



## **Election Year Refresher for Public CAAs**

August 2016

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

For those of you new to the world of Community Action, 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.

### **Public CAAs are limited in their ability to engage in political campaign activity**

Because public CAAs receive federal funding, they are subject to various restrictions with respect to engaging in political campaign activities under some authorizing statutes for federal awards and the federal cost principles contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance). For example, the federal cost principles prohibit CAAs from using federal funds to contribute to political parties, campaigns, or political action committees (PACs).<sup>1</sup>

Moreover, local laws and ordinances may impose additional restrictions, therefore a public CAA should consult with an attorney for its local government to determine what other requirements may restrict its ability to engage in political campaign activities.

### **The Hatch Act applies to employees of public CAAs**

Although the Hatch Act applies to certain public 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.

A public CAA employee who is principally employed by a state or local executive agency and who works in connection with activities financed in whole or in part by any federal grant or loan is subject to the Hatch Act<sup>2</sup> and may not: (1) use his or her official authority to influence or interfere with or affect the results of an election or nomination for office; or (2) directly or indirectly coerce, attempt to coerce, command, or advise another employee covered under the Hatch Act to make political contributions to candidates, PACs, or political parties.<sup>3</sup> 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.<sup>4</sup>

In addition, a public CAA employee whose salary is paid completely, directly or indirectly, by federal loans or grants may not be a candidate for public office in a partisan election.<sup>5</sup> Generally speaking, "partisan" elections are those in which at least one candidate is nominated by, represents, is supported by, or associates himself or herself with a party whose Presidential candidate received votes in last election, or if any of the candidates are identified on the ballot with a political party.<sup>6</sup> Elections are also deemed to be "partisan" for the purposes of Hatch Act if state or local laws designate them as such.

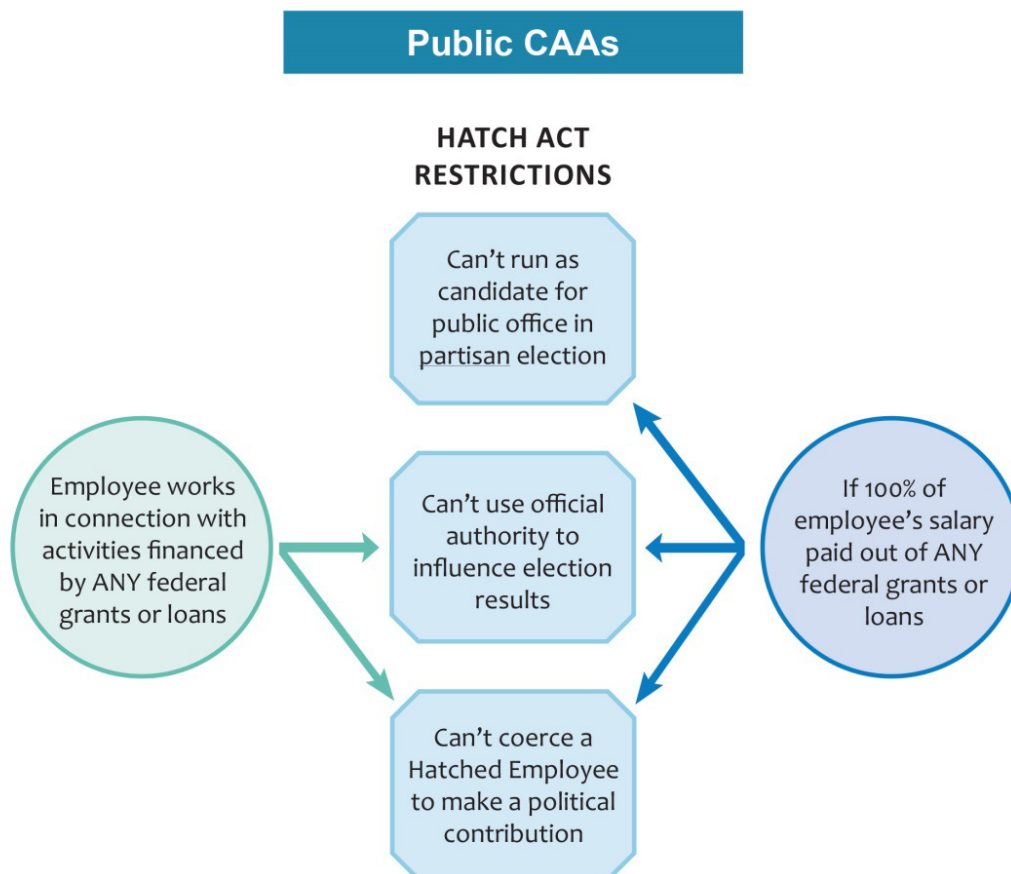
For example, a communications director of a public CAA would be considered “Hatched” if she works in connection with activities financed in whole or in part by any federal grant or loan (e.g., she prepares outreach materials relating to the CAA’s CSBG-funded programs). Thus, during and outside of work, 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.

Further, if the communications director receives a salary that is 100% paid for with federal 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:



Public 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;<sup>7</sup> (2) continue to serve in the offices to which they were elected prior to becoming subject to Hatch Act restrictions;<sup>8</sup> (3) run for and hold office in a political party;<sup>9</sup> and (4) participate in political campaigns, party organizations, and make and solicit contributions.<sup>10</sup>

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

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.<sup>11</sup> 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.<sup>12</sup>

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 any federal grants or loans (if an employee receives 100% of his/her salary from federal grants or loans, 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** consult with an attorney for your local government to ensure compliance with all of the rules that restrict your ability to engage in political campaign activities, or contact CAPLAW if you have further questions!

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<sup>1</sup> 2 CFR § 200.450(c)

<sup>2</sup> 5 U.S.C. § 1501(4)

<sup>3</sup> 5 U.S.C. § 1502(a)(1), (2); 5 C.F.R. §151.121(a), (b)

<sup>4</sup> July 30, 1999 Office of Special Counsel Advisory Opinion, available from CAPLAW

<sup>5</sup> 5 U.S.C. § 1502(a)(1), (3); 5 C.F.R. §151.121(c)

<sup>6</sup> 5 U.S.C. § 1503; 5 C.F.R. 151.101(h)

<sup>7</sup> 5 U.S.C. § 1503

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

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

<sup>10</sup> 5 C.F.R. §§ 734.205, 734.208

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

<sup>12</sup> 42 U.S.C. § 9851(b)(2)