

such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

**(C) Deadline for decision**

A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

**(D) Cost**

**(i) In general**

Except as provided in clause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

**(ii) Exception**

If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

**(5) Proposed placement**

If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this subchapter, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

**(6) Remedies**

Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this subchapter;

(B) termination of such payments;

(C) prohibition of the placement described in paragraph (5);

(D) in a case in which the grievance is filed by an individual applicant or participant—

(i) the applicant's selection or the participant's reinstatement, as the case may be; and

(ii) other changes in the terms and conditions of service applicable to the individual; and

(E) in a case in which the grievance involves a violation of subsection (a) or (b) of section 12637 of this title and the employer of the displaced employee is the recipient of assistance under this subchapter—

(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

(ii) payment of lost wages and benefits of the displaced employee;

(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 12637 of this title or to make the displaced employee whole.

**(7) Enforcement**

Suits to enforce arbitration awards under this section may be brought in any district

court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

(Pub. L. 101-610, title I, §176, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103-82, title I, §116, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 863, 918; Pub. L. 111-13, title I, §1604, Apr. 21, 2009, 123 Stat. 1529.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

2009—Subsec. (a)(2)(A). Pub. L. 111-13, §1604(1), substituted "1 or more periods of 30 days not to exceed a total of 90 days" for "30 days".

Subsec. (f)(1). Pub. L. 111-13, §1604(2)(A), substituted "An entity" for "A State or local applicant".

Subsec. (f)(6)(D), (E). Pub. L. 111-13, §1604(2)(B), added subpar. (D) and redesignated former subpar. (D) as (E).

1993—Subsec. (a)(1). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in two places.

Pub. L. 103-82, §116(a)(1), inserted " , or revoke the designation of positions, related to the grant or contract, as approved national service positions," after "assistance under this subchapter".

Subsec. (a)(2). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 103-82, §116(a)(2), inserted "or revoked" after "terminated".

Subsec. (e). Pub. L. 103-82, §116(b), inserted before period at end " , other than assistance provided pursuant to this chapter".

Subsec. (f). Pub. L. 103-82, §116(c), amended subsec. (f) generally, substituting pars. (1) to (6) for former pars. (1) to (6) relating to same subjects and adding par. (7).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-13 effective Oct. 1, 2009, see section 6101(a) of Pub. L. 111-13, set out as a note under section 4950 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 116 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

**§ 12637. Nonduplication and nondisplacement**

**(a) Nonduplication**

**(1) In general**

Assistance provided under the national service laws shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

**(2) Private nonprofit entity**

Assistance made available under the national service laws shall not be provided to a

private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) are met.

**(b) Nondisplacement**

**(1) In general**

An employer shall not displace an employee, position, or volunteer (other than a participant under the national service laws), including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under the national service laws.

**(2) Service opportunities**

A service opportunity shall not be created under the national service laws that will infringe in any manner on the promotional opportunity of an employed individual.

**(3) Limitation on services**

**(A) Duplication of services**

A participant in a program receiving assistance under the national service laws shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

**(B) Supplantation of hiring**

A participant in any program receiving assistance under the national service laws shall not perform any services or duties, or engage in activities, that—

- (i) will supplant the hiring of employed workers; or
- (ii) are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

**(C) Duties formerly performed by another employee**

A participant in any program receiving assistance under the national service laws shall not perform services or duties that have been performed by or were assigned to any—

- (i) presently employed worker;
- (ii) employee who recently resigned or was discharged;
- (iii) employee who—
  - (I) is subject to a reduction in force; or
  - (II) has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
- (iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
- (v) employee who is on strike or who is being locked out.

**(c) Labor market information**

The Secretary of Labor shall make available to the Corporation and to any program agency under this subchapter such labor market information as is appropriate for use in carrying out the purposes of this subchapter.

**(d) Treatment of benefits**

Allowances, earnings, and payments to individuals participating in programs that receive assistance under this subchapter shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

**(e) Standards of conduct**

Programs that receive assistance under this subchapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

**(f) Parental involvement**

**(1) In general**

Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

**(2) Parental permission**

Programs that receive assistance under the national service laws shall, before transporting minor children, provide the children's parents with the reason for the transportation and obtain the parents' written permission for such transportation, consistent with State law.

(Pub. L. 101-610, title I, §177, Nov. 16, 1990, 104 Stat. 3163; Pub. L. 103-82, title I, §117, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 864, 918; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427; Pub. L. 111-13, title I, §1605, Apr. 21, 2009, 123 Stat. 1530.)

**Editorial Notes**

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2009—Subsec. (a)(1), (2). Pub. L. 111-13, §1605(1), substituted “under the national service laws” for “under this subchapter”.

Subsec. (b)(1). Pub. L. 111-13, §1605(1), (2), substituted “employee, position, or volunteer (other than a participant under the national service laws)” for “employee or position” and “under the national service laws” for “under this subchapter”.

Subsec. (b)(2), (3). Pub. L. 111-13, §1605(1), substituted “under the national service laws” for “under this subchapter” wherever appearing.

Subsec. (f). Pub. L. 111-13, §1605(3), added subsec. (f). 1998—Subsec. (d). Pub. L. 105-277 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Section 142(b) of the Job Training Partnership Act shall apply to the projects conducted under this subchapter as such projects were conducted under the Job Training Partnership Act.”

1993—Subsec. (b)(3)(B). Pub. L. 103-82, §117(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “A participant in any program receiving assistance under this subchapter shall not perform any services or duties or engage in

activities that will supplant the hiring of employed workers.”

Subsec. (b)(3)(C)(iii). Pub. L. 103-82, §117(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “employee who is subject to a reduction in force;”.

Subsec. (c). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 2009 AMENDMENT**

Amendment by Pub. L. 111-13 effective Oct. 1, 2009, see section 6101(a) of Pub. L. 111-13, set out as a note under section 4950 of this title.

##### **EFFECTIVE DATE OF 1993 AMENDMENT**

Amendment by section 117 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

### **§ 12638. State Commissions on National and Community Service**

#### **(a) Existence required**

##### **(1) State Commission**

Except as provided in paragraph (2), to be eligible to receive a grant or allotment under division B or C or to receive a distribution of approved national service positions under division C, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

##### **(2) Alternative administrative entity**

The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this chapter. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under section 12582 of this title.

#### **(b) Appointment and size**

Except as provided in subsection (c)(3), the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio nonvoting members, as described in paragraph (3) or (4) of subsection (c).

#### **(c) Composition and membership**

##### **(1) Required members**

The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in subsection (a), (b), or (c) of section 12572 of this title.

(J) A representative of the volunteer sector.

#### **(2) Sources of other members**

The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

#### **(3) Corporation representative**

The representative of the Corporation designated under section 12651f(c) of this title for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State.

#### **(4) Ex officio State representatives**

The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

#### **(5) Limitation on number of State employees as members**

The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

#### **(d) Miscellaneous matters**

##### **(1) Membership balance**

The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party.