

# POLITICAL ACTIVITIES

## I. REFERENCES

- A. 2 U.S.C. § 441a, Federal Election Campaigns: Limitation on Contributions and Expenditures.
- B. 5 U.S.C. §§ 7321-7326, Political Activities of Federal Civilian Employees. ([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/5usc7321\\_7326.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/5usc7321_7326.pdf))
- C. 10 U.S.C. § 888, UCMJ Art. 88, Contempt toward Officials;
- D. 10 U.S.C. § 973, Duties of Officers on Active Duty; Performance of Civil Functions Restricted.
- E. 18 U.S.C. Chapter 29, Elections and Political Activities; 18 U.S.C. § 1913
- F. 5 C.F.R. Parts 733, 734, Political Activities of Federal Employees ([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/5cfr733.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/5cfr733.pdf)) and ([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/5cfr734.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/5cfr734.pdf))
- G. 5 C.F.R. Part 2635, Subparts G & H, Standards of Ethical Conduct for Employees of the Executive Branch.
- H. DoD 5500.07-R, Joint Ethics Regulation, Chapters 2, 3, 5 & 6. (<http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf>)
- I. DoD Directive 1344.10, Political Activities by Members of the Armed Forces, February 19, 2008. (<http://www.dtic.mil/whs/directives/corres/pdf/134410p.pdf>)
- J. DoD Instruction 1334.01, Wearing of the Uniform, October 26, 2005.
- K. Partisan Political Activity Rules for “Less Restricted” DoD Civilians. ([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/hatch\\_act\\_q\\_a\\_less\\_restricted.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/hatch_act_q_a_less_restricted.pdf))

- L. Partisan Political Activity Rules for “Further Restricted” DoD Civilians.  
([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/hatch\\_act\\_q\\_a\\_further\\_restricted.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/hatch_act_q_a_further_restricted.pdf))
- M. DepSecDef Memorandum, June 19, 2012, Civilian and Military Personnel Participation in Political Activities.  
([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/sectry\\_carter\\_hatch\\_act\\_2012\\_guidance\\_memo.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/sectry_carter_hatch_act_2012_guidance_memo.pdf))
- N. Air Force Instruction 51-902, Political Activities by Members of the U.S. Air Force, 12 November 2010.
- O. AR 600-20 Army Command Policy, 18 March 2008 (Rapid Action Revision (RAR) 4 August 2011), paragraph 5-3 “Political Activities” and Appendix B.
- P. Secretary of the Navy Instruction 5720.44B, Department of the Navy Public Affairs Policy and Navy Regulations, 1 November 2005.
- Q. Marine Corps Order (MCO) 5370.7B -- POLITICAL ACTIVITIES (March 1993)
- R. “Politicians in the Ranks: A Review of the Law and Policy Governing Civil Office Holders in Military Service.” Colonel T. Strong, 2004. This paper was submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree, U.S. Army War College, Carlisle Barracks, Pennsylvania.  
(<http://www.strategicstudiesinstitute.army.mil/pdf/files/ksil259.pdf>).
- S. [2014 Election Year Guidance](#) June 24, 2014
- T. 2014 DoD Public Affairs Guidance for Political Campaigns and Elections (contact your local PAO)

## **II. STATUTORY RESTRICTIONS INVOLVING ELECTIONS AND POLITICAL ACTIVITIES**

- A. Limitations on amount of political contributions. 2 U.S.C. § 441a.
- B. No solicitation of fellow Federal employees for campaign contributions. 18 U.S.C. § 602.

- C. No contributing to any other Federal employee who is the contributor's employer or employing authority. 18 U.S.C. § 603.
- D. No threats or intimidation to secure contributions. 18 U.S.C. §§ 601 & 606.
- E. No solicitation or receipt of contributions in any room occupied in discharge of official duties, or in any navy yard, fort, or arsenal. 18 U.S.C. § 607.
- F. No paying/receiving of pay to vote or withhold vote. 18 U.S.C. § 597.
- G. No promising of benefits that depend on an Act of Congress, as reward for political activity. 18 U.S.C. § 600.
- H. No intimidation of voters. 18 U.S.C. § 594.
- I. No coercing political activities of Federal employees. 18 U.S.C. § 610.
- J. No interference with rights under Uniformed and Overseas Citizens Absentee Voting Act. 18 U.S.C. § 608.
- K. No assembling troops at polls. 18 U.S.C. § 592.
- L. No election interference by armed forces. 18 U.S.C. § 593.
- M. No polling of armed forces. 18 U.S.C. § 596.
- N. No use of military authority to influence votes of other military members. 18 U.S.C. § 609.

### **III. APPLICATION OF THE RULES TO MEMBERS OF THE ARMED FORCES**

A. Political Activity by Members of the Armed Forces (DoD Directive 1344.10).  
(<http://www.dtic.mil/whs/directives/corres/pdf/134410p.pdf>)

1. Applicability.

- a. Members of the Armed Forces on Active Duty, includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary concerned. See 10 USC § 101. For purposes of this directive only, active duty also includes full-time National Guard duty.
- b. Members of the Armed Forces also includes retirees and members of the Reserve Components not on active duty including, for section 4.3, members of the National Guard even when in non-Federal status.
- c. Includes enlisted members and officers.

2. Spirit and intent.

- a. It is DoD policy to encourage members of the Armed Forces (including members on active duty, members of the Reserve Components not on active duty, and retired members) to carry out the obligations of citizenship. In keeping with the traditional concept that members on active duty should not engage in partisan political activity, and that members not on active duty should avoid inferences that their political activities imply or appear to imply official sponsorship, approval, or endorsement. Section 4.

- b. “Activities not expressly prohibited may be contrary to the spirit and intent of this Directive. Any activity that may be reasonably viewed as directly or indirectly associating the Department of Defense or Department of Homeland Security (in the case of the Coast Guard) with a partisan political activity or is otherwise contrary to the spirit and intention of this Directive shall be avoided.” Section 4.1.5.
  
- B. Permitted political activities (Section 4.1). A member of the Armed Forces on active duty may:
  - 1. Register, vote, and express personal opinions on political candidates and public issues;
  - 2. Encourage other military members to exercise voting rights;
  - 3. Join a political club (even if partisan) and attend political meetings when not in uniform. (See DoD Instruction 1334.01 (Reference J));
  - 4. Sign petitions for specific legislative action or to place a candidate’s name on the ballot;
  - 5. Write letters to the editor expressing personal views (so long as not part of organized letter writing campaign or solicitation of votes for or against a political party or partisan political cause or candidate). Requires a disclaimer that the views are those of the individual and not DoD;
  - 6. Make permissible monetary contributions to a political organization, party, or committee;
  - 7. Display a bumper sticker on a member’s private vehicle;
  - 8. Attend a partisan or nonpartisan political fundraising activity, meeting, rally, debate, convention, or activity when not in uniform and when no appearance of sponsorship or endorsement can reasonably be drawn.

- C. Prohibited political activities (Section 4.1.2). A member of the Armed Forces on active duty shall not:
1. Participate in partisan political fundraising activities, rallies, conventions, management of campaigns, or debates. The prohibition is broad and does not depend on whether a member is in uniform or even whether an inference of official endorsement can be drawn;
  2. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others;
  3. Publish partisan political articles or letters that solicit votes for or against a partisan political party, candidate, or cause. Letters to the editor may be allowed as noted above;
  4. Participate in any radio, television, or other program or group discussion as an advocate for or against a partisan political party, candidate, or cause;
  5. Serve in official capacity/sponsor a partisan political club;
  6. Conduct a political opinion survey or distribute political literature;
  7. Speak before a partisan political gathering;
  8. Work for a partisan political committee or candidate during a campaign, on election day or while closing out a campaign;
  9. Engage in fundraising activity for any political candidate or cause in Federal offices, facilities, or on military reservations;
  10. March or ride in partisan parades;

11. Participate in organized efforts to provide voters transportation to polling places if the effort is associated with a partisan political party;
12. Sell tickets for or actively promote partisan political dinners and similar fundraising events;
13. Make a campaign contribution to or receive or solicit a campaign contribution from any other member of the Armed Forces on active duty;
14. Display a partisan political sign visible to the public at one's residence on a military installation.

D. Participation in local nonpartisan political activities is allowed, so long as:

1. Not in uniform;
2. No use of Government property or resources;
3. No interference with duty;
4. No implied Government position or involvement.

E. Nomination or candidacy for covered civil offices set out in section 4.2.

1. A regular member, or a retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days may not be a nominee or candidate for a covered civil office unless the Secretary concerned grants permission. The Secretary concerned may not delegate the authority to grant or deny this permission.

2. If a member noted immediately above becomes a nominee or candidate for a covered office prior to entering active duty, then he or she must submit a written request for permission from the Secretary concerned before entering active duty.
3. A retired regular or Reserve Component member on active duty under a call or order to active duty for 270 days or fewer may remain or become a candidate or nominee for covered civil office provided there is no interference with the performance of military duty.
4. Any nominee or candidate for covered civil office who is either granted permission or not otherwise prohibited from being a nominee or candidate for covered civil office must complete the acknowledgement of limitations in enclosure 4 and forward it to the first general or flag officer in his or her chain of command. Those who do not require permission must complete the acknowledgement within 15 days of becoming a nominee or candidate or within 15 days of entry on active duty if already a nominee or candidate.
5. Additional limitations on nomination or candidacy and campaigning (4.3).
  - a. Any nominee or candidate for covered civil office who is on active duty and who is either granted permission to be or not otherwise prohibited from being a nominee or candidate for covered civil office may not participate in any campaign activities. This prohibition is broad and includes open and active campaigning and all behind-the-scenes activities. Such members may not:
    - (1) Direct, control, manage, or otherwise participate in their campaigns;
    - (2) Make statements to or answer questions from the media regarding policies or activities unless specifically authorized;
    - (3) Publish or allow to be published partisan political articles, literature, or documents they have signed, written or approved that solicit votes for or against a partisan political party, candidate, issue, or cause;

- (4) Any nominee or candidate for covered civil office who is on active duty and who is either granted permission or not otherwise prohibited from being a nominee or candidate for covered civil office must:
  - (i) Take documented, affirmative efforts to inform those who work for them that they (the nominees or candidates) may not direct, control, manage, or otherwise participate in campaign activities on their own behalf;
  - (ii) Take all reasonable efforts to prevent current anticipated advertisements that they control from being publicly displayed or running in any media. This includes Web sites. Web sites created before entry on active duty may not be updated or revised any may be ordered shut down by the Secretary concerned;

6. Members not on active duty who are nominees or candidates for covered offices may, in their campaign literature (including Web sites, videos, television, and conventional print advertisements):
  - a. Use or mention their military rank or grade and military service affiliation, but they must clearly indicate their retired or reserve status;
  - b. Include their current or former specific military duty, title, or position, or photographs in military uniform, when displayed with other non-military biological details. This must be accompanied by a clearly displayed disclaimer that the information or photographs do not imply official endorsement;
  - c. Use of photographs, drawings, and other similar media formats of the member in uniform cannot be the primary graphic representation in any campaign material. Depictions of the member in uniform cannot misrepresent their actual performance of duty.

F. Holding and exercising the functions of public office (citations refer to DoDD 1344.10).

	Regular	Reg Ret / RC Less than or = 270	Reg Ret / RC > 270
Hold Fed Office	NO (4.4.2.)	YES, provided no interference w/ duty (4.4.3.)	NO (4.4.4.)
Execute Fed Office	NO (4.4.2.)	YES, provided no interference w/ duty (4.4.3.)	NO (4.4.4.)
Hold non-Fed	NO (4.5.2.)	YES, provided no interference w/ duty (4.5.4.)	NO, unless SEC grants permission after determining no interference w/duty (4.5.3.2.)
Execute non-Fed	NO (4.5.2.)	YES, provided no interference w/ duty (4.5.4.)	NO (4.5.3.)

1. Federal Civil Office.

- a. Limitations apply to these covered offices: elective offices; offices that require appointment by President (no longer requires Senate confirmation too), and certain executive schedule positions.
- b. A regular member, or retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days, may not hold or exercise the functions of a covered Federal office.
- c. A retired regular or Reserve Component member on active duty under a call or order to active duty for 270 days or fewer may hold and exercise the functions of a covered Federal office provided there is no interference with the performance of military duty.

2. Non-Federal Civil Office.
  - a. Limitations apply to these covered offices: an office in a State; the District of Columbia; a territory, possession, or commonwealth of the United States; or any political subdivision thereof.
  - b. A regular member may not hold or exercise the functions of a covered non-Federal office.
  - c. A retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days may hold a covered office if the Secretary concerned grants permission. The Secretary concerned may not delegate the authority to make this decision.
    - (1) This is a change from the 2004 directive.
    - (2) The 2004 directive established the presumption that the Service member could hold the office unless the Secretary concerned prohibited it.
    - (3) Under the new directive, the Service member cannot hold the office unless the Secretary concerned first grants affirmative permission.
    - (4) A retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days who has permission to hold a covered non-Federal office may not exercise the functions of that office.
    - (5) A retired regular or Reserve Component member on active duty under a call or order to active duty for fewer than 270 duty days may hold and exercise the functions of a covered office provided there is no interference with the performance of military duties.

- (6) Any member on active duty authorized to hold or not otherwise prohibited from holding or exercising the functions of a covered office is still subject to the prohibitions of subsection 4.12.

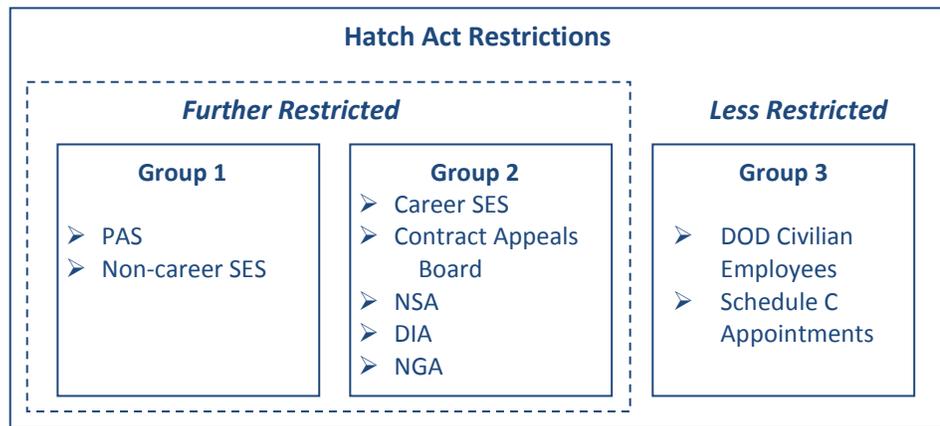
#### **IV. APPLICATION OF THE RULES TO CIVILIAN EMPLOYEES**

A. Political Activity of Civilian Employees (5 C.F.R. Parts 733 and 734). The Hatch Act (Act) is the law that restricts the partisan political activity of civilian executive branch employees of the Federal Government.

1. General Information.

- a. For purposes of the Act, “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.
- b. The Act does not prohibit employees from participating in or being candidates in nonpartisan elections. A nonpartisan election is one in which none of the candidates is to be nominated or elected as representing a political party, i.e., none of the candidates are running, for example, as representatives of the Democratic or Republican party. Employees who are interested in running for state or local office should first check with their local board of elections to clarify the nonpartisan status of the election. Employees who are candidates for public office in nonpartisan elections are not barred by the Act from soliciting, accepting, or receiving political contributions for their own campaigns.
- c. A nonpartisan election can also include an election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum question, or a municipal ordinance (e.g., gun control, gay marriage, tax issues, climate change, and DC statehood).
- d. At DoD, there are 2 sets of rules for 3 groups of employees. The first set of restrictions applies to: (1) individuals appointed by the President and confirmed by the Senate and individuals serving in non-career SES positions, who are further restricted by DoD policy;

(2) career members of the SES, contract appeals board members, and all employees of the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Geo-Spatial-Intelligence Agency (NGA). The second, and more lenient set of restrictions, applies to all other employees (including Schedule C political appointments). Employees in Groups 1 and 2 are prohibited from taking an active part in partisan political management or political campaigns and are referred to as “Further Restricted” employees. Employees in Group 3 are referred to as “Less Restricted.”



2. Prohibited Political Activities Applicable to All DoD civilian employees - All DoD civilian employees are prohibited from:
  - a. Using their official authority or influence for the purpose of interfering with or affecting the result of an election; including coercing subordinates to participate in political activity, using one’s official title while participating in political activity; using agency social media for political purposes;
  - b. Knowingly, personally soliciting, accepting or receiving a political contribution from any person; including hosting or serving as a POC for a fundraising event for a political party or candidate for partisan political office; signing a solicitation letter, collecting money at a fundraising event, soliciting donations through a phone bank;

- c. Running for the nomination or as a candidate for election to a partisan political office (an election where candidates are running with party affiliation, usually as Democrats or Republicans);
  
- d. Participating in political activity while on-duty or in any room or building occupied in the discharge of official duties by an individual employed by DoD;
  - (1) On-duty. An employee is on duty during the time period when he or she is: (1) in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay) or (2) representing an agency or instrumentality of the United States Government in an official capacity.
  
  - (2) Employees are prohibited 24/7 from sending or forwarding political/campaign literature, materials, information (including jokes) while using their DoD email account or while using a DoD computer.  
<https://osc.gov/Resources/Obama%20email.pdf>
  
  - (3) All DoD employees are prohibited from displaying political/campaign literature, materials, and information in their DoD workspace (including non-official pictures of a President running for reelection). (<https://osc.gov/Resources/2011-04-05%20FAQ%20Re%20Presidential%20photographs%20and%20candidacy%20for%20reelection.pdf#search=Presidential%20photographs%20and%20candidacy%20for%20reelection%20pdf>)
  
- e. Engaging in political activity while wearing a uniform or official insignia identifying the office or position of the DoD employee;
  
- f. Engaging in political activity while using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof;



- d. Express personal opinions on candidates and political issues;
  - e. Attend political events;
  - f. Participate in nonpartisan elections;
  - g. Assist in nonpartisan voter registration drives;
  - h. Work for the city or county as a poll worker on Election Day; and
  - i. Sign a nominating petition.
5. Permitted political activities for “Less Restricted” employees - “Less Restricted” employees are permitted to engage in political activity while off-duty and outside of a Federal building (in their personal capacity), as follows:
- a. Volunteer to work on a partisan campaign;
  - b. Attend and be active at political rallies and meetings;
  - c. Go door to door with the candidate and distribute campaign literature;
  - d. Write speeches for a candidate
  - e. Join and hold office in a political party or political organization;
  - f. Endorse a candidate for partisan political office in a political advertisement (may not use DoD title);
  - g. Organize and work at a fundraising event (no soliciting);
  - h. Serve as a delegate to a state, local or national political party convention;
  - i. Work to get out the vote on Election Day; and
  - j. Serve as an election judge (for a political party or the city or county).

## V. SOCIAL MEDIA AND POLITICAL ACTIVITIES

### A. Guidance for Members of the Armed Forces

<p><b>May an Active Duty member express his or her own personal views on public issues or political candidates via social media platforms, such as Facebook, Twitter, or personal blogs?</b></p>	<p><b>May an Active Duty member become a “friend” of, or “like,” the Facebook page, or “follow” the twitter account of a political party or partisan candidate, campaign, group, or cause?</b></p>
<p>➤ Yes, personal views are OK, much the same as writing a letter to the editor of a paper, but may <u>not</u> engage in any partisan political activity</p>	<p>➤ Yes, but must refrain from engaging in activities with respect to partisan political entities’ accounts that would constitute political activity</p>
<p>➤ “Partisan political activity” is activity directed at the success or failure of a political party, partisan political candidate, campaign, group or cause.</p>	<p>➤ Cannot suggest that others “like”, “friend” or “follow” the partisan account</p>
<p>➤ Cannot solicit others, fundraise, etc.</p>	<p>➤ Cannot forward invitations to partisan events, solicit or fundraise</p>
<p>➤ If identifiable as military must disclaim</p>	
<p>➤ No direct links of “likes” to partisan sites (akin to distribution of literature)</p>	

B. Guidance for Civilian Employees\*

<p><b><i>May a Federal employee advocate for or against a political party, partisan political group, or candidate for partisan political office in posts on a blog, Facebook, Twitter or other social media.</i></b></p>
<p>➤ <b>Less Restricted: YES</b>, may post and blog...while on off-duty and outside of a Federal building. Employees may never post or blog...while on duty or in Federal workplace.</p>
<p>➤ <b>Further Restricted: YES</b>, same as above. Additionally, further restricted employees may not list links to partisan websites or post material from a political campaign on their Facebook page as this would be equivalent of distributing literature.</p>
<p><b><i>If a Federal employee lists an official title on his/her Facebook profile, may he/she also complete the “political views” filed?</i></b></p>
<p>➤ <b>All employees: YES</b> – simply identifying one’s political affiliation without more is not engaging in “political activity.”</p>
<p><b><i>May Federal employees who are “friends” with their subordinate employees advocate for/against partisan parties or candidates on their Facebook page?</i></b></p>
<p>➤ <b>Less Restricted: Yes</b>, as long as updates are sent to “all” Facebook friends – (for example, posting an update in “Status” field) but, cannot specifically target subordinates – (for example, sending a personal message to a subordinate or posting political comments on a subordinate employee’s Facebook page).</p>
<p>➤ <b>Further Restricted: Same as above;</b> Further, restricted employees may not list links to partisan websites or post material from a political campaign on their Facebook page.</p>
<p><b><i>May a Federal employee become a “friend” of or “like” or “follow” the Twitter account of a political party or candidate?</i></b></p>
<p>➤ <b>Less: YES</b>, but employees may not engage in activities with respect to a Facebook or Twitter that would constitute political activity while on duty or in Federal workplace.</p>
<p>➤ <b>Further Restricted: YES</b>, but further, restricted employees may not list links to partisan websites or post material from a political campaign on their Facebook page as this would be engaging in political activity which is prohibited for further restricted employees.</p>
<p>➤ Employees remain subject to Hatch Act and these requirements even if they create an “alias” account.</p>
<p><b><i>May a Federal employee create a Facebook or Twitter page in his official capacity and advocate for party/candidate?</i></b></p>
<p>➤ <b>All: NO</b>...any social media page created in an employee’s official capacity must be limited to official business and remain politically neutral.</p>

\*See [OSC Advisory Opinion, April 4, 2012](https://osc.gov/Resources/Social%20Media%20and%20the%20Hatch%20Act%202012.pdf#search=OSC%20Advisory%20Opinion%2C%20April%204%2C%202012), for more detailed information on social media and political activity.

(<https://osc.gov/Resources/Social%20Media%20and%20the%20Hatch%20Act%202012.pdf#search=OSC%20Advisory%20Opinion%2C%20April%204%2C%202012>)

## **VI. ROLE OF U.S. OFFICE OF SPECIAL COUNSEL (OSC)**

- A. OSC's Hatch Act Unit provides advisory opinions on political activity of civilian Federal employees. They do not provide advice on DoD's rules concerning military members. Contact OSC attorneys by email at [hatchact@osc.gov](mailto:hatchact@osc.gov), or by phone at (202) 653-7143.
- B. OSC retains exclusive jurisdiction to rule on matters affecting the political activities of civilian personnel.
- C. Penalties for violating the Hatch Act cover a range of disciplinary actions, including removal from federal service, reduction in grade, debarment from federal employment for a period not to exceed 5 years, suspension, reprimand, or a civil penalty not to exceed \$1,000.
- D. OSC Advisory Opinions may be found on the US Office of Special Counsel website at <https://osc.gov/Pages/Advisory-Opinions.aspx>

## **VII. DOD PUBLIC AFFAIRS GUIDANCE FOR POLITICAL CAMPAIGNS AND ELECTIONS**

- A. DoD newspapers, magazines, and civilian enterprise publications will not publish information provided by a candidate's campaign organization, partisan advertisements and discussions, or cartoons, editorials, and commentaries dealing with political campaigns or elections, candidates, causes or issues.
- B. Access to installation by office holders and candidates. While a candidate for public office is prohibited from engaging in political activity on a military installation, a sitting officer holder who is up for reelection may be granted access to a military installation to engage in duties related to his elected office.
- C. Off-installation political events. All members of the Armed Forces are prohibited from wearing military uniforms at political campaign or elections events. This prohibition is not applicable to the joint color guards at the opening ceremonies of national political conventions.

- D. DoD may not prohibit the use of a military facility for an official polling place for local, State, or Federal elections if the facility was designated as a polling place as of 31 December 2000 or has been used as a polling place since 1 January 1996. There is an exception for the Secretary concerned to waive the provision if he determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election. (10 U.S.C. 2670(b))
- E. POC – OASD(PA), (703) 697- 5131. Start with your local PAO.

## VIII. LOBBYING

The Lobbying Disclosure Act of 1995, [2 U.S.C. §§ 1601–1614](#) (2013) imposes disclosure and registration requirements on lobbyists who contact “covered” Legislative and Executive Branch officials. It also requires that a covered Executive Branch official who is contacted by a lobbyist disclose the fact that he or she is a covered official upon the request of the person making the lobbying contact.

- A. Covered Executive Branch officials include, among others:
  - 1. Any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or EO;
  - 2. Any member of the uniformed services whose pay grade is at or above O-7, under [37 U.S.C. § 201 c](#) (2013); and
  - 3. Any individual serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character, as described in [5 U.S.C. § 7511 \(b\)\(2\)\(B\)](#). (2013)
- B. Generally, the Act applies to “PAS and Schedule C officials,” but does not apply to members of the SES (unless they meet the criteria in the first bullet above). If you have any questions about who is considered a lobbyist, how you should respond to contacts from lobbyists, and what your responsibilities are under the Act, you should contact your agency’s General Counsel.

C. Lobbying Congress.

1. Federal law prohibits the use of appropriated funds, directly or indirectly, to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress under [18 U.S.C. § 1913](#) (2013). This prohibition, however, does not prevent direct communications between Executive Branch officials and Congress.
  
2. Examples of prohibited activities include:
  - a. An article written by a Commerce Department official and published in *Business America*, a Commerce Department publication, explicitly urging readers to contact their elected representatives in Congress to support certain amendments to the Export Administration Act;
  
  - b. A campaign by the Defense Department to use contractors' lobbyists and the subcontractor network to lobby Congress in support of an aircraft procurement.
  
3. Briefings by Executive Branch officials to Members of Congress or their staffs to advise of properly coordinated departmental views on matters before the Congress generally are not prohibited. However, a planned media campaign to further that same objective may fall outside of [18 U.S.C. § 1913](#) (2013).

4. The Department Of Defense Appropriations Act (2013), which is Division A of the Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 8013, 125 Stat. 786, 807 (Dec. 23, 2011), also restricts lobbying activities. Specifically, section 8013 provides “None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before the Congress.”\*
5. This provision has a broader reach than the criminal prohibition against grassroots lobbying contained in [18 U.S.C. § 1913](#) (2013). Specifically, these restrictions have been determined to be responsive to particularly egregious instances of agency lobbying through public information campaigns, even though, material provided to members of the public stops short of actually soliciting them to contact their representatives in support of or in opposition to pending legislation.

D. General Guidelines.

1. The provisions are not intended to prohibit an ongoing dialogue or interaction between the Executive Branch and the public in an educational effort to explain administration positions. Public campaigns designed or intended to influence citizen groups to contact Congressional representatives are prohibited.
2. Material distributed to the public should never suggest directly or indirectly that persons or organizations contact their Congressional representatives to indicate support for appropriations for weapons programs or any other DoD program or issue.

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\*See House Report 112-493 - [Department of Defense Appropriations Bill \(2013\)](#)

3. OSD personnel should be especially circumspect in any contacts with associations or industry. They should not suggest, orally or in writing, that organizations activate their membership to contact members of Congress, nor should they provide multiple copies of materials to be distributed by such organizations.
4. OSD personnel must avoid the appearance of grass roots lobbying efforts or any other attempt to encourage communication with Congress on pending legislation.
5. Coordination of Congressional affairs is the responsibility of the Office of the Assistant Secretary of Defense for Legislative Affairs (ASD (LA)). Proposed contacts with Congress must be coordinated with that office at 703-697-6210.