

U.S. House of Representatives

COMMITTEE ON ETHICS
Washington, DC 20515

February 08, 2019

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Theodore E. Deutch, Chairman
Kenny Marchant, Ranking Member

SUBJECT: Reminder of Ethics Requirements for Financial Disclosure Filers

All Members of the House and certain House employees are subject to financial disclosure filing requirements. In general, Members and staff who are subject to financial disclosure filing requirements must file two types of reports: 1) annual reports, which must be filed regardless of a filer's holdings or financial activity and that are due by May 15 of each year, as well as upon beginning and terminating House employment, and 2) periodic reports that a filer may be required to file throughout the year on an ongoing basis throughout the year, depending on their actual financial activity. The purpose of this memorandum is to summarize these requirements, including who must file, what types of reports they must file, when they must be filed, and how to file. This memorandum also discusses the penalties for noncompliance with the filing requirements and other restrictions on financial activity, including restrictions on participating in Initial Public Offerings (IPOs) and insider trading.

WHO MUST FILE FINANCIAL DISCLOSURE STATEMENTS

Title I of the Ethics in Government Act of 1978 (EIGA) requires Members, officers, and certain employees of the House to file annual Financial Disclosure Statements (FD Statements) with the Clerk of the House of Representatives.¹ The financial disclosure requirements apply to Members, officers, "senior staff," as defined by the EIGA, principal assistants, and shared employees. All Members and any employee who is required to file an FD Statement must do so, regardless of the level of reportable activity (e.g. amount of assets, transactions, etc.). *It is each employee's responsibility to know if you are senior staff and to comply with the ethics requirements that attach to that designation.*

"Senior staff" are those House officers and employees whose "rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15

¹ 5 U.S.C. app. §§ 101-111. Candidates for the House are also required to file FD Statements, but their filing obligations are not discussed here. For more information, see Comm. on Ethics, *Instruction*

of the General Schedule” for at least 60 days at any time during a calendar year.² For 2019, the annual threshold rate of pay is **\$126,148**,³ or a monthly salary at or above \$10,512.⁴ If your gross base salary was increased to more than the senior staff rate, \$10,512, for any two months⁵ in a calendar year, then you are senior staff for that calendar year for financial disclosure (FD) purposes. This often happens when House employees are awarded year-end bonuses in the form of a temporary increase in base rate of pay, where the bonus is paid out over two paychecks.

At least one employee in every Member’s personal office must file an annual FD Statement.⁶ Most offices will have at least one employee who is paid at or above the senior staff rate and therefore is required to file an FD Statement. If a Member does not have an employee paid at or above the senior staff rate, the Member must designate at least one current employee as a “**principal assistant**” to file an FD Statement. To designate a principal assistant, the Member must sign and transmit to the Clerk of the House a letter that identifies the designee. A form for this purpose is available on the Clerk’s website, www.clerk.house.gov.

Except in the case of a new Member, an employee who has been designated as a principal assistant must have been employed in the Member’s office for more than 60 days in the previous calendar year covered by the report and still be employed by the Member on the May 15, 2019, filing deadline. Neither an FD Statement filed by a new employee nor one filed by a terminated employee of the Member will satisfy the requirement that at least one person in each Member’s office must file an annual FD Statement.

Some **shared employees** are also required to file financial disclosure statements pursuant to a Committee on House Administration Resolution. Each House employee who is employed simultaneously by three or more offices for more than 60 days in a calendar year is required to file an FD Statement on May 15 of the following year regardless of their rate of pay.

Guide, Financial Disclosure Statements and Periodic Transaction Reports (Calendar Year 2017) at 3, available at <https://ethics.house.gov/forms/information-and-forms>.

² 5 U.S.C. app. §§ 109(13) & 101(d).

³ This amount is referred to as the “senior staff rate.”

⁴ This amount is subject to change based on changes to the General Schedule. In the event that it does change, the Committee will announce the new amount. Comm. on Ethics, *The 2019 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees*, Feb. 08, 2019, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>.

⁵ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger financial disclosure filing requirements. This is true even if the pay change affects only part of a month.

⁶ 5 U.S.C. app. §§ 101(d), 101(f)(10), and 109(13).

WHO MUST FILE PERIODIC TRANSACTION REPORTS (PTRs)

The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) amended the EIGA to add a requirement for Members, officers, and certain employees of the House to report certain securities transactions over \$1,000 within 30 days of notice of the transaction, but in no case later than 45 days after the transaction.⁷ These STOCK Act filings are known as Periodic Transaction Reports (PTRs). Members and employees who are subject to PTR filing requirements must file PTRs if they have reportable activity as described below, but unlike an annual FD Statement, do not need to file if they have no reportable activity.

In general, filers must report on their annual FD Statement each purchase, sale, or exchange transaction involving real property held for investment, stocks, bonds, commodities futures, or other securities (including cryptocurrencies⁸ and options) made by the filer, their spouse, or dependent child when the amount of the transaction exceeds \$1,000. For sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

Additionally, the STOCK Act requires Members, officers, and senior staff to also file a PTR for the purchase, sale, or exchange of stocks, bonds, and other securities.⁹ PTRs are not required for widely held investment funds such as mutual funds and exchange traded funds.¹⁰ A PTR must be filed within 30 days of receiving notice that a reportable transaction has been made, but no later than 45 days after the transaction has occurred. Principal assistants and shared employees (who are not also senior staff) are not required to file PTRs.

For all Members and staff who are subject to PTR filing requirements, securities transactions must be reported twice: for the first time on a PTR no later than 45 days from the transaction, and then a second time on the annual FD Statement covering that calendar year.¹¹ Transactions in certain types of widely held investment funds (e.g. mutual funds, exchange traded funds, bond funds, and similar assets) only have to be reported on the

⁷ STOCK Act (Pub. L. 112-105, as amended by Pub. L. 112-173, Pub. L. 112-178 & Pub. L. 113-7).

⁸ Comm. on Ethics, *Cryptocurrencies: Financial Disclosure Requirements and Other Ethics Ramifications*, June 18, 2018, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>.

⁹ 5 U.S.C. app. §§ 101(c), 109(f) and 103(l).

¹⁰ See the chart on page 45 of [this document](#) for more information concerning transactions in assets that will, will not, or may trigger the requirement to file a PTR.

¹¹ Also note that purchase, sales, and exchange transactions involving stocks, bonds, commodities futures, and other securities held within retirement accounts such as 401(k) plans and IRAs must be disclosed on both a PTR and your annual FD Statement if they exceed \$1,000 in value or generate more than \$200 in income for any one asset. Further, a reinvestment of a dividend generated by one of these assets, whether in a retirement account or otherwise, where the value of the reinvestment exceeds \$1,000 must be reported on both a PTR and your annual FD Statement.

annual FD Statement.¹² Any filer who has a question about whether a particular assets is considered widely diversified for this purpose should contact the Committee for guidance.

DEADLINES FOR FILING AND REQUESTS FOR EXTENSIONS

Annual FD Statements are due on May 15th of each calendar year. Members must file a FD Statement Form A (Schedules A-I) on or before May 15th of each calendar year. New Members sworn in between November 6, 2018, and April 15, 2019, must file FD Statement Form B (Schedules A, C, D, E, F, and J) on or before May 15, 2019. In addition, all Members must file a termination FD Statement Form A within 30 days of leaving the House.¹³

For new employees hired at the senior staff rate, an FD statement must be filed within 30 days of beginning employment. Terminating employees subject to financial disclosure requirements must also file a termination FD statement within 30 days of leaving House payroll.¹⁴ The Clerk of the House will send notice of filing deadlines to both new and terminating employees.

The EIGA permits the Committee to grant an extension of time (up to 90 days) for the filing of an FD Statement.¹⁵ However, the extension request must be received by the Committee no later than the original deadline for the FD Statement. An extension can be requested in the electronic filing system at <https://fd.house.gov> or by filing a paper extension request form found on the Committee's website at <https://www.ethics.house.gov>. The Committee will submit all granted extension requests to the Clerk for public filing.

PTRs must be filed within 30 days of notice of a relevant transaction, but no later than 45 days after the transaction. No extensions are permitted for PTRs.

¹² Comm. on Ethics, *Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended*, Aug. 17, 2012, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>; Comm. on Ethics, *Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports (Calendar Year 2017)* at 42, available at <https://ethics.house.gov/forms/information-and-forms>.

¹³ See 5 U.S.C. app. § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available FD statement. Departing Members or staff who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing, by sending a letter, completing a form available for that purpose, or filing a notice through the electronic financial disclosure filing system.

¹⁴ *Id.*

¹⁵ 5 U.S.C. app. § 101(g).

HOW AND WHERE TO SUBMIT FINANCIAL DISCLOSURE FILINGS

There are two ways to complete both an FD Statement and a PTR: (1) by using the electronic filing system, or (2) by hand, using a preprinted form. The electronic filing system can be accessed by visiting <https://fd.house.gov>. Copies of the paper forms can be obtained by visiting the Committee's website at <https://www.ethics.house.gov>. The forms must be submitted to the Clerk of the House, via the Legislative Resource Center, located in B-81, Cannon House Office Building.

The Committee strongly encourages filers to use the electronic filing system for completing both FD Statements and PTRs. Utilizing the electronic filing system can significantly increase accuracy and reduce some of the most common errors. In addition, filers using the electronic filing system can import PTR transactions into annual FD Statements, and import certain prior year annual FD Statement schedules into current filings.

FEES FOR LATE FILINGS

An individual who files an FD Statement or PTR more than 30 days after the later of (1) the date the filing is required to be filed, or (2) the last day of any filing extension period that has been granted, must pay a late filing fee of \$200. For late PTRs, there is a \$200 late fee for the 1st late PTR filing no matter how many missed transactions are included. For other late PTR filings, the late fee can increase to a maximum of \$200 per late transaction. Late filing fees must be submitted to the Clerk of the House at the Legislative Resource Center, checks payable to the United States Treasury. Late filing fees must be submitted with the late report(s).

Any FD Statement or PTR that is submitted more than 30 days after the due date without the required late filing fee shall be deemed procedurally deficient and not properly filed. In addition, payment of the fee does not preclude the Committee from taking other disciplinary action authorized by law or the rules of the House of Representatives.

FAILURE TO FILE OR FALSIFYING DISCLOSURE STATEMENTS

Each individual must file their own report, certify its accuracy, and is responsible for the completeness and accuracy of the information contained in the individual's FD Statement or PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a Statement or fails to file a Statement required by the EIGA. The maximum civil penalty is \$59,028. The maximum criminal penalty is up to one year in prison and a fine of up to \$59,028.

In addition, 18 U.S.C. § 1001, as amended by the False Statements Accountability Act of 1996, is applicable to FD Statements and PTRs. That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.

House Rule 26 provides that Title I of the EIGA shall be deemed to be a rule of the House with regard to House Members, officers, and employees. As such, in addition to the penalties noted above, a Member, officer, or employee who violates these provisions is subject to additional action by the Committee and/or the House.

BAN ON PARTICIPATION IN INITIAL PUBLIC OFFERINGS

The STOCK Act bans Members, officers, and employees who file FD statements from participating in Initial Public Offerings¹⁶ (IPO) in a manner “other than is available to members of the public generally.”¹⁷ IPO participation, however, is often unavailable to the general public at all. This limitation took effect immediately upon enactment of the STOCK Act on April 4, 2012.

As a result of the ban, filers will be required to indicate whether they purchased any shares that were allocated as part of an IPO on the PTR form. If you answer “yes” to the question because you received an IPO allocation, or if you would like to participate in an IPO, please contact Committee staff to discuss the matter.¹⁸ Shared employees and principal assistants are not subject to the IPO restriction.

PROHIBITION AGAINST INSIDER TRADING

The STOCK Act explicitly affirmed that Members, officers, and **all** employees are subject to the insider trading prohibitions arising under the securities laws, which include Section 10(b) of the Securities Exchange Act of 1934 and 17 C.F.R. § 240.10b-5 (popularly known as Rule 10b-5). The prohibition applies to information learned both in an official capacity and in a personal capacity.

Members, officers, and employees may obtain material nonpublic information about a public company or economic sector (*e.g.*, energy, telecommunications, or healthcare) during the course of their official duties or in their personal capacity from family, friends, acquaintances, or from their own involvement with a company. If the Member, officer, or employee chooses to trade on this information, they may have engaged in insider trading.

¹⁶ Please be advised that it is currently unclear if the Securities and Exchange Commission (SEC) will treat Initial Coin Offerings as IPOs for purposes of the STOCK Act. Comm. on Ethics, *Cryptocurrencies: Financial Disclosure Requirements and Other Ethics Ramifications*, June 18, 2018, available at <https://ethics.house.gov/reports/financial-disclosure-pink-sheets>. See *infra* note 18.

¹⁷ 15 U.S.C. § 78u-1(i).

¹⁸ While interpretation and enforcement of the STOCK Act regarding participation in IPOs is chiefly within the jurisdiction of the SEC and Department of Justice, the opinion of the Committee is that, as drafted, the STOCK Act prohibits only the filer from participating in IPOs, but not the filer’s spouse or dependent child, assuming the assets used for the purchase and the securities purchased are wholly owned by the spouse or dependent child, separate and independent of the filer. See STOCK Act § 13.

Material nonpublic information is any information concerning a company, security, industry or economic sector, or real or personal property that is not available to the general public **and** which an investor would likely consider important in making an investment decision. A good rule of thumb to determine whether information may be material nonpublic information is whether or not the release of that information to the public would have an effect on the price of the security or property.

For example, a House employee learns in a meeting with Food and Drug Administration (FDA) staff that a new miracle weight loss drug is going to be approved by the FDA. The staffer is informed at the meeting that this information is confidential. The House employee then buys shares in the company that manufactures the drug. Once the news of the drug approval is made public, the company share price increases and the employee sells at a profit. As the STOCK Act explains, the employee would be subject to liability for violation of federal civil and criminal insider trading statutes. However, if the House employee waits to purchase the shares until the information regarding the FDA decision becomes public, the employee would not be subject to liability. Committee staff is available to discuss these matters.

FREQUENTLY ASKED QUESTIONS

1. Who must file FD Statements?

Members, officers, senior staff, principal assistants, and shared employees of three or more offices must file FD Statements.

2. Who must file PTRs?

Only Members, officers, and senior staff are subject to PTR filing requirements.

3. A Member owns \$5,000 of stock in Company A. Company B purchases Company A. Thereafter, the Member receives notice in a monthly statement that he no longer owns Company A stock, but as of January 15, 2019, owns \$5,000 in Company B stock. Does the Member have a financial disclosure reporting requirement?

Yes. The Member must file a PTR to disclose an exchange transaction of Company A stock for Company B stock. The PTR must be filed no later than March 1, 2019, which is 45 days from January 15, 2019, the date of the transaction. In addition, the Member must report the exchange transaction on the calendar year 2019 FD Statement, which will be due on May 15, 2020.

4. A senior staff employee holds a \$100,000 mortgage on her primary residence. Her primary residence is not rented out and does not generate

income in any other manner. Is she required to disclose the mortgage on her primary residence on her financial disclosure statement?

No. Only Members are required to disclose a mortgage on a primary residence. Staff filers must report a mortgage on a residence that is either held for investment purposes or rented out in whole or part for rental income. In that case, ownership of the home would be required to be reported on Schedule A (both the value of the home and the amount of rental income received), and the employee would need to disclose the mortgage on Schedule D.

5. Do I need to report my spouse's retirement account (e.g., 401(k), 403(b), SEP, etc.)?

Yes. You are required to report any retirement plan of your spouse. You should report the underlying assets in the account as separate line items on Schedule A. For funds held in the account; you should determine whether they meet the definition of the "Excepted Investment Fund" (EIF), so you can report them correctly.

6. May I use my Members Representational Allowance (MRA) to pay my accountant to prepare my FD Statement or PTRs?

Yes. Members may use their MRA to pay for the preparation of their own FD Statement or PTRs. They may also use their MRA to pay for the preparation of FD Statements or PTRs of an employee in their personal offices. Committee staff may use committee funds to pay for the preparation of a FD Statement for a committee employee if approved by that committee.

AVAILABLE ASSISTANCE

The Committee will offer a series of Financial Disclosure Training sessions before the May 15, 2019, filing deadline. A list of upcoming ethics training sessions is available at <https://ethics.house.gov/events> and is regularly updated. The training sessions will cover general information about the requirement to file FD Statements and PTRs. They are an hour long and will satisfy either the annual ethics training requirement for 2019 or the additional hour of training required for senior staff for the 116th Congress (staff must choose one or the other). In order to receive credit for these trainings, staff are **required to pre-register**. To register: (1) Visit <https://registerme.house.gov>; (2) Click on "Ethics," then "All Staff"; (3) Add desired Financial Disclosure Training; (4) Select "Register" on the left of the page; and (5) Login and Submit. More information, including a list of upcoming training dates, is available on the Committee's website, <https://ethics.house.gov>.

In addition, filers are encouraged to carefully read the instructions on each form and the "Instruction Guide: Financial Disclosure Statements and Periodic Transaction Reports, Calendar Year 2017" found on the Committee's website at <https://www.ethics.house.gov>. Any filer who has questions concerning financial

disclosure requirements should call the Committee at (202) 225-7103. Committee staff is available to review FD Statements and PTRs before filing (pre-screen). To have your filings pre-screened, please email your request to financial.disclosure@mail.house.gov.

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