

115TH CONGRESS
1ST SESSION

S. 65

To address financial conflicts of interest of the President and Vice President.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2017

Ms. WARREN (for herself, Mr. CARDIN, Mrs. FEINSTEIN, Mr. COONS, Mr. DURBIN, Mr. MERKLEY, Mr. LEAHY, Mrs. MURRAY, Mr. WYDEN, Mr. REED, Ms. STABENOW, Mr. BROWN, Mr. CASEY, Ms. KLOBUCHAR, Mr. WHITEHOUSE, Mr. BENNET, Mrs. GILLIBRAND, Mr. FRANKEN, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. MARKEY, Mr. BOOKER, Mr. PETERS, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To address financial conflicts of interest of the President
and Vice President.

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 “Presidential Conflicts
5 of Interest Act of 2017”.

1 **SEC. 2. DIVESTITURE OF PERSONAL FINANCIAL INTERESTS**
 2 **OF THE PRESIDENT AND VICE PRESIDENT**
 3 **THAT POSE A POTENTIAL CONFLICT OF IN-**
 4 **TEREST.**

5 (a) DEFINITIONS.—

6 (1) IN GENERAL.—In this section—

7 (A) the term “conflict-free holding” means
 8 a financial interest described in section
 9 102(f)(8) of the Ethics in Government Act of
 10 1978 (5 U.S.C. App.);

11 (B) the term “financial interest posing a
 12 potential conflict of interest” means a financial
 13 interest of the President, the Vice President,
 14 the spouse of the President or Vice President,
 15 or a minor child of the President or Vice Presi-
 16 dent, as applicable, that—

17 (i) would constitute a financial inter-
 18 est described in subsection (a) of section
 19 208 of title 18, United States Code—

20 (I) if—

21 (aa) for purposes of such
 22 section 208, the terms “officer”
 23 and “employee” included the
 24 President and the Vice President;
 25 and

1 (bb) the President or Vice
2 President, as applicable, partici-
3 pated as described in subsection
4 (a) of such section 208 in rela-
5 tion to such financial interest;
6 and

7 (II) determined without regard to
8 any exception under subsection (b) of
9 such section 208; or

10 (ii) may constitute a present, emolu-
11 ment, office, or title, of any kind whatever,
12 from any king, prince, or foreign state (in-
13 cluding from an entity owned or controlled
14 by a foreign government), within the
15 meaning of article I, section 9 of the Con-
16 stitution of the United States;

17 (C) the term “qualified blind trust” has
18 the meaning given that term in section
19 102(f)(3) of the Ethics in Government Act of
20 1978 (5 U.S.C. App.), unless otherwise speci-
21 fied in this Act; and

22 (D) the term “tax return”—

23 (i) means any Federal income tax re-
24 turn and any amendment or supplement
25 thereto, including supporting schedules, at-

tachments, or lists which are supplemental to, or part of, the return for the taxable year; and

(ii) includes any information return that reports information that does or may affect the liability for tax for the taxable year.

(2) APPLICABILITY OF ETHICS IN GOVERNMENT ACT OF 1978.—For purposes of the definition of “qualified blind trust” in this section, the term “supervising ethics officer” in section 102(f)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) means the Director of the Office of Government Ethics.

(b) INITIAL FINANCIAL DISCLOSURE.—

(1) SUBMISSION OF DISCLOSURE.—

(A) IN GENERAL.—Not later than 30 days after assuming the office of President or Vice President, respectively, the President and Vice President shall submit to Congress and the Director of the Office of Government Ethics a disclosure of financial interests.

(B) APPLICATION TO SITTING PRESIDENT AND VICE PRESIDENT.—For any individual who is serving as the President or Vice President on

1 the date of enactment of this Act, the disclosure
2 of financial interests shall be submitted to Con-
3 gress and the Director of the Office of Govern-
4 ment Ethics not later than 30 days after the
5 date of enactment of this Act.

6 (2) CONTENTS.—

7 (A) PRESIDENT.—The disclosure of finan-
8 cial interests submitted under paragraph (1) by
9 the President shall—

10 (i) describe in detail each financial in-
11 terest of the President, the spouse of the
12 President, or a minor child of the Presi-
13 dent;

14 (ii) at a minimum, include the infor-
15 mation relating to each such financial in-
16 terest that is required for reports under
17 section 102 of the Ethics in Government
18 Act of 1978 (5 U.S.C. App.); and

19 (iii) include the tax returns filed by or
20 on behalf of the President for—

21 (I) the 3 most recent taxable
22 years; and

23 (II) each taxable year for which
24 an audit of the return by the Internal

1 Revenue Service is pending on the
2 date the report is filed.

3 (B) VICE PRESIDENT.—The disclosure of
4 financial interests submitted under paragraph
5 (1) by the Vice President shall—

6 (i) describe in detail each financial in-
7 terest of the Vice President, the spouse of
8 the Vice President, or a minor child of the
9 Vice President;

10 (ii) at a minimum, include the infor-
11 mation relating to each such financial in-
12 terest that is required for reports under
13 section 102 of the Ethics in Government
14 Act of 1978 (5 U.S.C. App.); and

15 (iii) include the tax returns filed by or
16 on behalf of the Vice President for—

17 (I) the 3 most recent taxable
18 years; and

19 (II) each taxable year for which
20 an audit of the return by the Internal
21 Revenue Service is pending on the
22 date the report is filed.

23 (c) DIVESTITURE OF FINANCIAL INTERESTS POSING
24 A POTENTIAL CONFLICT OF INTEREST.—

1 (1) IN GENERAL.—The President, the Vice
 2 President, the spouse of the President or Vice Presi-
 3 dent, and any minor child of the President or Vice
 4 President shall divest of any financial interest posing
 5 a potential conflict of interest by transferring such
 6 interest to a qualified blind trust.

7 (2) TRUSTEE DUTIES.—Within a reasonable pe-
 8 riod of time after the date a financial interest is
 9 transferred to a qualified blind trust under para-
 10 graph (1), the trustee of the qualified blind trust
 11 shall—

12 (A) sell the financial interest; and

13 (B) use the proceeds of the sale of the fi-
 14 nancial interest to purchase conflict-free hold-
 15 ings.

16 (d) REVIEW BY OFFICE OF GOVERNMENT ETHICS.—

17 (1) IN GENERAL.—The Director of the Office of
 18 Government Ethics shall submit to Congress, the
 19 President, and the Vice President an annual report
 20 regarding the financial interests of the President,
 21 the Vice President, the spouse of the President or
 22 Vice President, and any minor child of the President
 23 or Vice President.

24 (2) CONTENTS.—Each report submitted under
 25 paragraph (1) shall—

1 (A) indicate whether any financial interest
 2 of the President, the Vice President, the spouse
 3 of the President or Vice President, or a minor
 4 child of the President or Vice President is a fi-
 5 nancial interest posing a potential conflict of in-
 6 terest;

7 (B) evaluate whether any previously held
 8 financial interest of the President, the Vice
 9 President, the spouse of the President or Vice
 10 President, or a minor child of the President or
 11 Vice President that was a financial interest pos-
 12 ing a potential conflict of interest was divested
 13 in accordance with subsection (c); and

14 (C) redact such information as the Direc-
 15 tor of the Office of Government Ethics deter-
 16 mines necessary for preventing identity theft,
 17 such as social security numbers or taxpayer
 18 identification numbers.

19 (e) ENFORCEMENT.—

20 (1) IN GENERAL.—The Attorney General, the
 21 attorney general of any State, or any person ag-
 22 grieved by any violation of subsection (c) may seek
 23 declaratory or injunctive relief in a court of com-
 24 petent jurisdiction if—

1 (A) the Director of the Office of Govern-
 2 ment Ethics is unable to issue a report indi-
 3 cating whether the President or the Vice Presi-
 4 dent is in substantial compliance with sub-
 5 section (c); or

6 (B) there is probable cause to believe that
 7 the President or the Vice President has not
 8 complied with subsection (c).

9 (2) FAIR MARKET VALUE.—In granting injunc-
 10 tive relief to the plaintiff, the court shall ensure that
 11 any divestment procedure shall ensure the fair mar-
 12 ket return for any asset that is liquidated.

13 **SEC. 3. RECUSAL OF APPOINTEES.**

14 Section 208 of title 18, United States Code, is
 15 amended by adding at the end the following:

16 “(e)(1) Any officer or employee appointed by the
 17 President shall recuse himself or herself from any par-
 18 ticular matter involving specific parties in which a party
 19 to that matter is—

20 “(A) the President who appointed the officer or
 21 employee, which shall include any entity in which the
 22 President has a substantial interest; or

23 “(B) the spouse of the President who appointed
 24 the officer or employee, which shall include any enti-

1 ty in which the spouse of the President has a sub-
2 stantial interest.

3 “(2)(A) Subject to subparagraph (B), if an officer or
4 employee is recused under paragraph (1), a career ap-
5 pointee in the agency of the officer or employee shall per-
6 form the functions and duties of the officer or employee
7 with respect to the matter.

8 “(B)(i) In this subparagraph, the term ‘Commission’
9 means a board, commission, or other agency for which the
10 authority of the agency is vested in more than 1 member.

11 “(ii) If the recusal of a member of a Commission
12 from a matter under paragraph (1) would result in there
13 not being a statutorily required quorum of members of the
14 Commission available to participate in the matter, not-
15 withstanding such statute or any other provision of law,
16 the members of the Commission not recused under para-
17 graph (1) may—

18 “(I) consider the matter without regard to the
19 quorum requirement under such statute;

20 “(II) delegate the authorities and responsibil-
21 ities of the Commission with respect to the matter
22 to a subcommittee of the Commission; or

23 “(III) designate an officer or employee of the
24 Commission who was not appointed by the President
25 who appointed the member of the Commission

1 recused from the matter to exercise the authorities
 2 and duties of the recused member with respect to
 3 the matter.

4 “(3) Any officer or employee who negligently violates
 5 paragraph (1) shall be subject to the penalties set forth
 6 in section 216.

7 “(4) For purposes of this section, the term ‘particular
 8 matter’ shall have the meaning given the term in section
 9 207(i).”.

10 **SEC. 4. CONTRACTS BY THE PRESIDENT OR VICE PRESI-**
 11 **DENT.**

12 (a) AMENDMENT.—Section 431 of title 18, United
 13 States Code, is amended—

14 (1) in the section heading, by inserting “**the**
 15 **President, Vice President, or a**” after
 16 “**Contracts by**”; and

17 (2) in the first undesignated paragraph, by in-
 18 serting “the President or Vice President,” after
 19 “Whoever, being”.

20 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 21 sections for chapter 23 of title 18, United States Code,
 22 is amended by striking the item relating to section 431
 23 and inserting the following:

“431. Contracts by the President, Vice President, or a Member of Congress.”.

1 **SEC. 5. PRESIDENTIAL TAX TRANSPARENCY.**

2 (a) IN GENERAL.—Title I of the Ethics in Govern-
3 ment Act of 1978 (5 U.S.C. App.) is amended—

4 (1) by inserting after section 102 the following:

5 **“SEC. 102A. DISCLOSURE OF TAX RETURNS.**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the term ‘covered candidate’ means an in-
8 dividual—

9 “(A) required to file a report under section
10 101(c); and

11 “(B) who is nominated by a major party
12 as a candidate for the office of President; and

13 “(2) the term ‘covered individual’ means—

14 “(A) a President required to file a report
15 under subsection (a) or (d) of section 101; and

16 “(B) an individual who occupies the office
17 of the President required to file a report under
18 section 101(e);

19 “(3) the term ‘major party’ has the meaning
20 given the term in section 9002 of the Internal Rev-
21 enue Code of 1986; and

22 “(4) the term ‘income tax return’ means, with
23 respect to any covered candidate or covered indi-
24 vidual, any return (within the meaning of section
25 6103(b) of the Internal Revenue Code of 1986) re-

1 lated to Federal income taxes, but does not in-
2 clude—

3 “(A) information returns issued to persons
4 other than such covered candidate or covered
5 individual, and

6 “(B) declarations of estimated tax.

7 “(b) DISCLOSURE.—

8 “(1) COVERED INDIVIDUALS.—

9 “(A) IN GENERAL.—In addition to the in-
10 formation described in subsections (a) and (b)
11 of section 102, a covered individual shall in-
12 clude in each report required to be filed under
13 this title a copy of the income tax returns of the
14 covered individual for the 3 most recent taxable
15 years for which a return have been filed with
16 the Internal Revenue Service as of the date on
17 which the report is filed.

18 “(B) FAILURE TO DISCLOSE.—If an in-
19 come tax return is not disclosed under subpara-
20 graph (A), the Director of the Office of Govern-
21 ment Ethics shall submit to the Secretary of
22 the Treasury a request that the Secretary of
23 the Treasury provide the Director of the Office
24 of Government Ethics with a copy of the in-
25 come tax return.

1 “(C) PUBLICLY AVAILABLE.—Each income
2 tax return submitted under this paragraph shall
3 be filed with the Director of the Office of Gov-
4 ernment Ethics and made publicly available in
5 the same manner as the information described
6 in subsections (a) and (b) of section 102.

7 “(D) REDACTION OF CERTAIN INFORMA-
8 TION.—Before making any income tax return
9 submitted under this paragraph available to the
10 public, the Director of the Office of Government
11 Ethics shall redact such information as the Di-
12 rector of the Office of Government Ethics, in
13 consultation with the Secretary of the Treasury
14 (or a delegate of the Secretary), determines ap-
15 propriate.

16 “(2) CANDIDATES.—

17 “(A) IN GENERAL.—Not later than 15
18 days after the date on which a covered can-
19 didate is nominated, the covered candidate shall
20 amend the report filed by the covered candidate
21 under section 101(c) with the Federal Election
22 Commission to include a copy of the income tax
23 returns of the covered candidate for the 3 most
24 recent taxable years for which a return has
25 been filed with the Internal Revenue Service.

1 “(B) FAILURE TO DISCLOSE.—If an in-
2 come tax return is not disclosed under subpara-
3 graph (A) the Federal Election Commission
4 shall submit to the Secretary of the Treasury a
5 request that the Secretary of the Treasury pro-
6 vide the Federal Election Commission with the
7 income tax return.

8 “(C) PUBLICLY AVAILABLE.—Each income
9 tax return submitted under this paragraph shall
10 be filed with the Federal Election Commission
11 and made publicly available in the same manner
12 as the information described in section 102(b).

13 “(D) REDACTION OF CERTAIN INFORMA-
14 TION.—Before making any income tax return
15 submitted under this paragraph available to the
16 public, the Federal Election Commission shall
17 redact such information as the Federal Election
18 Commission, in consultation with the Secretary
19 of the Treasury (or a delegate of the Secretary)
20 and the Director of the Office of Government
21 Ethics, determines appropriate.

22 “(3) SPECIAL RULE FOR SITTING PRESI-
23 DENTS.—Not later than 30 days after the date of
24 enactment of this section, the President shall submit
25 to the Director of the Office of Government Ethics

1 a copy of the income tax returns described in para-
 2 graph (1)(A).”; and

3 (2) in section 104—

4 (A) in subsection (a)—

5 (i) in paragraph (1), in the first sen-
 6 tence, by inserting “or any individual who
 7 knowingly and willfully falsifies or who
 8 knowingly and willfully fails to file an in-
 9 come tax return that such individual is re-
 10 quired to disclose pursuant to section
 11 102A” before the period; and

12 (ii) in paragraph (2)(A)—

13 (I) in clause (i), by inserting “or
 14 falsify any income tax return that
 15 such person is required to disclose
 16 under section 102A” before the semi-
 17 colon; and

18 (II) in clause (ii), by inserting
 19 “or fail to file any income tax return
 20 that such person is required to dis-
 21 closed under section 102A” before the
 22 period;

23 (B) in subsection (b), in the first sentence
 24 by inserting “or willfully failed to file or has
 25 willfully falsified an income tax return required

to be disclosed under section 102A” before the period;

(C) in subsection (c), by inserting “or failing to file or falsifying an income tax return required to be disclosed under section 102A” before the period; and

(D) in subsection (d)(1)—

(i) in the matter preceding subparagraph (A), by inserting “or files an income tax return required to be disclosed under section 102A” after “title”; and

(ii) in subparagraph (A), by inserting “or such income tax return, as applicable,” after “report”.

(b) AUTHORITY TO DISCLOSE INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(23) DISCLOSURE OF RETURN INFORMATION OF PRESIDENTS AND CERTAIN PRESIDENTIAL CANDIDATES.—

“(A) DISCLOSURE OF RETURNS OF PRESIDENTS.—

“(i) IN GENERAL.—The Secretary shall, upon written request from the Direc-

1 tor of the Office of Government Ethics
 2 pursuant to section 102A(b)(1)(B) of the
 3 Ethics in Government Act of 1978, provide
 4 to officers and employees of the Office of
 5 Government Ethics a copy of any income
 6 tax return of the President which is re-
 7 quired to be filed under section 102A of
 8 such Act.

9 “(ii) DISCLOSURE TO PUBLIC.—The
 10 Director of the Office of Government Eth-
 11 ics may disclose to the public the income
 12 tax return of any President which is re-
 13 quired to be filed with the Director pursu-
 14 ant to section 102A of the Ethics in Gov-
 15 ernment Act of 1978.

16 “(B) DISCLOSURE OF RETURNS OF CER-
 17 TAIN CANDIDATES FOR PRESIDENT.—

18 “(i) IN GENERAL.—The Secretary
 19 shall, upon written request from the Chair-
 20 man of the Federal Election Commission
 21 pursuant to section 102A(b)(2)(B) of the
 22 Ethics in Government Act of 1978, provide
 23 to officers and employees of the Federal
 24 Election Commission copies of the applica-
 25 ble returns of any person who has been

1 nominated as a candidate of a major party
 2 (as defined in section 9002(a)) for the of-
 3 fice of President.

4 “(ii) DISCLOSURE TO PUBLIC.—The
 5 Federal Election Commission may disclose
 6 to the public applicable returns of any per-
 7 son who has been nominated as a can-
 8 didate of a major party (as defined in sec-
 9 tion 9002(6)) for the office of President
 10 and which is required to be filed with the
 11 Commission pursuant to section 102A of
 12 the Ethics in Government Act.

13 “(C) APPLICABLE RETURNS.—For pur-
 14 poses of this paragraph, the term ‘applicable re-
 15 turns’ means, with respect to any candidate for
 16 the office of President, income tax returns for
 17 the 3 most recent taxable years for which a re-
 18 turn has been filed as of the date of the nomi-
 19 nation.”.

20 (2) CONFORMING AMENDMENTS.—Section
 21 6103(p)(4) of such Code, in the matter preceding
 22 subparagraph (A) and in subparagraph (F)(ii), is
 23 amended by striking “or (22)” and inserting “(22),
 24 or (23)” each place it appears.

1 **SEC. 6. SENSE OF CONGRESS REGARDING VIOLATIONS.**

2 It is the sense of Congress that a violation of section
3 2 of this Act or the Ethics in Government Act of 1978
4 (5 U.S.C. App.) by the President or the Vice President
5 would constitute a high crime or misdemeanor under arti-
6 cle II, section 4 of the Constitution of the United States.

7 **SEC. 7. RULE OF CONSTRUCTION.**

8 Nothing in this Act or an amendment made by this
9 Act shall be construed to violate the Constitution of the
10 United States.

11 **SEC. 8. SEVERABILITY.**

12 If any provision of this Act or any amendment made
13 by this Act, or any application of such provision or amend-
14 ment to any person or circumstance, is held to be uncon-
15 stitutional, the remainder of the provisions of this Act and
16 the amendments made by this Act, and the application of
17 the provision or amendment to any other person or cir-
18 cumstance, shall not be affected.

○