



MEMORANDUM

TO: USDA Public Financial Disclosure Report Filers

FROM: Stuart Bender
Director and Designated Agency Ethics Official
USDA Office of Ethics

SUBJECT: STOCK ACT – Ethics Advisory: Periodic Transaction Public Disclosure Reports

DATE: June 29, 2012

On April 4, 2012, President Obama signed into law the Stop Trading on Congressional Knowledge Act of 2012 (the STOCK Act).¹ As an employee who files a Public Financial Disclosure Report (OGE-278), the STOCK Act affects you.

Effective **July 3, 2012**, the Act requires that not later than 30 days after receiving notification of any transaction required to be reported, but in no case later than 45 days after such a transaction, you must file a report of such transaction. On June 20, 2012, the U.S. Office of Government Ethics (OGE) issued guidance on periodic transaction reporting.² To assist you, the USDA Office of Ethics (OE) has posted this guidance, and much other STOCK Act information, on USDA's Ethics website (www.usda.gov/ethics). To further assist you, OE is issuing this Ethics Advisory to enhance your understanding of the new periodic transaction reporting requirement.³

The New Periodic Transaction Reporting Requirement:

OGE-278 filers must submit reports on transactions involving stocks, bonds, commodities futures and other securities (but typically not mutual funds) in excess of \$1,000 within 30 days of receiving notification of a transaction, but no later than 45 days after the transaction. These transaction reports are required to be submitted to OE and will be posted on USDA's website.

Q: Who is required to file the periodic transaction reports?

Employees in positions requiring public financial disclosure reports, including Presidential appointees, Career and Non-Career Senior Executive Service (SES), Senior Level (S/L), Scientific/Technical (S/T), Administrative Law Judges (ALJ), and Schedule C appointees. See 5 C.F.R. § 2634.202.

¹ Pub. L. No. 112-105 (2012). The STOCK Act amends the Ethics in Government Act of 1978, 5 U.S.C. app (EIGA).

² OGE Legal Advisory, LA-12-04, dated June 20, 2012.

³ This Ethics Advisory is limited to providing guidance on one aspect of the STOCK Act, namely the provisions governing periodic transaction reporting, as required by Section 103(l) of EIGA, as amended. To view all of the STOCK Act guidance issued by OE, please visit www.usda.gov/ethics.

Q: What transactions must be disclosed in periodic transaction reports?

The periodic transaction reporting requirement covers transactions occurring on or after July 3, 2012. The law covers any purchase, sale or exchange of stocks, bonds, commodities futures⁴ or other forms of securities owned or acquired by you when the transaction amount exceeds \$1,000.

Q: What transactions are NOT covered by the reporting requirement?

Excluded transactions include: (1) real property; (2) excepted investment funds⁵ (such as widely diversified, widely held, publicly available and independently controlled mutual funds); (3) assets solely owned by your spouse or dependent child, provided that you are not a co-owner of the asset;⁶ (4) Treasury bonds; (5) life insurance and annuities; (6) cash accounts; (7) assets in a retirement system under Title 5, United States Code (including the Thrift Savings Plan maintained under subchapter III of chapter 84 of such title); (8) assets in any other retirement system maintained by the United States for officers or employees of the United States.

Q: Does this requirement apply even if a broker buys or sells under a blanket authority?

Yes. It is your responsibility to review the statements and other notifications received from your financial manager and to determine whether a periodic transactions report must be filed.

Q: When are you required to file periodic transaction reports?

You are obligated to submit a transaction report by the earlier of: (a) 45 days after the transaction, or (b) 30 days after you receive notification of the transaction.⁷ For purposes of

⁴ OGE's guidance, consistent with long-standing practice, allows ethics officials to rely on the existing assumptions described in OGE's manual on public financial disclosure. This manual states that a filer need not report transactions concerning "assets that are solely incidental to the primary trade or business of an entity listed on Schedule A of the annual OGE-278 report." OGE, *Public Financial Disclosure: A Reviewer's Reference*, 2d ed. 3-18 (2004). Accordingly, you will not need to report transactions incidental to the primary trade or business of an entity (such as a farming business) listed on Schedule A of the OGE-278.

⁵ Section 14 of the STOCK Act excludes certain investment funds you are already required to disclose on your annual OGE-278 report. These funds, referred to as "excepted investment funds" are defined in Section 14 of the STOCK Act and in OGE's regulations at 5 C.F.R. § 2634.310(c)(2). It is important to note that the new periodic reporting is in addition to, and not a substitute for, the cumulative reporting of transactions that occurs on an annual basis on Schedule B, Part I of the OGE-278. In other words, you should report transactions of excepted investment funds, such as mutual funds, on your annual OGE-278 report.

⁶ While your annual OGE-278 report requires you to list your transactions as well as the transactions of your spouse or dependent children, the periodic transaction report requirement is limited to those assets belonging solely or jointly to you. In other words, transactions of those assets owned separately by a spouse or dependent children are not subject to the periodic reporting requirement, unless you also own that asset.

⁷ You do not need to file a negative report reflecting that no transactions occurred.

counting days in connection with periodic transaction reports, the first day to be counted is the first full day after the date of the triggering event. Cf. Fed. R. Civ. P. 6.

Q: Will there be a new standard form and can reports be filed electronically?

Yes. The new form for reporting periodic transactions is the OGE-278T Form. USDA employees will be required to electronically file (e-file) their OGE-278T periodic transaction reports. As a business process improvement, e-filing will provide greater flexibility to filers across the country and will be the standardized method of reporting transactions to OE. Further details will follow.

Q: Will my periodic transaction report be publicly posted on USDA's website?

Yes. The OGE-278T reports are required to be posted on agency websites within 30 days of the filing date. For purposes of this requirement, the filing date is deemed to be the later of either the date on which the employee actually files the report or the filing deadline for the report. Additionally, OGE requires that, within 60 days of the filing date, agency ethics officials evaluate and complete a substantive conflict of interest review of the transactions in each report, considering compliance with the criminal conflict of interest statute (18 U.S.C. § 208), the Principles of Ethical Conduct (Executive Order 12674, as modified by Executive Order 12731), and the Standards of Ethical Conduct (5 C.F.R. Part 2635).

Q: Does the \$200 late filing fee apply to a periodic transaction report?

Yes. Pursuant to the U.S. Office of Government Ethics, the \$200 late filing fee is applicable to periodic transaction reports, though not to individual transactions. Thus, the late fee would cover all transactions you could have timely included in a single report.

Q: When can the late fee be waived?

Agencies have the authority to waive the \$200 late fee in extraordinary circumstances.⁸ However, it is important to note that OGE's guidance permitting the extraordinary circumstances waiver specifically excludes from a fee waiver any intentional failure to file a periodic transaction report.

Q: May I be granted an extension of the filing deadlines?

Yes. Upon written request to OE (e-mail is sufficient), you may be granted an extension of up to 45 calendar days for good cause shown with the possibility of one additional extension of up to 45 calendar days (90 calendar days total). **You must submit your request for an extension to OE by e-mail at DAEO.ethics@dm.usda.gov.**

Q: What if I have questions?

If you have any questions regarding the STOCK Act, or any ethics questions in general, please contact the Office of Ethics at (202) 720-2251 or via e-mail at: Daeo.ethics@dm.usda.gov.

⁸ Ethics in Government Act of 1978, 5 U.S. app. 4, § 104(d)(2); 5 C.F.R. § 2634.704(b).