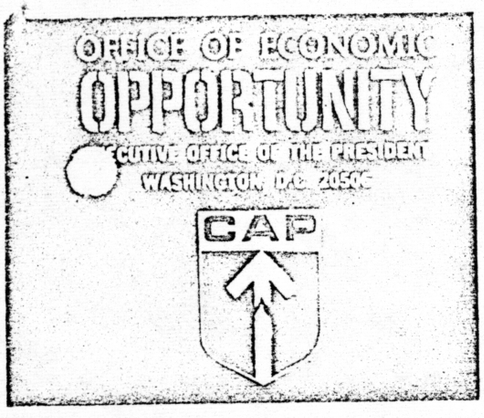
Dr Hector P Garcia Restrictions Political Activities



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REFERENCES: Economic Opportunity Act of 1964, as amended:

Section 213(a)
Section 213(b)
Section 602(n)
Section 603(a)
Section 603(b)

The text of the appropriate parts of these Sections is provided in Appendix A to this Instruction.

APPLICABILITY: Programs which are (1) financially assisted under Titles II or III-B of the Economic Opportunity Act, (2) financially assisted under Title I-D of the Economic Opportunity Act and administered by OEO.

Different sections of this Instruction apply to different categories of grantees. Furthermore, some restrictions apply only to employees or to certain classes of employees, while other restrictions also apply to board members, volunteers, trainees and enrollees. The applicability of the different sections of this Instruction to various classes of programs and persons is presented graphically in Appendix B as well as summarized at the beginning of each section.

DEFINITION: Public agency. For the purposes of this Instruction, a public agency means the executive or legislative branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof.

EFFECTIVE DATE: This Instruction is effective immediately.

1. POLICY

Grantee and delegate agencies must administer OEO-assisted programs in a politically nonpartisan manner, and must avoid actions which can reasonably be construed as intended to favor one political party over another or to influence the outcome of any election for public or party office. The use of program funds, the provision of services and the assignment of personnel must not result in the identification of the program with any partisan political activity or with any nonpartisan political activity which is

designed to further the election or defeat of a candidate for public or party office. In addition, grantee and delegate agencies may not use program funds, the provision of services, or the assignment of personnel in connection with voter registration activity or with transporting voters or potential voters to the polls.

Anti-poverty programs are, in many communities, live political issues and will often include activities which may become the subject of political controversy. Grantee and delegate agencies may, of course, undertake activities dealing with issues related to their basic program responsibilities. In carrying out the basic mission and goals of community action, grantee and delegate agencies may actively engage in campaigns connected with constitutional amendments, referenda, municipal ordinances, law reform and lawful attempts to influence government officials to respond to the grievances of the poor. Grantee and delegate agencies need not avoid such activities merely because partisan officials or candidates for public office may take or have taken positions with respect to the issue. Agency officials must, however, deal with questions which have become a subject of political controversy on their merits and not in terms of whether they are supported or opposed by a particular party or candidate.

Except as provided in this Instruction, employees of grantees and delegate agencies are free to engage in various kinds of political activities during their off-duty hours and in their private capacities. A broad range of participation in nonpartisan elections (e.g. nonpartisan school board elections) is permitted. In addition, a broad range of off-duty partisan activity is permitted for employees of private delegate agencies and private single-purpose grantees. All employees are expected, however, to avoid to the greatest extent possible any identification of their off-duty activities with the OEO-supported program.

2. REQUIREMENT THAT COMMUNITY ACTION AGENCIES ADOPT RULES

Section 213(a) of the Economic Opportunity Act requires each community action agency (CAA) to adopt rules designed to assure that its programs and programs of its delegate agencies are conducted in a manner which is free from any taint of partisan political bias. This requirement will be considered to be met by the agency's adoption of the provisions of this Instruction and by making these rules available to all employees in writing.

If, however, the agency wishes to adopt its own rules it may do so, providing that the provisions of this Instruction are included in those rules and that none of these provisions are contradicted by the agency's additional rules.

3. SUMMARY OF KINDS OF RESTRICTIONS ON POLITICAL ACTIVITIES

Sections 4 and 5 of this Instruction contain categories of restrictions applied to community action programs by the 1967 Amendments to the Economic Opportunity Act and by Chapter 15, Title 5, of the United States Code (formerly known as the Hatch Act).

Section 4 contains restrictions on the use of program funds, the provision of services, and the assignment of agency personnel in a manner which identifies the program with partisan political activity, nonpartisan activity associated with a candidate or faction in an election for public office, voter registration activity, and the transportation of voters to the polls. These restrictions are, in a broad sense, designed to prohibit the use of OEO funds for certain purposes. They apply to personnel of all grantee and delegate agencies, public and private. Insofar as the individual employee is concerned, however, these restrictions deal only with what he does as an employee.

Section 5 includes additional restrictions on the partisan political activities of employees of all community action agencies and of public agencies which are grantees or delegate agencies. These restrictions do not apply to private single-purpose grantees or private delegate agencies. The restrictions cover employees regardless of whether they are on duty at the time they engage in the prohibited activities.

The chart in Appendix B summarizes the applicability of the restrictions of Sections 4 and 5.

4. RESTRICTIONS ON THE USE OF PROGRAM FUNDS, THE PROVISION OF SERVICES AND THE EMPLOYMENT AND ASSIGNMENT OF PERSONNEL

a. Prohibited Political Activity. The following restrictions apply to all employees of grantee and delegate agencies as well as to volunteers, trainees and members of governing or administering boards and advisory committees.* These individuals may not -

(1) Use their official position, authority, or influence with the agency for the purpose of interfering with or affecting the result of an election or a nomination for a party or public office.

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*Restrictions 1 and 2 are imposed on employees of all grantee and delegate agencies except certain educational or research organizations [see Section 5(a)(3)] by Section 603(a) of the Economic Opportunity Act and Chapter 15, Title 5, of the United States Code (formerly known as the Hatch Act). They are extended to employees of other OEO-supported agencies and to board and committee members and volunteers by OEO in order to implement the provisions of Section 603(b) of the Economic Opportunity Act. Restrictions 3-6 implement the provisions of Section 603(b) and Section 213 of the Economic Opportunity Act.

(2) Directly or indirectly coerce, attempt to coerce, command or advise an employee or any other person who is subject to these restrictions to pay, lend, or contribute anything of value or to contribute personal services to a party, committee, organization, agency or person for political purposes.

(3) Use program funds for any partisan political purposes or to influence any election for public or party office.

(4) Permit the use of equipment or premises purchased or leased with program funds for any partisan political purpose or to influence the outcome of any election for public or party office. This restriction applies only to facilities when under the control of the grantee or delegate agency. For example, if an agency leases a facility during certain hours only, the landlord may of course use the facility as he wishes during other hours.

(5) Discriminate, or threaten or promise discrimination, against or in favor of any employee or beneficiary of the program, or any potential employee or beneficiary, because of his political affiliations or beliefs, or require any applicant, employee or beneficiary to disclose his political affiliation.

(6) Offer any person employment, promotion or benefits under the program as a reward for the support or defeat of any political party or candidate for public or party office, or threaten or create disadvantage in employment or deprivation of benefits as a penalty for such support, except that such a person may be deprived of employment or subject to lesser penalties for engaging in activities which are forbidden by this memorandum.

b. Candidates' Meetings. Candidates' meetings, even if all rival candidates for one or more public offices appear, shall not be sponsored or conducted with program funds or facilities. Such meetings are, however, often conducted by neutral and nonpartisan groups such as the League of Women Voters or local civic associations.

c. Voter Registration and Transportation Activity. Employees of grantee and delegate agencies, including volunteers and trainees, may not, while carrying out the program of their agencies, engage in voter registration activity or in transporting voters or prospective voters to the polls.

This restriction applies to the use of program funds, agency facilities or equipment, as well as to the provision of services and the assignment of personnel. All persons may participate in nonpartisan voter registration during their off-duty hours, so long as they avoid identification of such off-duty activities with the OEO-supported program.

A grantee or delegate agency may properly conduct a citizenship education program which includes, as part of the curriculum, information about the mechanics and function of voter registration. Such a program may be valuable in educating the poor as to the legitimate and constructive roles they as citizens may play in local community life and in the American democratic process. However, the program must be informational and not designed to solicit registration. Furthermore, program funds may not be used in any way to aid registration campaigns. Door-to-door solicitations and mass mailing campaigns, for example, may not be undertaken or supported with program funds.

5. STATUTORY RESTRICTIONS ON POLITICAL ACTIVITIES OF CAA EMPLOYEES AND EMPLOYEES OF PUBLIC GRANTEES AND DELEGATE AGENCIES

a. Persons to Whom This Section Applies. The restrictions contained in this Section are imposed by Chapter 15, Title 5 of the U.S. Code and Section 603(a) of the Economic Opportunity Act. They generally apply to all CAA employees and all employees of public grantees and public delegate agencies who perform duties in connection with an OEO-assisted program or any other Federally-assisted program administered by that agency. Employees of private single-purpose agencies or private delegate agencies are not covered by these restrictions.

(1) Volunteers, Trainees and Enrollees.

Volunteer workers are not covered by this Section. Trainees and enrollees shall be deemed employees for the purpose of this Section only if they are engaged in on-the-job training for a position as an employee of a grantee or delegate agency.

(2) Board Members. Board members are not covered by this Section.

(3) Principal Employment Rule. In case of an employee who holds more than one job, whether he is subject to the restrictions of this Section depends on which job is his principal one--that is, if the job on which he spends the majority of his work time and from which he derives the majority of his earned income is covered by this Instruction, then he is covered.

(4) Employees on Leave Still Covered. The statutory restrictions apply to employees even though they are on leave, with or without pay. The prohibitions are lifted only when the employment is terminated. However, if an employee is on terminal leave, he is not subject to the restrictions during the period for which he has received a lump-sum leave payment.

(5) Exemption of Employees of Educational and Research Organizations. An individual is not subject to the statutory restrictions of this part if his principal employment is with an educational institution, establishment, agency, or system supported in whole or in part by State or local public funds or by a recognized religious, philanthropic, or cultural organization. Thus, employees of private schools and colleges supported by such organizations, as well as all public schools and colleges, are exempt from coverage, even if these institutions are grantees or delegate agencies financed under the Economic Opportunity Act. (A Community Action Agency is not considered to be an exempt educational or research institution.)

b. Prohibited Use of Influence or Attempt to Coerce. Persons covered by this Section are prohibited from:

(1) Using their official position, authority or influence with the agency for the purpose of interfering with or affecting the result of an election or a nomination for a party or public office;

(2) Directly or indirectly coercing or attempting to coerce, command or advise an employee or any other person who is subject to these restrictions to pay, lend, or contribute anything of value or to contribute personal services to a party, committee, organization, agency or person for political purposes.

c. Prohibited Activities. Persons covered by this Section are prohibited from taking an active part in partisan political campaigns. Such persons may not engage in partisan political activities, including but not limited to the following:*

(1) Becoming a candidate for nomination or election to a political office or to a party office.

(2) Serving on or for any political committee, party, or other similar organization, or serving as a delegate or alternate to a political caucus or convention.

*Further information on activities prohibited by Chapter 15, Title 5 of the U.S. Code may be obtained from the Office of the General Counsel, United States Civil Service Commission, Washington, D.C. 20415.

(3) Soliciting or handling political contributions.

(4) Soliciting the sale of or selling political fund-raising tickets.

(5) Serving as an officer of a political club, as a member or an officer of any of its committees, or being active in organizing it.

(6) Assisting in preparations for, organizing, or conducting a political meeting or rally. Attendance at a political rally or meeting is permissible.

(7) Engaging in activity at the polls at primary, regular, or special elections such as soliciting votes or passing out literature.

(8) Acting as recorder, checker, watcher, or challenger for any party or candidate in an election.

(9) Writing for publication or publishing any letter or article soliciting votes in favor of or against any candidate or party.

(10) Distributing political campaign literature or material.

(11) Initiating or circulating political petitions, including nomination petitions.

(12) Soliciting support for a candidate or party.

d. Permitted Political Activities. A person covered by this Section may:

(1) Register and vote as he chooses.

(2) Express his opinions on political subjects and candidates.

(3) Be a member of a party or political club, although he may not hold office or otherwise be active in party affairs.

(4) Make voluntary contributions of money to a political campaign or party.

(5) Participate in educational efforts related to issues and to the political process so long as this is done in a politically neutral manner.

(6) Attend political meetings and rallies.

(7) Wear a political badge or button.

(8) Display a political sticker on his private automobile.

(9) Engage in nonpartisan political activity. There is no prohibition on political management or political campaigning in connection with (1) nonpartisan elections, which are defined as those in which none of the candidates represents the Democratic or Republican party or any other party which ran a candidate for President in the preceding presidential election, or (2) questions not specifically identified with a national or state political party, such as constitutional amendments, referenda, approval of municipal ordinances, and similar matters. In addition, if a state election law provides for nonpartisan election for a particular local office or class of local offices, the campaign for that office qualifies for the exception. For example, elections for local school boards and other local boards or offices are frequently run on a nonpartisan basis.

6. ADDITIONAL PRECAUTIONS

As explained in Section 5, employees of all community action agencies and of public delegate and single-purpose agencies are prohibited from engaging in partisan political management or partisan political campaigns while off-duty. However, the Economic Opportunity Act does not prohibit these employees from engaging in off-duty nonpartisan political activities and does not prohibit employees of private delegate and single-purpose agencies from engaging in either partisan or nonpartisan political activities while off-duty. In the spirit of the most recent legislation, however, all employees should avoid activity which will identify their agencies with political campaigns associated with electing candidates to public or party office. Directors and deputy directors of grantee and delegate agencies and neighborhood and outreach workers have the most substantial contacts with the community and are likely to be regarded as spokesmen for their agencies. Therefore, these persons must be particularly careful not to involve or identify the OEO-assisted program with the campaign of any individual for public or party office.

All grantee and delegate agencies must inform their employees about these precautions.

7. ENFORCEMENT

a. Reporting Possible Violations

(1) Hatch Act Violations. When a grantee or delegate agency has reason to believe that an employee has engaged in partisan political activity prohibited by the statutory provisions of Chapter 15, Title 5 of the U.S. Code(Section 4(a)(1) and (2) and Section 5 of this Instruction), it shall report the matter to the United States Civil Service Commission, Office of the General Counsel, Washington, D.C. 20415.

(2) Non-Hatch Act Violations. Information concerning possible violations of other provisions of this Instruction shall be reported either in writing or orally by the grantee or delegate agency to the OEO Regional Office of Inspection or to the OEO Office of Inspection in Washington, D.C.

If the grantee or delegate agency is uncertain as to whether an activity violates the statutory provisions of Chapter 15, Title 5 of the U.S. Code administered by the Civil Service Commission, the information may be submitted to the OEO Office of the General Counsel in Washington, D.C. The OEO General Counsel will refer information concerning possible violations of Chapter 15, Title 5 of the U.S. Code to the Civil Service Commission for consideration where appropriate.

The grantee or delegate agency may in addition make such preliminary inquiry as may be necessary to verify the facts concerning the reported violation and initiate appropriate action to prevent a continuation or recurrence of the prohibited activity.

b. OEO Action to Prevent Continuation or Repetition of Violations

(1) When OEO receives information concerning possible violation of the restrictions of this Instruction it may --

(a) conduct an investigation to ascertain the facts and, in appropriate cases, undertake informal discussions with the grantee or delegate agency concerned in order to agree upon means for preventing continuation or repetition of the violation, and

(b) refer the matter, with or without investigation, to the Office of the General Counsel of the Civil Service Commission for consideration.

(2) If OEO concludes, after discussions with the local agency concerned, that appropriate action will not be taken by the grantee, OEO may then issue an order to the grantee directing it to take such action as may be necessary to prevent continuation or repetition of the violation.

If the grantee fails to comply with such an order issued by OEO, OEO may, on an emergency basis, summarily suspend assistance in whole or in part, or it may proceed to suspend or terminate assistance pursuant to Part 1009 of Chapter X, Title 45 of the Code of Federal Regulations. A grantee whose financial assistance has been summarily suspended under this provision may at any time request informal discussions with OEO officials and present evidence that no further violation is occurring and may also request OEO to hold a full hearing in accordance with the regulations cited above.

In no event shall OEO terminate assistance to an agency without the agency being afforded the right to a full and fair hearing.

c. Enforcement Action by the Civil Service Commission.

OEO may refer any specific information of apparent violation of the non-Hatch Act restrictions set forth in this Instruction to the General Counsel of the Civil Service Commission for investigation and determination. The General Counsel of the Commission may conduct an investigation and inform OEO and the grantee or delegate agency involved of his findings of fact and the corrective action recommended. If the corrective action recommended is directed against an employee of a grantee or delegate agency, the General Counsel of the Commission shall also inform the employee involved of his findings of fact and recommendation. In formulating his findings of fact and the corrective action recommended, the General Counsel of the Commission may request information from and solicit the views of OEO.

Within fifteen days after receipt of the report of the General Counsel of the Commission, the grantee or delegate agency shall either comply fully with the Commission's recommendations or request the Commission to hold a hearing. If the Commission recommends the dismissal or suspension of an employee, he may also request a hearing. The Commission shall give notice of the time and place of the hearing at which the agency or the affected employee is entitled to appear in person, or by or with counsel. The agency or employee and the counsel for the Commission are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

The hearing shall be before an examiner designated by the Commission. Testimony shall be under oath or affirmation and the parties may introduce affidavits and other documentary evidence. Unless the parties agree to a summary of the testimony, the hearing will be reported stenographically. The hearing examiner shall report his findings of facts and recommendations of sanctions to the Director of OEO.

The Director of OEO may reject, modify or affirm the recommendations of the hearing examiner. If he accepts any part of the recommendations, he shall issue an order to the agency directing it to comply with those sanctions he has accepted. If the local agency refuses to comply within five days after receiving this order, the Director may suspend or terminate assistance to the agency pursuant to Part 1009 of Chapter X, Title 45 of the Code of Federal Regulations. However, if the Director of OEO affirms a recommendation of the hearing examiner that assistance to a local agency be suspended or terminated, OEO shall not hold an additional hearing. In such instances, the hearing held before the examiner designated by the Civil Service Commission shall be regarded as satisfying the requirements of Part 1009 of Chapter X, Title 45 of the Code of Federal Regulations.

In any hearing held by OEO pursuant to Part 1009, an issue of fact previously determined by a hearing examiner designated by the Commission shall be deemed conclusively determined and shall not be relitigated.

The sanctions which the General Counsel of the Commission or a Commission-designated hearing examiner may recommend include, but are not limited to, the following:

(a) full or partial termination or suspension of assistance.

(b) changes in the administration of the grantee's or delegate agency's program or activities.

(c) an order to an agency directing the dismissal, suspension, transfer or reprimand of an employee or other person engaged in carrying out the agency's program.

Theodore M. Berry
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