

535 of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 3305 of this title.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR CO-OPERATIVES

Applicability of this section to Federal land banks, Federal intermediate credit banks, and banks for co-operatives, see section 531(g) of Pub. L. 86-778, set out as a note under section 3305 of this title.

§ 3309. State law coverage of services performed for nonprofit organizations or governmental entities

(a) State law requirements

For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term “employment” solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term “employment” solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service

This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a);

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

(c) Nonprofit organizations must employ 4 or more

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

(d) Election by Indian tribe

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306(a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with re-

spect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(Added Pub. L. 91-373, title I, § 104(b)(1), Aug. 10, 1970, 84 Stat. 697; amended Pub. L. 94-566, title I, § 115(a), (b), (c)(2), (3), title V, § 506(a), Oct. 20, 1976, 90 Stat. 2670, 2671, 2687; Pub. L. 95-19, title III, § 302(b), Apr. 12, 1977, 91 Stat. 44; Pub. L. 105-33, title V, §§ 5405(a), 5407(a), Aug. 5, 1997, 111 Stat. 604, 605; Pub. L. 106-554, § 1(a)(7) [title I, § 166(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-627.)

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106-554, § 1(a)(7) [title I, § 166(b)(1)], inserted “, including an Indian tribe,” after “the State law shall provide that a governmental entity”.

Subsec. (b)(3)(B). Pub. L. 106-554, § 1(a)(7) [title I, § 166(b)(2)], inserted “, or of an Indian tribe” before semicolon at end.

Subsec. (b)(3)(E). Pub. L. 106-554, § 1(a)(7) [title I, § 166(b)(3)], inserted “or tribal” after “the State”.

Subsec. (b)(5). Pub. L. 106-554, § 1(a)(7) [title I, § 166(b)(4)], inserted “or of an Indian tribe” after “an agency of a State or political subdivision thereof”.

Subsec. (d). Pub. L. 106-554, § 1(a)(7) [title I, § 166(c)], added subsec. (d).

1997—Subsec. (b)(1)(C). Pub. L. 105-33, § 5407(a), added subpar. (C).

Subsec. (b)(3)(F). Pub. L. 105-33, § 5405(a), added subpar. (F).

1977—Subsec. (a)(2). Pub. L. 95-19 substituted “(or group of governmental entities or other organizations)” for “(or group of organizations)”.

1976—Pub. L. 94-566, § 115(c)(3), substituted “services performed for nonprofit organizations or governmental entities” for “certain services performed for nonprofit organizations and for State hospitals and institutions of higher education” in section catchline.

Subsec. (a)(1)(B). Pub. L. 94-566, § 115(a), struck out “performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State, if such service is” after “service”.

Subsec. (a)(2). Pub. L. 94-566, § 506(a), substituted “a governmental entity or any other organization” for “an organization”, “paragraph (1)” for “paragraph (1)(A)”, and “that governmental entities or other organizations” for “that organizations”.

Subsec. (b)(3). Pub. L. 94-566, § 115(b)(1), substituted reference to services performed in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such services are performed by an individual in the exercise of his duties as an elected official, as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, as a member of the State National Guard or Air National Guard, as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency, or in a position which, under or pursuant to the State law, is designated as a major nontenured policymaker or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week, for reference to services performed in the employ of a school which is not an institution of higher education.

Subsec. (b)(6). Pub. L. 94-566, § 115(b)(2), substituted “by an inmate of a custodial or penal institution” for “for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution”.

Subsec. (d). Pub. L. 94-566, § 115(c)(2), struck out subsec. (d) which defined “institution of higher education”. See section 3304(f) of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to service performed on or after Dec. 21, 2000, with transition rule for service performed in the employ of an Indian tribe, see section 166(e) of Pub. L. 106-554, set out as a note under section 3306 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, § 5405(b), Aug. 5, 1997, 111 Stat. 605, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-33, title V, § 5407(b), Aug. 5, 1997, 111 Stat. 605, provided that: “The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-19, title III, § 302(d)(2), Apr. 12, 1977, 91 Stat. 45, provided that: “The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended this section in 1976, see Effective Date of 1976 Amendment note below].”

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 115(a), (b), (c)(2), (3) of Pub. L. 94-566, see section 115(d) of Pub. L. 94-566, set out as a note under section 3304 of this title.

For effective date of amendment by section 506(a) of Pub. L. 94-566, see section 506(c) of Pub. L. 94-566, set out as a note under section 3304 of this title.

EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91-373, set out as a note under section 3304 of this title.

§ 3310. Judicial review

(a) In general

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) Findings of fact

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be