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Career Competitive Employees
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Guidelines For Federal Employees Covered Under the New Hatch Act Amendments

The following list contains examples of both permissible and prohibited activities for covered employees.¹ The Office of Special Counsel is responsible for investigating reports or complaints concerning Hatch Act violations. The new amendments took effect February 3, 1994.

OPM Regs- have not been issued -

1-800-85-HATCH (854-2824)

- free to campaign -*
- o May be candidates for public office in nonpartisan elections
- o May register and vote as they choose
- o May assist in voter registration drives
- o May express opinions about candidates and issues
- o May contribute money to political organizations
- o May attend political fundraising functions
- o May attend and be active at political rallies and meetings
- o May join and be an active member of a political party or club
- o May sign nominating petitions
- o May campaign for or against referendum questions, constitutional amendments, municipal ordinances
- o May campaign for or against candidates in partisan elections
- o May make campaign speeches for candidates in partisan elections
- o May distribute campaign literature in partisan elections
- o May hold office in political clubs or parties
- o May not use their official authority or influence to interfere with an election
- o May not solicit, accept or receive political contributions unless both individuals are members of the same federal labor organization or employee organization and the one solicited is not a subordinate employee
- o May not knowingly solicit or discourage the political activity of any person who has business before the agency
- o May not engage in political activity while on duty
- o May not engage in political activity in any government office
- o May not engage in political activity while wearing an official uniform
- o May not engage in political activity while using a government vehicle
- o May not be candidates for public office in partisan elections
- o May not wear political buttons on duty

*can work POLLS if take a day of leave.
can't wear political button on duty.*

¹ Employees of the following agencies or divisions within an agency continue to be covered under the old law: Federal Elections Commission, Federal Bureau of Investigation, Secret Service, Central Intelligence Agency, National Security Council, National Security Agency, Defense Intelligence Agency, Merit Systems Protection Board, Office of Special Counsel, Office of Criminal Investigation of the IRS, Office of Investigative Programs of the Customs Service, Office of Law Enforcement of BATFA, Criminal Division of DOJ, career members of the senior executive service, Administrative Law Judges, and contract appeals board members. Contact OSC at the number above for further information.

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Amendments of 1993, appear in column three.³² The italicized citations refer to *United States Code* language. A Section Analysis for Subchapter III, Chapter 73 of Title 5 *United States Code* begins the side-by-side and appears on page 17.

Definitions are included at the end of the applicable sections.

³² Section 9 covering Garnishment of Federal employees' pay (including a technical and conforming amendment) and Section 11, a Sense of the Senate resolution Relating to assistance to Nicaragua are not included in this report.

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For the purposes of the regulations implementing the 1939 Hatch Act, as amended, the following definitions applied:

- "Political party" meant a National political party, a State political party, and an affiliated organization;
- "Election" included a primary, special, and general election;
- "Partisan" when used as an adjective referred to a political party;
- "Contribution" meant any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise;
- "Federal workplace" meant any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.²⁹

COMPARISON OF PROVISIONS

This report presents a side-by-side analysis. The first column contains the previous statutory language and regulations for the Hatch Act and related statutes as published in the *United States Code* (U.S.C.) and the *Code of Federal Regulations* (CFR). The regulations are cited where applicable to expand upon the statutory language. "Regulations are not the work of the legislature and do not have the effect of law in theory. In practice, however, because of the intricacies of judicial review of administrative action, regulations can have an important effect in determining the outcome of cases involving regulatory activity."³⁰

The provisions of H.R. 20 as passed by the House of Representatives appear in column two.³¹ The provisions of Public Law 103-94, The Hatch Act Reform

to the parties or candidates. *Special Counsel Booklet*, pp. 4 and 7.

²⁹ 5 CFR 733.101(c), (d), (f), (h), and (i).

³⁰ Black, Henry C. *Black's Law Dictionary*. Fifth Edition. St. Paul, Minnesota, West Publishing Company, 1979. p. 1156.

³¹ Sections 2(b)(2)(A) and (B) of H.R. 20, as passed by the House of Representatives, are not included in this report. They contain technical and conforming amendments to 5 U.S.C. 8332(k)(1), 8706(c), 8906(e)(2), and 8411(e) which cover provisions of Civil Service Retirement, Life Insurance, Health Insurance, and the Federal Employees' Retirement System.

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- Initiating or circulating a partisan nominating petition;
- Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

Still Prohibited

- Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

Clarification Probably Required (to take into account politics off the job requirement and limited solicitation permitted by Public Law 103-94)

- Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;
- Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;
- Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;
- Soliciting, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient;
- Paying a contribution at or in the Federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient. 'Employer or employing authority' means the immediate employing agency head, agency principals, or an employee's supervisor.
- Soliciting, paying, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient.²⁸

²⁸ 5 CFR 733.121 and 5 CFR 733.122. According to the Special Counsel, in addition to the prohibited activities stated above, employees may not distribute campaign material in partisan elections; do clerical work at campaign headquarters, write campaign speeches or canvass voters for the purpose of promoting support for candidates or political parties; address and stuff envelopes even when the activity is conducted in the employee's own home; organize or manage political rallies or meetings; or work to register voters for one party only. If however, employees have a part-time profession or business, they may be allowed to provide services to political parties or to the candidates under certain circumstances. If employees regularly provide such services and the services do not require the employees to perform duties which directly involve their creative talents in functions normally associated with campaigning, the services may be rendered

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efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his [or her] agency.²⁵

Presumably, these activities would still be permitted under Public Law 103-94, but off the job only.

The OPM regulations to implement the 1939 Hatch Act covered prohibited activities as well. These prohibited activities have been grouped into three categories to take into account the passage of Public Law 103-94: those activities probably now permitted; those activities still prohibited; and those activities probably requiring guidance to be issued.

Probably Now Permitted (off the job)

- Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
- Serving as a delegate, alternate, or proxy to a political party convention;
- Organizing or reorganizing a political party organization or political club;
- Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
- Driving voters to the polls on behalf of a political party or a candidate in a partisan election;²⁶
- Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;
- Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;²⁷

²⁵ 5 CFR 733.111. *Special Counsel Booklet*, p. 7 states that, in addition to the permissible activities stated above, employees may participate in nonpartisan voter registration drives but they may not attempt to influence voters to register for a particular party.

²⁶ *Special Counsel Booklet*, p. 7 states that employees may assist voters to the polls as a gesture of goodwill or as part of an effort by a nonpolitical organization.

²⁷ *Special Counsel Booklet*, p. 6 states that employees may not participate in the rallies by carrying banners or placards.

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- Express his [or her] opinion as an individual privately and publicly on political subjects and candidates;²³
- Display a political picture, sticker, badge, or button.²⁴
- Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- Attend a political convention, rally, fund-raising function; or other political gathering;
- Sign a political petition as an individual;
- Make a financial contribution to a political party or organization;
- Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by 5 CFR 733.124 which covers political activity permitted of employees residing in certain municipalities;
- Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
- Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and
- Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his [or her]

²³ U.S. Office of Special Counsel. *Political Activity and the Federal Employee*. Washington, 1992. p. 6 states that employees may write a letter to the editor of a local newspaper expressing an opinion on a partisan issue but may not write letters in connection with political parties or partisan groups or candidates. *Political Activity and the Federal Employee* is a booklet which summarizes the laws, regulations, and policies governing the political activities of Federal and District of Columbia Government employees. (Hereafter cited as *Special Counsel Booklet*.)

²⁴ *Special Counsel Booklet*, pp. 4 and 6 states that employees may wear or display political badges, buttons, or stickers. A Federal employee may place a sign on his or her automobile, or in his or her yard, which supports or opposes a political candidate so long as this activity is an expression of personal opinion. The size of any such sign is irrelevant.

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to individual inquiries.¹⁸ These advisory opinions are kept in an internal chronological file at the OSC. When the OSC prosecutes a Hatch Act violation case through the Merit Systems Protection Board, the decision in that case is published in the *Merit Systems Protection Reporter*.

Section 7321 of the 1939 Hatch Act provided that, "Employees are not obliged by reason of their employment, to contribute to a political fund or to render political service. Employees may not be removed or otherwise prejudiced for refusal to do so."¹⁹ Section 7322 of that same Act provided that, "Employees may not use their official authority or influence to coerce the political action of a person or body."²⁰

The President was granted authority by the 1939 Hatch Act to prescribe rules for sections 7321 and 7322. This authority was delegated to the Office of Personnel Management (OPM) in 1978.²¹ Using that authority OPM prescribed regulations and published them in the *Code of Federal Regulations*.²²

These regulations are listed immediately below as background. Public Law 103-94 at 5 U.S.C. 7325 authorizes OPM to prescribe regulations only with regard to political activity permitted of employees residing in certain municipalities. The law specifies that this authority takes effect upon enactment of the Act (October 6, 1993). The law does not, however, provide specific authority to OPM, OSC, or any other agency to prescribe regulations related to any of the other sections of Chapter 73, Subchapter III of Title 5, *United States Code*.

The OPM regulations to implement the 1939 Hatch Act, as amended, stated that each employee retained the right to:

- Register and vote in any election;

¹⁸ The Civil Service Commission had primary responsibility to enforce the Hatch Act statute prior to 1979. With the enactment of the Civil Service Reform Act of 1978, the Office of Special Counsel (OSC) was created as an independent office of the Merit Systems Protection Board and empowered with the investigative and prosecutorial authority of the Hatch Act. In 1989 the OSC was established as an independent agency with passage of the Whistleblower Protection Act of 1989 (P.L. 101-12).

¹⁹ Previous 5 U.S.C. 7321.

²⁰ Previous 5 U.S.C. 7322.

²¹ Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.

²² 5 CFR 733.101 - 733.301.

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removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

The provisions of this section shall not affect the right of any employee, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof.¹⁶

These provisions are similar to language at 39 U.S.C. 1002, covering political recommendations for Postal Service employees.

The law also amends 5 U.S.C. 2302(b)(2) relating to prohibited personnel practices to provide that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority - "(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under 5 U.S.C. 3303(f)" (as added by P.L. 103-94).

Regulatory Authority for the Political Recommendations Provisions

The Office of Personnel Management is authorized to prescribe regulations. The head of each agency is to ensure that employees and applicants are given notice of the provisions on political recommendations.

Effective Date

Public Law 103-94 takes effect 120 days after its enactment (February 3, 1994).

BACKGROUND

The Hatch Act was enacted in 1939 (53 Stat. 1147-1149) and subsequently amended.¹⁷ Prior to its enactment, the Civil Service Commission had made some 3,000 administrative decisions about permissible and prohibited political activity by competitive service employees. These decisions were published in the *Political Activity Reporter*. They were incorporated into the Hatch Act at 5 U.S.C. 7324(a) by reference.

The Office of Special Counsel (OSC) investigates and prosecutes violations of the Hatch Act and issues advisory opinions about the Hatch Act in response

¹⁶ This right is provided in 5 U.S.C. 7211.

¹⁷ Previous 5 U.S.C. 7321-7328.

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determine whether the employee or applicant meets suitability or security standards;

- Is furnished by a former employer of the employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such employee or applicant during employment with such former employer; or
- Is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

Otherwise, each personnel action with respect to an employee or applicant shall be taken without regard to any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for such personnel action, made by:

- Any Member of Congress or congressional employee;
- Any elected official of the government of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;
- Any official of a political party; or
- Any other individual or organization making such recommendation or statement on the basis of the party affiliation of the employee or applicant.

The above named are prohibited from making or transmitting to any officer or employee of an agency, any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for any personnel action in such agency. Likewise, an employee or applicant who requests or is under consideration for a personnel action in an agency is prohibited from requesting or soliciting a recommendation or statement from any of the above named.

The agency, or any officer or employee of the agency (1) shall not solicit, request, consider, or accept any such recommendation or statement; and (2) shall return any such written recommendation or statement, appropriately marked as in violation of this section, to the person or organization transmitting the same.

An agency shall take any action it determines necessary and proper under Subchapters I or II of Chapter 75 that cover adverse actions to enforce the provisions of this section. These actions are suspension for 14 days or less,

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Political Recommendations

Public Law 103-94 amends 5 U.S.C. 3303 pertaining to political recommendations related to civil service employment. The following definitions apply to this section.

- "Agency" means an Executive agency and an agency in the legislative branch with positions in the competitive service.
- "Applicant" means an individual who has applied for appointment to be an employee.
- "Employee" means an employee of an agency who is in the competitive service; a career appointee in the Senior Executive Service or an employee under a similar appointment in a similar executive service; or in the excepted service other than an employee who is appointed by the President; or an employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character.
- "Personnel action" means any action described under clauses (i) through (x) of 5 U.S.C. 2302(a)(2)(A). These actions are an appointment; a promotion; an action under 5 U.S.C. Chapter 75 or other disciplinary or corrective action; a detail, transfer, or reassignment; a reinstatement; a restoration; a reemployment; a performance evaluation under 5 U.S.C. Chapter 43; a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in subparagraph (a)(2)(A) of 5 U.S.C. 2302; and any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

An agency, or any authorized officer or employee of an agency, may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the agency or such authorized officer or employee, any statement with respect to an employee or applicant who requests or is under consideration for a personnel action if the statement:

- Is furnished pursuant to a request or requirement of the agency and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the employee or applicant;
- Relates solely to the character and residence of the employee or applicant;
- Is furnished pursuant to a request made by an authorized representative of the United States Government solely in order to

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Regulatory Authority for the Political Activities Provisions

The Office of Personnel Management is authorized under the law (5 U.S.C. 7325) to prescribe regulations regarding political activity permitted of employees residing in certain municipalities. It specifies that this authority takes effect upon enactment of the Act (October 6, 1993). The law does not, however, provide specific authority to the Office of Personnel Management, the Office of Special Counsel, or any other agency to prescribe regulations related to any of the other sections of Chapter 73, Subchapter III of Title 5, *United States Code*.

The law amends 5 U.S.C. 3302(2) that authorizes the President to prescribe rules providing necessary exceptions from various provisions of Title 5, *United States Code* by deleting references to section 7321 (relating to political contributions and services) and section 7322 (relating to the prohibition on political use of authority or influence) of Subchapter III, Chapter 73 of Title 5, *United States Code*.

Amendments to Title 18 United States Code

The law also amends sections of Title 18, United States Code relating to the solicitation of and making of political contributions. Section 602 is amended to prohibit a candidate for Congress; a Senator, Representative, Delegate, or Resident Commissioner; a Federal employee or officeholder; or a person receiving any salary or compensation for services from monies from the U.S. Treasury from knowingly soliciting any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Individuals who violate this section will be fined under the 18 U.S.C. provisions or imprisoned not more than three years, or both. Any activity of employees covered by the Hatch Act is excluded unless that activity is prohibited under 5 U.S.C. 7323 or 7324, relating to prohibitions on the use of official influence or official information and solicitation. Section 603 is amended to exclude any activity of employees covered by the Hatch Act from the prohibition in subsection (a) of Section 603 unless that activity is prohibited under 5 U.S.C. 7323 or 7324.

A new provision to 18 U.S.C. Chapter 29 covering the coercion of political activity provides that it shall be unlawful for any person to or attempt to intimidate, threaten, command, or coerce, any employee to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section will be fined not more than \$5,000 or imprisoned not more than three years, or both.

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- **Knowingly solicit or discourage the participation in any political activity of any person who:**
 - has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of the employee; or
 - is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by that office.

"Political contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose. This includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose; 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 purpose; and the provision of personal services for any political purpose.

Under the law, Federal Election Commission employees (except those 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.

Penalties

An employee or individual who violates 5 U.S.C. 7323 or 7324 shall be removed from his position, and funds appropriated for that position thereafter may not be used to pay the employee or individual. However, if the Merit Systems 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. The law also amends 5 U.S.C. 1216(c) to provide that if the Special Counsel receives an allegation concerning matters relating to prohibited political activities withholding of information political intrusion into personnel decisionmaking and discrimination¹⁵ the Special Counsel may investigate and seek corrective action under 5 U.S.C. 1214 and disciplinary action under 5 U.S.C. 1215 in the same way as if a prohibited personnel practice were involved. This action may consist of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

¹⁵ 5 U.S.C. 1216(a).

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the U.S. Government or any agency or instrumentality thereof. The Senate Committee on Governmental Affairs report accompanying the legislation states that "politics on the job, including the wearing of political buttons, is prohibited."¹³

Employees described below may engage in political activities on duty if the costs associated with that political activity are not paid for by money from the U.S. Treasury. This provision applies to employees

- (A) the duties and responsibilities of whose positions continue outside normal duty hours and while away from the normal duty post; and
- (B) who are paid from an appropriation for the Executive Office of the President; or appointed by the President, by and with the advice and consent of the Senate, whose positions are located within the United States, who determine policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

Use of Official Influence or Official Information Prohibited

The law prohibits employees from using their official authority or influence to interfere with or affect the result of an election. The Senate Committee on Governmental Affairs report accompanying the legislation states that "the prohibition on coercion includes pressuring employees to attend political functions."¹⁴

Solicitation/Contributions

Employees may not:

- Knowingly solicit, accept, or receive a political contribution from any person, unless that person is:
 - a member of the same Federal labor organization or a Federal employee organization which, as of the enactment date of this Act, had a multicandidate political committee;
 - not a subordinate employee; and
 - the solicitation is for a contribution to that Federal labor organization's or Federal employee organization's multicandidate political committee.

¹³ S. 185 Report, p. 14.

¹⁴ *Ibid.*

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- Office of Special Counsel,
- Office of Criminal Investigation of the Internal Revenue Service,
- Office of Investigative Programs of the U.S. Customs Service,
- Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms, or
- the Criminal Division at the Department of Justice; or
- members of the career Senior Executive Service,
- Administrative Law Judges, or
- contract appeals board members.

may not take an active part in political management or political campaigns. "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 determination of the Civil Service Commission under the rules prescribed by the President.

The law permits political activity by employees residing in certain municipalities.

Public Law 103-94 also provides that "an employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates."¹²

Candidacy for Partisan Political Office Prohibited

The law prohibits Federal employees from running for nomination or as a candidate for election to a partisan political office. Partisan political office is defined as 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. The definition excludes any office or position within a political party or affiliated organization.

Political Activities on Duty Prohibited

Federal employees may not engage in political activity (1) while on duty; (2) in any room or building occupied in the discharge of official duties by an employee or officeholder of the United States Government or any agency or instrumentality thereof; (3) while wearing a uniform or official insignia identifying their office or position; or (4) using any vehicle owned or leased by

¹² 5 U.S.C. 7323(c); 107 Stat. 1003.

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- District of Columbia government employees or office holders, other than the Mayor or a member of the City Council or the Recorder of Deeds.

It repeals 42 U.S.C. 9904(e), which provided that employees of any nonprofit private organization receiving assistance under the Community Services Block Grant Program and having responsibility for planning, developing, and coordinating community antipoverty programs were covered by the Hatch Act covering State and local government employees.¹⁰

Political Activities

The law provides that "an employee may take an active part in political management or in political campaigns", except as prohibited.¹¹

Employees Exempted

Employees (except those appointed by the President, by and with the advice and consent of the Senate) of the

- Federal Election Commission,
- Federal Bureau of Investigation,
- Secret Service,
- Central Intelligence Agency,
- National Security Council,
- National Security Agency,
- Defense Intelligence Agency,
- Merit Systems Protection Board,

¹⁰ The Hatch Act provisions had been extended to State or local officeholders and employees in 1940 when Congress passed Public Law No. 753 (54 Stat. 767-772). Amendments to that statute in 1966 and 1974 removed all but three of the political activity prohibitions on these individuals. (Public Law 89-554, September 6, 1966, 80 Stat. 404; Public Law 93-443, October 15, 1974, 88 Stat. 1290). A State or local officer or employee still may not (5 U.S.C. 1502): use their official authority or influence to interfere with or affect the result of an election or a nomination for office; directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; be a candidate for elective office in a partisan election.

¹¹ 5 U.S.C. 7323(a); 107 Stat. 1002.

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a few word changes to H.R. 20, 102d Congress.⁵ In the Senate, the text of S. 185, the Hatch Act Reform Amendments of 1993, as amended, was substituted for H.R. 20. The Senate then passed H.R. 20, amended, by a vote of 68 to 31 on July 20, 1993.⁶ S. 185 had been introduced by Senator John Glenn and 10 cosponsors on January 26, 1993, and, as introduced, was identical to S. 914, 102d Congress.⁷ On September 21, 1993, the House of Representatives agreed to the Senate version of H.R. 20, by a roll call (No. 437) vote of 339 to 85.⁸

Public Law 103-94 provides the following.

Coverage⁹

The law covers:

- employees or office holders in Federal executive agencies or in positions within the competitive service which are not in executive agencies.
- U.S. Postal Service and Postal Rate Commission employees.

⁵ Clay, William (Bill). Remarks in the House. Clay Introduces Legislation to Reform the Hatch Act. *Congressional Record*, daily edition, v. 139, Jan. 5, 1993. pp. E31-E32. The bill was referred to the House Committee on Post Office and Civil Service, ordered to be reported from the Committee on January 27, 1993 and reported to the House of Representatives on February 22, 1993. See U.S. Congress. House. Committee on Post Office and Civil Service. *Federal Employees Political Activities Act of 1993*. Report to Accompany H.R. 20. House Report No. 103-16, 103d Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1993. 42p.

⁶ Debate in the Senate on H.R. 20 appears in the *Congressional Record*, daily editions, v. 139, July 13, 1993 (pp. S8601-S8616); July 14, 1993 (pp. S8670-S8689, S8692-S8699, and S8702-S8705); July 15, 1993 (pp. S8751-S8752, S8759-S8771, S8779-S8780, S8782-S8790, S8792-S8793, S8795-S8796, and S8805-S8812); and July 20, 1993 (pp. S8919-S8952, S8954-S8955, S9053-S9054, and S9056).

⁷ Glenn, John. Remarks in the Senate. *Congressional Record*, daily edition, v. 139, Jan. 26, 1993. pp. S697-S699. The bill was referred to the Senate Committee on Governmental Affairs and was ordered to be reported favorably, with an amendment in the nature of a substitute, on May 13, 1993, by a roll call vote of 6 to 1, with 3 Committee members voting yes by proxy and 2 members voting no by proxy. One member did not vote. S. 185 was reported to the Senate on June 16, 1993. See U.S. Congress. Senate. Committee on Governmental Affairs. *Hatch Act Reform Amendments of 1993*. Report to accompany S. 185. Senate Report No. 103-57, 103d Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1993. 57p. (Hereafter referred to as *S. 185 Report*.)

⁸ Debate in the House of Representatives prior to House agreement to the Senate amendment to H.R. 20 appears in the *Congressional Record*, daily edition, v. 139, Sept. 21, 1993. pp. H6813-H6827.

⁹ The Hatch Act, enacted in 1939 and subsequently amended, covered the political activity of competitive and excepted service employees in Federal executive agencies, the U.S. Postal Service, the Postal Rate Commission, and civilians in the Department of Defense. District of Columbia government employees were deemed to be Federal executive branch employees for purposes of the Hatch Act.

POLITICAL ACTIVITIES: 103D CONGRESS AMENDMENTS TO THE HATCH ACT

INTRODUCTION

On October 6, 1993, President William Jefferson Clinton signed into law H.R. 20, The Hatch Act Reform Amendments of 1993.¹ This law, Public Law 103-94, expands the rights of Federal employees to participate in voluntary political activities that had previously been prohibited under "An Act To prevent pernicious political activities" and its subsequent amendments, popularly known as the Hatch Act.² Federal employees may now generally participate in partisan political activities on their own time and away from the office, as long as those efforts do not include running for office in a partisan election or soliciting campaign funds from the general public.

Selected law enforcement and national security personnel as well as members of the career Senior Executive Service, Administrative Law Judges, and contract appeals board members continue to be prohibited from taking an active part in political management or political campaigns.

The law states that it is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or 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. It aims to protect these employees from improper political solicitations, broaden their rights to participate in political activities, tighten the restrictions on political coercion, and strengthen the procedures for punishment of those who violate the prohibitions.

PUBLIC LAW 103-94, THE HATCH ACT REFORM AMENDMENTS OF 1993³

The Federal Employees Political Activities Act of 1993, H.R. 20, passed the House of Representatives, amended, by a roll call (No. 52) vote of 333 to 86 on March 3, 1993.⁴ The legislation was introduced by Representatives William Clay and John Myers on January 5, 1993, and, as introduced, was identical except for

¹ P.L. 103-94; 107 Stat. 1001-1011; 5 U.S.C. 7321-7326. Further information on the Hatch Act amendment issue can be found in U.S. Library of Congress. Congressional Research Service. *Hatch Act Amendments: Political Activity and the Civil Service*. Issue Brief No. 87153, by Barbara L. Schwemle, Oct. 8, 1993 (continually updated). Washington, 1993.

² The Hatch Act was named after its sponsor, Senator Carl Hatch (Democrat, New Mexico).

³ The law amends the Hatch Act by providing substitute language to expand upon existing language or adding new language to Subchapter III, Chapter 73 of Title 5, *United States Code*.

⁴ Debate in the House of Representatives prior to passage of H.R. 20 appears in the *Congressional Record*, daily edition, v. 139, Mar. 3, 1993. pp. H985-H997.

To: All Commission Staff
From: Mary Ann Hook, General Counsel
Re: Hatch Act

As the political season approaches, here is a CRS analysis of the Hatch Act, which limits political activity of government employees. Please read and call me if you have any questions.

As special government employees, you are considered to be an employee only on the days you actually work and bill the government. You are restricted by the Hatch Act during that 24 hour period.

During a billable day, you may not conduct political activity while on duty, in a government office, or by using government property. You may not solicit political contributions from the public, nor use your official title to influence or interfere with an election.

You may attend political fundraising functions, contribute money and be an active member of a political party or club.

Are there post-employment restrictions?

Yes. There are criminal statutes and regulations that apply to all employees after government service. The restrictions include one year ban from lobbying the Commission on any matter and a lifetime restriction on issues you worked on while a government employee. Each case is different and the restrictions are fact determinate therefore, it is recommended that you seek counsel if you are interested in post-employment that relates to base closure issues.

If the speech is outside your official capacity and does not relate to nor was it extended to you because of your official position, you may accept an honorarium but you may not use government time or staff to prepare your speech.

What is a financial conflict of interest ?

Under 18 U.S.C. 208 you may not participate personally and substantially as a government employee in a particular matter in which you have a financial interest if your actions will have a direct a predictable effect on these interests. There is no minimal amount. In other words, if you , your spouse or your minor child, partner or an organization in which you serve as an officer, director, trustee, partner or employee has such an interest, no matter what the monetary value, and you vote on the issue that affects your interest, you are in violation. of this criminal statute

There are three options available in cases of a conflict: the employee can divest or sell the stock holding, or in cases of position, terminate their position. The Secretary of Defense, has authority to issue a waiver in limited circumstances where the interest is found to be not so substantial as to affect the integrity of our services to the Government. Or you can recuse yourself or not participate in the conflicting matter before the Commission.

May I negotiate with a prohibited source, i.e. a defense contractor that has contracts at bases under consideration by the Commission, for employment after the Commission ends while serving as a Commissioner?

No. You may not negotiate for any future association with an employer, or for any business relationship, i.e. board of directors if it is determined that the entity has business before the Commission, while an employee.

Can I endorse a fund raising activity?

You may not use your official title to endorse a fundraising activity.

What is the Hatch Act and does it apply to Commissioners?

The Hatch Act is a law governing the political activities of government employees.

When the Commission visits "competing" communities whose bases are under consideration for closure, it is vital that the Commission remain and appear impartial.

What happens if someone sends me a gift?

First of all, declining the gift is the preferred method. If it is sent to you, depending on the gift, there are acceptable manners of disposal of a gift. I.e. if it is perishable, you may donate to charity or share it with the Commission. In some cases, you may pay the fair market value of the gift. The best remedy in some cases is to return the gift. Please seek counsel for proper disposal.

May I accept gifts and other benefits from commercial sources: i.e. travel benefits?

You may not use frequent flyer mileage gained from government travel for personal use.

Can I accept a lunch from a) lobbyist representing a base subject to closure, b) a friend representing a base subject to closure, c) a group with interests at a base subject to closure?

The recommended answer to all of the above is NO. All the above have interests before the Commission. If the fair market value is less than \$20, you may under the ethics regulations for gifts, however, the appearance of impropriety regulation and common sense indicate the better option is not to accept any gift or meal from a party who has interests before the Commission.

May I accept payment "an honorarium" for making or appearing or speech or writing that is related to my job but done on private time?

You may not receive any payment for accepting a fee for a speech or article or appearance that is undertaken as part of your official duties as a Commissioner. This includes directing the prohibited honorarium to a charity in lieu of your acceptance. To do so is the same as if you had accepted the money yourself.

III. QUESTIONS AND ANSWERS

**What are the restrictions as far as acceptance of a gift?
What is the definition of gift?**

A gift is any gratuity, favor, discount, entertainment, hospitality, loan forbearance or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or by reimbursement after the expense has been incurred.

You or your family may not receive gifts either from any prohibited source or due to your official position.

A prohibited source is any entity doing business before the Commission. This includes state organizations lobbying the Commission and commercial entities that have contracts at the military installations under consideration for closure or realignment.

You may not receive or solicit funds or a gift in return for being influenced in the performance of an official act.

Are there exceptions?

Yes. You may accept on an occasional basis only- coffee, donuts and nominal refreshments from a prohibited source.

You may also accept unsolicited gifts from one source with the fair market value of less than \$20 per occasion, i.e. a cap or souvenir pen. An employee may not accept an aggregate amount of more than \$50 total for the year from one source, i.e. a cap in April and a book in June each with a value of \$20 is permitted. If either individually was more than \$20 they could not be accepted or if three books totaled more than \$50 they could not be accepted.

The Commission discourages acceptance of any gifts from communities or entities who have interests that may be affected by the Commission. Be aware that there is a regulation that states that an employee should not do anything that gives a reasonable person with knowledge of the facts a reason to believe that an employee is compromising his or her impartiality.

*Questions and Answers on Government Ethics For
Commissioners*

I. INTRODUCTION

This guide is a brief introduction into government ethics. It presents the basic laws, executive orders and regulations in the form of providing answers to frequently asked ethics questions. Although, it is not comprehensive and is no substitute to the information presented by the General Counsel's office in your ethics training, this document provides a quick look at commonly occurring ethical issues.

For questions on the rules and laws or their interpretation, please contact the General Counsel's office.

II. STANDARDS OF CONDUCT

There are general standards of conduct that govern all government employees and are implemented by laws and regulations. The essential principles are the following:

- 1- You shall not use public office for private gain.
- 2- No group may receive preferential treatment.
- 3- You shall not make government decisions outside official channels.
- 4- You shall not use your position to induce or influence anyone .
- 5- Your private interests and activities should not conflict with your public duties.

MEMORANDUM FOR COMMISSIONERS AND STAFF
QUESTIONS AND ANSWERS ON GOVERNMENT ETHICS