

**New York State Office for the Aging
2 Empire State Plaza, Albany, NY 12223-0001**

To: <input checked="" type="checkbox"/> Area Agency on Aging Directors <input type="checkbox"/> <input type="checkbox"/>	INFORMATION MEMORANDUM
	Number: 93-IM-71
FYI:	Date: October 12, 1993
Subject: Equal Access to Candidates Federal Hatch Act Restrictions	Supersedes:
	Response Due Date:
Programs Affected:	
<input checked="" type="checkbox"/> Title III-B <input type="checkbox"/> Title III-C-1 <input type="checkbox"/> Title III-C-2 <input type="checkbox"/> Title III-D <input type="checkbox"/> Title III-G <input type="checkbox"/> CSE <input type="checkbox"/> SNAP <input type="checkbox"/> Energy <input type="checkbox"/> EISEP <input type="checkbox"/>	
Contact Person: John Phelan	Telephone:(518) 474-5796

-An Equal Opportunity Employer-

The purpose of this Information Memorandum is to provide a reminder during the current political season concerning requirements that may apply to Area Agencies on Aging and to their employees. Attached are 92-PI-36 relating to Equal Access to Candidates at senior facilities or centers and 92-PI-37 dealing with Hatch Act requirements. It is important that Area Agencies and their employees be familiar with these areas during the current period leading up to Election Day.

The attached Program Instructions were issued during a Presidential election year and some of the references may have changed but the legal requirements contained in them remain the same. Please note that the reference in the second paragraph of 92-PI-36 to Standard Assurance No. 11(c) has been changed. That matter is now contained in Standard Assurance No. 12(c).

PROGRAM INSTRUCTION

Memorandum



NEW YORK STATE OFFICE FOR THE AGING
Bldg. 2, Empire State Plaza, Albany, NY 12226

No: 90-PI-36	Date: 8/1/90		
Programs Affected:			
[] IXI-B	[] III-C-1	[] III-C-2	[] III-C
[] SNAP	[] CSE	[] ELSEP	[] EPIC
[] RPE	[] HEAP	[] OTHER:	
Contact Person(s) - Phone Number(s)			
John Phelan		518/474-5796	
For Your Information:			
PI Superseded by this document:			

TO: [X] AREA AGENCY ON AGING DIRECTORS
[]
[]

Subject:
Equal Access to Candidates

Response Due Date:

Introduction

During this Presidential election year, candidates for public elective office, or their representatives, may ask to make appearances at senior facilities or centers. Older New Yorkers should be encouraged to hear the views of all candidates - incumbents and challengers alike - and to participate in the political process by exercising their right to vote. Senior citizen facilities and centers can play an important role in this regard. Nonetheless, facilities and centers should be sensitive to the adverse implications of appearing to favor one candidate over another. Most facilities and centers receive some form of Federal and State funding and must not be seen as supporting one political party or candidate.

It is reminded that in the Standard Assurances, which is attached to the Annual Implementation Plan as "Attachment E", AAA's must "refrain from using funds to advance partisan candidates or effort: however, the AAA shall ensure that candidates have equal access to information and activities regardless of political or party affiliation". (Assurance no. 11(c)) More importantly, in 90-PI-47, dated August 31, 1990, relating to subcontract monitoring, AAA's are required to monitor their subcontractors for "[c]ompliance with prohibitions on using public funds to support sectarian, political and lobbying actions."

The purpose of this document is to provide a more detailed, and comprehensive, explanation of the subject Standard Assurance. The policy set forth herein does not supersede the requirements contained in 90-PI-61 (October 19, 1990). However, since that PI dealt mostly with political activities of State and local government employees, it was decided to issue a separate document on this subject.

-AN EQUAL OPPORTUNITY EMPLOYER-

Program Instruction

A senior citizen facility or center shall not use public funds to advance any partisan candidate or effort.

A senior citizen facility or center shall assure equal access to candidates regardless of policy views or party affiliation. That is, if any senior citizen facility or center permits any legally qualified candidate for any public office to make an appearance at the facility for political purposes, the facility must afford equal opportunities to all other such candidates for that office to appear at the facility. Appearances for political purposes includes, but is not limited to, activities such as making a speech, photo opportunities, and passing out political literature.

The facility is under no legal obligation to allow the use of its **facility/center** by any such candidate. However, if it allows one candidate to appear, it must give other candidates for the same office an equal opportunity to appear.

Questions and Answers

1. Who is a "legally qualified" candidate?

A legally qualified candidate is a person who (a) is on the ballot in a primary election for nominees to run in the general election for public office; or (b) has been nominated by a "party" or an "**independent** party", as such terms are defined in the State Election Law, to run for any public office. For the purposes of this Program Instruction, this definition includes incumbents who are running for re-election.

2. If a facility decides to allow a candidate to make an appearance at the facility, what are its obligations toward the other candidates for the same office?

If the facility allows the appearance of one candidate, it is not obligated to contact or notify the other candidates of such appearance. However, if the other **candidate(s)** requests an opportunity to make a similar appearance, the facility must provide "**equal opportunities**" to the other **candidate(s)**.

It is important to reiterate that this requirement applies only to candidates who are running for the same office.

3. What constitutes "equal opportunities"?

A facility's obligation to provide "equal opportunities" to candidates calls for equal treatment in matters such as the amount of time to be afforded, the hour of the day when each candidate may appear, and the number of appearances.

4. To whom does the principle of "equal opportunities" extend?

"Equal opportunities" does not extend to campaign appearances by family, friends, campaign managers or other supporters. In other words, after an appearance by a candidate, the **facility/center** is not required to provide "equal opportunities" to anyone other than another candidate for the same office. This response, however, should not be construed to mean that a facility cannot invite, or must refuse a request by, a representative of a candidate to present the candidate's views and positions.

PROGRAM INSTRUCTION

memorandum



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

TO: [X] AREA AGENCY ON AGING DIRECTORS [] []
Subject: Hatch Act
Response Due Date:

No: 92-PI-37	Date: 9/8/92
Programs Affected: [] III-B [] III-C-1 [] III-C-2 [] RPE [] SNAP [] CSE [] ELSEP [] HEAP	
Contact Person(s) - Phone Number(s) John Phelan - 518/474-5796	
For Your Information	
PI Superseded by this document:	

This program instruction summarizes Federal and State requirements concerning aging network involvement in political activities.

INTRODUCTION

Under the Federal Older Americans Act (42 U.S.C sec. 3001, et seq.) and Article 19-J of the New York State Executive Law, New York State's aging network is required to help assure that older people have full access to their rights and benefits, including the right to vote and to participate in the public policy making 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 set forth in these laws, as well as restrictions on certain partisan (one-sided) political activity including those imposed by the Federal Hatch Act. General standards, such as the requirement that all activities financed with covered funds performed either by AAA,'s or their sub-contractors must comply with area plans, also apply to network involvement in political activities. Similarly, SOFA grantees that are not Area Agencies must also comply with the terms of their applications and grant awards, including conditions prohibiting improper political activity.

This Program Instruction addresses specific Federal and State requirements applying to political involvement of Area Agencies on Aging, their subcontractors, and all SOFA grantees. Restrictions applicable to non-profit organizations are also described.

FEDERAL LAWS

HATCH ACT

The Federal Hatch Act (5 U.S.C. **sec.** 1501, et seq.) restricts the political activity of an individual employed by a State or local executive agency in connection with a program financed in whole or in part by Federal loans or grants, including Older Americans Act funds. The Hatch Act applies to an officer or **employee** of a State or local agency whose principal employment is in connection with an activity financed in whole or in part of federal loans or grants. It does not apply to employees of private non-profit organizations; however, such organizations, including those that are designated as local Area Agencies, are subject to Federal lobbying restrictions (see "**Federal Anti-Lobbying Laws and Policies**", below).

Accordingly, employees of AAA's, their **governmental** subcontractors and governmental SOFA grantees, are subject to the Hatch Act (if Federal funds are involved) and are prohibited from engaging in certain partisan political activities. These prohibited activities include being a candidate for public office in a partisan election (see below), using official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, and directly or indirectly coercing contributions from subordinates in support of a political party or candidate. Violations of this act could result in an adverse **determination** by the Federal Merit Systems Protection Board requiring either dismissal of the violators or the forfeiture of a portion of Federal assistance equal to two years salary of the violating employees.

Title V Senior Employment Program enrollees working for public agencies are also subject to the Hatch Act's restrictions on partisan political activity, and may not engage in these prohibited political activities.

The Hatch Act also prohibits such State and local government employees to be a candidate for partisan elective office. This restriction does not apply to the governor or lieutenant governor of a state, the **mayor** of a city, the duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system or, an individual holding elective office, if such individual's involvement with the Federally funded program is solely by virtue of that elected office. An individual holding elective office who, during such elective office, undertakes employment in connection with an activity financed in whole or in part with Federal funds cannot run for re-election after assuming such employment.

The Hatch Act **restrictions** apply to State and local employees who are on annual leave, sick leave, leave without pay, administrative leave or furlough.

Individuals employed by governmental Area Agencies and governmental subcontractors and SOFA grantees retain their personal political rights, except for the right to be a candidate in a partisan election; however, any public political involvement of such individuals must be clearly represented as private and unrelated to Area Agency employment.

Attached to **this** PI is a copy of the most recent Federal Government booklet reviewing the provisions of the Hatch Act and related matters.

FEDERAL "ANTI LOBBYING" **LAWS AND POLICIES**

Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

In 1990, the Federal Administration on Aging issued **AOA-PI-90-09** (a copy of which was attached to **SOFA's** 90-PI-61) to inform Administration on Aging grantees of the new lobbying requirements and to request authorized officials to submit Federal certifications regarding lobbying. Note that this requirement also applies to Area Agencies on Aging and their service providers upon receipt of a Federal grant exceeding \$100,000. Also, please note that the required Certification, in paragraph (3), provides that the Federal grantee will include the language of the Certification in the award documents for all subawards and that all subrecipients shall also certify and disclose in the same manner.

Non-profit organizations (including non-governmental **AAAs**, subcontractors and SOFA grantees) are also subject to additional constraints under revisions to the U.S. Office of Management and Budget's Circular A-122, Cost Principles for Non-Profit Organizations. **OMB** Circular 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. An exception exists for "**any** activity specifically authorized by statute to be **undertaken**" with specified Federal or matching funds. Thus, non-profit **AAAs**, subcontractors and SOFA grantees

funds. Thus, non-profit AAAs, subcontractors and SOFA grantees 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.

IRS PROVISIONS

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

STATE LAWS

CIVIL SERVICE LAW

The State Civil Service Law prohibits certain political activities engaged by, or directed at, State and local employees. (Civil Service Law, **sec.** 107) The following is a brief description of the more pertinent provisions:

- No appointment, selection or removal of a civil service employee shall be affected or influenced by political opinions or affiliation;
- No civil service employee is under any obligation to contribute to any political fund or to render any political service; or shall be removed by refusing to do so;
- No civil service employee shall use his or her official authority or influence to coerce political action of any person or to interfere with any election;
- No person shall ask the political affiliation of any civil service employee as a test of fitness for office;
- No state or local officer or employee shall use his or her authority or official influence to compel or induce any other State or local officer or employee to pay any political contribution.

A violation of such laws may result in criminal sanctions

ELECTION LAW

Pursuant to the Election Law, a state or local officer or employee who uses his authority or influence to compel any other state or local officer or employee to pay or promise to pay a political contribution is guilty of a class A misdemeanor. (Election Law, **sec.** 17-158)

The Election Law also states that a state or local officer or employee who uses his or her authority or influence to affect the vote of any other state or local officer or employee is guilty of a felony. (Election Law, sec. 17-158)

MISCELLANEOUS

VOTER REGISTRATION

Area Agencies, their subcontractors, and SOFA grantees 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, voter registration could be made available throughout the Planning and Service Area for homebound or institutionalized elderly. However legal assistance providers may not engage in such voter registration activities.

INFORMATION ABOUT ISSUES AND CANDIDATES

Area Agencies, their subcontractors and SOFA grantees may provide or arrange for the provision of **information** concerning public issues, including elections, referenda, and other ballot issues, consistent with their grant awards and plans.

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. This does not require that all candidates be present at the same time but rather that all candidates be given a genuinely equal opportunity to appear and make their views known. No candidate endorsement or **partisan** advocacy by Area Agencies is permitted. (For more details, see **92-PI-36**)

ACCESS TO POLLS

Area Agencies, their subcontractors and SOFA grantees 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.

AAA Directors who have further questions regarding specific activities should contact SOFA's Counsel's office or, if they are part of county government, the county attorney for advice concerning that particular activity. Subcontractors should contact their AAA or other contracting entity with questions. SOFA grantees should contact the SOFA Counsel's office.

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