



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 27, 2012

Mr. Daniel Epstein
Executive Director
Freedom Through Justice Foundation
2111 Wilson Blvd #700
Arlington, VA 22201

Dear Mr. Epstein:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated September 23, 2011 and assigned tracking number 11-194, which requests the following specified documents "for the date range of January 1, 2010 to the present":

1. All documents, including e-mail communications, referring or relating to the March 7, 2011, Blue Room event, including, but not limited to, draft and finalized invitation lists, RSVP notices, and communications with non-federal parties including the DNC.
2. All notes, transcripts, or other documents or communications which were generated either during or as a result of the March 7, 2011 Blue Room event.
3. All documents, including e-mail communications, referring or relating to any other DNC-planned events that have used, discussed the use of, or proposed to use any room of the White House, the Eisenhower Executive Office Building, the New Executive Office Building, or any other federal property on or off the White House grounds.
4. All documents and materials relating to the production of the "Dinner with Barack and Joe" presidential campaign fundraising video, including any raw video footage or script related materials.
5. All documents referring or relating to the use of federal personnel for fundraising purposes, including having federal employees attend fundraising events.
6. All documents, including e-mail communications and receipts, referring or relating to solicitations made to White House employees by: the DNC, Obama for America, or any other political fundraising entity concerning donations or other contributions.
7. All documents inviting or encouraging federal personnel to attend any White House event sponsored or planned in whole or in part by the DNC.
8. All documents between any federal personnel and any personnel, officers, agents, or representatives of the DNC or any DNC-affiliated committee referring or relating to the American Jobs Act of 2011. This request shall also capture all documents referring or relating to communications between any federal personnel and any personnel, officers,

agents, or representatives of the DNC or any DNC affiliated committee referencing the American Jobs Act of 2011.

9. All documents and internal communications which reference the DNC and/or any DNC affiliated committee and the American Jobs Act of 2011.
10. All documents, including e-mail communications, referring to, relating to, or including as an author or recipient, any federal personnel and
 - a. any personnel, officers, agents, or representatives of the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE") or
 - b. any personnel, officers, agents, or representatives of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union (also known as the "United Steelworkers" or "USW")
11. All documents referring or relating to, or including as a recipient or respondent, Patrick Gaspard, the DNC's Executive Director; Jim Messina, the Political Director of the Obama for America re-election campaign; Martin Nesbitt, the Treasurer of the Obama for America re-election campaign; Madeline Talbott, the former director of Project Vote in Chicago; and/or the "Presidential Partners" entity-including its relationship to the PACE and/or the USW.
12. All documents referring or relating to communications between the OSC and Members of Congress, including but not limited to Committee Chairmen and/or Ranking Members, referring or relating to
 - a. Ethics waivers,
 - b. The White House Blue Room Event of March 7, 2011 ,
 - c. Any event coordinated between the White House and the DNC, or
 - d. The Hatch Act.

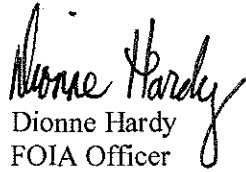
In response to your request, OMB has conducted a search for responsive documents.

In response to item 5 of your request, enclosed are copies of the guidance that OMB's Office of General Counsel has issued to OMB staff since January 1, 2010, regarding Hatch Act compliance.

With respect to the remaining items in your request (1-4 and 6-12), OMB's search did not identify any responsive documents. We should note that, as a general matter, OMB does not maintain records relating to events, activities, and communications that are of the types described in items 1-4, 6-7, and 12. And, with respect to items 8-11, your request did not provide any background information as to why you thought that OMB might have documents that are responsive to those items, and OMB's search did not identify any such documents. (OMB did not conduct a search for materials that are widely available to the public, such as press articles.)

This is my personal decision, which you may appeal in accordance with OMB regulations, at 5 C.F.R. § 1303. If you have any questions, please feel free to contact me at 202-395-3642.

Sincerely,


Dionne Hardy
FOIA Officer

Enclosures

Hardy, Dionne

From: Bansal, Preeta D.
Sent: Wednesday, October 20, 2010 3:39 PM
To: DL-OMB-ALL
Cc: Rackoff, Jonathan E.; Aitken, Steven D.
Subject: Message from GC's Office: POLITICAL ACTIVITIES
Attachments: Political Activities Memo A (2010) (Career SES).pdf; Political Activities Memo B (2010) (Career and Most Political Appointees).pdf; Political Activities Memo C (2010) (Specified High-Level Political Appointees).pdf

TO: ALL OMB Staff

With the midterm elections less than one month away, it is appropriate to remind OMB staff that the Hatch Act Reform Amendments of 1993 ("Hatch Act")^[1] and OPM's associated regulations^[2] apply to your personal participation in politics. Your activities will be considered "political" when they are "directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. §734.101.

The Hatch Act and related OPM regulations generally impose three levels of constraint on your personal political activity. Which level applies to you depends on your personnel classification. Career members of the Senior Executive Service ("SES") are the most restricted, OMB career staff and most political appointees are less restricted, while certain political appointees specifically designated by the Director are the least restricted. We offer three separate guidance documents corresponding to each level of restriction and employee category. They are summarized below and attached (and also at the embedded links).

Please read the memo that applies to you. Penalties for Hatch Act violations are severe (and in some instances criminal in nature), frequently involving removal from office.^[3] We must all therefore be vigilant in conducting our affairs within the confines of our ethical duties as Executive Branch employees. To assist, OGC has prepared this overview (and attached memoranda) summarizing the main legal rules governing your participation in political activity. It is not exhaustive. Nor is it intended to be legal advice; but rather only guidance as to broad principles. If you have specific questions or concerns about the legality or propriety of a proposed activity, we urge you to consult with OGC. Please contact Preeta Bansal (5-5044) or Jonathan Rackoff (5-7535) for advice.

THREE LEVELS OF CONSTRAINT ON POLITICAL ACTIVITY

a. Career SES (More Restricted)

Career members of the SES are held to the highest standard. Like other covered employees, they are prohibited from engaging in political activity at work or on duty. See 5 C.F.R. § 734.406. But in many instances the Hatch Act also follows them home. Career SES employees are barred from any political activity "performed in concert with a political party, partisan political group, or a candidate for partisan political office," regardless of time or place. See 5 C.F.R. § 734.402.

If you fall into this category, please read **Memorandum A**, attached to this message and linked here: <https://max.omb.gov/community/x/GAfDI>.

b. Career Staff & Political Appointees Not Specified (Less Restricted)

Career OMB staff, Schedule C, Schedule A, and Senior Level ("SL") appointees, as well as appointees whom the Director has not determined to have "duties and responsibilities . . . continu[ing] outside normal duty hours and away from the normal duty post" (see section I(c) of this memo below), are subject to an intermediate standard of restriction, with more liberal allowances for off-duty political activity.

While off-the-job, these employees may "[t]ake an active part in managing the political campaign of a partisan political candidate or a candidate for political party office," 5 C.F.R. § 734.205(f), which includes "supervising paid and unpaid

campaign workers.” See 5 C.F.R. § 734.205 ex.7. They may also, on their own time, canvass for votes, endorse candidates, circulate petitions, serve as party officers or as delegates to conventions and participate in political rallies. See 5 C.F.R. § 734.204-5. It is critical to recognize, however, that Hatch-Act prohibitions against “political activity” while on duty remain in full-force.^[iv]

If you fall into this category, please read **Memorandum B**, attached to this message and linked here: <https://max.omb.gov/community/x/GgfDI>.

c. High-Level Political Appointees Specified By The Director (Least Restricted)

Certain high-level political appointees are subject to an even less restrictive standard. Specifically, they are exempted from the statutory restrictions against engaging in political activities while on duty or in a government building or vehicle. This exemption covers

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 . . . who determines policies to be pursued by the United States . . . in the nationwide administration of Federal laws

5 U.S.C. §7324(b)(2); see also 5 C.F.R. §734.502(a). In accord with OPM regulations providing that the Director of OMB determines the “normal duty hours and normal duty post” for OMB staff, see 5 C.F.R. §734.502(b), the Director has specified certain OMB positions as qualifying for the exception.^[v]

These least-restricted employees are, for example, permitted to hold a partisan political meeting or host a reception (which is not a fundraiser) in an EEOB conference room during normal business hours. See 5 C.F.R. § 734.502 ex.3. However, the associated costs may not be paid for by money derived from the Treasury. Rather, such monies must be reimbursed to OMB within a reasonable time. See 5 C.F.R. § 734.503(a).^[vi]

If you fall into this category, please read **Memorandum C**, attached to this message and linked here: <https://max.omb.gov/community/x/HAfDI>.

Preeta D. Bansal
OMB General Counsel and Senior Policy Advisor
395-5044

^[i] See 5 U.S.C. §§7321-7326.

^[ii] See 5 C.F.R. §§733-734.

^[iii] The Office of Special Counsel (“OSC”) has jurisdiction over and investigates reports of Hatch Act violations. See 5 U.S.C. §1216(a)(1); 5 C.F.R. §734.102. Where the OSC determines a violation has occurred that warrants prosecution, it files a written complaint with the MSPB, which the accused may contest. See 5 U.S.C. §1215(a)(2); 5 C.F.R. §734.102(b). However, a violation of the Hatch Act carries the automatic penalty of termination of employment. See 5 U.S.C. §7326. Only where the MSPB determines by a unanimous vote that the violation is minor can it impose the minimum penalty of 30 days suspension without pay. *Id.*

^[iv] See *Burrus v. Vegliante*, 336 F.3d 82, 86-87 (2nd Cir. 2003).

^[iv] See Memo from Jeffrey D. Zients, Acting Director of OMB, “*Determination Pursuant to 5 C.F.R. §734.502(b)*” (October 18, 2010); *Application of Hatch Act to Certain Officials at OMB*, Op. Off. Legal Counsel (June 4, 2004) (finding legal support for the Director’s designation of PAS and Non-Career SES appointees).

^[v] Note that costs associated with a political activity do not include any costs that the Government would have incurred regardless of whether the activity was political, 5 C.F.R. § 734.503(b); for example, the value of office space owned or leased by the Government, the salary or expenses of employees required in the performance of their duties to staff less-restricted principals engaging in political activity, and the cost of special security arrangements or transportation methods. See 5 C.F.R. § 734.503(b)(2)-(3); On the other hand, you must apportion the costs of mixed travel based on the time spent on political activities compared to the time spent performing official duties.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 20, 2010

POLITICAL ACTIVITIES MEMO A:
Members of the Career SES

FROM: Preeta D. Bansal, General Counsel
Jonathan E. Rackoff, Assistant General Counsel & DAEO

SUBJECT: Permitted & Prohibited Activities of More Restricted Employees

Below, we provide a detailed list of permissible and impermissible conduct specific to your employee category:

- Members of the Career Senior Executive Service.

Certain, core political activities are permitted to all employees covered by the Hatch Act. For example, all OMB employees retain the right to register and vote as they choose and to express their opinion on political subjects and candidates. Nonpartisan political activity is permitted for all Hatch Act-covered employees, including assisting in a nonpartisan voter registration drive, or participating in campaigns where none of the candidates represent a political party. If conducted off-duty, a range of partisan activity is also allowed: e.g., donating money to a partisan candidate or political organization, attending a political fundraiser, attending political rallies and meetings, joining political clubs or parties, signing nominating petitions, or campaigning for or against referendum questions, constitutional amendments, and municipal ordinances.¹

As Career SES employees, you are subject to the provisions of 5 C.F.R. §734, Subpart D, under which you also retain the right to participate in any of the “permitted” activities listed in Table A1, as long as you do not perform them “in concert with a political party, partisan political group, or a candidate for partisan political office.” 5 C.F.R. §734.402. (The provisions of 5 C.F.R. §734, Subpart B and C – discussed in Memorandum B. and applicable to career OMB staff and most political appointees – do not apply to you. See 5 C.F.R. §734.201.) Conversely, 5 C.F.R. §734, Subpart D prohibits the political activities listed in Table A2.

Table A1
Permitted Activity—As A Career SES Employee, You May...

Type	Description	Authority
Expression of personal opinion	Express your opinion as an individual privately and publicly on political subjects and candidates	§734.402(a)
	Display a political picture, sign, sticker, badge, or button, as long as neither on duty nor in a government building or vehicle	§734.402(b)
	Sign a political petition as an individual	§734.402(c)
	Be politically active in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other similar question or issue	§734.402(d)

Elections	Register and vote in any election	§734.403(a)
	Take an active part, as a candidate or in support of a candidate, in a nonpartisan election	§734.403(b)
	Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law	§734.403(c)
Political organizations	Participate in the nonpartisan activities of a civic, community, social labor, or professional organization, or of a similar organization	§734.404(a)(1)
	Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with Federal law	§734.404(a)(2)
	Attend a political convention, rally, fund-raising function, or other political gathering	§734.404(a)(3)
	Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office	§734.404(a)(4)
Campaigning for spouse or family member	Appear in photographs of your spouse or family member who is a candidate for partisan-political or political-party office, even though it might appear in a political advertisement, a broadcast, campaign literature, or similar material. You may also attend political functions with your candidate-relative.	§734.405
Candidacy in designated localities	Run – if you live in an OPM designated municipality or political subdivision ² – as an independent candidate for election to partisan political office in elections for local office in the designated locality; solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the designated locality; solicit, accept, or receive uncompensated volunteer services as, or on behalf of, an independent candidate for partisan political office in elections for office in the designated locality; and take an active part in other political activities associated with elections for local partisan political office and in managing the campaigns of candidates for election to local partisan political office in the designated locality – but only as an independent candidate or on behalf of, or in opposition to, an independent candidate. ³	5 C.F.R. §733.105(c)

Table A2
Prohibited Activity—However, As A Career SES Employee, You May Not...

Type	Description	Authority
Political activities while on duty	Participate in political activities (1) while on duty; (2) while wearing a uniform, badge, or insignia that identifies OMB, the EOP, or your official position; (3) while 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; or (4) while using a Government-owned or leased vehicle or a privately owned vehicle on official duty	5 C.F.R. §734.406(a)
Campaigning for spouse or relative	Distribute campaign literature or solicit, accept, or receive political contributions, even in support of your spouse or family member's campaign	§734.405; §734.410
Use of official authority	Use official authority or influence for the purpose of interfering with or affecting the result of an election.	§734.407
Campaigning	Take an active part in political management or in a political campaign	§734.408
Political organizations	Serve 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 group, or be a candidate for any of these positions	§734.409(a)
	Organize a political party organization or partisan political group	§734.409(b)
	Serve as a delegate, alternate, or proxy to a political party convention	§734.409(c)
	Address a convention, caucus, or rally in support of or in opposition to a candidate for partisan-political or political-party office, if done in concert with a candidate, political party, or partisan political group	§734.409(d)
Political Fundraising	Solicit, accept, or receive political contributions	§734.410(a)
	Organize, sell tickets to, or promote or actively participate in a fundraising activity of a candidate for partisan-political or political-party office	§734.410(b)
	Take an active part in managing the political campaign of a candidate for partisan-political office or a candidate for political-party office	§734.411(a)
	Campaign for partisan political office	§734.411(b)
	Canvass for votes in support of or in opposition to a candidate for partisan office if done in concert with the candidate or political party or partisan political group	§734.411(c)
	Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement broadcast, campaign literature, or similar material if done in concert with the candidate, a political party or partisan political group	§734.411(d)
	Initiate or circulate a partisan nominating petition	§734.411(e)
Elections	Be a candidate for partisan political office	§734.412(a)
	Act as recorder, watcher, challenger, or similar officer at polling places in concert with a political party, partisan political group, or a candidate for partisan political office	§734.412(b)
	Drive voters to polling places in concert with a political party, partisan political group or a candidate for partisan political office.	§734.412(c)

¹ See Office of Special Counsel, "Further Restricted Employees—Examples of Permitted Activities," available at <http://www.osc.gov/haFederalFurtherPermittedActivities.htm>.

² In Maryland: Annapolis; Anne Arundel County; Berwyn Heights; Bethesda; Bladensburg; Bowie; Brentwood; Calvert County; Capitol Heights; Cheverly; Chevy Chase, section 3; Chevy Chase, section 4, Chevy Chase View.

Town of Chevy Chase Village; College Park; Cottage City; District Heights; Edmonston; Fairmont Heights; Forest Heights; Frederick County; Garrett Park; Glenarden; Glen Echo; Greenbelt; Howard County; Hyattsville; Kensington; Landover Hills; Village of Martin's Additions; Montgomery County; Morningside; Mount Rainier; New Carrollton; North Beach; North Brentwood; North Chevy Chase; Northwest Park; Prince George's County; Riverdale; Rockville; St. Mary's County; Seat Pleasant; Somerset; Takoma Park; University Park; Washington Grove. In Virginia: Alexandria; Arlington County; Clifton; City of Fairfax; Fairfax County; Falls Church; Fauquier County; Herndon; Loudoun County; Manassas; Manassas Park; Portsmouth; Prince William County; Spotsylvania County; Stafford County; Vienna.

³ 5 C.F.R. §733.105(a)(14) makes this political activity permissible for "Career Appointees in the Senior Executive Service"; but note that 5 C.F.R. §733.106(b) confirms that a career SES employee is prohibited from running as a representative of a political party for local partisan political office; from soliciting, accepting, or receiving political contributions on behalf of candidates who represent a political party; from soliciting, accepting, or receiving uncompensated volunteer services on behalf of such a candidate; from knowingly soliciting a political contribution from any Federal employee; from accepting or receiving a political contribution from a subordinate; from soliciting, accepting, or receiving uncompensated volunteer services from a subordinate for any political purpose; and from taking an active part in other political activities associated with elections for local partisan political office, when such participation occurs on behalf of a political party, partisan political group, or a candidate for local partisan political office who represents a political party.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 20, 2010

POLITICAL ACTIVITIES MEMO B:
Career OMB Staff & Political Appointees Not Specified By The Director

FROM: Preeta D. Bansal, General Counsel
Jonathan E. Rackoff, Assistant General Counsel & DAEO

SUBJECT: Permitted & Prohibited Activities of Less Restricted Employees

Below, we provide a detailed list of permissible and impermissible conduct specific to your employee category:

- Career OMB Staff, Schedule A, C, and Senior Level Political Appointees, and High-Level Political Appointees Not Specified by the Director.

Certain, core political activities are permitted for all employees covered by the Hatch Act. For example, all OMB employees retain the right to register and vote as they choose and to express their opinion on political subjects and candidates. Nonpartisan political activity is likewise permitted for all Hatch Act-covered employees, including assisting with a nonpartisan voter registration drive, or participating in campaigns where none of the candidates represent a political party. If conducted off-duty, a range of partisan activity is also allowed: e.g., donating money to a partisan candidate or political organization, attending a political fundraiser, attending political rallies and meetings, joining political clubs or parties, signing nominating petitions, or campaigning for or against referendum questions, constitutional amendments, and municipal ordinances.¹

As a career OMB employee or political appointee whose position has not been determined by the Director to have “duties and responsibilities...continu[ing] outside normal duty hours and away from the normal duty post,” you are subject to the provisions of 5 C.F.R. §734, Subpart B, under which you may actively engage in most political activities, including political campaigns, to the extent not expressly prohibited by law. *See* 5 C.F.R. §734.202. Specifically, you retain the right to participate in any of the “permitted” activities listed in Table B1, below. Conversely, however, you are also bound by the strictures of 5 C.F.R. §734, Subpart C, which prohibits the political activities listed in Table B2.

Table B1
Permitted Activity—As Career Staff or an Unspecified Political, You May...

Type	Description	Authority
Nonpartisan activities	Express your opinion privately and publically on political subjects	5 C.F.R. §734.203(a)
	Be politically active in connection with questions not specifically identified with a political party	§734.203(b)
	Participate in non-partisan activities of civic, community, social, labor or professional organizations	§734.203(c)
	Fully participate in public affairs, where not prohibited by Federal law, in a manner that does not compromise your efficiency or integrity, or the neutrality, efficiency or integrity of OMB	§734.203(d)

Political organizations	Be a member of a political party (or other political group) and participate in its activities	§734.204(a)
	Serve as an officer or committee member of a political party on a national, State or local level, or be a candidate for the same	§734.204(b)
	Attend and participate fully in nominating caucuses of political parties	§734.204(c)
	Organize a political party organization	§734.204(d)
	Participate in a political convention, rally, or other political gathering	§734.204(e)
	Serve as a delegate to a political party convention	§734.204(f)
Political campaigns	Display pictures, signs, stickers, badges or buttons associated with political parties or candidates for partisan political office, except that you may not do so when: <ul style="list-style-type: none"> • On duty (§734.306(a)(1)); • Wearing your badge or any similar item identifying the White House, OMB, the EOP, or your position (§734.306(a)(2)); • On the complex or any room or building occupied in the discharge of official duties (§734.306(a)(3)); and/or • Using a Government-owned vehicle (§734.306(a)(4)) 	§734.205(a)
	Initiate or circulate a nominating petition for a candidate	§734.205(b)
	Canvass for votes in support of or in opposition to a candidate	§734.205(c)
	Endorse or oppose a candidate in a political advertisement, broadcast, campaign literature, or similar material	§734.205(d)
	Address a convention, caucus or rally	§734.205(e)
	Manage the political campaign of an candidate	§734.205(f)
Elections	Register and vote in any election	§734.206(a)
	Act as a recorder, watcher, or challenger at the polls	§734.206(b)
	Serve as an election judge or clerk	§734.206(c)
	Drive voters to polling places	§734.206(d)
Candidacy in designated localities	Run — if you live in an OPM designated municipality or political subdivision ² — as an independent candidate in a partisan election covered by 5 C.F.R. §733 ³ , or as a candidate in a nonpartisan election, but in no other circumstances	§§734.207(a)-(b) & 734.304
Fundraising	Make a political contribution to a political party, group, campaign or candidate	§734.208(a)
	Attend a political fundraiser	§734.208(b)(2)
	Accept and receive political contributions in a partisan election, as defined in 5 C.F.R. §733 ⁴	§734.208(b)(2)
	Solicit, accept, or receive uncompensated volunteer services from any individual (but not the personnel office of a business or corporation)	§734.208(b)(3)

Table B2
Prohibited Activity—As a Career or Unspecified Political Employee, You May NOT...

Type	Description	Authority
Use of official authority	Use your official authority to interfere with or affect the results of an election	5 C.F.R. §734.302(a)
	Use your official title while participating in political activities	§734.302(b)(1)
	Use your authority to coerce political participation from any person	§734.302(b)(2)
	Solicit, accept, or receive uncompensated individual volunteer services from a subordinate for any political purpose	§734.302(b)(3); §734.304(d)
Fundraising	Knowingly personally solicit, accept or receive a political contribution from another person	§734.303(a)
	Personally solicit political contributions in a speech at a fundraiser	§734.303(b)
	Allow your official title to be used in connection with fundraising	§734.303(c)
Candidacy for public office in designated localities	Seek the nomination or run as a candidate for election to partisan political office, <i>except...</i> ...if you live in an OPM designated municipality or political subdivision, <i>see</i> infra n.2, you may run in a nonpartisan election or as an independent candidate in a partisan election, and in no other circumstance ³	§734.207(a)-(b); §734.304
Coercion	Knowingly solicit or discourage the participation in any political activity of any person who has an application (e.g., for a grant, contract, ruling, license, permit, or certificate) pending before OMB ⁴	§734.305(a)
While on duty or at work...	Participate in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or while using a Federal vehicle	§734.306

¹ See Office of Special Counsel, "Further Restricted Employees—Examples of Permitted Activities," available at <http://www.osc.gov/haFederalFurtherPermittedActivities.htm>.

² In Maryland: Annapolis; Anne Arundel County; Berwyn Heights; Bethesda ; Bladensburg; Bowie; Brentwood; Calvert County; Capitol Heights; Cheverly; Chevy Chase, section 3; Chevy Chase, section 4, Chevy Chase View. Town of Chevy Chase Village; College Park; Cottage City; District Heights; Edmonston; Fairmont Heights; Forest Heights; Frederick County; Garrett Park; Glenarden; Glen Echo; Greenbelt; Howard County; Hyattsville; Kensington; Landover Hills; Village of Martin's Additions; Montgomery County; Morningside; Mount Rainier; New Carrollton; North Beach; North Brentwood; North Chevy Chase; Northwest Park; Prince George's County; Riverdale; Rockville; St. Mary's County; Seat Pleasant; Somerset; Takoma Park; University Park; Washington Grove. In Virginia: Alexandria; Arlington County; Clifton; City of Fairfax; Fairfax County; Falls Church; Fauquier County; Herndon; Loudoun County; Manassas; Manassas Park; Portsmouth; Prince William County; Spotsylvania County; Stafford County; Vienna.

³ Under 5 C.F.R. §733.103(b), employees who reside in a municipality or political subdivision designated by OPM under §733.107 – *see* supra n.2 – may run as independent candidates for election to partisan political office in elections for local office in the designated locality; solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate; accept or receive a political contribution on behalf of such a candidate; solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

⁴ See supra n.2-3.

⁵ Under 5 C.F.R. §733.104(b), an employee who resides in a designated locality – *see supra* n.2 – may not run as the representative of a political party for local partisan political office; solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party; knowingly solicit a political contribution from any Federal employee; accept or receive a political contribution from a subordinate; or solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose. Moreover, it is a violation for one’s candidacy for, or service in, a partisan political office to result in neglect of, or interference with, the performance of one’s official duties, or to or create a conflict, or apparent conflict, of interest. *See* §733.104(e).

⁶ But note that an employee with “agency-wide responsibility” may address a large, diverse group to seek support for a partisan political candidate as long as the group has not been “specifically targeted” as having matters before OMB. *See* §734.305 ex.2.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 20, 2010

POLITICAL ACTIVITIES MEMO C:
High-Level Political Appointees Specified By The Director

FROM: Preeti D. Bansal, General Counsel
 Jonathan E. Rackoff, Assistant General Counsel & DAEO

SUBJECT: Permitted & Prohibited Activities of Least Restricted Employees

Below, we provide a detailed list of permissible and impermissible conduct specific to your employee category:

- High-Level Political Appointees Specified by the Director.¹

Certain, core political activities are permitted for all employees covered by the Hatch Act. For example, all OMB employees retain the right to register and vote as they choose and to express their opinion on political subjects and candidates. Nonpartisan political activity is likewise permitted for all Hatch Act-covered employees, including assisting with a nonpartisan voter registration drive, or participating in campaigns where none of the candidates represent a political party. A range of partisan activity is also allowed: e.g., donating money to a partisan candidate or political organization, attending a political fundraiser, attending political rallies and meetings, joining political clubs or parties, signing nominating petitions, or campaigning for or against referendum questions, constitutional amendments, and municipal ordinances.²

As a high-level OMB political appointee whose position has been determined by the Director to have "duties and responsibilities...continu[ing] outside normal duty hours and away from the normal duty post," you are generally subject to the same restrictions as OMB career staff and your Schedule A, Schedule C, and Senior Level colleagues – i.e., the provisions 5 C.F.R. §734, Subparts B and C.

You benefit, however, from the special provisions of Subpart E, which exempt you from the statutory restrictions against engaging in political activity on duty or on government property. Accordingly, you have the right to participate in the "permitted" activities listed in Table C1, below. But be cautious – most of your colleagues will incur Hatch-Act penalties if they join you in those activities.³

And, again, except where relaxed by Subpart E, you remain bound by the strictures of 5 C.F.R. §734, Subpart C, which prohibits the political activities listed in Table C2.

Table C1
Permitted Activity—As A High-Level Political Appointee Specified by the Director,
You May...

Type	Description	Authority	
Political activities while on duty	Participate, subject to any other restrictions OMB may impose, in political activities:	5 C.F.R. §734.503	
	While you are on duty;	§734.503(c)(1)	
	While you are wearing a uniform, badge, or insignia that identifies OMB, the EOP, the Administration, or your official position;	§734.503(c)(2)	
	While you are in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Federal government; and/or	§734.503(c)(3)	
	While using a Government-owned or leased vehicle or a privately-owned vehicle in the discharge of official duties	§734.503(c)(4)	
Nonpartisan activities	Express your opinion privately and publically on political subjects	§734.203(a)	
	Be politically active in connection with questions not specifically identified with a political party	§734.203(b)	
	Participate in non-partisan activities of civic, community, social, labor or professional organizations	§734.203(c)	
	Fully participate in public affairs, where not prohibited by Federal law, in a manner that does not compromise your efficiency or integrity, or the neutrality, efficiency or integrity of OMB	§734.203(d)	
Political organizations	Be a member of a political party (or other political group) and participate in its activities	§734.204(a)	
	Serve as an officer or committee member of a political party on a national, State or local level, or be a candidate for the same	§734.204(b)	
	Attend and participate fully in nominating caucuses of political parties	§734.204(c)	
	Organize a political party organization	§734.204(d)	
	Participate in a political convention, rally, or other political gathering	§734.204(e)	
	Serve as a delegate to a political party convention	§734.204(f)	
Political campaigns	Display pictures, signs, stickers, badges or buttons associated with political parties or candidates for partisan political office, except that you may not do so when: <ul style="list-style-type: none"> • On duty (§734.306(a)(1)); • Wearing your badge or any similar item identifying the WH, OMB, the EOP, or your position (§734.306(a)(2)); • On the complex or any room or building occupied in the discharge of official duties (§734.306(a)(3)); and/or • Using a Government-owned vehicle (§734.306(a)(4)) 	§734.205(a)	
	Initiate or circulate a nominating petition for a candidate	§734.205(b)	
	Canvass for votes in support of or in opposition to a candidate	§734.205(c)	
	Endorse or oppose a candidate in a political advertisement, broadcast, campaign literature, or similar material	§734.205(d)	
	Address a convention, caucus or rally	§734.205(e)	
	Manage the political campaign of an candidate	§734.205(f)	
	Elections	Register and vote in any election	§734.206(a)
		Act as a recorder, watcher, or challenger at the polls	§734.206(b)
		Serve as an election judge or clerk	§734.206(c)
		Drive voters to polling places	§734.206(d)
Candidacy in designated localities	Run — if you live in an OPM designated municipality or political subdivision ⁴ — as an independent candidate in a partisan election covered by 5 C.F.R. §733 ⁵ , or as a candidate in a nonpartisan election, but in no other circumstances	§§734.207(a)-(b) & 734.304	

Fundraising	Make a political contribution to a political party, group, campaign or candidate	§734.208(a)
	Attend a political fundraiser	§734.208(b)(2)
	Accept and receive political contributions in a partisan election, as defined in 5 C.F.R. §733 ⁶	§734.208(b)(2)
	Solicit, accept, or receive uncompensated volunteer services from any individual (but not the personnel office of a business or corporation)	§734.208(b)(3)

Table C2
Prohibited Activity— As A High-Level Political Appointee Specified by the Director, You May NOT...

Type	Description	Authority
Use of official authority	Use your official authority to interfere with or affect the results of an election	5 C.F.R. §734.302(a)
	Use your official title while participating in political activities	§734.302(b)(1)
	Use your authority to coerce political participation from any person	§734.302(b)(2)
	Solicit, accept, or receive uncompensated individual volunteer services from a subordinate for any political purpose ⁷	§734.302(b)(3); §734.304(d)
Fundraising	Knowingly personally solicit, accept or receive a political contribution from another person	§734.303(a)
	Personally solicit political contributions in a speech at a fundraiser	§734.303(b)
	Allow your official title to be used in connection with fundraising	§734.303(c)
Candidacy for public office in designated localities	Seek the nomination or run as a candidate for election to partisan political office, <u>except</u>if you live in an OPM designated municipality or political subdivision, <i>see</i> infra n.4, you may run in a nonpartisan election or as an independent candidate in a partisan election, and in no other circumstance ⁸	§734.207(a)-(b); §734.304
Coercion	Knowingly solicit or discourage the participation in any political activity of any person who has an application (e.g., for a grant, contract, ruling, license, permit, or certificate) pending before OMB ⁹	§734.305(a)

¹ See Memorandum from Jeffrey D. Zients, Acting Director of OMB, "Determination Pursuant to 5 C.F.R. §734.502(b)" (October 18, 2010).

² See Office of Special Counsel, "Further Restricted Employees—Examples of Permitted Activities," available at <http://www.osc.gov/haFederalFurtherPermittedActivities.htm>.

³ Remember that, under 5 U.S.C. §7326, violation of the Hatch Act carries an automatic penalty of termination of employment. But also note that OMB employees to whom these special provisions of Subpart E do not apply may, nevertheless, and when not on duty, participate in political activities in rooms of the White House or the Residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties. See §734.503(d).

⁴ In Maryland: Annapolis; Anne Arundel County; Berwyn Heights; Bethesda ; Bladensburg; Bowie; Brentwood; Calvert County; Capitol Heights; Cheverly; Chevy Chase, section 3; Chevy Chase, section 4, Chevy Chase View. Town of Chevy Chase Village; College Park; Cottage City; District Heights; Edmonston; Fairmont Heights; Forest Heights; Frederick County; Garrett Park; Glenarden; Glen Echo; Greenbelt; Howard County; Hyattsville; Kensington; Landover Hills; Village of Martin's Additions; Montgomery County; Morningside; Mount Rainier; New Carrollton; North Beach; North Brentwood; North Chevy Chase; Northwest Park; Prince George's County; Riverdale; Rockville; St. Mary's County; Seat Pleasant; Somerset; Takoma Park; University Park; Washington Grove. In Virginia: Alexandria; Arlington County; Clifton; City of Fairfax; Fairfax County;

Falls Church; Fauquier County; Herndon; Loudoun County; Manassas; Manassas Park; Portsmouth; Prince William County; Spotsylvania County; Stafford County; Vienna.

⁵ Under 5 C.F.R. §733.103(b), employees who reside in a municipality or political subdivision designated by OPM under §733.107 – *see supra n.4* – may run as independent candidates for election to partisan political office in elections for local office in the designated locality; solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate; accept or receive a political contribution on behalf of such a candidate; solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

⁶ *See supra nn.4-5.*

⁷ For example, you may neither ask your subordinate schedule C employee to write a policy speech for you to give at a partisan political event, nor accept such a speech. The fact that the policy speech contains no partisan political advocacy is irrelevant. *See* 5 C.F.R. §§ 734.302(b)(3), 734.303(d).

⁸ Under 5 C.F.R. §733.104(b), an employee who resides in a designated locality – *see supra n.4* – may not run as the representative of a political party for local partisan political office; solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party; knowingly solicit a political contribution from any Federal employee; accept or receive a political contribution from a subordinate; or solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose. Moreover, it is a violation for one's candidacy for, or service in, a partisan political office to result in neglect of, or interference with, the performance of one's official duties, or to or create a conflict, or apparent conflict, of interest. *See* §733.104(e).

⁹ But note that an employee with "agency-wide responsibility" may address a large, diverse group to seek support for a partisan political candidate as long as the group has not been "specifically targeted" as having matters before OMB. *See* §734.305 ex.2.