

## Restrictions on Lobbying

December 2022

### COMPILATION OF RESTRICTIONS ON LOBBYING BY AMERICORPS FINANCIAL ASSISTANCE RECIPIENTS

Organizations (“recipients”) that receive grants from or enter into cooperative agreements with AmeriCorps must comply with the federal restrictions on several types of partisan political activities, including “lobbying”.

Such restrictions prohibit recipients from:

- Spending federal funds they receive from AmeriCorps, or matching funds they receive from other sources, to influence an officer or employee of any federal agency or Congressional member/staff regarding federal awards (e.g. contracts, grants or cooperative agreements); and
- Using federal funds they receive from AmeriCorps or matching funds they receive from other sources to influence the introduction, enactment or modification of any federal, state, or local legislation;

Recipients are also required to submit certain required certification and disclosure forms before they can receive any benefit from or enter into any cooperative agreement with AmeriCorps (*See, below*).

To help organizations understand and comply with the foregoing restrictions, AmeriCorps has compiled the following list of statutory and regulatory references which set forth the various limitations and restrictions on lobbying. This list is not exhaustive and is merely a reference tool, not a recitation of all applicable legal principles that might apply in a given situation.

#### The Byrd Amendment

Congress placed lobbying restrictions on recipients of federal funding through the Byrd Amendment to the Department of the Interior Appropriations Act for Fiscal Year 1990 (Pub. L. 101-121, October 23, 1989; and 31 U.S.C. § 1352). AmeriCorps implemented those restrictions on its recipients via a regulation, 45 CFR Part 1230, *New Restrictions on Lobbying*. That regulation, in part, sets forth the following general prohibition:

*No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence<sup>1</sup> 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*

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<sup>1</sup> Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before 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 covered Federal action. 45 CFR § 1230.105(h).



*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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.*<sup>12</sup>

In summary, the foregoing statutory and regulatory provisions preclude the expenditure of federal funds to influence officers or employees of any agency (including AmeriCorps) or Congressional members or staff regarding the award of federal contracts, grants, cooperative agreements, or loans. As a prerequisite to the receipt of any financial assistance from AmeriCorps, recipients will be required to submit or certify to the following:

- [45 CFR Part 1230, Appendix A](#) contains the required certification language for Contracts, Grants, Loans, and Cooperative Agreements, and for Loan Guarantees and Loan Insurance, that each person that requests or receives a Federal contract, grant, or cooperative agreement from CNCS must adhere to.
- [45 CFR Part 1230, Appendix B](#) provides the required SF-LLL for each person to disclose any lobbying activities.

### 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) broaden the Byrd Amendment restrictions. These restrictions limit expenditures by a recipient that are aimed at: influencing the outcomes of elections, establishing or paying for a political party's expenses, or aiding legislative liaison activities. Costs are also unallowable if they are associated with any attempt to influence the introduction of federal or state legislation, or the enactment or modification of any pending federal or state legislation through communication with employees or member of congress or state legislatures, or through preparation, distribution, or use of publicity or propaganda.<sup>3</sup> Exceptions to these prohibited activities include:

- Technical or factual presentations on topics related to the performance of a grant in response to a documented request made by a member of Congress or other legislative body;<sup>3</sup>
- Any lobbying to influence state legislation to directly reduce the cost, or to avoid material impairment of the nonfederal entity's authority to perform the grant;<sup>4</sup>
- Any activity specifically authorized by statute to be undertaken with funds from the federal award;<sup>5</sup> or

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<sup>1</sup> 45 CFR § 1230.100(a).

<sup>2</sup> CFR § 200.450(c)(1).

<sup>3</sup> 2 CFR § 200.450(c)(2)(i).

<sup>4</sup> 2 CFR § 200.450(c)(2)(ii).

<sup>5</sup> 2 CFR § 200.450(c)(2)(iii). <sup>7</sup> 2

CFR § 200.450(c)(2)(iv).



- Nonpartisan analysis, study, or research reports and examinations and discussions of broad social, economic, and information provided upon request by a legislator for technical advice and assistance, as defined by the Internal Revenue Code.<sup>7</sup>

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### **Annual Appropriations Restrictions**

Fiscal Year Appropriations Acts in recent years have specifically provided that:

*No part of any appropriation contained in this Act ... shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.*<sup>6</sup>

The final section of these annual appropriations provisions makes clear that restrictions on beneficiaries on the expenditure of federal funds and on expenses charged by grant or contract recipients applies to lobbying for certain specified subjects.

*The prohibitions in [the two subsections above] shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.*<sup>7</sup>

In addition to the foregoing generally applicable provisions, there are provisions specific to AmeriCorps' programs that also restrict lobbying.

### **AmeriCorps- Specific Requirements**

Section 132A of the National and Community Service Act of 1990 (NCSA) (42 U.S.C. § 12584a) provides that “[a]n approved national service position ... may not be used for ... [a]ttempting to influence legislation ....” (Emphasis added.) AmeriCorps’ regulations make this restriction applicable to AmeriCorps members and program staff “[w]hile charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by [CNCS].” Section 403(c) of the Domestic Volunteer Service Act of 1973 (DVSA) (42 U.S.C. § 5043), which applies to AmeriCorps’ Senior Corps and VISTA programs, provides that—

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<sup>6</sup> See e.g. Pub. L. 116-260, Division H, Title V, Sec. 503(a) (Dec. 27, 2020); Pub. L. 114-113, Division H, Title V, Sec. 503(a), (Dec. 18, 2015); Pub. L. 113-235, Division G, Title V, Sec. 503(a), (Dec. 16, 2014); Pub. L. 113-76, Division H, Title V, Sec. 503(a), (Jan.17, 2014); Pub. L. 113-6, (Mar. 26, 2013); Pub. L. 112-74, Division F, Title V, Sec. 503(a), (Dec. 23, 2011).

<sup>7</sup> See e.g. Pub. L. 116-260, Division H, Title V, Sec. 503(c) (Dec. 27, 2020); Pub. L. 114-113, Division H, Title V, Sec. 503(c), (Dec. 18, 2015); Pub. L. 113-235, Division G, Title V, Sec. 503(c), (Dec.16, 2014); Pub. L. 11376, Division H, Title V, Sec. 503(c), (Jan. 17, 2014); Pub. L. 113-6, (Mar. 26, 2013); Pub. L. 112-74, Division F, Title V, Sec. 503(c), (Dec. 23, 2011).



No funds appropriated to carry out this Act shall be used by any program assisted under this Act in any activity for the purpose of influencing the passage or defeat of legislation ....<sup>8</sup>

AmeriCorps has, by regulation<sup>11</sup>, stated that under the prohibition in section 403(c) of the DVSA a Senior Corps Volunteer member may not—

- Testify or appear before any legislative body in regard to proposed or pending legislation;

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- Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;
  - Draft legislation;
  - Prepare legislative testimony;
  - Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;
  - Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;
  - Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation; or
  - Engage in any activities for the purpose of influencing executive action in approving or vetoing legislation.

AmeriCorps has also, by regulation<sup>9</sup>, stated that under the prohibition in section 403(c) of the DVSA that VISTA sponsors and subrecipients may not—

- assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.
- use any AmeriCorps financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

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<sup>8</sup> While Section 403(c) has two exceptions that would appear to permit some lobbying activity by Senior Corps or VISTA participants using grant funds, those exceptions are annually overridden by the annual appropriations restrictions that prevent lobbying by non-profit grantees, as discussed above. <sup>11</sup> 45 CFR § 1226.8(d).

<sup>9</sup> 45 CFR § 2556.780.