

MEMORANDUM

TO: Mary Ann Wyrsh
U.S. Department of Labor

FROM: Terry Russell 
General Counsel

RE: Our interpretation of the National and Community Service Act of 1990, as amended, with respect to whether an employment relationship exists between AmeriCorps participants and grantee programs.

DATE: March 6, 1995

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The National and Community Service Act of 1990, as amended (NCSA), provides that "[a] participant shall not be considered to be an employee of the program in which the participant is enrolled." 42 U.S.C. § 12511(17)(B). Thus, as a matter of law, an employer/employee relationship does not exist between the grantee/subgrantee program and the participant. While characteristics of a common law employer/employee relationship may exist in particular instances, these facts are immaterial as the NCSA precludes the finding of such a relationship as a matter of law. We interpret the introductory language of section 12511, "for purposes of this subchapter," as merely meaning that the terms used in the subchapter must be interpreted in accordance with the definitions listed in the definitional section.

The payment by AmeriCorps grantees/subgrantees of State workers' compensation taxes based on participants' service or taxes on participants' wages under the Federal Insurance Contributions Act, 26 U.S.C. § 3101 *et seq.* (FICA), is consistent with the above interpretation of section 12511(17)(B). AmeriCorps grantees/subgrantees may still be liable for the payment of workers' compensation and FICA taxes despite the provision in section 12511(17)(B) that participants are not employees, because the NCSA expressly authorizes the use of grant funds to pay workers' compensation and FICA to the extent the program is subject to such taxes. 42 U.S.C. § 12594(b). This specific provision relating to workers' compensation and FICA taxing takes precedence over the general provision that participants are not employees. Since the NCSA also expressly mentions the Federal Unemployment Tax Act (FUTA) tax, a similar result would occur to the extent that grantees may be subject to the federal unemployment tax, although most such organizations, as non-profits and State and local governmental organizations, are not subject to this tax. No similar provision exists, however, to authorize the use of grant funds to pay State unemployment contributions or reimbursements. Thus, we interpret the NCSA as providing that AmeriCorps participants are not employees of the grantee/subgrantee programs with the express statutory exception that they may be treated as such for workers' compensation purposes, and, to the extent that the grantee/subgrantee is subject to FICA and FUTA taxes, for the purposes of those statutes as well.

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