

TITLE 40 - PUBLIC BUILDINGS, PROPERTY, AND WORKS
SUBTITLE II - PUBLIC BUILDINGS AND WORKS
PART A - GENERAL
CHAPTER 31 - GENERAL
SUBCHAPTER V - VOLUNTEER SERVICES

§ 3162. Waiver for individuals who perform volunteer services

(a) **Criteria for Receiving Waiver.**— The requirement that certain laborers and mechanics be paid in accordance with the wage-setting provisions of subchapter IV of this chapter as set forth in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) does not apply to an individual—

- (1) who volunteers to perform a service directly to a state or local government, a public agency, or a public or private nonprofit recipient of federal assistance—
 - (A) for civic, charitable, or humanitarian reasons;
 - (B) only for the personal purpose or pleasure of the individual;
 - (C) without promise, expectation, or receipt of compensation for services rendered, except as provided in subsection (b); and
 - (D) freely and without pressure or coercion, direct or implied, from any employer;
- (2) whose contribution of service is not for the direct or indirect benefit of any contractor otherwise performing or seeking to perform work on the same project for which the individual is volunteering;
- (3) who is not employed by and does not provide services to a contractor or subcontractor at any time on the federally assisted or insured project for which the individual is volunteering; and
- (4) who otherwise is not employed by the same public agency or recipient of federal assistance to perform the same type of services as those for which the individual proposes to volunteer.

(b) **Payments.**—

- (1) **In accordance with regulations.**— Volunteers described in subsection (a) who are performing services directly to a state or local government or public agency may receive payments of expenses, reasonable benefits, or a nominal fee only in accordance with regulations the Secretary of Labor prescribes. Volunteers who are performing services directly to a public or private nonprofit entity may not receive those payments.
- (2) **Criteria and content of regulations.**— In prescribing the regulations, the Secretary shall consider criteria such as the total amount of payments made (relating to expenses, benefits, or fees) in the context of the economic realities. The regulations shall include provisions that provide that—
 - (A) a payment for an expense may be received by a volunteer for items such as uniform allowances, protective gear and clothing, reimbursement for approximate out-of-pocket expenses, or the cost or expense of meals and transportation;
 - (B) a reasonable benefit may include the inclusion of a volunteer in a group insurance plan (such as a liability, health, life, disability, or worker's compensation plan) or pension plan, or the awarding of a length of service award; and
 - (C) a nominal fee may not be used as a substitute for compensation and may not be connected to productivity.
- (3) **Nominal fee.**— The Secretary shall decide what constitutes a nominal fee for purposes of paragraph (2)(C). The decision shall be based on the context of the economic realities of the situation involved.

(c) **Economic Reality.**— In determining whether an expense, benefit, or fee described in subsection (b) may be paid to volunteers in the context of the economic realities of the particular situation, the

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Secretary may not permit any expense, benefit, or fee that has the effect of undermining labor standards by creating downward pressure on prevailing wages in the local construction industry.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1153.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3162(a)	40:276d–1(a).	Pub. L. 103–355, title VII, §§ 7303, 7304, Oct. 13, 1994, 108 Stat. 3382.
	40:276d–2.	
	40:276d–3.	Pub. L. 103–355, title VII, § 7305, Oct. 13, 1994, 108 Stat. 3384; Pub. L. 104–208, div. A, § 101(e) [title VII, § 709(a)(4)], Sept. 30, 1996, 110 Stat. 3009–312.
3162(b)	40:276d–1(b).	
3162(c)	40:276d–1(c).	

In subsection (a), the references to sections 254b and 254c of title 42 in 40:276d–3 are omitted. Sections 329 and 330 of the Public Health Service Act were omitted in the general amendment of subpart I of part D of title III of the Act (42:254b et seq.) by sections 2 and 3(a) of the Health Care Consolidation Act of 1996 (Public Law 104–299, 110 Stat. 3626), which enacted new sections 330 and 330A of the Public Health Service Act. Sections 330 and 330A do not refer to the Act of March 3, 1931 (ch. 411, 46 Stat. 1494).

In subsection (b)(1), the words “Volunteers who are performing services directly to a public or private nonprofit entity may not receive those payments” are added for clarity.

References in Text

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (a), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.