



Billing Code 6325-48

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206-AM80

5 CFR Part 733

Political Activity – Federal Employees Residing in Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is amending its regulations to grant Federal employees residing in the District of Columbia a partial exemption from the political activity restrictions, and to add the District of Columbia to its regulatory list of designated localities in OPM regulations. This regulatory amendment reflects OPM's determination that the District of Columbia meets the criteria in the Hatch Act, as amended by the Hatch Act Modernization Act of 2012, for a partial exemption to issue.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, United States Office of Personnel Management, (202) 606-1700.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7323(a)(2) and (3), prohibits Federal employees from becoming candidates for partisan political office and from soliciting, accepting, or receiving political contributions. However, 5 U.S.C. 7325, as amended, authorizes OPM to prescribe regulations permitting employees in certain communities to participate in local elections for partisan political office without regard to the prohibitions in

5 U.S.C. 7323(a)(2) and (3) only if the requirements described in section 7325 are met. The first requirement is that: (1) the community must be the District of Columbia; or, (2) the community or political subdivision must be located in Maryland or Virginia, and in the immediate vicinity of the District of Columbia; or, (3) the majority of the community's registered voters must be employed by the United States Government. The second requirement is that OPM must determine that it is in the domestic interest of the employees to permit that political participation because of special or unusual circumstances existing in the community or political subdivision. Under 5 CFR part 733, the exemption from the prohibitions in 5 U.S.C. 7323(a)(2) and (3) is a partial exemption because in 5 CFR 733.103 through 733.106, OPM has established limitations on political participation by most Federal employees residing in these designated municipalities and subdivisions.

On April 5, 2013, OPM issued a proposed rule at 78 FR 20497 to add the District of Columbia to the regulatory list of designated localities at 5 CFR 733.107(c). In its notice of proposed rulemaking, OPM noted that the District of Columbia had fulfilled the statutory requirements for a partial exemption to issue and proposed the addition of the District of Columbia to the regulatory list of designated localities.

OPM received one comment from a labor organization supporting the proposal to include the District of Columbia in the OPM regulatory list of designated localities and encouraging OPM adopt the proposed amendment as a final rule. The comment noted that a large share of District of Columbia residents were Federal employees who otherwise would be prohibited from running for major local offices in the District of Columbia because these elections are partisan, and from partaking in many political activities associated with participation in partisan election campaigns. The comment noted that this limited the pool of candidates for election to local District offices, and denied federally employed District residents the opportunity to participate in

some of the most vital aspects of self-governance and the democratic process. In addition, the comment noted that, because the proposed amendment would dramatically broaden the pool of eligible candidates for District of Columbia office and offer many District residents the opportunity to more fully participate in the local political process, local governance, and the civic life of their community, special or unusual circumstances indeed existed so that the proposed amendment was in the domestic interest of Federal employees residing in the District of Columbia. Consequently, comment urged OPM to adopt the regulatory proposal as a final rule.

Therefore, OPM is adding the District of Columbia to its list of designated localities at 5 CFR 733.107(c). When this rule becomes effective, federally employed residents of the District of Columbia will be permitted under 5 CFR 733.103 to participate in the following activities: (1) Run as an independent candidate in a local election to partisan political office; (2) solicit, accept, or receive political contributions as, or on behalf of, an independent candidate for partisan political office in a local election; (3) accept or receive political contributions on behalf of an individual who is a candidate for local partisan political office and who represents a political party; (4) solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office; and (5) solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

Under 5 CFR 733.104 of title 5, however, federally employed residents of the District of Columbia may not: (1) Run as the representative of a political party for local partisan political office; (2) solicit political contributions on behalf of individuals who are candidates for local partisan political office and who represent a political party; (3) knowingly solicit a political contribution from any Federal employee, except when permitted; (4) accept or receive political contributions from a subordinate; (5) solicit, accept, or receive uncompensated volunteer services

from a subordinate for any political purpose. Employees also may not participate in political activities when on duty, or while they are wearing items that identify their employing agency or their position. They cannot participate in political activities while they are in any room or building in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; nor while using a Government-owned or lease vehicle, or while using a privately-owned vehicle in the discharge of official duties.

Moreover, candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

Sections 733.103 and 733.104 of Title 5, Code of Federal Regulations, do not apply to individuals, such as career senior executives and employees of the Federal Bureau of Investigation, who are employed in the agencies and positions listed on the website of the United States Office of Special Counsel, at <http://www.osc.gov/haFederalFurtherRestricted.htm>, and at 5 CFR 733.105(a). These individuals are subject to the more stringent limitations described in 5 CFR 733.105 and 733.106.

Individuals who require advice concerning specific political activities, and whether an activity is permitted or prohibited under 5 CFR 733.103-733.106, should contact the United States Office of Special Counsel at (800) 854-2824 or (202) 254-3650. Requests for Hatch Act advisory opinions may be made by e-mail to: hatchact@osc.gov.

The District of Columbia will be listed alphabetically after Crane, Indiana, and before Elmer City, Washington, at 5 CFR 733.107(c).

E.O. 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

U.S. Office of Personnel Management

Elaine Kaplan,
Acting Director.

Accordingly, the Office of Personnel Management amends 5 CFR Part 733 as follows:

**PART 733 – POLITICAL ACTIVITY -- FEDERAL EMPLOYEES RESIDING IN
DESIGNATED LOCALITIES**

1. The authority citation for part 733 is revised to read as follows:

Authority: 5 U.S.C. 7325; Pub. L. 112-230, 126 Stat. 1616 (Dec. 28, 2012); sec. 308 of Pub. L. 104-93, 109 Stat. 961, 966 (Jan. 6, 1996)

2. Section 733.107(c) is amended by adding the District of Columbia, alphabetically, to the list of other designated municipalities as set forth below.

§ 733.107 Designated localities.

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(c) * * *

Other Municipalities

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District of Columbia

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