



SEA Position Paper

STOCK Act Public Disclosure Issues

June, 2012

The STOCK Act (P.L. No: 112-105) was quickly passed by Congress and then signed by the President on April 4th, 2012 in response to concerns that members of Congress were currently exempt from insider trading laws. And while the original intent of the bill was to discourage any future attempts at insider trading by members of Congress, the bill inexplicably included provisions that made drastic changes to the financial disclosures required of career federal employees. Unfortunately, these changes were not carefully considered; there were no hearings on the legislation.

High ranking employees in the Executive Branch should be, and already are, required to submit financial disclosure reports. Disclosure reports help minimize conflict of interest problems and corruption, while increasing public trust in government. Specially trained and experienced agency ethics officials carefully examine the annual financial disclosure reports of Executive Branch employees. The system has worked well. Few, if any, problems with insider trading by federal executives have come to our attention. These financial disclosure reports have been available to the public in a controlled manner that has safeguarded the privacy and integrity of Senior Executives' financial information.

New public disclosure requirements mandated by the STOCK Act will serve no purpose that we are aware of, will jeopardize the privacy and integrity afforded by this Ethics in Government Act system, and, in our opinion, will hinder government performance in a number of ways.

We urge that implementation of sections 6 & 11 of the Act be delayed for careful consideration of its impact and for the solicitation of interested parties' views, and, if the case is as one-sided as we believe, ultimately revised to exclude career employees. These sections have the potential to cause serious damage without countervailing beneficial effects, and the extent of the impact they will have on government performance should be studied prior to implementation. The wide availability of private financial information will have the potential to leave federal employees vulnerable to identity theft, allow public employees serving abroad to be scrutinized by foreign interests, negatively impact Inspector General investigations, poison manager-employee relationships, and wastefully exhaust valuable employee energy and agency resources. The previous disclosure system helped prevent these problems, but, as outlined below, implementation of sections 6 & 11 of the STOCK Act will create

significant and, in all likelihood, unforeseen problems and undermine the ability of federal employees to do their jobs.

Pre-STOCK Act Federal Financial Disclosure Requirements

Even without the new STOCK Act amendments, high-level career federal employees for many years have complied with a detailed annual financial disclosure process, a process that appropriately balances the interests of the public with the privacy and security needs of the individual. Political appointees and career public servants above the minimum GS-15 level¹, i.e. those occupying positions that pay greater than 120 percent of the minimum rate of basic pay payable for GS-15, are required to file annually OGE form 278 Public Financial Disclosure Report that discloses assets, outside sources of income, financial transactions, and liabilities as well as other personal information. This form not only requires disclosure of employees' information, but also that of their spouses and dependents. While some filers may be uncomfortable with reporting private financial information, they have understood that the disclosures strengthen institutional integrity and that there have been safeguards in place to keep the information from being used for nefarious purposes.

The prior process protected sensitive financial information

The STOCK Act amendments remove these safeguards. The pre-STOCK Act process allowed members of the public to request the financial disclosure forms filed by members of the Executive Branch, but it also included safeguards that controlled the extent to which the sensitive information contained in the forms could be used. To request the information, members of the public requesting a copy of a filer's disclosure had to submit a written request stating: his or her name, occupation, and address; the name and address of any other person or organization on whose behalf the inspection or copy was requested; and that he or she was aware of the prohibitions on obtaining or using the report. This safeguard helped agency ethics offices ensure the reports were not being procured, for example, by foreign entities for harmful purposes and that they otherwise were being utilized for a legitimate purpose.

Those requesting the information had to also acknowledge that they were aware of the prohibition on using the information for: any unlawful purpose; any commercial purpose, except by news and communications media for dissemination to the general public; determining or establishing a credit rating; or direct or indirect use in the solicitation of money for any purpose, including political and charitable purposes. These requirements provide a crucial check on privacy and security, but at the same time allowed ethics officers to exercise their professional judgment in scrutinizing the requests. Armed with the requester's information, a system of accountability existed which was enforceable by civil action brought by the Attorney General. By implementing the STOCK Act, however, this crucial check on information security will be removed, making enforcement a practical nullity.

¹ According to OGE, in 2011 there were 28,000 OGE-Form 278 filers.

Provisions of the STOCK Act will remove safeguards on information integrity

The STOCK Act, as passed by Congress and signed into law by the President, changes the government-wide financial disclosure process by removing the requirement that an individual employee's public financial disclosure form—including the sensitive information therein—be obtained only through a process of submitting a written request for each form. Because of provisions in the STOCK Act, every public financial disclosure form filed by all career public servants, except those in intelligence agencies, will be posted on a public, easily searchable database. This means, quite simply, that the private financial information of tens of thousands of career public employees will be available to everyone—criminal enterprises and foreign interests included. We believe that releasing this private financial information in such an uncontrolled manner will result in several unintended consequences, detailed below, that outweigh the benefits of making such information so easily available to all.

Identity theft risks to Federal Employees

Once agencies post the financial disclosure reports of career federal employees on the internet, filers will become prime targets for identity thieves, and federal employees posted overseas may have their finances scrutinized by foreign interests. As well as being harmful to career federal employees, both of these outcomes will have a deleterious effect on the performance of government.

The requirement that ethics offices must publish tens of thousands of financial disclosure reports will put filers at heightened risk of identity theft. Marketers and identity thieves will find that the information contained within reports, including the names, addresses, signatures, assets, and liabilities of a large group of federal executives, is extremely valuable. And once agency ethics offices post this information on the internet, those who are victims of identity theft will need to exhaust considerable time and energy reestablishing the integrity of their information and their finances. Identity theft is a traumatic experience, and the time required to rectify the situation will be a needless distraction from the important work done by career federal employees.

Concerns for US National Security and Overseas Federal Employees

We are particularly concerned about the STOCK Act's effect on public financial disclosure report filers who are posted overseas and those who travel overseas on government business. Under the STOCK Act, federal employees' financial information will be readily available to everyone and would not only completely disregard these individuals' right to privacy, but could also prove extremely harmful. The ubiquity of the internet makes information immediately available worldwide. Foreign Service officers and other federal employees serving and traveling abroad could come under easy scrutiny by foreign interests, including terrorists. Members of the US Foreign Service are, and will continue to be, fearful that their children, already at a heightened risk for kidnapping, will become prime targets given that foreign gangs will have access to information about their parents' finances. Additionally, senior executives traveling overseas who are fortunate enough to have substantial financial resources could become attractive targets for ransom seekers.

Recent events make it clearer than ever that the information contained in the public financial disclosure reports will be a tempting target for foreign countries as some seek to undermine US security. In May of this year, Nextgov reported on a cyber-attack, targeted at a TSP contractor, which compromised the personal information of over a hundred thousand TSP participants. James Lewis, a cyber-security analyst who advises the Obama administration and Congress, has the impression that "at least one smart country is building a data base on [U.S. Government] employees."² The information contained in the financial disclosure reports, if posted online as required by the STOCK Act, will be a gold mine to any country that is building such a database. The Department of Defense alone has about 5,500 employees who are required to fill out OGE form 278. Although the STOCK ACT will require a log-in for users who want to download OGE-278 forms from the yet to be created office of Government Ethics government-wide database, this requirement does not protect the information from being mined by criminal syndicates or foreign intelligence groups. The statute allows anyone to view the information online, and sophisticated groups will merely utilize automated computer programs and runtimes in order to create a database containing information on tens of thousands of federal employees.

We believe that the STOCK ACT will even compromise US intelligence operations overseas, as the online posting requirement could easily jeopardize the cover of US intelligence personnel. Senior Foreign Service officers serving at embassies abroad are often suspected of being undercover intelligence officers. Those foreign interests harboring such suspicions will be able to determine very easily whether they are well founded; since intelligence officers' financial disclosure reports cannot be made public, the absence of a Senior Foreign Service Officer's report from the public data base will confirm such suspicions.

Impact on Law Enforcement and Manager-Employee relations

The STOCK Act's requirement that financial disclosure forms be posted online could also hinder law enforcement agencies and Inspectors General (who will also have their financial disclosure forms available to anyone), in conducting effective investigations. We can perceive of situations where those who are under investigation may attempt to exert pressure on law enforcement executives by using publicly available sensitive financial information against them. Law enforcement should be able to conduct thorough and wide ranging investigations free from the fear of reprisal based on hitherto carefully guarded private information. Similarly, supervisors within a federal agency could be subject to unwarranted personal scrutiny by their subordinates, causing tension and problems in the workplace.

Additionally, career employees are often targets of frivolous lawsuits, brought by members of the public, for merely carrying out the routine duties their positions require. We are aware of instances when the plaintiffs in these cases have attempted to intimidate career federal employees named in the

² Sternstein, Aliya. "Thrift Savings Plan Hackers Could Be Targeting Other Government Data." *Nextgov*. 29 May 2012. Web. 05 June 2012. <<http://www.nextgov.com/cybersecurity/2012/05/thrift-savings-plan-hackers-could-be-targeting-other-government-data/55953/>>.

suit, and we believe that these persons—now armed with sensitive financial information—will be tempted to use the information to intimidate federal employees who are faithfully executing their duties. As a result, the STOCK Act may hinder employees carrying out critical agency missions, and executives faced with the possibility of fighting frivolous lawsuits may on occasion avoid making difficult decisions for fear of retaliation.

Concerns about OGE's ability to implement the public disclosure site

Section 11 of the STOCK Act tasks the Office of Government Ethics (OGE) with creating an electronic system for public access—through OGE's website—to a searchable and sortable database of financial disclosure reports. OGE does not presently have the resources necessary to comply with this requirement, and the agency will be forced to devote much of its time to the project. OGE estimates that the cost of creating the system will significantly exceed its annual budget, which is less than \$14 million for FY2012. Additionally, OGE has evaluated most, if not all, electronic financial disclosure systems in the executive branch. No system has been developed by any agency that has the costly searchable, sortable functions required by the STOCK Act. We do not believe that the cost feasibility of this project was considered before passage, and for that reason and others we have set forth, the implementation of Section 11 of the Act should be delayed.

STOCK Act's Impact on Spousal Disclosure

The STOCK Act will also have an unsettling impact on the spouses of the tens of thousands of federal executives who are covered, as the spouses' financial information will also be widely available. The public financial disclosure report requires filers to report the identity of their spouses' employers, as well as their own assets and liabilities, and any financial transactions they made during the past year. Previously, the disclosure process gave reasonable assurance to these spouses that their financial information would be relatively secure, and that a limited number of individuals would have access to it. These same assurances will not be given if sections 6 & 11 of the STOCK Act are implemented as planned. And spouses working in the private sector may have their finances scrutinized by their own co-workers, subordinates, and neighbors. We believe that this is an undue and unnecessary invasion of privacy, and that the spouses of federal employees should have an expectation of reasonable privacy absent compelling reasons to do otherwise.

SEA is also aware of a serious flaw in spousal disclosure requirements that will make available on the internet the financial information of some employees in the intelligence community. The STOCK Act is structured in a way that requires senior executives to disclose on the internet their spouse's financial information, even if that spouse is in the intelligence community. The spouse's report will be identical in virtually all aspects. We have been contacted by one SES member who pointed out that her agency will in fact be forced to post on its website the finances of her husband, who is a member of the intelligence community. This is undoubtedly an unintended consequence of an inadequately considered law, unfortunately enacted with extreme haste in an election year.

Impact on Senior Executive Recruitment

For no reason that has been shown, the STOCK Act's requirements will not only put an immense burden on current senior federal employees, but its intrusive requirements are already having a chilling effect on the recruitment and retention of career executives. We have heard from a number of GS 14s & 15s that impending implementation of the STOCK Act has caused them to abandon their plans to seek entry into the Senior Executive Service. In addition, many current Senior Executives are considering retirement or falling back to GS-15 in light of the new rules. Given this feedback, we believe that following through on the implementation of sections 6 & 11 of the STOCK Act is likely to impair the ability of the Senior Executive Service to attract and retain top talent.

Impact on Political Appointee Recruitment

We further believe that Implementation of the STOCK ACT will also make it significantly harder to attract capable political appointees to the current administration and also to future administrations. Political appointees already expect to file financial disclosure reports that have a good chance of being examined by journalists and "good government" groups, but they have never had the expectation that their financial disclosure reports will be freely available to criminal elements and foreign groups. Given this new risk, it will be much easier for potential appointees to make the calculation that, as much as they desire to serve an administration, they cannot justify opening themselves and their families up to the identity theft and exploitation that will be possible once their finances are posted on a public database. This is especially true for the many political appointees who, in choosing government service, take a significant pay cut as part of their appointments.

Conclusion

Implementation of the STOCK ACT as written should not come at the expense of the identities, safety, and security of tens of thousands of federal employees, of adverse effects on government performance, and of the addition of unnecessary and significant fiscal and administrative burdens on federal agencies. Because of these extremely serious concerns, we believe that the STOCK ACT should be amended to eliminate the requirement for internet posting of Executive Branch employee financial disclosure reports, particularly those of career employees. At the very least, implementation of the act should be delayed until its impact on government performance can be carefully studied, which to date has unfortunately not occurred.