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Guilt by Omission

The Federal Government Has Failed to Comply With
Three Key Disclosure Requirements From 2007 Ethics Law

Acknowledgments

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It is vital to democracy that the public have an understanding of who is trying to influence our government. The near-daily revelations of conflicts of interest across the Trump administration serve as an ever-present reminder of the need for transparency. While far from perfect, disclosure requirements yield valuable information.

For instance, it was due to disclosure requirements that the public learned that Secretary of Health and Human Services Tom Price had engaged in numerous trades of health company stocks while he served on a House subcommittee with purview over health care companies.¹ Likewise, a law requiring lobbyists to disclose their work on behalf of foreign governments led to Michael Flynn, formerly Trump's national security adviser, belatedly revealing that he lobbied for a business with ties to the Turkish government.²

But the systems the government uses to carry out transparency mandates are often cumbersome and outdated, hampering the public's ability to access the information within them. At times, these systems violate both the letter and spirit of public disclosure laws. This report looks at three key public disclosure requirements the government fails to meet from the 2007 Honest Leadership and Open Government Act (HLOGA), the last major ethics law passed by Congress. They are:

- Lobbying disclosure concerning foreign agents;
- U.S. House members' stock trading; and
- Privately funded congressional travel.

While these shortcomings predate both the Trump administration and the current congressional leadership, it is incumbent upon those currently in power to fix the problems with these disclosure systems. This is especially imperative given heightened concerns about foreign influences on the government and the Trump administration's cavalier attitude toward ethics customs.

¹ James V. Grimaldi, *Lawmaker Asks SEC to Investigate Stock Trades of HHS Nominee Tom Price*, THE WALL STREET JOURNAL (May 10, 2017), <http://on.wsj.com/2q34KcD>.

² Tom Hamburger, *Manafort Is Expected To Register as a Foreign Agent*, THE WASHINGTON POST (April 12, 2017), <http://wapo.st/2pjgcP1>.

Requirement: Foreign Agent Lobbying Disclosure

The Foreign Agents Registration Act (FARA) was passed in 1938 to require disclosure of efforts by those representing other countries to influence the U.S. government.³ The law serves as a corollary to the Lobbying Disclosure Act (LDA), which covers lobbying efforts on behalf of domestic entities and some foreign corporations.⁴

FARA calls for much more detailed disclosure than the LDA. For instance, it requires filers to reveal whom they contact, the issues they discuss with their contacts, copies of documents they use in their lobbying efforts, and the contracts they sign with their clients. The information filed pursuant to FARA has at times revealed efforts to win favors for countries with egregious human rights records and other issues that clash with stated U.S. policies and values.⁵

Information filed pursuant to FARA figured in the investigation of disgraced lobbyist Jack Abramoff in the middle of the last decade, and revealed numerous controversial ties of Paul Manafort, who briefly served as chairman of Donald Trump's presidential campaign.⁶ More recently, FARA has been in the news over revelations that Manafort and Michael Flynn, who served briefly as national security advisor, submitted retroactive disclosures of their representation of Ukrainian and Turkish interests.⁷

The database of FARA filings has long been difficult for the public to access. In 2004, prior to the database being posted on the Internet, the Center for Public Integrity attempted to obtain its contents through a Freedom of Information Act request. The unit of the U.S. Department of Justice that manages the database denied the request. It said the database was "so fragile" that attempting to copy it "could result in a major loss of data, which would be devastating." The Center for Public Integrity was forced to copy the data it wanted for 50 cents per page, resulting in a \$3,000 bill.⁸

The Honest Leadership and Open Government Act of 2007 (HLOGA) required that registration statements and updates filed pursuant to FARA be posted on the Internet "in a searchable, sortable, and downloadable manner, to the extent technically practicable."⁹

Additionally, HLOGA required that registration statements or supplements "shall be filed in electronic form, in addition to any other form that may be required by the Attorney General."¹⁰

³ See, e.g., U.S. DEPARTMENT OF JUSTICE OFFICE OF INSPECTOR GENERAL, AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT, (September 2016), <http://bit.ly/2dZ8pU5>.

⁴ Melissa Yeager, *Foreign Influence in America: A Brief Explainer on FARA*, SUNLIGHT FOUNDATION (Sept. 25, 2016), <http://bit.ly/2f6vm7H>.

⁵ *Id.*

⁶ *Timely, Effective and Fair? Justice Department Makes a Valuable Public Database all but Inaccessible*, CENTER FOR PUBLIC INTEGRITY (Sept. 13, 2005), <http://bit.ly/2fdYjLy> and PAMELA BROGAN, CENTER FOR PUBLIC INTEGRITY, THE TORTURERS' LOBBY: HOW HUMAN RIGHTS-ABUSING NATIONS ARE REPRESENTED IN WASHINGTON (1992), <http://bit.ly/2a5ctg3>.

⁷ Tom Hamburger, *Manafort Is Expected to Register as a Foreign Agent*, THE WASHINGTON POST (April 12, 2017), <http://wapo.st/2ufxfTk> and Alan Cullison and Byron Tau, *Ex-Trump Campaign Manager Paul Manafort Registers as Foreign Agent*, THE WALL STREET JOURNAL (June 28, 2017), <http://on.wsj.com/2tkrQ07>.

⁸ Kevin Bogardus, *Foreign Lobbyist Database Could Vanish*, CENTER FOR PUBLIC INTEGRITY (July 28, 2004), <http://bit.ly/2eY0BPF>.

⁹ Honest Leadership and Open Government Act of 2007 § 212, Public Law 110-81 (Sept. 14, 2007), <http://bit.ly/2ejjIFx>.

The FARA information now provided online represents a significant improvement over that of a decade ago, but it does not nearly satisfy the requirements outlined in HLOGA.¹¹ There is no option on the FARA web site to download the entire database, other than as an index. This shortcoming forecloses the ability to perform most keyword searches or to analyze the data in bulk.

In some areas, the database appears to offer greater functionality. For instance, in response to some searches, it provides an option to “Click here for downloadable data spreadsheet.” This provision would theoretically begin to satisfy some of the requirements for downloadable functionality that Congress laid out in HLOGA. But the spreadsheet that results from clicking that option includes only a few categories of information, representing only a fraction of the data in the underlying form that the lobbyist submitted.¹²

The Sunlight Foundation in 2014 submitted a letter to the Justice Department recommending short-term and long-term fixes to the database. This excerpt provides a helpful summary of problems with the current system:

“The current uploading system requires submissions in either image or PDF formats. These formats frustrate use of the data, making them harder to search and impossible for computers to synthesize in bulk ... Further, there are volumes of data that were clearly composed in spreadsheet format, by a program like Excel, which were then converted into a much less usable format, like PDF. Unfortunately, even tools that convert images and PDFs into text are inadequate because they often produce gibberish, especially when synthesizing handwriting.”¹³

The challenges in accessing the information filed pursuant to FARA greatly reduce the usefulness of the disclosure called for in the law.

Recommendations: The Foreign Agent Registration Unit of the U.S. Department of Justice should require lobbying registrants submitting information to use web-based forms, with images of primary documents (such as contracts) to be submitted as attachments. The Foreign Agent Registration Unit, in turn, should enable the public to download the entirety of the database into spreadsheets with data points, such as payments, expressed as data. Links should be provided to primary documents, such as contracts, that can only be expressed as images. The system also should enable users to conduct full-text searches of the entire database, as well as targeted full-text searches within individual categories of information.

¹⁰ *Id.*

¹¹ Public Citizen analysis of FARA Document Search, <https://www.fara.gov/search.html>.

¹² *Id.*

¹³ *Recommendations from the Sunlight Foundation to the Department Of Justice Regarding The Foreign Agents Registration Act*, Sunlight Foundation (April 8, 2014), <http://bit.ly/2dZcBDH>.

Requirement: House Financial Disclosures, Including Stock Transactions

In response to outrage over a “60 Minutes” report on members of Congress and their staffs trading stocks with the benefit of inside political information, Congress in 2012 passed the Stop Trading on Congressional Knowledge (STOCK) Act.¹⁴

The bill prohibited public officials from trading on inside political information and required disclosures of stock trades to be made within 45 days. Perhaps most importantly, the law called on the Secretary of the Senate and Clerk of the House to create systems to enable public access to financial reports, including investment transaction information, “through databases that ... allow the public to search, sort, and download data contained in the reports.”¹⁵ The disclosure aspect of the law applied to members of Congress, candidates for Congress, members of congressional staffs and many executive branch officials.

Almost exactly a year later, Congress gutted the law, deleting the STOCK Act requirement to create a searchable, sortable, downloadable database to keep track of stock trades.¹⁶

Despite this action, there is a separate – seemingly long forgotten – requirement for a database to chronicle the trades of U.S. House members much as was called for in the original STOCK Act.

The 2007 Honest Leadership and Open Government Act (HLOGA) requires the Clerk of the House to “post on the public Internet site of the Office of the Clerk, in a format that is searchable, sortable, and downloadable, to the extent technically practicable ... The reports filed under section 103(h)(1) of the Ethics in Government Act of 1978.”¹⁷

Section 103(h)(1) of the Ethics in Government Act pertains to the requirement that members of Congress and others file financial disclosure forms. Those financial disclosure forms, in turn, include stock transactions.¹⁸

The web site of the Clerk of the House purports to allow users to “Download Financial Disclosure Reports by Year.” But the information it enables users to download is only an index of reports that have been filed. The contents of the reports are not included in the downloadable data.¹⁹

In the absence of a database, one cannot analyze the contents of the forms in bulk. The only substitute is for an individual to transcribe the data by hand into one’s own database or gain access to a database provided by a third-party who has separately transcribed the information.

¹⁴ Stop Trading on Congressional Knowledge Act of 2012, Public Law 112-105 (April 4, 2012), <http://bit.ly/2fruU5c> and *Congress: Trading Stock on Inside Information?* CBS NEWS (Nov. 13, 2011), <http://cbsn.ws/2e1k9ld>.

¹⁵ *Id.*

¹⁶ Tamara Keith, *How Congress Quietly Overhauled Its Insider-Trading Law*, NPR (April 16, 2013), <http://n.pr/2f7rkMB>.

¹⁷ Honest Leadership and Open Government Act of 2007 § 304, Public Law 110-81 (Sept. 14, 2007), <http://bit.ly/2ejjIFx>.

¹⁸ Ethics In Government Act of 1978, § 103(h)(1), <http://bit.ly/2dZ8pU5>.

¹⁹ Public Citizen analysis of financial disclosure reports posted on the web site of the Clerk of the House, http://clerk.house.gov/public_disc/financial.aspx.

Further reducing the effectiveness of the STOCK Act, a requirement that members “shall file reports electronically” was edited to read “shall *be able to* file reports electronically.” [emphasis added] This step permitted members of Congress to continue submitting scrawled, handwritten forms, which would increase the difficulty for the public to read them. Here is an example filed by Rep. Fred Upton (R-Mich.) in 2016:²⁰

HAND DELIVERED
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ESTIMATED FILING DATE: 2015 NOV 18 PM 3:18
U.S. HOUSE OF REPRESENTATIVES
MC (For Official Use Only)
A \$200 penalty shall be assessed against anyone who files more than 30 days late.

UNITED STATES HOUSE OF REPRESENTATIVES
Periodic Transaction Report

NAME: Fred Upton OFFICE TELEPHONE: 202-225-3761

Member of the U.S. House of Representatives
State: MI District: 6 OFFICE OR EMPLOYEE
 Officer or Employee
Employing Office: _____
File an original and 2 copies File an original and 1 copy

Did you purchase any shares that were allocated as a part of an Initial Public Offering? Yes No
If you answered "yes" to this question, please contact the Committee on Ethics for further guidance.

Please indicate whether this is an initial report or an amended report. For amendments, please provide the date of the report you are amending.
 Initial Report Amendment
Date of Report Being Amended: _____

FULL ASSET NAME	TYPE OF TRANSACTION		DATE OF TRANSACTION (MM/DD/YYYY)	DATE NOTIFIED OF TRANSACTION (MM/DD/YYYY)	AMOUNT OF TRANSACTION												
	Purchase	Sale			A	B	C	D	E	F	G	H	I	J	K		
SP DC JT All of these 6 tickers purchased Provide full name, not ticker symbol or sold by control or w/ Trust w/o control by ind. direction by ind.					\$1,000-\$10,000	\$10,001-\$25,000	\$25,001-\$50,000	\$50,001-\$100,000	\$100,001-\$250,000	\$250,001-\$500,000	\$500,001-\$1,000,000	\$1,000,001-\$5,000,000	\$5,000,001-\$25,000,000	\$25,000,001-\$50,000,000	\$50,000,001-\$100,000,000	Over \$100,000,000	Transactions in Excess of Thresholds of Reportable Cash Asset over \$1,000,000
Example: Mega Corp. Common Stock		X	02/05/15	03/07/15		X											
T. Rowe Price Overseas Stock	X		11-2-15	11-18-15		X											
Altria Group		X	10-26-15	11-18-15		X											
3M		X	10-26-15	11-18-15		X											
American Express		X	10-21-15	11-18-15		X											

Here is an excerpt from a form filed in 2016 by Rep. Loretta Sanchez (D-Calif.).²¹

Name: LORETTA SANCHEZ Page 4 of 7

SCHEDULE B – TRANSACTIONS

Report any purchase, sale, or exchange transactions that exceeded \$1,000 in the reporting period of any security or real property held by you, your spouse, or your dependent child for investment or the production of income. Include transactions that resulted in a capital loss. Exclude a distribution of an exchange transaction. Exclude transactions between you, your spouse, or dependent child, or the purchase or sale of your personal residence, unless generated rental income. If you purchase or sell an asset to sell, please choose "for sale" as the type of transaction.

Capital Gains: If a sales transaction resulted in a capital gain in excess of \$100,000, check the "capital gain" box, unless it was an exempt transaction, and disclose the amount.

Column K for assets under held by your spouse or dependent child.

SP, DC, JT	Asset	Type of Transaction			Date	Amount of Transaction										
		Purchase	Sale	Exchange		A	B	C	D	E	F	G	H	I	J	K
SP	Example: Mega Corp. Stock			X	3/07/15		X									
	2105 N. TANNER ST. SANTA ANA CA, 92706 HOME		X		July 17 2015											
	821 N. CAMBRIDGE ST ORANGE, CA 92667 HOME		X		June 15 2015											
SP	Sourcing Solutions, LLC 415 S. ... Cash/IRA		X		Dec 15 2015					X						

Recommendations: The Clerk of the House should act to fulfill the requirements outlined in HLOGA regarding financial disclosure forms. To facilitate this result, it should convert to a system of accepting the data in financial disclosure forms on web-based forms. The Clerk should enable to public to download the entirety of the information in the forms into a spreadsheet. For simplicity,

²⁰ Periodic Transaction Report, Rep. Fred Upton (R-Mich.) (filed Jan. 13, 2016), <http://bit.ly/2emthQB>.

²¹ Financial Disclosure (Original) for 2015, Rep. Loretta Sanchez (D-Calif.) (filed May 16, 2016), <http://bit.ly/2ewwvnp>.

the information should be segregated by the various categories on financial disclosure forms, such as assets and “unearned” income, transactions, earned income and liabilities. The system also should enable the public to conduct full-text searches of the entire database, as well as targeted full-text searches in the major categories, including stock transactions.

Requirement: Congressional Travel Disclosure

Members of Congress and their staffs have long been permitted to participate in privately funded trips under the rationale that such trips are educational and do not cost the taxpayers money. In the early-2000s, Washington, D.C., was rocked by revelations that many of these trips were little more than lavish vacations underwritten by lobbyists to exotic destinations.

The most notorious of these trips was an August 2002 junket in which lobbyist Jack Abramoff financed a private jet getaway to Scotland that included Rep. Bob Ney (R-Ohio), a Ney staffer, a top executive branch procurement official, and former Christian Coalition leader (turned lobbyist) Ralph Reed.²²

The trip’s itinerary included golfing at five venues, including at the legendary “Old Course at St. Andrews,” which has often hosted the British Open tournament. The travelers stayed in luxury accommodations. The trip itinerary included few, if any, activities with public policy educational value.²³ Four of the participants in that trip, including Abramoff, were eventually convicted for various actions in what came to be known the “Abramoff scandal.”²⁴

HLOGA significantly restricted lobbyists’ permission to finance trips for members of Congress, required prospective travelers to obtain preapproval from the House or Senate ethics committee and mandated improved disclosure of the details of trips to the public. The law also called for vastly improved public disclosure of information relating to trips, but the House and Senate have failed to disclose the details of privately funded travel in a comprehensive fashion.

House Privately Funded Travel

HLOGA says that

“The Clerk of the House of Representatives shall post on the public Internet site of the Office of the Clerk, in a format that is searchable, sortable, and downloadable, to the extent technically practicable [...] The advance authorizations, certifications, and disclosures filed with respect to transportation, lodging, and related expenses for travel ... by Members (including Delegates and Resident Commissioners to the Congress), officers, and employees of the House.²⁵”

²² Massimo Calabresi, *The Golf Junket That Haunts Abramoff and Friends*, TIME (May 11, 2006), <http://ti.me/2thT3Rf>.

²³ *Id.*

²⁴ Press release, U.S. Department of Justice, *Former GSA Chief of Staff David Safavian Convicted of Obstruction, Making False Statements* (Dec. 19, 2008), <http://bit.ly/2f9cT8d> and *People Convicted in Lobbying Scandal*, THE ASSOCIATED PRESS (Dec. 19, 2008), <http://bit.ly/2f6f9U>.

²⁵ Honest Leadership and Open Government Act of 2007 § 304, Public Law 110-81 (Sept. 14, 2007), <http://bit.ly/2eijlFx>.

The Clerk of the House did subsequently create a web site that provides certain details about privately sponsored trips. The web site permits users to download a searchable, sortable database of disclosures relating to privately funded trips. But the downloadable information is incomplete, leaving out the answers to many questions that travelers and trip sponsors are required to answer.²⁶

House rules require four essential forms to be filed with respect to a privately funded trip. These forms include a total of about 35 questions. A few of these questions refer to attachments, such as event itineraries, that would be difficult to represent in raw data. But the answers to most of the questions could be included in the downloadable database. The database could easily connect to attachments, like trip itineraries, via a link.²⁷

In practice, only a fraction of questions that travelers and sponsors answer are included in the downloadable data. Key points omitted from the downloadable data include the traveler's explanation of "why participation in the trip is connected to the traveler's individual official or representational duties" and even the cost of the trip, which can range from just a few dollars to many thousands of dollars.²⁸

A writer for the *Open Secrets* blog, which is run by the Center for Responsive Politics, noted the absence of cost information when the database was released in 2008. "An employee of the [House] Clerk's office said that dollar amounts had been typed up but have not yet been included in the database because of time constraints," the writer reported.²⁹ More than eight years later, that information still is missing.

The downloadable data do not include the pertinent "advance authorizations" and "certifications," even though the law specifically calls for those elements to be included in the downloadable database.³⁰

A likely reason that the downloadable travel information is so incomplete is simply that the forms are not submitted electronically. Even those that appear to have been filled out on a computer are printed and scanned in. This shortcoming could be fixed rather easily if the Clerk's office were to switch to a system of accepting travel documents electronically.

Recommendations: The Clerk of the House should receive travel-related information solely on web-based electronic forms, with options for users to submit images of primary documents (such as itineraries) as attachments. The Clerk's office should enable the public to download a spreadsheet that includes answers to all of the questions on the forms submitted by travelers and trip sponsors, with the exception of those questions that can only be reasonably answered with attachments. In

²⁶ Public Citizen analysis of Gift Travel Filings web site of the Clerk of the House, U.S. House of Representatives, <http://bit.ly/2eRPKZD>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Luke Rosiak, *House Posts Travel Database, Sort Of*, OPENSECRETS.ORG (Aug. 5, 2008), <http://bit.ly/2f6cgvg>.

³⁰ Public Citizen analysis of Gift Travel Filings web site of the Clerk of the House, U.S. House of Representatives, <http://bit.ly/2eRPKZD>.

those cases, the database should include links to the images of attachments. The system also should enable the public to conduct full-text searches of the database, as well as searches within significant categories, such as trip destinations and cost.

Senate Privately Funded Travel

HLOGA calls for the Secretary of the Senate to establish a publicly available website on privately funded travel that includes:

“a search engine” ... “uniform categorization by Member, dates of travel, and any other common categories associated with congressional travel,” and “forms filed in the Senate relating to officially related travel.”³¹

The Senate’s web site provides a search engine that permits users to search by the name of the traveler, the office of the traveler (for example, a senator on whose staff or committee a staffer serves), dates and other categories. This search engine functions adequately, and permits users to bring up the packets of forms that are submitted for a given trip. The search engine does not, however, permit users to search by trip sponsors or destinations.³²

The Senate site does allow users to download data on a year-by-year basis, even though HLOGA does not mandate this. As with the data set of the House, the downloadable Senate information does not include the cost of trips or the answers to many other questions that travelers are required to answer. For instance, answers to the requirement for prospective travelers to “explain how this trip is specifically connected to the traveler’s official or representational duties” are left out.³³ As with the House data, the partial Senate datasets provided as a download do not provide links to the images of the actual forms that include more detailed information.

Recommendations: Similar to reforms needed in the House, the Secretary of the Senate should receive travel-related information solely on web-based electronic forms, with options for users to submit images of primary documents (such as itineraries) as attachments. The Secretary’s office should enable the public to download a spreadsheet that includes answers to all of the questions on the forms submitted by travelers and trip sponsors, with the exception of those that can only be answered with attachments. In those cases, the database should include links to the images of documents. The system also should enable the public to conduct full-text searches of the database, as well as searches within significant categories, such as trip destinations.

Conclusion

Many of the examples in this report illustrate cases in which the government has not lived up to the spirit or letter of its disclosure obligations. Setting aside questions of legal adherence, the examples in this report indisputably illustrate poor execution, especially given the information technology standards of 2017. Such an approach cannot help but breed public cynicism.

³¹ Honest Leadership and Open Government Act of 2007 § 546, Public Law 110-81 (Sept. 14, 2007), <http://bit.ly/2ejjIFx>.

³² Public Citizen analysis of the Gift Rule/ Outside Paid Travel Database of the U.S. Senate, <http://soprweb.senate.gov/giftrule/>.

³³ See, *Employee Pre-Travel Authorization* form, available by searching for forms at <http://soprweb.senate.gov/giftrule/>.