



United States
Department of
Agriculture

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Office of the
General
Counsel

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TO: All USDA Employees

FROM: Stephen Alexander Vaden 
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SUBJECT: Important Political Activity Guidance Reminder

With the conclusion of the two major political parties' Presidential Nominating Conventions and various national, state, and local election campaigns moving into high gear across the country, we are providing this timely reminder of the applicable statutory restrictions on political activity imposed by the Hatch Act (5 U.S.C. §§ 7321 - 26). This memorandum has three sections. The first section provides USDA employees with useful digital Ethics and Hatch Act resources that are available to you now, whether you have returned to the office or are teleworking remotely. Remember, whenever you have an Ethics or Hatch Act question, you can, and should, always contact the USDA Office of Ethics. You can easily locate the Office of Ethics advisors assigned to service your Mission Area at: www.ethics.usda.gov. The second section contains an overview of the applicable Hatch Act rules. The third section provides the latest Hatch Act guidance issued by the U.S. Office of Special Counsel (OSC). OSC is the Federal agency that has jurisdiction to investigate and enforce employee violations of the Hatch Act.

I) Resources Available to Help You Learn More About the Hatch Act

To assist USDA employees in complying with the Hatch Act's requirements, the Office of Ethics has created several resources for obtaining answers to specific questions about personal political activities (See Attachment A at the end of this memo). There are several resources available to all USDA employees:

- All employees are encouraged to direct any questions about the Hatch Act to the USDA Office of Ethics at its "Hatch Act Hotline" (202) 720-2251 or via e-mail at daeo.ethics@usda.gov.

- Additionally, employees can readily locate the Office of Ethics advisors assigned to service their Mission Areas at: www.ethics.usda.gov.

- Further information about the Hatch Act can be found on the USDA Ethics App (you can search “USDA Ethics” and download the App, at no cost, on any smart phone).
- Employees can view several short videos about the Hatch Act located on the Video Section of the USDA Ethics App as well as on USDA’s official YouTube page. The following four videos, created by the USDA Office of Ethics, are available to you on demand 24 hours a day and can be viewed on your laptop, tablet, or smart phone. These videos can be located on YouTube by searching “USDA Office of Ethics Playlist.”

- 1) *The Hatch Act Illustrated and Explained.*
- 2) *The Hatch Act Rules for USDA Employees.*
- 3) *Hatch Act and Social Media.*
- 4) *Hatch Act Rules for Further Restricted Employees (career-SES).*

II) Overview of the Hatch Act Rules: Determining if You Are “Less Restricted” or “Further Restricted:”

a) **The Rules for “Less Restricted” Employees:**

Although all Executive Branch employees are covered by the Hatch Act, not all employees are covered by the same restrictions. **The majority of USDA employees are considered under the Hatch Act to be “Less Restricted” and may engage in political activity while off-duty, outside of Federal buildings, out of uniform, and without using their USDA position title or Federal resources. The “Less Restricted” category includes all GS-level, SL and ST career employees, and all political appointees.** Those employees who wish to volunteer for political campaigns should seek prior guidance on the relevant rules by contacting the Office of Ethics at (202) 720-2251 or via e-mail at: daeo.ethics@usda.gov. Senate-confirmed Presidential appointees (PAS) are also “Less Restricted”; and because the set of rules governing these officials are more complex, those officials should seek further guidance from the Office of Ethics before engaging in political activities.

b) **The Rules for “Further Restricted” Employees (Career-SES and ALJs):**

The rules apply more stringently to certain senior employees, such as those employees in career Senior Executive Service (SES) positions and Administrative Law Judges (ALJs). Because of their leadership positions as the most senior career officials within the Executive Branch, SES and ALJs are considered under the Hatch Act to be “Further Restricted” and may not engage in certain political activities, even on their own time. Career SES and ALJs interested in learning more are encouraged to contact the Office of Ethics.

c) **Volunteering for a Political Campaign in Your Personal Capacity Off-Duty:**

Under the Hatch Act, if you are a “less restricted” employee, you are permitted to volunteer for a political campaign of your choice, provided that you are:

- off-duty,
- outside of a Federal building,
- not using government resources, government e-mails, or computer equipment;
- not soliciting or receiving campaign contributions,
- not wearing an official USDA insignia or apparel with government insignia (such as a Forest Service uniform or an FSA, NRCS or RD polo shirt).

Important Note: You cannot enlist your subordinate employees to assist in any partisan political campaign.

Volunteer activities for employees who are “Less Restricted” could include:

- (1) an active part in managing or volunteering on a political campaign;
- (2) serving as an officer of a political party or other political group, or as a member of a national, state, or local committee of a political party;
- (3) canvassing for votes in support of, or in opposition to, a political candidate;
- (4) addressing a convention, rally, caucus, or similar gathering of a political party in support of, or in opposition to, a partisan candidate for public office;
- (5) assisting in “get out the vote” partisan phone banks;
- (6) attending political fundraisers, but **not** soliciting political contributions;
- (7) distributing campaign literature in partisan elections;
- (8) assisting in voter registration drives; and
- (9) circulating nominating petitions.

Please remember, these allowances apply only to employees who are volunteering in their personal capacity, on their own time (off duty), and not in a Federal building. **USDA Employees must not enlist subordinate employees to assist any partisan political campaign.** Additionally, employees who are “Further Restricted” (career SES and Administrative Law Judges) cannot volunteer to assist any partisan political campaign.

d) **Restrictions on Political Contributions and Fundraising:**

You are prohibited from soliciting political contributions from any person or organization at any time. The restriction against political fundraising is a complete ban on a 24/7 basis.

The Hatch Act's fundraising ban means, for example, that you:

- **Cannot** host a political fundraiser at your personal residence;
- **Cannot** solicit donations to a Campaign, Political Party or Political Action Committee;
- **Cannot** join a host committee (or permit your name to be used) for a fundraising event;
- **Cannot** send or forward campaign fundraising e-mails, solicit campaign donations on Facebook, or retweet fundraising solicitations that you may receive to others.

NOTE: If you choose to, you can always contribute your own personal funds to political candidates, parties, or groups and may attend political fundraisers in your personal capacity while off duty.

e) **Social Media and the Hatch Act:**

You must be especially vigilant to comply with the Hatch Act when using social media while in the workplace, on duty, or anytime while using your USDA e-mail account or using government-issued computer equipment or communications devices.

- For Social Media, this means:

(1) Don't post, like, share, or retweet a message or comment or forward a private organization's video in support of or opposition to a political party, candidate, or partisan political group **while you are on official duty or are in the workplace**, even if your social media account is private. This includes while you are on duty teleworking from home. As an example of an action prohibited for all employees under the Hatch Act, we must not post social media messages in support of or opposition to a political candidate or party **while we are "on the clock" in a work duty status at home.**

(2) Never post, like, share, or retweet a message or comment to **solicit a political contribution** for a political party, candidate in a partisan race, or partisan political group. This restriction applies 24 hours a day. Put another way, you are barred from soliciting campaign contributions whether you are on or off duty.

(3) Never use your **official authority or government social media resources** (including government e-mail and twitter accounts) to post, like, share, or retweet a message, a comment, or an outside organization's video, to influence the outcome of an election.

When in doubt, contact the USDA Office of Ethics for the latest Hatch Act guidance.

f) **Other Hatch Act Limitations:**

As a Federal employee, you cannot:

- (1) Run as a candidate in a partisan political election for a Federal, State, or local elected office;
- (2) Use your official authority or influence for the purpose of interfering with or affecting the result of an election (*e.g.*, using your official title when participating in political activity, using your authority to coerce another to participate in political activity, or soliciting or receiving services from a subordinate for any political purpose);
- (3) 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 staff member's office;
- (4) Knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by your office; or
- (5) Coerce any Federal employee to engage in or not engage in any political activity; or
- (6) **You cannot wear any campaign apparel into the office or while you are on duty. This means that when you are on duty or in the Federal workplace, you cannot wear any campaign buttons, stickers, ballcaps, t-shirts or face masks with partisan political campaign messages, slogans, logos, or items purchased from a political campaign's website.**
- (7) You cannot display pictures of candidates for partisan political office in your Federal office or in a Federal building, unless it is a personal photo and all of the following apply:
 - (1) the photograph was on display in advance of the election season;
 - (2) the employee is in the photograph with the candidate
 - (3) the photograph is a personal one (*i.e.*, taken at a personal event or function such as a wedding, and not at a campaign event or other partisan political event); and
 - (4) the employee must not have a political purpose for displaying the photograph, namely promoting or opposing a political party or a candidate for partisan political office.

(III) Recent Office of Special Counsel Guidance on the Presidential Election Season and the Hatch Act:

On July 14, 2020, the Office of Special Counsel (OSC) issued an advisory titled: “Black Lives Matter and the Hatch Act.” This advisory provided guidance on a timely question that OSC had received from several Federal employees: *Is Black Lives Matter (BLM) currently a partisan political organization for purposes of the Hatch Act?* (See OSC Advisory <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Black%20Lives%20Matter%20and%20the%20Hatch%20Act.pdf>.)

In its July 14th advisory, OSC determined that Black Lives Matter is not a partisan political organization at this time. The phrasing “at this time” is an important caveat by OSC because it means that this determination could change if BLM (or some of its subordinate chapters) move to endorse or support a political candidate or party as the upcoming elections draw nearer.

What this means: As applied to Black Lives Matter, this means that OSC advises that an employee is not prohibited by the Hatch Act from expressing support for, or opposition to, the BLM movement while on duty or in the workplace. **However, the Hatch Act may still apply if,** for example, an employee was to say, in the workplace or while on duty, *“If you believe that Black Lives Matter, then you should vote for/against Candidate X in November.”* Such a comment would violate the Hatch Act if it was said on duty, either in the office or while teleworking. Similarly, if BLM were to host a fundraiser to support a candidate for partisan political office, then the Hatch Act would prohibit a Federal employee from advertising, promoting, or inviting others to attend that political fundraiser at any time. Because BLM, at this time, is not itself a partisan political group, the Hatch Act would not prohibit the employee from inviting others to a fundraiser that solely benefitted BLM. Because this is a new advisory, and because it may change, if BLM decides to engage in partisan political campaigning, employees who have questions about the Hatch Act should contact the Office of Ethics.

The main point is that the Hatch Act’s prohibitions will apply once a campaign committee, political party, or a partisan political organization issue a slogan, logo, image, or phrase for the purpose of causing the success or defeat of a partisan candidate or political party in an election. This means that, while on official duty or in a federal workplace, employees are prohibited from wearing, displaying, or distributing partisan political slogans like “Make America Great Again,” “#MAGA” or “America First.” This prohibition also applies equally to items directed at the failure of President Trump’s reelection campaign, such as those containing the slogan “No Malarkey,” or the candidate’s first or last names, or other terms that have been adopted as slogans by political parties and partisan political groups. The essential cautionary note of OSC’s advisory is to reaffirm the long-standing rule that criticism or praise that is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group is considered to be political activity and cannot be conducted while on duty or in the workplace.

Remember, the Hatch Act’s restrictions concerning political activity only apply to employees while they are on official duty (including teleworking) or in the workplace (including Federal buildings or Federally-leased office space). The Hatch Act does not impose restrictions on the ability of employees (who are not further restricted) to engage in non-fundraising political activity while off-duty and away from the workplace. And, as a final reminder, the restrictions

against partisan political campaign fundraising are more stringent and apply 24 hours a day to all Federal employees. Employees are encouraged to direct any questions to the USDA Office of Ethics at (202) 720-2251 or at daeo.ethics@usda.gov. Additionally, employees can direct any questions to the Office of Ethics advisors assigned to service their Mission Areas at: www.ethics.usda.gov. (See Attachment A below for further information about how to contact the USDA Office of Ethics and for useful Ethics and Hatch Act resources available to help you become more familiar with these and other important rules.)

ATTACHMENT A

How to Get in Touch with the USDA Office of Ethics:

Employees of:	Contact:
Farm Production and Conservation Mission Area (FSA, NRCS, RMA, and FPAC Business Center)	Ethics-FPC@usda.gov
Food, Nutrition and Consumer Service Mission Area (FNS, CNPP)	Ethics-FNCS@usda.gov
Food Safety Mission Area (FSIS)	Ethics-FoodSafety@usda.gov
Marketing and Regulatory Programs Mission Area (AMS, APHIS & GIPSA)	Ethics-MRP@usda.gov
Natural Resources and Environment Mission Area (USFS)	Ethics-NRE@usda.gov
Research, Education and Economics Mission Area (ARS, NIFA, ERS, NASS)	Ethics-REE@usda.gov
Trade and Foreign Agricultural Affairs Mission Area (FAS)	Ethics-TFAA@usda.gov
Rural Development (RBCS, RHS & RUS)	Ethics-RD@usda.gov
Departmental Management, Staff Offices, Filers of Public Financial Disclosure Reports and Political Appointees	Daeo.ethics@usda.gov

Ethics Resources Available to You “On Demand” 24 Hours a Day:

- 1) **The USDA Ethics Mobile Application (the USDA Ethics App):** The USDA Ethics App is available by searching “USDA Ethics” on any smartphone app store on either Apple or Android devices.
- 2) **Ethics Videos:** The Office of Ethics has created 28 videos on a wide array of Ethics and Hatch Act topics. These videos are available on USDA’s Official YouTube page. Employees can search the full playlist of videos by searching: “*USDA Office of Ethics Playlist*” on YouTube.
- 3) **Hatch Act Videos:** The USDA Ethics App and USDA’s Official YouTube page contain several short videos on the Hatch Act. The newest video (issued in February 2020) is an animated and illustrated Hatch Act video (search: “*The Hatch Act Illustrated and Explained*” on YouTube).
- 4) **USDA’s Ethics Web site:** Another resource is the USDA Ethics web site (search: “*USDA Office of Ethics*” on the web or go directly to the site at: [https://www.ethics.usda.gov/.](https://www.ethics.usda.gov/))