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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

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March 18, 2014

The Honorable Carolyn Lerner
U.S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner:

I am writing to request information related to the investigation conducted by the Office of Special Counsel into the potential Hatch Act violations of former Secretary of Labor Hilda Solis during the 2012 presidential election cycle. Ms. Solis apparently faced a federal inquiry concerning her role in a fundraiser supporting President Obama's reelection campaign.

In March 2012, then-Secretary Solis headlined a fundraiser for President Obama's reelection campaign at La Fonda Restaurant in Los Angeles, California.¹ According to news reports, "Solis was the star attraction at the La Fonda fundraiser."² Apparently, Secretary Solis faced a federal inquiry concerning whether she solicited donations for the event.³ The FBI reportedly questioned a California state senator to determine if Solis solicited his support for the fundraiser.⁴ While still serving as Secretary of Labor, Solis retained a law firm "to address legal issues concerning her role in a fundraising event."⁵ Solis apparently spoke with the FBI about her involvement with the fundraiser in November 2012.⁶ In January 2013, Solis resigned as secretary of Labor.⁷

¹ Paul Pringle, *Solis Faced Federal Inquiry Concerning Role in Obama Fundraiser*, L.A. TIMES, Jan. 31, 2014, available at <http://www.latimes.com/local/la-me-0201-solis-inquiry-20140201,0,4078063.story#axzz2seMvnKRk>.

² Paul Pringle & Abby Sewell, *Hilda Solis Won't Say if She Advised Obama About FBI Inquiry*, L.A. TIMES, Feb. 3, 2014, available at <http://www.latimes.com/local/lanow/la-me-ln-hilda-solis-obama-fbi-inquiry-20140203,0,7400938.story#axzz2seMvnKRk>.

³ Pringle, *supra* note 1.

⁴ *Id.*

⁵ Pringle & Sewell, *supra* note 2.

⁶ *Id.*

⁷ Steven Mufson & David Nakamura, *Hilda Solis Resigns as Labor Secretary; Some Others in Cabinet to Stay On*, WASH. POST, Jan. 9, 2013, available at http://www.washingtonpost.com/business/economy/hilda-solis-resigns-as-labor-secretary/2013/01/09/1e9b9394-5aa3-11e2-9fa9-5fbd9c9530eb9_story.html.

The Hatch Act prohibits federal employees from engaging in certain types of political activities.⁸ In particular, it prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the results of an election.⁹ A federal employee may not host a political fundraiser, invite others to a political fundraiser or collect contributions.¹⁰ A federal employee may, however, speak at a fundraiser as long as he or she appears in a personal capacity and does not solicit donations.¹¹

This is not the first time Cabinet-level officials in the Obama Administration have participated in questionable political activity.¹² On February 25, 2012, Health and Human Services Secretary Kathleen Sebelius attended an event in North Carolina in her official capacity.¹³ Secretary Sebelius reportedly stated, “[y]our lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house.”¹⁴ Despite OSC’s determination that Sebelius violated the Hatch Act, your office did not recommend any disciplinary action, nor was any taken.

Federal employees continue to face penalties for Hatch Act violations that occurred during the 2012 election cycle.¹⁵ In fact, OSC recently issued a press release announcing that a federal employee no longer in federal service violated the Hatch Act through use of Twitter.¹⁶ In contrast, OSC has yet to issue a statement regarding former Secretary Solis. The fact that it took nearly two years for reports to surface that Secretary Solis allegedly solicited donations for President Obama’s reelection campaign raises concerns about OSC’s ability to investigate Hatch Act violations of high-ranking officials effectively and impartially. As head of a Cabinet-level department, Ms. Solis held a

⁸ 5 U.S.C. §§ 7321-632.

⁹ 5 U.S.C. § 7323(a)(1).

¹⁰ U.S. Office of Special Counsel, *Less Restricted Employees – Political Restrictions and Prohibited Activities*, available at <http://www.osc.gov/haFederalLessRestrictionandActivities.htm> (last visited Feb. 18, 2014).

¹¹ U.S. Office of Special Counsel, *Frequently Asked Questions, Soliciting, Fundraising & Political Contributions*, available at <http://www.osc.gov/haFederalfaq.htm> (last visited Feb. 18, 2014).

¹² See *Kathleen Sebelius Admits ‘Mistake’ in Probe on Violation of Hatch Act*, REUTERS, Sept. 13, 2012, available at <http://in.reuters.com/article/2012/09/13/usa-healthcare-sebelius-idINL1E8KD5WW20120913>; see also Randy Economy & Brian Hews, *Exclusive: Former U.S. Labor Secretary Hilda Solis Failed to Report Trips on Private Jet Owned by Powerful Labor Boss During 2009 Confirmation Hearings*, LOS CERRITOS NEWS, Feb. 10, 2014, available at <http://www.loscerritosnews.net/2014/02/10/exclusive-former-us-labor-secretary-hilda-solis-failed-to-report-trips-on-private-jet-owned-by-powerful-labor-boss-during-2009-confirmation-hearings/>.

¹³ Jennifer Haberkorn, *HHS Secretary Kathleen Sebelius Violated Hatch Act, OSC Concludes*, POLITICO, Sept. 13, 2012, available at <http://www.politico.com/news/stories/0912/81122.html>.

¹⁴ Byron Tau, *Sebelius Will Reimburse Taxpayers for ‘Political’ Trip*, POLITICO, Mar. 2, 2012, available at <http://www.politico.com/politico44/2012/03/sebelius-rescinds-endorsement-will-reimburse-taxpayers-116248.html>.

¹⁵ See, e.g., Press Release, U.S. Office of Special Counsel, *OSC Settles Hatch Act Cases* (Feb. 3, 2014), available at http://www.osc.gov/documents/press/2014/pr14_02.pdf.

¹⁶ Press Release, U.S. Office of Special Counsel, *Federal Employee Violates Hatch Act through Twitter* (Feb. 4, 2014), available at http://www.osc.gov/documents/press/2014/pr14_03.pdf.

The Honorable Carolyn Lerner

March 18, 2014

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significant leadership position in the federal government. Enforcement of the Hatch Act must not selectively favor senior Administration officials.

Former Secretary Solis remained a federal employee for nearly ten months after the La Fonda fundraiser. It is unclear if OSC ever opened an investigation into the matter. The Hatch Act is effectively meaningless if OSC requires substantial time to respond to an inquiry of violations, particularly if enforcement is limited to current employees of the federal government.

In light of these facts and concerns, please produce the following documents as soon as possible, but by no later than noon on March 31, 2014:

All documents, including e-mails, related to any OSC investigation into former U.S. Labor Secretary Solis's involvement with the March 23, 2012, fundraiser for President Obama at La Fonda Restaurant in Los Angeles.

In addition, please make arrangements by March 24, 2014, to brief Committee staff on this matter.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please deliver your responses to the Majority Staff Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

Thank you for your attention to this matter. Please contact Lamar Echols of the Committee staff at (202) 225-5074 with any questions about this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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WASHINGTON, DC 20515-6143

Majesty (202) 225-2074
Stewart (202) 225-5813

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.