LSC

Legal Services Corporation
Office of Inspector General

Inspector General
Kirt West

MEMORANDUM

TO: LSC Board Operations and Regulations Committee

THROUGH: Kirt West
Inspector General

FROM: Laurie Tarantowicz
Assistant IG and Legal Counsel

DATE: December 21, 2006

SUBJ: Office of Inspector General Recommendations to the Committee for its 2007 Regulatory Agenda

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The Office of Inspector General is recommending that the Legal Services Corporation Board of Directors, through its Operations and Regulations Committee, consider a number of issues for its 2007 Regulatory Agenda. Some of these recommendations have been made formally before, by the OIG and/or by LSC management through its Regulations Review Task Force (Task Force). Legal Services Corporation, Regulations Review Task Force, Final Report, January 2002 [hereinafter, LSC Task Force Report]. Other recommendations are new.

The OIG's ongoing investigation into certain activities of LSC grantee California Rural Legal Assistance precipitated these current recommendations by bringing into focus the need for regulatory action. However, the following recommendations are not intended to resolve perceived deficiencies at one LSC grantee; rather they are intended to improve LSC guidance to grantees generally and to improve accountability for use of federal funds.

I. Issue a Regulation Authorizing Lesser Sanctions

A. Background

In years past, LSC has used a percentage penalty as an enforcement tool. Currently, however, when a grantee is found to have violated the restrictions or other conditions

3333 K Street, NW 3rd Floor
Washington, DC 20007-3522
Phone 202.295.1660 Fax 202.337.6616
www.oig.lsc.gov

under which it receives LSC funding, LSC management has limited tools at its disposal to sanction the grantee or to otherwise induce the grantee to comply. The Board has directed that management not impose lesser sanctions resulting in a reduction in funding of less than 5% of the grant, absent a formal rulemaking. 45 C.F.R. § 1606.2(d)(2)(v).

Part 1623 allows suspension of all or part of a grantee's funding. Suspensions of funding only last for 30 days, unless the grantee agrees to an extension; suspended funding is returned to the grantee at the end of the 30-day suspension period.

Part 1606 allows termination of the grant, in whole or in part. Termination of funding creates a difficult situation. LSC management must find an alternative organization(s) to provide services in the area previously served by the terminated grantee -- a daunting task in light of state planning and the resultant increase in the area(s) served by a given grantee -- or risk lack of service to clients in the affected service area.

Part 1618 governs enforcement procedures. Part 1618 is of limited functional value as an enforcement tool. LSC also places grantees on month-to-month funding. This tool is of limited usefulness because, although it results in a minor reduction in funding, unless LSC decides to cease funding at the end of a given month, LSC essentially continues to fund the grantee in a manner similar to grantees funded by full term grants. LSC also uses special grant conditions, again a tool of limited usefulness as applied to a grantee that has refused to comply with the terms, conditions, and restrictions under which funding originally was provided.

B. Task Force Recommendation

The OIG's recommendation is consistent with that of the LSC Task Force,[1] which recommended the Board's consideration of the application of lesser sanctions in the context of a comprehensive review of LSC's current enforcement regulations, Parts 1606, 1618 and 1623; the Task Force recommendation was made with the highest priority for future LSC rulemaking. The Task Force Report also stated that the LSC Office of Compliance and Enforcement desired the ability to impose lesser sanctions in cases in which the degree of noncompliance makes a full suspension or termination of funding a disproportionate penalty. The LSC Task Force recommendation was accepted by LSC management at the time and was accepted by the Board.

C. OIG Recommendation

The OIG recommends the LSC Board issue a regulation allowing for additional sanctions, historically termed lesser sanctions, and other tools to induce grantee compliance. This will allow the Corporation to assure grantee compliance with the terms and conditions of its grant, including the statutory restrictions, while providing both a more streamlined and a less draconian measure.

[1] The OIG has recommended that lesser sanctions be available to LSC management in the past, including to the LSC Task Force.

As an example, one possible "lesser sanction" would be to impose a non-refundable penalty with minimal procedures, making enforcement quick and effective. The Board may also consider a legislative recommendation, requesting Congress to allow LSC to impose a trustee to replace the executive director, senior management and/or the Board responsible for the violations. A second legislative fix could allow LSC to debar an executive director or senior management that caused the grantee to engage in the prohibited activities, rather than debarring the recipient organization itself, as provided in current law. The Board also might consider monitoring arrangements similar to those made pursuant to consent decrees.

The imposition of lesser sanctions also would place LSC in a stronger position to defend the termination of a grantee or the non-renewal of a grantee by creating a documented record of the noncompliance and of LSC's efforts to induce compliance.

II. **Revise Part 1635: Timekeeping Requirement**

A. Background

LSC's Timekeeping Requirement, Part 1635, provides a basic accountability tool, intended to assure the appropriate use of recipient funds, to improve recipients' internal management of funds, and to assist LSC in its compliance and enforcement activities.

> [The regulation] is intended to improve accountability for the use of all funds of a recipient by:
>
> (a) Assuring that allocation of expenditure of LSC funds pursuant to [Regulation 1630, cost standards and procedures] are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which funds have been expended;
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> (b) Enhancing the ability of the recipient to determine the cost of specific functions; and
>
> (c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

45 C.F.R. § 1635.1. LSC originally promulgated the Timekeeping Requirement in anticipation of the statutory requirement found in the FY 1996 Appropriations Act. 104 Pub. L. 134, 110 Stat. 1321 (1996). The statute requires grantees to "agree[ ] to maintain records of time spent on each case or matter with respect to which the [grantee] is engaged," requires that "[non-LSC funds] are accounted for and reported as recipients and disbursements, respectively, separate and distinct from Corporation funds," and requires grantees to make such records available to LSC and its auditors and monitors. Id. at § 504(a)(10).

Part 1635 requires grantee attorneys and paralegals to keep contemporaneous time records for all time spent on each case, matter and supporting activity. 45 C.F.R. § 1635.3. However, although the regulation requires that such records support all expenditures of funds for recipient actions and that the allocation of expenditures be carried out in accordance with LSC's regulation governing cost standards and procedures, 45 CFR Part 1630, the regulation does not require an identifiable nexus between the expenditure of employees' time and the funding source against which employees' time is charged. This missing link makes an accounting of grantee expenditure of funds, particularly on those activities recipients may only engage in with the use of non-LSC funds, difficult, if not impossible.

B. Task Force Recommendation & Previous LSC Board Action

During 1998-2000, the Board considered amending the Timekeeping Requirement to mandate that timekeeping records be consistent with payroll records. Ultimately, the Board determined that such a requirement was not necessary. The LSC Task Force did not recommend further action on the Timekeeping Regulation. LSC Task Force Report at p. 19. However, it is not clear what the Task Force would recommend had it had before it the additional experience gained in the intervening years, for example, that discussed in the illustration that follows.[2]

C. Illustration of Difficulty in the Field

Because CRLA's timekeeping records are not linked to funding sources the OIG could not readily determine whether certain CRLA activities involving comments on public rulemaking were made with LSC funds or non-LSC funds. LSC OIG Report to the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary Regarding the Activities of California Rural Legal Assistance, Inc. (September 14, 2006) [hereinafter, OIG Report on CRLA], pp.iii-iv,.

D. OIG Recommendation

We are informed that some grantees currently have timekeeping systems with the capacity to link time records to funding sources. For example, the timekeeping software already employed by some grantees incorporates the funding source into the recordation of time by staff. These grantees provide guidance to their employees as to how to properly enter their time and the corresponding funding codes. We also understand that CRLA is in the process of implementing such a timekeeping system. Thus, requiring grantees to implement a timekeeping system capable of linking time records to funding source would provide LSC with a tool critical for ensuring accountability while apparently not over-burdening the grantee community.

[2] For example, since my tenure as OIG liaison to the Task Force, the knowledge I have gained through the CRLA investigation and other OIG work, leads me to advocate strongly in favor of amending the Timekeeping Requirement to require the linking of time records to funding source.

The OIG recommends that the Board modify the Timekeeping Requirement to include such an obligation. The regulation, otherwise, falls short of fulfilling its stated purpose, to assure the allocation and expenditure of funds pursuant to Part 1630 is supported by accurate and contemporaneous records, and the purpose evident in the statute, to require both contemporaneous timekeeping records and separate accounting for the use of non-LSC funds.

III. **Revise Part 1612: Restrictions on Lobbying and Certain other Activities**

A. Background

LSC's regulation governing restrictions on lobbying and certain other activities implements the statutory lobbying restriction, and is intended to "ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities." 45 C.F.R. § 1612.1. The regulation also provides guidance for appropriate recipient participation in public rulemaking, efforts with State or local governments regarding recipient funding, and responding to requests of legislative and administrative officials. Id.

The statutory lobbying restriction prohibits grantees from engaging in the following activities:

- Making funds, personnel, or equipment available for certain redistricting and census activities;
- "[A]ttempt[ing] to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency;"
- "[A]tempt[ing] to influence any part of any adjudicatory proceeding of any Federal, State, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect;"
- [A]ttempt[ing] to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body;"
- [A]ttempt[ing] to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation."

104 Pub. L. 134, 110 Stat. 1321 (1996), § 504(a)(1)-(5). The statute permits the use of non-LSC funds for certain activities relating to governmental funding for recipients, for commenting on public rulemaking, or for responding to certain requests for information or testimony by certain government bodies or members. Id. at §§ 504(a)(19) & 504(e).

LSC's Lobbying Regulation implements these restrictions (and others) but the OIG finds certain sections of the regulation to be confusing and to provide insufficient implementing guidance to grantees on what constitutes prohibited and permissible activities. As such, grantees cannot be confident their activities fall within the parameters of permissible behavior and LSC cannot assure grantee compliance with the statutory restrictions.

The following provides an example of the regulation's generally confusing language. The law prohibits grantees from "attempt[ing] to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency," Id. at § 504(a)(2) (emphasis added). LSC Regulation 1612.3(b) prohibits grantees from attempting to influence any "executive order" or "rulemaking." The regulation in section 1612.2(d)(1), defines "rulemaking" to include "any agency process for formulating, amending, or repealing rules, regulations, or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State, or local rulemaking procedures," and then includes examples of formal rulemaking procedures. The regulation then provides that "rulemaking" does not include either administrative proceedings of particular applicability or communications with agency personnel "for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines policies or practices." 45 C.F.R. § 1612.2(d)(2). The regulation goes on to define "public rulemaking" which appears to be a subset of "rulemaking." 45 C.F.R. § 1612.2(e). In another section, the regulation refers to "negotiated rulemaking" as separate subset of "rulemaking." See 45 C.F.R. § 1612.6(a) (3). The use the term "rulemaking" in varying contexts appears to muddle the meaning of the term for LSC purposes. Thus what is and is not permissible under LSC Regulations is confusing.

This lack of clarity leads to and, at the same time, conceals the lack of sufficient implementing guidance. The regulation only addresses the phrase found in the statute "or statement of general applicability or future effect" in the context of the "rulemaking" definition which requires a formal proceeding generally associated with the regulation making process. 45 C.F.R. § 1612.2 (d)(1). Thus the regulation appears to equate "rulemaking" with both "regulation" and "or statement of general applicability or future effect," else the phrase is completely unimplemented in LSC regulations. As a result, LSC regulations provide no guidance to grantees for activities that go beyond what is clearly permissible under the regulation -- communications for the purpose of obtaining information, clarification or interpretation -- but fall short of what is prohibited by the regulation -- communications aimed at influencing the amendment of a "statement of general applicability and future effect" when the amendment is not made through a public rulemaking or other formal procedure.

B. Task Force Recommendation

The LSC Task Force did not recommend action on the Lobbying Regulation. LSC Task Force Report at p. 8.

C. Illustration of Difficulty in the Field

In the CRLA investigation the OIG found instances of CRLA staff contacts with agency personnel aimed at changing agency practice. Some of these contacts appear to be outside formal rulemaking proceedings but are clearly aimed at changing agency statements of general applicability and future effect. OIG Report on CRLA, pp. 21-27.

D. OIG Recommendation

The OIG recommends the LSC Board amend Part 1612 to provide clearer and more adequate guidance on lobbying and related restrictions.

IV. **Revise Part 1608: Prohibited Political Activities**

A. Background

The LSC Act addresses political activities by LSC and grantee staff and provides that "[e]mployees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office," and that "[e]mployees of the Corporation and [recipient] staff attorneys shall be deemed State or local employees for purposes of [the Hatch Act].[3] 42 USC § 2996e(e) (emphasis added). LSC's implementing regulation (Political Activities Regulation) generally mirrors the LSC Act without providing additional guidance with respect to what constitutes "intentional identify[ing]" the Corporation or a recipient. The Office of Legal Affairs has issued limited guidance stating, for example, that an employee of a grantee who is a candidate for a non-partisan office may list the grantee as his/her employer without running afoul of the prohibition.

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[3] The Hatch Act applies to executive branch state and local employees principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. The Hatch Act has been made applicable to employees of certain private nonprofit organizations such as LSC through separate legislation, e.g., the LSC Act for LSC employees and staff attorneys. The Hatch Act generally permits employees to run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations and attend political fundraising functions, while prohibiting employees from being candidates for public office in a partisan election, using official authority or influence to interfere with or affect the results of an election or nomination, and directly or indirectly coerce contributions from subordinates in support of a political party or candidate. *See* U.S. Office of Special Counsel, http://www.osc.gov/ha_state.htm.

B. Task Force Recommendation

The LSC Task Force recommended action on the Political Activities regulation to make clarifying and structural changes in order to make the rule easier to use and apply. LSC Task Force Report at p. 6.

C. Illustration of Difficulty in the Field

The following provides an example of the need for clarification and guidance. In the CRLA investigation, the OIG found that a high level CRLA employee who works as a fair housing advocate in her position at CRLA publicly identified herself as a sponsor of a fund raising event in 2004 by "Fair Housing Advocates for Kerry." The Fair Housing Advocates for Kerry website identified this employee not only as a sponsor of the event but as a sponsor affiliated with CRLA, thus indicating that her sponsorship was in her capacity as a CRLA fair housing advocate. LSC's Office of Compliance and Enforcement, to which the OIG referred the CRLA findings, concluded this did not violate the prohibition; OCE found the situation to fall outside the parameters of what it means to "intentionally identify" the recipient, CRLA, with the political activity, the fund raising activity associated with a candidate for political office. OCE relied on the above-referenced OLA opinion; OLA was not asked to provide an opinion to OCE on this issue.

The OIG finds the OLA opinion inapposite, dealing with an employee providing biographical data (e.g., name of employer) rather than an employee providing associational information, that is, sponsoring the political fund raising activity in her capacity as a fair housing advocate and identifying herself as associated with CRLA, the organization for which the individual acts as a fair housing advocate. Moreover, the OLA opinion is limited to application of the prohibition against "intentionally identify[ing]" the recipient with political activity and does not address the Hatch Act restrictions on grantee employee activities. See 42 USC § 2996e(e)(2). As applicable to LSC and grantee employees, the Hatch Act prohibits "the use of official authority or influence to interfere with or affect the results of an election or nomination." 5 USC 1502(a)(1). Material from the United States Office of Special Counsel, responsible for enforcing the Hatch Act, indicates that this restriction prohibits employees from using their official title while participating in political activity.[4] This material, as well as discussions with Office of Special Counsel staff, indicates that the CRLA employee's association of CRLA with the political fund raiser likely would violate the Hatch Act.

D. OIG Recommendation

The OIG recommends the LSC Board modify the Political Activities Regulation to provide guidance on what it means to "intentionally identify" the Corporation or the recipient with activities in contravention of the law, as well as other clarifications as

[4] Attached hereto are the following Office of Special Counsel opinions, Redacted Letter from William E. Reukauf, Associate Special Counsel for Investigation and Prosecution, and Redacted Letter from Mariama Liverpool, Attorney, Hatch Act Unit.

needed. We recommend LSC work closely with the United Stated Office of Special Counsel in formulating the clarifying guidance.

Even if the Board ultimately were to disagree with the OIG's interpretation in the situation described above, the example nonetheless provides a sound basis for modification of the Political Activities Regulation so as to offer additional guidance and clarity on the question of "intentional [identification]" by employees with political activities, and the scope of the other Hatch Act restrictions.

We recommend that Part 1608 also address the situation in which an employee engaged in political activities covered by the regulation uses his or her official LSC or grantee title and affiliation but designates its use as "for identification purposes only." We also found this situation during the CRLA investigation. OIG Report on CRLA at p. 20.

V. Issue a Regulation Requiring Grantees to Maintain Records Identifying Cases in which Client Name is Protected by the Attorney-Client Privilege

A. Background

LSC is statutorily authorized to have access to, among other things, client names, except those protected by the attorney client privilege.

> Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), financial records, time records, retainer agreements, client trust fund and eligibility records, and **client names,** for each recipient shall be made available to any auditor or monitor of the recipient, including any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation, except for reports or records subject to the attorney-client privilege.

Pub. L. 104-134, 110 Stat.1321 (1996), § 509(h) (emphasis added). LSC grant assurances similarly require grantees to provide access to client names. It is extremely rare that a client name is protected by the attorney-client privilege. Despite these requirements, LSC, including OCE and the OIG, has experienced recurrent problems gaining access to records of client names or records that include client names, even though the names are needed for OIG reviews or for management activities carrying out its compliance and enforcement responsibilities.

B. Illustration of Difficulty in the Field

Most recently, in connection with the OIG's investigation of CRLA, the OIG requested a database of all client names over a given period of time, and CRLA responded that it

would be required to perform an extensive, time consuming, and likely unnecessary review of all case files before providing any client names, in part to protect against disclosure of names subject to the attorney-client privilege. The OIG ultimately issued a subpoena for the client names and other requested records. The OIG has had to resort to subpoenas and judicial enforcement in the past to access client names from other grantees.

C. OIG Recommendation

The situation described above benefits neither LSC nor its grantees. To guard against future problems of this nature, the OIG recommends the LSC Board promulgate a regulation requiring grantees to maintain records in such a manner as to identify the rare case in which a client's name is protected from disclosure by the attorney-client privilege.[5]

VI. Issue a Regulation Addressing when it is Permissible for Grantees to Perform Work Without a Client

A. Background

The question of whether, and if so the extent to which, grantees may perform work without having a client does not present a simple answer. At least with regard to work on a particular piece of litigation, such efforts appear inconsistent with the premise on which funding is supplied, that it will be used to provide legal assistance to eligible clients.[6]

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[5] This requirement could be made part of the procedure for closing cases. The OIG realizes that this will not resolve all potential issues because a privilege claim sometimes will be dependent on the extent to which other information has been disclosed.

[6] In addition to the overall purpose of establishing LSC, several restrictions and requirements touch on the notion. See LSC Act, supra note 4, § 2996b(a) (discussing overall purpose: LSC established "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance); see also id. at § 2996 (discussing congressional findings and declaration of purpose). See LSC Act, supra note 4, § 2996f(a)(2), LSC Regulations, supra note 6, Part 1611 (discussing *financial eligibility*: before providing legal assistance, grantees must determine that an individual is financially eligible for services); 1996 Appropriations Act, supra note 5, § 504(a)(9), LSC Act, supra note 4, § 2996f(a)(2)(C)(1), and LSC's Regulations, supra note 6, Part 1620 (discussing *priorities:* grantees may devote time and resources only to those cases or matters the grantee has determined to be within its priorities after appraising the needs of its eligible client population); 1996 Appropriations Act, supra note 5, § 504(a)(10)(A) and LSC Regulations, supra note 6, Part 1635 (discussing *timekeeping:* grantees must maintain records of time spent on each case, matter or supporting activity in which the grantee is engaged); 1996 Appropriations Act, supra note 5, § 504(a)(8) and LSC Regulations, supra note 6, Part 1636 (discussing *client identity and statement of facts*: grantee must identify its client in complaints filed or in pre-complaint negotiations and must maintain a statement of facts forming the basis for the complaint); LSC Regulations, supra note 6, Part 1611 (discussing *retainer agreement*: grantees must execute retainer agreements with clients in extended service cases, although not where only brief service or only advice is given); 1996 Appropriations Act, supra note 5, § 504(a)(1)-(6) and LSC Regulations, supra note 6, Part 1612 (discussing *lobbying prohibited*); LSC Act, supra note 4, §§ 2996f(a)(6), (b)(4), (b)(6), & (b)(7) and LSC Regulations, supra note 6, Parts 1608 & 1612 (discussing political activity, organizing activity and demonstrations limited).

The 1996 reforms appear to have been intended to refocus legal services delivery on the day-to-day legal problems of the poor who seek legal assistance. The statutory framework and its legislative history suggest that after 1996, activities such as those described below would no longer be permissible; rather, LSC grantees should be representing clients who request legal assistance. LSC, however, provides neither an explicit requirement that litigation work be performed only when a grantee has an identifiable client, nor a regulation that specifically addresses under what circumstances, if any, a grantee may conduct legal work without a client.

B. Illustration of Difficulty in the Field

In connection with its CRLA investigation, the OIG found two instances in which CRLA engaged litigation-related work without a client on whose behalf the work was conducted. In both instances, CRLA was within days of filing a lawsuit without having a client who had come to CRLA to request that CRLA represent him. In both instances, pro bono counsel was representing the plaintiffs in the litigation. As a result of CRLA's desire to be associated with the actual filing of the lawsuits, CRLA then engaged in solicitation to find an eligible client. Thus, CRLA not only performed work without a client, it did so on behalf of those *already represented by other counsel.*[7]

C. OIG Recommendation

The OIG, therefore, recommends that the LSC Board issue a regulation providing guidance to grantees on the appropriate use of LSC funds to support work when there is no client on whose behalf the work is conducted.

Thank you for your consideration of the OIG's recommendations.

[7] These individuals, moreover, were likely not eligible for LSC funded service, given the apparent difficulty CRLA had in attempting to find one to qualify for service The work also could be viewed as subsidizing the activities of other organizations in violation of Part 1610 of LSC Regulations; and the work raises concerns regarding the efficient and effective use of the scarce resources available to provide services to clients.

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

Mr. XXXXXX

Re: OSC File No. HA-XXXXXX

Dear Mr. XXXXX:

This letter is in response to information the Office of Special Counsel (OSC) received concerning allegations that your official title as an employee of the Department of Commerce was listed on the website of a candidate for partisan political office. After reviewing this matter, we are closing our file without further action. The reason for our decision is stated below.

Specifically, in April 2001, then-Virginia gubernatorial candidate XXXXX's website identified you as a member of the "XXXXX for Governor Steering Committee." The website indicated that you were a "XXXXX, U.S. Department of Commerce."

As an employee of the Department of Commerce (DOC), you are covered by the Hatch Act (5 U.S.C. §§ 7321-7326). The Hatch Act generally permits most federal employees to actively participate in partisan political management and political campaigns. 5 U.S.C. § 7323(a). Accordingly, most covered employees may join, organize and be active members of political groups or clubs and campaign for or against candidates in partisan elections.

While most covered employees are now permitted to engage in political campaigning and political management, they are still prohibited from, among other things, using their official authority or influence to interfere with or affect the result of an election. This restriction prohibits employees from using their official title while participating in political activity. See 5 C.F.R. § 734.302 (b)(1).

Based on the foregoing, although it is permissible for your name to be used in connection with a candidate's campaign, the use of your official title in identifying you as a member of the steering committee on XXXXXXXX's campaign website was a violation of the Hatch Act. We note, however, than upon notification by the Washington Times that your official title appeared on XXXXXXXX's website, you immediately had the information removed from the website and contacted our office. In your conversation with our office, you stated that you were aware of the Hatch Act's restrictions and, as such, you were careful not to give permission to XXXXXXX's campaign to use your official title in identifying you as a steering committee member.

Therefore, we do not believe that you knowingly or willfully violated the Act and we are closing this matter.

Please be advised that if in the future you engage in Hatch Act prohibited activity while employed in a federal executive agency, we would consider such activity to be a willful and knowing violation of the law, which could result in your removal from your employment. Please call OSC attorney Ana Galindo-Marrone at 800-854-2824 if you have any questions concerning this matter.

Sincerely,

William E. Reukauf
Associate Special Counsel
for Investigation and Prosecution

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Mr. XXXXXX

Re: OSC File No. HA-XX-XXXXX

Dear Mr. XXXXXX:

This letter is in response to information the Office of Special Counsel (OSC) received concerning allegations that you violated the Hatch Act by using your official title in a letter you wrote to the editor of your local newspaper supporting a candidate for Mayor of Huntsville, Alabama. At the time of your alleged activity, you were employed as, and continue to be, the XXXXXXXX. It is our understanding that you are a member of the career Senior Executive Service. After reviewing this matter, we have determined that you did not violate the Hatch Act for the reasons explained below.

Federal employees of executive agencies are covered by the Hatch Act. See 5 U.S.C. §§ 7321-7326. The Hatch Act prohibits all covered employees from, among other things, using their official authority or influence for the purpose of interfering with or affecting the result of an election, or using their official title while participating in political activity.[1] U.S.C. § 7323; 5 C.F.R. § 734.302. Additionally, career members of the Senior Executive Service are subject to greater restrictions under the Act, and therefore, are prohibited from taking an active part in partisan political management or in political campaigns. The Hatch Act, however, permits employees, including further restricted employees, to participate in nonpartisan elections, i.e., elections where none of the candidates represent a political party.

The information that we reviewed shows that on XXXXXXX, the Huntsville Times published a letter to the editor that you wrote expressing support for XXXXXXXXXX, a candidate for Mayor of Huntsville. At the end of the letter, your official title was published. In a conversation with our office, you stated that you did not include your title in the letter, were not aware that it would be published, and did not give permission for its use. Moreover, our investigation into this matter revealed that the election for Mayor of Huntsville was a nonpartisan election.

In this case, because the election at issue was nonpartisan, the Hatch Act would not have prohibited you from using or authorizing the use of your official title while engaging in political activity. Accordingly, we are closing our file in this matter.

[1] Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

For your information, I am enclosing a copy of our publication that explains the Hatch Act's application to federal employees. Please call me at 800-854-2824 if you have any questions concerning this matter.

Sincerely yours,

Mariama Liverpool
Attorney
Hatch Act Unit

Enclosure