

Office of Government Ethics
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**Letter to the Chairman of a U.S. House
of Representatives Committee dated November 6, 1996**

On September 30, 1996, the Office of Special Counsel (OSC) forwarded to me a copy of your letter dated April 18, 1996. It was thought by OSC that one of the questions in your letter raised an issue which might be more appropriately reviewed by my Office. That question asked if there were "any conflict or apparent conflict between" the official duties of [a Federal employee], who is [a high-ranking official] of [a] Department, "and his work for a presidential campaign on issues [related to his department's program]". Although the materials that were attached to your letter to OSC did not disclose the type of information that would be necessary to perform the analysis you requested, I am pleased to provide the following general guidance regarding executive branch employees' political activities in the context of the statutes and regulations for which my Office is responsible.

[The employee's] work for a Presidential campaign while he is a Federal employee would be an outside activity. There are various so-called "conflict of interest" provisions applicable to the outside activities of Federal employees. These provisions are summarized in subpart H of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635. 1 That subpart, together with other subparts in the Standards of Conduct, sets forth basic ethics rules relating to employees' outside activities.

Under the Standards of Conduct, at 5 C.F.R. § 2635.802, an employee may not engage in an outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties if it is prohibited by statute or by an agency regulation supplementing the Standards of Conduct; 2 or if the activity would require the employee's disqualification from matters critical to performance of the employee's official duties. The Hatch Act Reform Amendments, 5 U.S.C. § 7321 et seq., is the primary statute governing the partisan political activities of executive branch employees. 3 We understand that OSC, which has responsibility for enforcing the HARA, is addressing questions in your letter regarding application of the HARA. A partisan political activity prohibited by the HARA or another law would "conflict" with an employee's official duties, within the meaning of 5 C.F.R. § 2635.802.

The Standards of Conduct also provide, at 5 C.F.R. § 2635.801(b), that an employee engaging in an outside activity must comply with all relevant

provisions therein. Subpart G of the Standards of Conduct, for example, prohibits employees from using or allowing the use of nonpublic information to further their own private interests or the private interests of others, and from using or allowing the use of Government property or official time for other than authorized purposes. 5 C.F.R. §§ 2635.703, 2635.704 and 2635.705. In addition, a conflict of interest statute, 18 U.S.C. § 205, would prohibit an employee from seeking official action from an agency on behalf of a campaign. That statute is specifically noted in the outside activities provisions of subpart H of the Standards of Conduct.

Finally, we would point out that while the Standards of Conduct place certain restrictions on employees' fundraising activities, the section of the Standards of Conduct that contains those restrictions does not apply to fundraising for a political party, candidate for partisan political office, or partisan political group. See the provision to be codified in the Standards of Conduct at 5 C.F.R. § 2635.808(a)(2) note, at 61 Fed. Reg. 50691. Rather, political fundraising is governed by statutory provisions such as that in the HARA, at 5 U.S.C. § 7323(a), under which employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances; 18 U.S.C. § 602, under which employees are prohibited from knowingly soliciting political contributions from other employees, except as permitted by the HARA; and 18 U.S.C. § 607, under which employees are prohibited from soliciting or receiving political contributions in Federal offices.

We trust that the foregoing guidance will be of assistance to you.

Sincerely,

Stephen D. Potts
Director

¹ The brief reference to the Hatch Act in this summary, at section 2635.801(d)(7), recently was replaced with a reference to the Hatch Act Reform Amendments (HARA). 61 Fed. Reg. 50689-50691 (Sept. 27, 1996).

Other technical amendments to make the Standards of Conduct conform with the HARA also were done in this rulemaking.

² The Department does not have such a regulation.

3 Interim and final regulations regarding the political activities of Federal employees under the HARA have been issued by the Office of Personnel Management. See 59 Fed . Reg . 48765-48777 (September 23, 1994) and 61 Fed . Reg . 35088-35102 (July 5, 1996) [interim rule codified in part 734 of the 1995 and 1996 editions of title 5, Code of Federal Regulations].