



November 6, 2012

Mr. Kevin Herms
Desk Officer for the Office of Government Ethics
Office of Management and Budget
via email to kherms@omb.eop.gov

Mr. Paul Ledvina
Agency Clearance Officer
Office of Government Ethics
via email to usoge@oge.gov

Re: Agency Information Collection Activities; Emergency Clearance Submission for Expedited OMB Review; Proposed Information Collection; Comment Request for a Proposed OGE Form 201-A Ethics in Government Act Access Form (77 FR 66075)

Dear Mr. Herms and Mr. Ledvina:

OMB Watch and Public Citizen welcome the opportunity to comment on the Office of Government Ethics' (OGE) proposed information collection. As nonprofit organizations dedicated to open government, accountability, and citizen participation, OMB Watch and Public Citizen have long worked for effective government information collection practices and ready access to public ethics information.

The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) clarifies for the first time that members of Congress and their staff are subject to the same laws against insider trading that apply to everyone else.¹ In addition to specifying that it is against the law for Congress to trade on non-public information gleaned through the course of official business, the STOCK Act also creates an important system of real-time transparency of stock trading activity by members and staff, as well as executive branch officials. These transparency provisions are an integral part of the legislation that provide enforcement authorities and the public the means to monitor compliance with the law.

Our organizations are concerned that the proposed information collection could result in diminished public access to information about federal officials' potential conflicts of interest, contrary to the intent of the STOCK Act. Requiring individuals to complete a form before being able to access financial disclosure reports could impede users browsing the system, prevent the reports from appearing in search results on search engines such as Google and Bing, and preclude the system from developing advanced features such as comparisons and visualizations.

¹ P.L. 112-105.

OGE should ensure that the proposed information collection, if approved, does not unduly impede transparency.

Concerns with the Proposed Information Collection

OGE has not explained the need for, or utility of, the proposed information collection. In its notice, OGE cites its statutory and regulatory authority to require agencies to collect this information.² We note that these authorities predate the STOCK Act, which does not require agencies to collect this information. However, OGE does not explain the need for the agency to collect this information or how OGE proposes to use the information.

The House of Representatives has posted online the financial disclosure reports of its members and candidates since 2008 without requiring individuals requesting access to the reports to submit personal information. In addition, several states, including Arkansas and Tennessee, provide online access to public officials' financial disclosure reports without requiring the submission of such information.³ OGE should fully explain why it cannot similarly post financial disclosure data without a request form for users.

OGE should take steps to minimize the burden on respondents. If the proposed information collection system is pursued, OGE should create a system that minimizes the burden on users and prevents the information collection from becoming an impediment to robust use of the financial disclosure data.

In its current approach, OGE's automated Form 201 (OMB Control Number 3209-0002) allows individuals to request access to up to five reports on a single form. If the same individual wished to request access to more than five reports, they would have to complete the form again.

We encourage OGE to take a minimal burden approach to the proposed information collection, if approved. An individual should not have to file the proposed Form 201-A more than once in order to access OGE's data tools and retrieve reports, including data from multiple reports. For example, Kansas's online access to Statements of Substantial Interests requires users to fill out a form to gain access. But once filed, applicants receive a username and password that allow full access to all online data.⁴ OGE should not let the requirement for individuals to complete proposed Form 201-A to impede the functionality or user experience of the system.

² 5 U.S.C. appendix section 402(b)(1); 5 CFR 2634.603(c) and (f).

³ OMB Watch, *Upholding the Public's Trust: Key Features for Effective State Accountability Websites*, March 19, 2012, available at <http://www.ombwatch.org/upholdingpublictrustreport>.

⁴ Kansas Secretary of State, "View Statement of Substantial Interests," available at https://www.kssos.org/elections/ssi/secure/ssi_examiner_entry.asp.

OGE's burden estimate is likely to underestimate the annual number of respondents. OGE's estimated annual number of respondents for the proposed information collection uses as its baseline the annualized number of respondents to its current Form 201 to request access to financial disclosure reports. However, the STOCK Act will make financial disclosure reports more accessible by making them publicly available and searchable online.

As more reports are made available online, and as the functionality for searching reports improves, we expect that the number of individuals seeking access to the reports will increase. Generally, the usage of a database increases as more information is included in the database and users are provided with improved tools for using the database. Therefore, we expect that the annual number of respondents for the proposed Form 201-A will increase from the baseline as the STOCK Act is implemented.

Conclusion

OMB Watch and Public Citizen appreciate the opportunity to comment on OGE's proposed information collection. The proposed information collection form appears unnecessary, but under any conditions the form should not impose undue burdens. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

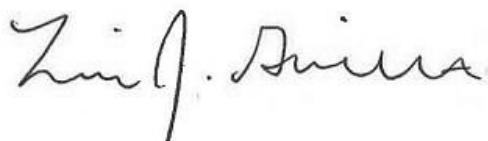
Sincerely,



Sean Moulton
Director, Federal Information Policy
OMB Watch



Gavin R. Baker
Federal Information Policy Analyst
OMB Watch



Lisa Gilbert
Director, Congress Watch
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Craig Holman, Ph.D.
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