



DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010

JUL 22 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF  
DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Contacts with Presidential Campaigns

The Counsel to the President recently issued a memorandum (enclosed) announcing policy regarding contacts between the campaign committees of Presidential candidates and executive department federal employees in their official capacity. In order to ensure compliance, any request for contact with a Presidential Campaign shall first be approved by me or by the head of DoD Transition (when appointed).

This guidance is in addition to the previously provided guidance regarding political participation by Department of Defense civilian employees, which is also enclosed.

I appreciate your assistance in this matter.

Enclosures:  
As stated



THE WHITE HOUSE

WASHINGTON

April 22, 2008

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM FRED F. FIELDING  
COUNSEL TO THE PRESIDENT



SUBJECT FEDERAL AGENCY EMPLOYEE CONTACTS WITH PRESIDENTIAL  
CAMPAIGNS

To ensure that the Administration meets the high ethical standards that the President demands, the President has asked me to communicate to you this policy to govern contacts between employees of executive departments and agencies ("Federal agencies") in their official capacities and the authorized campaign committees of Senator John McCain or one of the Democratic candidates for President (individually, "campaign organization"). Federal agencies must comply with applicable law, agency-specific policies, and this policy.

Prior Approval Required For Certain Campaign Organization Contacts

A contact that falls within any of the following categories may not take place without the prior written approval of the Counsel to the President, even if the contact is otherwise permissible by law and agency policy:

(1) contacts between a campaign organization and any of the following: Office of the Director of National Intelligence and all elements of the Intelligence Community, including the Central Intelligence Agency; Office of Investigations, Bureau of Immigration and Customs Enforcement; Merit Systems Protection Board; Administrative Law Judges, or Contract Appeals Board Members;

(2) contacts between a campaign organization and any of the following: the Internal Revenue Service (except as necessary for the campaign organization's compliance with tax laws); Federal Election Commission (except with respect to a campaign organization's compliance with Federal election laws); Office of Special Counsel (except with respect to legal compliance matters); U.S. Secret Service (except with respect to scheduling, advance, logistics, security and legal compliance matters); or the Departments of Justice (including the FBI), State, Homeland Security or Defense (except as necessary in connection with scheduling, advance, logistics, security and legal compliance matters); or

(3) contacts between a campaign organization and any Federal agency regarding a particular investigative, intelligence, adjudicative, tax, rulemaking, enforcement or procurement matter (including, for example, such matters at the Securities and Exchange Commission, Federal Communications Commission, Federal Trade Commission, Federal bank regulatory agencies and other regulatory agencies).

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### Other Contacts

Contacts between a campaign organization and Federal agency employees that are not covered by the above policy may occur as permitted by law and agency policy if:

- (1) the contact is necessary for security or legal compliance;
- (2) the contact is necessary to properly coordinate official and campaign conduct on matters of scheduling, advance, or logistics;
- (3) a campaign organization seeks from a Federal agency, or a Federal agency provides to a campaign organization, information that the Federal agency makes available to members of the public on request; or
- (4) one of the following officials approves the contact: the Chief of Staff to the President, the Deputy Chief of Staff to the President for Policy, the Deputy Chief of Staff to the President for Operations, the Counselor to the President or the Assistant to the President for Strategic Initiatives and External Affairs.

An official will not approve a contact under paragraph (4) above unless the person requesting the approval demonstrates that the contact is consistent with applicable laws, agency policies and the public interest. Such officials will consult the Counsel to the President and appropriate Federal agency officials, as needed.

In some cases, a campaign organization may request information that is not publicly available, or assistance not available to the other campaign. If you receive a request for nonpublic information from a campaign (other than as described above), you should pass that request along to the Counselor to the President or Assistant to the President for Strategic Initiatives and External Affairs, who will determine how that request should be handled, in consultation with White House Counsel where appropriate.

Special care should also be taken to ensure that any Federal agency employees who are interacting with the campaign organization are permitted by law to do so while on duty or in a federal office.

If a Federal agency employee is contacted by the campaign organization in a manner that is inconsistent with the above policy, the employee should refer the campaign organization to the Office of the Counsel to the President.

Notwithstanding the foregoing guidance, a contact from a candidate's Senate office that relates to official business should be handled in the same manner as any request from a Senate office.

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The above policy is not intended to prevent incidental, social or personal contacts between Federal employees in their private capacities and any of their acquaintances who happen to be campaign organization personnel. The above policy also does not prevent the political activities in a private capacity of a person who happens to be a Federal employee, to the extent that Federal law permits such activities. Finally, the above policy does not apply to the Executive Office of the President, which will be governed by the policy guidance issued by the Counsel to the President on April 22, 2008.

As a reminder, even when a contact between the campaign organization and a Federal agency employee is permitted by law and policy, a Federal employee cannot disclose to the campaign organization any official information protected by law, executive order, or regulation from disclosure to members of the public. Federal employees must also take special care to ensure that there is no use of their official authority or influence for the purpose of interfering with or affecting the result of an election. Finally, we remind you that any political fundraising activity in a federal office building is strictly prohibited.

Please feel free to contact me if you have any additional questions, and ensure that this memorandum is disseminated appropriately within your Federal agency.

cc: Agency General Counsel



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UNDER SECRETARIES OF DEFENSE  
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GENERAL COUNSEL OF THE DEPARTMENT OF  
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ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Civilian Employees' Participation in Political Activities

While most civilian employees may take an active part in political activities, the extent and nature of civilian employees' participation in political activities is limited by the Hatch Act, related statutes, and implementing regulations.<sup>1</sup> Employees must ensure that their political activities do not create a real or apparent conflict of interest with the performance of their official duties.

Additional statutory restrictions apply to career members of the Senior Executive Service (SES)<sup>2</sup>, members of the contract appeals boards, and all employees of the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Geospatial-Intelligence Agency (NGA). Long-standing Department of Defense (DoD) policy places further, substantial restrictions on non-career SES members and officials who are appointed by the President with the advice and consent of the Senate (PAS).

The Deputy Secretary of Defense traditionally issues political activity guidance in advance of a national election to ensure that DoD employees comply with these rules.<sup>3</sup> This current guidance lists not only prohibited activities but also permitted activities

<sup>1</sup> The Hatch Act of 1939, as amended in 1993, is published in 5 U.S.C. §§ 7321-7326, and its implementing regulations are published in 5 C.F.R. parts 733-734. Members of the Armed Forces are subject to different rules, published in DoD Directive 1344.10.

<sup>2</sup> "Senior Executive Service" means any position in an agency which is classified above GS-15 pursuant to 5 U.S.C. § 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee exercises important policy-making, policy-determining, or other executive functions.

<sup>3</sup> The most recent prior guidance was issued on May 31, 2006.



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consistent with governing statutes, regulation, and long-standing DoD policy. **Please note that nothing in this memorandum is intended to encourage or discourage employees' participation in political activities.**

Before participating in any political activity, employees should review the relevant part of this memorandum (guidance applicable to most employees is set forth in part I; guidance applicable to career SES officials, members of the contract appeals boards, and all NSA, DIA, and NGA employees is set forth in part II; and guidance applicable to PAS and non-career SES officials is set forth in part III). Employees with any questions concerning the contents of this memorandum should consult their component's legal office or the Office of the Deputy General Counsel (Legal Counsel) of the Department of Defense.<sup>4</sup>

## **I. Rules Applicable to Most Civilian Employees (Except PAS and SES Officials, members of the Contract Appeals Boards, and All NSA, DIA, and NGA Employees)**

### **A. Prohibited Political Activities**

Civilian employees *may not*:

- Use their official authority or influence to interfere with or affect the result of an election, which includes:
  - Using their official titles while participating in a permitted political activity
  - Using their authority to coerce anyone into participating in a political activity
  - Soliciting or receiving uncompensated volunteer services from a subordinate
  - Soliciting or discouraging the participation in a political activity of anyone with official matters before DoD
- Participate in the following political fundraising activities:
  - Soliciting or receiving political contributions (except under limited circumstances in relation with certain local elections or Federal labor organizations)
    - *Employees may not solicit contributions anonymously over the telephone*
  - Allowing the use of their official titles in relation with political fundraising
  - Hosting or sponsoring a political fundraiser
    - *But an employee's spouse may host or sponsor a fundraiser, and the employee may attend it*

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<sup>4</sup> Employees also should consult counsel before accepting gifts related to permitted political activities (such as attendance fees or meals).

- Run for partisan political office (except as independent candidates in certain local elections)
- Participate in a permitted political activity while on duty, while in a Government office or building, or while using a Government vehicle

### **B. Permitted Political Activities**

Most civilian employees may participate in political activities to the extent not expressly prohibited above. These employees *may*:

- Participate in the following political organization activities:
  - Being members of a political party or partisan group
  - Serving as officers of a political party or partisan group
  - Attending and participating in a political convention, caucus, or rally
  - Serving as delegates to a political party convention
- Take an active part in a political campaign, which includes:
  - Displaying a political sign, sticker, button, or similar material (but not while on duty, in a Government office or building, or using a Government vehicle)
    - *Employees may place political stickers on their privately-owned vehicles even if they park in a Government lot or occasionally drive themselves to attend meetings at other agencies*
  - Initiating or circulating a partisan nominating petition
  - Canvassing for votes
  - Endorsing or opposing a candidate in a political advertisement, broadcast, or campaign literature
  - Addressing a political convention, caucus, or rally on behalf of a candidate
  - Managing a political campaign
  - Distributing campaign literature
- Participate in the following election-related activities:
  - Voting
  - Acting as recorders, watchers, or challengers at a polling place
  - Serving as election judges or clerks
  - Driving voters to a polling place
  - Running for non-partisan office (that is, an office to which political parties may not designate candidates)
    - *But employees who run for non-partisan office may not seek the endorsement of a political party or print partisan campaign literature*

- Running as an independent in certain partisan local elections
- Participate in the following political fundraising activities:
  - Making a financial political contribution
  - Attending, addressing, or being featured guests at a political fundraiser (but refraining from soliciting contributions personally)
    - *Invitations to a fundraiser may list employees as guests or speakers but may not include their official titles*
  - Soliciting or receiving uncompensated volunteer services (but not from a subordinate or anyone with official matters before DoD)
  - Managing or organizing a political fundraiser hosted or sponsored by others (but refraining from soliciting contributions personally)
- Use work email to discuss political subjects in a manner similar to water-cooler conversations
  - *But employees may not use work email to send messages to a high number of people with whom they have a minimal relationship for the purpose of encouraging the recipients to support or oppose a candidate, political party, or partisan group*

## **II. Rules Applicable to Career SES Officials, Members of the Contract Appeals Boards, and All NSA, DIA, and NGA Employees**

### **A. Prohibited Political Activities**

Career SES officials, members of the contract appeals boards, and all NSA, DIA, and NGA employees *may not*:

- Participate in a permitted political activity while on duty, while in a Government office or building, or while using a Government vehicle
- Use their official authority or influence to interfere with or affect the result of an election, which includes:
  - Allowing the use of their official titles in relation with a political activity
    - *A general form of address (such as "The Honorable") may be used*
  - Using their authority to coerce anyone into participating in a political activity
  - Soliciting or discouraging political activity participation
- Participate in the following political organization activities:
  - Serving as officers of a political party or partisan group

- Serving as delegates, alternates, or proxies to a political party convention
- Addressing a political convention, caucus, or rally in support of or in opposition to a candidate, if done in concert with a candidate, political party, or partisan group
  - *In their official capacity, employees may brief a political party or partisan group (but not at a partisan meeting conducted as a fundraiser) or a non-partisan policy conference (such as an official town-hall meeting sponsored by a Member of Congress) on issues of national defense or foreign policy*
- Participate in the following political fundraising activities:
  - Soliciting or receiving political contributions (except under limited circumstances in relation with certain local elections or Federal labor organizations)
    - *Employees may not solicit contributions anonymously over the telephone*
  - Hosting, sponsoring, managing, organizing, selling tickets to, promoting, addressing, or being featured guests at a political fundraiser
    - *But an employee's spouse may host, sponsor, manage, or organize a fundraiser, and the employee may be present at it solely as an attendee*
- Take an active part in a political campaign, which includes:
  - Managing a political campaign (except for an independent candidate in certain local elections)
  - Canvassing for votes in concert with a candidate, political party, or partisan group
    - *Employees may not canvas anonymously over the telephone*
  - Endorsing or opposing a candidate in a political advertisement, broadcast, or campaign literature, in concert with a candidate, political party, or partisan group
    - *At their own expense, employees may purchase air-time to express their individual political opinions but may not appear in a program sponsored by a campaign committee*
  - Initiating or circulating a partisan nominating petition
  - Distributing campaign literature printed by or in concert with a candidate, political party, or partisan group
    - *At their own expense, employees may print and distribute fliers that express their individual political opinions but may not distribute fliers printed by a campaign committee*
  - Providing volunteer services to a political campaign (such as writing a speech, doing clerical work at a campaign office, or participating in a phone bank)