



**Legislative Bulletin ..... February 9, 2012**

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**S. 2038 – The Stop Trading on Congressional Knowledge Act of 2012**

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**S. 2038 – The Stop Trading on Congressional Knowledge Act of 2012 (Lieberman, ID-CT)**

**Order of Business:** S. 2038 is scheduled considered suspension of the rules on Thursday, February 9, 2012.

**Summary:** S.2038 prohibits Members and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and other purposes. The legislation amends to the Senate version of the Stop Trading on Congressional Knowledge Act (STOCK Act) of 2012 by strengthening and expanding the Senate bill and its position. Highlights are listed below.

**Prohibitions of the Use of Nonpublic Information for Private Profit**

The legislation requires the Select Committee on Ethics of the Senate and the Committee on Ethics of the House of Representatives to issue interpretive guidance of the relevant rules of each chamber, including rules on conflicts of interest and gifts, clarifying that a Member of Congress and an employee of Congress may not use nonpublic information derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities as a means for making a private profit.

**Key Definitions**

The legislation defines the term “executive branch employee” as: the President; the Vice President; and an employee of the United States Postal Service or the Postal Regulatory Commission.

The legislation defines “Member of Congress” as a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner for Puerto Rico. The legislation defines “employee of Congress” as:

- any individual (other than a Member of Congress), whose compensations disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; and
- any other officer or employee of the legislative branch (as defined in section 109(11) of the Ethics in Government Act of 1978 (5 U.S.C. App. 109(11))).

The legislation defines the term “judicial employee” as any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Veterans Appeals, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

### **Prohibitions of Insider Trading**

The legislation amends the Security Exchange Act of 1934 by removing exemptions from the insider trading prohibitions arising under the securities laws for members of Congress, employees of Congress, for Executive branch employees, judicial officers, and judicial employees. The legislation also affirms the non exemption of Members and employees of Congress from the insider trading prohibitions arising under securities laws, including section 10b of the Securities Act of 1934 which pertains to positions limits and position accountability for security-based swaps and large trader reporting. The legislation states that the purpose of this amendment is to affirm a duty arising from a relationship of trust and confidence owed by each Member of Congress, each employee of Congress, each executive branch employee, judicial officer, and judicial employee. .

The legislation states that each Member of Congress or employee of Congress, each executive branch employee, each judicial officer, and each judicial employee owes a duty arising from a relationship of trust and confidence to Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information derived from such a person’s position as a Member or employee of Congress, executive branch employee, judicial officer, or judicial employee or gained from the performance of such a person’s official responsibilities.

The bill states that nothing in this section is to be construed to impair or limit the construction of the existing antifraud provisions of the security laws or the SEC Commissioner’s authority under the securities law.

The legislation defines the term “judicial employee” as any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Veterans Appeals, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial

branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

### **Prompt Reporting of Financial Transactions**

The legislation amends the Ethics in Government Act of 1978 by requiring that not later than 30 days after receiving notification of any transaction, but no case later than 45 days after such a transaction, the lawmakers and employees of the legislative Branch, the executive branch, and some employees of the U.S. Postal Service and the Postal Regulatory Commission to report within 45 days any transaction of stocks or securities. The legislation requires that these amended reporting will apply to transactions occurring on or after the date that is 90 days after the date of enactment of this bill.

### **Executive Branch Reporting**

The legislation requires that not later than August 31, 2012, or 90 days after the date of enactment of this Act, whichever is later, the President shall ensure that financial disclosure forms filed by executive branch employees in calendar year 2012 and in subsequent years are made available to the public on the official websites of the respective executive branch agencies not later than 30 days after such forms are filed.

The legislation allows notices of extension for financial disclosure to be made available electronically along with its related disclosure. In the case of transaction disclosures, such disclosures are to be filed not later than the date required by this bill. The legislation requires notices of extension for transaction disclosure to be made available electronically along with its related disclosure. The legislation allows for these requirements to expire upon implementation of the public disclosure system.

The legislation requires that not later than 18 months after the date of enactment of this Act, the President acting through the Director of the Office of Government Ethic shall develop systems to enable:

- electronic filing of reports received by; and
- public access to financial disclosure reports filed by executive branch employees, as well as reports of a transaction disclosure, notices of extensions, amendments, and blind trusts, through databases that—
  - are maintained on the official websites of the Office of Government Ethics; and
  - allow the public to search, sort, and download data contained in the reports.

The legislation allows for there not to be a login requirement to search or sort the data contained in the reports made available. A login requirement with the name of the user is required for persons seeking to download data contained in the reports.

## **Report on Political Intelligence Activities**

The legislation requires that not later than 12 months after the date of enactment of this bill, the Comptroller General of the United States, in consultation with the Congressional Research Service, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate the Committee on Oversight and Government Reform and the Committee on the Judiciary of the House of Representatives a report on the role of political intelligence in the financial markets. The report shall include a discussion of the following:

- what is known about the prevalence of the sale of political intelligence and the extent to which investors rely on such information;
- what is known about the effect that the sale of political intelligence may have on the financial markets;
- the extent to which information which is being sold would be considered nonpublic information;
- the legal and ethical issues that may be raised by the sale of political intelligence;
- any benefits from imposing disclosure requirements on those who engage in political intelligence activities; and
- any legal and practical issues that may be raised by the imposition of disclosure requirements on those who engage in political intelligence activities.

The legislation defines political intelligence as information that is:

- derived by a person from direct communications with an executive branch employee, a Member of Congress, or an employee of Congress; and
- provided in exchange for financial compensation to a client who intends, and who is known to intend, to use the information to inform investment decisions.

## **Public Filing and Disclosure of Financial Disclosure Forms of Members of Congress and Congressional Staff**

The legislation requires that not later than August 31, 2012, or 90 days after the date of enactment of this Act, whichever is later, the Secretary of the Senate and the Sergeant at Arms of the Senate, and the Clerk of the House of Representatives, shall ensure that financial disclosure forms filed by Members of Congress, candidates for Congress, and employees of Congress in calendar year 2012 are made available to the public on the respective official websites of the Senate and the House of Representatives not later than 30 days after such forms are filed.

The legislation requires that not later than 18 months after the date of enactment of this Act, the Secretary of the Senate and the Sergeant at Arms of the Senate and the Clerk of the House of Representatives shall develop systems to enable—

- electronic filing of reports received by; and
  
- public access to financial disclosure reports filed by Members of Congress, candidates for Congress, and employees of Congress, as well as reports of a transaction disclosure, notices of extensions, amendments, and blind trusts, through databases that—
  - are maintained on the official websites of the House of Representatives and the Senate; and
  - allow the public to search, sort, and download data contained in the reports.

The legislation allows for there not to be a login requirement to search or sort the data contained in the reports made available. A login requirement with the name of the user is required for persons seeking to download data contained in the reports.

The legislation requires that electronic availability on the official websites of the Senate and the House of Representatives be deemed to have met the public availability requirement. Individuals required to file a financial disclosure report with the Secretary of the Senate or the Clerk of the House of Representatives shall file reports electronically using the systems developed by the Secretary of the Senate, the Sergeant at Arms of the Senate, and the Clerk of the House of Representatives.

The legislation amends the recordkeeping section of the Ethics in Government Act of 1978 to require:

- Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate shall be retained by such agency or office or by the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be.
  
- Such report shall be made available to the public:
  - in the case of a Member of Congress until a date that is 6 years from the date the individual ceases to be a Member of Congress; and
  - in the case of all other reports filed pursuant to this title, for a period of 6 years after receipt of the report.

The legislation also requires Members of the House to retain until the expiration of the 6-year period which begins on the date the individual is no longer a Member of Congress. The amendment made by this bill shall apply with respect to any report which is filed on

or after the date on which the systems developed by the Secretary and Sergeant at Arms of the Senate and the Clerk of the House of Representatives first take effect.

### **Conforming Changes to the Commodity Exchange Act**

The legislation requires Members and employees of Congress or any judicial officer or judicial employee to conform to the prohibited transactions highlighted in section 4c(a) of the Commodity Exchange Act.

### **Rules of Construction**

The legislation states that nothing in this Act, or any of the amendments made by this Act, or the interpretive guidance to be issued, shall be construed to:

- impair or limit the construction of the antifraud provisions of the securities laws or the Commodity Exchange Act or the authority of the Securities and Exchange Commission or the Commodity Futures Trading Commission under those provisions;
- be in derogation of the obligations, duties, and functions of a Member of Congress, an employee of Congress, an executive branch employee, a judicial officer, or a judicial employee, arising from such person's official position;
- be in derogation of existing laws, regulations, or ethical obligations governing Members of Congress, employees of Congress, executive branch employees, judicial officers, or judicial employees.

### **Participation in Initial Public Offerings**

The legislation amends the Securities Exchange Act of 1934 by restricting an individual described in section 101(f) of the Ethics in Government Act of 1978 from purchasing securities that are the subject of an initial public offering in any manner other than is available to members of the public generally.

### **Requiring Mortgage Disclosure**

The legislation amends the Ethics in Government Act of 1978 requires lawmakers and their spouses to disclose the financial terms of their home mortgages, but the following exemption does not apply to a reporting individual described who has been nominated for appointment as an officer or employee in the executive branch other than:

- an individual appointed to a position—
  - as a Foreign Service Officer below the rank of ambassador; or
  - in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code is O-6 or below; or

- a special government employee, as defined under section 202 of title 18, United States Code.

The legislation requires these amendments shall apply with respect to reports which are required to be filed under section 101 of the Ethics of Government Act of 1978 on or after the date of the enactment of this Act.

### **Widely Held Investment Fund**

The legislation allows the transaction reporting requirements established by the Ethics in Government Act of 1978 to not be construed to apply to a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if:

- the fund is publicly traded; or (B) the assets of the fund are widely diversified; and
- the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

### **Application to Other Elected Officials and Criminal Offenses**

The legislation amends the creditable services section on of the civil service retirement and the federal employee retirement system to include the President, the Vice President, or an elected official of a State or local government. The legislation also allows for the President, the Vice President, or an elected official of a State or local government retirement plans to be penalized for if convicted of felonious criminal offenses.

### **Fannie Mae / Freddie Mac Executive Bonuses**

The legislation prohibits senior executives at the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from receiving bonuses during any period of conservatorship for those entities on or after the date of enactment of this Act.

### **Post-employment Negotiation Restrictions.**

The legislation prohibits the executive and judicial branches from directly negotiating or have any agreement of future employment or compensation unless such individual, within 3 business days after the commencement of such negotiation or agreement of future employment or compensation, files with the individual's supervising ethics office a statement, signed by such individual, regarding such negotiations or agreement, including the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.

The legislation also requires an individual filing a statement, under this amendment, may recuses himself or herself whenever there is a conflict of interest, or appearance of a conflict of interest, for such individual with respect to the subject matter of the statement, and shall notify the individual's supervising ethics office of such recusal.

**Committee Action:** S. 2038 was introduced by Sen. Joseph Lieberman (R-FL) on 1/26/2012 and the legislation was referred to the Committee Homeland Security and Governmental Affairs. On 2/2/ 2012 the Senate passed the legislation with an amendment 96 – 3.

**Administration Position:** No Statement of Administration Policy (SAP) is available, but during the 2012 State of the Union speech, President Obama called on Congress to pass a bill that would expressly prohibit members of Congress from trading on confidential information.

**Cost to Taxpayers:** According to the CBO, implementing the legislation would cost about \$9 million over the 2012-2017 period, assuming appropriation of the necessary amounts.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, S. 2038 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available.

**Constitutional Authority:** No statement on constitutional authority was available.

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