

PROGRAM INSTRUCTION

memorandum



NEW YORK STATE OFFICE FOR THE AGING
Bldg. 2, Empire State Plaza, Albany, NY 12223

No: 84-PI-40		Date: 9/17/84
Programs Affected: <input type="checkbox"/> CSE <input checked="" type="checkbox"/> III-B <input type="checkbox"/> III-C-1 <input type="checkbox"/> III-C-2 <input type="checkbox"/> IV-A <input type="checkbox"/> V <input type="checkbox"/> RPE <input type="checkbox"/> HEAP <input type="checkbox"/>		
To: <input checked="" type="checkbox"/> AREA AGENCY ON AGING DIRECTORS <input type="checkbox"/> <input type="checkbox"/>	Contact Person(s) — Phone Number(s) Aging Services Representative	
Subject: FEDERAL AND STATE RESTRICTIONS ON POLITICAL ACTIVITIES	For Your Information:	
	Response Due Date: None	PI Superseded by this document: None

This Program Instruction restates and summarizes Federal and State requirements concerning aging network involvement in political activities.

Under the Federal Older Americans Act (42 USC 3001) and the State Community Services for the Elderly Program (§541 of the Executive Law), New York State's aging network is required to assure that older people have full access to their rights and benefits, including the right to vote and to participate in the public policymaking process. The network is also responsible for advocacy on behalf of older people.

In meeting these responsibilities, each level of the aging network must work within specific constraints. This Program Instruction addresses Federal and State requirements applying to political involvement of Area Agencies on Aging and their subcontractors. (General standards, such as the requirement that all AAA and subcontracted activities comply with approved Area plans, also apply to this area.)

A. Voter Registration. Area Agencies or their subcontractors may participate in non-partisan voter registration activities, especially those targeted towards elderly who might otherwise not have easy access to the right to vote. Thus, for example, homebound or institutionalized elderly could be supplied with "post-card" registration forms which should also be available at focal points throughout the Planning and Service Area.

No partisan voter registration efforts are permitted.

No legal services provider (or staff of the provider) may engage in voter registration activity.

All voter registration efforts funded with Federal or State funding (including matching funds) must be allocated to an appropriate expenditure category. Under the Federal Older Americans Act regulations (45 CFR §1321 (c)(3)(D)) no voter registration activities may be performed as legal services.

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B. Access to Polls. Area Agencies or their subcontractors may participate in non-partisan efforts to assure that all elderly have access to the polls, whether by absentee ballot or at polling places.

No partisan access or partisan get-out-the vote efforts are permitted.

Title V, Senior Employment Programs and enrollees are specifically included in the provisions of the Hatch Act which restrict partisan political activities. Under these regulations, neither the project nor the personnel employed in the administration of the project may "in any way or to any extent" engage in the conduct of political activities.

C. Information about Issues and Candidates. Area Agencies and their subcontractors may provide or arrange for the provision of information concerning public issues, including elections, referenda, and other ballot issues.

Groups of elderly service recipients may, in appropriate circumstances, be given the opportunity to hear or meet with public officials or candidates, provided that all such events are open on an equal basis to all candidates regardless of policy views or partisan affiliation.

No candidate endorsements or partisan advocacy by Area Agencies is permitted. No legal services attorney (funded under Title III-B OAA) may be a candidate for partisan elective office.

Non-profit organizations (including non-governmental AAAs and subcontractors) are also subject to new constraints under the recent revisions to the U.S. Office of Management and Budget's Circular A-122, Cost Principles for Non-Profit Organization. A-122 prohibits use of Federal or matching funds by non-profit organizations to attempt to influence the outcome of any referendum or other ballot issue, with an exception for "any activity specifically authorized by statute to be undertaken" with specified Federal or matching funds. Non-profit AAAs are exempt from A-122's restrictions on the use of Federal or matching funds for these purposes only to the extent that a specific statutory authorization covers such activities.

State funds (such as CSE) may not be used in support of or opposition to State ballot issues.

(Individuals employed by Area Agencies retain their personal rights; any public political involvement of such individuals must be clearly presented as private and unrelated to Area Agency employment.)

D. Executive Advocacy. Under the OAA and CSE, Area Agencies are responsible for representing the interests of elderly to government decisionmakers. Some specific activities designed to influence Executive-branch decisionmakers are subject to special restrictions. For example, political endorsements or promises of political support or bribes may not be offered to influence such decisionmakers.

Non-profit organizations (including non-governmental AAAs and subcontractors) are also subject to new constraints under the recent revisions to the U.S. Office of Management and Budget's Circular A-122 Cost Principles for Non-Profit Organizations. A-122 prohibits use of Federal or matching funds by non-profit organizations for "any attempt to influence ... the enactment or modification of any pending Federal or State legislation through communication ... with any government official or employee in connection with a decision to sign or veto enrolled* legislation" with an exception for "any activity specifically authorized by statute to be undertaken" with specified Federal or matching funds.

Non-profit subcontractors, except those with approved subcontracts specifically requiring this type of advocacy contacts with Federal or State decisionmakers pursuant to statutory requirements, are thus prohibited from using OAA or matching funds for "sign-or-veto" contacts with Federal or State officers or employees.

Even non-profit Area Agencies may be constrained by these provisions of A-122, to some extent. Area Agencies' responsibility for advocacy is most explicitly stated at 42 U.S.C. §3026(D), which requires each AAA to "serve as the advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting upon all policies, programs, hearings and community actions which will affect the elderly." Non-profit AAAs are exempt from A-122's restrictions on the use of Federal or matching funds for these purposes only to the extent that this specific statutory authorization covers such activities.

Whether public or private, AAAs and their subcontractors are also subject to registration requirements under the New York State Regulation of Lobbying Act. Any entity which retains, employs, or designates a person or organization to influence regulatory decisions of State agencies or "sign-or-veto" decisions of the Governor (or to influence the New York State Legislature in passing or defeating legislation) is subject to registration requirements of the Temporary State Commission on Regulation of Lobbying. These requirements apply to overall entities (e.g., county governments or non-profit corporations) rather than to subunits, so many Area Agencies would be covered by registrations filed by sponsoring organizations.

E. Legislative Advocacy. As noted above, Area Agencies are responsible under the OAA and CSE for representing the interests of the elderly to government decisionmakers, as well as assisting older people with self-advocacy. However, legislative advocacy is covered by several specific restrictions.

Regardless of funding source, and governmental or non-profit status, any Area Agency or subcontractor seeking to influence passage or defeat of legislation by the State Legislature is subject to registration requirements under the New York State Regulation of Lobbying Act. Because these requirements apply to overall entities

*passed but not signed

(e.g., county governments or non-profit corporations) many Area Agencies would be covered by registrations filed by sponsoring organizations.

Federal funds (but not matching funds) are also subject to annual appropriations language forbidding the use of Federally appropriated funds "to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress." This restriction applies to both public and private organizations, and to Area Agencies as well as their subcontractors.

In addition, non-profit Area Agencies and subcontractors are also subject to new constraints under the recent revisions to the US Office of Management and Budget's Circular A-122, Cost Principles for Non-Profit Organizations.

A-122 prohibits use of Federal or matching funds by non-profit organizations for "any attempt to influence (i) the introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or state legislation" either through "communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity)" or through "preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letterwriting or telephone campaign." Federally funded legislative liaison activities "carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying" by non-profit organizations are also prohibited. As with A-122's restrictions on executive advocacy, a specific exemption exists for legislative advocacy activities "specifically authorized by statute to be undertaken" with specified Federal or matching funds.

Non-profit subcontractors, except those with approved subcontracts specifically requiring legislative advocacy pursuant to statutory requirements, are thus prohibited from using OAA or matching funds for this type of activity in connection with Federal or State legislation. Specific exceptions exist for "a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement thorough hearing testimony, statements or letters to the Congress or a State Legislature, or subdivision, member, or cognizant staff member thereof in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record or statements for the record at a regularly scheduled hearing)" for "any lobbying ... to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract or other agreement."

Even non-profit Area Agencies may be constrained by these provisions of A-122, to some extent. Area Agencies' responsibility for advocacy is most explicitly stated at 42 U.S.C. Section 3026(D),

which requires each AAA to "serve as the advocate and focal point for the elderly within the community by monitoring, evaluating and commenting upon all policies, programs, hearings, and community actions which will affect the elderly." Non-profit AAAs are exempt from A-122's restrictions on the use of Federal or matching funds for these purposes only to the extent that this specific statutory authorization covers such activities.

Legal Services Attorney Providers (and their staff and employees) are prohibited by AoA Regulations under the OAA from engaging in any voter registration, candidacy for partisan elective public office, electioneering, or coercing or advising employees of any provider to contribute for political purposes. Additionally, no legal services program funds, including OAA, State CSE or matching funds, may be used to influence legislation by Congress or any State or local legislative body or any state proposals by initiative petition except to the extent excepted in the regulations for representation of a named client or responding to documented requests from the legislative body, committee or member thereof, or government agency regulatory or administrative action. (AoA Regulations, 45 CFR S 1321.151 (C) (3).)

Non-profit tax-exempt organizations are also subject to Federal Internal Revenue Code restrictions prohibiting tax-exempt organizations from expending a substantial proportion of their funds for lobbying.

These restrictions on legislative advocacy (except for the NYS lobbying registration and U.S. Internal Revenue Code limitations) pertain only to the specified funding sources. Funds from other sources could still be used for legislative advocacy.

F. Candidacy. Although most of the Federal Hatch Act's restrictons no longer apply below the Federal level, State and local government employees whose primary employment is connected with an activity financed in whole or in part with Federal funds may not be a candidate for elective office. (Elective officials such as county executives are exempt.) Attorneys providing legal services (even if they are not part of State or local government) are also prohibited from running for partisan elective public office.

G. Coercion. No public funds may be used for and no public agency may be involved in efforts to influence the result of any election or referendum or to coerce anyone to vote in a particular manner.

It is important that AAAs fulfill their responsibilities to assist elderly in obtaining access to their full rights and benefits, including the right to vote and to participate in the political process. The restrictions noted above apply to the use of federal or state funds and are not intended to restrict the legitimate advocacy or lobbying activities of AAAs or non-profit organizations to the extent they are carried on through other funding sources. AAA Directors who have further questions regarding specific activities should contact their aging services representative for a ruling on that particular activity.