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October 13, 2020

The Honorable Carolyn Maloney
Chairwoman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gerry Connolly
Chairman
Subcommittee on Government Operations
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: The Hatch Act and Officials Performing Official Duties While Visiting Federal Agencies

Dear Chairwoman Maloney and Chairman Connolly:

This letter is in response to a request by your committee staff for additional information as to whether or not the civil provisions of the Hatch Act constrain Members of Congress from performing their official duties while visiting Federal agencies.¹ The Office of Special Counsel's (OSC) position is that it does not.

The Hatch Act governs the political activity of federal civilian executive branch employees and prohibits them from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office.² The Hatch Act also prohibits most employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.³ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴

OSC released an advisory opinion on February 15, 2018, concerning candidate visits to Federal agencies and generally cautioned employees that authorizing the use of Federal facilities for campaign purposes is prohibited by the Hatch Act. But the opinion made clear that Members of Congress, who are candidates for partisan political office, are not barred from visiting Federal facilities to execute their official, oversight responsibilities to include receiving briefings, tours, or other official information.⁵ This position remains unchanged.

¹ OSC is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² 5 U.S.C. § 7323(a)(1)-(4).

³ 5 U.S.C. § 7324.

⁴ 5 C.F.R. § 734.101.

⁵ U.S. Office of Special Counsel, *Federal Hatch Act Advisory: Candidate Visits to Federal Agencies* (Feb. 15, 2018), <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Candidate%20Visits%20to%20Federal%20Agencies.pdf>.

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While each Federal agency is different, and each may have reasons to implement certain guidelines and procedures to meet certain specific internal policies, the Hatch Act does not require an agency to bar oversight activities by Members of Congress within a specific timeframe nearing an election. However, there are some general guidelines that Members of Congress can follow during visits to Federal agencies to help ensure that agency employees authorizing such visits are in compliance with the Hatch Act. For example, campaign staff should not schedule agency visits; the Member should only be accompanied by official, not campaign, staff; the Member should not distribute campaign literature during the visit or make campaign-style remarks; and the Member should not include as part of the visit campaign-style photograph opportunities, meet-and-greets, and town hall events. Instead, Member visits to Federal agencies should be in furtherance of the Members' official duties. For example, a Chair or Ranking Member of a committee with oversight of the agency may want to visit the agency to determine how well it is administering specific programs.

Please note that this letter provides only general advice and does not purport to address every situation that could result from a Member of Congress visiting a Federal agency. Should you or your staff have any questions, please contact me at (202) 804-7084.

Sincerely,



Ana Galindo-Marrone,
Chief
Hatch Act Unit

cc: The Honorable James Comer
Ranking Member
House Committee on Oversight and Reform

The Honorable Jody Hice
Ranking Member
Subcommittee on Government Operations