

RESTRICTIONS ON BALLOT AND PARTISAN POLITICAL ACTIVITY

May 2019

COMPILATION OF RESTRICTIONS ON BALLOT AND PARTISAN POLITICAL ACTIVITY BY CNCS GRANTEES AND AMERICORPS VISTA MEMBERS

If an organization receive a grant or enters into a cooperative agreement, or VISTA sponsorship agreements with the Corporation for National and Community Service (CNCS), certain federal restrictions on partisan political activity will apply to that organizations, as well as individuals receiving funds or benefits under such a grant or agreement.

As a general matter, these partisan political activity restrictions preclude certain individuals from

- using official authority or influence to interfere with or affect the results of an election, or
- directly or indirectly coercing contributions from subordinates in support of a political candidate.

In addition, organizations are generally prohibited from spending grant funds to

- influence the outcome of any election to Federal, State, or local public office or
- engage in voter registration activities, or for transporting people to polling places.

To help organizations understand and comply with these restrictions, CNCS has compiled this list of statutory and regulatory references which summarizes the limitations and restrictions on partisan political activity. This list is merely a reference tool to support compliance; grantees may not rely on this as a definitive or complete recitation of all applicable legal principles that might apply in a given situation.

The Hatch Act (for Employees of State and Local Governments that receive CNCS grants)

The Hatch Act, 5 U.S.C. §§ 7321-7326, a federal law passed in 1939, limits certain political activities of state and local government employees who work in connection with federally funded programs. *See*, 5 U.S.C. §§ 1501 et. seq. The law's purposes include ensuring that federal programs are administered in a nonpartisan fashion. The Hatch Act applies to state and local government employees who, as a normal and foreseeable incident of their principal employment, perform duties in connection with an activity financed in whole or in part by federal funds.¹ Under the Hatch Act, these "covered" state and local employees cannot:

- use official authority or influence to interfere with or affect the results of an election or nomination. or
- directly or indirectly coerce, attempt to coerce, command, or advise a state, or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

These prohibitions continue to apply while the employees are on annual leave, sick leave, administrative leave, furlough, or any other paid or unpaid leave. In addition, a covered state or local employee whose salary is paid for entirely by federal funds are prohibited from running for partisan office.

¹ The Hatch Act does not apply to individuals who are principally employed by educational or research institutions, establishments, agencies or systems that are supported in whole or in part by a state or local agency (e.g., teacher, administrator, custodian, etc.).

Code of Federal Regulations

Provisions in the Code of Federal Regulations (CFR), *Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards* (2 CFR Part 200), also provide relevant restrictions on partisan political activity by nonprofit organizations and Institutes of Higher Education. These restrictions include prohibitions on:

- Attempting to influence the outcome of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;²
- Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization whose purpose is to influence the outcome of elections in the United States;³

CNCS Specific Requirements

Section 174(b) of the National and Community Service Act (NCSA) (42 U.S.C. § 12634(b)) provides that grants awarded under the NCSA shall not be used by program participants and program staff to finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

In addition, section 132A of the NCSA (42 U.S.C. § 12584a), in conjunction with CNCS's regulations at 45 CFR 2520.65, provide that AmeriCorps Members and AmeriCorps program staff serving under AmeriCorps State and National grants⁴ may not be utilized for the purpose of—

- engaging in partisan political activities, or other activities designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office, or
- participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials.

Congress also placed restrictions on partisan political activity of recipients of federal funding under section 403 of the Domestic Volunteer Service Act of 1973 (DVSA) (42 U.S.C. § 5043). Under these restrictions no organization receiving DVSA assistance from CNCS (AmeriCorps VISTA sponsors or Senior Corps grantees) may use that assistance (including funded services or personnel) that results in identifying the organization with—

- any partisan or nonpartisan political activity associated with a candidate, or a contending faction or group, in an election for public or party office
- any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election
- any voter registration activity⁵, or

² 2 C.F.R. § 200.450(c)(1)(i).

³ 2 C.F.R. § 200.450(c)(1)(ii).

⁴ These restrictions apply to AmeriCorps members and program staff while charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by CNCS.

⁵ VISTA sponsors can make voter registration applications and nonpartisan voter registration information available to the public on the sponsors' premises. But VISTA sponsor staff members may not indicate a preference with respect to any candidate, political party, or election issue; or seek to influence the political or party affiliation, or voting decision, of any individual. 42 U.S.C. 5043(b)(1)(C) and (b)(2). However, by regulation Senior Corps grantees may not engage any voter registration activity, including the dissemination of official voter registration materials. 45 CFR 1226.8(b).

- any activity whose purpose is to influence the passage or defeat of ... proposals by initiative petition.⁶

Also, CNCS has by regulation, (45 CFR 1226.8) stated that a Senior Corps Volunteers may not engage in electoral activity, including:

- any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election
- participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office
- raising, soliciting, or collecting funds for a candidate for public office
- preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media
- organizing political meetings or forums
- canvassing voters on behalf of a candidate for public office
- raising, soliciting or collecting funds for groups that engage in any of these activities
- circulating petitions, gathering signatures on petitions, or urging or organizing others to do so, for the purpose of placing certain measures on the ballot at a general or special election, or
- any activities related to the passage or defeat of any measure on the ballot in a general or special election.

A Senior Corps Volunteer also may not engage in any voter registration activity, including:

- providing transportation of individuals to voter registration sites
- providing assistance to individuals in the process of registering to vote, including determinations of eligibility
- disseminating official voter registration materials, or
- raising, soliciting or collecting funds to support those activities.

Finally, a Senior Corps Volunteer may not engage in any activity to provide voters or prospective voters with transportation to the polls, or collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

In addition to the prohibitions in section 403 of the DVSA, under section 415(b) of the DVSA (42 U.S.C. § 5055(b)), AmeriCorps VISTA members are treated as federal employees under the Hatch Act (regardless of whether they are full- or part-time). CNCS has issued regulations covering the restrictions and prohibitions on political activities for VISTA members.⁷ Under these authorities, VISTA members may not engage in the following activities **at any time**:

- using their official authority or influence to interfere with or affect the result of an election.⁸ For example:
 - using their official titles or positions while engaged in political activity.
 - inviting subordinate employees to political events or otherwise suggest to subordinates that they attend political events or undertake any partisan political activity.
- soliciting, accepting or receiving a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group.⁹ For example:

⁶ Note that 42 U.S.C. 5043(c)(2) creates an exception that allows AmeriCorps VISTA sponsors and Senior Corps grantees to seek to influence "proposals by initiative petition" in connection with an authorization or appropriations measure directly affecting the operation of the programs. However, such petition or ballot initiatives directly affecting funding of CNCS programs are rare.

⁷ 45 CFR Part 2556, Subpart H.

⁸ See 45 CFR 2556.710(a)

⁹ See 45 CFR 2556.740(c)(1)

- hosting a political fundraiser.
- collecting contributions or sell tickets to political fundraising functions.
- Being a candidate for public office in a partisan political election.¹⁰
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their office.¹¹

Nevertheless, VISTA members may engage in certain political activity – i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group –For example VISTA member may:

- distribute campaign materials or items
- display campaign materials or items
- perform campaign related chores
- wear or display partisan political buttons, T-shirts, signs, or other items
- make political contributions to a partisan political party, candidate for partisan political office, or partisan political group
- post a comment to a blog or a social media site that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group, or
- use any e-mail account or social media to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

However, VISTA members MAY NOT participate in any of the foregoing activities while they are either on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle. In addition, any such activity cannot:

- interfere with the performance of, or availability to perform, the member’s VISTA project duties
- interfere with the member’s provision of service in the VISTA program
- be conducted in a manner involving the use of VISTA assistance, resources or fund
- result in the identification of the member as being a participant in or otherwise associated with the VISTA program
- be conducted during scheduled VISTA service hours; and
- interfere with the member’s full-time commitment to remain available at all times for VISTA service without regard to regular working hours, during periods of service, and except for authorized periods of leave.

¹⁰ See 45 CFR 2556.735

¹¹ See 45 CFR 2556.745