress when an allegation made by a Member of Congress is closed without referral for investigation.

Title LII includes other provisions related to Inspectors General (IGs), including on independence (§§5201-5204), explanation of failure to nominate an IG (§5221), notice related to IG status changes (§5241), CIGIE expenditures (§5251), notice of refusal to provide IG access (§5261), and IG training resources (§§5271-5275).

§§5321-5322, the Periodically Listing Updates to Management Act (PLUM Act) requires the Office of Personnel Management (OPM) to establish and maintain a current, publicly available directory of senior government leaders online.¹⁸

Title LIX, Subtitle D, is related to Judicial Security and Privacy (§§5931-5939). §5934(a)(2) notes that “government agencies shall not publicly post or display publicly available content that includes covered information of an at-risk individual or immediate family member. Government agencies, upon receipt of a written request under paragraph (1)(A), shall remove the covered information of the at-risk individual or immediate family member from publicly available content not later than 72 hours after such receipt.”

§§7241-7248, the Access to Congressionally Mandated Reports Act requires the Director of the Government Publishing Office (GPO) to establish and maintain an online portal that allows the public to obtain electronic copies of congressionally mandated reports.

III. LEGISLATION CONSIDERED THAT IS OF INTEREST TO THE ETHICS PROGRAM

The 117th Congress considered, but did not enact, numerous bills of interest that would significantly reform the executive branchwide ethics program. Many of these bills have already been or are likely to be reintroduced in the 118th Congress.

Services, the Director of the Cybersecurity and Infrastructure Security Agency, the Director of National Intelligence, and the Secretary of Defense, and consistent with the information security requirements under subchapter II of chapter 35 of title 44, United States Code, shall develop standards and guidelines for executive agencies requiring the removal of any covered application from information technology.”).

¹⁷ James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, [H.R. 7776](#), Pub. L. No. 117-263 (2022).

¹⁸ *Id.* at § 5322 (“CONTENTS.—With respect to any policy and supporting position listed on the covered website, the Director shall include—(1) the agency, and agency component, (including the agency and bureau code used by the Office of Management and Budget) in which the position is located; (2) the name of the position; (3) the name of the individual occupying the position (if any); (4) the geographic location of the position, including the city, State or province, and country; (5) the pay system under which the position is paid; (6) the level, grade, or rate of pay; (7) the term or duration of the appointment (if any); (8) the expiration date, in the case of a time-limited appointment; (9) a unique identifier for each appointee; (10) whether the position is vacant; and (11) for any position that is vacant— (A) for a position for which appointment is required to be made by the President, by and with the advice and consent of the Senate, the name of the acting official; and (B) for other positions, the name of the official performing the duties of the vacant position.”).

H.R. 1, the For the People Act, passed by the House, included multiple provisions to reform the executive branch ethics program.¹⁹ Following the 116th Congress, which passed similar legislation, OGE published [LA-21-06](#) for agency ethics officials, describing notable conflict of interest, transparency, and other relevant provisions.²⁰

H.R. 5314, the Protecting Our Democracy Act, passed by the House, included multiple provisions on ethics-related issues, such as emoluments (§§301-309), whistleblower protections (§§801-806), strengthening ethics enforcement and penalties (§§1011-1016), and others.²¹

H.R. 9640, the Presidential Tax Filings and Audit Transparency Act, passed by the House, would have required the Internal Revenue Service to disclose and report on presidential income tax returns.²² In December 2022, the House Ways and Means Committee [voted to release](#) six years of former President Trump’s tax returns.

The 117th Congress also considered hundreds of other bills related to the ethics program that were not passed by either chamber, but show significant congressional concerns regarding ethics in a variety of areas, particularly with respect to stock trading. Other legislation would expand OGE’s duties and authorities.

Numerous bills were introduced to restrict stock trading and increase transparency. For example, H.R. 6694 and S. 3612, the STOCK Act 2.0, would require certain senior officials to report payments received from the federal government, improve the filing and disclosure of certain financial disclosures, and ban stock trading for certain senior government officials.²³ H.R. 9216, the PORTFOLIO Act, would amend the Ethics in Government Act to restrict trading and ownership of covered investments by each federal employee.²⁴ H.R. 8754, the DIVEST Act, would amend the Ethics in Government Act to prohibit transactions involving certain financial instruments by senior federal employees, their spouses, or dependent children.²⁵

Legislation was also considered to specifically increase trading transparency. For example, H.R. 6486, the Transparency in Government Officials Trading Act, would amend the Ethics in Government Act to modify the timing to file periodic transaction reports, requiring all transactions to be reported electronically within 24 hours, and, if a report is not filed, levy a mandatory penalty equal to the amount of the transaction.²⁶

Multiple bills to expand OGE’s duties and authorities were considered by the 117th Congress. S. 1546, the Executive Branch Comprehensive Ethics Enforcement Act, would authorize OGE to issue subpoenas during investigations, order corrective actions, and issue administrative remedies.²⁷ H.R. 6107, the Stop Corporate Capture Act, would require disclosure of conflicts of interest with respect to rulemaking and would establish an office within OGE called the “Office of the Public Advocate” that

¹⁹ For the People Act of 2021, [H.R. 1](#), 117th Cong. (2021).

²⁰ OGE Legal Advisory [LA-21-06](#) (Mar. 3, 2021).

²¹ Protecting Our Democracy Act, [H.R. 5314](#), 117th Cong. (2021).

²² Presidential Tax Filings and Audit Transparency Act of 2022, [H.R. 9640](#), 117th Cong. (2022).

²³ STOCK Act 2.0, [H.R. 6694](#), 117th Cong. (2022); STOCK Act 2.0, [S. 3612](#), 117th Cong. (2022).

²⁴ Preventing Opportunistic Returns on Trades and Futures by Officials, Leadership, and Individuals in Office Act, [H.R. 9216](#), 117th Cong. (2022).

²⁵ Dismantling Investments in Violation of Ethical Standards through Trusts Act, [H.R. 8754](#), 117th Cong. (2022).

²⁶ Transparency in Government Officials Trading Act, [H.R. 6486](#), 117th Cong. (2022).

²⁷ Executive Branch Comprehensive Ethics Enforcement Act, [S. 1546](#), 117th Cong. (2021).

would work with the public in rulemakings.²⁸ S. 3181, the Foreign and Domestic Emoluments Enforcement Act, would make emolument prohibitions enforceable through administrative fines and civil actions by OGE.²⁹

Finally, the 117th Congress held numerous hearings related to ethics in government. For example, the House Administration Committee held a hearing on stock trading reforms for Congress in [April 2022](#). The House and Senate Judiciary Committees held multiple hearings on judicial ethics, including in [October 2021](#), [April 2022](#), [May 2022](#), and [December 2022](#).

CONCLUSION

OGE brings the actions of the 117th Congress to your attention as part of our initiative to keep the ethics community apprised of relevant ethics-related legislative activity. OGE will provide you with relevant updates throughout the 118th Congress and will also continue to monitor and keep agency ethics officials informed of agency-specific legislative proposals that may affect their agency's ethics program. If you have questions about this Legal Advisory or other legislative matters, please contact Diana Veilleux at (202) 482-9203 or djveille@oge.gov.

²⁸ Stop Corporate Capture Act, [H.R. 6107](#), 117th Cong. (2021).

²⁹ Foreign and Domestic Emoluments Enforcement Act, [S. 3181](#), 117th Cong. (2021).