



ADMINISTRATIVE LAW ADVISORY – THE STOCK ACT

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The STOCK Act, which was enacted on April 4, 2012, imposes new reporting requirements on employees who file public financial disclosure reports (OGE Form 278s) and reiterates some restrictions on investments. It also requires the posting of reports on an agency website.

Requirement to report all employment negotiations – OGE Form 278 filers must provide a notice of all employment negotiations within three days of the beginning of such negotiations to a Department ethics official. This applies only to future employment outside the United States Government. The notice must be in the form of a signed statement that identifies the prospective employer and that states that the employee will disqualify himself or herself from matters creating a conflict of interest. Such notices should be filed whenever a covered employee (an employee in a position requiring the filing of an OGE Form 278) contacts someone, or is contacted by someone, about possible future employment outside the Federal Government. A notice must also be filed within three days of entering into an employment agreement (unless a notice was previously filed regarding an employment negotiation with the future employer). This does not change the law, other than to require that notice be given (of course, if an employee immediately rejects an overture to discuss future employment, he or she has not “entered into negotiations” and there is no need to report). The Office of the General Counsel intends to treat these notices as confidential and not for distribution. A form that can be used to provide the notice is available at the website of the Ethics Law and Programs Division: www.commerce.gov/ethics. Notices with an original signature must be sent to the Ethics Law and Programs Division at the U.S. Department of Commerce, 1401 Constitution Ave, NW, Room 5898C, Washington D.C. 20230.

Requirement for Presidential Appointees in Senate-confirmed positions (PASs) and NOAA Corps flag officers to report mortgages on personal property – Presidential appointees in positions requiring Senate confirmation, Foreign Service Officers at the rank of Ambassador, and NOAA Corps officers at pay grade O-7 or above are now required to include on their public financial disclosure reports mortgages on personal residences. Previously, mortgages needed to be reported for a residence only if the property produced income or was held for investment purposes, which continues to be the standard for reporting mortgages by employees who are not Presidential appointees (or senior NOAA Corps officers or Foreign Service officers).

Requirement to report all transactions within 30 days – As of July 3, 2012, OGE Form 278 filers must file a report of all transactions within 30 days of the transaction, which, in Commerce, will be with the Ethics Law and Programs Division. This applies to all transactions that are otherwise reportable on a financial disclosure report (purchases, sales, and exchanges greater than \$1,000) other than widely held investment funds (such as broadly diversified mutual funds, pensions and other publicly

traded diversified funds, and funds with widely diversified assets not under an employee's control). Transactions reported during the course of the year do not need to be listed on the filer's annual report. A form that can be used to provide the notice is available at the website of the Ethics Law and Programs Division: www.commerce.gov/ethics. Failure to submit such a report may result in a \$200 late filing fee. This form, like an OGE Form 278, is publicly available.

Posting of public financial disclosure reports on an agency website – By August 31, 2012, all OGE Form 278s and reports of transactions must be posted on an agency website. Therefore, the Department of Commerce will be providing online public access to all OGE Form 278s. Thus, it is important that employees do not include on their reports any information that is not required to be reported, unless the filer does not care about its release to the public. It is particularly important that if documents are attached to the report, such as a brokerage statement, any information not required to be reported be deleted from the document, including social security numbers, personal addresses and telephone numbers, names of the employee's children and spouse, and account numbers. Ethics officials will not be responsible for redacting such information from reports, including documents included with a report; it is the filer's responsibility to delete such information from the report and attached documents. This caution applies to transaction reports also.

Electronic filing of public financial disclosure reports – In late 2013 (the specific date to be determined) employees who file public financial disclosure reports will be required to file them electronically in a system established by the Office of Government Ethics (OGE). OGE officials have indicated that the new system will be compatible with the electronic filing system being made available to OGE Form 278 filers in the Department of Commerce in 2012.

Limits on Investments in IPOs – All Federal employees are now specifically barred from investing in an Initial Public Offering (IPO) except in the same manner as is available to members of the public generally.

Bar on the use of inside information for investments – The law confirms and clarifies that Federal employees may not use non-public information for personal gain and that Federal employees are not exempt from the insider trading restrictions of the Securities Exchange Act.