



# AMERICAN OPTOMETRIC ASSOCIATION

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**TO:** Matt Willette

**FROM:** Michael Stokes

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**SUBJECT:** AOA Legal Guidance on the Hatch Act

## AOA Legal Department Guidance on the Hatch Act

### Summary of Findings

Federal employees who engage in issue advocacy on legislative matters of import to doctors of optometry and who do not engage in activity directed to the success or failure of a political party, a candidate for a partisan political office or a partisan political group have not violated the Hatch Act.

### *What is the Hatch Act?*

The Hatch Act was enacted in 1939 and was most recently amended in 2012. The Hatch Act regulates the political activities of all civilian employees in the Executive Branch of the Federal government, with the exception of the president and vice president.

### *As a civilian employee in the Executive Branch of the federal government, would I be considered a less restricted employee or a further restricted employee?*

The federal executive branch is the fifth highest employer of doctors of optometry. “Optometrist was the 143<sup>rd</sup> most popular job in the U.S. government in 2021 with 1,314 employed. In 2021, the Veteran’s Health Administration hired the most employees titled Optometrists”<sup>i</sup>

#### **~Less Restricted Employees~**

The first question an O.D. who works with a federal agency should ask themselves is which Hatch Act employee category they fall into: “less restricted employee” or a “further restricted employee”. The majority of individuals identified as employees subject to the Hatch Act are considered “less restricted employees.”<sup>ii</sup> A less restricted employee is largely defined by what they are not: a further restricted employee. So as long as the federal employee does not work for one of the designated agencies or in certain specified career categories, they are considered a “less restricted employee.”

#### **~Further Restricted Employees~**

Another set of employees is referred to as further restricted employees. Further restricted employees are identified by the agencies for which they work or particular positions within the executive branch. Employees who work for any of the following agencies<sup>iii</sup>: the Federal Election Commission; the Election Assistance Commission; the Federal Bureau of Investigation; the Secret Service; the Central Intelligence Agency; the National Security Council; the National Security Agency; the Defense Intelligence Agency; the Merit Systems Protection Board; the Office of Special Counsel; the Office of Criminal Investigation of the Internal Revenue Service; the Office of Investigative Programs of the United States Custom Service; the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; the National Geospatial Intelligence Agency; the Office of the Director of National Intelligence; the Criminal Division of the Department of Justice and the National Security Division of the Department of Justice. The increased restrictions also apply to employees holding certain positions<sup>iv</sup> which include career

appointees in a Senior Executive Service position; administrative law judges; contract appeals board members; and administrative appeals judges. As a practical matter, it is unlikely that many optometrists would be hired as part of the agency and agency sections noted above. With regard to increased restrictions based on position, the only likely possibility would be those optometrists that are in a Senior Executive service position.

***How are one’s political activities limited by the designation as a less restricted employee?***

“Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or a partisan political group.”<sup>v</sup> This definition is determinative in establishing the permissibility of the contemplated AOA activity for doctors of optometry who are federal employees. Readers are instructed to look at the Appendix to the attached article, Brown, Cynthia and Maskell, Jack, Hatch Act Restrictions on Federal Employees’ Political Activities in the Digital Age, Congressional Research Services (2016) for a thorough accounting of those activities which are permissible and not permissible.

For example, a less restricted employee would be prohibited from hosting a political fund raiser, distributing campaign items or materials, wearing, or displaying partisan political buttons, T-shirts signs or other items or serving as a candidate for public office in a partisan political election. A less restricted employee also cannot invite subordinate employees to political events or otherwise suggest they engage in political activity. They also cannot knowingly solicit or discourage the political activity of any person with business before the agency. A less restricted employee may not engage in political activity in the workplace or while on duty, while wearing a uniform or official insignia, or in a government vehicle. Federal employees are permitted to make campaign contributions, whether to a political party or to a campaign. However, regardless of whether they’re less restricted, further restricted, or a political appointee, all employees are prohibited from soliciting or receiving political contributions. That applies both on and off the job.

While federal employees may not engage in “political activity”, they are permitted to engage in activities that are not prohibited, including issue advocacy, which is AOA’s primary activity.

***Is issue based advocacy permitted by the Hatch Act?***

Yes. AOA meetings and other activities are focused on issue advocacy and are not associated with a particular candidate, party, or partisan political group. Consequently, federal employees who engage in issue advocacy on legislative matters of import to doctors of optometry and who do not engage in activity directed to the success or failure of a political party, a candidate for a partisan political office or a partisan political group have not violated the Hatch Act. The voice of our Executive agency optometrists is extremely important, and AOA strongly encourages them to join in our advocacy efforts which are centered solely on issues of importance to Optometrists and not on partisan politics.

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<sup>i</sup> “Optometrist Salary Statistics.” Federal Pay.org-The Civilian Employees Pay source. Accessed February 7, 2023. <https://www.federalpay.org/employees/occupations/optometrist#:~:text=In%202021%2C%20the%20Veterans%20Health,a n%20average%20salary%20of%20%24118%2C240.>

<sup>ii</sup> See Office of Special Counsel, Hatch Act: Federal Employees *available at* <https://osc.gov/pages/hatchact-affectsme.aspx>

<sup>iii</sup> See 5 U.S.C. § 7323(b)(2)(B)(i).

<sup>iv</sup> See 5 U.S.C. § 7323(b)(2)(B)(ii).

<sup>v</sup> Green, Jeffrey, Understanding the Hatch Act, Journal of DOD Research and Engineering (2020).