



Election Year Refresher for Nonprofit CAAs

August 2016

Note that this article applies to nonprofit CAAs. For more information about election year activity for public CAAs (i.e. those that are part of local government), see CAPLAW's [Election Year Refresher for Public CAAs](#).

For those of you new to the world of Community Action and 501(c)(3) tax-exempt organizations, as well as those with many years in the field, keeping track of the rules relating to election and campaign activity is never easy! But understanding them is critical. As the election season enters its final stretch, here's a quick review of some of the most significant rules:

The Community Action Agency (CAA), as an organization, may not participate in political campaign activities

The Internal Revenue Code prohibits 501(c)(3) tax-exempt organizations, including nonprofit CAAs, from “participat[ing] or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for election to a public office.”¹ This type of prohibited conduct is often referred to as “electioneering.” Therefore, 501(c)(3)s may not use their funds (from any source, whether government or private), organizational name, or other assets, including staff time and facilities, to support (or endorse) or oppose political candidates. Nor may 501(c)(3)s create, support, or contribute to political action committees (PACs). In addition, 501(c)(3)s are prohibited by the federal cost principles contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance) from using federal funds to engage in such activities.²

In general, individuals associated with a CAA may participate in election campaigns as private citizens, on their own time and without using CAA resources. CAA employees and board members have the same right as other individuals to contribute to political campaigns, participate in campaign activities, serve on political party committees, and endorse candidates, for example. The key is to ensure that the CAA employee or board member clearly separates his or her personal political campaign activity from the activities or statements of the CAA, and that any such personal political activity is done on non-work time and without using CAA resources. This distinction does not mean that just because an individual is well known in the community as a CAA employee or board member, he or she may not engage in political campaign activity. It means only that in doing so, the individual should carefully distinguish his or her personal views from those of the CAA.

The Hatch Act applies to certain employees of nonprofit CAAs

Although the Hatch Act applies to certain nonprofit CAA employees, it is not nearly as broad as many people believe. The restrictions don't apply to all CAA employees, and those covered are only prohibited from engaging in a few, specific political activities.³

The Hatch Act applies to an employee of a nonprofit CAA who (1) spends the majority of his/her work time working for the CAA or earns the majority of his/her income from a CAA **and** (2) works (for any portion of their time) in connection with CSBG- or Head Start-funded activities.

These employees are often referred to as “Hatched” and are specifically prohibited from: (1) using their official authority or influence to affect the result of an election or nomination for office; and (2) advising, commanding, or coercing other Hatched employees, either directly or indirectly, to make political campaign contributions (cash or anything of value) or loans.⁴ The federal Office of Special Counsel, which enforces the Hatch Act, has interpreted the latter provision to prohibit covered individuals from asking for political contributions from employees whom they supervise due to the inherently coercive nature of such a request.⁵

For example, a communications director of a nonprofit CAA would be considered “Hatched” if she works full-time for a CAA and spends any portion of her work time in connection with CSBG and/or Head Start-funded activities (e.g., she prepares outreach materials relating to CSBG and/or Head Start funded programs). Thus, during and outside of work, the communications director may not use her authority as the communications director of the CAA to influence others to vote for a political candidate. She should also exercise caution in soliciting political campaign contributions: she may not advise, command, or coerce any other Hatched employee to donate to any political campaign and she may not even **ask** any employee she supervises to do so. However, she may engage in most other political campaign activities, on her own time and using non-CAA resources, including, but not limited to:

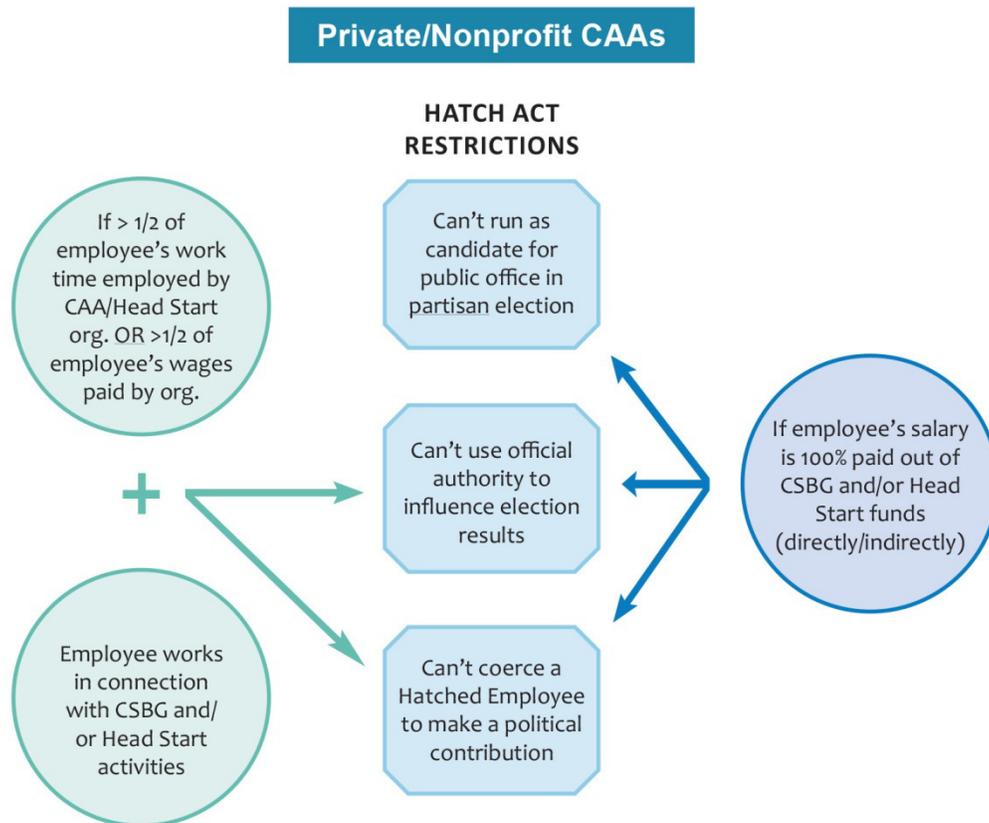
- Running or participating in others’ campaigns;
- Voting as she chooses;
- Expressing her own political opinions (and not referring to her position as communications director for the CAA when doing so); and
- Holding a political party office.

In addition, if the salary of the employee discussed above is completely (100%) paid for with CSBG and/or Head Start funds, that employee is further prohibited from being a candidate in a partisan election, including primaries.⁶ However, such an employee may still run for office in a nonpartisan election or continue to hold a public office obtained prior to being paid completely with CSBG and/or Head Start funds. Although the issue of whether an election is “partisan” is often decided by state or local law, typically an election will be considered partisan if any of the candidates represent, are supported by, or their names are identified on the ballot with, a political party.

For example, if the communications director discussed above receives a salary that is 100% paid for with CSBG and/or Head Start funds, then she may not run for a vacant seat in the state legislature if the candidates in that election are representing, supported by, or identified with political parties.

NOTE: All of the Hatch Act restrictions discussed above apply regardless of whether the restricted activity is conducted during work time or on the employee’s personal time, even if the employee is on paid or unpaid leave.

This graphic helps to illustrate application of the Hatch Act restrictions:



Nonprofit CAA employees subject to the Hatch Act *may*, on their own time and outside of the workplace: (1) run for office in a nonpartisan election,⁷ (2) continue to serve in the offices to which they were elected prior to becoming subject to Hatch Act restrictions,⁸ (3) run for and hold office in a political party,⁹ and (4) participate in political campaigns, party organizations, and make and solicit contributions.¹⁰

What about voter education, voter registration, and transportation to the polls?

If conducted in a neutral and balanced manner, 501(c)(3) CAAs may engage in these activities, but need to be careful about the funding source. The activity, regardless of the funding source, cannot exhibit any bias for or against a particular candidate or political party. The CSBG and Head Start Acts expressly prohibit the use of CSBG and Head Start funds, and CSBG-or Head Start-funded employees or services, for voter registration activities and transportation to the polls.¹¹ Both the CSBG and Head Start Acts also prohibit the use of such resources for partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office. The Head Start Act, however, permits a nonpartisan organization (the League of Women Voters, for example) to use Head Start facilities during hours of operation to increase voter registration.¹²

Voter registration activities and transportation to the polls must be conducted with non-CSBG, non-Head Start funds and employees and in a neutral and balanced manner that does not result in even the *identification* of such activities with CSBG-funded programs. For more information about conducting

voter registration activities with CSBG funds, see [Information Memorandum 81](#) from the federal Office of Community Services.

Let's get practical

Here's a list of do's and don'ts to steer you through the rules:

- **DO** run for office in a *nonpartisan* political election, so long as any campaign activity is conducted on your own time, off CAA premises, and without using CAA resources.
- **DO** run for office in a *partisan* election as long as you do not receive 100% of your salary from CSBG and/or Head Start funds (if an employee receives 100% of his/her salary from either or both CSBG and Head Start funds, then the employee must resign from his or her CAA position to run as a candidate in a partisan election).
- **DO** participate as a private citizen in political campaigns, including using personal funds to make campaign contributions, but do so on your own time and without using CAA resources such as computers, phones, copiers, or office supplies.
- **DON'T** speak on behalf of the CAA, or use the name of the CAA, when supporting or opposing any political candidate.
- **DON'T** say in CAA communications or at CAA events: "The President doesn't represent your interests – we need a change!" or "Vote Democratic! Register to vote today: Jane Smith needs your vote!"
- **DO** voter education activities, including voter registration, get-out-the-vote, and transportation to the polls, with appropriate funds and in a nonpartisan manner that does not result in identification of the activities with CSBG-funded programs.
- **DON'T** use CSBG or Head Start funds or personnel, facilities or supplies funded by those programs, for voter registration activities (except Head Start facilities may be used by nonpartisan groups during hours of operation).
- **DO** structure your CAA's issue advocacy communications so as to avoid electioneering activity. The IRS has issued guidance, [Revenue Ruling 2004-6](#), listing some of the more important factors it uses to decide whether it considers an issue advocacy communication to involve electioneering.
- **DO** get more information on this subject by reading the IRS's summary of rules around [Political and Lobbying Activities](#). For a more-in-depth publication, see the IRS's Tax Guide for Churches and Religious Organization, [IRS Publication 1828](#). Although geared toward religious organizations, it provides a practical discussion of the political campaign ban for all 501(c)(3)s.
- **DO** speak to a local attorney knowledgeable in this area of the law or contact CAPLAW if you have further questions!

¹ 26 U.S.C. § 501(c)(3)

² 2 C.F.R. § 200.450(c)

³ 42 U.S.C. § 9918(b)(1) (CSBG Act); 42 U.S.C. § 9851(a) (Head Start Act)

⁴ 5 U.S.C. § 1502(a)(1) and (2)

⁵ July 30, 1999 Office of Special Counsel Advisory Opinion, available from CAPLAW

⁶ 5 U.S.C. § 1502(a)(3)

⁷ 5 U.S.C. § 1503

⁸ 5 U.S.C. § 1502(c)(4); 5 C.F.R. § 151.122

⁹ 5 C.F.R. § 151.111(a); U.S. Office of Special Counsel Advisory Opinion 2002-06-04

¹⁰ 5 C.F.R. §§ 734.205, 734.208

¹¹ 42 U.S.C. § 9918(b)(2) (CSBG) and 42 U.S.C. § 9851(b) (Head Start)

¹² 42 U.S.C. § 9851(b)(2)