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Office of Government Ethics
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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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Director

SUBJECT: NOTIFICATION OF NEGOTIATIONS FOR POST-GOVERNMENT COMPENSATION UNDER SECTION 17 OF THE STOCK ACT

This Legal Advisory clarifies that an employee must comply with the notification requirements under section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) when he or she negotiates for, or has an agreement of, post-government, non-federal compensation for services to be rendered entirely after termination of federal employment.

Section 17 of the STOCK Act ("section 17") provides that a covered employee[1] may not directly negotiate or have any agreement of future non-federal employment or compensation unless the employee, within three business days after commencement of such negotiation or agreement, files with his or her Designated Agency Ethics Official (DAEO) a notification statement. *See* Pub. L. No. 112-178, 126 Stat. 291, 303-304 (2012). Earlier guidance from the U.S. Office of Government Ethics (OGE) regarding section 17 focused on an employee's notification obligations when he or she negotiates for, or has an agreement of, post-government employment. *See* OGE LA-12-01. However, the notification requirements also apply when an employee negotiates for or has an agreement with a non-federal entity of future compensation for providing personal services, which might not be considered employment. The notification requirement for future compensation under section 17 may typically arise when an employee negotiates for, or has an agreement of, a post-government teaching, speaking, or writing activity.

Future Compensation

Future compensation means compensation that will be received in return for services rendered after termination of federal government employment. *See* OGE LA-12-01 (defining

[1] A "covered employee" is any individual who is required to file a public financial disclosure report under section 101 of the Ethics in Government Act of 1978 (EIGA). *See* OGE LA-12-01.

future employment). For example, an employee who has engaged in negotiations for a paid speaking engagement that will occur after he or she terminates federal government employment (*i.e.* future compensation) must file a notification statement with the agency's DAEO within three business days after commencement of such negotiations. Likewise, an employee who enters into a contract to begin writing a book after he or she leaves government service must file a written notification statement with his or her DAEO because the employee has entered into an agreement for future compensation with a non-federal entity.

In contrast, negotiations or agreements to compensate an employee for personal services that will be performed, at least in part, during government service will not trigger the notification requirements under section 17, even if the actual payment is deferred until or continues after the employee leaves government service.[2] Therefore, if a current government employee signs a contract to write a book that he or she expects to begin writing while in government service, the employee is deemed to receive compensation during government service. *See* OGE Informal Advisory Opinion 08 x 3a at 11; OGE 08 x 3b at 9-10. As a result, the employee is not required to file a notification under section 17 because the agreement is not entirely for future, post-government compensation. However, it is very important to note that this employee will still be subject to a number of restrictions on his or her ability to engage in and receive compensation for personal services performed during government service.[3]

Compensation for the Provision of Personal Services

For purposes of section 17, OGE is applying the definition of compensation found in 5 C.F.R. § 2635.807(a)(2)(iii), which includes any form of consideration, remuneration, or income, as well as royalties.[4] Negotiations for, or agreements of, future compensation in the form of transportation, lodgings, and meals will also trigger the notification requirement under

[2] *See* 5 C.F.R. § 2636.303(c) (stating that compensation is deemed to be "received while an individual is an employee if it is for conduct by him that occurs while an employee, even though actual payment may be deferred until after Federal employment is terminated"). OGE also interprets this definition of "receive" to apply equally to 5 C.F.R. § 2635.807. *See* OGE Informal Advisory Opinion 08 x 3a at 11; OGE Informal Advisory Opinion 08 x 3b at 10.

[3] For example, the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) limit the receipt of compensation by an employee for teaching, speaking, or writing that relates to the employee's official duties. *See* 5 C.F.R. § 2635.807. Agency regulations supplementing the Standards of Conduct may also limit or prohibit an employee's outside activities. In addition, a covered noncareer employee, as defined in 5 C.F.R. § 2636.303(a), is subject to a ban on receiving, in a calendar year, outside earned income that exceeds 15% of the annual rate of basic pay for level II of the Executive Schedule. *See* 5 U.S.C. app. § 105(a)(1). A Presidential appointee to a full-time, noncareer position (PA), as defined at 5 C.F.R. § 2635.804(c), is also prohibited from receiving any earned income for activities performed during government service. *See* Executive Order 12674, *as modified by* Executive Order 12731 and implemented by 5 C.F.R. § 2635.804(a). An employee should consult with an agency ethics official regarding these and other prohibitions and limitations on the employee's ability to engage in and receive compensation for an outside activity performed during government service.

[4] Royalties are not treated the same under all ethics rules. *See* 5 C.F.R. § 2636.303(b)(5) and 5 C.F.R. § 2635.804(c)(1) (excluding from the definition of compensation "copyright royalties, fees, and their functional equivalent . . ."). OGE has determined that applying the definition of compensation found in 5 C.F.R. § 2635.807(a)(2)(iii) (including royalties in the definition of compensation) for purposes of the notification requirement under section 17 is appropriate to ensure that an employee avoids the appearance of a conflict of interest when the employee is negotiating for, or has an agreement of, future compensation for the provision of personal services.

section 17 if such compensation will be received in exchange for services rendered entirely after termination of government employment. *See* 5 C.F.R. § 2635.807(a)(2)(iii).

The requirement to report a negotiation for, or agreement of, future compensation applies only if the compensation will be in exchange for the provision of personal services.[5] As used in section 17, the term "compensation" does not include income from investment activities where the employee's services are not a material factor in the production of income. For example, an employee is generally not required to file a notification statement if the employee enters into an agreement to lease a rental property.

Recusal Requirements

Section 17 also requires an employee to file a notification regarding recusal whenever there is a conflict of interest or an appearance of a conflict of interest with that entity. This provision affirms the recusal obligations addressed in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. part 2635, subpart E. An employee should not participate in a matter involving specific parties when someone with whom the employee has a covered relationship is a party to the matter, or represents a party to the matter, if a reasonable person would question his or her impartiality in the matter. In general, an employee will be considered to have a covered relationship with a person with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction. *See* 5 C.F.R. § 2635.502(b)(1)(i). Thus, for example, an employee with a book deal may need to recuse from a particular matter involving specific parties in which the publisher is a party or represents a party in order to avoid the appearance of loss of impartiality. In rare cases, the employee may need to recuse from a particular matter that would have a direct and predictable effect on the publisher's ability or willingness to honor the terms of the publishing agreement in order to avoid a conflict of interest.

Finally, please note that this Legal Advisory includes an updated suggested format that agency ethics officials may choose to have employees use to ensure full compliance with the notification requirements of section 17.

Attachment 1 – Suggested Format for Notification of Post-Employment or Compensation Negotiation or Agreement and Recusal Statement

[5] *See* BLACK'S LAW DICTIONARY 277 (9th ed. 2009) (defining "compensation" as "remuneration and other benefits received in return for services rendered").

NOTIFICATION OF POST-GOVERNMENT EMPLOYMENT OR COMPENSATION NEGOTIATION OR AGREEMENT AND RECUSAL STATEMENT

Section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires certain employees to file a statement notifying their agency ethics official of any negotiation for, or agreement of, future employment or compensation with a non-federal entity within three business days after commencement of the negotiation or agreement. An employee who files a notification statement also must file with the agency's ethics official a recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity, unless the employee obtains a written waiver as discussed in 5 C.F.R. § 2635.402(d), obtains an authorization as discussed in 5 C.F.R. § 2635.502(d), or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

NOTIFICATION OF POST-GOVERNMENT EMPLOYMENT OR COMPENSATION NEGOTIATION OR AGREEMENT

Name of Employee	
Agency/Office	
Date Negotiation or Agreement Commenced	
Name(s) of Non-Federal Entity or Entities Disclose each non-federal entity with which you are negotiating for, or have an agreement of, future employment or compensation.	

RECUSAL STATEMENT

For as long as I am negotiating for, or have an agreement of, employment or compensation with any entity listed above, I will comply with all applicable recusal obligations under 5 C.F.R. part 2635 and, where applicable, 18 U.S.C. § 208. I understand that it is my responsibility to consult an agency ethics official if I have questions regarding these recusal obligations.

Employee Signature	**Date Submitted**
Agency Ethics Official Signature	**Date Received**