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Here are 6 things to watch as Congress considers banning lawmakers from trading stocks

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There isn't much members of Congress can agree on these days, even within their own party. Democrats are still divided over how to jumpstart the Build Back Better Act and are gearing up for a mostly party-line vote to confirm Supreme Court nominee Ketanji Brown Jackson.

But on Thursday, a key US House panel is turning its attention to a surprisingly unifying issue: government ethics. At the center of the hearing by the Committee on House Administration is a debate over the merits of banning federal lawmakers from trading individual stocks.

The hearing is the first on the issue in more than a decade. It marks an acceleration on the matter after Insider's Conflicted Congress investigation found 1 in 10 members of Congress had failed to report their stock trades in a timely way or faced late penalties, as required by the 2012 Stop Trading on Congressional Knowledge Act, or STOCK Act.

Insider's investigation also uncovered numerous conflict-of-interest concerns where members of Congress personally invested in industries they oversee. Recent reports show members or their spouses investing in missile manufacturers during Russia's invasion of Ukraine, and lawmakers who hold stocks in Russian companies.

Five witnesses will testify before the Committee on House Administration during Thursday's hearing. Here are six things to watch during the high-stakes hearing:

How serious are members about the possibility of a trading ban?

Rep. Zoe Lofgren, who chairs the Committee on House Administration, never used the word "ban" last month when she announced the STOCK Act hearing. Her comments instead focused on making the current law more rigid.

She mentioned the committee was investigating the extent to which members of Congress were following the rules about disclosing their trades. She also said they'd be looking at stronger penalties for members who don't report their trades on time.

Members are supposed to pay a late fee of $200 the first time they are tardy, regardless of how late they reported their transactions or how much those transactions were worth.

But right now — especially in the House — penalties for violating the STOCK Act are inconsistently enforced and the process is not transparent, Insider found. There isn't even a public ledger anywhere showing who paid a penalty.

"As we have seen through recent reporting, Congress has not been good about complying with the STOCK Act's disclosure requirements, and that's a problem," said Jennifer Schulp, director of Financial Regulation Studies at the CATO Institute, a libertarian think tank.

Republicans invited Schulp to testify, and she's opposed to a stock-trade ban because she said transparency helps to inform voters of what their elected officials are doing.

But she said Congress should consider other ways to strengthen the STOCK Act, such as publicly reporting who is flouting the law and who paid fines. Shortening the timeframe between when lawmakers or their family members can make a trade and when they have to report it could also help, she said. Currently, lawmakers must publicly disclose stock trades within 30 to 45 days, depending on when members learned about their trades.

Rep. Rodney Davis of Illinois, the Committee on House Administration's top Republican, said in an interview last month that he was skeptical about a ban but hadn't totally ruled it out. He stressed that Congress could improve lawmakers' ethics trainings to help them better comply with disclosure rules. Davis also said Congress could improve how it makes lawmakers' trading information available to the public.

But the committee will certainly hear about how and why to implement a stock trading ban.

Democrats on the committee called on nonprofit anti-corruption organizations, including the Project on Government Oversight and Citizens for Responsibility and Ethics in Washington, to testify on behalf of a ban. Meanwhile, 37 former members of Congress on Wednesday asked current lawmakers to ban themselves — and their immediate family members — from trading stocks while in office.

Enforcement: tougher and more transparent?

Here's a recent example of how convoluted current congressional stock disclosure rules are.

Stick with us — it's a bumpy ride.

On February 28, House Speaker Nancy Pelosi disclosed to the Clerk of the House of Representatives that her husband, Paul Pelosi, purchased $2.9 million in stock on January 21.

Pelosi also affirmed in her disclosure that she became aware of her husband's stock trades the same day, January 21.

A stock disclosure filing submitted February 28, 2022, by House Speaker Nancy Pelosi. Clerk of the House of Representatives

Federal law and House guidance states that members of Congress must disclose such stock trades "within 30 days of notice of the transaction." They have a maximum of 45 days to disclose a transaction in the event that a financial or stock broker bought stock on their behalf but didn't inform the member of Congress about it until, say, 35 or 40 days after doing so.

At its face, this language indicates Pelosi disclosed her husband's trade one week late. Several former congressional ethics attorneys told Insider that this 30-day rule is real and clear — but that the Committee on House Ethics, in particular, doesn't follow it.

"The law requires members of Congress to disclose stock trades within 30 days of knowing of the trade, but the Ethics Committee has created exceptions contrary to law," said Kedric Payne, the nonpartisan Campaign Legal Center's general counsel and senior director for ethics and a former deputy chief counsel of the Office of Congressional Ethics.

Pelosi's office denied that the speaker was late and referred questions to the Committee on House Ethics. But the Committee on House Ethics, which enforces the STOCK Act, refused to answer Insider's questions — as has been the case for months.

In October, however, Insider obtained an email from Tonya N. Sloans, the Committee on House Ethics' director of financial disclosure, advising another member of Congress that she actually had 45 days to disclose her stock transactions, and that the 30-day rule doesn't apply.

"As long as the transaction is reported within 45 days of the transaction … the transaction is timely," Sloans wrote.

On March 4, Pelosi filed another disclosure with the Clerk of the House of Representatives. In it, she said that she didn't learn of her husband's stock trades on January 21, as she originally affirmed, but on February 28.

An updated stock disclosure filing submitted March 4, 2022, by House Speaker Nancy Pelosi. Clerk of the House of Representatives

"The Speaker was made aware of these transactions on February 28, 2022. The last disclosure has been amended to correct the notification date of these transactions," Pelosi deputy chief of staff Drew Hammill told Insider.

There is no evidence that Pelosi paid a fine or was otherwise warned in the matter.

On Thursday, expect lawmakers to debate whether Congress can do better when it comes to clarifying what existing law even requires of them. And bet that lawmakers will discuss whether they should provide more insight into what's now a decidedly opaque process for investigating potential STOCK Act disclosure violations and penalizing members who break the law.

If they do talk about a ban, who will it apply to?

Two bills, the Ban Conflicted Trading Act and the TRUST in Congress Act, would prevent lawmakers from trading individual stocks while in office. They'd force lawmakers to hold onto existing investments or have them put assets into a blind trust.

Both bills have bipartisan support but differ in a key way: The TRUST in Congress Act would extend a ban to lawmakers' spouses.

Several good government groups view a lawmaker-only ban as meaningless. They pan the idea that finances in a marriage can remain separate given that spouses do tend to live together, likely discuss their jobs on a regular basis and share in each other's wealth.

Take Pelosi, for instance. Pelosi herself does not trade any stocks. But her husband, Paul, has millions of dollars worth of investments, including in companies that together spend tens of millions of dollars annually lobbying the federal government for favorable treatment. With her husband's wealth considered, Pelosi ranks among the wealthiest members of Congress.

Will senior staff get considered?

Discussions on Capitol Hill about reforming the STOCK Act have included very few mentions of senior congressional staff.

One big reason: lawmakers are concerned about being able to retain top talent when they know the people working for them can easily depart for a far more high-paying corporate lobbying position.

Yet Insider has found that at least 182 of the highest-paid Capitol Hill staffers, who earned a minimum salary of $132,552, were late reporting their stock trades during 2020 and 2021 — in violation of the STOCK Act.

These staffers often wield significant influence over their elected bosses. Many also regularly meet with special interests and corporate lobbyists, who could conceivably represent a company or industry in which a congressional staffer personally invests.

That's why the STOCK Act obligated senior staff to disclose their stock trades, just as lawmakers have to.

These disclosure documents, however, are notoriously difficult to access: One must physically go to the US Capitol to obtain them. Even if you successfully access the office where the records are, and snag one of the few dedicated computer terminals where you may access them, you're not allowed to download them. But you can print them — for 20 cents per page.

Rep. Abigail Spanberger, a Democrat of Virginia who co-sponsored the bipartisan TRUST in Congress Act, told Insider one of her biggest concerns was that Thursday's hearing will attempt to address too many issues at once and distract from Congress focusing on … members of Congress.

"I'm hyper alert to things that might be poison pills," Spanberger said, citing the staffer example and then questions over whether to create new requirements for federal employees.

"I'm not in any way opposed to it," she said of a ban on trading for top staffers, particularly those on committees. "But the principle I'm focused on is that we are the elected ones. We are the ones who have to demonstrate that we should be, and are, trustworthy."

Will Congress target judges?

Spanberger's concerns extend to the question over whether to create new requirements for the judiciary — she's concerned that the legislation might become too large and result in nothing being able to pass.

In September 2021, The Wall Street Journal released a bombshell investigation that found 131 federal judges broke the law by hearing cases in which they had a financial interest.

As a result, some lawmakers and outside groups started talking about restrictions on their stock ownership.

"The recent scandals make it clear that it is time to go a step further and ban stock trading activity altogether for some, if not most, government officials," Craig Holman, government affairs lobbyist at Public Citizen, wrote in comments he submitted to the committee.

While Public Citizen says it would support numerous reforms on stock trading, it is encouraging Congress to be more encompassing, including by banning Supreme Court justices from trading.

Even Pelosi has said that it might be important to consider "government-wide" reforms.

"The court system, the third branch of government, the Judiciary, has no reporting," she said during a press conference on February 9. "The Supreme Court has no disclosure. It has no reporting of stock transactions. And yet it makes important decisions every day."

Will members use the hearing as an opportunity to attack each other?

The discussion about congressional stock trading is happening smack at the start of a midterm election year.

Political campaigns know that voters are agitated by the idea that lawmakers are in Washington to benefit and enrich themselves rather than the people they were sent there to represent. They're running tons of ads and fundraising emails attacking their opponents about their stock trades.

Hearings can often provide fodder for even more attacks. So the question is, how much will members call out each other for STOCK Act violations or conflict-of-interest questions?