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TO: Designated Agency Ethics Officials

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SUBJECT: Legislative Activity of the 112th Congress Affecting the Executive Branch Ethics Program

This Legal Advisory updates relevant legislative activity from the recently ended 112th Congress. Two new laws are of particular importance to the Executive Branch ethics community: the Stop Trading on Congressional Knowledge Act of 2012<sup>1</sup> (“STOCK Act”) and the Presidential Appointment Efficiency and Streamlining Act of 2011<sup>2</sup> (“Streamlining Act”). The Office of Government Ethics (OGE) also monitored other ethics-related provisions of note and trends in legislative activities.

In addition, OGE has compiled and published a newly updated “Compilation of Federal Ethics Laws” that includes all provisions signed into law through January 13, 2013. The compilation includes not only the laws within the jurisdiction of the ethics program, but also related statutes of interest to the Executive Branch ethics programs, such as the Hatch Act. The Compilation may be found on OGE’s website at: <http://www.oge.gov/Laws-and-Regulations/Statutes/Compilation-of-Federal-Ethics-Laws/>.

### **Stop Trading on Congressional Knowledge Act of 2012**

The STOCK Act establishes significant new requirements for OGE, the Executive Branch ethics program, ethics officials, and federal employees who file public financial disclosure reports pursuant to the Ethics in Government Act of 1978 (EIGA), among other changes. The law creates three new requirements for employees who file public financial disclosure reports: (1) periodic transaction reporting;<sup>3</sup> (2) personal residential mortgage disclosure for some of the most senior officials in government; and (3) post-government

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<sup>1</sup> Pub. L. No. 112-105, 126 Stat. 291 (2012).

<sup>2</sup> Pub. L. No. 112-166, 126 Stat. 1283 (2012).

<sup>3</sup> In September 2012, Congress amended the STOCK Act periodic transaction reporting requirement to clarify that employees subject to the periodic transaction reporting requirement under subsection 103(1) of EIGA must also report any purchase, sale, or exchange of securities by their spouses or dependent children, effective January 1, 2013. Act of September 28, 2012, Pub. L. No. 112-178, 126 Stat. 1408 (2012).

employment notification and recusal. The STOCK Act also requires the development of an electronic filing system for the approximately 28,000 Executive Branch public financial disclosure report filers, which OGE is in the process of implementing. In addition, the STOCK Act, as amended, requires that most Executive Branch public financial disclosure reports be made available online through agency websites by April 15, 2013.<sup>4</sup>

Congress also directed the Office of Personnel Management (OPM) to contract with the National Academy of Public Administration (NAPA) to study the potential risks, such as harm to national security or endangerment of personal safety, financial security, or privacy, raised by online publication of financial disclosure reports under the STOCK Act.<sup>5</sup> On March 28, 2013, NAPA submitted an independent study on the impact of the STOCK Act to Congress and the President of the United States. The five-member Panel of Fellows that conducted the study made the following recommendation: Congress should indefinitely suspend the online posting requirements that are due April 15, 2013, and the unrestricted access to searchable, sortable, downloadable databases, currently planned for October 2013, while continuing implementation of other requirements of the STOCK Act.<sup>6</sup> The full report is available at <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.

OGE has issued guidance on several aspects of the STOCK Act, available in the Legal Advisory section of the OGE website at [http://www.oge.gov/OGE-Advisories/Legal-Advisories/](http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/). OGE will continue to provide additional guidance on other provisions of the STOCK Act in the near future.

## **Presidential Appointment Efficiency and Streamlining Act of 2011**

The Streamlining Act eliminates the requirement of Senate approval for approximately 170 civilian positions in the Executive Branch and 3,000 military appointments. The Act also establishes a working group to make recommendations on how to streamline the paperwork required of Presidential nominees who require Senate confirmation (PAS nominees). The first report, submitted in November 2012, made recommendations that include: eliminating repetitive responses and reducing overlapping and duplicative questions; reducing unnecessary burdens on nominees; and building an electronic system with a “Smart Form.” The full report is available at <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Reports-and-Testimony/Substantive->

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<sup>4</sup> Subsection 11(a)(1) of the STOCK Act originally required that by August 31, 2012, public financial disclosure reports filed pursuant to title I of EIGA in calendar year 2012, and in subsequent years, be made available to the public on the official websites of the respective Executive Branch agencies no later than 30 days after such forms were filed. The STOCK Act was amended by S. 3510 to move this deadline to September 30, 2012. Act of August 16, 2012, Pub. L. No. 112-173, 126 Stat. 1310 (2012). Subsequent to this amendment, the U.S. District Court for the District of Maryland Southern Division enjoined posting under the STOCK Act until October 31, 2012. The effective date of subsection 11(a)(1) of the STOCK Act was extended once again to December 8, 2012, except for certain high-level filers occupying positions listed at Levels I and II of the Executive Schedule. Act of September 28, 2012, Pub. L. No. 112-178, 126 Stat. 1408 (2012). Most recently, President Obama signed into law H.R. 6634, which extends the effective date to April 15, 2013. Act of December 7, 2012, Pub. L. No. 112-207, 126 Stat. 1495 (2012).

<sup>5</sup> Act of September 28, 2012, Pub. L. No. 112-178, 126 Stat. 1408 (2012).

<sup>6</sup> NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE xv (2013), available at <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.

[Reports-to-Congress/Working-Group-Report-to-Congress-on-Streamlining-Paperwork-for-Executive-Nominations-\(November-2012\)/](#). The second report, due May 7, 2013, will make recommendations regarding background investigation requirements for PAS nominees.

In conjunction with the Streamlining Act, a Senate resolution (S. Res. 116) eliminated the requirement that approximately 250 positions be referred to committee before they are considered by the full Senate.<sup>7</sup> The resolution provides that, upon receipt of biographical and financial questionnaires, nominations for those positions will be placed on the Executive Calendar under the heading “Privileged Nomination–Information Received.” If within 10 session days of reviewing all required biographical and financial information no senator requests full committee vetting, the nomination will be considered by the full Senate.

The 113th Congress is continuing its efforts to streamline the PAS nomination process. Most recently, the Senate enacted S. Res. 15 to improve procedures for the consideration of legislation and nominations in the Senate.<sup>8</sup> In particular, the Senate will limit debate to eight hours on nominations to certain Executive Branch positions if a senator invokes the procedure for breaking a filibuster.

### **Other Notable Ethics-Related Provisions Considered by the 112th Congress**

The 112th Congress also considered several other notable ethics-related provisions that did not become law:

- The Grant Reform and Transparency Act (H.R. 3433) would have introduced new standards to determine whether federal grant reviewers have a prohibited conflict of interest with respect to the evaluation or review of a grant application or proposal, or the decision to award a grant.
- The Transparency and Openness in Government Act (H.R. 1144) and the Federal Advisory Committee Act Amendments of 2011 (H.R. 3124) would have amended the Federal Advisory Committee Act (FACA) in part to increase transparency by requiring that certain information about advisory committee members, including recusal agreements and waivers issued pursuant to 18 U.S.C. § 208(b)(3), be made available to the public on the official website of the Executive Branch agency to which the advisory committee reports. The bills also would have required that agencies designate advisory committee members as special Government employees or representatives, explain to advisory committee members the difference between those designations, and summarize the applicable ethics requirements.
- The Domestic Partnership Benefits and Obligations Act of 2012 (S. 1910) would have amended several ethics provisions to extend to same-sex partners of federal workers in domestic partnerships the same benefits and obligations as spouses in heterosexual marriages. The bill also would have required additional disclosure obligations under EIGA for filers in domestic partnerships that are registered with OPM.

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<sup>7</sup> S. Res. 116, 112th Cong. (2012).

<sup>8</sup> S. Res. 15, 113th Cong. (2013).

- The Foreign Lobbying Reform Act (H.R. 4343) would have prohibited certain high-ranking government officials from lobbying on behalf of specified foreign governments for 10 years after leaving office.

### **Other Legislative Activity of Interest to Executive Branch Ethics Programs**

Ethics officials are often called upon to provide advice to agency employees on issues that fall outside of OGE’s jurisdiction. Accordingly, OGE monitored a number of related provisions that may be of interest to Executive Branch ethics programs, including the Hatch Act Modernization Act of 2012<sup>9</sup> and various Executive Branch travel and conference spending proposals.

#### *Hatch Act Modernization Act of 2012*

The Hatch Act Modernization Act made reforms to the Hatch Act,<sup>10</sup> which is the law that limits certain political activity of most Executive Branch employees. The Hatch Act Modernization Act broadens the range of potential discipline when a violation is found. The U.S. Office of Special Counsel (OSC) is the agency responsible for interpreting and enforcing the Hatch Act. Additional information about the Hatch Act may be found on the OSC website at <http://www.osc.gov/hatchact.htm>.

#### *Travel and Conference Spending Restrictions*

OGE monitored several bills introduced in the 112th Congress that were aimed at imposing new restrictions on Executive Branch travel and conference spending. Although these bills did not become law, they evidence concern about conference and travel spending.

In particular, the Government Spending and Accountability Act (H.R. 4631) (“GSA Act”) would have capped spending on any single conference at \$500,000 and required online posting of all conference information, including an itemized list of expenses and a brief explanation of how a conference advances an agency’s mission. The GSA Act also would have allowed agency heads to waive the \$500,000 cap after making a determination that the conference is the “most cost-effective option to achieve a compelling purpose.” In addition, the GSA Act would have limited travel spending in Executive Branch agencies for fiscal years 2013 to 2017 to 70% of what an agency spent on travel in fiscal year 2010. Eleven other bills were introduced with similar provisions, including four appropriations bills. The bills, which did not become law, signal concern about conference and travel spending across a wide range of committees.

The 113th Congress is continuing the trend toward reining in agency conference and travel spending. On March 26, 2013, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2013,<sup>11</sup> which includes a provision requiring the head of

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<sup>9</sup> Pub. L. No. 112-230, 126 Stat. 1616 (2012).

<sup>10</sup> 5 U.S.C. §§ 7321-7326.

<sup>11</sup> Pub. L. No. 113-6, 127 Stat. 198 (2013).

each Executive Branch agency to submit an annual report to the Inspector General, or senior ethics official for any entity without an Inspector General, regarding the costs and contracting procedures related to each agency conference during fiscal year 2013 that cost more than \$10,000. For conferences that cost more than \$20,000, the law requires that, within 15 days of the date of a conference, the agency head notify the Inspector General, or senior ethics official for any entity without an Inspector General, of the date, location, and number of employees attending such conference.

As an aide to ethics officials, OGE recently updated and re-issued its compilation of federal acquisition, fiscal, and ethics laws and regulations that apply to issues raised by conferences. This guidance is available on the OGE website at <http://www.oge.gov/Program-Management/Program-Management-Resources/Ethics-Community/Conference-Resources/A-Collection-of-Federal-Resources-Relating-to-Conferences/>.

## **Conclusion**

OGE brings the above information to your attention as part of our initiative to keep the ethics community apprised of relevant legislative activity. As the 113th Congress engages in ethics-related legislative activity, OGE will provide similar, periodic updates. OGE also monitors and keeps agency ethics officials informed of agency-specific legislative proposals and provisions that may affect ethics programs. If you would like to discuss this Legal Advisory or other legislative matters, please contact OGE's Program Counsel, Shelley Finlayson at (202) 482-9314.