

UNITED STATES DEPARTMENT OF COMMERCE

SUMMARY OF ETHICS RULES FOR PRESIDENTIAL APPOINTEES IN SENATE-CONFIRMED POSITIONS ENGAGING IN POLITICAL ACTIVITIES



2017

ETHICS LAW AND PROGRAMS DIVISION
OFFICE OF THE GENERAL COUNSEL
UNITED STATES DEPARTMENT OF COMMERCE
202-482-5384 – ethicsdivision@doc.gov – www.commerce.gov/ethics

POLITICAL ACTIVITIES OF PRESIDENTIAL APPOINTEES IN SENATE-CONFIRMED POSITIONS

Presidential appointees in positions that require Senate confirmation (PASs) are subject to some important limits on political activities but, unlike other Federal employees, may generally engage in political activities while on duty (except the Inspector General) as long as the costs are not borne by the Government. Like other employees, they are barred from using the authority of their position to support (or oppose) a candidate or political party.

DEPARTMENT OF COMMERCE PRESIDENTIAL APPOINTEE POSITIONS REQUIRING SENATE CONFIRMATION (EXCLUDING THE INSPECTOR GENERAL):

Office of the Secretary

- Secretary of Commerce
- Deputy Secretary of Commerce
- General Counsel
- Chief Financial Officer and Assistant Secretary for Administration
- Assistant Secretary for Legislative and Intergovernmental Affairs

Bureau of Industry and Security

- Under Secretary for Industry and Security
- Assistant Secretary for Export Administration
- Assistant Secretary for Export Enforcement

Economic Development Administration

- Assistant Secretary for Economic Development

Economics and Statistics Administration

- Under Secretary for Economic Affairs
- Director of the Bureau of the Census

International Trade Administration

- Under Secretary for International Trade
- Assistant Secretary for Enforcement and Compliance
- Assistant Secretary for Global Markets and Director General of the U.S. & Foreign Commercial Service

- Assistant Secretary for Industry and Analysis

National Institute of Standards and Technology

- Under Secretary for Standards and Technology

National Oceanic and Atmospheric Administration

- Under Secretary for Oceans and Atmosphere
- Assistant Secretary for Conservation and Management
- Assistant Secretary for Environmental Observation and Prediction

National Telecommunications and Information Administration

- Assistant Secretary for Communications and Information

United States Patent and Trademark Office

- Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office

LIMITS ON POLITICAL ACTIVITIES

A Presidential Appointee in a position requiring Senate confirmation (PAS) may actively engage in political activities but may not:

- ask for or receive funds (engage in fundraising) for a candidate or political party,
- use the authority of his or her Government position to support (or oppose) a candidate or political party,
- use Government resources for political purposes, or
- run for office in a partisan election.

FUNDRAISING

A PAS may attend a political fundraiser, speak at a fundraiser, help organize a fundraiser, and donate funds to a candidate or party but may not:

- host a fundraiser, serve on a fundraiser's host committee, or invite persons to a fundraiser;
- ask for donations to a campaign or party; or
- permit invitations or other campaign literature to create an appearance that the PAS is a host or inviter or list the name of the PAS on the same page as a request for contributions.

MISUSE OF GOVERNMENT AUTHORITY

A PAS must be careful to keep Government duties separate from political activities and may not:

- use, or allow others to use, the PAS's title or Department position for political events, such as on invitations or online-notices of events at which the PAS will be appearing (the PAS can be referred to as "The Honorable");
- participate in fundraisers for which invitations were targeted to persons with interests in matters before the Department (or small events (20 or fewer) in which any of the persons attending has matters pending before the Department); or
- participate in political events described as focused on a matter related to the activities of the Department, such as a campaign roundtable focusing on international trade.

MISUSE OF GOVERNMENT RESOURCES

A PAS must be careful not to use any Government resources for political purposes. Specifically a PAS may not:

- allow subordinate staff members to actively assist the PAS in political activities (even if the staff member is a political appointee (that is not a PAS));
- disclose nonpublic information in political speeches or meetings; or
- use a Government cell phone, computer, or other device for communications relating to campaign activities.

Note that Department policy is that PASs, other than the Secretary, not hold political meetings on Government premises or use Department resources (such as a Government car) for political purposes (even if reimbursement is made).

POLITICAL TRAVEL

Costs associated with political activities may not be paid for with Government funds, including travel costs for trips to attend political events outside the Washington, D.C. area. Therefore, travel costs must be allocated to ensure that no Government funds are used to support campaign activities. Three different methods for allocating costs are used: (1) for travel in which there are no official events, only political events; (2) travel for a non-Presidential election campaign that also includes official Government activities during the trip; and (3) travel for a Presidential election campaign that also includes official Government activities during the trip.

PURELY POLITICAL TRIPS

If all activities of a PAS during the course of a trip are for political events, all costs for the PAS's travel must be paid for by the relevant campaign or campaigns.

MIXED POLITICAL/OFFICIAL TRIPS FOR A NON-PRESIDENTIAL CAMPAIGN

For a trip that includes both campaign (non-Presidential) and official events, the campaign is responsible for providing costs based on the proportion of time spent on each type of event. This is called the "hard-time formula." When the hard-time formula is used, itineraries must be provided to the Ethics Law and Programs Division no later than one week before the trip; the Division will then calculate the percentage of trip costs to be charged to the campaign or campaigns; staff of the PAS then are responsible for determining costs and collecting from each campaign its share of travel costs, by a check to the U.S. Treasury, before the travel.

MIXED POLITICAL/OFFICIAL TRIPS FOR A PRESIDENTIAL CAMPAIGN

For a trip that includes a Presidential campaign event and an official event, the campaign is responsible for paying all costs it would have incurred had there been no official events; the Department pays the remaining costs (if any). This is called the "hypothetical trip" formula. Payment from the campaign, in the form of a check to the U.S. Treasury, must be received before the travel.

EMPLOYEES ACCOMPANYING A PAS ON A POLITICAL OR MIXED POLITICAL/OFFICIAL TRIP

Department staff members, such as security personnel or a Department liaison (a "plus-one"), may accompany a PAS to political events if it is determined that their presence is necessary to perform Government duties. In such case, the Department pays all their travel expenses. They cannot assist the PAS in performing campaign activities, such as by doing advance work or logistical support. However, for mixed official/political trips, Commerce staff may make air and hotel reservations and arrangements for going to or from official events from campaign events.

PROCEDURES FOR REVIEWING PARTICIPATION IN POLITICAL EVENTS

When a Department official is invited to speak at or attend a political event as a featured guest, actions must be taken to ensure that participation complies with applicable laws and policies, including the collection of information from the PAS or the relevant campaign, followed by review by an attorney in the Ethics Law and Programs Division. If the information is collected by someone other than the PAS, he or she must be careful not to help a campaign organize an event, such as by suggesting dates or who to invite.

A [Political Event Review Form](#) must be provided to an ethics attorney by the PAS or other agency official to the campaign or filled out by the PAS or other agency official based on information obtained from the campaign. Information collected includes basic information about the participating PAS (name, title) and event (location, date, hosting organization) and information that will help determine if the PAS's participation will be consistent with applicable laws (role of the PAS, identity of those attending, references to the PAS on event literature). This form is available at the Ethics web page: www.commerce.gov/ethics.

Note that the event organizer may not target invitations to persons with interests in matters before the Department of Commerce (or the PAS's operating unit if the PAS does not have Department-wide responsibilities). Therefore, the event organizer must confirm that persons were not specifically invited because of business before the Department. Furthermore, for small events with limited attendance (20 persons or less), the event organizer must provide a list of known and confirmed attendees with identification of their employers.

[Laws and current Administration policies provide that a PAS should not participate in political activities for which the event organizer is soliciting, or permitting the bundling of, or accepting contributions from the following sources:

- registered lobbyists,*
- registered lobbying organizations,*
- political action committees (PACs),
- registered foreign agents, or
- minors under the age of 16.

* *Registered lobbyists and lobbying organizations are listed in Congressional websites at: <http://soprweb.senate.gov/index.cfm?event=selectfields> and <http://disclosures.house.gov/ld/ldsearch.aspx>.*

NEED TO CHECK ON STATUS OF THIS POLICY IN 2017]

Campaign literature may not refer to a PAS's Government title or affiliation or imply that the PAS is hosting or inviting people to a fundraiser. The name of the PAS cannot appear on the same page as a request for funds. To ensure compliance, event materials—print and electronic—must be collected by the PAS or other employee for advance clearance by an ethics official. Furthermore, all event materials must comply with applicable Federal Election Commission (FEC) regulations and election laws.

STAFF ASSISTANCE TO A PRESIDENTIAL APPOINTEE WHO IS SENATE-CONFIRMED

Although a PAS (other than the Inspector General) may engage in political activities during regular working hours, no similar rule covers other employees, including other political appointees, such as non-career SES members and Schedule C employees. Therefore, when on duty or in a Government office, employees who work with a PAS may not:

- attend a political meeting,
- write a campaign speech,
- perform advance work for a political event, or
- provide advice regarding a political campaign.

A Department liaison (“plus-one”) may accompany a PAS on a political trip and to political events, but only to perform Government duties and only if such work will be needed. The liaison cannot help provide advance services for the political event or assist the PAS with regard to giving a speech or making remarks at the political event. However, the liaison may assist the PAS to deal with any Commerce matters that arise while the PAS is at the event.

Staff of the PAS may also perform administrative tasks that are necessary relating to keeping track of the PAS’s schedule or ensuring compliance with the political activities rules. Thus, a staff member may keep track of a PAS’s schedule, including noting times spent at political events, and may collect information needed to review the PAS’s participation in political events consistent with procedures set forth above, including communicating with campaign officials to obtain information. However, a staff member, including a political appointee who is not a PAS, may not assist in organizing a political event or a PAS’s participation in such an event, such as by making recommendations to the PAS on how to accommodate a campaign request, providing advice to the PAS on whether or not to participate in a political event, or suggesting means to a campaign or PAS on how to change a political event, except to provide information regarding changes that would be needed to ensure compliance with applicable laws, such as instructing a campaign to delete references to a PAS’s Government title in an invitation.

OFFICIAL EVENT HELD WITH A CANDIDATE OR WITHIN 90 DAYS OF AN ELECTION

When an public official Government event (a non-political event) is held at which a candidate for elective office is present (including an incumbent officeholder seeking reelection) or held shortly before an election, it is necessary to ensure that the official nature of an event is *bona fide*, substantial, and not a vehicle for a political endorsement or campaign support. This is to ensure that a PAS is not using the authority of his or her position to support a candidate. More than a “reasonable relation” to an agency’s business is required to classify the event as official and not political when a candidate is present. Similarly, it is important that public official events held shortly before an election not be supportive of an election campaign.

Therefore, official events held with a candidate present or held during the 90-day period preceding an election in circumstances that may raise questions about a political purpose, will be subject to this strict scrutiny. For example, an event that will announce a new grant, waiver, or other final agency action that was made prior to the 90-day period preceding the election but that was held for announcement during the 90-day period will require an explanation as to why the announcement was made during the 90-day period, including all facts related to the delay.

To ensure that official Department events are not designed to affect the outcome of an election, the Ethics Law and Programs Division must review all official public events that take place within 90 days of an election or events at which a candidate for political office is present. This review is conducted through submission of a [Review of Official Event with a Candidate Form](#) to an attorney in the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration. This form is available at the Ethics web page: www.commerce.gov/ethics.

Factors considered when reviewing an official event at which a candidate is present include whether the event was recommended by a campaign office, whether the event was scheduled after a campaign event in the area was scheduled, whether this is the type of event at which a Commerce official at the level of the PAS usually participates, whether the candidate at the event holds government office, and whether any remarks at the event will refer to the campaign or the election.

Note that the scheduling of an official event on a trip after a political event has been scheduled raises particular concerns that the official event is in furtherance of a political purpose. Therefore, the scheduling of official events in such circumstances should be avoided or limited to situations in which the official event clearly serves an important Government purpose and is consistent with past practice.

SUMMARY OF POLITICAL ACTIVITIES DO'S AND DON'T'S FOR PRESIDENTIAL APPOINTEES IN SENATE-CONFIRMED POSITIONS

SUMMARY OF RULES ON A PAS ENGAGING IN POLITICAL ACTIVITIES

A PAS (other than the Inspector General) may:

- + engage in political activities while on duty;
- + engage in political activities while on Government premises (Secretary only);
- + engage in a political activity while using a Government-owned or leased vehicle (Secretary only);
- + contribute money to, and attend fund-raisers for, political parties and candidates;
- + speak at a fundraiser or other political event (but not ask for contributions);
- + attend and be active at political rallies, meetings, conventions, and caucuses;
- + hold office in a political club or political party;
- + help manage a political campaign;
- + register and vote;
- + be a candidate for public office in a nonpartisan election;
- + campaign for or against referenda, constitutional amendments, or ordinances;
- + sign and circulate nominating petitions and assist in voter registration drives; and
- + display a political sticker on a personal vehicle (when not on official business).

However, a PAS may not:

- use Government resources for political activities, including to send e-mails;
- use official authority to interfere with an election, including use of a Government title;
- fundraise—solicit or accept funds—for a candidate or party;
- coerce other Federal employees regarding political activities;
- solicit or discourage political activity of anyone with matters before your agency;
- be a candidate in a partisan election (except as an independent candidate in certain areas);
- wear a political button while on duty;
- display a partisan banner, sign, sticker, or poster in a Federal office; or
- consider political affiliation for a personnel action (unless it is for a noncareer position—a Schedule C or other political appointee position).

FOR FURTHER GUIDANCE ON POLITICAL ACTIVITY RULES AND ETHICS RULES,
CONTACT AN ETHICS ATTORNEY AT
202-482-5384 OR ETHICSDIVISION@DOC.GOV