November 22, 2022

Inspector General Sean O'Donnell
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

Submitted via email (OIG_Hotline@epa.gov)

Dear Inspector General O'Donnell:

Campaign Legal Center ("CLC") respectfully requests that the Environmental Protection Agency ("EPA") Office of Inspector General ("OIG") investigate deficiencies in the agency's ethics program. Specifically, the EPA has repeatedly allowed senior officials to own and trade stock in companies that appear to create conflicts of interest with their official duties.[1] Federal ethics rules provide that the EPA Administrator and the Designated Agency Ethics Official ("DAEO") are responsible for "maintaining an effective agency ethics program."[2] Pursuant to 5 C.F.R. § 2638.106, the OIG should investigate whether the EPA's ethics program has enabled public officials to have personal financial interests that violate the Ethics in Government Act.

Recent reporting revealed that during the past four years, the EPA ethics program permitted: the spouse of a senior advisor to the Administrator to make hundreds of transactions in energy and mining firms;[3] and an official to work on renewable fuel standards involving oil refineries while their spouse held a financial interest in oil and gas wells.[4] The agency's ethics

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[1] *Capital Assets: A Wall Street Journal Investigation*, Wall St. J. (Oct. 13, 2022), https://www.wsj.com/articles/capital-assets-11665673055?mod=bigtop-breadcrumb.
[2] 5 C.F.R. § 2638.107.
[3] Rebecca Ballhaus, et al., *Federal Officials Trade Stock in Companies Their Agencies Oversee*, Wall St. J. (Oct. 11, 2022), https://www.wsj.com/articles/government-officials-invest-in-companies-their-agencies-oversee-11665489653 (attached as Exhibit A).
[4] Brody Mullins, Rebecca Ballhaus, & Joe Palazzolo, *The $1 Million Amazon Conflict: Washington's Ethics Czars Struggle to Enforce Stock-Trading Laws*, Wall St. J. (Oct. 21,

officials are required to prevent actual conflicts of interest and the appearance of such conflicts caused by an official's financial interests. An investigation is needed to determine whether the ethics officials are complying with the requirements.

The EPA serves a vital role in Americans' lives by "protect[ing] human health and the environment."[5] The EPA Administrator and agency ethics officials are instrumental in maintaining public trust by enforcing ethics laws.[6] The public has a right to know that the officials tasked with protecting our environment are always acting in the public's interest, not in their own private financial interest.

The EPA Administrator and Agency Ethics Officials Are Required to Identify and Resolve Employee Conflicts of Interests

Under 5 C.F.R. § 2638.107, the EPA Administrator "is responsible for, and will exercise, personal leadership in, establishing and maintaining and effective agency ethics program and fostering an ethical culture in the agency."[7] As part of those responsibilities, the EPA Administrator designates "employees to serve as the DAEO and ADAEO . . . ."[8] Pursuant to 5 C.F.R. § 2634.605, a DAEO must examine employee financial disclosure reports to determine that "no interest or position disclosed on the report violates or appears to violate . . . [t]he [Ethics in Government] Act," or any other agency-specific rule which governs the filer.[9]

Pursuant to 5 C.F.R. § 2635.501, the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct"), officials are required to act with impartiality in performing official duties.[10] This includes instances in which an employee's involvement in a specific matter "would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."[11]

The Standards of Conduct also require employees, as part of their basic obligation to public service to "not hold financial interests that conflict with the conscientious performance of duty;"[12] and "not engage in financial transactions using nonpublic Government information or allow the improper

2022), https://www.wsj.com/articles/the-1-million-amazon-conflict-washingtons-ethics-czars-struggle-to-enforce-stock-trading-laws-11666360815 (attached as Exhibit B).

[5] *Our Mission and What We Do*, Env't Prot. Agency, https://www.epa.gov/aboutepa/our-mission-and-what-we-do.

[6] 5 C.F.R. § 2638.104.

[7] 5 C.F.R. § 2638.107.

[8] 5 C.F.R. § 2638.107(a)

[9] 5 C.F.R. § 2634.605(b)(2).

[10] 5 C.F.R. §§ 2635.501-503.

[11] 5 C.F.R. § 2635.502(a).

[12] 5 C.F.R. § 2635.101(b)(2).

use of such information to further any private interest."[13] They also prohibit employees from using public office for private gain.[14] Finally, officials should "avoid any actions creating the appearance that they are violating" these provisions.[15]

If an employee fails to prevent a conflict of interest or the appearance of a conflict of interest, DAEOs must take appropriate action to resolve the conflict under 5 C.F.R. § 2638.104(c)(6).[16] In addition, 5 C.F.R. § 2638.104(c)(8) requires DAEOs to carry out an effective financial disclosure program to assist employees in preventing the appearance of a conflict of interest.[17]

Pursuant to 5 C.F.R. § 2638.106, "[a]n agency's Inspector General has authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations."[18]

The EPA Repeatedly Allowed Officials to Own or Trade Stock in Companies Related to Their Official Duties

Several senior EPA officials owned stock in companies that created actual or perceived conflicts of interest with their official duties. The officials responsible for prohibiting these conflicts of interest, including the EPA Administrator and DAEO, apparently approved or ignored these ethics issues.

Specifically, EPA ethics officials have failed to stop these conflicts of interest and their appearance from occurring for at least four senior officials, despite a regulatory mandate to do so. The most striking examples of conflicts of interest at the EPA come by way of the agency's senior employees, which heightens the concern that widespread conflicts of interest have permeated the entire agency.

1. **Senior Advisor to the Administrator/Deputy Chief of Staff**: Michael Molina served as the as Senior Advisor to the Administrator from May 2018 until February 2019. He was then promoted to Deputy Chief of Staff, a job he held until January 2021.[19] His responsibilities included acting as

[13] 5 C.F.R. § 2635.101(b)(3).
[14] 5 C.F.R. § 2635.101(b)(7).
[15] 5 C.F.R. § 2635.101(b)(14).
[16] 5 C.F.R. § 2638.104(c)(6) directs DAEOs to take "appropriate action to resolve conflicts of interest, through recusals, directed divestitures, waivers, authorizations, assignments, and other appropriate means."
[17] 5 C.F.R. § 2638.104(c)(8).
[18] 5 C.F.R. § 2638.106.
[19] Ballhaus, *supra* note 3.

a "personal and confidential representative" of the EPA deputy administrator in matters involving the White House and Congress.[20]

- *Stock* – Mr. Molina's spouse purchased between $16,002 and $65,000 of stock in Cheniere Energy Inc., a major producer and exporter of liquefied natural gas, in May 2018. During his two and a half years at the EPA, Mr. Molina reported that his spouse made more than 100 trades in energy and mining companies, including in Duke Energy Corp., NextEra Energy Inc., and BP PLC.[21]

- *Conflict of Interest* – Mr. Molina's spouse made these trades while he served as a liaison between the EPA, White House, and Congress, a job that gave him tremendous access to information about developments in environmental regulations relating to energy. Per his job description, he was responsible for "review[ing] and coordinat[ing] sensitive reports, documents and other materials."[22] During Mr. Molina's tenure, the Trump Administration's EPA was working to increase the U.S.'s exports of liquefied natural gas.[23]

- *Ethics Program Deficiency* – According to the EPA, the ethics officials "counseled Mr. Molina on his ethics and financial disclosure obligations," and certified all his financial disclosure statements.[24] This suggests that the ethics officials did not see any actual or apparent conflicts of interest with the stock ownership. The ethics officials lapsed in their responsibilities if they did not flag these stocks as raising at least the appearance of a conflict of interest and recommend divestiture to avoid that appearance. Mr. Molina's senior position in an agency that was actively working on easing restrictions on liquified natural gas should have put ethics officials on high alert for conflicts of interest related to one of the country's leading producers of the resource. Not only did Mr. Molina fail to avoid the appearance of a conflict of interest; the DAEOs failed to detect that possible conflict and act.[25]

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[20] *Id.*
[21] *Id.*
[22] Ballhaus, *supra* note 3.
[23] *See, e.g.*, U.S. Dep't of Energy, *Trump Administration Secures American Energy Jobs, Natural Gas Exports* (Oct. 21, 2020), https://www.energy.gov/articles/trump-administration-secures-american-energy-jobs-natural-gas-exports; Susan Phillips, *'That Terrifies Me': Trump Rule Allows Natural Gas Transport By Rail In Dense Areas*, NPR (Dec. 29, 2020), https://www.npr.org/2020/12/29/950140412/that-terrifies-me-trump-rule-allows-natural-gas-transport-by-rail-in-dense-areas.
[24] Ballhaus, *supra* note 3.
[25] 5 C.F.R. § 2635.101(b)(14); *See* 5 C.F.R. § 2638.104(c)(6).

2. **Unnamed Official in EPA:** Reporting also mentioned an unnamed employee at EPA who worked on renewable fuel standards relating to oil refineries.

- *Stock* – The employee's spouse held a financial interest of between $35,007 and $175,000 in oil and gas wells.[26]

- *Conflict of Interest* – In 2021, the official worked on renewable fuel standards involving oil refineries. Renewable fuel standards require transportation fuel sold in the U.S. to contain a minimum volume of renewable fuels.[27] Oil refineries and importers are obligated to adhere to the renewable fuel standards determined yearly.[28]

- *Ethics Program Deficiency* – EPA permitted the ownership of the stock because the "interest of the United States Government in [the employee's] participation outweighs any concerns about [the employee's] impartiality."[29] However, a reasonable person likely would have required divesture or recusal given the possible impact of renewable fuel standards on refinery stock prices.

An Investigation is Needed to Determine Whether the EPA Administrator and Agency Ethics Officials Took Appropriate Action to Avoid Conflicts of Interest

The trades made by the EPA employees create at least the appearance of a conflict of interest. They were all high-ranking EPA officials who owned stock in companies that were directly affected by the actions their departments did or did not take.

Federal regulations clearly require the EPA Administrator and DAEO to ensure that an official does not have an interest that may create a conflict of interest, and to take action to resolve the appearance of a conflict if one is present.[30] The facts suggest that the ethics officials did not take appropriate action to resolve the appearance of conflicts of interest presented by these EPA employees and their stock trades, and even certified that these officials were in compliance with the law.[31]

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[26] Mullins, *supra* note 4.
[27] U.S. Dep't of Energy, *Renewable Fuel Standard*, https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA).
[28] Overview for Renewable Fuel Standard, Env't Prot. Agency, https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard
[29] Mullins, *supra* note 4.
[30] 5 C.F.R. § 2638.104(c)(6).
[31] *See, e.g.,* Ballhaus, *supra* note 3.

We request that your office investigate whether the EPA ethics program is implemented properly in compliance with financial disclosure requirements of 5 C.F.R. § 2638.104(c)(8).

Respectfully submitted,

____________/s/______________

Kedric L. Payne
Vice President, General Counsel, and
Senior Director, Ethics

____________/s/______________

Delaney N. Marsco
Senior Legal Counsel, Ethics

Exhibit A

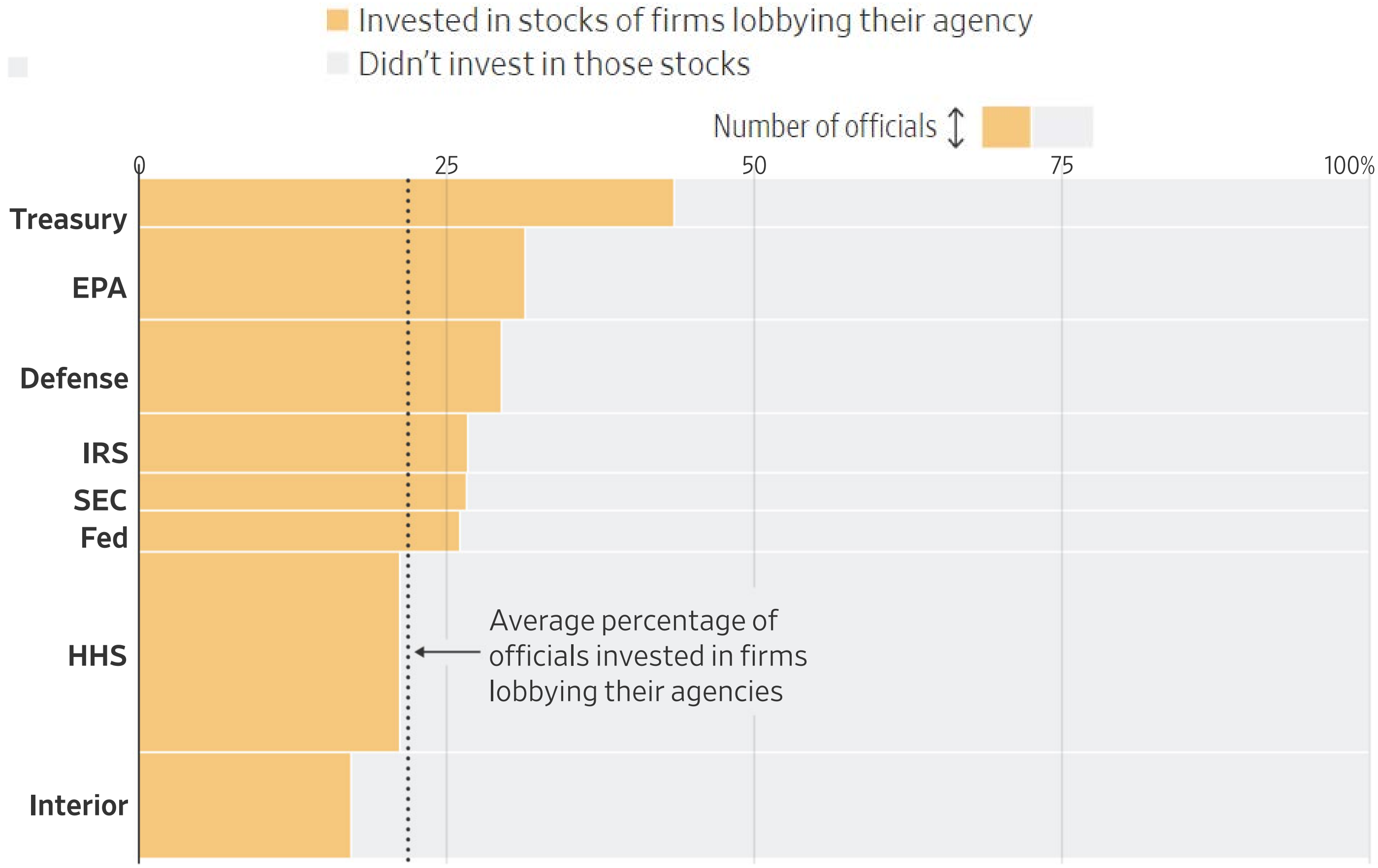
Thousands of officials across the government's executive branch reported owning or trading stocks that stood to rise or fall with decisions their agencies made, a Wall Street Journal investigation has found.

More than 2,600 officials at agencies from the Commerce Department to the Treasury Department, during both Republican and Democratic administrations, disclosed stock investments in companies while those same companies were lobbying their agencies for favorable policies. That amounts to more than one in five senior federal employees across 50 federal agencies reviewed by the Journal.

A top official at the Environmental Protection Agency reported purchases of oil and gas stocks. The Food and Drug Administration improperly let an official own dozens of food and drug stocks on its no-buy list. A Defense Department official bought stock in a defense company five times before it won new business from the Pentagon.

The Journal obtained and analyzed more than 31,000 financial-disclosure forms for about 12,000 senior career employees, political staff and presidential appointees. The review spans 2016 through 2021 and includes data on about 850,000 financial assets and more than 315,000 trades reported in stocks, bonds and funds by the officials, their spouses or dependent children.

Federal officials who filed public financial disclosures, 2016-21



Note: Holdings include those owned by officials or their immediate family members. Select agencies shown.

The vast majority of the disclosure forms aren't available online or readily accessible. The review amounts to the most comprehensive analysis of investments held by executive-branch officials, who have wide but largely unseen influence over public policy.

AMONG THE JOURNAL'S FINDINGS:

• While the government was ramping up scrutiny of big technology companies, more than 1,800 federal officials reported owning or trading at least one of four major tech stocks: Meta Platforms Inc.'s Facebook, Alphabet Inc.'s Google, Apple Inc. and Amazon.com Inc.

• More than five dozen officials at five agencies, including the Federal Trade Commission and the Justice Department, reported trading stock in companies shortly before their departments announced enforcement actions, such as charges and settlements, against those companies.

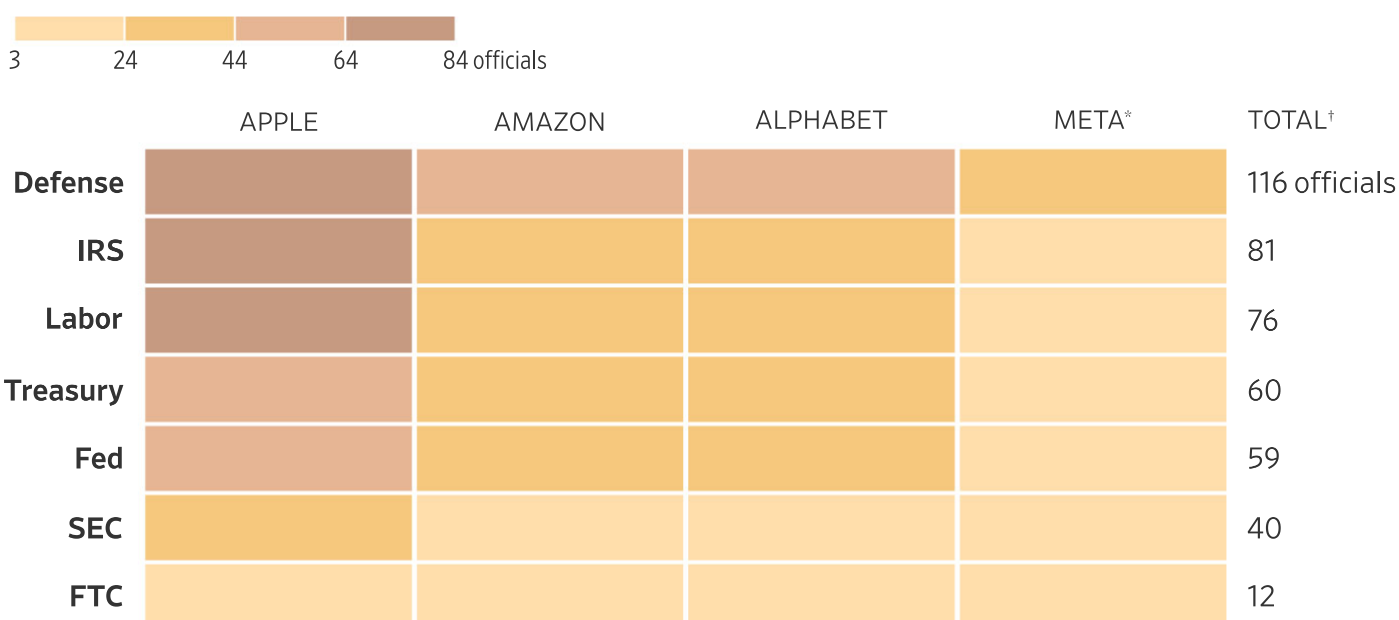
• More than 200 senior EPA officials, nearly one in three, reported investments in companies that were lobbying the agency. EPA employees and their family members collectively owned between $400,000 and nearly $2 million in shares of oil and gas companies on average each year between 2016 and 2021.

• At the Defense Department, officials in the office of the secretary reported collectively owning between $1.2 million and $3.4 million of stock in aerospace and defense companies on average each year examined by the Journal. Some held stock in Chinese companies while the U.S. was considering blacklisting the companies.

• About 70 federal officials reported using riskier financial techniques such as short selling and options trading, with some individual trades valued at between $5 million and $25 million. In all, the forms revealed more than 90,000 trades of stocks during the six-year period reviewed.

• When financial holdings caused a conflict, the agencies sometimes simply waived the rules. In most instances identified by the Journal, ethics officials certified that the employees had complied with the rules, which have several exemptions that allow officials to hold stock that conflicts with their agency's work.

Number of federal officials who reported owning specific tech stocks, 2016-21



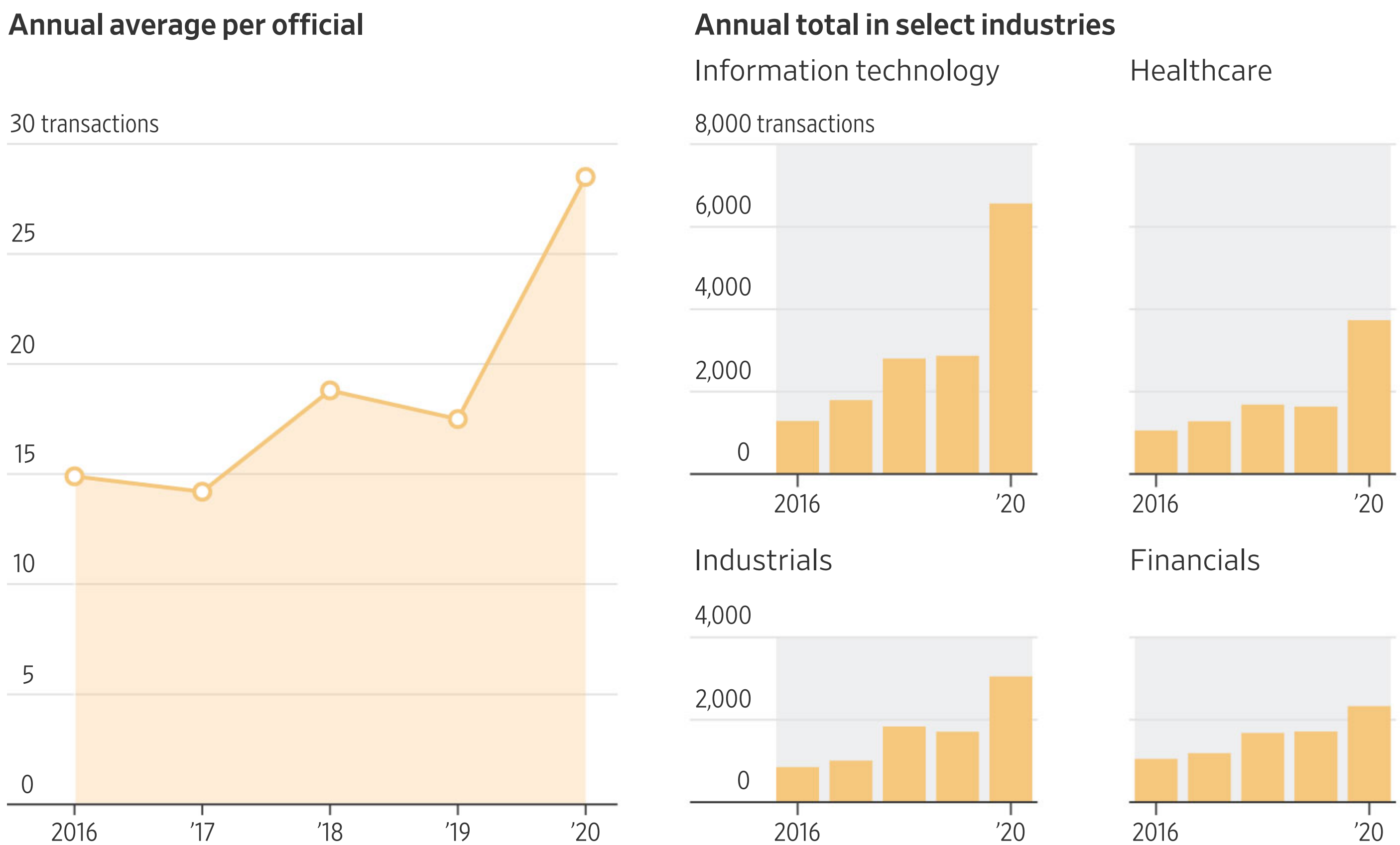
*Meta includes holdings listed for Facebook †The number of officials who own at least one of the four companies
Note: Select agencies shown

Federal agency officials, many of them unknown to the public, wield "immense power and influence over things that impact the day-to-day lives of everyday Americans, such as public health and food safety, diplomatic relations and regulating trade," said Don Fox, an ethics lawyer and former general counsel at the U.S. agency that oversees conflict-of-interest rules.

He said many of the examples in the Journal analysis “clearly violate the spirit behind the law, which is to maintain the public’s confidence in the integrity of the government.”

Some federal officials use investment advisers who direct their stock trading, but such trades still can create conflicts under the law. “The buck stops with the official,” said Kathleen Clark, a law professor and former ethics lawyer for the Washington, D.C., government. “It’s the official who could benefit or be harmed.... That can occur regardless of who made the trade.”

Stock transactions reported by federal officials



Note: Excludes agencies that haven’t provided reports for all years. Only includes officials who reported at least one stock transaction.

Investing by federal agency officials has drawn far less public attention than that of lawmakers. Congress has long faced criticism for not prohibiting lawmakers from working on matters in which they have a financial interest. The rules were tightened in 2012 by the Stop Trading on Congressional Knowledge (STOCK) Act, passed following a series of Journal articles on congressional trading abuses.

Journal reporting last year on federal judges, revealing that more than 130 jurists heard cases in which they had a financial interest, led to a law passed this May requiring judges to promptly post online any stock trades they make.

This article launches a Journal series on the financial holdings of senior executive-branch employees and, in some instances, conflicts of interest hidden in their disclosure forms.

U.S. law prohibits federal officials from working on any matters that could affect their personal finances. Additional regulations adopted in 1992 direct federal employees to avoid even an appearance of a conflict of interest.

The 1978 Ethics in Government Act requires senior federal employees above a certain pay level to file annual financial disclosures listing their income, assets and loans. The financial figures are reported in broad dollar ranges.

A view of Washington, D.C.

Most officials' financial disclosures are public only upon request. The Journal obtained disclosure forms by filing written requests with each federal agency.

Some made it difficult to obtain the forms, and several agencies haven't turned over all of them. The Department of Homeland Security hasn't provided any financial records. (See an accompanying article on methodology.)

Under federal regulations, investments of $15,000 or less in individual stocks aren't considered potential conflicts, nor are holdings of $50,000 or less in mutual funds that focus on a specific industry. The law doesn't restrict investing in diversified funds.

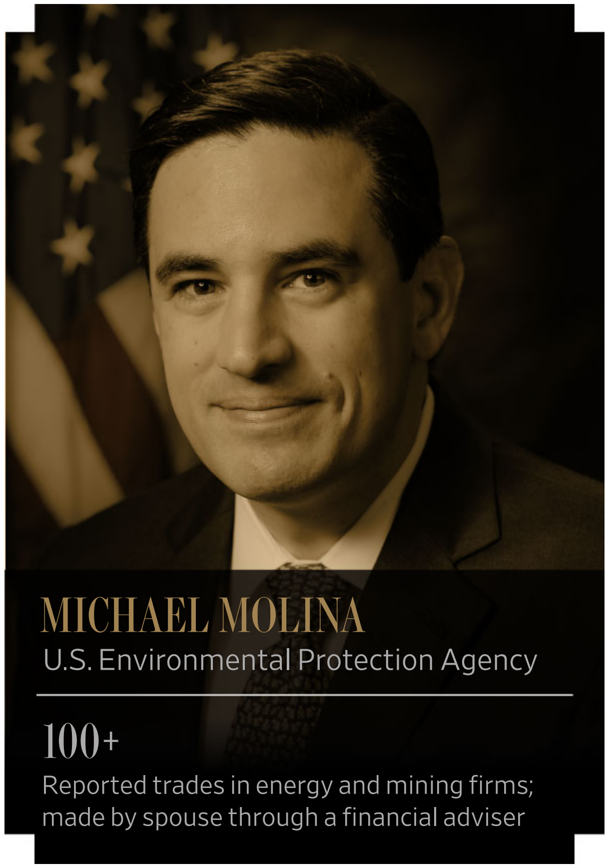
Some federal officials, especially those at the most senior levels, sell all their individual stocks when they enter the government to avoid the appearance of a conflict.

The Office of Government Ethics, which oversees the conflict-of-interest rules across the executive branch, is "committed to transparency and citizen oversight of government," said a spokeswoman. She said the agency publishes financial disclosures of the most senior officials on its website, along with instructions for getting disclosures from other agencies.

At the EPA, an official named Michael Molina and his husband owned oil and gas stocks while Mr. Molina was serving as senior adviser to the deputy EPA administrator, according to agency records. Such companies stood to benefit from former President Donald Trump's pledge to promote energy production by rolling back environmental regulations and speeding up projects.

Mr. Molina's job gave him a front-row seat to deliberations about environmental regulations relating to energy. He "reviews and coordinates sensitive reports, documents and other materials," said his job description, provided by the EPA in response to a public-records request. He served as a "personal and confidential representative" of the EPA deputy administrator in communications with the White House and Congress, according to the job description.

In the month he started the job, May 2018, Mr. Molina reported purchases totaling between $16,002 and $65,000 of stock in Cheniere Energy Inc., a leading producer and exporter of liquefied natural gas. He reported adding Cheniere stock five additional times over the next year. At the time, senior EPA officials were encouraging the production of natural gas in the U.S.



The trades were made through a financial adviser in his husband's account, according to emails and disclosure forms reviewed by the Journal. Mr. Molina was required to enter the trades into the EPA's electronic-disclosure system within 30 days of receiving notice of the transactions, under the 2012 STOCK Act.

Officials are responsible for ensuring that their holdings don't conflict with their work, regardless of whether they use a financial adviser. The Journal's review of disclosures shows that many federal officials tell their financial advisers to avoid investing in certain industries or to shed specific stocks.

In an interview on Sept. 28, Mr. Molina indicated that he didn't know much about the energy trades. "I can say this on the record: I didn't even know what Cheniere was until 36 hours ago," he said.

In February 2019, Mr. Molina was promoted to EPA deputy chief of staff. He attended scores of meetings on environmental issues, reviewed matters for the then-head of the agency, Andrew Wheeler, and was sometimes asked his opinions in meetings, according to records reviewed by the Journal and people familiar with the matter.

In about 2½ years at the EPA, Mr. Molina reported more than 100 trades in energy and mining companies including Duke Energy Corp., NextEra Energy Inc. and BP PLC. About 20 of the transactions were for between $15,001 and $50,000 each, according to Mr. Molina's disclosures. Those trades also were made for his husband by his financial adviser.

In the month he was promoted, February 2019, his husband made several stock purchases through the adviser in Cheniere and Williams Cos., which builds and operates natural-gas pipelines.

Two months later, Mr. Trump said the EPA would propose new rules to help the gas industry.

After publication of this article, Mr. Molina said in a written statement: "Neither I nor my husband knew about or directed any of these trades. Our financial advisor had complete discretion to trade in the account, and these same trades were made on behalf of a 'pool' of several dozen clients—not for us individually."

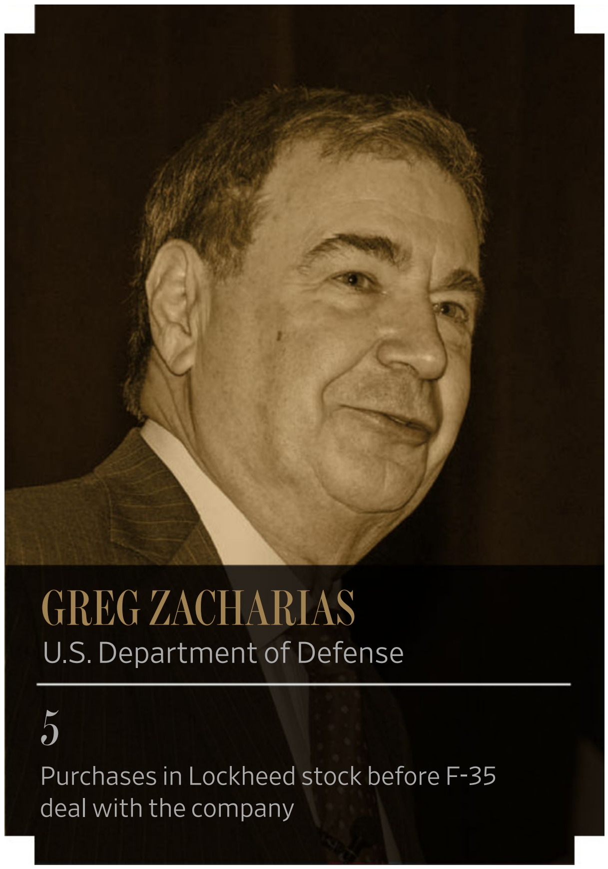
Mr. Molina left the EPA in January 2021. An EPA spokeswoman said the agency's ethics office "counseled Mr. Molina on his ethics and financial disclosure obligations." EPA officials signed Mr. Molina's financial-disclosure statement in each year he worked at the agency, an indication they believed he was in compliance with the conflict-of-interest rules.

U.S. law leaves it to individual agencies to decide whether they need rules to beef up the federal conflict-of-interest law. The Federal Energy Regulatory Commission explicitly bars its officials from investing in natural gas, interstate oil pipeline, utility and other energy firms.

The EPA doesn't have additional agencywide rules. A spokeswoman for the EPA said its officials may invest in energy companies so long as they aren't working on policies that could affect their investments. Mr. Molina's boss told ethics officials that he had no influence over public policy matters.

Greg Zacharias was the chief scientist for the Defense Department's director of operational test and evaluation until last fall. He repeatedly bought stock in a defense contractor in the weeks before the Pentagon announced it would pay the company $1 billion to deliver more F-35 combat jets, while his division was overseeing testing of those planes.

Mr. Zacharias made five purchases of Lockheed Martin Corp. stock, collectively worth $20,700, in August and September 2021, according to figures he provided. On Sept. 24, 2021, the Defense Department said it was buying 16 F-35 jets from Lockheed for the Air Force and Marine Corps. Lockheed shares closed up 1.1% the next trading day. The stock made up a small part of Mr. Zacharias's portfolio.



Mr. Zacharias's office had been involved for years in overseeing testing of combat jets, and testing officials regularly met with the Pentagon's F-35 Joint Program Office and with Lockheed directly, according to former defense officials. Mr. Zacharias, who provided scientific and technical expertise on how to assess the effectiveness of weapons systems, didn't attend those meetings.

In an interview, Mr. Zacharias said he wasn't involved in decisions on contracting and had no inside knowledge ahead of the contract, beyond the public information that the Pentagon remained committed to the F-35 program. He acknowledged that his role could have allowed him to access information about specific weapons systems. "I could always walk downstairs and ask them how it's going. But that really wasn't an interest of mine," he said, adding that his focus was emerging technologies.

Mr. Zacharias said he wanted to buy stock in defense contractors, including Lockheed, because of their dominance of the defense market. He said he didn't pay much attention to the timing of trades, adding: "I'm just the pipe-smoking science guy."

The Lockheed investments were among more than 50 trades Mr. Zacharias reported in about a half-dozen defense contractors in 2020 and 2021, according to the Journal's analysis.

"I apologize that things don't look good on the buy side," Mr. Zacharias added. Of the trades in defense contractors, he said: "I just decided that would be a good investment at the time."

He said ethics officials didn't raise concerns about his trades in Lockheed or any of the other defense contractors he reported investments in, beyond periodically sending a letter reminding him not to take part in contract negotiations involving the companies. He said ethics rules could be "a little tighter."

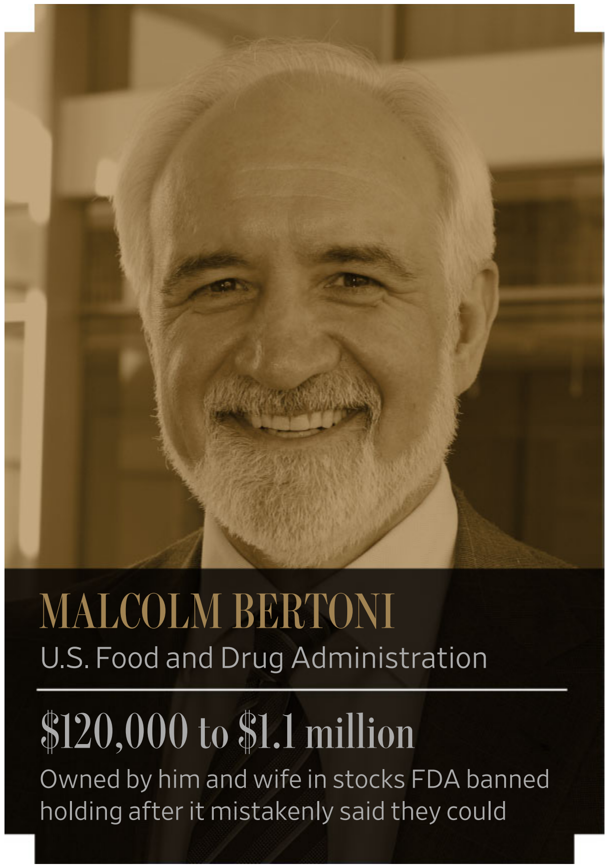
A Pentagon spokeswoman said Mr. Zacharias "worked with his supervisor and ethics officials to implement appropriate disqualifications." She said the department requires supervisors to screen their employees' disclosures for conflicts in addition to the review conducted by ethics officials. Ethics officials certified that he complied with the law.

Some conflicts of interest stemmed from agencies' misunderstanding of their own rules.

The FDA prohibits employees, their spouses and their minor children from investing in companies that are "significantly regulated" by the agency. The FDA maintains an online list of the prohibited companies for officials to check.

An FDA official named Malcolm Bertoni disclosed that he and his wife owned stock in about 70 pharmaceutical, diagnostics, medical device and food companies regulated by the agency in 2018 and 2019, including drug giants Pfizer Inc. and Takeda Pharmaceutical Company Ltd. All were on the prohibited list.

Mr. Bertoni, a career executive, ran the FDA's planning office from 2008 to 2019, researching and analyzing agency programs. Most of the investments he reported were in the range of $1,001 to $15,000, but his 2019 disclosure showed he and his wife owned between $15,001 and $50,000 in each of Allergan PLC, Sanofi SA, Takeda and Zoetis Inc.



Mr. Bertoni's lawyer, Charles Borden, said Mr. Bertoni and his wife held these stocks despite the bans because they got bad advice from the FDA ethics office.

The stocks were in accounts managed by professionals who had discretion to trade without the knowledge of Mr. Bertoni or his wife, the attorney said. He said that years ago, Mr. Bertoni asked the ethics office how he should treat the accounts and was told they fell into an exception to the rules for mutual funds.

They did not. The ethics office discovered its error in a routine review of Mr. Bertoni's forms in early 2019, Mr. Borden said. "The FDA's Office of Ethics and Integrity took full responsibility for the inaccurate guidance given to Mr. Bertoni," the attorney said in an email.

After considering the tax and retirement-planning consequences of having to sell the stocks, and other personal factors, Mr. Bertoni chose to retire instead, his lawyer said.

An FDA spokesman said Mr. Bertoni was recused from matters involving the companies once he reported his family's holdings in them. The spokesman declined to comment on the events leading up to his departure.

"The FDA takes seriously its obligation to help ensure that decisions made, and actions taken, by the agency and its employees, are not, nor appear to be, tainted by any question of conflict of interest," said the spokesman.

When federal officials are found to have violated conflicts rules and are referred to criminal authorities, they often receive light punishment if any, according to records reviewed by the Journal.

Valerie Hardy-Mahoney, a lawyer who runs the National Labor Relations Board's Oakland, Calif.-based regional office, held Tesla Inc. shares as her office pursued complaints against the auto maker and Chief Executive Elon Musk and considered whether to file more.

Members of the labor relations board, appointed by the president, review decisions made by agency administrative courts. Ms. Hardy-Mahoney acts as a prosecutor in those courts. She is a career employee who joined the NLRB in the 1980s.

Ms. Hardy-Mahoney's office filed complaints against Tesla in 2017 and 2018. She reported holding Tesla shares worth $1,001 to $15,000 in 2019 while those cases were ongoing. The next year, her disclosure form shows, she owned Tesla shares valued at between $30,002 and $100,000 in E*Trade accounts. She purchased two chunks of Tesla stock in August 2020, each valued at between $1,001 and $15,000, according to her disclosure form.

The NLRB ruled in March 2021 that Tesla had illegally fired an employee involved in union organizing and that Mr. Musk, in a tweet, had coerced employees by threatening them with the loss of stock options if they unionized. It ordered Tesla to reinstate the employee and Mr. Musk to delete the tweet. Tesla has disputed the findings and has appealed the decision to a federal appeals court.

Ms. Hardy-Mahoney's office has in other cases rejected charges against Tesla filed by employees, including allegations her office received in 2020, after she bought more Tesla stock, according to an NLRB case docket. An employee who worked at the Tesla Gigafactory alleged that the company interfered with workers' rights. Ms. Hardy-Mahoney's office dismissed the charge in January 2021.

Last November, an NLRB ethics official declined to certify that Ms. Hardy-Mahoney was in compliance with ethics laws and regulations, according to her disclosure form.

The NLRB's inspector general said in a report that his office had substantiated an allegation of violating federal law by participating in a matter in which an employee had a financial interest. An agency spokeswoman confirmed that the report involved Ms. Hardy-Mahoney.

The report said that the matter was referred to the local U.S. attorney's office, but that federal prosecutors declined to take it. The report said the subject of the report—Ms. Hardy-Mahoney—received additional training regarding financial conflicts of interest and the case was closed.

Ms. Hardy-Mahoney declined to comment. She recused herself from Tesla cases last year and now is in compliance with conflict-of-interest rules, the NLRB spokeswoman said.

At the Federal Reserve, an economist named Min Wei reported trades in stock of a marijuana company after the Fed sought clarity about whether banks could serve cannabis businesses. A Fed spokeswoman said the trades were made by Ms. Wei's husband.

In June 2018, Fed Chairman Jerome Powell said publicly that the issue put the central bank "in a very, very difficult position." Even though its mandate has nothing to do with marijuana, Mr. Powell said, he "just would love to see" a clear policy on the matter.

Because Mr. Powell didn't dismiss the idea, investors saw the comment as bullish for cannabis companies such as Tilray Brands Inc., a leading producer. Tilray went public the following month, and its stock skyrocketed.

In early September 2018, Ms. Wei's husband bought between $480,005 and $1.1 million of Tilray shares, according to her disclosure form and the Fed. The stock continued to surge.

It then became clear that neither the Fed nor the Treasury would take action; it would be up to Congress, with no quick fix in sight. In October, shares of cannabis companies began to fall.

Ms. Wei's husband sold his Tilray stake in five sales in early October. By then, the shares had nearly doubled, worth between $800,005 and $1.75 million, according to Ms. Wei's disclosure.

The Fed imposed new restrictions this year on investing by bank presidents, Fed board governors and senior staff after the Journal reported questionable trading by presidents of two Fed banks, who subsequently resigned. The new rules prohibit trading individual stocks and bonds and require that trades, even in mutual funds, be preapproved and prescheduled.

The new Fed rules for top people don't apply to Ms. Wei because she isn't senior enough. The trades were "permissible then and are permissible now," said the Fed spokeswoman.

Ms. Wei referred questions to the Fed. The spokeswoman said Ms. Wei had “no responsibility or involvement with policy decisions related to bank supervision or the provision of banking services.” She said the Fed “did not assert any interest at the time in the Federal Reserve resolving the conflict between federal and state law in the area of cannabis companies and their access to banking services, but rather pointed out that the appropriate resolution of those issues should come from the Congress.”

Ethics lawyers said trading such large amounts of an individual stock while the Fed is publicly addressing an issue creates an appearance problem, even if Ms. Wei’s trades didn’t violate conflicts rules.

The Federal Reserve building in Washington.

Roughly seven dozen federal officials reported more than 500 financial transactions apiece over the six-year period analyzed by the Journal. Some traded a single stock frequently, while others reported hundreds or even thousands of trades across a broad array of stocks, bonds and funds.

In one instance, the Commodity Futures Trading Commission permitted short sales contrary to one of the CFTC’s own rules.

The financial disclosure of Lihong McPhail, an economist at the CFTC, showed the most trading reported by any federal official in the Journal's review. Her husband made more than 9,500 trades in 2020—an average of about 38 each trading day, according to her disclosure form and the CFTC.

About one-third of those reported 2020 trades—2,994—involved shorting stocks, or betting on a fall in their price. They ranged from Amazon to Ford Motor Co. to Zoom Video Communications Inc. The CFTC said all the short sales were made by her husband.

Over the years, to safeguard the CFTC's integrity, Congress imposed tighter restrictions than at other agencies on employees' investing. In amending the Commodity Exchange Act, Congress also declared that any breach by a CFTC employee of an investment rule set by the commission could be punishable by up to a $500,000 fine and five years in prison. The CFTC's role doesn't include regulating stocks, but in 2002, the agency adopted a rule banning short selling by its employees and their families.

Nonetheless, a CFTC ethics official approved short selling by Ms. McPhail's husband, Joseph McPhail, a CFTC spokesman said, fearing that the commission "could possibly be sued by the employee if we said no." The spokesman said the ethics office believed the regulatory provision exceeded the commission's statutory authority.

Mr. McPhail referred questions to the CFTC. The CFTC spokesman said he didn't speak for the McPhails. Ms. McPhail didn't respond to requests for comment.

At the CFTC, "employees are required by statute and by regulations to adhere to strict ethical standards and to disclose personal investments to ensure that the work of the CFTC to oversee markets is free from any conflict of interest," said the agency spokesman. "In this instance, several years ago the employee sought advice regarding their spouse's investments and received approval from career ethics counsel."

Mr. McPhail was a senior policy analyst at the Federal Deposit Insurance Corp. until September 2021. In a written statement, that agency said: "The FDIC expects our employees, as public servants, to devote their time and efforts to our mission to maintain stability and public confidence in the nation's banking system."

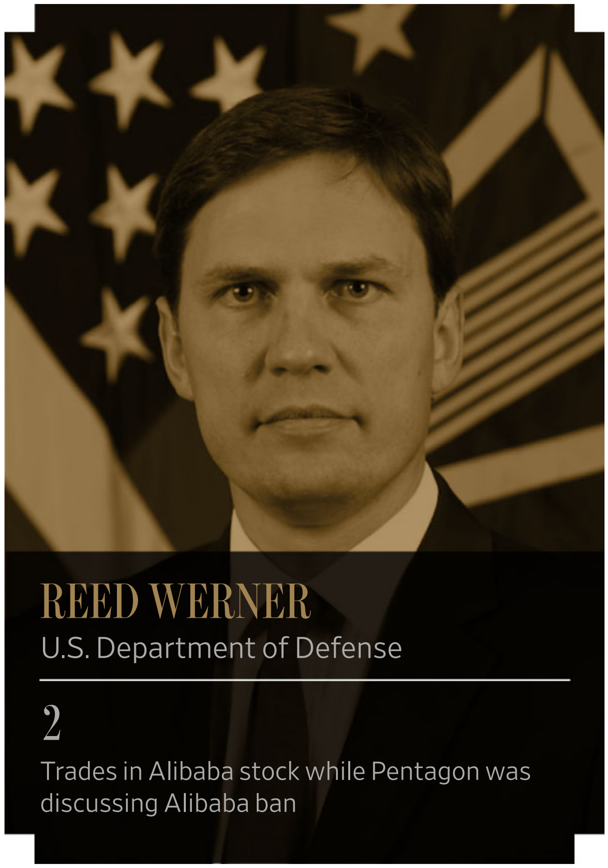
The Defense Department was among the federal agencies with the most officials who invested in Chinese stocks, even as the Pentagon in recent years has shifted its focus to countering China.

Across the federal government, more than 400 officials owned or traded Chinese company stocks, including officials at the State Department and White House, the Journal found. Their investments amounted to between $1.9 million and $6.6 million on average a year.

Reed Werner, while serving as deputy assistant secretary of defense for south and southeast Asia, in December 2020 reported a purchase of between $15,001 and $50,000 of stock in Alibaba Group Holding Ltd.

At the time, discussions were under way at the Pentagon over whether to add the Chinese e-commerce giant to a list of companies in which Americans were barred from investing because of their alleged ties to the Chinese government.

Defense and State officials pushed to add the company to the blacklist, while the Treasury feared this would have wide capital-markets ramifications. Mr. Werner had been involved over a period of months in some discussions about what companies to add to the blacklist, former defense officials said.



Nearly two weeks after the Alibaba purchase, the Treasury updated its list and didn't include Alibaba. The company's stock rose 4% that day.

Three days later, Mr. Werner's financial-disclosure form shows a sale of between $15,001 and $50,000 of Alibaba stock.

The sale came a day before a meeting where defense officials planned to press their case for adding Alibaba and two other companies to the blacklist. Then-Treasury Secretary Steven Mnuchin ultimately blocked the effort.

In an interview, Mr. Werner acknowledged he was involved in discussions about adding Alibaba to the list, saying he attended a meeting in late 2020 and was on an email chain about the matter. He said that he wasn't involved in blacklist discussions during the period the Alibaba trades were made, and that the trades resulted in a $1,556.51 gain. He declined to answer further questions.

The Pentagon spokeswoman said that the officials who formally compiled and approved the blacklist didn't own stock in affected companies, and that supervisors and ethics officials review reports for holdings that could conflict with an employee's duties. Ethics officials certified that Mr. Werner complied with the law.

At least 15 other defense officials in the office of the secretary reported that they or family members owned or traded Alibaba between 2016 and 2021, including Jack Wilmer, who served as senior cybersecurity adviser at the White House and then as the Pentagon's top cybersecurity official.

Between 2018 and 2020, Mr. Wilmer reported at least six trades, which he said totaled around $10,000, in the Chinese companies Alibaba, search-engine giant Baidu Inc. and China Petroleum & Chemical Corp.

Mr. Wilmer said that a money manager handles his trades and that he didn't direct any of those transactions. He said he wasn't involved in policy-making decisions that would have affected those stocks and said he didn't see a conflict between his job and investments. He left the government in July 2020, before Mr. Trump signed the executive order barring Americans from investing in certain Chinese companies.

Within federal agencies, ethics officials generally don't consider it their job to investigate whether employees are making stock trades based on information they glean from their government jobs. Ethics officials' ability to spot potential conflicts is limited because they usually don't know what employees are working on.

When ethics officials do see a potential violation, they can refer it to their agencies' inspectors general, who refer cases on to the Justice Department if they find evidence of wrongdoing.

A Journal review of inspector general reports showed that the offices rarely investigated financial conflicts. As more federal officials invest in the stock market, ethics officials say they have less time to look into possible wrongdoing. When findings have been referred to the Justice Department, prosecutors in most cases have declined to open an investigation.

One matter at the Securities and Exchange Commission involved an official who failed to report or clear his and his spouse's financial holdings and trades for at least seven years. The trades included stocks that SEC employees and their families weren't allowed to own, some of which the SEC inspector general determined posed a conflict with the official's work, according to a report the inspector general provided to Congress.

When a U.S. attorney declined to prosecute, the SEC's inspector general reported the findings to SEC management. The unnamed official ultimately was suspended for seven days and gave up 16 hours of leave time.

The SEC declined to comment. A Justice Department spokeswoman declined to comment on individual investigations but said: "We take all inspector general referrals seriously and bring charges when the facts and law support them, consistent with the principles of federal prosecution."

Most federal agencies don't have protocols to verify that officials' financial disclosures are complete. One Agriculture Department official disclosed wheat, corn and soybean futures and options trades. The Journal discovered that he had made additional large trades in corn and soybean futures in 2018 and 2019 and omitted them from his reports.

The official, Clare Carlson, who is no longer at the USDA, said that he tried to be scrupulous in his disclosures, and that the omissions were honest mistakes. The Agriculture Department declined to comment.

At the EPA, Mr. Molina's financial-disclosure reporting caught the attention of ethics officials.

The conflict-of-interest rules say executive-branch employees may not "participate personally and substantially" in matters that have a "direct and predictable effect" on their investments and those of family members.

When the ethics officials contacted Mr. Molina about energy stocks he reported on his forms, they were told he didn't have any influence over environmental policy.

His "duties are administrative in nature," his boss, the EPA's chief of staff at the time, told the ethics officials. "He provides logistical support to the principal but does not participate personally and substantially in making any decisions, recommendations or advice that will have any direct or substantial effect" on his financial interests, the chief of staff said, according to Mr. Molina's financial disclosure.

In his time at the EPA, Mr. Molina clashed with ethics officials. Many of his financial disclosure reports were inaccurate and tardy, according to EPA emails reviewed by the Journal. At one point, he didn't file accurate monthly trading disclosures for 12 months, according to the EPA emails. Mr. Molina reported the stock trades on his annual financial reports, as required.

The EPA headquarters in Washington.

Ethics officials said they contacted Mr. Molina "scores" of times to press him to file timely reports, according to the emails reviewed by the Journal.

In one email, a senior ethics official said his office had "provided you with at least 3-5 times more personal assistance than for any other agency employee, yet the required ethics reports were still late."

Mr. Molina told EPA officials that he initially didn't know he was supposed to complete regular stock-trading reports. He later struggled to keep up with the EPA's electronic-disclosure system, according to the emails reviewed by the Journal.

In September 2020, the EPA fined Mr. Molina $3,200 for numerous failures to disclose stock trades to the agency on time. Mr. Molina refused to pay.

"We have never before had an employee refuse to pay the late fee," wrote one ethics officer in an email to Mr. Molina on Oct. 21, 2020, "so I will have to inquire about how to commence garnishment proceedings."

The next month, Mr. Molina accused ethics officials of discriminating against him. "I feel that I am being targeted and have been asked to report more than anyone else," he wrote in a Nov. 3, 2020, email.

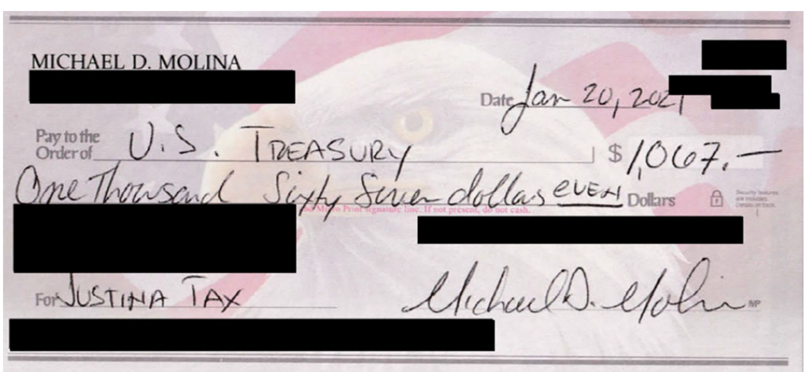
"If the intent of these filings is to curb any corruption or misbehavior," Mr. Molina wrote, the EPA should open an investigation. "I believe that paying such an outrageous fine would be an admission that I have done something wrong in this regard."

Ethics officials didn't investigate Mr. Molina's trades or refer the matter to internal investigators.

On the evening of Jan. 19, 2021, Mr. Molina's final day working for the government, EPA ethics officials offered to end the matter if he paid a discounted fine of $1,067.

Mr. Molina wrote out a personal check to "U.S. Treasury" and sent it to officials in the EPA's ethics office, including to Justina Fugh, an official with whom he had clashed.

In the memo line of his check, Mr. Molina wrote: "Justina tax."



EPA official Michael Molina paid a fine for late disclosures of stock trades. The memo line refers to a dispute with EPA ethics official Justina Fugh. (Redactions by the EPA.)

—Coulter Jones contributed to this article.

—A color filter has been used on photos.

—Design by Andrew Levinson.

—Graphics by Rosie Ettenheim and Elizaveta Galkina.

—Photographs by Eric Lee for The Wall Street Journal.

—Portrait Photo Sources: Environmental Protection Agency (Michael Molina); William Birchfield/U.S. Air Force (Greg Zacharias); Michael J. Ermarth/Food and Drug Administration (Malcolm Bertoni); National Labor Relations Board (Valerie Hardy-Mahoney); Federal Reserve (Min Wei); Commodity Futures Trading Commission (Lihong McPhail); Department of Defense (Reed Werner)

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Appeared in the October 12, 2022, print edition as 'U.S. Officials Trade Stocks Of Firms Agencies Oversee'.

Exhibit B

Mark Wu held more than $1 million of Amazon.com Inc. stock when President Biden tapped him to help craft a trade policy that would benefit U.S. technology companies and online retailers.

Ethics officials at the Office of the U.S. Trade Representative said they gave Mr. Wu two options: Get rid of the stock or recuse himself from digital trade issues.

He did neither.

For several months, Mr. Wu continued working on the trade matter while keeping the shares. He had "not followed the requirements," the U.S. Trade Representative's chief of staff told him in a June 2021 phone call, an email describing the call shows.

Eventually, Mr. Wu quit, citing family issues. He kept his Amazon stock.

Mr. Wu said he didn't work on trade issues specific to Amazon and left the government when the restrictions became too much of a burden on his family.

The U.S. has a law aimed at preventing the nation's thousands of obscure but powerful federal officials from using their influence on regulations, policies and investigations to benefit themselves.

With penalties up to $50,000 and five years in prison, the law is supposed to ensure that officials in the executive branch don't work on any matter that could affect their personal finances.

It doesn't. It has exceptions. Violations often go unpunished. When a problematic holding is identified, if the official resists selling it, the rules often are waived. The result is a system that largely relies on government employees to police their own stock investing.

A Wall Street Journal investigation revealed how more than 2,600 federal officials invested in companies that stood to benefit from their agencies' work from 2016 through 2021. The Journal reviewed annual financial disclosure reports filed for those years by about 12,000 senior executive-branch officials at 50 federal agencies, from career employees to political staff to presidential appointees.

The investigation found that some federal officials received waivers from conflict-of-interest rules because they were considered too important in a particular job. In other cases, officials were permitted to keep holdings because they weren't large enough to be a problem under the law. Owning $15,000 or less in a stock isn't considered a conflict.

The Federal Energy Regulatory Commission in Washington.
PHOTO: ERIC LEE FOR THE WALL STREET JOURNAL

The Federal Energy Regulatory Commission allowed an official who reported a financial interest of between $50,001 and $100,000 in a hydroelectric company to work as director of the agency's hydropower administration and compliance division.

The Environmental Protection Agency in 2021 let an official work on renewable fuel standards involving oil refineries while his wife held a financial interest of between $35,007 and $175,000 in oil and gas wells. In a letter provided in response to a public-records request, the EPA stated that the official didn't have a financial conflict and that the "interest of the United States Government in your participation outweighs any concerns about your impartiality."

The EPA said its employees follow the rules. FERC said the hydropower official, who left in 2017, had a passive interest in the facility and was recused from any matters that could affect the interest.

Federal agencies have ethics officials who check compliance, but they often lack the tools to investigate potential conflicts of interest. Instead, they primarily focus on whether required financial disclosure forms are consistent and timely.

Ethics officials typically consider themselves legal advisers to employees more than enforcers, often referring to those whose reports they review as “clients,” former ethics officials say.

On Capitol Hill, Congress lets lawmakers own stock in companies they help oversee because, its rules say, members shouldn’t be divorced from the economic realities of their constituents. Congress has no recusal requirement, on the notion that such a rule would at times deprive constituents of a voice in the legislature.

The executive branch doesn’t adopt such reasoning. Its officials are required to avoid any financial conflict of interest by selling a stock that poses one, by abstaining from matters affecting their holdings—or by obtaining an exemption.

In 2020, ethics officials at the Office of the U.S. Trade Representative, or USTR, noticed that Michael Nemelka, a new trade adviser, owned a stake worth roughly $2.6 million in Sanuwave Health Inc., a company that uses energy waves to heal injuries.

The ethics officials said this could conflict with Mr. Nemelka’s work as a deputy U.S. trade representative in charge of global trade policy for intellectual property, industrial competitiveness and several other matters. In his role negotiating trade agreements, he wouldn’t be allowed to work on policy that could impact Sanuwave or its rivals in the medical device or pharmaceutical industry.

They recommended Mr. Nemelka get rid of the shares.

He didn't want to, "because he considers this investment to be the future financial nest egg for his family," according to an email from an ethics official to then-U.S. Trade Representative Robert Lighthizer that was reviewed by the Journal.

Michael Nemelka appearing in 2020 before a Senate committee weighing his nomination as deputy United States Trade Representative.

PHOTO: ROD LAMKEY/CNP/ZUMA PRESS

Mr. Nemelka said he sold other stocks to avoid financial conflicts, but said it wouldn't be possible to sell the roughly 9 million Sanuwave shares without hurting the company's stock price. "It was an illiquid penny stock," he said in an email.

Mr. Nemelka sought to be recused from working on policy issues related to Sanuwave while keeping the shares. He told ethics officials he could instruct his assistant to make sure he didn't see any materials that might lead to his working on a matter affecting the company.

"I am not sure how this is going to work," one USTR ethics officer wrote to another, according to emails they exchanged that were reviewed by the Journal. "How is his assistant going to determine whether he can participate?"

Janice Kaye, the senior ethics counsel at the USTR, wrote to the other ethics official: "I am still very wary about this."

She sought advice from Mr. Lighthizer, telling him that numerous recusals might hurt Mr. Nemelka's ability to be effective in trade negotiations. Since 2000, she wrote, no senior USTR official "has been permitted to retain this kind of stock interest."

Ultimately, Mr. Nemelka was permitted to keep the Sanuwave shares so long as he didn't work on issues that related to the company, a decision made at a level above the ethics officials.

Mr. Nemelka said the recusal "never affected my ability to perform my duties."

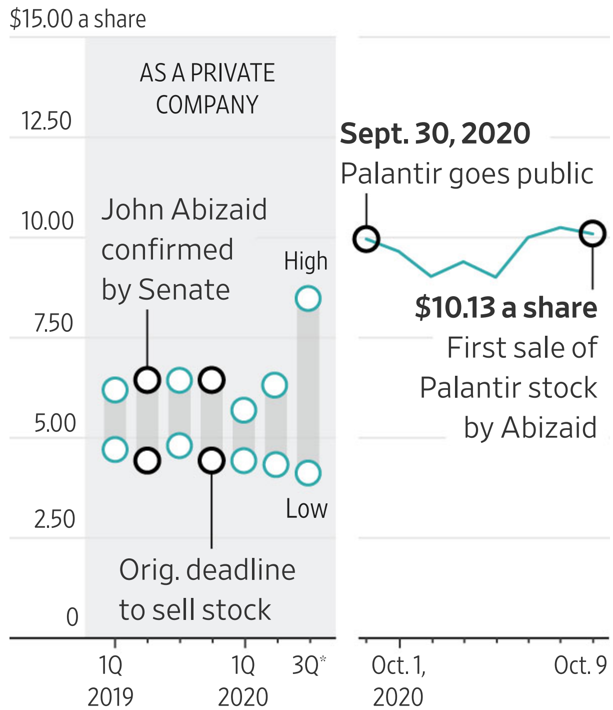
A USTR spokesman declined to comment on Mr. Nemelka. Ms. Kaye didn't respond to requests for comment.

When John Abizaid, a retired Army general and former head of the Central Command, was nominated in November 2018 to be ambassador to Saudi Arabia, he owned nonpublic shares in Palantir Technologies Inc., a data-mining company that does business with the U.S. government. At the time, the company was discussing going public the following year, the Journal reported.

An ethics agreement Mr. Abizaid signed shows that he promised to get rid of his shares in the private company within 180 days of his April 2019 confirmation.

More than six months after he was supposed to have sold them, he still held them, according to a financial disclosure form Mr. Abizaid signed in April 2020.

Palantir stock price during Abizaid’s tenure



*3Q through Aug. 21, 2020
Note: Palantir went public via a direct listing on Sept. 30, 2020. Public prices at market open.
Sources: the company (private per-share sale price); MarketWatch (public per-share sale price); ethics documents

“Palantir was not divested as required by the ethics agreement, because the stock is not currently marketable,” said a note appended to the form by an employee of the U.S. Office of Government Ethics, the government body that oversees the conflict-of-interest law.

More than 23 million shares of the company changed hands on private markets in 2019, according to Palantir’s regulatory filings. They said the average price was $5.42. In the first eight months of 2020, they were trading privately at an average price of $5.35.

Mr. Abizaid said in an email to the Journal that he wasn’t able to meet the selling deadline because Palantir put restrictions on private sales of its shares. It required approval of a buyer, a right of first refusal and “significant time” to approve a sale, he said.

“I tried several ways to privately sell the stock in a manner that would satisfy Palantir, State and myself, and was unable to do so,” Mr. Abizaid said.

Ethics officials accepted Mr. Abizaid’s explanation and revised his agreement to allow him to own Palantir stock so long as he abstained from any matters involving the company, he said.

In his email, Mr. Abizaid said Palantir ended up having no business with Saudi Arabia during his tenure.

The State Department said Mr. Abizaid was required to get rid of Palantir shares because the company was pursuing business in the Middle East around the time of his nomination. "With the passage of time, it became clear that owning Palantir stock was unlikely to present a conflict of interest for the U.S. Ambassador to Saudi Arabia after all and that any potential conflict of interest could be managed via recusal," the department said.

In September 2020, Palantir went public at $10 a share. The following month, Mr. Abizaid sold three chunks of the stock on days when it closed at as low as $9.95 and as high as $10.75—nearly double Palantir's average share price in 2019, when he was required to sell under his original ethics agreement.

Retired four-star Army general John Abizaid testifying before a Senate committee after his nomination to be ambassador to Saudi Arabia.

PHOTO: KEVIN LAMARQUE/REUTERS

The sales totaled between $1 million and $2 million, according to his financial disclosure. Mr. Abizaid continued to hold $5 million to $25 million in Palantir stock in 2020, according to his financial disclosure. He had received the shares as compensation for consulting work he did for the company from 2008 to 2014, his disclosure form says.

"Once the determination was made that I didn't need to divest I proceeded as I normally would with regard to any sales in my portfolio," Mr. Abizaid said. "I reported the sales as required, and the sales I did make were in line with Palantir policy and State Department guidelines."

The Office of Government Ethics declined to comment. Palantir didn't respond to requests for comment.

The way ethics officials handle the conflict-of-interest law can be inconsistent.

When Andrew Maloney was nominated to a top position at the Treasury Department in 2017, ethics officials reviewed his holdings and saw several that would conflict with his duties.

His job would be to advocate for then-President Donald Trump's economic agenda, chiefly a major tax-cut proposal for corporations and individuals. The Treasury Department says officials may not work on narrow policy matters that stand to benefit stocks they own, but they may work on broad economic policy, even if it might affect their personal portfolio.

Lawyers at the Office of Government Ethics advised Mr. Maloney to shed some stocks. But it let him keep certain others that also stood to be affected by his work.

Apple stock performance during Maloney's tenure

Sources: FactSet (performance); financial disclosures

Mr. Maloney followed the advice. After the Senate voted to confirm him in August 2017, he sold about a dozen stocks, including between $250,001 and $500,000 in Hess Corp., $50,001 to $100,000 in Cigna Corp. and $15,001 to $50,000 of Bank of America Corp., according to his financial disclosure report.

As permitted, he kept between $250,001 and $500,000 of Amazon stock, $100,001 to $250,000 of Apple Inc. and between $250,001 and $500,000 of stock in Facebook, now called Meta Platforms Inc. He also kept a $100,001-to-$250,000 call option on Amazon, a bet on a rise in its stock price.

Mr. Maloney set off to rally support for the tax cuts in Congress. In December 2017, Congress passed a $1.5 trillion bill reducing the corporate tax rate to its lowest point since 1939. The bill saved billions of dollars collectively for large companies, including those that ethics officials allowed Mr. Maloney to retain.

When he left the government in June 2018, the share prices of Amazon, Apple and Facebook were up 74%, 21% and 16%, respectively, from the time of his confirmation.

Mr. Maloney said that he had followed the law. He said he wasn't told why he was permitted to keep certain stocks.

The Office of Government Ethics said it couldn't comment on the rationale of specific decisions.

The Treasury Department said the officials who worked on Mr. Maloney's case are no longer there. A Treasury spokesman said its ethics officers help officials comply with the rules.

Under federal law, agencies can grant waivers from the conflict-of-interest rules if an ethics official determines that an investment is "too remote or too inconsequential to affect the integrity of the services of the Government officers or employees."

Susan Morris was an assistant manager at the Production Office of the Energy Department's National Nuclear Security Administration, or NNSA. Among matters she worked on were some related to science and engineering company Leidos Holdings Inc.

Her husband owned stock in and worked as a consultant for Leidos. His job involved working with several federal agencies, including the Energy Department, and he was eligible to receive a bonus linked to Leidos's performance, according to a waiver Ms. Morris ultimately was given.

Part of Ms. Morris's job was to be lead adviser on environment, safety, health and quality matters affecting the NNSA Production Office and its contract with a consortium that runs nuclear-related facilities for the government. Ms. Morris was the agency contracting officer's representative on the matter and was required to deal regularly with the consortium's representatives. A Leidos unit was joining the consortium at the time.

The Energy Department in Washington.
PHOTO: ERIC LEE FOR THE WALL STREET JOURNAL

She discussed the matter with ethics officials in 2017. In a six-page waiver, her boss, NNSA Production Office deputy manager Teresa Robbins said she didn't believe that Ms. Morris's ties to Leidos were significant enough to prevent her from working on the contract.

Among reasons Ms. Robbins cited was that Leidos's expected annual revenue from the consortium would be $13.5 million at most, an amount she said was "extremely small" relative to Leidos's roughly $5 billion revenue in fiscal 2015.

In addition, Ms. Robbins wrote, the need for Ms. Morris to work on the matter "can't be overstated."

The waiver allowed Ms. Morris to work on matters that would affect Leidos as part of a group, but not on matters that would have any "special or distinct effect" on the company's finances.

Ms. Morris didn't respond to requests for comment. A spokesman for the Energy Department said that it and the Biden administration take "ethics very seriously and work diligently to ensure staff are following both the letter and spirit of ethics laws and regulations." Ms. Robbins didn't respond to requests for comment.

Because the federal ethics system grants substantial leeway to individual agencies to determine their own rules, a patchwork has emerged. The Consumer Financial Protection Bureau and FERC bar officials from owning specific companies the agencies regulate. The Defense Department doesn't let certain senior officials own stock in the top 10 defense contractors, measured by their revenue from Pentagon contracts over the previous five years. The Securities and Exchange Commission bars its officials from owning shares in any company it is investigating or from doing short-term trading.

Other agencies let employees own stock in any companies so long as they don't work on matters related to them.

Some agencies require that officials' financial disclosure forms be reviewed not just by the ethics office but also by officials' supervisors, who know what they're working on.

The USTR doesn't have additional stock-ownership rules for officials but leaves it to ethics officers to flag potential problems.

On Mr. Biden's first day in office, Mr. Wu, a Harvard University law professor, joined the USTR as a senior adviser.

Among other duties, Mr. Wu worked on one of Mr. Biden's international priorities—a digital trade agreement with Asian countries that would seek to lower impediments to U.S. technology companies doing business overseas. One goal was to promote U.S. tech companies and online retailers.

In March 2021, when Mr. Wu filed a financial disclosure report for him and his wife, ethics lawyers at the USTR noted several potential conflicts. He and his wife owned between $1 million and $5 million of stock in Amazon, a company that stood to benefit from the hoped-for new digital trade pact.

Amazon stock performance during Wu's tenure

Sources: FactSet (performance); agency emails

The shares were stock Mr. Wu's wife acquired when she helped sell a company to Amazon, Mr. Wu told the Journal.

Ethics officials told Mr. Wu that to comply with the federal conflicts rule, he should sell the Amazon stock or stop working on the digital trade pact, according to emails between the USTR's ethics officials and Mr. Wu.

Mr. Wu said he would look into selling the Amazon shares. In the meantime, ethics officials advised him to stop working on digital trade issues, according to the emails.

The USTR's ethics officials didn't sign Mr. Wu's disclosure form, because they needed more information about his other assets to determine whether he was in compliance with the conflict rules.

About that time, Mr. Wu requested a "certificate of divestiture" from the Office of Government Ethics in order to defer capital-gains taxes on a potential sale of Amazon stock, a perk offered to federal employees who sell shares to avoid conflicts with their government roles.

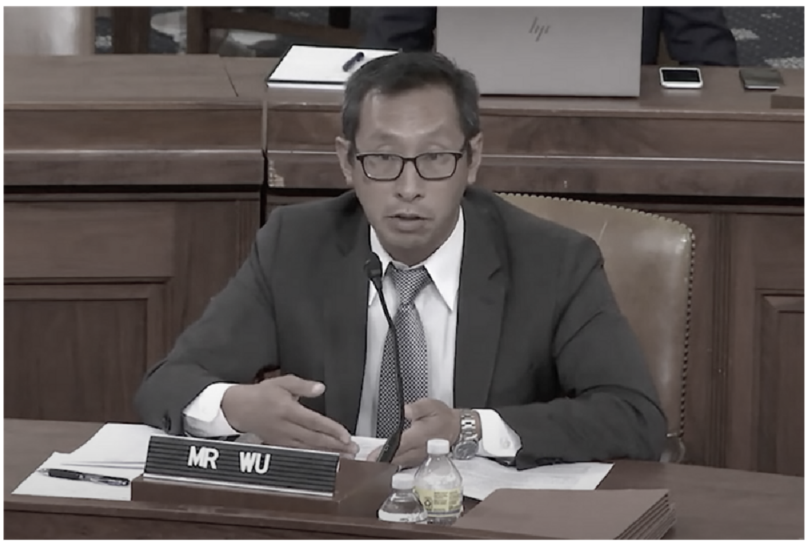
The USTR's ethics officials pressed Mr. Wu to resolve his financial conflict.

Mr. Wu said in an interview that the Office of Government Ethics advises employees not to sell stock until it makes a decision on the preferential tax matter. That advice is on its website.

“Given that there was a possibility that I might get a certificate of divestiture,” Mr. Wu said, it was “financially prudent” not to sell the stock at that point.

Mr. Wu continued working on general matters related to the trade pact, emails show.

In June, he gave a briefing to a Washington-based association that lobbies for technology companies, including Amazon. He provided tech executives and lobbyists an overview of the administration's priorities, including the digital trade matter.



Mark Wu, appearing recently before a congressional committee.
PHOTO: WAYS & MEANS COMMITTEE

Mr. Wu said that USTR officials asked him to speak and that “no one ever mentioned anything to me about the presentation as inappropriate.”

Around that time, another USTR official noticed that Mr. Wu was included on emails regarding digital trade policy. Ethics officers were alerted.

In late June 2021, ethics officials confronted Mr. Wu.

“It has come to my attention that you may have been participating in digital trade issues that raise conflict of interest concerns,” wrote Ms. Kaye, the USTR's chief ethics official, to Mr. Wu in an email on June 21, 2021.

“I want to remind you again about the criminal conflicts of interest law,” she wrote.

The next day, Mr. Wu asked in a phone call "if he needs to recuse himself if the immediate topic is about the broader area of digital trade and not Amazon specifically," according to an email summarizing the call.

Ms. Kaye recommended he "go nowhere close to the COI line," referring to the conflict-of-interest law, according to the email.

Ms. Kaye alerted U.S. Trade Representative Katherine Tai and her chief of staff about the situation.

A week later, Mr. Wu learned that the government had denied his request to defer capital-gains taxes on a sale of Amazon stock.

Then, Mr. Wu disclosed another potential conflict: His wife had recently joined the board of CarGurus Inc. This raised questions about whether he could work on trade issues involving the auto industry.

USTR Chief of Staff Nora Todd had a phone call with Mr. Wu on June 29. On the call, Ms. Todd told him she was unwilling to grant further recusal agreements because of his failure to comply with his prior restrictions.

"Recusal has not worked to date," Ms. Todd told Mr. Wu, according to notes of the call, because he "has not followed the requirements."

Ms. Todd told Mr. Wu that recusing himself from digital trade issues "should have been mentally easy to understand," according to the call notes.

"I did recuse myself from all matters where Amazon was discussed," Mr. Wu told the Journal.

Ms. Todd didn't respond to emails seeking comment. A USTR spokesman said, "Our ethics officials acted to ensure that all staff followed existing federal rules and policies designed to avoid conflicts of interest."

Mr. Wu was given 10 days to sell his Amazon shares and 90 days to resolve other conflicts.

The Office of the United States Trade Representative, right, in Washington.
PHOTO: ERIC LEE FOR THE WALL STREET JOURNAL

To avoid conflicts with his wife's work, he was advised that she should sell all stock received for her board service soon after receiving it.

Mr. Wu decided to quit. He cited his mother's failing health and the rule's impact on his wife's career.

"My wife could not sit on the board of the company and always be selling the stock the minute she is being issued the stock," Mr. Wu said.

"When one of the goals of the progressive movement is to get more women of color onto company boards, I didn't want my wife to have to sacrifice what she was doing," he said. "So it was obviously a bit disappointing for me."

Mr. Wu's final day at USTR was July 16, 2021.

Between Mr. Wu's first day and last day at USTR, Amazon's stock price rose nearly 10%, increasing the value of his Amazon stock by between $100,000 and $500,000.

—Design by Andrew Levinson. Graphics by Stephanie Stamm. A color filter has been used on photos.

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