

**(f) “State” defined**

In this section, the term “State” has the meaning given such term in section 1101(a)(36) of title 8.

(Pub. L. 101-649, title VIII, § 801, Nov. 29, 1990, 104 Stat. 5087.)

## CODIFICATION

Section was enacted as part of the Immigration Act of 1990, and not as part of title I of the Workforce Investment Act of 1998 which comprises this chapter.

Section was formerly classified to section 1506 of this title.

## SUBCHAPTER V—ADMINISTRATION

**§ 2931. Requirements and restrictions****(a) Benefits****(1) Wages****(A) In general**

Individuals in on-the-job training or individuals employed in activities under this chapter shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 206(a)(1) of this title or the applicable State or local minimum wage law.

**(B) Rule of construction**

The reference in subparagraph (A) to section 206(a)(1) of this title—

(i) shall be deemed to be a reference to section 206(a)(3)<sup>1</sup> of this title for individuals in American Samoa; and

(ii) shall not be applicable for individuals in other territorial jurisdictions in which section 206 of this title does not apply.

**(2) Treatment of allowances, earnings, and payments**

Allowances, earnings, and payments to individuals participating in programs under this chapter shall not be considered as 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.).

**(b) Labor standards****(1) Limitations on activities that impact wages of employees**

No funds provided under this chapter shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system.

**(2) Displacement****(A) Prohibition**

A participant in a program or activity authorized under this chapter (referred to in

this section as a “specified activity”) shall not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

**(B) Prohibition on impairment of contracts**

A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

**(3) Other prohibitions**

A participant in a specified activity shall not be employed in a job if—

(A) any other individual is on layoff from the same or any substantially equivalent job;

(B) the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or

(C) the job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of the participation).

**(4) Health and safety**

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that a State workers’ compensation law applies, workers’ compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

**(5) Employment conditions**

Individuals in on-the-job training or individuals employed in programs and activities under this chapter, shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

**(6) Opportunity to submit comments**

Interested members of the public, including representatives of businesses and of labor organizations, shall be provided an opportunity to submit comments to the Secretary with respect to programs and activities proposed to be funded under subchapter II of this chapter.

**(7) No impact on union organizing**

Each recipient of funds under this chapter shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

**(c) Grievance procedure****(1) In general**

Each State and local area receiving an allotment under this chapter shall establish and

<sup>1</sup> See References in Text note below.

maintain a procedure for grievances or complaints alleging violations of the requirements of this chapter from participants and other interested or affected parties. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint.

**(2) Investigation**

**(A) In general**

The Secretary shall investigate an allegation of a violation described in paragraph (1) if—

(i) a decision relating to such violation has not been reached within 60 days after the date of the filing of the grievance or complaint and either party appeals to the Secretary; or

(ii) a decision relating to such violation has been reached within such 60 days and the party to which such decision is adverse appeals such decision to the Secretary.

**(B) Additional requirement**

The Secretary shall make a final determination relating to an appeal made under subparagraph (A) no later than 120 days after receiving such appeal.

**(3) Remedies**

Remedies that may be imposed under this section for a violation of any requirement of this chapter shall be limited—

(A) to suspension or termination of payments under this chapter;

(B) to prohibition of placement of a participant with an employer that has violated any requirement under this chapter;

(C) where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and

(D) where appropriate, to other equitable relief.

**(4) Rule of construction**

Nothing in paragraph (3) shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of this chapter.

**(d) Relocation**

**(1) Prohibition on use of funds to encourage or induce relocation**

No funds provided under this chapter shall be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

**(2) Prohibition on use of funds for customized or skill training and related activities after relocation**

No funds provided under this chapter for an employment and training activity shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any busi-

ness or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

**(3) Repayment**

If the Secretary determines that a violation of paragraph (1) or (2) has occurred, the Secretary shall require the State that has violated such paragraph to repay to the United States an amount equal to the amount expended in violation of such paragraph.

**(e) Limitation on use of funds**

No funds available under this chapter shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals under this chapter. No funds available under subchapter II of this chapter shall be used for foreign travel.

**(f) Testing and sanctioning for use of controlled substances**

**(1) In general**

Notwithstanding any other provision of law, a State shall not be prohibited by the Federal Government from—

(A) testing participants in programs under subchapter II of this chapter for the use of controlled substances; and

(B) sanctioning such participants who test positive for the use of such controlled substances.

**(2) Additional requirements**

**(A) Period of sanction**

In sanctioning participants in programs under subchapter II of this chapter who test positive for the use of controlled substances—

(i) with respect to the first occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 6 months; and

(ii) with respect to the second occurrence and each subsequent occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 2 years.

**(B) Appeal**

The testing of participants and the imposition of sanctions under this subsection shall be subject to expeditious appeal in accordance with due process procedures established by the State.

**(C) Privacy**

A State shall establish procedures for testing participants for the use of controlled substances that ensure a maximum degree of privacy for the participants.

**(4)<sup>2</sup> Funding requirement**

In testing and sanctioning of participants for the use of controlled substances in accordance with this subsection, the only Federal funds that a State may use are the amounts made available for the administration of statewide workforce investment activities under section 2864(a)(3)(B) of this title.

(Pub. L. 105-220, title I, §181, Aug. 7, 1998, 112 Stat. 1038.)

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of former Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

Section 206(a)(3) of this title, referred to in subsec. (a)(1)(B)(i), was repealed and section 206(a)(4) of this title was redesignated section 206(a)(3) by Pub. L. 110-28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189.

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## PRIOR PROVISIONS

Provisions similar to this section were contained in sections 1551 to 1554 of this title prior to repeal by Pub. L. 105-220.

**§ 2932. Prompt allocation of funds****(a) Allotments based on latest available data**

All allotments to States and grants to outlying areas under this chapter shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to disadvantaged adults and disadvantaged youth shall be based on the most recent satisfactory data from the Bureau of the Census.

**(b) Publication in Federal Register relating to formula funds**

Whenever the Secretary allots funds required to be allotted under this chapter, the Secretary shall publish in a timely fashion in the Federal Register the proposed amount to be distributed to each recipient of the funds.

**(c) Requirement for funds distributed by formula**

All funds required to be allotted under section 2852 or 2862 of this title shall be allotted within 45 days after the date of enactment of the Act appropriating the funds, except that, if such funds are appropriated in advance as authorized by section 2939(g) of this title, such funds shall be allotted or allocated not later than the

March 31 preceding the program year for which such funds are to be available for obligation.

**(d) Publication in Federal Register relating to discretionary funds**

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary’s discretion under this chapter, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the Federal Register for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and local area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the Federal Register.

**(e) Availability of funds**

Funds shall be made available under sections 2853 and 2863 of this title for a local area not later than 30 days after the date the funds are made available to the Governor involved, under section 2852 or 2862 of this title (as the case may be), or 7 days after the date the local plan for the area is approved, whichever is later.

(Pub. L. 105-220, title I, §182, Aug. 7, 1998, 112 Stat. 1041.)

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (d), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of former Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

## PRIOR PROVISIONS

Provisions similar to this section were contained in section 1572 of this title prior to repeal by Pub. L. 105-220.

**§ 2933. Monitoring****(a) In general**

The Secretary is authorized to monitor all recipients of financial assistance under this chapter to determine whether the recipients are complying with the provisions of this chapter, including the regulations issued under this chapter.

**(b) Investigations**

The Secretary may investigate any matter the Secretary determines to be necessary to determine the compliance of the recipients with this chapter, including the regulations issued under this chapter. The investigations authorized by this subsection may include examining records (including making certified copies of the records), questioning employees, and entering any premises or onto any site in which any part of a program or activity of such a recipient is conducted or in which any of the records of the recipient are kept.

<sup>2</sup> So in original. No par. (3) has been enacted.