

**Legal Issues Unique to CAAs**  
**Part 1**

Applications

Grants

CAPLAW Attorney Network Webinar  
Wednesday, September 20, 2017

PRESENTED BY:  
Eleanor Evans, Esq.  
Allison Ma'luf, Esq.  
(617) 357-6915

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## Agenda

### Part 1:

- Federal grant vs. contract
- Type of grant
- CSBG basics
- Board composition
- Bylaws provisions
- Personnel Policies
- Lobbying & political activity

### Part 2:

- Uniform Guidance basics
- Disallowances
- Attorney fees
- Contract Provisions
- Mergers and shared services
- Garnishment
- Bankruptcy

# Are CAAs Federal Contractors?

## FEDERAL GRANT VS. CONTRACT

- **Answer:** CAAs, generally, are federal grantees, not contractors
- **Federal gov't distinguishes between:**
  - Vendors from which it buys products or services to be used by the gov't, i.e., contractors **AND**
  - Entities to which the gov't provides funds to benefit the public at large, i.e., grants or federal assistance
- **Grant terms:** "financial assistance award", "notice of grant award", "grant award", "grant agreement"



- **CAPLAW Articles Archive,** <http://caplaw.org/resources/caplawArticles.html>

### Are CAAs Federal Contractors and Do They Need Affirmative Action Plans?

September 2007, CAPLAW Update  
By Robert Mennig, CAPLAW

Some Community Action Agencies (CAAs) have received notification from the U.S. Department of Labor (DOL) that the Office of Federal Contract Compliance Programs (OFCCP) will conduct a review of their compliance with a number of laws applicable to federal contractors, including requirements for affirmative action plans. Other CAAs have received a DOL "Equal Opportunity Survey" of federal contractors. Before responding to these communications, CAAs should review all of their grants and contracts to determine whether they are in fact "federal contractors" subject to OFCCP jurisdiction. In most cases, CAAs are not federal contractors and a letter to that effect should be sent to DOL.

In addition, state contracts for Community Services Block Grant (CSBG), Low Income Home Energy Assistance Program (LIHEAP), Weatherization and other "pass-through" grants sometimes include language that requires CAAs to comply with the affirmative action rules that apply to federal contractors. If a CAA is not a federal contractor, it should explain this fact to the state and seek to have the language removed from its contract. Keep in mind, though, that CAAs may be required to comply with state laws, regulations and executive orders on affirmative action, including a state requirement that they have an affirmative action plan.

As a general rule, because CAAs are federal grantees, rather than federal contractors, they are not required to comply with rules imposed on federal contractors, such as Executive Order 11246<sup>1</sup> and 41 Code of Federal Regulations (C.F.R.) Part 60 (which

## Who Awards Federal Funds to a CAA?

### TYPE OF GRANT

- **Answer:** Depends on type of grant a CAA receives

#### Discretionary, e.g., Head Start – Federal Agency

- Grantor agency **may exercise judgment** in selecting grantee and/or setting award criteria and funding levels
- Often made through a competitive grant process


#### Block, e.g., CSBG, LIHEAP – State Agency

- **Block grants** are awarded to one source and distributed to multiple subrecipient for various similar purposes
- Distribution under block grants often based on a **formula** set by Congress or established by the federal agency


## What Rules Apply to Federal Grants?

### TYPE OF GRANT





- **Chapter One: General Overview of Federal Grant Law,**  
<http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html>




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## What Makes a CAA a CAA?

### CSBG BASICS

- **Answer:** An entity must receive Community Services Block Grant (CSBG), 42 U.S.C. § 9901, et al. funding to be a community action agency (CAA)
- **Approximately 1,000 CAAs across the U.S.**
  - Provide services to over 15 million people
  - Serve 99% of nation's counties
- **CSBG "eligible entities"**
  - **Nonprofit/private CAAs:** Majority are nonprofit organizations (42 U.S.C. § 9909(a), (b))
  - **Public CAAs:** Remainder are arms of city or county government (42 U.S.C. § 9909(c))



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## Who Facilitates a CAA's CSBG Funding?

### CSBG BASICS

- **Answer:** CSBG is facilitated by both the:
  - **Federal agency**
    - Office of Community Services (OCS), within the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS)
  - **State agency**
    - Governor appoints a state office to oversee CSBG program
    - State primarily responsible for interpreting governing statutory provisions, 45 C.F.R. § 96.50(e)

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▪ **CAPLAW Interactive Training Modules,**  
<http://www.caplaw.org/resources/training-modules.html>

**Introduction to CSBG**  
 CAPLAW TRAINING MODULE

**Purely for Public CAAs**  
 CAPLAW TRAINING MODULE

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CAPLAW Interactive Training Modules

CAPLAW's newest learning tool, interactive training modules, enable CAA staff and boards to learn at their leisure or in a group learning session, such as a train-the-trainer. They are continuously developing resources of information concerning nonprosecutive chapters and updates to help your knowledge on the information you just learned. Please note, the modules may take several minutes to download.

Introduction to Procurement for Community Action Agencies

Introducing CAPLAW's new interactive training module, Introduction to Procurement for CAAs! The module contains 12 chapters on topics ranging from the guiding principles of procurement to creating your own procurement policy and procedures.

Launch, view and download

Purely for Public CAAs Training Module

This module contains 11 chapters on topics relevant specifically for public CAAs. Topics range from governing law to the separate board to monitoring and managing resources.

Launch, view and download

Introduction to CSBG Training Module

This module contains 10 chapters in 4 training modules and scenarios.

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CAPLAW Tools and Resources

- CAPLAW Model Charters
- CAPLAW Guidelines
- CAPLAW Self Assessment Tools
- Resources by State

Resources by Topic

- ACF
- Community Action Network
- Community Services Block Grant (CSBG)
- Child Abuse
- Employment Law
- Financial Statements
- Governance
- Health Care
- Health Care Reform
- Lobbying and Political Activity
- Open Records and Public Records

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CSBG Organizational Standards

Click on the Category and Standard number to view the Standard and available resources. The national Community Action Partnership has also developed Technical Assistance Guides and webinars which provide compliance information for all the Standards in a Category. These Guides are not included in the resources listed below for each Standard but may be accessed via the Partnership's website.

**1 CONSUMER INPUT AND INVOLVEMENT**  
**2 COMMUNITY ENGAGEMENT**  
**3 COMMUNITY ASSESSMENT**  
**4 ORGANIZATIONAL LEADERSHIP**  
**5 BOARD GOVERNANCE**  
**6 STRATEGIC PLANNING**  
**7 HUMAN RESOURCE MANAGEMENT**  
**8 FINANCIAL OPERATIONS AND OVERSIGHT**

Standard 1.1  
 Standard 1.2  
 Standard 1.3

**Private**  
 The organization has a systematic approach for collecting, analyzing, and reporting customer satisfaction data to the governing board.

**Public**  
 The department has a systematic approach for collecting, analyzing, and reporting customer satisfaction data to the Incumbent board/advisory body, which may be met through broader local government processes.

**Resources**  
 CAPLAW Resource:  
 • [Tools for The Sector CAAs](#). This six-section Tool is intended to assist boards and management in their collaborative efforts to build well-governed and effective CAAs. Section 1 Making Board Meetings Matter of this Tool addresses the structure of board meetings and provides some guidance as to the content and timing of both financial and programmatic reports to the board.

**CAPLAW Events**

Did you miss a webinar in the Essential Governance Policies Series? View all three webinars on demand in the webinar archives!  
[View the Archives](#)

**CAPLAW Tools and Resources**

- [CAPLAW Model Policies](#)
- [CAPLAW Publications](#)
- [CAPLAW Self-Assessment Tools](#)
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Secure | https://www.communityactionpartnership.com/menu/organizational-standards.html

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**Technical Assistance Guides and Webinars**

**Category 1 - Consumer Input and Involvement**

- To download the toolkit for Private CAAs, please [click here](#)
- To download the toolkit for Public CAAs, please [click here](#)
- To view a recording of the webinar, please [click here](#)
- To download the slides from the webinar, please [click here](#)
- To download the slides from the Organizational Standards 2.0 Webinar, please [click here \(NEW\)](#)
- To view a recording of the Organizational Standards 2.0 webinar, please [click here \(NEW\)](#)

**Category 2 - Community Engagement**

- To download the toolkit for Private CAAs, please [click here \(REVISED 4/2016\)](#)
- To download the toolkit for Public CAAs, please [click here](#)
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**Category 3 - Community Assessment**

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**Category 4 - Organizational Leadership**

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COE DEVELOPED CSBG ORGANIZATIONAL STANDARDS

**Category 1  
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1140 Connecticut Avenue, NW, Suite 1210  
Washington, DC 20036  
202.265.5548 | Fax 202.265.5049  
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## Why is CSBG Funding Important?

### CSBG BASICS

- **Answer:** CSBG usually not a CAA's largest source of funding, but important because:
  - Flexible use of funds: (42 U.S.C. § 9901)
    - Based on local community needs
    - Supports and enhances a CAA's other anti-poverty programs and links them together
    - **OCS Information Memorandum 37**  
<https://www.acf.hhs.gov/ocs/resource/im-no-37-definition-and-allowability-of-direct-and-administrative-cost>







**COMMUNITY SERVICES BLOCK GRANT**

Training Tools for NONPROFIT BOARDS



**COMMUNITY SERVICES BLOCK GRANT**

Training Tools for PUBLIC CAA BOARDS

**GOVERNANCE**

Tripartite Board Composition and Selection



Community Action Program Legal Services, Inc.

**GOVERNANCE**

Tripartite Board Composition and Selection



Community Action Program Legal Services, Inc.



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## Raising the Low-Income Voice

Case Studies in Democratic Selection Procedures

**INTRODUCTION**

Since the inception of the Economic Opportunity Act, a fundamental goal of Community Action has been to provide low income individuals with a voice in the administration of its poverty alleviating programs. With the Community Service Block Grant's (CSBG) call to achieve "maximum participation" of the low income community in the development, planning, implementation, and evaluation of CSBG funded programs, a critical venue for the low income community's participation is through their representation on the tripartite board.

Despite the importance placed on maximum participation of the low income community, there is relatively little federal law that explains what this means in the context of democratic selection procedures. The federal CSBG Act requires that "(i) not fewer than 1/3 of the members [of the board] are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and (ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community... resides in the neighborhood represented by the member..."




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The only further federal guidance comes in the Information Memorandum (IM 82) from the Office of Community Services (OCS). This nonbinding guidance advises Community Action Agencies (CAAs) to "ensure that board members representing low-income individuals and families... have been selected on the basis of some form of democratic procedure either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group, or an advisory board/governing council to another low-income service provider." IM 82 advises CAAs to ensure democratic selection procedures "directly through election [or] public forum," but if that is not possible, it lists a number of alternatives. These case studies are focused on the "direct" democratic procedures. If a CAA determines that direct democratic procedures are not possible, it will likely be able to comply with the law by creating what may be called "micro" democratic selection procedures, whereby the CAA asks another entity comprised primarily of individuals elected from the low-income community (e.g., a tenants association from a local low income housing development) to select someone from their organization to sit on the CAA's board.

While it is clear that CAAs must establish some kind of democratic selection procedure, it is not clear from the federal law what those procedures should or may look like. Given this, it may come as no surprise that one of the more common questions asked of CAPLAW is, "How do we conduct a democratic selection process?" Therefore, we have created these case studies to help the Community Action network answer this question by learning from their peers.

- CAPLAW Democratic Selection Procedures Case Studies, <http://caplaw.org/resources/PublicationDocuments/raisingthelowincomevoice.html>



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## Why is Board Structure Challenging?

### BOARD COMPOSITION

- **Answer:** Other federal funding sources impose board composition requirements, for example:
  - **Head Start funding requires** (42 U.S.C. § 9837(c)(1)(b)):
    - Licensed attorney familiar with board issues
    - Early child hood education expert
    - Fiscal management or accounting expert
    - Reflect community served and include current/former HS parents
  - **HUD Community Housing Development Organizations (CHDO), funding requires** (24 C.F.R. § 92.2):
    - At least 1/3 low-income community representatives
    - No more than 1/3 public officials (broad definition)
    - Remainder unrestricted

## Does CAA Designation Affect Bylaws?

### BYLAWS PROVISIONS

- **Answer:** yes, a handful of bylaws provisions are potentially affected by CAA-specific requirements, such as:
  - Board composition (42 U.S.C. § 9910)
  - Petition for representation (42 U.S.C. § 9908(b)(10))
  - Board size, terms and terms limits may be addressed by state CSBG laws and policies
  - Meeting requirements such as open meeting/sunshine laws, if applicable
- CSBG Org. Standards require attorney review of bylaws w/in past 5 yrs (*Stand. 5.3 (Nonprofit CAAs)*)

## How do Sunshine Laws Apply to CAAs?

### BYLAWS PROVISIONS

- **Answer:** sunshine/open meetings laws (OMLs) apply to public CAAs as divisions/depts of a local gov't; however, the application of OMLs to nonprofit CAAs varies by state and may apply for reasons such as:
  - OML applies to entities that receive a certain % of public funds;
  - OML specifically applies to CAAs;
  - Attorney general or state office charged with enforcing OML interprets it as applicable to CAAs via published opinions; or
  - State CSBG laws require all CAAs to comply with OML

## CAPLAW <sup>BYLAWS</sup> Toolkit

Community Action Program Legal Services, Inc. 2008 Edition

### The Rules CAAs Live By

By Joel L. Kuleva, Esq. and Eleanor A. Evans, Esq. © 2010 Community Action Program Legal Services, Inc.

This toolkit is intended to guide Community Action Agencies (CAAs) in understanding and revising their meeting bylaws and articles of incorporation. It is written primarily for private, nonprofit CAAs, however many of the principles discussed can also apply to public CAAs. Public CAAs should keep in mind, however, that they are not governed by the state nonprofit corporation laws discussed in this toolkit but instead by state laws governing cities and counties.



An organization's bylaws should be treated as the operating manual for its board of directors. The bylaws set forth the everyday rules by which the organization is governed. Well-drafted bylaws should clearly set forth the manner in which the board of directors is selected, meets, votes, and delegates its authority to others.

In order to keep its organization as a CAA and to receive Community Services Block Grant (CSBG) funding, a CAA must comply with the requirements of the federal CSBG Act, which requires that the organization be governed by a tripartite board. Because of the tripartite board structure required by the CSBG Act, CAAs must include a number of provisions in their bylaws not found in a typical nonprofit's bylaws.

When drafting or revising their bylaws, CAAs should be sure to review the CSBG Act's tripartite board requirements. (To view

the revised version of the CSBG Act visit the "Revisions" page on [www.caplaws.org](http://www.caplaws.org) and look under "Community Services Block Grant (CSBG) Revisions", see 42 U.S. Code section 9910 for the tripartite board requirements that apply to CAAs.) In addition, CAAs should check their state's CSBG law, regulations or other guidance issued by the state CSBG office, as these authorities often require CAAs to include certain provisions in their bylaws.

In March of 2007, the federal Office of Community Services (OCS) issued Informative Memorandum No. 82 (IM 82) to provide OCS's interpretation of some of the CSBG Act's board requirements and recommendations on how CAAs can meet those requirements. Throughout this toolkit, we will point out OCS's recommendations as they are pertinent to the subjects being reviewed. (For a copy of IM 82, visit the

"Revisions" page on [www.caplaws.org](http://www.caplaws.org) and look under "Community Services Block Grant (CSBG) Revisions" for a listing of OCS IMs, including IM 82.)

Now that IM 82 is not law or binding authority for CAAs or the state CSBG offices, some of its recommendations may conflict with state laws that apply to a specific CAA. Each state has its own statutes that apply to nonprofit organizations, and these can vary from state to state. Thus, it is important for each CAA to clearly evaluate the special rules that apply to it to ensure that its bylaws comply with both federal and state law requirements.

Joel L. Kuleva, Esq. is a partner in the Montreal, Missouri office of Crowley Fleck P.L.P.C. Mr. Kuleva's practice focuses on consulting nonprofit organizations, including Community Action Agencies, about the complicated interplay among the different federal and state agencies that regulate the activities of these organizations. Mr. Kuleva may be reached by phone at (405) 523-5000 or by e-mail at [jkuleva@crowleyfleck.com](mailto:jkuleva@crowleyfleck.com).

Eleanor A. Evans, Esq. is CAPLAW's deputy director and senior counsel. Ms. Evans may be reached by phone at (617) 357-6915 or by email at [eevans@caplaw.org](mailto:eevans@caplaw.org).

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- **CAPLAW's Bylaws Toolkit,**  
<http://www.caplaws.org/resources/publications.html>



■ **Tips for Attorneys Reviewing CAA Bylaws,**  
<http://www.caplaw.org/resources/networks/attorney-network.html>

**Top Ten Tips For Attorneys Reviewing CAA Bylaws**  
 Thursday, September 22, 2016  
 PRESENTED BY:  
 Eleanor Evans, Esq.  
 Christopher B. Logue, Esq.  
[eevans@caplaw.org](mailto:eevans@caplaw.org)  
[christopher.logue@caplaw.org](mailto:christopher.logue@caplaw.org)

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## Are Personnel Policies Affected by CSBG?

### PERSONNEL POLICIES

- **Answer:** yes, Category 7 of the CSBG Org Standards (now incorporated in a state's CSBG laws/policies) require certain actions be taken w/r to HR management, such as:
  - **Stand. 7.1**, written personnel policies **reviewed by an attorney** and approved by board **w/in past 5 yrs**
  - **Stand. 7.2**, employee handbook available to all staff who are notified of any changes
  - **Stand. 7.3**, written job descriptions for all positions updated w/in past 5 yrs
  - **Stand. 7.4, 7.5**, board evaluates and sets ED compensation annually
  - **Stand. 7.6**, policy for regular written employee evaluations by supervisors
  - **Stand. 7.7**, board approved whistleblower policy
  - **Stand. 7.8, 7.9**, new employee orientation w/in 60 days of hire and ongoing training for staff either conducted or made available

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**Category 7 Human Resource Management**

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202.265.7546 | Fax 202.265.5048  
WWW.COMMUNITYACTIONPARTNERSHIP.COM

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**ATTORNEY NETWORK**

The CAPLAW Attorney Network connects attorneys from across the country in dealing with Community Action Agency legal issues, creating legal professionals working with CAAs to share information, provide informal peer-to-peer assistance, and benefit from other legal experts' input.

Join the Attorney Network

If you are an attorney and interested in learning more about participating in the CAPLAW Attorney Network, go [Attorney Network, results form](#)

**Network Webinars & Conference Calls**

Legal Issues Unique to CAAs – Two Part Webinar Series

Presented: CAPLAW Attorney  
Former Webinar  
Part One: Wednesday, September 20, 2017, 1:00-2:00pm ET  
Part Two: Thursday, September 21, 2017, 1:00-2:00pm ET

Working with Community Action Agencies (CAAs) on legal matters can sometimes be challenging for outside counsel of these grants that CAAs receive requires compliance with layers of requirements that can make one's needs more involved and complex. In this two-part webinar series, we pose questions and provide answers to attorneys working with CAAs on some of the key legal requirements that impact the way CAAs operate. Rather than simply go into any one issue, we will help CAA attorneys spot a variety of CAA legal issues and identify CAPLAW attorneys they refer to when working with CAAs on specific matters. The webinar will cover topics such as the contracts, board composition, board procedures, issues of joint governing use of federal funds, cost allocation and recommended contract provisions, mergers and shared services, and more.

**CASNER EDWARDS**

Working With Personnel Policies and Procedures for CAAs

CAPLAW Attorney Network Webinar  
June 8, 2016  
Anita Lichtblau, Esq.  
Casner & Edwards  
[lichtblau@casneredwards.com](mailto:lichtblau@casneredwards.com)  
617.426.5900 x 362  
[www.casneredwards.com](http://www.casneredwards.com)

**CAPLAW**

- Working with Personnel Policies and Procedures for CAAs, <http://www.caplaw.org/resources/networks/attorney-network.html>

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# Are Lobbying Rules Different for CAAs?

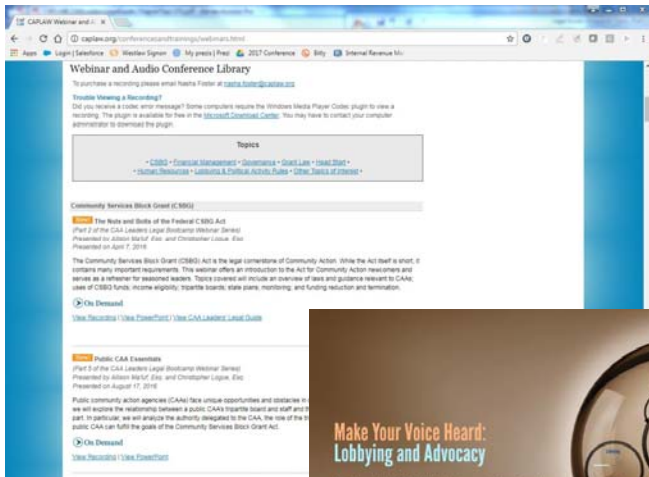
## LOBBYING & POLITICAL ACTIVITY

- **Answer:** yes, in addition to IRS rules applicable to tax-exempt nonprofits (i.e., nonprofit CAAs) and local gov't rules applicable to gov't entities (i.e., public CAAs), **CAAs generally may not use federal funds for lobbying:**
  - Anti-Lobbying Act may apply to CAA's federal grant funds (18 U.S.C. § 1918)
  - Annual federal appropriation acts are broad; may include state and local regulatory or administrative action
  - Uniform Guidance specifically prohibits use of funds for lobbying, including costs of membership in orgs whose primary purpose is lobbying are unallowable (Uniform Guidance 2 C.F.R. § § 200.\_\_\_\_, 200.454)


### CAA Leaders' LEGAL GUIDE


A publication by CAPLAW and the Community Action Partnership

- **Chapter One: General Overview of Federal Grant Law and Chapter Two: Community Services Block Grant Act,** <http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html>



- **Make Your Voice Heard: Lobbying and Advocacy**, <http://www.caplaw.org/conferencesandtrainings/webinars.html#lobbying>






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## Are Political Activity Rules Different for CAAs?

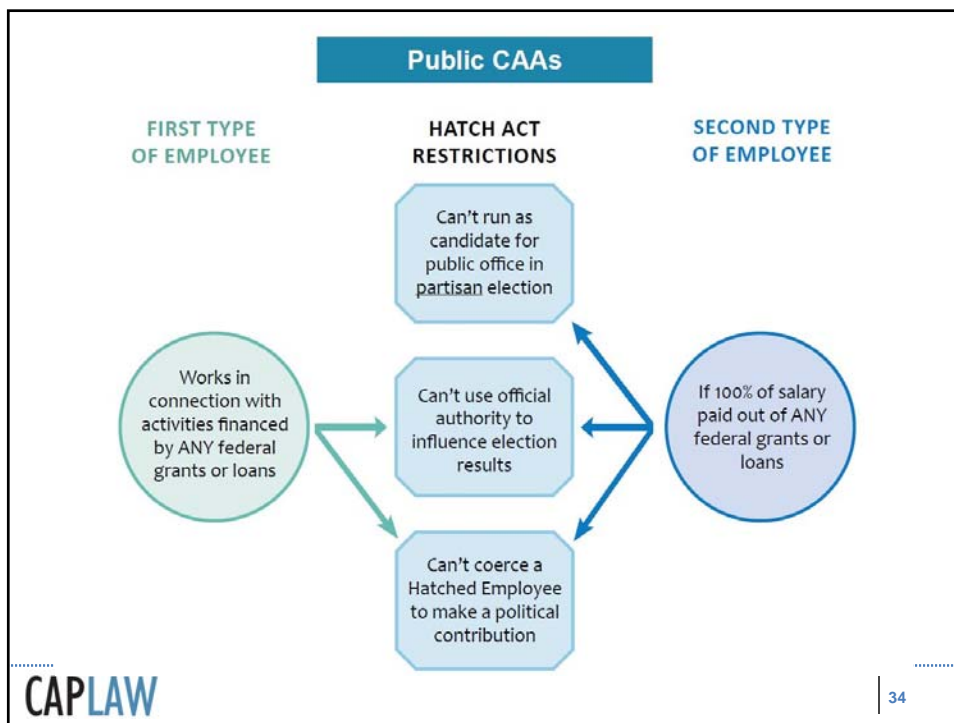
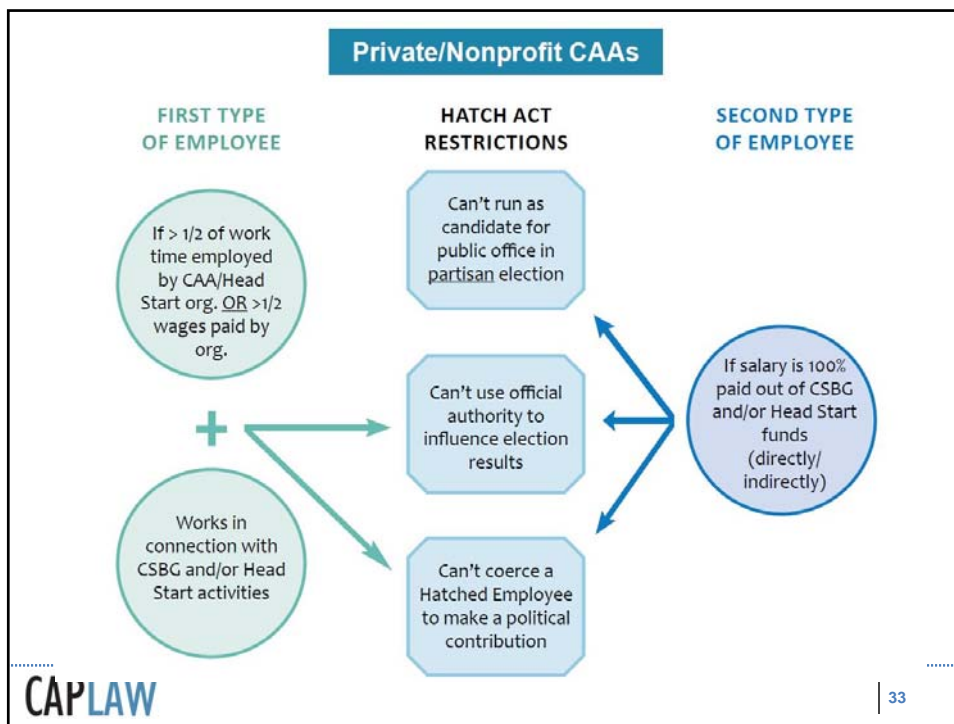
### LOBBYING & POLITICAL ACTIVITY

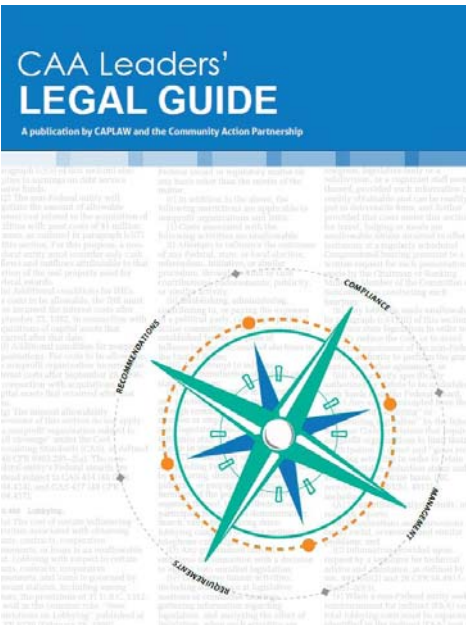
- **Answer:** yes, in addition to IRS rules applicable to tax-exempt nonprofits (i.e., nonprofit CAAs) and local gov't rules applicable to gov't entities (i.e., public CAAs), all CAAs must comply with the following federal grant rules:
  - Uniform Guidance **prohibits** use of federal funds for influencing the outcomes of elections, referenda or initiatives or contributing to political parties, campaigns or PACs (2 C.F.R. § 200.450(c)(ii))
  - Federal CSBG Act (42 U.S.C. § 9918(b)(1),(2))
    - **Prohibits** use of CSBG funds to provide services or use employees in a manner that **identifies** programs with any partisan or nonpartisan political activity, voter registration activities or transportation to the polls or similar activities
    - **Requires** compliance with the **Hatch Act**



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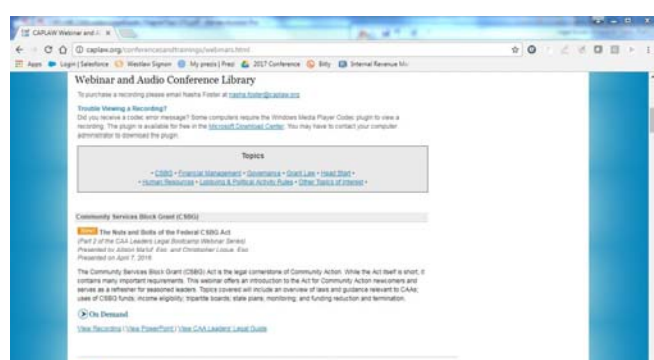


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- Chapter One: General Overview of Federal Grant Law and Chapter Two: Community Services Block Grant Act, <http://caplaw.org/resources/PublicationDocuments/CAALeadersLegalGuide.html>

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- Public CAA Essentials
- Playing by the Rules: Political Activity

**Community Services Block Grant (CSBG)**

**Public CAA Essentials**

**Playing by the Rules: Political Activity**

- Playing by the Rules: Political Activity, <http://www.caplaw.org/conferencesandtrainings/webinars.html#lobbying>

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*This training is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0441-03.*

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