

THE WHITE HOUSE

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MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

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SUBJECT: 2012 Presidential Nominating Conventions

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In response to questions we have received from a number of you, this memorandum outlines pertinent guidelines governing Presidential Nominating Convention-related political activity by Administration appointees and other federal employees. As always, we urge you also to consult with your General Counsel regarding other rules governing political activity and attendance at events that might apply. For example, officials at certain agencies are prohibited by law or policy from taking an active part in political management or political campaigns, and other Cabinet Departments (e.g., State, Justice, Defense, and Homeland Security) have agency-specific policies that otherwise restrict employees' involvement in political activity.

I. Applicable Rules on Political Activity

Except for appointees whose official duties require them to attend a Convention (e.g., security personnel), attending and participating in presidential nominating conventions is political activity governed by the Hatch Act. The rules on engaging in such political activity are outlined in a memorandum from our office dated November 7, 2011.

Please note that while all federal employees may attend a nominating convention, employees at certain agencies are "further restricted" under the Hatch Act and may not serve as a delegate or proxy or address the Convention, for example, to promote or oppose a candidate.

If you or your agency's employees choose to attend a nominating Convention, please keep the following Hatch Act rules particularly in mind:

- Unless an individual's attendance at the Convention is part of his or her official duties, he or she may only attend the Convention in his or her personal capacity.
- Federal employees may not use their official authority for the purpose of interfering with or affecting the result of an election. That means, for example, they may not knowingly permit their official titles to be used in relation to Convention events. Nor may they coerce subordinates into engaging in Convention-related political activity.

- Federal employees may not personally solicit, receive, or accept political contributions.
- Federal employees may not use government resources, such as government cars, phones, or blackberries, for political activity.<sup>1</sup>

## II. Vacation Time and Leaves of Absence

Federal employees who attend or participate in a Convention must do so on their own time. The only exception to this policy is for individuals whose official duties require them to attend a Convention (e.g., Secret Service and Department of Homeland Security).

Provided they are otherwise permitted to attend a Convention, full-time, non-career appointees must use vacation or compensatory time to attend or participate in a Convention. Appointees subject to the Leave Act may also take up to five days of leave without pay to attend or participate in a Convention.

As with any leave request, agency officials should approve leave based on agency workload and other agency policies applicable to such requests. Thus, an appointee's ability to take leave without pay to attend a Convention is a matter of agency discretion. Agencies must, of course, ensure that they have sufficient personnel to accomplish the work of the government during the Conventions. To ensure that appropriate care is exercised in approving Convention leave requests, the Office of the Chief of Staff asks that you establish a review process for Convention-related leave requests by full-time, non-career appointees.<sup>2</sup>

## III. Travel Expenses

Convention-related travel, except travel for those employees who are designated to perform official functions, is political; therefore, appropriated funds may not be used to pay these costs. Employees who are permitted to engage in political activity may accept travel expenses from a political committee in connection with their active participation in a Convention or related political activity, subject to the gift restrictions discussed below. Employees may also pay their own travel expenses to attend the Convention. Please note that if you will be working for a campaign or political party at the Convention, your personal travel expenses may be subject to federal contribution limits. Under federal election law, individuals may only spend up to \$1,000 per election for their own travel on behalf of a candidate, and \$2,000 per year for party-related travel, without it qualifying as a contribution.<sup>3</sup>

## IV. Official Events During the Conventions

During the week of the Conventions, local groups, community organizations, and businesses may ask Cabinet and sub-Cabinet officials and other agency heads to engage in non-Convention

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<sup>1</sup> For Commissioned Officers and PAS, de minimis use of communications systems like email or local phone calls need not be reimbursed, but the best practice is not to use government equipment.

<sup>2</sup> Agencies may continue to apply existing policies and practices governing leave requests by other employees.

<sup>3</sup> See 11 C.F.R. § 100.79.

activities in a Convention host city. Although some of these activities might meet the standard for an official event, out of an abundance of caution these events should generally be treated as political for the purpose of using appropriated funds. Therefore, appointees should not fly to a Convention city at government expense to staff or attend such events. This guidance does not extend to employees of the Department of Homeland Security and other federal employees who may need to travel officially in connection with Convention-related security matters.

#### V. Convention Positions

Federal employees who are permitted to engage in political activity and are not further restricted by the Hatch Act or agency-specific policy may hold formal Convention offices, positions or titles. Thus, with the exception of further restricted employees, most employees may serve as a delegate, a Convention speaker, or a member of any of the standing committees.<sup>4</sup> However, employees may not use their government position or resources for activities related to their Convention duties. Also, many appointees are subject to a ban on outside earned income; therefore appointees should receive advance approval from their General Counsel's office before accepting compensation for work performed at a Convention.

#### VI. Attending Receptions, Dinners, and Similar Events

The President expects his Administration to continue to adhere to the highest ethical standards while attending or participating in the Convention. As explained more fully below, employees may accept travel, hotel accommodations, dinners, receptions, and entertainment only in accordance with this guidance and applicable ethics laws and rules. If you or your employees have any questions regarding attendance at or participation in an event, please consult with your General Counsel's office and ethics officials.

The government-wide Standards of Ethical Conduct for Employees of the Executive Branch govern the acceptance of gifts, including gifts of free attendance at events such as dinners and receptions.<sup>5</sup> The Standards provide that a federal employee may not accept a gift from a prohibited source<sup>6</sup> or a gift that is given to the employee because of the employee's official position, unless an exception applies.

Additionally, all full-time, non-career appointees in the Obama Administration continue to be bound by the Ethics Pledge ban on accepting gifts from federally-registered lobbyists or lobbying organizations. *See* Executive Order 13490. Such appointees may not accept travel,

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<sup>4</sup> "Further restricted" employees may attend a party convention as a spectator, but may not serve as a delegate or proxy or address the convention, for example, to promote or oppose a candidate.

<sup>5</sup> *See* 5 C.F.R. Part 2635, Subpart B.

<sup>6</sup> A prohibited source means any person who is seeking official action by the employee's agency (or, for White House Staff, the Executive Office of the President); does business or seeks to do business with the employee's agency or entity, conducts activities regulated by the employee's agency or entity, has interests that may be substantially affected by his or her official duties, or an organization, the majority of whose members meet any of these criteria. *See* 5 C.F.R. § 2635.202(d).

accommodations, or other gifts from a federally-registered lobbyist or lobbying organization.<sup>7</sup> It is each appointee's responsibility to confirm that persons offering such benefits are not registered lobbyists. To ensure compliance with the Ethics Pledge, appointees should consult with their General Counsel's office or ethics officials before accepting any gifts from corporations, unions, and political committees other than national party or presidential campaign committees.

In connection with Convention activities, and depending on the specific facts, the following gift exceptions may apply:

- Gifts valued at \$20 or less: A federal employee may accept unsolicited gifts valued at \$20 or less – including food or drink at a reception, dinner or other event – provided the total value of gifts from that source does not exceed \$50 in a calendar year and, for a full-time non-career appointee, the donor is not a federally-registered lobbyist or lobbying organization.
- Gifts offered by political organizations: A federal employee participating in a lawful political activity under the Hatch Act may accept unsolicited meals, lodging, transportation, and other gifts when provided by a political organization in connection with such active political participation. Thus, employees may attend events at the Convention sponsored by political organizations when the gift of attendance is offered by a political organization (e.g., national party committee, campaign committees, political action committees, etc.) and the donor is not a federally-registered lobbyist or lobbying organization. Please note that Convention host committees and unions are not political organizations for the purpose of this exception, and that some political action committees are registered lobbying organizations subject to the lobbyist gift ban. If you or your staff have questions about whether an entity is defined as a political organization or is subject to the lobbyist gift ban, please contact your General Counsel's office.
- Widely Attended Events: During the Convention, many organizations, advocacy groups, non-profits, unions, corporations and other entities will offer employees the opportunity to attend receptions, dinners, and other similar events. The President has made the determination that, with respect to attendance by federal employees at such events during the Convention, a federal employee may accept such offers of free attendance if:
  - The gift of free attendance is unsolicited;
  - The event is widely attended (i.e., 200 or more persons representing a diversity of viewpoints are expected to attend);

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<sup>7</sup> The Pledge prohibits gifts from lobbyists or lobbying organizations that are "registered" under the Lobbying Disclosure Act, 2 U.S.C. § 1601, *et. seq.* See Executive Order 13490, sec. 2(e). Consistent with guidance from the Office of Government Ethics interpreting E.O. 13490, an appointee may accept an otherwise permissible gift from an employee of a 501(c)(3) nonprofit, institution of higher education, or media organization even if that organization is a registered lobbying organization, provided the person extending the invitation is not personally a registered lobbyist.

- The event is hosted in connection with a Convention for the nomination of a presidential candidate; and
- For a full-time, non-career appointee, accepting the invitation is consistent with the President's Ethics Pledge, including restrictions on accepting gifts from a federally-registered lobbyist or lobbying organization.<sup>8</sup>

If these criteria are met, employees may accept meals, refreshments, and entertainment without further authorization from their General Counsel's office.<sup>9</sup> There are a few other exceptions that might permit an employee to accept meals and entertainment even if the events do not meet the above criteria, but these exceptions are quite limited. Employees should seek guidance from their General Counsel's office if they wish to attend receptions, dinners, or other events that do not fall under one of the exceptions above.

Please also note that if an employee accepts more than \$350 in gifts from any one source in a reporting period, the employee may be required to report the gifts on his or her next financial disclosure report. An employee need not report travel reimbursements from a qualified political committee.<sup>10</sup>

## VII. Conclusion

If after consulting with your agency General Counsel you have any further questions concerning this guidance, please contact Leslie Kiernan at (202) 456-3092.

cc: Agency General Counsels  
Designated Agency Ethics Officials

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<sup>8</sup> See footnote 7.

<sup>9</sup> The Office of Government Ethics has no objection to this policy because it is similar to that issued by previous administrations and is intended to protect employees from inadvertent violations of the Standards of Conduct.

<sup>10</sup> See 5 C.F.R. § 2634.105(n).