

MEMORANDUM FOR ALL DEPARTMENT OF ENERGY EMPLOYEES

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Restrictions on Political Activities

The Hatch Act restricts the political activities of Executive Branch employees, and the Office of the General Counsel routinely distributes periodic advice about these restrictions. This memorandum addresses frequently asked questions concerning political activity restrictions.

How the Hatch Act applies to you depends upon your appointment type. All Department of Energy (DOE) employees have restrictions that prohibit them from engaging in certain political activities (e.g., fundraising). There are also restrictions that prohibit certain activities based upon the time and location of the activity (e.g., while performing official Government duties or in the Federal workspace). Career members of the Senior Executive Service, however, may not actively participate in partisan political activity even if off duty. While career SES employees continue to have the ability to express their opinions, they must seek further counsel before engaging in any partisan political activity.

Please read this memorandum carefully, as it contains new guidance from the Office of Special Counsel (OSC) regarding when official events may otherwise be deemed to be partisan and prohibited because of the surrounding circumstances. **THIS IS IMPORTANT:** the penalty for violation of Hatch Act restrictions, which are generally described below, can include significant consequences, including at a minimum, a 30 day suspension without pay, and up to loss of Federal employment. Violations of the Hatch Act are enforced by the OSC, not DOE.

PROHIBITED ACTIVITIES FOR ALL EMPLOYEES

QUESTION: What types of activities are generally prohibited by the Hatch Act?

ANSWER: You and every other DOE employee are prohibited from:

- Using official authority for the purpose of interfering with or affecting the result of an election (this prohibition includes items such as the timing of grant announcements);
- Coercing an employee to engage in any political activity, including voting or not voting;
- Seeking to influence, encourage, or discourage the political activity of any person doing business with or affected by the policies of the Department;
- Using your official title while engaging in an otherwise permissible political activity;
- Soliciting or accepting financial contributions for a political campaign or party (with one limited exception described below);
- Being a partisan candidate for public office (There is a limited exception allowing some employees to run as independent candidates in certain partisan elections. Please seek advice from an ethics counselor if you want more information about this exception.); and

- Using official resources, including a DOE e-mail account and non-public information, for political purposes. This restriction applies to all campaign organizations and political parties.

QUESTION: What types of activities are included in the prohibition on soliciting contributions for partisan campaigns?

ANSWER: You and every other DOE employee may not engage in the following prohibited activities:

- Requesting or accepting financial contributions for a partisan political party, candidate, or campaign;
- Selling tickets to a fundraising activity of a partisan political party, candidate, or campaign;
- Allowing your name to appear on an invitation to a fundraiser as a sponsor, host, or a point of contact;
- Hosting a fundraiser (however, your spouse may host such a fundraiser, if he or she is not subject to these restrictions);
- Allowing your official title to be used in connection with a fundraising activity; and
- Soliciting, accepting, or receiving uncompensated volunteer services from a subordinate.

There is one exception to the general prohibition on soliciting political contributions for partisan campaigns. You may (unless you are a career member of the Senior Executive Service) solicit financial contributions for a political purpose if (1) both you and the person you are soliciting are members of the same Federal labor organization or Federal employee organization, (2) the contribution is for the political committee of the labor or employee organization of which you both are members, and (3) the person being solicited is not your subordinate. All three of these conditions must exist.

In addition, you may (unless you are a career member of the Senior Executive Service) actively participate in planning, organizing, or conducting a fundraising activity of a candidate for partisan political office, a political party, or a partisan political group, provided that you do not solicit or accept contributions. For example, you may stuff envelopes for a partisan political candidate, campaign, or party, including literature that solicits a money contribution, provided that your name or signature does not appear on the solicitation material.

PERMITTED ACTIVITIES

QUESTION: What types of activities are permitted by the Hatch Act?

ANSWER: You and every other DOE employee may:

- Register and vote as you choose;

- Express opinions about candidates and issues;
- Contribute money to political organizations or candidates;
- Participate in nonpartisan voter registration drives;
- Attend political fundraising functions, rallies, and meetings;
- Sign political petitions;
- Campaign for or against an issue that is not specifically identified with a political party, such as referendum questions, constitutional amendments, or municipal ordinances;
- Campaign for or against a candidate in a nonpartisan election;
- Serve as an election official whose duties are nonpartisan by law; and
- Be an independent candidate in a nonpartisan election for public office.

However, all permissible political activities, including those listed above, are subject to the following four limitations, which prohibit Executive Branch employees from engaging in political activities:

- while on duty,
- while in any Federal office or workplace (a room or building in which any Federal employee discharges his duties),
- while using a Government vehicle, or
- while wearing an official uniform, badge, or insignia identifying DOE.

Only if you are a DOE employee who was appointed by the President by and with the advice and consent of the Senate (other than the Inspector General), are you exempted from these limitations under certain circumstances.

CONDUCTING MISSION RELATED ACTIVITIES

QUESTION: Can an event I am planning that will involve a DOE official and a current officeholder or candidate be considered political even when the DOE official is talking about the programs of DOE?

ANSWER: Yes. The OSC has issued new guidance with regard to the conduct of some official activities. As a general matter, an appearance by a DOE official at an event constitutes political activity if the predominant purpose of the appearance is the success or failure of a political party, partisan candidate, or partisan group. Determining whether an event should be classified as official or political requires you to conduct a “frank and thorough factual analysis” of the circumstances surrounding the proposed event. The OSC has determined that events that may look official (e.g. ribbon cuttings and grant announcements and other similar mission-related events) can nevertheless be used to increase media attention on political candidates (incumbent officeholders are often simultaneously candidates) and constitute a prohibited political activity. OSC has identified a number of factors for agencies to consider when determining if an event is official or political. Express advocacy of the election or defeat of a candidate is not a pre-requisite to a finding that an event is political and prohibited. If you are planning a DOE event

in which a current officeholder or candidate will participate, please contact an ethics counselor for review and advice.

Further, because the rules regarding official/political travel are complex, if your duties include scheduling, advancing, or accompanying a DOE official on official/political travel you must contact an ethics counselor for guidance well in advance of departure if travel involving a political purpose is contemplated.

USING EMAIL AND SOCIAL MEDIA

QUESTION: What is partisan political email?

ANSWER: A partisan political email is an email you write or receive that is directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. A partisan email may be text, a partisan political cartoon, a newspaper article or any other manner of communication that carries a partisan political message.

QUESTION: If I receive a partisan political email in my government email account, have I violated the Hatch Act?

ANSWER: No. Simply receiving a partisan political email in your government email account, without more, does not constitute prohibited political activity. However, you must not send or forward that email except to send that e-mail to your non-government e-mail address (but no one else's address) while at work.

QUESTION: If I am on duty and/or in a government workspace, can I login to my non-government email account and from that account, send or forward a partisan political email?

ANSWER: No. You cannot send a partisan political email from your non-government email address while you are on duty and/or in any government-owned workplace or building. This restriction applies whether you are using personally-owned or government owned devices such as cellphones, smartphones, ipads, personal computers or blackberries.

QUESTION: May I write a letter to the editor or post a comment on a blog endorsing a partisan political candidate?

ANSWER: Yes, if you are not a career SES, you are permitted to express your opinions privately and publicly on political subjects and participate in political activities to the extent not expressly prohibited by the Hatch Act meaning that you may not undertake these activities while on duty, in a Federal building or vehicle, or while wearing indicia of your Federal employment. If you are a career SES, you may express your opinion privately and publicly on political subjects, including writing a letter to the editor or posting a comment to a blog as long as the activity is not done in concert with a partisan political party, candidate for partisan office or a partisan political group AND it is not undertaken while on duty, in a Federal building or vehicle, or while wearing indicia of your Federal employment.

Regardless of your appointment type, you may not use your official position or influence to affect the results of an election (including identifying your federal position or office), you must conduct this activity in your personal capacity, and your comments must not contain a request for political contributions.

QUESTION: If I have listed my official title on my Facebook page, can I fill in the field provided for “political views” on my Facebook profile?

ANSWER: Yes, you and all other DOE employees may identify the political party that you support on your Facebook profile. Simple identification of the political party, without more, is not political activity.

QUESTION: I am a “friend” with a subordinate employee: can I advocate for or against a political party, partisan political group, or candidate for partisan public office on my Facebook page?

ANSWER: Yes, provided that you, as a supervisor, direct your statements to all of your Facebook “friends,” as opposed to directing your statements to your subordinates or to your subordinates as a subset of your friends (e.g. it is permissible to post your opinion concerning a candidate in your Facebook “status” field.) Directing messages to subordinates would be viewed as purposefully targeting subordinates with a prohibited message, as opposed to incidental or by chance communication if it is posted to a much larger universe of individuals. For career SES the answer applies but with one added restriction. Specifically, career SES are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

For more information regarding various other social media activities, such as linking to political webpages, “liking” and becoming a “fan” of partisan entities and candidates, and following on Twitter, please see the OSC website at: <http://www.osc.gov/haFederalfaq.htm>

MISCELLANEOUS CAMPAIGN ACTIVITIES

QUESTION: May I volunteer to work for a candidate who is running in a partisan election?

ANSWER: Subject to the four restrictions (only off duty, not in a federal building or government vehicle and without government indicia), you may (unless you are a career member of the SES) actively participate in a partisan election, including participation in the following activities:

- Organizing or speaking at political rallies;
- Participating in partisan voter registration drives;
- Distributing campaign literature;
- Working on a phone bank, provided that financial contributions are not solicited;
- Transporting voters to the polls;

- Managing a campaign; and
- Supervising or organizing volunteers (provided no subordinates).

Again, only those employees who are appointed by the President by and with the advice and consent of the Senate (other than the Inspector General) may participate in political activities while on duty and may hold partisan political meetings or receptions (other than fundraisers) in their conference rooms during normal business hours. However, any refreshments served at such meetings or receptions must not be paid for with appropriated funds.

If you are a career SES employee, you may not actively participate in partisan political activities.

QUESTION: May I wear a partisan political button or have a partisan bumper sticker on my car?

ANSWER: Partisan political buttons and bumper stickers are treated differently under the regulations. Wearing partisan political buttons is considered participating in a partisan political activity and, thus, is subject to the four limitations (i.e., may not be done while on duty, while in a Federal building or workplace, while using a Government vehicle, or while wearing an official uniform, badge, or insignia identifying DOE). However, employees who are appointed by the President by and with the advice and consent of the Senate (other than the Inspector General) are exempted from these four limitations under certain circumstances; but nonetheless, should not wear partisan political buttons while performing official duties for the Department.

Under no circumstances should a partisan bumper sticker be placed on a Government vehicle. All employees may have partisan bumper stickers on their own private vehicles while commuting, when the vehicle is parked in a Federal garage or parking space, and when the vehicle is being used on official business if such use is infrequent or occasional. However, partisan bumper stickers on a private vehicle must be covered while the vehicle is being used on official business (i.e., travel for which the employee may be reimbursed) if such use is frequent or recurrent or while the vehicle is clearly identified as being on official business.

QUESTION: May I have partisan political material displayed in my Federal office?

ANSWER: No. You, or any other DOE employee, may not display in your office or while you are performing official duties pictures, signs, stickers, or badges associated with a current political campaign or candidate or a political party. There are two exceptions to this prohibition when it comes to pictures of candidates who are current office holders. The first exception applies to official photographs of the President. You may continue to display official photographs of these officials in the Federal workplace, to include both public and employee work spaces. Official photographs include the traditional portrait photo of the President displayed in all Federal buildings, as well as photographs of the President conducting official business (e.g., President meeting with heads of state). However, these official photographs must be displayed in a traditional size and manner and should not be altered in anyway (e.g., the addition of halos or horns). Pictures that are distributed by the President's campaign or a partisan organization, such as the Democratic National Committee or Organizing for America, are not official, even if they depict the President performing an official act. Similarly, pictures

downloaded from the internet or clipped from magazines or newspapers, screens savers and life-size cutouts are not official photographs for purposes of this exception.

The second exception, which applies to all candidate photographs, concerns employee personal photographs. An employee would not be prohibited from having a photograph of any candidate in his or her office, if all of the following apply: the photograph was on display in advance of the election season; the employee is in the photograph with the candidate; and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). An employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office. Also, you may display photographs of past presidents and vice presidents and other political memorabilia from past partisan political campaigns that have no effect on a current campaign.

QUESTION: May I serve as an election official?

ANSWER: In any election, including a partisan election, you and any other DOE employee may serve as an election judge, clerk, or other official if those duties are nonpartisan by law. You may (unless you are a career member of the Senior Executive Service) serve as a representative of a political party or candidate at a polling place, including serving as a poll watcher, recorder, or challenger. In so serving, you remain subject to the four limitations described above, including the prohibition against wearing a DOE badge or insignia identifying you as a DOE employee.

QUESTION: How may I participate in the activities of a political party?

ANSWER: You and any other DOE employee may, of course, be a member of a political party (or other political group) and may attend its meetings, rallies, caucuses, or conventions, as an observer. Further, unless you are a career member of the Senior Executive Service, you may also actively participate in the functions of a political party or other political group, including performing the following activities:

- Serving as an officer of or a member of a local, State, or national committee of a political party or club;
- Organizing or reorganizing a political party or club;
- Serving as a delegate, alternate, or proxy to a state or national party convention; and
- Participating fully in and speaking before a nominating caucus, political convention, rally, or other gathering.

However, you should keep in mind that these permitted activities are subject to the four limitations mentioned earlier and the prohibition against using your influence to affect an election, soliciting or accepting political contributions.

QUESTION: Where can I get information if I have any questions about restrictions on political activities?

ANSWER: Headquarters personnel may direct questions to the Office of the Assistant General Counsel for General Law (202-586-1522), <mailto:standardsofconduct@hq.doe.gov>. Field personnel may address questions to their respective field counsel.