

117TH CONGRESS
2D SESSION

H. R. 8754

To amend the Ethics in Government Act of 1978 to prohibit transactions involving certain financial instruments by senior Federal employees, their spouses, or dependent children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 30, 2022

Mr. CLOUD (for himself and Mr. GOLDEN) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Ethics in Government Act of 1978 to prohibit transactions involving certain financial instruments by senior Federal employees, their spouses, or dependent children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dismantling Invest-
5 ments in Violation of Ethical Standards through Trusts
6 Act”.

1 **SEC. 2. PROHIBITING TRANSACTIONS AND OWNERSHIP OF**
2 **CERTAIN FINANCIAL INSTRUMENTS BY SEN-**
3 **IOR FEDERAL EMPLOYEES, THEIR SPOUSES,**
4 **OR DEPENDENT CHILDREN.**

5 (a) IN GENERAL.—The Ethics in Government Act of
6 1978 (5 U.S.C. App.) is amended by inserting after title
7 I the following:

8 **“TITLE II—RESTRICTIONS RE-**
9 **GARDING FINANCIAL INSTRU-**
10 **MENTS**

11 **“SEC. 201. DEFINITIONS.**

12 “In this title:

13 “(1) COVERED FINANCIAL INSTRUMENT.—

14 “(A) IN GENERAL.—The term ‘covered fi-

15 nancial instrument’ means—

16 “(i) any investment in—

17 “(I) a security (as defined in sec-

18 tion 3(a) of Securities Exchange Act

19 of 1934 (15 U.S.C. 78c(a)));

20 “(II) a security future (as de-

21 fined in that section); or

22 “(III) a commodity (as defined in

23 section 1a of the Commodity Ex-

24 change Act (7 U.S.C. 1a)); and

25 “(ii) any economic interest com-

26 parable to an interest described in clause

1 (i) that is acquired through synthetic
2 means, such as the use of a derivative, in-
3 cluding an option, warrant, or other simi-
4 lar means.

5 “(B) EXCLUSIONS.—The term ‘covered fi-
6 nancial instrument’ does not include—

7 “(i) a diversified mutual fund;

8 “(ii) a diversified exchange-traded
9 fund;

10 “(iii) a United States Treasury bill,
11 note, or bond; or

12 “(iv) compensation from the primary
13 occupation of a spouse or dependent child
14 of a senior Federal employee.

15 “(2) QUALIFIED BLIND TRUST.—The term
16 ‘qualified blind trust’ has the meaning given the
17 term in section 102(f)(3).

18 “(3) SENIOR FEDERAL EMPLOYEE.—The term
19 ‘senior Federal employee’ means any individual occu-
20 pying a Senior Executive Service position (as that
21 term is defined in section 3132 of title 5, United
22 States Code).

23 “(4) SUPERVISING ETHICS OFFICE.—The term
24 ‘supervising ethics office’ has the meaning given the
25 term in section 109.

1 **“SEC. 202. PROHIBITION ON CERTAIN TRANSACTIONS AND**
2 **HOLDINGS INVOLVING COVERED FINANCIAL**
3 **INSTRUMENTS.**

4 “(a) PROHIBITION.—Except as provided in sub-
5 section (b), a senior Federal employee, their spouse, or
6 their dependent children may not, during the term of serv-
7 ice of the employee, hold, purchase, or sell any covered
8 financial instrument.

9 “(b) EXCEPTIONS.—The prohibition under sub-
10 section (a) does not apply to—

11 “(1) a sale by a senior Federal employee, their
12 spouse, or their dependent child that is completed by
13 the date that is—

14 “(A) for an employee serving on the date
15 of enactment of this title, 180 days after that
16 date of enactment; and

17 “(B) for any employee who commences
18 service as an employee after the date of enact-
19 ment of this title, 180 days after the first date
20 of the initial term of service;

21 “(2) a covered financial instrument held in a
22 qualified blind trust operated on behalf of, or for the
23 benefit of, a senior Federal employee, their spouse,
24 or their dependent child; or

25 “(3) a covered financial instrument exempted
26 from coverage under section 208 of title 18, United

1 States Code, pursuant to section 2640.202 of title 5,
2 Code of Federal Regulations (or any successor regu-
3 lation).

4 “(c) APPLICATION OF CERTIFICATE OF DIVESTITURE
5 PROGRAM.—For purposes of section 1043 of the Internal
6 Revenue Code of 1986—

7 “(1) this section shall be treated as a Federal
8 conflict of interest statute; and

9 “(2) any person required to dispose of any
10 property by reason of this section shall be treated as
11 an eligible person.

12 “(d) PENALTIES.—

13 “(1) DISGORGEMENT.—A senior Federal em-
14 ployee, their spouse, or their dependent child shall
15 disgorge to the general fund of the Treasury any
16 profit from a transaction or holding involving a cov-
17 ered financial instrument that is conducted in viola-
18 tion of this section.

19 “(2) INCOME TAX.—A loss from a transaction
20 or holding involving a covered financial instrument
21 that is conducted in violation of this section may not
22 be deducted from the amount of income tax owed by
23 the applicable senior Federal employee, their spouse,
24 or their dependent child.

1 “(3) FINES.—A senior Federal employee who
2 holds or conducts a transaction involving a covered
3 financial instrument in violation of this section may
4 be subject to a civil fine assessed by the supervising
5 ethics office under section 204.

6 **“SEC. 203. CERTIFICATION OF COMPLIANCE.**

7 “(a) IN GENERAL.—Not less frequently than annu-
8 ally, each senior Federal employee shall submit to the su-
9 pervising ethics office a written certification that the em-
10 ployee, their spouse, or their dependent child has achieved
11 compliance with the requirements of this title.

12 “(b) PUBLICATION.—The supervising ethics office
13 shall publish each certification submitted under subsection
14 (a) on a publicly available website.

15 **“SEC. 204. AUTHORITY OF SUPERVISING ETHICS OFFICE.**

16 “(a) IN GENERAL.—The supervising ethics office
17 may implement and enforce the requirements of this title,
18 including by—

19 “(1) issuing—

20 “(A) for applicable senior Federal employ-
21 ees—

22 “(i) rules governing that implementa-
23 tion; and

24 “(ii) 1 or more reasonable extensions
25 to achieve compliance with this title, if the

1 supervising ethics office determines that an
2 employee is making a good faith effort to
3 divest any covered financial instruments;
4 and

5 “(B) guidance relating to covered financial
6 instruments;

7 “(2) publishing on the internet certifications
8 submitted by senior Federal employees under section
9 203(a); and

10 “(3) assessing civil fines against any senior
11 Federal employee who is in violation of this title,
12 subject to subsection (b).

13 “(b) REQUIREMENTS FOR CIVIL FINES.—

14 “(1) AMOUNT.—A fine imposed under this sec-
15 tion against a senior Federal employee shall be equal
16 to the greater of—

17 “(A) \$1,000, or

18 “(B) an amount equal to 10 percent of the
19 greatest dollar value of the applicable covered
20 financial instrument during any period that
21 such instrument was held by the applicable sen-
22 ior Federal employee or their spouse or depend-
23 ent child (as the case may be).

24 “(2) IN GENERAL.—Before imposing a fine pur-
25 suant to this section, the supervising ethics office

1 shall provide to the applicable senior Federal em-
2 ployee—

3 “(A) a written notice describing each cov-
4 ered financial instrument transaction for which
5 a fine will be assessed; and

6 “(B) an opportunity, with respect to each
7 such covered financial instrument transaction—

8 “(i) for a hearing; and

9 “(ii) to achieve compliance with the
10 requirements of this title.

11 “(3) PUBLICATION.—The supervising ethics of-
12 fice shall publish on a publicly available website a
13 description of—

14 “(A) each fine assessed pursuant to this
15 section;

16 “(B) the reasons why each such fine was
17 assessed; and

18 “(C) the result of each assessment, includ-
19 ing any hearing under paragraph (2)(B)(i) re-
20 lating to the assessment.

21 “(4) APPEAL.—A senior Federal employee may
22 appeal to the supervising ethics office a fine assessed
23 under this section during the 30-day period begin-
24 ning on the date the fine is so assessed.

1 **“SEC. 205. AUDIT BY GOVERNMENT ACCOUNTABILITY OF-**
2 **FICE.**

3 “Not later than 2 years after the date of enactment
4 of this title, the Comptroller General of the United States
5 shall—

6 “(1) conduct an audit of the compliance by sen-
7 ior Federal employees with the requirements of this
8 title; and

9 “(2) submit to each supervising ethics office a
10 report describing the results of the audit conducted
11 under paragraph (1).”.

12 (b) APPLICATION.—The amendments made by sub-
13 section (a) shall apply to individuals described in section
14 202(a) of the Ethics in Government Act of 1978 (5 U.S.C.
15 App.) beginning on the date that is 12 months following
16 the date of enactment of this Act.

17 (c) ADDITIONAL EMPLOYEES.—Section 401(c)(1) of
18 the Ethics in Government Act of 1978 (5 U.S.C. App.)
19 is amended by inserting “up to 100” after “appoint”.

20 (d) FUNDING.—The Director of the Office of Man-
21 agement and Budget may transfer such funds as the Di-
22 rector considers appropriate, to be derived from unobli-
23 gated amounts available for executive branch programs
24 identified by the Director to be duplicative, to the Office
25 of Government Ethics for the purpose of carrying out this

1 Act, to remain available until the date that is 5 years fol-
2 lowing the date of the enactment of this Act.

3 (e) CONFORMING AMENDMENTS.—

4 (1) Section 109 of the Ethics in Government
5 Act of 1978 (5 U.S.C. App.) is amended—

6 (A) in the matter preceding paragraph (1),
7 by striking “For the purposes of this title, the
8 term—” and inserting “In this title.”;

9 (B) in paragraph (1), by striking “means”
10 and all that follows through “Representatives;”
11 and inserting the following: “means, as applica-
12 ble—

13 “(A) the Select Committee on Ethics of
14 the Senate; and

15 “(B) the Committee on Ethics of the
16 House of Representatives.”;

17 (C) in each of paragraphs (2) through
18 (17), by striking the semicolon at the end of the
19 paragraph and inserting a period;

20 (D) in paragraph (18)—

21 (i) in subparagraph (B), by striking
22 “Standards of Official Conduct” and in-
23 serting “Ethics”; and

24 (ii) in subparagraph (D), by striking
25 “; and” at the end and inserting a period;

1 (E) in each of paragraphs (1) through
2 (19)—

3 (i) by inserting “The term” after the
4 paragraph designation; and

5 (ii) by inserting a paragraph heading,
6 the text of which is comprised of the term
7 defined in that paragraph; and

8 (F) by redesignating paragraphs (8) and
9 (9) as paragraphs (9) and (8), respectively, and
10 moving the paragraphs so as to appear in nu-
11 merical order.

12 (2) Section 101(f) of the Ethics in Government
13 Act of 1978 (5 U.S.C. App.) is amended—

14 (A) in paragraph (9), by striking “as de-
15 fined under section 109(12)”;

16 (B) in paragraph (10), by striking “as de-
17 fined under section 109(13)”;

18 (C) in paragraph (11), by striking “as de-
19 fined under section 109(10)”;

20 (D) in paragraph (12), by striking “as de-
21 fined under section 109(8)”.

22 (3) Section 103 of the Ethics in Government
23 Act of 1978 (5 U.S.C. App.) is amended—

1 (A) in subsection (j)(1), by striking
2 “Standards of Official Conduct” and inserting
3 “Ethics”; and

4 (B) in subsection (l)—

5 (i) in paragraph (9), by striking “, as
6 defined under section 109(12)”; and

7 (ii) in paragraph (10), by striking “,
8 as defined under section 109(13)”.

9 (4) Section 105(b)(3)(A) of the Ethics in Gov-
10 ernment Act of 1978 (5 U.S.C. App.) is amended by
11 striking “described in section 109(8) or 109(10) of
12 this Act” and inserting “who is a judicial employee
13 or judicial officer”.

14 (5) Section 111(2) of the Ethics in Government
15 Act of 1978 (5 U.S.C. App.) is amended by striking
16 “Standards of Official Conduct” and inserting “Eth-
17 ics”.

18 (6) Section 402 of the Ethics in Government
19 Act of 1978 (5 U.S.C. App.) is amended—

20 (A) in subsection (b), by striking “title II
21 of” each place it appears; and

22 (B) in subsection (f)(2)(B)—

23 (i) by striking “Subject to clause (iv)
24 of this subparagraph, before” each place it
25 appears and inserting “Before”; and

1 (ii) by striking clause (iv).

2 (7) Section 503(1)(A) of the Ethics in Govern-
3 ment Act of 1978 (5 U.S.C. App.) is amended by
4 striking “Standards of Official Conduct” and insert-
5 ing “Ethics”.

6 (8) Section 3(4)(D) of the Lobbying Disclosure
7 Act of 1995 (2 U.S.C. 1602(4)(D)) is amended by
8 striking “legislative branch employee serving in a po-
9 sition described under section 109(13) of the Ethics
10 in Government Act of 1978 (5 U.S.C. App.)” and
11 inserting “officer or employee of the Congress (as
12 defined in section 109 of the Ethics in Government
13 Act of 1978 (5 U.S.C. App.))”.

14 (9) Section 21A of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78u-1) is amended—

16 (A) in subsection (g)(2)(B)(ii), by striking
17 “section 109(11) of the Ethics in Government
18 Act of 1978 (5 U.S.C. App. 109(11))” and in-
19 serting “section 109 of the Ethics in Govern-
20 ment Act of 1978 (5 U.S.C. App.)”; and

21 (B) in subsection (h)(2)—

22 (i) in subparagraph (B), by striking
23 “section 109(8) of the Ethics in Govern-
24 ment Act of 1978 (5 U.S.C. App. 109(8))”
25 and inserting “section 109 of the Ethics in

1 Government Act of 1978 (5 U.S.C. App.)”;

2 and

3 (ii) in subparagraph (C), by striking

4 “under section 109(10) of the Ethics in

5 Government Act of 1978 (5 U.S.C. App.

6 109(10))” and inserting “in section 109 of

7 the Ethics in Government Act of 1978 (5

8 U.S.C. App.)”.

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