

## HOW TO REVIEW POLITICAL INVITATIONS IN ACCORDANCE WITH THE HATCH ACT

The Hatch Act, 5 USC §§ 7321-7326, regulates the political activities of federal employees in the Executive Branch of the Federal government. “Political activity” is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. Under the Hatch Act, most employees cannot participate in partisan political activity while on government time and in government facilities. However, this rule is different for PAS employees. This guidance will help you to know what the PAS employees *can* and *cannot* do.

### Who is a PAS employee?

EPA has 14 PAS employees, who are **Presidential Appointees** confirmed by the Senate. They are the Administrator, the Deputy Administrator, the General Counsel, the Inspector General, the Chief Financial Officer, and the nine Assistant Administrators.

### What are all employees prohibited from doing under the Hatch Act?

There are several things that no employee, including PASers, should do:

- (1) Don't use your official authority or influence to interfere with or affect an election. Don't use your official title while participating in political activity and don't use your authority to coerce anyone to participate in political activity. Importantly, you can't solicit, accept or receive uncompensated volunteer services from any subordinate for any political purpose;
- (2) Don't fundraise, even in your private capacity. You can't even let your name be used as the host of fundraiser. You can't solicit political contributions in a speech or address at a fundraiser, and you can't let your official title be used in connection with a fundraiser. You also can't solicit, accept or receive volunteer services from an EPA subordinate;
- (3) Don't run for partisan public office (without first talking to your ethics official and telling us where you live. There are a few exceptions for certain localities); and
- (4) Don't solicit or discourage political activity from any person who is doing business with the Agency. This includes any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending in your office. It also includes any person who is the subject of an investigation, audit or enforcement action in your office. For PAS employees, this description can include a lot of people!

### How are PASers special under the Hatch Act?

Unlike most employees, EPA's fourteen PASers can participate in political activity while on duty, on government premises, in a government vehicle, and while wearing the EPA badge. But only they can do so. The rest of the EPA employees, including Schedule Cs and non-career SESers cannot.

### The “Secret Service” exception

In limited cases, the Hatch Act nevertheless allows staff to assist the PAS consistent with their official duty. For example, a security detail may accompany the Administrator, even to a political event, so long as he is providing security and not himself participating in the political activity. Similarly, an administrative assistant may prepare the travel and itinerary associated with a political trip even if the Administrator is engaged in political activity or a mix of official and political activity.

But this exception should not be broadened to include speech writing or any “extra” voluntary service!

### What happens if an EPA PAS is invited to a political event?

1) The Scheduling Staff for the PAS should **examine the invitation** to determine who issued the invitation to the PAS employee and whether it is indeed for a political event.

- Clues: is the invitation from a campaign committee to elect someone? Is the event called a “rally” or a “fundraiser” or does it use words like “get out the vote?”

2) The Scheduling Staff should **send a copy of the invitation to OGC-Ethics** for review and confirmation as to whether it is indeed a political event.

3) If the event is political, then the Scheduling Staff must do the following:

\$ send the requestor the EPA’s “ground rules” about political events

\$ ask questions about the event:

- who is the host of the event?
- are there any co-sponsors?
- where will the event be held?
- who are the anticipated invitees to the event?
- how many people are expected to attend?
- what is the anticipated role of the EPA PAS at the event?

\$ identify a contact person on the Scheduling Staff to work with OGC

\$ identify a contact person on the requestor’s staff to talk to OGC

\$ do not confirm attendance until the event is cleared, in writing (by email), by OGC

NOTE: An employee with Agency-wide responsibility may address a large, diverse group to seek support for a partisan political candidate so long as the group has not been specifically targeted as having matters before the employing office. 5 CFR 734.305.

- An example of a permitted activity: the Administrator may speak on behalf of a partisan candidate at a forum sponsored by the League of Women Voters that is expected to have more than 100 people attend. However, he cannot use his official title and cannot solicit funds for the candidate in his speech. He also should not say that the candidate is endorsed by the US EPA.

- An example of a prohibited activity: the Administrator will not be permitted to speak at an event that is sponsored by an environmental law firm for its clients to be held in the law firm's offices.
- OGC will examine closely where the event is to be held and the sponsors and hosts. Scrutiny will be applied to certain entities, including lobbying organizations, law firms, for-profit and not-for-profit entities that have an environmental focus, and trade associations.

4) If the event is cleared, then the Scheduling Staff can confirm attendance, subject to the EPA's ground rules. The Scheduling Staff should now:

- \$ obtain a list of all of the invitees and send that list to OGC
- \$ obtain copies of all of the invitations and send to OGC for review of the format
- \$ talk to the PAS travel coordinator and OGC about payment for any political travel
- \$ reaffirm to the PAS that s/he cannot accept any volunteer services, including speeches
- \$ provide the PAS with the EPA's ground rules as part of her/his briefing package



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## GROUND RULES FOR PARTICIPATION IN A POLITICAL EVENT

Your campaign has invited a Presidentially-Appointed and Senate-confirmed appointee of the U.S. Environmental Protection Agency to speak at your political event. The Hatch Act, 5 U.S.C. §§ 7321-7326, sets forth certain restrictions that this employee must follow. She cannot use her official authority to further political activity; cannot solicit, accept or receive political contributions; and cannot solicit or discourage the political participation of anyone who has business pending before the Agency.

We ask that you review our ground rules carefully and ensure that they are followed. Failure to follow these rules may result in withdrawal of any approval to allow our employee to speak at your event.

- You must provide EPA with a copy of the invitation and any other public communications regarding the event before you may distribute them so that our counsel can ensure compliance with federal rules.
- Once EPA agrees to the final version of the invitation or other public communications, you cannot make any subsequent changes to the text or format nor change the title of the electronic files.
- You must provide EPA with a complete description of the event, the proposed venue, any sponsors or affiliated entities, and a summary description of proposed invitees.
- You may not specifically target invitees with interests before the Agency. If EPA agrees to provide a speaker, you will provide a list of all invitees to EPA and their contact information at least 48 hours in advance of the event.
- When you issue your invitations, you will include this statement as part of the distribution:

PLEASE NOTE: The federal Hatch Act prohibits this speaker from soliciting or discouraging the political participation of any person who has an application for any compensation grant, contract, ruling, license, permit, or certificate pending before US EPA. If you or your company has any business pending before any part of EPA, we ask that you not attend this event.

Any questions regarding these rules should be directed to Justina Fugh, Senior Counsel for Ethics, at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or 202 564 1786.