



MEMORANDUM

TO: USDA Public Financial Disclosure Report Filers

FROM: Stuart Bender
Director
USDA Office of Ethics

SUBJECT: STOCK ACT – Ethics Guidance

DATE: April 19, 2012

On April 4, 2012, President Obama signed the Stop Trading on Congressional Knowledge (STOCK) Act into law. This law will have a major impact on USDA and its public financial disclosure filers. As an employee who files a Public Financial Disclosure Report (OGE-278), it is important for you to understand the ramifications of the STOCK Act's passage. The Office of Ethics is providing this guidance to assist you in understanding the Act's requirements. We will be providing additional guidance in the future.

Brief Background:

The impetus of the STOCK Act was to restrict members and employees of Congress from using any nonpublic information derived from the individual's position or gained from performance of the individual's duties, for personal benefit. However, the final version of the STOCK Act incorporated provisions that apply to employees in the Executive and Judicial branches of the federal government. A majority of these provisions relate to the OGE-278 and the employees who are required to file the OGE 278.

The STOCK Act contains provisions that are effective immediately, provisions effective 90 days after enactment, provisions that will be effective by August 31, 2012, and provisions required within 18 months after enactment.

Interpretive Guidance will be issued by the U.S. Office of Government Ethics:

The U.S. Office of Government Ethics (OGE), an independent agency, has the lead for implementation of the STOCK Act for the Executive branch. The law has a good deal of complexity and OGE has begun the process of issuing implementing guidance. We are currently awaiting OGE's implementing guidance, which is being issued over a period of time, and until such guidance is published there will be several procedural questions that we cannot yet answer. USDA's Office of Ethics (OE) will be available to assist you to the maximum extent possible and to provide continuing guidance on ethics matters. We have posted a great deal of information on the STOCK Act on the front page of our

website at www.usda.gov/ethics and will continue to do so as more information becomes available. I encourage you to visit the web page for more detailed information.

Provisions *effective immediately* upon enactment of the STOCK Act:

- Public Financial Disclosure Report (OGE-278) filers must report to OE any negotiation or agreement for future post-government employment or compensation within three (3) business days of entering into the arrangement.
 - The requirement is triggered when an employee directly negotiates or enters into an agreement with a non-Federal entity for future employment or compensation. A "negotiation" begins when an employee enters into a discussion or communication with another person, or such person's agent or intermediary, that is mutually conducted with a view toward reaching an agreement regarding possible employment or compensation with that person. In other words, the disclosure requirement is triggered when both the employee and the potential employer are engaged in actual discussions regarding the terms of employment with the potential employer.
 - The notice requirement is not triggered by negotiations for outside employment that is intended to be performed concurrently with Federal employment. There are, however, separate restrictions on outside employment, and USDA employees should seek guidance from their ethics official before commencing employment with non-Federal entities.
 - If the negotiation or agreement results in a conflict of interest or appearance of a conflict, the filer must also recuse him or herself and notify OE of the recusal.
 - More information and a template disclosure/recusal document can be located on the new STOCK Act webpage on USDA's Ethics website. To readily access the Ethics website, go to www.usda.gov/ethics or visit the USDA home page and type in the word "ethics" on the search engine.
- The Act requires Senate-Confirmed Presidential appointees (PAS), not SES or Schedule C appointees to report, in the liabilities portion (Schedule C, Part I) of their OGE-278, information about mortgages on their personal residence in addition to the existing requirement to report mortgages on other property.
- OGE-278 filers may not purchase securities that are the subject of an initial public offering in any manner other than is available to members of the public generally.
- The Act clarifies that members of the executive branch are subject to the ban on trading on insider information.

Provisions *effective 90 days* after enactment:

- OGE-278 filers must file reports on transactions involving stocks, bonds, commodities futures and other securities (but not mutual funds) in excess of \$1,000 within 30 days of receiving notification of a transaction, or 45-days after the transaction. These transaction reports are required to be submitted to OE and will be posted on the agency's website.

Provisions *effective by August 31, 2012*:

- One of the many requirements of the Act is that Public Financial Disclosure Reports submitted in 2012 will be electronically available on the Department's website. Consequently, OGE-278 reports will be publicly posted on USDA's website. All reports filed in 2012 must be posted. Thereafter, reports must be posted within 30 days of filing with the Department.
- Any extensions of the time to file an OGE-278 must also be publicly posted on the Department's website.

Provisions *required within 18 months* after enactment:

- The Executive Branch must develop Information Technology systems to allow filers to electronic file the Public Financial Disclosure Report (OGE-278) and the Confidential Financial Disclosure report (OGE-450). USDA has approximately 700 OGE-278 filers and approximately 16,500 OGE-450 filers of these annual reports.
- For OGE-278 filers, the IT system developed must provide for a publicly available, searchable, and sortable database of OGE-278s and must include the new transaction reports. Reports are to be made publicly available in the database within 30 days of filing.

Frequently asked questions:

Q: Will OGE-278s have to be posted within 30 days even if they have not yet been reviewed or certified?

A: Yes, unless OGE subsequently advises otherwise.

Q: Will CY11 OGE-278 reports – and any requests for extensions of time -- that are due to be filed by May 15, 2012, be posted online?

A: Yes.

Q: Will the U.S. Office of Government Ethics be issuing further guidance interpreting the STOCK ACT?

A: Yes.

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: Daeco.ethics@dm.usda.gov.