

## PROS AND CONS

### SUMMARY

Various proposals for STOCK Act reform have emerged from public concern with congressional stock trading controversies. The proposals include five major options for reform: (1) an absolute ban on individual stock ownership; (2) requiring qualified blind trusts for stock transactions; (3) permitting ownership of only stocks that were owned prior to holding office; (4) a system of pre-approval for stock transactions; and (5) immediate disclosure of stock trades. Each of these options has unique benefits and challenges, and all have potential loopholes.

### SOLUTION ONE: ABSOLUTE BAN

A complete stock ownership ban is rarely proposed as an option. This provision prohibits members from owning or trading any individual stock while in office, even if the stock is held in a qualified blind trust (QBT).

In the 117th Congress, the Bipartisan Ban on Congressional Stock Ownership Act proposes that no member of Congress “may own an interest or trade (except as a divestment) any stock, bond, commodity, future, and other form of security, including in a hedge fund, a derivative, option, or other complex investment vehicle.” The bill allows for ownership of widely held investment funds (e.g., mutual funds, exchange traded funds) and certain stock issued under the Alaska Native Claims Settlement Act.

#### PROS:

- Eliminates any potential issues with congressional stock trading, restoring public trust that members are not using their official position to affect their stock investments
- Insider trading penalties and transparency would become irrelevant as lawmakers would no longer have any individual stocks to trade or disclose, including qualified blind trust records

#### CONS:

- This approach has very little downside from an effectiveness standpoint, however there may be challenges building consensus without first trying other options that face less opposition from lawmakers

## SOLUTION TWO: QUALIFIED BLIND TRUST REQUIREMENT

A frequently proposed option to improve the STOCK Act is to require lawmakers to have an unaffiliated third party control the ownership and trading of their securities such that the lawmaker does not know what their holdings are, and whether or when their assets are traded. As the vehicle that enables this arrangement, a [QBT ensures](#) the official does not have a conflict of interest or engage in insider trading, because they are completely detached from their investment decisions.

The following bills in the 117th Congress propose permitting lawmakers to trade individual stocks only if held in a qualified blind trust: Ban Conflicted Trading Act; Trust in Congress Act; Banning Insider Trading in Congress Act; and Ban Congressional Stock Trading Act. The option for executive branch and legislative branch officials to place assets in a QBT has been well established in the Ethics in Government Act of 1978. Recently, several members have voluntarily [transferred](#) their stocks to qualified blind trusts to avoid the criticism associated with the stock trading scandals.

### PROS:

- Can significantly improve the public's confidence that individual stock trades are not conflicts of interest or based on insider information
- Proposals that include disclosure requirements for the terms of the qualified blind trust increase transparency

### CONS:

- A poorly implemented qualified blind trust requirement could result in a worst-case scenario where the member in fact continues to control and direct holdings while the public does not know any of the investments

## SOLUTION THREE: PRIOR OWNERSHIP REQUIREMENT

Another option for reform is to allow lawmakers to own stocks and other investments that were held prior to entering Congress but prohibit trading such investments while in office. Lawmakers would also be prohibited from purchasing any new securities while in office.

In the 117th Congress, the Ban Conflicted Trading Act was introduced in both chambers. Pursuant to the bill, members and employees may not “purchase or sell any covered investment” except they “may have control over or knowledge of the management of any covered investment held by the covered person as of the day before the date on which the covered person took office.” The legislation creates a civil penalty “of not less than 10 percent of the value of the covered investment that was purchased or sold” for knowingly failing to comply.

### PROS:

- Increases public confidence that lawmakers are not trading stock in conflict with their official duties or based on insider information

## CONS:

- Lawmakers who maintain ownership of individual stock while in Congress may appear to make official decisions that increase the value of their holdings
- Will not decrease perception that lawmakers use their official positions to benefit the stocks that they own, even if they don't trade the stocks

## SOLUTION FOUR: PRE-APPROVAL REQUIREMENT

Pre-approval requirements allow members of Congress to own and trade stocks only if the specific investments do not create a potential conflict of interest. Ownership and trades of covered investments require the congressional ethics committees to determine if conflicts of interest exist on a case-by case basis.

Senate Rule 37.7 prohibits committee staff from owning “substantial holdings which may be directly affected by the actions of the committee for which [the staffer] works, unless the Ethics Committee . . . grants permission in writing.” Similarly, the Anti-Corruption and Public Integrity Act proposed in the 116th Congress prohibits certain congressional officers and employees from owning securities if “the value of such stocks or securities may be influenced by actions taken by the individual in his or her official positions, as determined by the [applicable ethics committee].” Moreover, [the executive branch relies](#) on agency ethics officials to advise senior officials where potential conflicts of interest with investments require recusal or divestment.

## PROS:

- Builds the public's trust that effective procedures exist to prevent lawmakers from placing their personal financial interests above the public's interest
- Increases transparency

## CONS:

- Potential for subjective determinations by the ethics committees that may approve stock ownership and trades that are publicly perceived as conflicts of interest or instances of insider trading
- Would require additional, clear parameters to inform the decisions on conflicts of interests, and safeguards that reduce risks of a system of self-policing, and avoidance of exceptions

## SOLUTION FIVE: IMMEDIATE DISCLOSURE

One option for reform is to strengthen the disclosure requirements of the STOCK Act. The STOCK Act currently requires disclosure of covered transactions within 30 days of the member receiving notice of the transaction, but no later than 45 days after the transaction. More immediate disclosure of the trade provides the public with prompt notice of any potential ethics issues, including conflicts of interest or potential insider trading.



In the 117th Congress, the Transparency in Government Officials Trading Act was introduced to require disclosure of covered transactions “24 hours after conducting any transaction,” instead of 30 days after receiving notification of the transaction. Additionally, the bill increases the penalty for a late filing from \$200 to “a fee equal to the amount of the transaction for which such report was required to be filed.”

**PROS:**

- Increases transparency

**CONS:**

- Unlikely to increase trust in lawmakers
- Does not address perceived conflicts of interest when members of Congress trade individual stock

## POTENTIAL LOOPHOLES FOR ANY SOLUTION

The effectiveness of any of the reform proposals is dependent upon enforcement. The most well-intentioned legislation can become unenforceable and ineffective if it includes obvious opportunities for circumvention. Therefore, sincere STOCK Act reform should at the very least close five common potential loopholes.

1. Covered Individuals: Reform legislation may be circumvented if stock trading restrictions are not applicable to the individuals most likely to receive inside information or have conflicts of interest. Accordingly, members, senior staff, and their spouses and dependent children should be subject to the legislation.
2. Excepted Investments: Exceptions to the rule should not allow indirect paths for covered individuals to hold improper investments. Any investment that a covered individual is prohibited from trading directly should also apply to investments held indirectly in an investment fund, trust, or similar entity, if the covered individual controls and directs those financial vehicles.
3. Delayed Compliance: Successful enforcement of a reform law requires a known and firm deadline for all covered individuals to comply. As a result, a proposal should not authorize ethics committees to waive or extend compliance deadlines beyond a very short period.
4. Meaningful Penalties: The \$200 penalty for reporting violations of the STOCK Act apparently exacerbated non-compliance because the penalties are not a deterrent. An effective reform bill will have significant and easily calculatable penalties.
5. Meaningful Disclosure: Reform proposals that include reporting requirements without specific rules facilitating accessibility will not enable the public or ethics enforcement bodies to easily detect non-compliance. Searchable, sortable, and downloadable filings are essential for meaningful disclosure.

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