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Chairperson Lofgren, Ranking Member Davis, and Members of the Committee, on behalf of the Congressional Research Service thank you for this opportunity to discuss current legislative proposals that would limit or prohibit certain financial transactions by Members of Congress.

My testimony focuses on three areas: (1) current financial disclosure laws under the Ethics in Government Act; (2) current disclosure requirements for financial transactions under the STOCK Act; and (3) an analysis of current legislative proposals to limit or prohibit certain financial transactions introduced in the 117th Congress (2021-2022). The discussion of current legislative proposals focuses on the content of the bills and resolutions, including proposed prohibitions on holding, purchasing, and/or selling certain assets; amendments to the Ethics in Government Act and/or STOCK Act; potential requirements for the use of qualified blind trusts; changes to public access of disclosure documents; and proposed penalties for non-compliance. Additionally, this testimony discusses two proposals to amend House Rule XXIII, the Code of Conduct.

This written statement is drawn largely from other CRS products, including CRS Insight 11860, *Stock Trading in Congress: 117th Congress Proposals to Limit or Prohibit Certain Financial Transactions*. Accordingly, my statement summarizes and expands key portions of the Insight, and addresses the legislative proposals introduced to date in the 117th Congress.

Background on Current Financial Disclosure Laws

Federal government officials and employees, including Members of Congress, when taking official action, are expected to “put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.”¹ Using these guiding principles, in 1978, Congress enacted the Ethics in Government Act, which created the current government ethics program to “preserve and promote the integrity of public officials and institutions.”²

As amended,³ the Ethics in Government Act requires covered employees, including Members of Congress, congressional officers, and selected congressional staff,⁴ to file annual financial disclosure

¹ Code of Ethics for Government Service (H.Con.Res. 975 (1958), 72 Stat. B12). The standards included in the Code of Ethics for Government Service are still recognized as continuing ethics guidance in the House and Senate. They are not legally binding, because the code was adopted by congressional resolution, not by public law. The Code of Ethics for Government Service is cited by many House and Senate investigations. For example, see U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, report, 108th Congress, 2nd sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 38. See also 5 C.F.R. §2635.101(a), which applies to executive branch employees, and 18 U.S.C. §208, which prohibits executive branch employees from participating “personally and substantially” in any covered activity in which the employee or the employee’s spouse, minor child, general partner, or previous organization has a financial interest.

² P.L. 95-521, 92 Stat. 1824 (1978); 5 U.S.C. Appendix §§101-112.

³ P.L. 101-194, 103 Stat. 1724 (1989); P.L. 112-105, 126 Stat. 291 (2012); 5 U.S.C. Appendix §§101-112.

⁴ The House *Ethics Manual* defines financial disclosure filers as “all Members of the House and those House employees earning —above GS-15, that is, at least 120% of the federal GS-15 base level salary, for at least 60 days during the calendar year must file a Financial Disclosure Statement by May 15 of each year.” U.S. Congress, House Committee on Standards of Official Conduct, *House Ethics Manual*, “Who Must File,” 110th Cong., 2nd sess. (Washington: GPO, 2008), p. 252. For CY 2022, “the GS-15, step 1, basic pay rate ... is \$112,890. The applicable 120% calculation for that rate is therefore \$135,468, or a monthly salary of equal to or more than \$11,289. This rate is referred to as the “senior staff rate.” U.S. Congress, House, Committee on Ethics, “The 2022 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees,” *Pink Sheet*, January 13, 2022, p. 2, at <https://ethics.house.gov/sites/ethics.house.gov/files/documents/Final%202022%20Annual%20Pay%20Memo%2001132022.pdf>. The Senate uses the same definition for filers. See U.S. Congress, Senate, Select Committee on Ethics, “Chapter 5: Financial Disclosure,” *Senate Ethics Manual, 2003 edition*, p. 125, at https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=f2eb14e3-1123-48eb-9334-8c4717102a6e.pdf#page=137.

statements that report “income, gifts, liabilities, property—both real property and business-related personal property—positions in business enterprises and other organizations and also any agreements relating to post-Government employment.”⁵ As one scholar noted, “the Ethics in Government Act of 1978 [is] a reflection of one of our nation’s most fundamental aspirations for government: that official decisions should be made in the interests of the common good, not in the narrow self-interests of the individuals in power.”⁶

Members of Congress and officers or employees of the Congress are included as covered officials in the Ethics in Government Act.⁷ Subsequent amendments provided that Representatives, Delegates, the Resident Commissioner, Senators, House and Senate officers, and other specified covered employees are required to file annual financial disclosure statements with the Clerk of the House of Representatives and the House Ethics Committee,⁸ or the Secretary of the Senate and Senate Select Committee on Ethics,⁹ respectively. The House Ethics Committee and the Senate Select Committee on Ethics each provide guidance for financial disclosure filing.¹⁰

Stock Trading Disclosure in Congress

On April 4, 2012, President Obama signed the STOCK Act.¹¹ The STOCK Act, as amended, affirms that Members of Congress, congressional employees, and other federal officials are not exempt from “insider trading”¹² laws and regulations.¹³ It also requires covered individuals (primarily those that already file financial disclosure statements) to file periodic transaction reports with their supervising ethics office within 30 days of receiving notification of a covered financial transaction and no later than 45 days after

⁵ U.S. Congress, House Committee on the Judiciary, *Ethics in Government Act of 1977*, report to accompany H.R. 1, 95th Cong., 1st sess., November 2, 1977, H.Rept. 95-800 (Washington: GPO, 1977), p. 16.

⁶ Beth Nolan, “Removing Conflicts from the Administration of Justice: Conflicts of Interest and Independent Counsels Under the Ethics in Government Act,” *Georgetown Law Journal*, vol. 79, no. 1 (October 1990), p. 2.

⁷ 5 U.S.C. Appendix §101(f)(9)-(10). For further clarification on the definition of Members of Congress and officers or employees of the Congress, definitions, see 5 U.S.C. Appendix §109(12)-(13).

⁸ U.S. Congress, House, Office of the Clerk of the House of Representatives, *Financial Disclosure Reports*, at <https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure>; and U.S. Congress, House, Committee on Ethics, “Financial Disclosure,” at <https://ethics.house.gov/financial-disclosure>.

⁹ Senate Rule XXXIV. U.S. Congress, Senate, Secretary of the Senate, “Senate Public Financial Disclosure (Senate Rule 34), *Public Disclosure*, at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm; and U.S. Congress, Senate, Select Committee on Ethics, “Financial Disclosure,” at <https://www.ethics.senate.gov/public/index.cfm/financialdisclosure>.

¹⁰ U.S. Congress, House, Committee on Ethics, “Financial Disclosure Guidance,” at <https://ethics.house.gov/forms/fd-guidance>; and U.S. Congress, Senate, Select Committee on Ethics, “Chapter 5: Financial Disclosure,” *Senate Ethics Manual, 2003 edition*, at https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=f2eb14e3-1123-48eb-9334-8c4717102a6e.pdf#page=135.

¹¹ P.L. 112-105, 126 Stat. 291 (2012). The STOCK Act was renamed the Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act by P.L. 115-277 (132 Stat. 4167 (2018)).

¹² For more information on insider trading, see CRS InFocus IF11966, *Insider Trading*, by Jay B. Sykes.

¹³ The STOCK Act (P.L. 112-105, §13) also prohibits Members, officers, and employees who file financial disclosure statements from participating in Initial Public Offerings (IPOs). In a February 2019 memorandum to House Members, officers, and employees, the House Ethics Committee noted that “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 U.S. Congress, House Committee on Ethics, *Summary of Activities One Hundred Sixteenth Congress*, 116th Cong., 2nd sess., December 31, 2020, H.Rept. 116-703 (Washington: GPO, 2020), p. 47, note 18. [Hereinafter House Ethics Committee, *Summary of Activities*, 116th Congress]

the transaction.¹⁴ For the House of Representatives, the supervising ethics office is the House Ethics Committee, and for the Senate it is the Senate Select Committee on Ethics.¹⁵

Under STOCK Act amendments to the Ethics in Government Act, covered individuals, including Members of Congress, officers, and covered congressional employees report financial transactions (e.g., sales and purchases of stocks, bonds, commodity futures, and other securities) that exceeded \$1,000.¹⁶ Periodic transaction reports are filed in the same manner as the covered official's annual financial disclosure. For Members of Congress, both their financial disclosure forms and their periodic transactions reports are available for public inspection from the Clerk of the House (for Representatives) or the Secretary of the Senate (for Senators).¹⁷

Proposals to Limit or Prohibit Certain Financial Transactions in the 117th Congress

In the 117th Congress, there has been interest in further limiting or prohibiting Members of Congress and other covered congressional officials and employees from engaging in certain financial transactions. As of March 1, 2022, some Members of Congress have introduced at least 14 bills or resolutions on these issues, eight in the House and six in the Senate. Broadly, these measures propose to amend the Ethics in Government Act, the STOCK Act, and/or House Rules to prohibit certain transactions, increase financial disclosure reporting requirements, and prescribe remedies to alleviate real or perceived conflicts of interest and penalties for engaging in certain behaviors. **Table 1** lists the 14 measures (bill or resolution number and title); the proposed affected party; proposed actions; timeline for implementation, if enacted; and proposed penalties. For organizational ease, **Table 1** lists companion measures together.

¹⁴ Covered filers are required by the Ethics in Government Act to “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 cryptocurrencies 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. See House Ethics Committee, *Summary of Activities*, 116th Congress, p. 44.

¹⁵ 5 U.S.C. Appendix §103(j).

¹⁶ P.L. 112-105, §6(a). For more information, see U.S. Congress, House, Committee on Ethics, “Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirements,” June 11, 2020, at https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.11.2020%20Final.pdf; and U.S. Congress, Senate, Select Committee on Ethics, “STOCK Act Requirements for Senate Staff,” June 15, 2012, at https://www.ethics.senate.gov/public/_cache/files/e63d0a27-19b2-4bf3-b26e-9073ff179e3e/stock-act-requirements-for-senate-staff-1-.pdf.

¹⁷ 5 U.S.C. Appendix §105. For Representatives and Senators, periodic transaction reports and financial disclosure reports, are available for public inspection on the Clerk of the House's and Secretary of the Senate's website, respectively. Periodic transaction reports and financial disclosure reports for officers and other covered congressional employees are not available for public inspection (P.L. 113-7, §1(a)(1), 127 Stat. 438 (2013)). For access to filings, see U.S. Congress, House, Office of the Clerk of the House of Representatives, *Financial Disclosure Reports*, at <https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure>; and U.S. Congress, Senate, Secretary of the Senate, “Senate Public Financial Disclosure (Senate Rule 34),” *Public Disclosure*, at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm.

Table I. Proposals to Limit or Prohibit Certain Financial Transactions, 117th Congress
Through March 1, 2022

Bill or Resolution	Affected Congressional Party	Proposed Action	Timeline	Proposed Penalty
H.Res. 873 No Option for Stock Trading and Ownership as a Check to Keep Congress Clean Resolution	Members of Congress, Delegates, and Resident Commissioner	Amends House Rule XXIII to prohibit ownership of common stock	Not specified	Not specified
H.R. 459 HUMBLE Act	Members of Congress, Delegates, and Resident Commissioner	Amends House Rule XXIII to prohibit ownership of common stock	Effective immediately before noon on January 3, 2023	Not specified
H.R. 336 TRUST in Congress Act	Members of Congress, spouses, and dependent children	Require placement of covered investments in a qualified blind trust; Clerk of the House and Secretary of the Senate post certifications on a public website	Within 90 days of enactment for current Members or within 90 days of taking office for new Members	Not specified
H.R. 1579 Ban Conflicted Trading Act	Members of Congress and congressional employees who file Financial Disclosure reports under the Ethics in Government Act	Prohibits purchase or sale of covered investments; covered officials may place securities holdings in qualified blind trust	Not specified	Civil penalty of not less than 10 percent of the value of the covered investment that was purchased or sold or the security in which a net short position was created in violation of this Act
S. 564 Ban Conflicted Trading Act				
H.R. 6490 Banning Insider Trading in Congress Act	Members of Congress and spouses	Amend the Ethics in Government Act to prohibit holding, purchase, or sale of covered financial instruments; covered officials may place holdings in qualified blind trust; supervising ethics committee publishes certification on a public website	Within 180 days of enactment for current Members or within 180 days of taking office for new Members	Disgorge to the Treasury any profit from the transaction or holding; prohibition on deduction of a loss from a covered transaction or holding; and civil fine assessed by supervising ethics committee
S. 3504 Banning Insider Trading in Congress Act				

Bill or Resolution	Affected Congressional Party	Proposed Action	Timeline	Proposed Penalty
<p>H.R. 6694 STOCK Act 2.0</p> <p>S. 3612 STOCK Act 2.0</p>	<p>Members of Congress, senior congressional staff, spouses, and dependents</p>	<p>Amend Ethics in Government Act to prohibit purchase or sale of covered financial instruments; covered officials may place securities holdings in qualified blind trust; and amend the STOCK Act to require public access to covered officials' financial disclosure and periodic transaction reports</p>	<p>Not specified</p>	<p>Fine pursuant to regulations issued by the supervising ethics office of \$500 in each case the covered person fails to file a report</p> <p>Amends STOCK Act to create fines for failure to report (\$500 for each case), and requires deposit of fines in the Treasury</p> <p>Civil penalty of not less than 10 percent of the value of the covered investment that was purchased or sold, or the security in which a net short position was created</p>
<p>H.R. 6678 Bipartisan Ban on Congressional Stock Ownership Act of 2022</p> <p>S. 3631 Bipartisan Ban on Congressional Stock Ownership Act of 2022</p>	<p>Members of Congress and spouses</p>	<p>Prohibit ownership of specified assets and requires divestment of assets except for widely held investment fund</p>	<p>Depending on type of asset, divest within 180 days or 5 years of enactment for current Members or within 180 days or 5 years of taking office for new Members</p>	<p>Civil fines of not more than \$50,000 if determined by a United States district court after the Attorney General or Special Counsel brings a civil action</p>
<p>H.R. 6844 Restoring Trust in Public Service Act</p>	<p>Members of Congress, spouses, and dependents</p>	<p>Prohibit ownership of specified assets and requires divestment of covered instruments</p>	<p>Divestment within 90 days of enactment for current Members or within 90 days of taking office for new Members</p>	<p>Penalty equal to the Member's entire federal salary, for as long as the violation continues</p> <p>Publication by the Ethics Committee of individuals found to be in violation</p>

Bill or Resolution	Affected Congressional Party	Proposed Action	Timeline	Proposed Penalty
S. 3494 Ban Congressional Stock Trading Act	Members of Congress, spouses, and dependents	Amend the Ethics in Government Act to require the divestment or placement of covered investments in a qualified blind trust; supervising ethics office makes public qualified blind trust certifications, trust agreement, schedule of assets placed in trust, and descriptions of extensions or penalties	Submit certification within 30 days of enactment for current Members or within 30 days of taking office for new Members Divest or place covered instruments in a qualified blind trust within 120 days of enactment or within 120 days of taking office for new Members	Written notice by supervising ethics office to Member with warning of potential violation to correct actions Civil penalty equal to the monthly equivalent of the annual rate of pay payable to the Member of Congress, if filings are not corrected after the supervising ethics office gives 30 days' notice of noncompliance
S. 3550 Ethics Reform Act	Members of Congress	Prohibit purchase or sale of individual securities	Not specified	Not specified

Source: CRS summary and analysis of proposed legislation.

Notes: To compile this list, CRS searched Congress.gov using subject headers “Government Ethics” + “Members of Congress” + “Securities.” CRS supplemented this search by examining House dear colleague letters and Member press releases for similar legislation. It is possible that other measures that might address similar policy matters but use different wording were not captured by this search. Jennifer Manning, Senior Research Librarian, conducted the search on February 14, 2022, and February 28, 2022.

Generally, the 14 measures in **Table 1** propose to regulate the financial activities of Members of Congress and covered congressional staff.¹⁸ Most frequently, these proposals seek to prohibit covered individuals from the holding, purchase, sale, and/or active management of certain types of financial assets; require certain assets to be placed in qualified blind trusts; and/or change access to filings and/or penalties for noncompliance. To accomplish these goals, the legislative proposals seek to amend the Ethics in Government Act and/or the STOCK Act, create new law, or amend House Rules.

Amend Ethics in Government Act, the STOCK Act, and/or Create New Law

Several legislative proposals would either amend the Ethics in Government Act, the STOCK Act, or both.¹⁹ Others would create new law to address Member and covered officials' financial holdings and

¹⁸ Several measures also propose to limit or prohibit particular executive branch officials or federal judges from holding, purchasing, and selling certain assets. For example, H.R. 6694 and S. 3612 “STOCK Act 2.0” both would prohibit the President, the Vice President, the Chief Justice of the United States, Associate Justices of the Supreme Court, members of the Board of Governors of the Federal Reserve System, and presidents and vice presidents of Federal Reserve Banks from engaging in certain transactions. H.R. 6684 would also propose to prohibit stock ownership by executive branch officials (President, Vice President, political appointees, and certain senior career employees) and federal judges.

¹⁹ H.R. 6490, H.R. 6694, S. 3494, S. 3504, and S. 3612.

transactions. In some cases, the proposals would authorize or require the use of a qualified blind trust (see “Require the Use of Qualified Blind Trusts” below) to avoid or prevent potential conflicts of interest.

The legislative proposals to amend the Ethics in Government Act and/or the STOCK Act all focus on codifying new prohibitions on covered individuals from holding, purchasing, or selling covered assets (discussed below under “Prohibit Holding, Purchasing, and Selling Certain Assets”). All of the proposals would apply restrictions to Members of Congress, but some would also apply to Members’ spouses and dependents.²⁰ Fewer would also apply to congressional officers or covered staff members.²¹

While the general approaches of each measure are similar, some differences exist. For example, H.R. 6490 and S. 3504, “The Ethics Reform Act,” propose to require that Members of Congress file annual “certification of compliance” forms with their supervising ethics committee, which the committee would then publish on a publicly available website.²² Further, these measures would authorize the House Ethics Committee and the Senate Select Committee on Ethics to issue civil fines, as they deem appropriate, for non-compliance.²³

Similarly, H.R. 6694 and S. 3612, “STOCK Act 2.0,” propose to authorize the use of qualified blind trusts on a case-by-case basis and establish a civil penalty of “not less than 10 percent of the value of the covered instrument” for a covered individual who knowingly fails to comply with the amendments.²⁴ Further, the legislation would amend the STOCK Act to require that certain financial disclosure forms be publicly available for Members of Congress and other government officials.²⁵

Two other proposals (H.R. 6490 and S. 3504, “Banning Insider Trading in Congress Act”) would provide the supervising ethics office with the power to impose civil fines and require the Government Accountability Office (GAO) to audit compliance with the law. GAO has similar authority under the Lobbying Disclosure Act (LDA),²⁶ which requires GAO to audit LDA filings and submit an annual report to Congress.²⁷

²⁰ H.R. 336, H.R. 6490, S. 3504, H.R. 6694, S. 3612, H.R. 6678, S. 3631, H.R. 6844, and S. 3494.

²¹ H.R. 1579, S. 564, H.R. 6694, and S. 3612.

²² H.R. 6490 and S. 3504, §2, proposed new section 203 of the Ethics in Government Act.

²³ H.R. 6490 and S. 3504, §2, proposed new section 204 of the Ethics in Government Act.

²⁴ H.R. 6694 and S. 3612, §5, proposed new section 205 of the Ethics in Government Act.

²⁵ H.R. 6694 and S. 3612, §6. Other government officials specified in the legislation include the President, Vice President, presidentially nominated Senate confirmed officials listed in 5 U.S.C. 5312 and 5313; judicial officers; and Officers of Federal Reserve Banks. Currently, financial disclosure statements for the named executive branch officials are available directly from the Office of Government Ethics (OGE) on its “Officials’ Individual Disclosure Search Collection” webpage, at <https://www.oge.gov/web/oge.nsf/Officials%20Individual%20Disclosures%20Search%20Collection?OpenForm>. On February 18, 2022, the Federal Reserve Board of Governors announced new ethics and disclosure rules for the Federal Open Market Committee and Federal Reserve Bank presidents and vice-presidents. For more information, see Board of Governors of the Federal Reserve System, “FOMC Formally Adopts Comprehensive New Rules for Investment and Trading,” press release, February 18, 2022, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20220218a.htm>; and Board of Governors of the Federal Reserve System, “Program for Security of FOMC Information,” approved February 17, 2022, with amendments effective May 1, 2022, at https://www.federalreserve.gov/monetarypolicy/files/FOMC_InformationSecurityProgram.pdf.

²⁶ 2 U.S.C. §§1601-1614. For more information, see CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

²⁷ Under the Lobbying Disclosure Act (LDA; 2 U.S.C. §1614), the Comptroller General is required to conduct an annual audit on “the extent of compliance or noncompliance with the requirements of this chapter by lobbyists, lobbying firms, and registrants through a random sampling of publicly available lobbying registrations and reports filed ... during each calendar year.” The most recent report was compiled in April 2021. U.S. Government Accountability Office, *2020 Lobbying Disclosure: Observations on Lobbyists’ Compliance with Disclosure Requirements*, GAO-21-375, April 1, 2021, <https://www.gao.gov/products/gao-21-375>.

Prohibit Holding, Purchasing, and Selling Certain Assets

Each of the legislative proposals in **Table 2** would generally prohibit covered officials from holding, purchasing, selling, and/or actively managing certain types of assets. Aspects of these measures would prohibit the purchase or sale of specified financial instruments, require additional disclosure and potential divestment of prohibited assets, and/or increase penalties for noncompliance. Each measure generally approaches covered assets in a particular way. **Table 2** reports the types of assets covered by each proposal.

Table 2. Covered Assets in Certain Legislative Proposals to Prohibit Holding, Purchasing or Selling Certain Financial Instruments

Legislative Proposal	Covered Assets	Exempted Assets
H.R. 1579/S. 564	Commodities, securities, futures, and any comparable economic interest acquired through synthetic means such as the use of a derivative	Widely held investments; United States Treasury bills, notes, or bonds
H.R. 6490/S. 3504	Security, security future, commodity, and “any [comparable] economic interest ... that is acquired through synthetic means, such as the use of a derivative, including an option, warrant, or other similar means”	Diversified mutual fund, diversified exchange-traded fund, United States Treasury bill, note, or bond; or compensation from the primary occupation of a Members’ spouse or dependent
H.R. 6694/S. 3612	Commodity, securities, futures, cryptocurrency, and any comparable economic interest acquired through synthetic means such as the use of a derivative	Widely held investments; United States Treasury bills, notes, or bonds
H.R. 6678/S. 3631	Stock, bond, commodity, future, or “other form of security, including an interest in a hedge fund, a derivative, option, or other complex investment vehicle”	Widely held investments, shares of Settlement Common Stock issued under the Alaska Native Claims Settlement Act (43 U.S.C. §1606(g)(1)(A)); United States Treasury bills, notes, or bonds; investment fund held by federal, state, or local government employee retirement plans; small business concern interests; and compensation from the primary occupation of a spouse
H.R. 6684	Individual stocks, securities, commodities, futures, and derivatives	Diversified mutual funds and environmental, social, and governance (ESG) mutual funds
S. 3550	Individual securities	Widely held investments
H.Res. 873	Common stock of any individual public corporation	None specified
H.R. 459	Common stock of any individual public corporation	None specified

Source: CRS analysis of proposed legislation.

Most of the proposals prohibit Members of Congress from holding, purchasing, or selling similar assets, including commodities,²⁸ securities,²⁹ security futures,³⁰ and other named assets. Currently, Congress does not prohibit the ownership of specified financial assets, but some executive branch agencies do. For example, the Nuclear Regulatory Commission has supplemental Standards of Ethical Conduct that include a list of prohibited securities.³¹

All but two proposals would exempt some type of assets. Most commonly, exemptions include United States Treasury bills, notes, or bonds; and certain “widely held investments.”³² Widely held investments would generally not need to be reported, but must meet three criteria: the fund must be publicly traded, 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.”³³

Require the Use of Qualified Blind Trusts

A number of the proposals would allow or require a Member of Congress (and their spouses and/or dependent children) to place covered assets in a qualified blind trust.³⁴ Qualified blind trusts are specific instruments that may be used to remediate real or perceived financial conflicts of interest.³⁵ Created in the Ethics in Government Act, qualified blind trusts

confer on an independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party. This responsibility includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of, and in what investments the proceeds of sale are to be reinvested.³⁶

The establishment of a qualified blind trust requires permission from a covered official’s supervising ethics office (e.g., the House Committee on Ethics or the Senate Select Committee on Ethics for Representatives and Senators, respectively). Should a qualified blind trust be established to remediate a financial conflict of interest, the covered official “gives up the management of the assets to an independent trustee, who makes investment decisions of the individual’s benefit without the individual’s knowledge.”³⁷ Further, the trustee must

²⁸ Generally defined in section 1a of the Commodity Exchange Act; 7 U.S.C. §1a.

²⁹ Generally defined in section 3(a) of the Securities Exchange Act of 1934; 15 U.S.C. §78c(a).

³⁰ Ibid.

³¹ 5 C.F.R. §5801.102(b).

³² The Office of Government Ethics (OGE) notes, “an investment fund is widely held if the fund has at least 100 natural persons as direct or indirect investors. For example, if a pension plan invests in the ABC Fund, one would count each plan participant toward the 100-person threshold when determining whether the ABC Fund is widely held.” See U.S. Office of Government Ethics, *Confidential Financial Disclosure Guide: OGE Form 450*, December 2018, p. 32, at [https://www.oge.gov/Web/OGE.nsf/0/A685AEC70F057115852585B6005A202F/\\$FILE/Confidential%20Fin%20Disc%20Guide_Jan2019.pdf#page=32](https://www.oge.gov/Web/OGE.nsf/0/A685AEC70F057115852585B6005A202F/$FILE/Confidential%20Fin%20Disc%20Guide_Jan2019.pdf#page=32). Similar guidance exists in OGE’s *Public Financial Disclosure Guide*, p. 290, at [https://www.oge.gov/Web/OGE.nsf/0/11E9ABAF6E128FF1852585B6005A2030/\\$FILE/Public%20Fin%20Disc%20Guide_Jan2019.pdf#page=290](https://www.oge.gov/Web/OGE.nsf/0/11E9ABAF6E128FF1852585B6005A2030/$FILE/Public%20Fin%20Disc%20Guide_Jan2019.pdf#page=290).

³³ 5 U.S.C. Appendix §102(f)(8).

³⁴ H.R. 336, H.R. 6844, S. 3494, H.R. 1579 and S. 564, and H.R. 6694 and S. 3612.

³⁵ 5 C.F.R. §2634.401.

³⁶ 5 C.F.R. §2634.401(a).

³⁷ U.S. Congress, Senate Select Committee on Ethics, *Qualified Blind Trusts*, 114th Cong., 1st sess., September 2015, p. 1, at https://www.ethics.senate.gov/public/_cache/files/286a4cf9-5aab-40ef-9a6c-bf2278e79e38/qualified-blind-trusts-guide---october-2020.pdf. [Hereinafter *Qualified Blind Trusts*]

be an independent financial institution, lawyer, certified public accountant, broker, or investment advisor; there may be no restrictions on the disposal of the trust assets; [and] the trust instrument must limit communications between the trustee and interested parties.³⁸

Qualified blind trusts may be considered expensive to establish and maintain.³⁹ Accordingly, some supervising ethics offices have determined that they are not always an appropriate remedy when other solutions might be available.⁴⁰

At least two proposals (H.R. 336 and S. 3494) would require a covered official to either divest or place certain assets in a qualified blind trust. Current Members of Congress would be required to divest and/or place covered assets in a qualified blind trust within a specified number of days of enactment. New Members of Congress would have to do the same within a specified number of days after being sworn in.⁴¹ Other proposals would provide the option of using a qualified blind trust.⁴²

Qualified blind trusts can serve as a way to “immunize” a public official “from potential conflicts of interest stemming from assets held in the trust because the legislator-beneficiary would have no knowledge of the impact of official actions on [their] personal financial interests.”⁴³ If a covered official places their assets in a qualified blind trust they are separated from the day-to-day decision making about their holdings, which can serve to remedy potential conflicts that might arise from decision-making that could impact their individual holdings.

The creation of a significant number of new qualified blind trusts could present administrative challenges to the House and Senate. In a scenario where all Representatives, delegates, and the Resident Commissioner, and Senators, were required to create a qualified blind trust within a certain number of days of enactment, the review and certification process currently used by the House Ethics Committee and the Senate Select Committee on Ethics could be strained. A similar scenario, albeit with a smaller number of individuals, could occur at the beginning of each subsequent Congress, as newly elected Members would have a deadline by which they would need to seek approval of their trust documents. Should Congress enact a proposal to require the use of qualified blind trust, the House Committee on Ethics and the Senate Select Committee on Ethics might require additional resources to conduct necessary reviews and certifications.

The House and Senate do not currently appear to publish data on the number of qualified blind trusts reviewed or certified. The House Ethics Committee and the Senate Select Committee on Ethics, however, do report the total number of financial disclosure and periodic transaction reports that it receives annually.

³⁸ U.S. Congress, House Committee on Ethics, “Trusts,” *Specific Disclosure Requirements*, at <https://ethics.house.gov/financial-disclosure/specific-disclosure-requirements>.

³⁹ *Qualified Blind Trusts*, p. 2. See also, National Conference of State Legislators, “Blind Trusts,” at <https://www.ncsl.org/research/ethics/blind-trusts.aspx>.

⁴⁰ *Qualified Blind Trusts*, p. 2. For a discussion of financial conflict of interest remedies, including disqualification (recusal), divestiture, waivers, trusts, and reassignment or resignation, see CRS InFocus 11904, *Financial Disclosure: Identifying and Remediating Conflicts of Interest in the Executive Branch*, by Jacob R. Straus. Similar, but not necessarily the same, remediation options are available in the House and Senate, depending on the filer’s role within Congress. Additionally, in some cases, the supervising ethics office can determine that “the financial interest may be deemed too remote or inconsequential ... to affect the integrity of an employee’s service and as such is not deemed a conflict.” See U.S. Government Accountability Office, *Presidential Transition: Information on Ethics, Funding, and Agency Services*, GAO-17-615R, September 7, 2017, p. 11, <https://www.gao.gov/assets/gao-17-615r.pdf#page=11>.

⁴¹ H.R. 336, §2. H.R. 336 would require action with 90 days of enactment for current Members, or 90 days of being sworn in for new Members. S. 3494, §2, proposes to add a new section to the Ethics in Government Act, that would require divestiture or placement of covered assets in a qualified blind trust within 30 days of enactment for current Members, or 30 days of being sworn in for new Members.

⁴² H.R. 1579, H.R. 6490, H.R. 6694, S. 564, S. 3504, and S. 3612.

⁴³ National Conference of State Legislators, “Blind Trusts,” at <https://www.ncsl.org/research/ethics/blind-trusts.aspx>.

Each year, the House Ethics Committee and the Senate Select Committee on Ethics review thousands of filings. The addition of qualified blind trusts for hundreds of filers could significantly add to the review and certification burden.⁴⁴

Change to Public Access to Disclosure Filings

Current law requires Members of Congress to file public financial disclosure and periodic transaction reports.⁴⁵ For Representatives and Senators, periodic transaction reports and financial disclosure reports are available for public inspection on the Clerk of the House's and Secretary of the Senate's website, respectively.⁴⁶ Periodic transaction reports and financial disclosure reports for officers and other covered congressional employees are not available for public inspection.⁴⁷

Four proposals would require additional public access to certain financial disclosure and periodic transaction report related information. H.R. 6694 and S. 3612 would amend the STOCK Act to require public access to covered officials' financial disclosure and periodic transactions reports. H.R. 336 would require the supervising ethics office to post certification for qualified blind trusts on a public website. S. 3494 would require the supervising ethics office to post qualified blind trust certificates, trust agreements, schedules of assets, any extensions granted, and any penalties levied.

Penalties for Non-Compliance

Ten legislative proposals would change available penalties for non-compliance and four legislative proposals do not specify potential changes to penalties. Within the ten legislative proposals, two basic penalty strategies are suggested: fine individuals for non-compliance and/or publish the names of individuals who are found in violation of the law on a public webpage. As noted in **Table 1**, those penalties include

- fines from \$500 per case (H.R. 6694 and S. 3612);
- a civil penalty of not less than 10 percent of the value of the covered investment (H.R. 1579, S. 564, H.R. 6694, and S. 3612);
- “disgorgement” to the United States Treasury of any profit from the transaction or holding (H.R. 6490 and S. 3504);

⁴⁴ Using data from the 116th Congress (2019-2020), the House reported that it received 6,331 financial disclosure reports and 3,722 periodic transaction reports filed by Members, officers, and employees of the House. In the Senate, the Senate Select Committee on Ethics reported that it received 3,712 public financial disclosure and periodic disclosure of financial transactions reports in 2020 and 3,876 public financial disclosure and periodic disclosure of financial transaction reports in 2021. House Ethics Committee, *Summary of Activities*, 116th Congress, p. 7; U.S. Congress, Senate, Select Committee on Ethics, “Annual Report of the Select Committee on Ethics 117th Congress, First Session,” January 29, 2021, at https://www.ethics.senate.gov/public/_cache/files/691e5e65-5b73-4e95-8cdb-de056570cb34/annual-report-for-2020.pdf; and U.S. Congress, Senate, Select Committee on Ethics, “Annual Report of the Select Committee on Ethics 117th Congress, Second Session,” January 31, 2022, at https://www.ethics.senate.gov/public/_cache/files/9a2ce840-718c-409b-891f-42f5ebf6f365/annual-report-for-2021.pdf.

⁴⁵ 5 U.S.C. Appendix §101; P.L. 112-105, §8, 126 Stat. 295 (2012).

⁴⁶ 5 U.S.C. Appendix §105. Forms can be accessed at U.S. Congress, House, Office of the Clerk of the House of Representatives, *Financial Disclosure Reports*, at <https://disclosures-clerk.house.gov/PublicDisclosure/FinancialDisclosure>; and U.S. Congress, Senate, Secretary of the Senate, “Senate Public Financial Disclosure (Senate Rule 34),” *Public Disclosure*, at https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm.

⁴⁷ P.L. 113-7, §1(a)(1), 127 Stat. 438 (2013). This law modified the STOCK Act to exempt officers and employees from public, online disclosure of their financial disclosure and periodic transaction reports.

- civil fines of not more than \$50,000 if the Attorney General or Special Counsel bring a civil suit before a United States district court and the court determines a fine is warranted (H.R. 6678 and S. 3631);
- a penalty equal to the Member’s entire salary for as long as the violation occurs (H.R. 6844); and/or
- a civil penalty equal to the monthly equivalent of the annual rate of pay for the Member, after a written notice from the supervising ethics committee to the Member.

Additionally, H.R. 6844 would require the respective ethics committees to publish the names of individuals found in violation of the proposed amendments.

Under current law, a covered individual who fails to file financial disclosure and/or periodic transaction reports or who files false reports may be subject to certain civil actions, generally after the supervising ethics office investigates the circumstances. Should the supervising ethics office find “reasonable cause to believe [the filer] has willfully failed to file or report or willfully falsified or willfully failed to file information required to be reported,” it may refer the case to the Attorney General.⁴⁸ Further, the Ethics in Government Act specifies that

The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed \$50,000.⁴⁹

Alternatively, the law also provides that the supervising ethics office “may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.”⁵⁰

For Congress, the House Committee on Ethics and the Senate Select Committee on Ethics provide additional interpretation of penalties for financial disclosure. The House incorporates the financial disclosure requirements into Rule XXVI.⁵¹ The Senate incorporates financial disclosure requirements into Rule XXXIV.⁵² Both committees, using identical language, also note that “in addition to Committee action, the EIGA [Ethics in Government Act] authorize[s] the Attorney General of the United States to seek a civil penalty ... again an individual who knowingly and willfully falsifies or fails to file or report any required information.”⁵³

⁴⁸ 5 U.S.C. Appendix §104(b).

⁴⁹ 5 U.S.C. Appendix §104(a)(1).

⁵⁰ 5 U.S.C. Appendix §104(c).

⁵¹ U.S. Congress, House, “Rule XXVI-Financial Disclosure,” *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States One Hundred Seventeenth Congress*, 116th Cong., 2nd sess., 2021, H.Doc. 116-177 (Washington: GPO, 2021), §1103, p. 1021, at <https://www.govinfo.gov/content/pkg/HMAN-117/pdf/HMAN-117.pdf#page=1036>.

⁵² U.S. Congress, Senate, Committee on Rules and Administration, “Rules of the Senate,” at <https://www.rules.senate.gov/rules-of-the-senate>.

⁵³ U.S. Congress, House Committee on Standards of Official Conduct, *House Ethics Manual*, “Failure to File or Filing False Disclosure Information,” 110th Cong., 2nd sess. (Washington: GPO, 2008), p. 265; and U.S. Congress, Senate Select Committee on Ethics, *Senate Ethics Manual*, committee print, 108th Cong., 1st sess., S.Prt. 108-1 (Washington: GPO, 2003), p. 127.

Amend House Rule XXIII

Two legislative proposals would amend House Rule XXIII, the House Code of Conduct, to add a new section.⁵⁴ The new section would state

A Member, Delegate, or Resident Commissioner may not own the common stock of any individual public corporation.⁵⁵

Amending House Rules to prohibit ownership of individual stocks might require the divestiture of certain assets by Members of the House. As an amendment to the Code of Conduct, jurisdiction over the implementation and enforcement of this proposed rule change would likely be with the House Ethics Committee.⁵⁶ A similar proposal to amend Senate Rules has not been introduced.⁵⁷

Amending House Rules rather than amending the Ethics in Government Act or creating a new law could be interpreted as having somewhat more limited affect (e.g., not allowing for restrictions to apply after a Member leaves office and not applying to Senators).⁵⁸ Some of the proposals involving changes to law would apply to Members for a period *after* they depart the House.⁵⁹

Concluding Considerations for Congress

In the 117th Congress, CRS identified 14 legislative proposals that seek to limit or prohibit Members of Congress from engaging in certain financial transactions. These measures include a wide-ranging number of proposals. They propose amendments to the Ethics in Government Act and/or STOCK Act, the creation of new law, or amendments to House rules. Taken together, the 14 legislative proposals include a range of options to limit or prohibit certain financial activities. These include prohibiting the holding, purchasing, selling, and active management of covered assets; requiring the use of qualified blind trusts to remediate real or perceived financial conflicts of interest; changing public access for financial disclosure documents; and amending penalties for non-compliance. Each of these options likely has advantages and disadvantages should Congress choose to implement a particular measure as introduced or incorporate various concepts into another measure.

Policymakers may wish to consider the scope of the proposals, the benefits of particular proposals, any potential administrative adjustments that might be necessary to implement a modification of ethics laws, and the potential costs to covered officials to comply with the proposed laws. Subsequently, several questions might be considered. These might include:

⁵⁴ H.R. 459, §5; and H.Res. 873.

⁵⁵ H.R. 459, §5; and H.Res. 873.

⁵⁶ House Rule X(g).

⁵⁷ Senate rules divide its code of conduct among several rules. These include Senate Rule XXXIV (public financial disclosure), Rule XXXV (gifts), Rule XXXVI (outside earned income), and XXXVII (conflict of interest). For more information, see U.S. Congress, Senate, Committee on Rules and Administration, “Rules of the Senate,” at <https://www.rules.senate.gov/rules-of-the-senate>.

⁵⁸ See also, *INS v. Chadha* (45 U.S. 919 (1983)), holding that the actions of one chamber cannot alter the legal rights of those outside the legislative branch. Traditionally, when a Representative or Senator departs the House or Senate, the House Ethics Committee or the Senate Select Committee on Ethics loses jurisdiction over the former Member. For example, House Committee on Ethics notes “As a general matter, the Committee’s investigative jurisdiction extends to current House Members, officers and employees. When a Member, officer, or employee, who is the subject of a Committee investigation, resigns, the Committee loses jurisdiction over the individual.” House Ethics Committee, *Summary of Activities*, 116th Congress, p. 14; and House Rule XI, clause 3(a)(2).

⁵⁹ H.R. 336 and S. 3494.

- Should new requirements apply only to Members of Congress, or also to their spouses and dependent children?
- Should congressional officers and staff be subject to the same disclosure and public access considerations as Members of Congress?
- What penalties are appropriate for violations of new or existing requirements and are proposed penalties sufficient to achieve congressional aims?
- What is the financial cost for establishing qualified blind trusts and how might covered officials pay for the establishment of such trusts?