

# The Hatch Act of 1939

## Frequently Asked Questions



### What kinds of activities are limited under the Hatch Act?

The Hatch Act of 1939 limits partisan political activities of federal employees and some state and local government employees who work with federally funded programs or whose salaries are fully paid with federal funds. The purposes of the Act are to ensure that the hiring and advancement of federal employees is fair and not based on their political affiliation, to prevent coercion of federal employees in the workplace, and to ensure that federal funds are not used for political activity.

The Hatch Act states that federal employees may not engage in political activity while on duty, in a federal facility, in uniform, or using federal property. **Political activity** is defined as an activity directed to aid in the success or failure of a political party, partisan group, or candidate in a partisan election. 5 C.F.R. § 734.101. Additionally, state and local employees may not:

- 1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or
- 2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value for political purposes; or
- 3) be a candidate in a partisan election if the employee's salary is completely paid with federal grants or loans. 5 U.S.C. § 1502(a).

Certain state employees (e.g. the Governor or Mayor) are not subject to prohibition #3, above. 5 U.S.C. § 1502(c). Furthermore, certain types of nonprofit organizations are treated as state and local agencies and are, therefore, subject to the Hatch Act.

### How do I know if my organization is subject to the Hatch Act?

The Hatch Act applies to nonprofit organizations **only if they are deemed state or local agencies by statute**. Currently, only two statutes – one authorizing the Head Start program and one authorizing the Community Service Block Grant (CSBG) – contain a provision stating that recipient organizations are deemed a state and local agency for purposes of paragraphs (1) and (2) of section 1502 (a) of the Hatch Act. Therefore, any nonprofit organization receiving funds from either of these programs is subject to the Hatch Act. See 42 U.S.C. §§ 9851 and 9918 (b). Additionally, any nonprofit organization that is responsible for the planning, developing, and coordinating of Head Start programs and or CSBG activities is bound by prohibitions (1) and (2) mentioned above. Id.

### I've confirmed that my organization qualifies as a state or local agency under the Hatch Act. What does that mean for me as an individual?

The Hatch Act does not prohibit employees of nonprofit organizations from engaging in advocacy, including lobbying, but all organizational advocacy activities must be

conducted in a nonpartisan manner.

Additionally, the Hatch Act does not prohibit employees from engaging in partisan political activity in their individual capacity on their personal time. When engaging in partisan political activity, individuals should engage outside of business hours, should not use the organization's resources, and should use disclaimers as appropriate.

Lastly, employees who fall under the Hatch Act can run for public office unless their salaries are fully paid using Hatch Act funds. Those employees whose salaries are fully funded by Hatch Act funds are prohibited from being a candidate for public office.

Note: Nonprofit organizations may request an advisory opinion from the Office of Special Counsel (OSC), and it will conduct a full investigation before determining that an employee is subject to the Hatch Act. See Op. Off. Special Counsel (May 14, 2021).

### **Does the Hatch Act limit my organization's ability to engage in advocacy?**

The Hatch Act regulates partisan political activities of federal employees and nonprofit organizations receiving funds from the Head Start and CSBG grants. It does not prohibit nonpartisan advocacy or lobbying. Still, the organization must comply with federal, state, and local lobbying disclosure laws and nonprofit tax law lobbying limits. Additionally, the organization must ensure that it does not use federal or other restricted funds for lobbying purposes. For more information on lobbying limits and definitions, consult Bolder Advocacy's guide entitled "[Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities.](#)"

### **How do I know if an advocacy or lobbying activity is allowed for my nonprofit since we fall under the Hatch Act?**

While the Hatch Act itself limits the political activity of certain organizations and their employees, other rules (e.g. those enforced by the Office of Management and Budget) also apply to the lobbying and election related activities of organizations receiving federal funds. As a result, federal funds may generally not be used to engage in lobbying or electioneering activities, including ballot measure advocacy. Organizations should consult with Counsel to ensure compliance with these rules and to confirm whether other, unrestricted, funds can be used for those purposes.

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