

Editorial Notes

AMENDMENTS

2009—Pub. L. 111-90 substituted “and Stewart L. Udall” for “Scholarship and Excellence in National Environmental Policy” in section catchline and in subsec. (a).

1998—Subsec. (a). Pub. L. 105-156, §9(a), substituted “The Trust Fund” for “The fund” and “5609(a)” for “5609”.

Subsec. (b). Pub. L. 105-156, §9(b), substituted “Trust Fund” for “Fund” in two places.

§ 5607. Expenditures and audit of Trust Fund**(a) In general**

The Foundation shall pay from the interest and earnings of the Trust Fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this chapter, including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed \$5,000 for a fiscal year.

(b) Audit by Government Accountability Office

The activities of the Foundation and the Center under this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the Government Accountability Office shall have access to all books, accounts, records, reports filed and all other papers, things, or property belonging to or in use by the Foundation and the Center, pertaining to such federally assisted activities and necessary to facilitate the audit.

(Pub. L. 102-259, §9, Mar. 19, 1992, 106 Stat. 83; Pub. L. 105-156, §9(b), Feb. 11, 1998, 112 Stat. 12; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111-90, §8, Nov. 3, 2009, 123 Stat. 2978.)

Editorial Notes

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-90 inserted before period at end “, including a reasonable amount for official reception and representation expenses, as determined by the Board, not to exceed \$5,000 for a fiscal year”.

2004—Subsec. (b). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in heading and in two places in text.

1998—Subsec. (a). Pub. L. 105-156 substituted “Trust Fund” for “Fund”.

§ 5607a. Environmental Dispute Resolution Fund**(a) Establishment**

There is established in the Treasury of the United States an Environmental Dispute Resolution Fund to be administered by the Foundation. The Fund shall consist of amounts appropriated to the Fund under section 5609(b) of this title and amounts paid into the Fund under section 5607b of this title.

(b) Expenditures

The Foundation shall expend from the Fund such sums as the Board determines are necessary to establish and operate the National Center, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other ex-

penses as the Board determines are necessary, including not to exceed \$1,000 annually for official reception and representation expenses.

(c) Distinction from Trust Fund

The Fund shall be maintained separately from the Trust Fund established under section 5606 of this title.

(d) Investment of amounts**(1) In general**

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(2) Interest-bearing obligations

Investments may be made only in interest-bearing obligations of the United States.

(3) Acquisition of obligations

For the purpose of investments under paragraph (1), obligations may be acquired—

- (A) on original issue at the issue price; or
- (B) by purchase of outstanding obligations at the market price.

(4) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(5) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(Pub. L. 102-259, §10, as added Pub. L. 105-156, §6(b), Feb. 11, 1998, 112 Stat. 10; amended Pub. L. 105-277, div. A, §101(h) [title V, §517(c)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-512; Pub. L. 116-94, div. P, title III, §306, Dec. 20, 2019, 133 Stat. 3190.)

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PRIOR PROVISIONS

A prior section 10 of Pub. L. 102-259 was renumbered section 12 and is classified to section 5608 of this title.

AMENDMENTS

2019—Subsec. (b). Pub. L. 116-94 substituted “National Center” for “Institute”.

1998—Subsec. (b). Pub. L. 105-277 inserted before period at end “, including not to exceed \$1,000 annually for official reception and representation expenses”.

§ 5607b. Use of the National Center by Federal agency or other entity**(a) Authorization**

A Federal agency may use the Foundation and the National Center to provide assessment, mediation, collaboration, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources, or with a Federal, State, or tribal process or procedure that may result in a dispute or conflict.

(b) Payment**(1) In general**

A Federal agency may enter into a contract and expend funds to obtain the services of the National Center.

(2) Payment into Environmental Dispute Resolution Fund

A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(c) Notification and concurrence

(1) Notification

An agency or instrumentality of the Federal Government shall notify the chairperson of the President's Council on Environmental Quality when using the Foundation or the National Center to provide the services described in subsection (a).

(2) Notification descriptions

In a matter involving two or more agencies or instrumentalities of the Federal Government, notification under paragraph (1) shall include a written description of—

(A) the issues and parties involved;

(B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues;

(C) all Federal agencies or instrumentalities with a direct interest or involvement in the matter and a statement that all Federal agencies or instrumentalities agree to mediation, collaboration, and dispute resolution; and

(D) other relevant information.

(3) Concurrence

(A) In general

In a matter that involves two or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), the agencies or instrumentalities of the Federal Government shall obtain the concurrence of the chairperson of the President's Council on Environmental Quality before using the Foundation or National Center to provide the services described in subsection (a).

(B) Indication of concurrence or nonconcurrence

The chairperson of the President's Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice under paragraph (2).

(d) Exceptions

(1) Legal issues and enforcement

(A) In general

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) that concern purely legal issues or matters, interpretation or determination of law, or enforcement of law by one agency against another agency shall not be submitted to the Foundation or National Center.

(B) Applicability

Subparagraph (A) does not apply to a dispute or conflict concerning—

(i) agency implementation of a program or project;

(ii) a matter involving two or more agencies with parallel authority requiring facilitation and coordination of the various Government agencies; or

(iii) a nonlegal policy or decisionmaking matter that involves two or more agencies that are jointly operating a project.

(2) Other mandated mechanisms or avenues

A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) for which Congress by law has mandated another dispute resolution mechanism or avenue to address or resolve shall not be submitted to the Foundation or National Center.

(e) Non-Federal entities

(1) Non-Federal entities, including state¹ and local governments, Native American tribal governments, nongovernmental organizations and persons, as defined in section 1 of title 1, may use the Foundation and the National Center to provide assessment, mediation, or other related services in connection with a dispute or conflict involving the Federal government¹ related to the environment, public lands, or natural resources.

(2) PAYMENT INTO THE ENVIRONMENTAL DISPUTE RESOLUTION FUND.—Entities utilizing services pursuant to this subsection shall reimburse the National Center for the costs of services provided. Such amounts shall be deposited into the Environmental Dispute Resolution Fund established under section 5607a of this title.

(f) Agency management or control

Use of the Foundation or National Center to provide independent and impartial assessment, mediation, or other dispute or conflict resolution under this section shall not be considered to be the establishment or use of an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 102-259, § 11, as added Pub. L. 105-156, § 7, Feb. 11, 1998, 112 Stat. 10; amended Pub. L. 105-277, div. A, § 101(h) [title V, § 517(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-512; Pub. L. 111-90, § 9, Nov. 3, 2009, 123 Stat. 2978; Pub. L. 116-94, div. P, title III, § 307, Dec. 20, 2019, 133 Stat. 3190.)

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REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 11 of Pub. L. 102-259 was renumbered section 13 and is classified to section 5609 of this title.

AMENDMENTS

2019—Pub. L. 116-94, § 307(1), substituted “the National Center” for “the Institute” in section catchline. Subsec. (a). Pub. L. 116-94, § 307(2), substituted “National Center” for “Institute” and “resources, or with

¹ So in original. Probably should be capitalized.

a Federal, State, or tribal process or procedure that may result in a dispute or conflict.” for “resources.” and inserted “collaboration,” after “mediation.”

Subsec. (b)(1). Pub. L. 116-94, §307(3), substituted “National Center” for “Institute”.

Subsec. (c)(1). Pub. L. 116-94, §307(4)(A), substituted “National Center” for “Institute”.

Subsec. (c)(2)(C). Pub. L. 116-94, §307(4)(B), inserted “mediation, collaboration, and” after “agree to”.

Subsec. (c)(3)(A). Pub. L. 116-94, §307(4)(C), substituted “National Center” for “Institute”.

Subsec. (d)(1)(A), (2). Pub. L. 116-94, §307(5), substituted “National Center” for “Institute”.

Subsec. (e). Pub. L. 116-94, §307(6), substituted “National Center” for “Institute” in pars. (1) and (2).

Subsec. (f). Pub. L. 116-94, §307(7), substituted “National Center” for “Institute”.

2009—Subsec. (f). Pub. L. 111-90 added subsec. (f).
1998—Pub. L. 105-277, §101(h) [title V, §517(a)(1)], inserted “or other entity” after “Federal agency” in section catchline.

Subsec. (e). Pub. L. 105-277, §101(h) [title V, §517(a)(2)], added subsec. (e).

§ 5608. Administrative provisions

(a) In general

In order to carry out the provisions of this chapter, the Foundation may—

(1)(A) appoint such personnel as may be necessary to carry out the provisions of this chapter, without regard to the provisions of title 5 governing appointments in the competitive service; and

(B) fix the compensation of the personnel appointed under subparagraph (A) at a rate not to exceed the maximum rate for employees in grade GS-15 of the General Schedule under section 5332 of title 5, except that up to 4 employees (in addition to the Executive Director under section 5603(f)(2) of this title) may be paid at a rate determined by the Board in accordance with section 5383 of title 5.

(2) procure or fund the Center to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for level IV of the Executive Schedule under section 5315 of title 5;

(3) prescribe such regulations as the Foundation considers necessary governing the manner in which its functions shall be carried out;

(4) accept, hold, solicit, administer, and utilize donations, grants, and gifts, both real and personal, for the purpose of aiding or facilitating the work of the Foundation;

(5) accept and utilize the services of voluntary and noncompensated personnel and reimburse such personnel for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board of Trustees, be entered into without performance or other bonds, and without regard to section 6101 of title 41;

(7) to¹ rent office space in the District of Columbia and Tucson, Arizona, or their environs; and

(8) make other necessary expenditures.

(b) The Institute

The authorities set forth above shall apply to the National Center established pursuant to section 5607a of this title and to the activities of the Foundation under section 5604(7) of this title.

(Pub. L. 102-259, §12, formerly §10, Mar. 19, 1992, 106 Stat. 83; renumbered §12, Pub. L. 105-156, §6(a), Feb. 11, 1998, 112 Stat. 9; amended Pub. L. 105-277, div. A, §101(h) [title V, §517(b)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-512; Pub. L. 106-568, title VIII, §817(b), Dec. 27, 2000, 114 Stat. 2918; Pub. L. 111-90, §10, Nov. 3, 2009, 123 Stat. 2978; Pub. L. 116-94, div. P, title III, §308, Dec. 20, 2019, 133 Stat. 3190.)

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CODIFICATION

In subsec. (a)(6), “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes (41 U.S.C. 5)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2019—Subsec. (a)(4). Pub. L. 116-94, §308(1)(A), substituted “accept, hold, solicit, administer, and utilize donations, grants, and gifts” for “accept, hold, administer, and utilize gifts”.

Subsec. (a)(7). Pub. L. 116-94, §308(1)(B), substituted “in the District of Columbia and Tucson, Arizona, or their environs” for “in the District of Columbia or its environs”.

Subsec. (b). Pub. L. 116-94, §308(2), substituted “apply to the National Center” for “, with the exception of paragraph (4), apply to the Institute”.

2009—Subsec. (a)(1). Pub. L. 111-90, §10(1), added par. (1) and struck out former par. (1) which read as follows: “appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Director be compensated at a rate to exceed the maximum rate for employees in grade GS-15 of the General Schedule under section 5332 of title 5;”.

Subsec. (a)(7), (8). Pub. L. 111-90, §10(2)-(4), added par. (7) and redesignated former par. (7) as (8).

2000—Subsec. (b). Pub. L. 106-568 inserted before period at end “and to the activities of the Foundation under section 5604(7) of this title”.

1998—Pub. L. 105-277 designated existing provisions as subsec. (a) and added subsec. (b).

§ 5609. Authorization of appropriations

(a) Trust Fund

There is authorized to be appropriated to the Trust Fund \$2,000,000 for each of fiscal years 2020 through 2023 to carry out the provisions of this chapter.

(b) Environmental Dispute Resolution Fund

There is authorized to be appropriated to the Environmental Dispute Resolution Fund established by section 5607a of this title \$4,000,000 for each of fiscal years 2020 through 2023, of which—

(1) \$3,000,000 shall be used to pay operations costs (including not more than \$1,000 for official reception and representation expenses); and

(2) \$1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of

¹ So in original. The word “to” probably should not appear.