U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

January 23, 2013

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
K. Michael Conaway, Chairman
Linda T. Sánchez, Ranking Member

SUBJECT: Change to Financial Disclosure Reporting Obligations and Reminder Regarding Periodic Transaction Reporting Requirement

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Each year on May 15, Members and senior House staff[1] are required to file a statement regarding their personal financial interests (FD Statement). The Committee will issue complete information and instructions in April 2013 regarding the annual filing requirement. However, prior to that date, the Committee wants to alert FD filers to a change in policy regarding the reporting of investment funds and some investment accounts. In addition, FD filers may owe reports of their ongoing transactions beginning immediately and throughout 2013. This Memorandum provides more detail on both topics.

CHANGES TO THE REPORTING OF INVESTMENT FUNDS AND SOME INVESTMENT ACCOUNTS

The Committee's previous guidance regarding the reporting of investment funds and some investment accounts was for the filer to determine if the fund or account was **"self directed,"** *i.e.*, whether the filer, filer's spouse, or filer's dependent child has the authority or discretion, *even if not exercised*, to direct the investments in the account. If the fund or account was self directed, the filer was required to list all of the holdings and transactions. If not, the filer was permitted to state the name of the fund or account and indicate it was "not self directed" on the Statement.

For calendar year 2012 FD Statements and for Periodic Transaction Reports (PTRs), the Committee has revised its guidance regarding investment funds and accounts and is no longer using the "self-directed or not-self-directed" test and definitions. Beginning with all EIGA filings made in 2013, in order to exclude the holdings and transactions from disclosure on a FD Statement or PTR, an asset must meet the criteria for an Excepted Investment Fund (EIF) outlined in § 102(f)(8) of the Ethics in Government Act of 1978 (EIGA), which are discussed in detail below.

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[1] "Senior staff" are any House employees who were paid at an annual rate of $119,553.60 or more (or a monthly salary of $9,962.80 or more) for any two months in calendar year 2012. Any such employees who are still employed by the House on May 15, 2013, will owe an annual FD Statement covering 2013, and may owe periodic transaction reports in 2013 if they continue to be paid at that rate.

For FD Statements and PTRs filed in 2013, filers are not required to report on an FD Statement or PTR the holdings of and/or transactions in a widely held investment fund (*e.g.*, a mutual fund, an exchange traded fund (ETF), or a defined benefit pension) if:

1. The asset is a **fund**;
2. The fund has 100 or more investors;
3. The filer, filer's spouse, or filer's dependent child do not exercise control over or have the ability to exercise control the financial interests held by the fund; **and**
4. (a) The fund is publicly traded; **or**

   (b) The assets of the fund are widely diversified.

If a fund meets these criteria, it is an Excepted Investment Fund or EIF.

A fund is widely diversified if it:

1. Holds no more that 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government); **and**
2. Holds no more than 20% of the value of its portfolio in any particular economic sector or geographic region.

Further explanation of certain terms used in the definition of "widely diversified" is as follows:

- **Issuer**: A legal entity that develops, registers, and sells securities for the purpose of financing its operations.
- **Economic Sector**: An area of the economy in which businesses share or offer the same or a related product or service and share common characteristics. Investors use sectors to place stocks and other investments into categories like telecommunications, technology, health care, energy, and utilities.
- **Geographic Region**: A single region of the globe, such as Europe, Asia, or Latin America, or an individual country or small group of countries. This definition only applies to geographic regions outside the United States.

In summary, for investment funds, FD filers must disclose the internal assets and related transactions of any fund unless it meets the test for an EIF outlined above. **Disclosure of the internal assets and related transactions of a fund may be required under this test even if such disclosure had not been previously required under the former "self-directed" test and definition.**

In addition, because brokerage, 401(k), 403(b), IRA, 529 accounts, and variable annuities are investment vehicles and not funds, these accounts fail to meet the criteria of an EIF. As a result, filers must provide all of the underlying holdings (*e.g.*, stocks, bonds, or mutual funds) and transactions in these accounts. It is not sufficient to disclose

the aggregate value of the portfolio or account. Note that if an internal holding is itself an EIF, then while the internally held fund would still need to reported, the further contents of that internally held fund would NOT need to be reported.

IMPORTANT: For previous filings, if the filer did not direct an investment or retirement account, the filer could state on the filing that the account was "not self directed" and then not list the holdings or transactions. With this change in guidance, the holdings and transactions must be reported for all investment and retirement accounts on future FD Statements and PTRs.

PERIODIC TRANSACTION REPORTING

Among other requirements, the Stop Trading on Congressional Knowledge Act (STOCK Act) requires Members, officers, and employees who file FD Statements pursuant to the EIGA to file Periodic Transaction Reports (PTRs) with the Clerk of the House. Filers must make periodic reports of financial transactions valued over $1,000 in stocks, bonds, and other securities owned by the filer, filer's spouse, or the filer's dependent child, including any asset jointly owned with another person. If the filer, the filer's spouse, or the filer's dependent children do not have any reportable transactions, then no PTR is required (although some transactions may still need to be reported on the filer's annual FD Statement).

The requirement to file PTRs applies to Members, officers, and senior staff. "Senior staff" for these purposes means any new employee with a starting salary paid at the senior staff rate;[2] a continuing employee paid at the senior staff rate on the first day of the new Congress (January 3, 2013); or any employee paid at the senior staff rate for any two months during the calendar year.

HOW AND WHERE TRANSACTIONS MUST BE REPORTED

The Committee's detailed guidance regarding the transaction reporting requirement, *Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended*, issued on August 17, 2012, is available on the Committee Web site, www.ethics.house.gov, under General Advisories. The form ("Ethics in Government Act Periodic Transaction Report") for use in making a PTR is also available on the Committee Web site under the "Financial Disclosure" tab, on the "Information and Forms" page.

A PTR is due within 30 days of you becoming aware of the transaction, but no later than 45 days after the transaction. No extensions of the 30- or 45-day time limits will be allowed. The reports may be hand delivered or mailed to the Legislative Resource Center, B-106 Cannon House Office Building, Washington, DC 20515. A report is timely if it is postmarked (legibly) by the due date. The Legislative Resource Center (LRC) does not accept submissions by facsimile or email.

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[2] Currently for CY 2013, the triggering rate of annual pay is $119,553.60, or a monthly salary at or above $9,962.80. Due to an Executive Order that may go into effect in 2013, this rate may change later in the year. For more information, see the Committee's January 2013 advisory memorandum "The 2013 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees," which is available on the Committee Web site (ethics.house.gov) under the links for Reports/General Advisories.

MEMBER REQUIREMENT TO HAVE ONE EMPLOYEE WHO FILES

The EIGA requires a Member to have one employee in their personal office who files a Financial Disclosure Statement. If the Member does not have an employee paid at the senior staff rate, they will need to designate a "Principal Assistant" (PA). A PA must have worked for the Member for 60 days in the reporting year, in this case 2012, and still be employed on May 15 of the next year, in this case May 15, 2013. New Members do not need to have someone who worked for 60 days in the previous year. A Member may designate a PA with a letter to the Clerk of the House that is filed in the LRC. A PA will be required to file annual FD Statements until either they terminate or the Member sends a letter to the Clerk removing the designation as a PA.

PAs are not required to file PTRs.

GETTING ASSISTANCE

Filers are encouraged to carefully read the Committee's guidance and the instructions that accompany the FD Statement and PTR form. Any filer who has questions concerning the reporting requirements or how to fill out an FD Statement or PTR should call the Committee at (202) 225-7103. Committee staff is available to review your FD Statement or PTR before filing (pre-screen). To have your FD Statement or PTR pre-screened, please fax it to (202) 225-3713 or e-mail it to financial.disclosure@mail.house.gov. Please allow sufficient time before the filing deadline for pre-screening.

In addition, the Committee will be offering live training sessions on the STOCK Act and the PTR requirements, as follows. Additional trainings on completing the annual FD Statement will be offered later this year, before the May 15 filing deadline.

STOCK Act/PTR Training

Date	Time	Location
Friday, January 25	2-3 p.m.	HVC-215
Tuesday, January 29	2-3 p.m.	HVC-215
Thursday, February 21	1:30-2:30 p.m.	HVC-215

Attendees must pre-register for the training with the House Learning Center (HLC). You can reach the registration page for each of the training sessions by visiting the Committee Web site at ethics.house.gov/events.

Pre-registering for and attending the training will fulfill the senior staff ethics training requirement that senior staff must complete once per Congress. It does not count for the one hour of ethics training each House employee must complete annually.