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"Hatch Act" and Other Restrictions in Federal Law on Political Activities of Government Employees

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ABSTRACT

This report discusses and summarizes the restrictions on permissible political activities by civilian employees in the executive branch of the Federal Government, under the provisions of the law commonly known as the "Hatch Act," as amended and replaced by the "Hatch Act Amendments of 1993," and under other provisions of federal law. The "Hatch Act" covers generally only civilian employee in the executive agencies and departments. For related information on permissible activities of congressional employees, see CRS. Report 96-184.

"Hatch Act" and Other Restrictions in Federal Law on Political Activities of Government Employees

Summary

Most federal officers and employees are now generally free to engage in a broad range of partisan political activities on their own "free time" or "off-duty" hours. The provisions of the "Hatch Act Amendments of 1993" removed most of the restrictions on voluntary, free-time activities by federal employees in the executive branch of Government for or on behalf of partisan candidates or political parties, while providing more express prohibitions regarding on-the-job politics in federal offices. Employees in the executive branch of the Federal Government are, however, still restricted by the "Hatch Act" provisions in several specific activities. All officers and employees in the executive branch, other than the President and Vice President, are still generally restricted in the following ways:

- (1) They may not use their "official authority or influence for the purpose of interfering with or affecting the result of an election."
- (2) They are generally restricted from soliciting, accepting or receiving political campaign contributions from any person.
- (3) They may not run for elective office in most "partisan" elections.
- (4) They are prohibited from soliciting or discouraging participation in any political activities by a person who has an application for a grant, contract or other funds pending before their agencies, or is the subject of an ongoing audit or investigation by their agencies.
- (5) They are generally prohibited from engaging in partisan campaign activity on federal property, on official duty time, while wearing a uniform or insignia identifying them as federal officials or employees, or while using a government vehicle.

Certain federal employees in specified executive agencies, generally those dealing with law enforcement or national security, are still subject to more restrictive provisions, similar to the old Hatch Act, which broadly bar such employees from taking an active part in partisan political activities even on their own, off-duty hours. The Hatch Act statute applies only to civilian officers and employees of the executive branch of the Federal Government. Members of the uniformed services are subject to the military's own restrictions issued as a Department of Defense Directive, No. 1344.10. Employees of the legislative and judicial branches of the Federal Government do not come within the restrictions of the Hatch Act, although some other provisions of federal law, such as the criminal restrictions on campaign contributions and solicitations, generally apply to all federal officers and employees. Rules and rulings governing congressional employees are discussed in another C.R.S. Report, No. 96-184, "Campaign Activities by Congressional Employees."

State or local governmental employees whose principal employment "is in connection with an activity which is financed in whole or in part" by federal funds, come within a particular part of the "Hatch Act." Such State and local employees are prohibited from running for office in a partisan election; using their official authority to influence an election; or attempting to coerce a state or local employee to make a political contribution.

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"Hatch Act" and Other Restrictions in Federal Law on Political Activities of Government Employees

Although many restrictions were relaxed in 1993, federal employees in the agencies and departments of the executive branch of the Government, including also postal workers, are still subject to certain limitations on their partisan political activities, even during their off-duty, personal time. Certain public employees in State and local governmental agencies, when their duties involve federally funded activities, are also covered by some federal restrictions on political activities.

Background

Employees in the executive branch of the Federal Government have for more than a century lived with certain statutory and regulatory limitations and restrictions upon their partisan political activities.¹ A general, over-all ban on even voluntary, off-duty participation in partisan politics by merit system employees was instituted by an Executive Order of the President in 1907.² Known as Civil Service Rule 1, this restriction and all of the administrative interpretations under it, were eventually codified in 1939 and made applicable to most executive branch employees in the law commonly called the "Hatch Act."³ State and local government employees whose official jobs are connected with activities that are federally funded have, since 1940, also come within the purview of a part of the federal "Hatch Act" law regarding partisan political activities.⁴

The "Hatch Act" and civil service restrictions were seen in some respects as protections of federal employees from coercion from higher level, politically

¹ Note Act of August 15, 1876, ch. 287, §9, 19 Stat. 169; and "Pendleton" Civil Service Act, 22 Stat. 403 (1883), concerning political contributions and political coercion. As early as 1801, President Thomas Jefferson had urged the principle of political neutrality for federal employees. See discussion in Vaughn, "Restrictions on the Political Activities of Public Employees: The Hatch Act and Beyond," 44 *George Washington University Law Review* 516, 517 (1976).

² Executive Order No. 642, June 3, 1907, amending Civil Service Rule I, which had been adopted originally in 1883 after passage of the Pendleton Act. The Executive Order of 1907 provided that persons in the "competitive classified service ... shall take no active part in political management or in political campaigns."

³ Public Law 252, 76th Congress, 53 Stat. 1147 (1939).

⁴ Public Law 553, 76th Congress, 54 Stat. 767 (1940), see now 5 U.S.C. §§ 1501 *et seq.*

appointed supervisors to engage in political activities against their will,⁵ as well as an effort by Congress and the Executive to assure a non-partisan and evenhanded administration of federal laws and programs.⁶ With the advent of the modern, more independent and merit-based civil service,⁷ and the adoption of increased statutory and regulatory protections of federal employees against improper coercion and retaliation,⁸ the need for a broad ban on all *voluntary*, outside activities in politics as a means to *protect* employees was seen as less necessary, and as more restrictive of the rights of private expression of millions of citizens than was needed to accomplish the goals of the Hatch Act.⁹ The 1993 Hatch Act Amendments thus removed many of the most restrictive limitations in federal law on employees' personal, off-duty voluntary activity, speech and expression, while at the same time provided more express statutory prohibitions on work place politicking.

In 1993, the provisions of Hatch Act were significantly amended by the "Hatch Act Amendments of 1993" to allow most federal employees to engage in a wide range of voluntary, partisan political activities on their own free time, away from their federal jobs and off of any federal premises.¹⁰ While most federal officers and employees may now generally engage in partisan political activities on their own "free time" or "off-duty" hours, federal employees in the executive branch of the Federal Government are still restricted by the "Hatch Act" provisions in several specific activities.

All officers and employees in the executive branch, other than the President and Vice President, are still generally restricted in the following ways:

⁵ Senate Report No. 1, 76th Congress, 1st Session (1939). The investigative hearings and report focused on the abuses of the merit system and use of public work relief funds (W.P.A.) to coerce political activities, loyalty and contributions from workers. Note discussions in Bolton, *The Hatch Act, A Civil Libertarian Defense*, American Enterprise Institute, at 2-3, 9-16 (1976), and H.R. Rpt. 103-16, 103rd Congress, 1st Session, 7-13 (1993).

⁶ *United Public Workers, C.I.O. v. Mitchell*, 330 U.S. 75, 94-103 (1947); and *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 564-567 (1973), upholding Hatch Act against First Amendment challenge.

⁷ The percentage of merit system civil service employees grew from 10% of the federal workforce at the time of the passage of the Pendleton Civil Service Act in 1883, to 32 % of the federal workforce at the time of the passage of the Hatch Act in 1939, to the current figure of more than 80% of all federal workers being in the competitive civil service. See *1997 Federal Personnel Guide*, Key Communications Group, at 11 (1997); Comm. Print 94-29, 94th Congress, 2d Session, "History of Civil Service Merit Systems of the United States and Selected Foreign Countries," at 8 (1976).

⁸ See, for example, 5 U.S.C. § 2302, added by the Civil Service Reform Act of 1978, and 5 U.S.C. §§ 1201 *et seq.* and 1211 *et seq.*, creating Merit Systems Protection Board and Office of Special Counsel. Note also the emergence of employee protections through recognized bargaining representatives and statutorily required grievance procedures. 5 U.S.C. §§ 7111 *et seq.*, and 7121 *et seq.*

⁹ H.R. Rpt. 103-16, *supra* at 5-15 (1993).

¹⁰ P.L. 103-94, October 6, 1993; 5 U.S.C. §§ 7321 *et seq.* Some employees of designated agencies and departments are still restricted in participating in even voluntary, off duty political activities. 5 U.S.C. § 7323(b).

(1) Officers and employees may not use their "official authority or influence for the purpose of interfering with or affecting the result of an election."¹¹

(2) Officers and employees are generally restricted from soliciting, accepting or receiving political campaign contributions from any person.¹²

(3) Officers and employees may not run for elective office in most "partisan" elections.¹³

(4) Officers and employees are prohibited from soliciting or discouraging participation in any political activities by a person who has an application for a grant, contract or other funds pending before their agencies, or is the subject of an ongoing audit or investigation by their agencies.¹⁴

(5) Officers and employees are generally prohibited from engaging in partisan campaign activity on federal property, on official duty time, while wearing a uniform or insignia identifying them as federal officials or employees, on in a Government vehicle.¹⁵

State and local governmental employees whose principal employment "is in connection with an activity which is financed in whole or in part" by federal funds, come within certain limitations on political activity in another part of the "Hatch Act."¹⁶ Such covered State and local employees are prohibited from running for office in a partisan election; using their official authority to influence an election; or attempting to coerce a state or local employee to make a political contribution.¹⁷

Coverage Under the Hatch Act

The provisions of the Hatch Act Amendments of 1993, in a manner similar to the basic provisions of their predecessor statutes, apply generally to all civilian officers and employees in the executive branch of the Federal Government, other than the President and Vice President. Included also are employees of the District of Columbia Government, officers and employees of the United States Postal Service or the Postal Rate Commission,¹⁸ and employees in positions expressly placed by statute in the competitive service, even if not in an "executive agency." The breadth of coverage of the general provisions of the Hatch Act includes, in addition to rank-and-file employees in the executive branch of the Federal Government, all officials of the executive agencies and departments, even agency and department heads appointed by the President with advice and consent of the Senate, as well as all

¹¹ 5 U.S.C. § 7323(a)(1).

¹² 5 U.S.C. § 7323(a)(2). See exceptions to prohibition at § 7323(a)(2)(A)-(C).

¹³ 5 U.S.C. § 7323(a)(3).

¹⁴ 5 U.S.C. § 7323(a)(4).

¹⁵ 5 U.S.C. § 7324(a). Note exemptions to "on duty" restriction for certain White House personnel and presidential appointees, discussed below. 5 U.S.C. § 7324(b).

¹⁶ 5 U.S.C. § 1501.

¹⁷ 5 U.S.C. § 1502(a).

¹⁸ 5 C.F.R. § 734.101.

officials, staff and aides in the offices of the President and Vice President.¹⁹ Some prohibitions in the Hatch Act Amendments, such as the restriction on partisan political activities while "on duty" time, may not apply to certain presidentially appointed officials and aides, when there is an express exemption in the statute.

The Hatch Act Amendments of 1993 define a covered "employee" to include individuals employed in or holding office in "an Executive agency" (other than the General Accounting Office), or in a position "within the competitive service which is not in an Executive Agency," but expressly exclude "a member of the uniformed service."²⁰ The permissible and prohibited political activities of military personnel are governed generally by rules set out in Department of Defense Directive 1344.10. Furthermore, by definition and design, the Hatch Act does not apply to employees in the judicial or the legislative branches of the Federal Government.²¹ Some provisions of the federal criminal code relating to campaign funds and contributions apply, however, to all federal officers and employees in all three branches of Government.²²

Employees Still Under Strict "No Politics" Rule

It should be noted that certain federal employees in specified executive agencies are not included in the more "relaxed" Hatch Act rules enacted in 1993, and still come under more restrictive provisions similar to the former "no politics" rule of the original Hatch Act. These employees are generally in agencies which deal with law enforcement or national security matters. Such employees may not "take an active part in political management or in political campaigns," and are subject to the "no politics" rule even while "off duty" or away from their official jobs or workplace.²³

Employees who remain subject to the old Hatch Act-type of prohibition include those employees who are not appointed by the President with the advice and consent of the Senate in the following agencies: the Federal Election Commission, the Federal Bureau of Investigation, the Secret Service, the Central Intelligence Agency, the National Security Council, the National Security Agency, the Defense Intelligence Agency, the Merit Systems Protection Board, the Office of Special Counsel, the Office of Criminal Investigation of the Internal Revenue Service, the

¹⁹ Employees in the Office of the President, including those employed directly in the White House, have historically come within the general provisions of the Hatch Act since its enactment in 1939, although some were expressly exempt from the strict "no politics" portion of Section 9(a) of the original Act. See debates on Hatch Act and Dempsey Amendment concerning the President's staff in the White House office, 84 *Congressional Record* 9596-9639, 76th Congress, 1st Sess., July 20, 1939; note 1 Op. O.L.C. 54 (1977)[Vice Presidential staff]; see discussion by Office of Personnel Management, 59 *Federal Register* 48769, September 23, 1994.

²⁰ 5 U.S.C. § 7322.

²¹ Positions not in an "executive agency" are not covered by the Hatch Act unless such positions are expressly included in the competitive service by statute.

²² For a discussion of the guidelines and rules for congressional employees, see CRS Rpt. No. 96-184A, "Campaign Activities By Congressional Employees," February 28, 1996.

²³ 5 U.S.C. § 7323(b)(2).

Office of Investigative Programs of the United States Customs Service, the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; employees who are career Senior Executive Service appointees (5 U.S.C. § 3132(a)(4)); administrative law judges (5 U.S.C. § 5372); contract appeals board members (5 U.S.C. § 5372a); and staff of the Criminal Division of the Department of Justice.²⁴

Persons Who are Not Federal Employees

The Hatch Act provisions of federal law which apply to federal employees in the executive branch of the Federal Government, apply only to *government employees*, and do not restrict the political activities of private individuals who may work for or be employed in private businesses, organizations or entities which are contractors or grantees of the Federal Government. The restrictions on federal executive branch employees generally do not follow federal contract or grant funds to restrict the personal political activities of the individuals who are or who work for recipients of such funds. Similarly, the Hatch Act provisions which relate to the permissible political activities of a "State or local officer or employee," generally apply only to State or local *governmental* personnel who work on federally funded projects, and do not apply on their face to personnel who work for private, non-profit or business organizations merely because they receive federal grant or contract monies.²⁵ In certain circumstances, and under some programs, it is possible that certain non-profit organizations which are funded under a particular federal program might, under federal statutory law, be expressly designated in the law establishing that program as "State or local" governmental agencies for purposes of those Hatch Act provisions.²⁶ It may be noted that, as opposed to restrictions on *individuals*, there are general restrictions on the use of *federal funds* for political purposes which generally follow such funds to private recipients under federal programs.²⁷

²⁴ 5 U.S.C. §7323(b)(2),(3).

²⁵ See discussion of federal restrictions on State and local governmental personnel whose employment is in connection with a federally funded activity, see pp. 16-17, *infra*.

²⁶ Note restrictions on "staff attorneys" of recipients of funds from the Legal Services Corporation, 42 U.S.C. § 2996e(e)(2); 45 C.F.R. Part 1608. It may be noted that the law establishing the Community Services Block Grant Program had at one time expressly provided that any private non-profit agency "receiving assistance under this chapter which has responsibility for planning, developing, and coordinating community antipoverty programs shall be deemed to be a State or local agency" for the purposes of the portion of the Hatch Act at chapter 15 of title 5, United States Code. That provision, however, was repealed by the Hatch Act Amendments of 1993. P.L. 103-94, § 6.

²⁷ Federal Acquisition Regulations [FAR], 48 C.F.R. § 31.205-22. OMB Circular A-122, ¶ B21, as added 49 F.R. 18276, April 27, 1984, see FAR, 48 C.F.R. § 31.701 et seq.

Activities Restricted by the Hatch Act

Use of Official Authority/Coercion

A provision of the new Hatch Act, in a fashion similar to the former law, prohibits any officer or employee in the executive branch of the Federal Government from using his or her official position, authority or influence to affect the results of an election.²⁸ This provision has generally been directed at coercive activities, including the coercion by federal supervisory personnel of those employees whom they supervise to engage in partisan political activities.²⁹ The request or direction by a supervisor to an employee he or she supervises to engage in partisan political activity, or to use resources, time or supplies in such activity may, therefore, implicate this section of the Hatch Act on use of official authority, particularly because of the inherently coercive nature of the supervisor-supervisee relationship.³⁰ The new Hatch Act Amendments also have added an explicit criminal provision which prohibits any person from intimidating, threatening or coercing or attempting to coerce any covered federal employee to engage in or refrain from political activity, to support or oppose a candidate, or to make or not to make a political contribution.³¹

Fund Raising Activities and Political Contributions

All federal officials and employees in the executive branch, other than the President and Vice President, are now substantially restricted in the permissible political fund *raising* activities in which they may engage. Employees are generally free to *make* political contributions, however, to candidates, committees and political parties of their choice.

Hatch Act and Campaign Funds. The new Hatch Act Amendments expressly provide that no officer or employee in the executive branch of Government, other

²⁸ 5 U.S.C. § 7323(a)(1); under former law, see 5 U.S.C. § 7324(a)(1) (1988 ed.).

²⁹ "Section 2, clause second, of the Civil Service Act directs that the civil-service rules 'shall provide and declare as nearly as the conditions of good administration will warrant, as follows: ... Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.' In pursuance of this section, Civil Service Rule IV, section 4.1 provides, in part, that 'Persons in the executive branch ... shall not use their official authority or influence for the purpose of interfering with an election or affecting the results thereof.' This provision applies to all persons in the executive civil service, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates." *Political Activity of Federal Officers and Employees*, U.S. Civil Service Commission, Pamphlet 20, at p. 23 (March 1964).

³⁰ See old Hatch Act cases on use of authority, for example, *In the Matter of McLeod*, CSC No. S-19-43 (1943), 2 P.A.R. 42; *In the Matter of Fleming*, CSC No. S-2-43 (1943), 2 P.A.R. 1. Note current regulation prohibiting the solicitation of uncompensated volunteer services from a subordinate. 5 C.F.R. § 734.303.

³¹ 18 U.S.C. § 610, P.L. 103-94, Section 4(c), 107 Stat. 1005.

than the President and Vice President, may "knowingly solicit, accept, or receive a political contribution from any person"³² The only exception to the fund raising restriction expressed in the statute allows for the solicitation of a fellow member of a federal employee association or federal employee labor organization who is not a subordinate, when that solicitation is for a multicandidate political committee.³³

It should be noted that there does not currently exist any express exception to the fundraising prohibition for employees in the Executive Office of the President, nor is there an exception to the fundraising prohibition for heads of agencies or high-level presidential appointees who require Senate confirmation. In this sense, with regard to fundraising activities by such persons, it would appear that the new provisions of the Hatch Act Amendments are *more restrictive* than the former provisions which had provided a general exemption to the prohibitions on engaging in political activities for certain high-level presidential appointees, agency heads and staff in the office of the President.³⁴ The Office of Personnel Management (OPM), in a discussion preceding the promulgation of its current Hatch Act regulations, notes that those employees, including presidential appointees and White House staff paid from appropriations of the Office of the President, who had been covered under the *general* prohibitions of the old Hatch Act on misuse of authority but who had been exempt from the "no politics" section of the old Hatch Act, will now still be covered under the general misuse of authority language in the Hatch Act Amendments and will be *additionally* covered by those new provisions from which they are not expressly exempt. The additional restrictions on such employees include the prohibitions on solicitations of political campaign contributions, as well as running for office in a partisan election, and the encouragement of political activity by those with matters pending before one's agency:

Subpart E applies to certain employees who are paid from the appropriation for the Executive Office of the President. It also applies to an employee who is appointed by the President by and with the consent of the Senate, whose position is located within the United States, and who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. ...

Under the [old] Hatch Act, these employees were covered by the prohibition against misusing their official authority to interfere with or affect the result of an election, but they specifically were excluded from all aspects of the prohibition against active partisan political participation. In contrast to the [old] Hatch Act, the Amendments subject these employees to additional prohibitions. Thus, the Amendments prohibit these employees from running for partisan political office. They also prohibit these employees from soliciting, accepting, and receiving political contributions, except under the conditions specified in the Amendments

³² 5 U.S.C. § 7323(a)(2).

³³ 5 U.S.C. § 7323(a)(2)(A)-(C); note 5 C.F.R. § 734.208(b).

³⁴ See discussion by OPM in 59 *Fed. Reg.* 48769, September 23, 1994. Note former 5 U.S.C. § 7324(d)(1),(2), and (3) (1988 Code ed.), exempting from political activities restrictions (other than the misuse of authority), employees paid from the appropriation for the office of the President, agency heads, and policy making presidential appointees.

and these interim regulations. However, the Amendments specifically exclude these employees from the prohibition against political participation while on duty, in uniform, in a room or building occupied in the discharge of official duties, or in a Government-owned or leased vehicle.³⁵

As to the specific activities that are prohibited or may be permitted under the fundraising restriction of the Hatch Act Amendments, the regulations and interpretations of the Office of Personnel Management note that employees in the executive branch may attend a campaign fundraiser, may work behind the scenes in organizing or managing a fundraising event, and may even speak at a fundraising event, but may not be involved personally in the actual solicitation, acceptance or receipt of campaign contributions.³⁶ An employee's name may not appear on a fundraiser invitation "as a sponsor of the fundraiser," but may appear on an invitation to a political fundraiser "as a guest speaker as long as the reference in no way suggests that the employee solicits or encourages contributions."³⁷ Furthermore, one's "official title" may not be used "in connection with fundraising activities,"³⁸ but an employee who "is ordinarily addressed using a general term of address, such as 'The Honorable,' may use or permit the use of that term of address for such a purpose."³⁹

Campaign Contributions and Criminal Prohibitions. All federal employees are prohibited by federal criminal law from knowingly *soliciting* campaign contributions from other federal employees, unless such solicitation is from a federal employee covered by the Hatch Act directed to those persons expressly permitted to be solicited under the Hatch Act Amendments.⁴⁰ Federal criminal law also expressly prohibits all federal employees from *making* political contributions to their employers or employing authority, that is, to their "bosses."⁴¹ Amendments to that criminal provision by the Hatch Act Amendments of 1993, however, now allow federal employees covered by the Hatch Act to make such political contributions as long as no Hatch Act violation occurs.⁴² Prior to 1993 this criminal statute on making contributions to one's "employing authority" was interpreted to prevent contributions from rank-and-file employees of the entire executive branch of the

³⁵ 59 *Fed. Register* 48769, September 23, 1994.

³⁶ See 5 C.F.R. §§ 734.208(b) and 734.303, and examples that follow. Employees may anonymously stuff envelopes with campaign literature soliciting campaign contributions. See 59 *Fed. Reg.* 48767.

³⁷ 5 C.F.R. § 734.303, *Example 2*; 5 C.F.R. § 734.208, *Example 3*.

³⁸ 5 C.F.R. § 734.303(c).

³⁹ 5 U.S.C. § 734.208, *Example 3*.

⁴⁰ 18 U.S.C. § 602. Employees may solicit from other federal employees who are fellow members of employee associations and organizations, if the solicited employee is not a subordinate of the employee soliciting, and if the solicitation is made for a multicandidate committee.

⁴¹ 18 U.S.C. § 603.

⁴² 18 U.S.C. § 603(c), added by P.L. 103-94, Section 4(b), 107 Stat. 1005.

Federal Government to the committee supporting the re-election of the President; however, the 1993 Amendments indicate that such contributions are now permitted.⁴³

A federal criminal statute which had originated in the Pendleton Civil Service Act of 1883 currently prohibits anyone from soliciting or receiving political contributions in official federal office space.⁴⁴ While the language of the statute is very broad, the legislative history, interpretation and application of the provision have been more narrowly focused. In a recent matter involving allegations of fundraising telephone calls from the office of the Vice President in the White House, for example, the Attorney General explained that criminal prosecutions under the statute, which had been adopted originally to protect federal employees from coercive and bothersome solicitations in their place of work, would generally be initiated only in the presence of "aggravated" circumstances of violations of the law.⁴⁵ Although criminal prosecution might not be initiated except in "aggravated" circumstances, such political activity in a federal building, in federal workspace or while an employee is "on duty," would, for most employees covered by the Hatch Act, constitute a Hatch Act violation.⁴⁶

Candidacy For Public Office

Employees covered under the Hatch Act may not run as candidates for a "partisan political office." A "partisan political office" is expressly defined in the law to mean "any office for which *any* candidate is nominated or elected as representing" a political party whose candidates received votes for presidential elector in the preceding presidential election.⁴⁷ The restrictions on being a candidate for office thus bar a federal executive branch employee from running for "any" elective public office, that is, even a State, local or county office, which is filled in an election where "any" of the candidates in the election run as a Democrat or a Republican.

⁴³ Compare "Memorandum for the Heads of All Departments and Agencies," from Fred F. Fielding, Counsel to the President, February 14, 1984 and "Memorandum for the Heads of All Departments and Agencies," from C. Boyden Gray, Counsel to the President, November 18, 1991, to "Memorandum for the Heads of All Agencies and Departments," from Abner J. Mikva, Counsel to the President, May 2, 1995.

⁴⁴ 18 U.S.C. § 607.

⁴⁵ Statement of Attorney General Reno, December 2, 1997. "Aggravating" factors included evidence of "coercion, knowing disregard of the law, a substantial number of violations, or a significant disruption of government functions." Concerning campaign fund raising solicitations in the White House, it should be noted that the White House has historically been considered a personal "residence" as well as an area containing federal office space for the conduct of official governmental business, and that the Department of Justice has found, therefore, that certain areas and rooms in the White House, depending on their use, are outside of the prohibition on campaign fundraising activities in a "room or building occupied in the discharge of official duties." 3 Op. O.L.C. 31 (1979).

⁴⁶ 5 U.S.C. § 7324; see discussion below.

⁴⁷ 5 U.S.C. § 7322(2). Emphasis added.

The Hatch Act does allow a federal employee to run as a candidate in "a non-partisan election."⁴⁸ However, the regulations make it clear that the election itself must be "non-partisan," that is, "*none* of the candidates is to be nominated or elected as representing" such political parties.⁴⁹ The statute would, therefore, continue to bar even an "independent" candidacy by a federal employee in an otherwise "partisan" election.

In addition to the general exception for candidacies in a non-partisan election, the Hatch Act provides that regulations issued by the Office of Personnel Management may establish that employees in certain communities near the Washington, D.C. metropolitan area, or in other communities where the majority of voters residing there are federal employees, may participate in certain local political activities which might otherwise be prohibited, such as the acceptance of political contributions and independent candidacies in partisan elections.⁵⁰ The Office of Personnel Management has issued regulations specifying those communities in which federal employees may be independent candidates even in partisan elections.⁵¹ Concerning such races, an employee could receive or accept political contributions in connection with that election, but would still be prohibited from *soliciting* contributions from the general public.⁵²

Holding Public Office

While the "Hatch Act" provisions generally prohibit employees from running for a partisan elective office, the language of the Act does not prohibit an employee from "holding" a public office, even an elective public office. An employee, under the Hatch Act is thus not necessarily prohibited from being appointed to a public office, or from holding a public office when he or she enters federal service. If the public office that the federal employee holds is one where the employee must normally run in a partisan election, however, then the employee may be barred from running for re-election to that office.

The regulations of the Office of Personnel Management provide that service in a particular public office (and candidacy for the office where candidacy is permitted under the Hatch Act) will be allowed only if such service will not "result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or an apparent conflict, of interest."⁵³ The issue of outside or additional office holding by a federal employee is thus predominately an ethics or "conflict of interest" issue, generally addressed in standard of conduct regulations concerning activity, employment or income outside of or additional to one's Government employment. The standards of conduct for employees in the executive branch of government have been promulgated by the Office of Government Ethics, and are

⁴⁸ 5 C.F.R. § 734.207(b).

⁴⁹ 5 C.F.R. § 734.101. Emphasis added.

⁵⁰ 5 U.S.C. § 7325. See 5 C.F.R. Part 733.

⁵¹ 5 C.F.R. § 733.102(d).

⁵² 5 C.F.R. § 733.102(b).

⁵³ 5 C.F.R. § 733.102(c).

codified at 5 C.F.R. part 2635. These provisions, at 5 C.F.R. § 2635.801 *et seq.*, seek to restrict outside compensation and employment which create a conflict of interest with one's governmental duties (such that an employee would be required to "recuse" himself or herself on governmental matters), or which implicate other ethical issues because of the source of the compensation and/or the duties of the employee receiving the compensation. It is possible that an agency, by supplemental regulation, will require an employee to receive prior approval before engaging in compensated outside private employment.⁵⁴ In any event, an employee considering appointment to or otherwise running for or holding an additional public office or position should check with his or her designated agency ethics officer for conflict of interest or other ethics considerations.

Soliciting or Discouraging the Participation in Elections

The federal Hatch Act law states that employees in the executive branch may not solicit political participation, or discourage such participation, by anyone who has any official matter pending before their agencies, that is, from one who "has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee," or who is the subject of "an ongoing audit, investigation, or enforcement action" carried out by the employee's office.⁵⁵ It does not appear that the fact that a private entity is merely regulated by one's agency (or may be affected by rules promulgated by the agency, or be subject to future audit or investigation) would be enough, in itself, to come within this restriction on solicitation of participation; rather the law appears to require a specific matter to be "pending," or an audit, investigation or enforcement action to be "ongoing."⁵⁶ Under regulations and examples provided by the Office of Personnel Management, an employee may address a "large, diverse group" to promote a candidacy even if it may incidentally contain persons in the audience with matters before the agency "as long as the group has not been specifically targeted as having matters before the employing office,"⁵⁷ but an employee should not address an industry group on a campaign matter if the event is sponsored by, for example, a lobby group for the industry when the employee knows that companies with matters before the employee's agency will be in attendance.⁵⁸

Politics "On Duty" or in Government Workplace

When the Hatch Act restrictions on voluntary, off-duty political activities were substantially eased for rank-and-file employees of the executive branch in 1993, more specific and express restrictions on political activities while "on duty," or in Government offices were instituted. While "on duty," in a federal office, while

⁵⁴ 5 C.F.R. § 2635.803

⁵⁵ 5 U.S.C. § 7323(a)(4).

⁵⁶ See 5 C.F.R. 734.305, *Example 2*: "An employee of the Federal Deposit Insurance Corporation (FDIC) may not solicit or discourage the participation of an insured financial institution or its employees if the institution is undergoing examination by the FDIC."

⁵⁷ *Id.* at *Example 1*.

⁵⁸ *Id.* at *Example 3*.

wearing a Government uniform or while using a Government vehicle, federal personnel in the executive branch are generally prohibited from engaging in partisan "political activity."⁵⁹ Interpretations of the former Hatch Act indicate that behind-the-scenes activity and assistance (e.g., preparation of political material, research or analysis intended for the benefit or use of a partisan candidate or political party in a campaign or an election, or assisting in organizing political campaign events), even though not overt electioneering, soliciting or canvassing for a candidate, was nevertheless the type of activity that traditionally constituted partisan "political activity."⁶⁰

There are certain employees in the executive branch of Government whose duties and responsibilities "continue outside normal duty hours and while away from the normal duty post." Such employees, when they are paid from appropriations for the Executive Office of the President, or are officers appointed by the President with the advice and consent of the Senate who determine policy with regard to foreign relations or the nationwide administration of federal laws, are under different rules concerning campaign activity while on duty status or in federal office space. These employees or officers are generally permitted to engage in political activity while on duty status or while in federal office space, or while using federal vehicles, under most circumstances.⁶¹ It should be noted that this exemption applies only to the specific prohibition on campaigning while on duty status or while in federal office space where official work is carried out, and is not a broad exemption of a general nature from all of the other specific restrictions of the Hatch Act, such as, for example, the restrictions on using one's official position to influence an election, soliciting or discouraging political activity from those with matters "pending" or "ongoing" before one's agency, or the prohibitions on political fundraising. Thus, for example, although an agency head may participate in a political meeting during "official hours" within his or her government office without violating this part of the "Hatch Act," such agency head may still not be involved in soliciting or receiving campaign contributions.⁶²

If such an exempt employee does engage in campaign activity during duty time or in federal offices, however, additional costs which are associated with such activity and paid for by moneys derived from the United States Treasury must be

⁵⁹ 5 U.S.C. § 7324. See 5 C.F.R. § 734.306. The type of activity now prohibited "on duty" would appear to be of the general type formerly prohibited under the old Hatch Act even on one's own time "off duty," that is, taking "an active part in political management or in political campaigns." See former 5 U.S.C. § 7324(a)(2) (1988 Code ed.)

⁶⁰ See, for example, "Political Activity and the Federal Employee," Office of Special Counsel, at 7 (1984), which noted that activity was covered even if the employee did not come in contact with the public: "The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches;" see also "Federal Employees Political Participation," United States Civil Service Commission, GC-46, at 2 (1972) ("work for a partisan candidate ... is prohibited, whether the work involves contact with the public or not").

⁶¹ 5 U.S.C. § 7324(b). See 5 C.F.R. § 734.502.

⁶² 5 C.F.R. § 734.502, note *Example 3*; see also 18 U.S.C. § 607 regarding campaign contributions in federal buildings.

reimbursed within a reasonable period of time and according to a formula expressed in the regulations.⁶³ This is required because, as a general rule, federal funds will not have been appropriated by Congress to a particular agency, department, or office for political campaign uses, and may, therefore, not be spent for purposes other than those for which they were appropriated. Employees paid from appropriations for the Executive Office of the President, therefore, if they fit within this exemption, may participate in political activities even during "on duty" time, and while in official federal office space, as long as any additional cost to the Government from such political activity is reimbursed from non-federal monies to the Treasury.⁶⁴

Employees who do not fall within the exempted class are permitted, when not "on duty," to be involved in campaign or political events which take place in rooms or portions of the White House which "are part of the private Residence area" of the White House and not used solely for "the discharge of official duties."⁶⁵ Such regulation by the Office of Personnel Management concerning treatment of the White House premises for Hatch Act purposes appears to comport with interpretations of the Justice Department which have found, as discussed above concerning campaign fund raising, such areas to be outside of the prohibition on campaign fundraising activities in a "room or building occupied in the discharge of official duties."⁶⁶

Use of Federal Funds, Facilities Generally

As discussed above, the Hatch Act provides that employees generally may not engage in partisan politics while on duty, in official Government work space, or with a Government vehicle. Even those who are exempt from the "on duty" limitations on campaign activities are expected to reimburse the United States Treasury for the federal resources used in campaign activities.

As to the use of federal funds and/or facilities for partisan political activities generally, it should be noted that although there is no overall, express restriction in federal statutory law on the use of appropriated funds for partisan "political purposes,"⁶⁷ general appropriation principles, ethics rules and laws work to bar the

⁶³ See 5 C.F.R. § 734.503.

⁶⁴ Costs which would normally have been incurred by the Government regardless of whether an activity is political do not have to be reimbursed, such as, for example, the cost of the official compensation of the officer or employee, the cost of official office space, or of required security. See 5 C.F.R. § 734.503(b).

⁶⁵ 5 C.F.R. § 734.502(d).

⁶⁶ See 3 Op. O.L.C. 31 (1979), and note 42, *supra*.

⁶⁷ Within the parameters of the First and Fifth Amendments, Congress may authorize, and has expressly authorized, the use of federal funds for partisan political purposes. One example is the federal monies provided to qualifying candidates for President of the United States for their partisan political campaign use during a primary campaign, and for the general election campaign for President, under the provisions of the Presidential Election Campaign Fund Act. See P.L. 92-178, as amended, note 26 U.S.C. §§9001 *et seq.*, and the
(continued...)

use of federal equipment, supplies, office space and funds, generally, for partisan political use or advantage of candidates or parties. A general appropriations principle, codified in federal law at 31 U.S.C. § 1301(a), provides that moneys appropriated by Congress may only be spent for the purposes for which they were appropriated.⁶⁸ This provision, in practice, would bar the misapplication or misuse of federal funds by federal agency personnel. As explained by the General Accounting Office:

[T]his statute was originally enacted in 1809 (2 Stat. 535) and is one of the cornerstones of congressional control over the Federal purse. Since money cannot be paid from the Treasury except under an appropriation (U.S. Const. art. I, § 9, cl. 7), and since an appropriation must be derived from an act of Congress, it is for Congress to determine the purpose for which an appropriation may be used. Simply stated, 31 U.S.C. § 1301(a) says that public funds may be used only for the purpose or purposes for which they were appropriated.⁶⁹

As to the use of appropriated funds for "political" purposes, and the possible limitation on such use by 31 U.S.C. § 1301(a), GAO explains:

Generally speaking, funds appropriated to carry out a particular program would not be available for political purposes, i.e., for a propaganda effort designed to aid a political party or candidate. See B-147578, November 8, 1962. If for no other reason, such an expenditure would be improper as

⁶⁷(...continued)

Presidential Primary Matching Payment Account Act, P.L. 93-443, note 26 U.S.C. §§9031 *et seq.* See *Buckley v. Valeo*, 424 U.S. 1, 85-109 (1976), upholding "public financing" provisions of federal campaign law, noting that there is no "establishment" clause with respect to politics as there is to religion in the First Amendment, and that Congress may "use public money to facilitate and enlarge public discussion and participation in the electoral process." *Buckley, supra* at 92-93. The "public" space of federal buildings, lands or parks or other federal property may generally be used for private partisan political activities of candidates or others, as long as such activity does not interfere with the normal official functions and governmental activities in that building or property. Note General Services Administration regulations on use of public buildings, at 41 C.F.R. §§ 101-20.305, 20.308, 20.309. See generally, GSA Memorandum for Regional Administrators, "Political Activity in GSA-controlled Buildings," April 17, 1992. There may, in fact, be constitutional limitations on the amount of restraint or prohibition that the government may impose over the free exercise of political speech and activity on or in any area of federal property which is considered a "public forum." See, for example, *United States v. Grace*, 461 U.S. 171 (1983); *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983); *United States v. Kokinda*, 497 U.S. 720 (1990).

⁶⁸ 31 U.S.C. § 1301(a): "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

⁶⁹ United States General Accounting Office. *Principles of Federal Appropriations Law*, at 4-2 (July 1991).

a use of funds for other than their intended purpose in violation of 31 U.S.C. § 1301(a).⁷⁰

Federal agencies and departments have discretion to expend federal funds to promote and to further the legitimate, official governmental objectives of the federal agency or department, and the programs and policies within their jurisdiction.⁷¹ Federal monies may not be expended "merely because some agency official feels it's a good idea." Rather, the expenditure of such funds must be in conformance with "their intended purpose," that is, that the expenditure "will contribute to accomplishing the purpose of the appropriation the agency wishes to charge."⁷²

The Comptroller General has thus looked to activities to determine if they "can be said to be so completely devoid of any connection with official functions or so political in nature that [the expenditures] are not in furtherance of purposes for which Government funds were appropriated."⁷³ Where, however, there has been a "determination" made by the President, cabinet officer, agency head or assistant that certain activities "are in connection with official duties," the Comptroller General would look merely to see if "there is a reasonable basis for such a determination."⁷⁴

There are not necessarily any clear-cut guidelines or hard-and-fast rules about categorizing an activity as "official" as opposed to "political," other than those embodied in the discussion above, that is, that the activity has some reasonable connection with official functions. It may be noted that the issue of whether an activity is "official" or "political" has arisen from time to time with respect to travel by the President and Vice President, including the travel of federal officers and employees accompanying or in advance of the President and Vice President. Guidance concerning such travel and the expenditure of funds for travel, including the reimbursement of the Government from campaign funds for "political" travel, have been given by the Office of Legal Counsel in the Department of Justice.⁷⁵ The O.L.C. has noted: "Thus, funds appropriated for the official functioning of the offices of the President and the Vice President may be used for travel expenses only if the

⁷⁰ *Principles of Federal Appropriations Law, supra* at 4-178.

⁷¹ See discussion of "necessary expense" doctrine, in *Principles of Federal Appropriations Law, supra* at 4-14 to 4-20, that the "expenditure must bear a logical relationship to the appropriation sought to be charged," that is, that "it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available." *Id.* at 4-16.

⁷² *Principles of Federal Appropriations Law, supra* at 4-16.

⁷³ Decision of the Comptroller General, B-147578, November 8, 1962, at 5; see also B-144323, November 4, 1960, *Principles of Federal Appropriations Law, supra* at 4-178.

⁷⁴ Decision of the Comptroller General, B-147578, *supra* at 5: "Consequently, where a determination is, in effect, made by the President, a cabinet officer or other agency head or assistant, that certain activities are in connection with official duties and there is a reasonable basis for such a determination we do not feel that we would be warranted in questioning the expenses incurred in connection with such activities."

⁷⁵ See 14 Op. O.L.C. 157 (1990); 6 Op. O.L.C. 214 (1982).

travel is reasonably related to an official purpose."⁷⁶ If travel or other such activities that are political/campaign-related in nature have been paid for by the Government, then such expenses should be reimbursed by a campaign committee in the appropriate manner.⁷⁷

In addition to the Hatch Act limitations on political activities while on duty or in a federal office, and the general appropriations principles discussed, it should be noted that under ethics regulations Government officers and employees in the executive branch may generally not engage in unofficial, non-governmental activity with Government resources, that is, personnel may not use appropriated funds, or use official federal supplies, equipment or official resources, for any activities which are not "official" Government activities authorized by a department or agency. Employees are expressly instructed by ethics and conduct provisions to "protect and conserve Federal property and ... not use it for other than authorized activities."⁷⁸ Administrative rulings have upheld disciplinary actions against federal employees who have misused such Government resources as the telephone, copier, or computer for certain personal business ventures, as opposed to use for official governmental activities.⁷⁹ In more severe factual circumstances, the use of Government property or resources for personal, non-official purposes to such an extent that the property is deemed to have been wrongfully converted to one's private use, or to have been stolen, would implicate criminal statutory violations.⁸⁰

State and Local Governmental Employees

In addition to the statutory restrictions on political activities by federal employees, there are some employees of State and local governmental units that may come within a certain part of the federal Hatch Act. The federal statutory provision commonly known as the "Hatch Act" has, since 1940,⁸¹ placed certain restrictions on the permissible partisan political activities of State and local governmental

⁷⁶ 6 Op. O.L.C. *supra* at 214.

⁷⁷ See, for example, Federal Election Commission regulations at 11 C.F.R. § 9004.7, and 9034.7; and Office of Personnel Management Regulations for official time and compensation of staff working on campaign matters, 5 C.F.R. § 734.503 (sometimes referred to as the "hard time formula.") Note Memorandum for the Cabinet, from Abner Mikva, Counsel to the President, "Payment of Expenses Associated with Travel by Senior Administration Officials during the Presidential Campaign," October 18, 1995.

⁷⁸ See Executive Order No. 12674, as modified by E.O. 12731, October 17, 1990, Section 101(i); 5 C.F.R. § 2634.704.

⁷⁹ See, for example, *Barcia v. Department of Army*, 47 M.S.P.R. 423 (1991); *Cobb v. Department of Air Force*, 57 M.S.P.R. 47 (1993).

⁸⁰ Note, for example, 18 U.S.C. § 641. For a theft or conversion under this statute, the improper use of the Government's property must be in such a manner that "serious interference with ownership rights" of the Government would occur. *United States v. Collins*, 56 F.3rd 1416,1420-21 (D.C. Cir. 1995).

⁸¹ P.L. 76-753, 54 Stat. 767, July 19, 1940. See now, 5 U.S.C. §§ 1501 *et seq.*, as amended by P.L. 93-443, 88 Stat. 1263, October 16, 1974.

employees whose "principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States"⁸² The Hatch Act provisions cover such individuals working with federally financed programs who are employed in State or local agencies in the "executive branch of a State, municipality, or other political subdivision of a State"⁸³

For those covered by the "Hatch Act" applicable to an employee of a "State or local agency," the provisions set out three general restrictions on employees, whether they are on or off-duty, or on annual leave, sick leave, or other leave from work. The first two relate to coercive activities, while the third relates to candidacy for office:

1. Employees are barred from using their official authority or influence to interfere with or affect the results of an election;
2. Employees are prohibited from coercing or advising fellow employees to make contributions in support of a party or candidate.
3. Employees may not be candidates for public office in a partisan election. 5 U.S.C. § 1502

Hatch Act Interpretation and Enforcement

The provisions of the Hatch Act are interpreted, and complaints of violations investigated by the United States Office of Special Counsel (O.S.C.), an independent executive agency.⁸⁴ Answers to questions about permitted or prohibited political activity may be requested from the O.S.C. by telephone at 800-85-HATCH (854-2824), or [redacted], and written advisories directed to their offices at 1730 M Street NW, Suite 300, Washington, D.C. 20036. The O.S.C maintains a web site on the Internet which provides information on and explanations of the Hatch Act and other matters under their jurisdiction, at <http://www.access.gpo.gov/osc/index.html>.

The O.S.C. investigates allegations of Hatch Act violations, and if the O.S.C. believes that disciplinary action is warranted, will prepare a complaint and statement forwarded to the employee and to the Merit Systems Protection Board (M.S.P.B.).⁸⁵ The employee is entitled to certain procedural rights in the matter before the M.S.P.B., including a hearing. The penalties, if a Hatch Act violation is found, are in the nature of administrative, personnel actions; the maximum penalty for a violation found by M.S.P.B. is removal from office, while the minimum penalty for a violation is suspension without pay for 30 days (5 U.S.C. § 7326).

⁸² 5 U.S.C. § 1501(4).

⁸³ 5 U.S.C. § 1501(2).

⁸⁴ 5 U.S.C. §§ 1211, 1216.

⁸⁵ 5 U.S.C. § 1215(a)(1).

Summary List of Permitted and Prohibited Political Activities for Federal Employees Under the "Hatch Act"

Permissible Political Activities

Most rank-and-file federal employees in the executive branch now may:

- be a member of a political party, group or club and participate in its activities (5 C.F.R. § 734.204(a));
- serve as an officer of a political party or other political group, or committee, and run for such party office (5 C.F.R. § 734.204(b));
- attend and participate in nominating caucuses of political parties (5 C.F.R. § 734.204(c));
- organize political party groups or organizations (5 C.F.R. § 734.204(d));
- participate in political conventions, rallies or other political gatherings (5 C.F.R. § 734.204(e));
- display pictures, signs, stickers, buttons, or badges of candidates or parties, as long as one is not on duty, in uniform or wearing a government agency insignia, or in a government building (an employee *may* have a bumper sticker on his or her private vehicle even if parked in a parking lot of a federal agency) (5 C.F.R. § 734.205(a));
- initiate or circulate nominating petitions (5 C.F.R. § 734.205(b));
- canvass for votes for a candidate or a party (5 C.F.R. § 734.205(c));
- endorse candidates in political broadcasts, campaign literature or other advertising (5 C.F.R. § 734.205(d));
- address a rally or caucus in support of or opposition to a partisan candidate (5 C.F.R. § 734.205(e));
- take an active part in managing the political campaign of a candidate (5 C.F.R. § 734.205(f));
- serve as a recorder, watcher, or challenger at a polling place (5 C.F.R. § 734.206(b));
- serve as an election official, election judge or clerk (5 C.F.R. § 734.206(c));
- drive voters to the polls for a partisan candidate, political party or group (5 C.F.R. § 734.206(d));
- run as a candidate in a nonpartisan election (5 C.F.R. § 734.207(b));

- make a political contribution to a political party or group, campaign committee of a candidate, or a multicandidate political committee (5 C.F.R. § 734.208(a));
- attend a political fundraiser (5 C.F.R. § 734.208(b)(1));
- solicit or accept volunteer services from individuals (5 C.F.R. § 734.208(b)(3)).

Prohibited Political Activities

The restrictions on political activities of federal employees under the Hatch Act provide that such employees may not:

- use their offices or official authority to influence an election (5 C.F.R. § 734.302);
- run for office themselves in partisan elections (5 C.F.R. § 734.304);
- solicit or receive campaign contributions from anyone (other than from fellow labor organization or employee association members who are not subordinates, for the multicandidate political action committee of the organization) (5 C.F.R. §§ 734.303(a), 734.208(b)(4));
- solicit contributions in a speech or keynote address given at a fundraiser (5 C.F.R. § 734.303(b));
- allow one's official title to be used in connection with a fundraising activity (5 C.F.R. § 734.303(c);
- solicit or accept uncompensated volunteer services from an individual who is a subordinate (5 C.F.R. § 734.303(d));
- solicit or discourage the political participation of individuals who have an application for any compensation, grant, contract, ruling, license, permit or certificate with the employee's employing office (5 C.F.R. § 734.305(a));
- solicit or discourage the political participation of individuals who are the subject of an audit, investigation or enforcement action by one's employing office (5 C.F.R. § 734.305(b));
- engage in political activity while on official duty, in any federal building or office, while wearing a uniform or other official insignia, or while using any government vehicle (5 C.F.R. § 734.306);
- intimidate, threaten, command or coerce any federal employee to engage or not to engage in any political activity (18 U.S.C. § 610).

APPENDIX: Text of Hatch Act Statute

Title 5, United States Code

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty of reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the nation.

§ 7322. Definitions

For the purpose of this subchapter -

(1) "employee" means any individual, other than the President and the Vice president, employed or holding office in -

(A) an Executive agency other than the General Accounting Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) "political contribution" -

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purposes; and

(D) includes the provision of personal services for any political purpose.

§ 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not--

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless that person is --

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who --

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is a subject of or a participant in an on going audit, investigation, or enforcement action carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under paragraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (a) shall apply to --

(i) an employee of --

(I) the Federal Election Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal

Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service; or

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, or 5372a of title 5, United States Code.

(3) No employee of the Criminal Division of the Department of Justice (except one appointed by the President, by and with the consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term "active part in political management or in a political campaign" means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

§ 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity --

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b) (1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee --

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is --

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

§ 7325. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraph (2) and (3) of section 7323(a) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivisions in which they reside, to the extent the Office considers it to be in their domestic interest, when --

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

§ 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board

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