



Billing Code 6325-48-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

RIN 3206-AM80

Political Activity – Federal Employees Residing in Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations by granting Federal employees residing in the District of Columbia a partial exemption from the political activity restrictions and adding the District of Columbia to its regulatory list of designated localities. The proposed amendment reflects OPM's determination that the District of Columbia meets the criteria for a partial exemption to issue.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be mailed to Elaine Kaplan, General Counsel, Room 7355, United States Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

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. 7321-7326, governs the political activity of Federal employees, as well as individuals employed with the United States Postal Service. Section 7323(a) generally permits Federal employees who are not

employed in the Federal agencies or positions described in section 7323(b), as amended, to take an active part in partisan political campaigns. Employees employed in the Federal agencies or positions specified in 5 U.S.C. 7323(b), as amended, generally may participate in nonpartisan political activities. According to 5 U.S.C. 7323(a)(2) and (3), Federal employees may not become candidates for partisan political office and may not solicit, accept, or receive political contributions. Section 7325, however, authorizes OPM to prescribe regulations exempting Federal employees from the prohibitions in section 7323(a)(2) and (3) to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7325, as amended, OPM may issue a regulatory exemption to the District of Columbia if OPM determines that, because of special or unusual circumstances, it is in the domestic interest of the District's federally employed residents to permit their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.107(c), OPM has designated municipalities and political subdivisions where Federal employees may participate in local elections. At 5 CFR 733.103-733.106, OPM has established limitations on political participation by most Federal employees residing in these designated municipalities and subdivisions. Under 5 CFR 733.103, most Federal employees who reside in a municipality or political subdivision designated by OPM may: (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, however, these employees 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 or positions listed in 5 U.S.C. 7323(b) and 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.

In response to an application from the Honorable Eleanor Holmes Norton, the Delegate from the District of Columbia to the United States House of Representatives, OPM proposes to designate the District of Columbia as a municipality in which Federal employees may run for local partisan political office, subject to the limitations established by OPM, and accept or receive political contributions in connection with elections for local public office. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in the District of Columbia to participate in these political activities. Principal factors leading to OPM's determination are the enactment of the Hatch Act Modernization Act of 2012, Pub. L. 112-230 (December 28, 2012), expressly providing for a partial exemption for the District of Columbia, as well as the District of Columbia's high concentration of federally employed residents, its unique position as the capital of the United States, and the partisan nature of its elections for local public office.

If this proposed rule is adopted, OPM will amend 5 CFR 733.107(c) by adding the District of Columbia to the list of other designated municipalities in which Federal Government employees may participate in elections for local partisan political office in accordance with the conditions specified in 5 CFR 733.103 – 733.106. The addition of the District of Columbia will be listed after Crane, Indiana, and before Elmer City, Washington.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

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 activity – Federal employees residing in designated localities.

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, the Office of Personnel Management proposes to amend 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 (The Hatch Act Modernization Act of 2012), 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.

* * * * *

(c) * * *

Other Municipalities

* * * * *

District of Columbia

* * * * *

Billing Code 6325-48-P

[FR Doc. 2013-07872 Filed 04/04/2013 at 8:45 am; Publication Date: 04/05/2013]