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Senior Associate Josh Rose discusses possible Hatch Act violations by Consumer Financial Protection Board.

Consumer protection board under fire for suspected violations of Hatch act

By Jim McElhatton

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Already under fire for accusations of retaliation and discrimination, the Consumer Financial Protection Board now faces a congressional inquiry into whether officials there violated the law that bars partisan activity in the federal workplace. The House Committee on Financial Services wants the financial watchdog agency to scour the email accounts of three officials for a dozen terms, including "Hatch," "Democrat," "Republican," "conservative" and "party," according to correspondence obtained by The Washington Times. The request by Rep. Patrick T. McHenry, North Carolina Republican and chairman of the House Financial Services' investigative subcommittee, seeks email records since January 2012 for Scott Pluta, assistant director for CFPB's consumer response office and two other agency officials, Dane D'Allesandro and Rachael Goldfarb. The April 17 letter gave the board until Thursday to comply. The letter doesn't make clear why the committee is seeking records from the three individuals. An agency spokesman confirmed that the board received the request. "We have received the letter and have been in communication with the Committee about providing responsive documents," Sam Gilford wrote in an email. The Hatch Act of 1939 limits certain political activities of most executive branch employees. "For example, the law prohibits employees from engaging in political activity while on duty or in the Federal workplace. It also prohibits

them from soliciting or receiving political contributions," according to the U.S. Office of Government Ethics. The letter by Mr. McHenry signals the committee's broadening investigation into the consumer board's workplace complaints. A senior enforcement attorney at the board, Angela Martin, testified to the committee this month that she has faced retaliation after filing discrimination complaints but said she is not alone. Misty Rauccia, an investigator retained by the board to look into Ms. Martin's complaint, testified about broader problems in a "toxic workplace." Ms. Martin testified that the board's director, Richard Cordray, told her to have her attorneys "back down" after she complained about workplace hostility. In a statement after the hearing, Mr. Cordray said he would welcome the opportunity to appear before Congress. "I take seriously the concerns raised at today's hearing and deeply apologize to any member of the CFPB staff who feels that they have not been heard or treated fairly," he said. Hatch Act researcher Scott Coffina, associate White House counsel under President George W. Bush, said it's hard to speculate exactly what the committee is seeking, but the request suggests lawmakers likely received a detailed complaint. "The specificity of the individuals and the search terms suggests the committee believes the search will yield evidence," he said. Even if the committee doesn't find a Hatch Act violation, the letter marks yet another cautionary warning to federal employees not to mix politics and government work. Rep. Darrell E. Issa, California Republican and chairman of the House Oversight and Government Reform Committee, requested information last month from the Office of Special Counsel into suspected Hatch Act violations by former Labor Secretary Hilda Solis. The Office of Special Counsel, which investigates Hatch Act violations, concluded last year that Health and Human Services Secretary Kathleen Sebelius had violated the act because of a partisan speech she gave at a government-funded gathering in 2012. Nearly two dozen employees at the Department of Education came under scrutiny in Hatch Act investigations stemming from emails they sent during the 2008 presidential campaign, including a civil rights lawyer who wrote that "many Republicans are inherently racist," according to the Federal Times. The Education Department's office of inspector analyzed email accounts of all department employees, searching for candidate names during the 2008 campaign season. It found that 870 employees, about one in five at the agency, sent at least one email containing the name of a presidential

candidate. Of those, 21 cases were referred to the Office of Special Counsel because they sent multiple political emails, according to a report last year by the newspaper, which cited an open records request. "I've been advising my clients for years and years that when it comes to email, it's the government's and they can search it — there's no question about it," said Josh Rose, a Washington-based lawyer who has represented federal employees before the Office of Special Counsel. "You never want to use government email for anything possibly political." University of Minnesota law professor Richard Painter, who also served in the Bush White House as an associate counsel, said Hatch Act cases will continue to surface without faster and tougher enforcement. "If they don't crack down, we're going to get a lot more, whether the Democrats or Republicans are in charge, it doesn't matter," he said. The Office of Special Counsel announced this month that it had filed a complaint against an Internal Revenue Service customer service representative who urged taxpayers to vote for President Obama in 2012. Complaints were filed against two other IRS employees this month in separate cases.