

Introduction: The Older Americans Act was amended during the fall of 2000 by the enactment of HR 782. As of March 2001, an official compilation of the Act as amended had still not been printed. To assist a variety of organizations who would find it useful to have a complete version of the OAA which includes the amendments adopted by Congress in 2000, The Center for Social Gerontology has begun to put together an unofficial compilation of the changes to the Older Americans Act. As we complete each Title of the Act, we will be putting it on our web site; for convenience in downloading the documents, we are putting each Title of the OAA in a separate pdf file. Because this is an unofficial copy of the amended OAA, it is possible that there will be some mistakes in it; The Center for Social Gerontology takes no responsibility for any problems these errors may cause. If you should find something which you feel to be an error, please contact us, and we will make any necessary changes.

## **TITLE V--COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS**

### **SECTION 501 SHORT TITLE**

This title may be cited as the `Older American Community Service Employment Act'.

### **SECTION 502 OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROGRAM**

- (a) (1) In order to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years or older and who have poor employment prospects, and in order to foster individual economic self-sufficiency and to increase the number of persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors, the Secretary of Labor (hereinafter in this title referred to as the `Secretary') is authorized to establish an older American community service employment program.
- (2) Amounts appropriated to carry out this title shall be used only to carry out the provisions contained in this title.
- (b) (1) In order to carry out the provisions of this title, the Secretary is authorized to enter into agreements, subject to section 514, with State and national public and private nonprofit agencies and organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (c) of this section, of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the program effective or to supplement the program. No payment shall be made by the Secretary toward the cost of any project established or administered by any organization or agency unless the Secretary determines that such project--

- (A) will provide employment only for eligible individuals except for necessary technical, administrative, and supervisory personnel, but such personnel shall, to the fullest extent possible, be recruited from among eligible individuals;
- (B) (i) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities; or  
(ii) if such project is carried out by a tribal organization that enters into an agreement under this subsection or receives assistance from a State that enters into such an agreement, will provide employment for such individuals, including those who are Indians residing on an Indian reservation, as the term is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2));
- (C) will employ eligible individuals in service related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;
- (D) will contribute to the general welfare of the community;
- (E) will provide employment for eligible individuals;
- (F) (i) will result in an increase in employment opportunities over those opportunities which would otherwise be available;  
(ii) will not result in the displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits); and  
(iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;
- (G) will not employ or continue to employ any eligible individual to perform work the same or substantially the same as that performed by any other person who is on layoff;
- (H) will utilize methods of recruitment and selection (including participating in a one-stop delivery system as established under section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)) and listing of job vacancies with the employment agency operated by any State or political subdivision thereof) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project;
- (I) will include such training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance;
- (J) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed in community service and other jobs assisted under this title shall be paid wages which shall not be lower than whichever is the highest of--
- (i) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act

applied to the participant and if the participant were not exempt under section 13 thereof;

(ii) the State or local minimum wage for the most nearly comparable covered employment; or

(iii) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(K) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowledgeable with regard to the needs of older persons;

(L) will authorize pay for necessary transportation costs of eligible individuals which may be incurred in employment in any project funded under this title, in accordance with regulations promulgated by the Secretary;

(M) will assure that, to the extent feasible, such project will serve the needs of minority, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, at least in proportion to their numbers in the State and take into consideration their rates of poverty and unemployment;

(N) (i) will prepare an assessment of the participants' skills and talents and their needs for services, except to the extent such project has, for the participant involved, recently prepared an assessment of such skills and talents, and such needs, pursuant to another employment or training program (such as a program under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), or part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(ii) will provide to eligible individuals training and employment counseling based on strategies that identify appropriate employment objectives and the need for supportive services, developed as a result of the assessment and service strategy provided for in clause (i); and

(iii) will provide counseling to participants on their progress in meeting such objectives and satisfying their need for supportive services;

(O) will provide appropriate services for participants through the one-stop delivery system as established under section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)), and will be involved in the planning and operations of such system pursuant to a memorandum of understanding with the local workforce investment board in accordance with section 121(c) of such Act (29 U.S.C. 2841(c));

(P) will post in such project workplace a notice, and will make available to each person associated with such project a written explanation, clarifying the law with respect to allowable and unallowable political activities under chapter 15 of title 5, United States Code, applicable to the project and to each category of individuals associated with such project and containing the address and telephone number of the Inspector General of the Department of Labor, to whom questions regarding the application of such chapter may be addressed;

(Q) will provide to the Secretary the description and information described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998; and

(R) will ensure that entities carrying out activities under the project, including State offices, local offices, subgrantees, subcontractors, or other affiliates of such organization or agency shall receive an amount of the administration cost allocation that is sufficient for the administrative activities under the project to be carried out by such State office, local office, subgrantee, subcontractor, or other affiliate.

(2) The Secretary is authorized to establish, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this title.

(3) The Secretary shall develop alternatives for innovative work modes and provide technical assistance in creating job opportunities through work sharing and other experimental methods to labor organizations, groups representing business and industry and workers as well as to individual employers, where appropriate.

(4) (A) An assessment and service strategy provided for an eligible individual under this title shall satisfy any condition for an assessment and service strategy or individual employment plan for an adult participant under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), in order to determine whether such individual qualifies for intensive or training services described in section 134(d) of such Act (29 U.S.C. 2864(d)), in accordance with such Act.

(B) An assessment and service strategy or individual employment plan provided for an adult participant under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.) shall satisfy any condition for an assessment and service strategy for an eligible individual under this title.

(c) 1) The Secretary is authorized to pay a share, but not to exceed 90 percent of the cost of any project which is the subject of an agreement entered into under subsection (b) of this section, except that the Secretary is authorized to pay all of the costs of any such project which is--

(A) an emergency or disaster project; or

(B) a project located in an economically depressed area;

as determined by the Secretary in consultation with the Secretary of Commerce and the Secretary of Health and Human Services.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair market value to services and facilities contributed from non-Federal sources.

(3) Of the amount for any project to be paid by the Secretary under this subsection, not more than 13.5 percent for any fiscal year shall be available for paying the costs of administration for such project, except that--

(A) whenever the Secretary determines that it is necessary to carry out the project assisted under this title, based on information submitted by the grantee with which the Secretary has an agreement under subsection (b), the Secretary may increase the amount available for paying the cost of administration to an amount not more than 15 percent of the cost of such project; and

(B) whenever the grantee with which the Secretary has an agreement under subsection (b) demonstrates to the Secretary that--

- (i) major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Secretary;
  - (ii) the number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of administration is not increased; or
  - (iii) the size of the project is so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent of the amount for such project;
- the Secretary shall increase the amount available for the fiscal year for paying the cost of administration to an amount not more than 15 percent of the cost of such project.

(4) The costs of administration are the costs, both personnel and non-personnel and both direct and indirect, associated with the following:

(A) The costs of performing overall general administrative functions and providing for the coordination of functions, such as--

- (i) accounting, budgeting, financial, and cash management functions;
- (ii) procurement and purchasing functions;
- (iii) property management functions;
- (iv) personnel management functions;
- (v) payroll functions;
- (vi) coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;
- (vii) audit functions;
- (viii) general legal services functions; and
- (ix) developing systems and procedures, including information systems, required for these administrative functions.

(B) The costs of performing oversight and monitoring responsibilities related to administrative functions.

(C) The costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space.

(D) The travel costs incurred for official business in carrying out administrative activities or overall management.

(E) The costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development, and operating costs of such systems.

(5) To the extent practicable, an entity that carries out a project under this title shall provide for the payment of the expenses described in paragraph (4) from non-Federal sources.

- (6) (A) Amounts made available for a project under this title that are not used to pay for the cost of administration shall be used to pay for the costs of programmatic activities, including--
- (i) enrollee wages and fringe benefits (including physical examinations);
  - (ii) enrollee training, which may be provided prior to or subsequent to placement, including the payment of reasonable costs of instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job, in a classroom setting, or pursuant to other appropriate arrangements;
  - (iii) job placement assistance, including job development and job search assistance;
  - (iv) enrollee supportive services to assist an enrollee to successfully participate in a project under this title, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and followup services; and
  - (v) outreach, recruitment and selection, intake, orientation, and assessments.
- (B) Not less than 75 percent of the funds made available through a grant made under this title shall be used to pay wages and benefits for older individuals who are employed under projects carried out under this title.

(d) Whenever a grantee conducts a project within a planning and service area in a State, such grantee shall conduct such project in consultation with the area agency on aging of the planning and service area and shall submit to the State agency and the area agency on aging a description of such project to be conducted in the State, including the location of the project, 90 days prior to undertaking the project, for review and public comment according to guidelines the Secretary shall issue to assure efficient and effective coordination of programs under this title.

- (e) (1) The Secretary, in addition to any other authority contained in this title, shall conduct projects designed to assure second career training and the placement of eligible individuals in employment opportunities with private business concerns. The Secretary shall enter into such agreements with States, public agencies, nonprofit private organizations, and private business concerns as may be necessary, to conduct the projects authorized by this subsection to assure that placement and training. The Secretary, from amounts reserved under section 506(a)(1) in any fiscal year, may pay all of the costs of any agreements entered into under the provisions of this subsection. The Secretary shall, to the extent feasible, assure equitable geographic distribution of projects authorized by this subsection.
- (2) The Secretary shall issue, and amend from time to time, criteria designed to assure that agreements entered into under paragraph (1) of this subsection--
- (A) will involve different kinds of work modes, such as flex-time, job sharing, and other arrangements relating to reduced physical exertion;
  - (B) will emphasize projects involving second careers and job placement and give consideration to placement in growth industries in jobs reflecting new technological skills; and

(C) require the coordination of projects carried out under such agreements, with the programs carried out under title I of the Workforce Investment Act of 1998.

(f) The Secretary shall, on a regular basis, carry out evaluations of the activities authorized under this title, which may include but are not limited to projects described in subsection (e).

## **SECTION 503 ADMINISTRATION**

### **(a) STATE SENIOR EMPLOYMENT SERVICES COORDINATION PLAN-**

(1) **GOVERNOR SUBMITS PLAN-** The Governor of each State shall submit annually to the Secretary a State Senior Employment Services Coordination Plan, containing such provisions as the Secretary may require, consistent with the provisions of this title, including a description of the process used to ensure the participation of individuals described in paragraph (2).

(2) **RECOMMENDATIONS-** In developing the State plan prior to its submission to the Secretary, the Governor shall obtain the advice and recommendations of--

(A) individuals representing the State and area agencies on aging in the State, and the State and local workforce investment boards established under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.);

(B) individuals representing public and private nonprofit agencies and organizations providing employment services, including each grantee operating a project under this title in the State; and

(C) individuals representing social service organizations providing services to older individuals, grantees under title III of this Act, affected communities, underserved older individuals, community-based organizations serving the needs of older individuals, business organizations, and labor organizations.

(3) **COMMENTS-** Any State plan submitted by a Governor in accordance with paragraph (1) shall be accompanied by copies of public comments relating to the plan received pursuant to paragraph (4) and a summary thereof.

(4) **PLAN PROVISIONS-** The State Senior Employment Services Coordination Plan shall identify and address--

(A) the relationship that the number of eligible individuals in each area bears to the total number of eligible individuals, respectively, in that State;

(B) the relative distribution of individuals residing in rural and urban areas within the State;

(C) the relative distribution of--

(i) eligible individuals who are individuals with greatest economic need;

(ii) eligible individuals who are minority individuals; and

(iii) eligible individuals who are individuals with greatest social need;

- (D) consideration of the employment situations and the type of skills possessed by local eligible individuals;
- (E) the localities and populations for which community service projects of the type authorized by this title are most needed; and
- (F) plans for facilitating the coordination of activities of grantees in the State under this title with activities carried out in the State under title I of the Workforce Investment Act of 1998.

(5) GOVERNOR'S RECOMMENDATIONS ON GRANT PROPOSALS- Prior to the submission to the Secretary of any proposal for a grant under this title for any fiscal year, the Governor of each State in which projects are proposed to be conducted under such grant shall be afforded a reasonable opportunity to submit recommendations to the Secretary--

(A) regarding the anticipated effect of each such proposal upon the overall distribution of enrollment positions under this title within the State (including such distribution among urban and rural areas), taking into account the total number of positions to be provided by all grantees within the State;

(B) any recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and

(C) in the case of any increase in funding that may be available for use within the State under this title for any fiscal year, any recommendations for distribution of newly available positions in excess of those available during the preceding year to underserved areas.

(6) DISRUPTIONS- In developing plans and considering recommendations under this subsection, disruptions in the provision of community service employment opportunities for current enrollees shall be avoided, to the greatest possible extent.

(7) DETERMINATION; REVIEW-

(A) DETERMINATION- In order to effectively carry out the provisions of this title, each State shall make available for public comment its senior employment services coordination plan. The Secretary, in consultation with the Assistant Secretary, shall review the plan and public comments received on the plan, and make a written determination with findings and a decision regarding the plan.

(B) REVIEW- The Secretary may review on the Secretary's own initiative or at the request of any public or private agency or organization, or an agency of the State government, the distribution of projects and services under this title within the State including the distribution between urban and rural areas within the State. For each proposed reallocation of projects or services within a State, the Secretary shall give notice and opportunity for public comment.

(8) EXEMPTION- The grantees serving older American Indians under section 506(a)(3) will not be required to participate in the State planning processes described in this section but will collaborate with the Secretary to develop a plan for projects and services to older American Indians.

- (b) (1) The Secretary of Labor and the Assistant Secretary shall coordinate the programs under this title and the programs under other titles of this Act to increase job opportunities available to older individuals.
- (2) The Secretary shall coordinate the program assisted under this title with programs authorized under the Workforce Investment Act of 1998, the Community Services Block Grant Act, the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998 (29 U.S.C. 701 et seq.)), the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.), and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.). The Secretary shall coordinate the administration of this title with the administration of other titles of this Act by the Assistant Secretary to increase the likelihood that eligible individuals for whom employment opportunities under this title are available and who need services under such titles receive such services. Appropriations under this title shall not be used to carry out any program under the Workforce Investment Act of 1998, the Community Services Block Grant Act, the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998), the Carl D. Perkins Vocational and Technical Education Act of 1998, the National and Community Service Act of 1990, or the Domestic Volunteer Service Act of 1973. The preceding sentence shall not be construed to prohibit carrying out projects under this title jointly with programs, projects, or activities under any Act specified in such sentence, or from carrying out section 512.
- (3) The Secretary shall distribute to grantees under this title, for distribution to program enrollees, and at no cost to grantees or enrollees, informational materials developed and supplied by the Equal Employment Opportunity Commission and other appropriate Federal agencies which the Secretary determines are designed to help enrollees identify age discrimination and understand their rights under the Age Discrimination in Employment Act of 1967.
- (c) In carrying out the provisions of this title, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities.
- (d) Payments under this title may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.
- (e) The Secretary shall not delegate any function of the Secretary under this title to any other department or agency of the Federal Government.
- (f) (1) The Secretary shall monitor projects receiving financial assistance under this title to determine whether the grantees are complying with the provisions of and regulations issued under this title, including compliance with the statewide planning, consultation, and coordination provisions under this title.
- (2) Each grantee receiving funds under this title shall comply with the applicable uniform cost principles and appropriate administrative requirements for grants and contracts that

are applicable to the type of entity receiving funds, as issued as circulars or rules of the Office of Management and Budget.

(3) Each grantee described in paragraph (2) shall prepare and submit a report in such manner and containing such information as the Secretary may require regarding activities carried out under this title.

(4) Each grantee described in paragraph (2) shall keep records that--

(A) are sufficient to permit the preparation of reports required pursuant to this title;

(B) are sufficient to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully; and

(C) contain any other information that the Secretary determines to be appropriate.

(g) The Secretary shall establish by regulation and implement a process to evaluate the performance of projects and services, pursuant to section 513, carried out under this title. The Secretary shall report to Congress and make available to the public the results of each such evaluation and use such evaluation to improve services delivered, or the operation of projects carried out under this title.

## **SECTION 504 PARTICIPANTS NOT FEDERAL EMPLOYEES**

(a) Eligible individuals who are employed in any project funded under this title shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this title with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier or by self-insurance, as authorized by State law, that the persons employed under the contract shall enjoy workmen's compensation coverage equal to that provided by law for covered employment.

## **SECTION 505 INTERAGENCY COOPERATION**

(a) The Secretary shall consult with, and obtain the written views of, the Assistant Secretary for Aging in the Department of Health and Human Services prior to the establishment of rules or the establishment of general policy in the administration of this title.

(b) The Secretary shall consult and cooperate with the Director of the Office of Community Services, the Secretary of Health and Human Services, and the heads of other Federal agencies carrying out related programs, in order to achieve optimal coordination with such other programs. In carrying out the provisions of this section, the Secretary shall promote programs or projects of a similar nature. Each Federal agency shall cooperate with the Secretary in disseminating information relating to the availability of assistance under this title and in promoting the identification and interests of individuals eligible for employment in projects assisted under this title.

- (c) (1) The Secretary shall promote and coordinate carrying out projects under this title jointly with programs, projects, or activities under other Acts, especially activities provided under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), including activities provided through one-stop delivery systems established under section 134(c) of such Act (29 U.S.C. 2864(c)), that provide training and employment opportunities to eligible individuals.
- (2) The Secretary shall consult with the Secretary of Education to promote and coordinate carrying out projects under this title jointly with workforce investment activities in which eligible individuals may participate that are carried out under the Carl D. Perkins Vocational and Technical Education Act of 1998.

## **SECTION 506 DISTRIBUTION OF ASSISTANCE**

### **(a) RESERVATIONS-**

- (1) **RESERVATION FOR PRIVATE EMPLOYMENT PROJECTS-** From sums appropriated under this title for each fiscal year, the Secretary shall first reserve not more than 1.5 percent of the total amount of such sums for the purpose of entering into agreements under section 502(e), relating to improved transition to private employment.
- (2) **RESERVATION FOR TERRITORIES-** From sums appropriated under this title for each fiscal year, the Secretary shall reserve 0.75 percent of the total amount of such sums, of which--
- (A) Guam, American Samoa, and the United States Virgin Islands shall each receive 30 percent; and
- (B) the Commonwealth of the Northern Mariana Islands shall receive 10 percent.
- (3) **RESERVATION FOR ORGANIZATIONS-** The Secretary shall reserve such sums as may be necessary for national grants with public or nonprofit national Indian aging organizations with the ability to provide employment services to older Indians and with national public or nonprofit Pacific Island and Asian American aging organizations with the ability to provide employment to older Pacific Island and Asian Americans.

(b) **STATE ALLOTMENTS-** The allotment for each State shall be the sum of the amounts allotted for national grants in such State under subsection (d) and for the grant to such State under subsection (e).

(c) **DIVISION BETWEEN NATIONAL GRANTS AND GRANTS TO STATES-** From the sums appropriated to carry out this title for any fiscal year that remain after amounts are reserved under paragraphs (1), (2), and (3) of subsection (a), the Secretary shall divide the remainder between national grants and grants to States, as follows:

- (1) **RESERVATION OF FUNDS FOR FISCAL YEAR 2000 LEVEL OF ACTIVITIES-** The Secretary shall reserve the amounts necessary to maintain the fiscal year 2000 level of activities supported by public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary, and the fiscal year 2000 level of activities supported by State grantees under this title, in proportion to their respective fiscal year 2000 levels of activities. In any fiscal year for which the appropriations are insufficient to provide the full amounts so required, then such amounts shall be reduced proportionally.

(2) FUNDING IN EXCESS OF FISCAL YEAR 2000 LEVEL OF ACTIVITIES-

(A) UP TO \$35,000,000- From the amounts remaining after the application of paragraph (1), the portion of such remaining amounts up to the sum of \$35,000,000 shall be divided so that 75 percent shall be provided to State grantees and 25 percent shall be provided to public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary.

(B) OVER \$35,000,000- Any amounts remaining after the application of subparagraph (A) shall be divided so that 50 percent shall be provided to State grantees and 50 percent shall be provided to public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary.

(d) ALLOTMENTS FOR NATIONAL GRANTS- From the sums provided for national grants under subsection (c), the Secretary shall allot for public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary in each State, an amount that bears the same ratio to such sums as the product of the number of persons aged 55 or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except as follows:

(1) MINIMUM ALLOTMENT- No State shall be provided an amount under this subsection that is less than 1/2 of 1 percent of the amount provided under subsection (c) for public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary in all of the States.

(2) HOLD HARMLESS- If the amount provided under subsection (c) is--

(A) equal to or less than the amount necessary to maintain the fiscal year 2000 level of activities, allotments for public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary in each State shall be proportional to their fiscal year 2000 level of activities; or

(B) greater than the amount necessary to maintain the fiscal year 2000 level of activities, no State shall be provided a percentage increase above the fiscal year 2000 level of activities for public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary in the State that is less than 30 percent of such percentage increase above the fiscal year 2000 level of activities for public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary in all of the States.

(3) REDUCTION- Allotments for States not affected by paragraphs (1) and (2)(B) of this subsection shall be reduced proportionally to satisfy the conditions in such paragraphs.

(e) ALLOTMENTS FOR GRANTS TO STATES- From the sums provided for grants to States under subsection (c), the Secretary shall allot for the State grantee in each State an amount that bears the same ratio to such sums as the product of the number of persons aged 55 or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except as follows:

- (1) **MINIMUM ALLOTMENT**- No State shall be provided an amount under this subsection that is less than 1/2 of 1 percent of the amount provided under subsection (c) for State grantees in all of the States.
- (2) **HOLD HARMLESS**- If the amount provided under subsection (c) is--
- (A) equal to or less than the amount necessary to maintain the fiscal year 2000 level of activities, allotments for State grantees in each State shall be proportional to their fiscal year 2000 level of activities; or
  - (B) greater than the amount necessary to maintain the fiscal year 2000 level of activities, no State shall be provided a percentage increase above the fiscal year 2000 level of activities for State grantees in the State that is less than 30 percent of such percentage increase above the fiscal year 2000 level of activities for State grantees in all of the States.
- (3) **REDUCTION**- Allotments for States not affected by paragraphs (1) and (2)(B) of this subsection shall be reduced proportionally to satisfy the conditions in such paragraphs.
- (f) **ALLOTMENT PERCENTAGE**- For the purposes of subsections (d) and (e)--
- (1) the allotment percentage of each State shall be 100 percent less that percentage which bears the same ratio to 50 percent as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 percent or less than 33 percent, and (B) the allotment percentage for the District of Columbia and the Commonwealth of Puerto Rico shall be 75 percent;
  - (2) the number of persons aged 55 or over in any State and in all States, and the per capita income in any State and in all States, shall be determined by the Secretary on the basis of the most satisfactory data available to the Secretary; and
  - (3) for the purpose of determining the allotment percentage, the term 'United States' means the 50 States and the District of Columbia.
- (g) **DEFINITIONS**- In this section:
- (1) **COST PER AUTHORIZED POSITION**- The term 'cost per authorized position' means the sum of--
    - (A) the hourly minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) (as amended), multiplied by the number of hours equal to the product of 21 hours and 52 weeks;
    - (B) an amount equal to 11 percent of the amount specified under subparagraph (A), for the purpose of covering Federal payments for fringe benefits; and
    - (C) an amount determined by the Secretary, for the purpose of covering Federal payments for the remainder of all other program and administrative costs.
  - (2) **FISCAL YEAR 2000 LEVEL OF ACTIVITIES**- The term 'fiscal year 2000 level of activities' means--
    - (A) with respect to public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary, their level of activities for fiscal year 2000, or the amount remaining after the application of section 514(e); and
    - (B) with respect to State grantees, their level of activities for fiscal year 2000, or the amount remaining after the application of section 514(f).

- (3) GRANTS TO STATES- The term `grants to States' means grants under this title to the States from the Secretary.
- (4) LEVEL OF ACTIVITIES- The term `level of activities' means the number of authorized positions multiplied by the cost per authorized position.
- (5) NATIONAL GRANTS- The term `national grants' means grants to public and private nonprofit agency and organization grantees that operate under this title under national grants from the Secretary.
- (6) STATE- The term `State' does not include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

## **SECTION 507 EQUITABLE DISTRIBUTION**

(a) INTERSTATE ALLOCATION- The Secretary, in awarding grants and contracts under section 506, shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts, in the aggregate, among the States, taking into account the needs of underserved States.

(b) INTRASTATE ALLOCATION- The amount allocated for projects within each State under section 506 shall be allocated among areas within the State in an equitable manner, taking into consideration the State priorities set out in the State plan pursuant to section 503(a).

## **SECTION 508 REPORT**

In order to carry out the Secretary's responsibilities for reporting in section 503(g), the Secretary shall require the State agency for each State receiving funds under this title to prepare and submit a report at the beginning of each fiscal year on such State's compliance with section 507(b). Such report shall include the names and geographic location of all projects assisted under this title and carried out in the State and the amount allocated to each such project under section 506.

## **SECTION 509 EMPLOYMENT ASSISTANCE AND FEDERAL HOUSING AND FOOD STAMP PROGRAMS**

Funds received by eligible individuals from projects carried out under the program established in this title shall not be considered to be income of such individuals for purposes of determining the eligibility of such individuals, or of any other persons, to participate in any housing program for which Federal funds may be available or for any income determination under the Food Stamp Act of 1977.

## **SECTION 510 ELIGIBILITY FOR WORKFORCE INVESTMENT ACTIVITIES**

Eligible individuals under this title may be deemed by local workforce investment boards established under title I of the Workforce Investment Act of 1998 to satisfy the requirements for receiving services under such title that are applicable to adults.

## **SECTION 511 TREATMENT OF ASSISTANCE**

Assistance furnished under this title shall not be construed to be financial assistance described in section 245A(h)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1255A(h)(1)(A)).

## **SECTION 512 COORDINATION WITH THE WORKFORCE INVESTMENT ACT OF 1998**

(a) **PARTNERS-** Grantees under this title shall be one-stop partners as described in subparagraphs (A) and (B)(vi) of section 121(b)(1) of the Workforce Investment Act of 1998 (29 U.S.C. 2841(b)(1)) in the one-stop delivery system established under section 134(c) of such Act (29 U.S.C. 2864(c)) for the appropriate local workforce investment areas, and shall carry out the responsibilities relating to such partners.

(b) **COORDINATION-** In local workforce investment areas where more than 1 grantee under this title provides services, the grantees shall coordinate their activities related to the one-stop delivery system, and grantees shall be signatories of the memorandum of understanding established under section 121(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2841(c)).

## **SECTION 513 PERFORMANCE**

(a) **MEASURES-**

(1) **ESTABLISHMENT OF MEASURES-** The Secretary shall establish, in consultation with grantees, subgrantees, and host agencies under this title, States, older individuals, area agencies on aging, and other organizations serving older individuals, performance measures for each grantee for projects and services carried out under this title.

(2) **CONTENT-**

(A) **COMPOSITION OF MEASURES-** The performance measures as established by the Secretary and described in paragraph (1) shall consist of indicators of performance and levels of performance applicable to each indicator. The measures shall be designed to promote continuous improvement in performance.

(B) **ADJUSTMENT-** The levels of performance described in subparagraph (A) applicable to a grantee shall be adjusted only with respect to the following factors:

(i) High rates of unemployment, poverty, or welfare reciprocity in the areas served by a grantee, relative to other areas of the State or Nation.

(ii) Significant downturns in the areas served by the grantee or in the national economy.

(iii) Significant numbers or proportions of enrollees with 1 or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation.

(C) **PLACEMENT-** For all grantees, the Secretary shall establish a measure of performance of not less than 20 percent (adjusted in accordance with subparagraph (B)) for placement of enrollees into unsubsidized public or private employment as defined in subsection (c)(2).

(3) **PERFORMANCE EVALUATION OF PUBLIC OR PRIVATE NONPROFIT AGENCIES AND ORGANIZATIONS-** The Secretary shall annually establish national performance measures for each public or private nonprofit agency or organization that is a grantee under this title, which shall be applicable to the grantee without regard to whether such grantee operates the program directly or through contracts, grants, or agreements with other entities. The performance of the grantees with respect to such measures shall be evaluated in accordance with section 514(e)(1) regarding performance of the grantees on a national basis, and in accordance with section 514(e)(3) regarding the performance of the grantees in each State.

(4) **PERFORMANCE EVALUATION OF STATES-** The Secretary shall annually establish performance measures for each State that is a grantee under this title, which shall be applicable to the State grantee without regard to whether such grantee operates the program directly or through contracts, grants, or agreements with other entities. The performance of the State grantees with respect to such measures shall be evaluated in accordance with section 514(f).

(5) **LIMITATION-** An agreement to be evaluated on the performance measures shall be a requirement for application for, and a condition of, all grants authorized by this title.

(b) **REQUIRED INDICATORS-** The indicators described in subsection (a) shall include--

- (1) the number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60;
- (2) community services provided;
- (3) placement into and retention in unsubsidized public or private employment;
- (4) satisfaction of the enrollees, employers, and their host agencies with their experiences and the services provided; and
- (5) any additional indicators of performance that the Secretary determines to be appropriate to evaluate services and performance.

(c) **DEFINITIONS OF INDICATORS-**

(1) **IN GENERAL-** The Secretary, after consultation with national and State grantees, representatives of business and labor organizations, and providers of services, shall, by regulation, issue definitions of the indicators of performance described in subsection (b).

(2) **DEFINITIONS OF CERTAIN TERMS-** In this section:

(A) **PLACEMENT INTO PUBLIC OR PRIVATE UNSUBSIDIZED**

**EMPLOYMENT-** The term 'placement into public or private unsubsidized employment' means full- or part-time paid employment in the public or private sector by an enrollee under this title for 30 days within a 90-day period without the use of funds under this title or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earnings of an enrollee through the use of wage records or other appropriate methods.

(B) **RETENTION IN PUBLIC OR PRIVATE UNSUBSIDIZED**

**EMPLOYMENT-** The term 'retention in public or private unsubsidized employment' means full- or part-time paid employment in the public or private

sector by an enrollee under this title for 6 months after the starting date of placement into unsubsidized employment without the use of funds under this title or any other Federal or State employment subsidy program.

(d) **CORRECTIVE EFFORTS-** A State or other grantee that does not achieve the established levels of performance on the performance measures shall submit to the Secretary, for approval, a plan of correction as described in subsection (e) or (f) of section 514 to achieve the established levels of performance.

## **SECTION 514 COMPETITIVE REQUIREMENTS RELATING TO GRANT AWARDS**

(a) **PROGRAM AUTHORIZED-** In accordance with section 502(b), the Secretary shall award grants to eligible applicants to carry out projects under this title for a period of 1 year, except that, after the promulgation of regulations for this title and the establishment of the performance measures required by section 513(a), the Secretary shall award grants for a period of not to exceed 3 years.

(b) **ELIGIBLE APPLICANTS-** An applicant shall be eligible to receive a grant under subsection (a) in accordance with section 502(b)(1), and subsections (c) and (d).

(c) **CRITERIA-** The Secretary shall select the eligible applicants to receive grants under subsection (a) based on the following:

- (1) The applicant's ability to administer a program that serves the greatest number of eligible individuals, giving particular consideration to individuals with greatest economic need, greatest social need, poor employment history or prospects, and over the age of 60.
- (2) The applicant's ability to administer a program that provides employment for eligible individuals in the communities in which such individuals reside, or in nearby communities, that will contribute to the general welfare of the community.
- (3) The applicant's ability to administer a program that moves eligible individuals into unsubsidized employment.
- (4) The applicant's ability to move individuals with multiple barriers to employment into unsubsidized employment.
- (5) The applicant's ability to coordinate with other organizations at the State and local level.
- (6) The applicant's plan for fiscal management of the program to be administered with funds received under this section.
- (7) Any additional criteria that the Secretary deems appropriate in order to minimize disruption for current enrollees.

(d) **RESPONSIBILITY TESTS-**

- (1) **IN GENERAL-** Before final selection of a grantee, the Secretary shall conduct a review of available records to assess the applicant's overall responsibility to administer Federal funds.

- (2) REVIEW- As part of the review described in paragraph (1), the Secretary may consider any information, including the organization's history with regard to the management of other grants.
- (3) FAILURE TO SATISFY TEST- The failure to satisfy any 1 responsibility test that is listed in paragraph (4), except for those listed in subparagraphs (A) and (B) of such paragraph, does not establish that the organization is not responsible unless such failure is substantial or persistent (for 2 or more consecutive years).
- (4) TEST- The responsibility tests include review of the following factors:
- (A) Efforts by the organization to recover debts, after 3 demand letters have been sent, that are established by final agency action and have been unsuccessful, or that there has been failure to comply with an approved repayment plan.
  - (B) Established fraud or criminal activity of a significant nature within the organization.
  - (C) Serious administrative deficiencies identified by the Secretary, such as failure to maintain a financial management system as required by Federal regulations.
  - (D) Willful obstruction of the audit process.
  - (E) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance measures.
  - (F) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.
  - (G) Failure to return a grant closeout package or outstanding advances within 90 days of the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.
  - (H) Failure to submit required reports
  - (I) Failure to properly report and dispose of government property as instructed by the Secretary.
  - (J) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.
  - (K) Failure to ensure that a subrecipient complies with its Office of Management and Budget Circular A-133 audit requirements specified at section 667.200(b) of title 20, Code of Federal Regulations.
  - (L) Failure to audit a subrecipient within the required period.
  - (M) Final disallowed costs in excess of 5 percent of the grant or contract award if, in the judgment of the grant officer, the disallowances are egregious findings.
  - (N) Failure to establish a mechanism to resolve a subrecipient's audit in a timely fashion.
- (5) DETERMINATION- Applicants that are determined to be not responsible shall not be selected as grantees.
- (6) DISALLOWED COSTS- Interest on disallowed costs shall accrue in accordance with the Debt Collection Improvement Act of 1996.

**(e) NATIONAL PERFORMANCE MEASURES AND COMPETITION FOR PUBLIC AND PRIVATE NONPROFIT AGENCIES AND ORGANIZATIONS-**

- (1) IN GENERAL- Not later than 120 days after the end of each program year, the Secretary shall determine if each public or private nonprofit agency or organization

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that is a grantee has met the national performance measures established pursuant to section 513(a)(3).

(2) TECHNICAL ASSISTANCE AND CORRECTIVE ACTION PLAN-

- (A) IN GENERAL- If the Secretary determines that a grantee fails to meet the national performance measures for a program year, the Secretary shall provide technical assistance and require such organization to submit a corrective action plan not later than 160 days after the end of the program year.
- (B) CONTENT- The plan submitted under subparagraph (A) shall detail the steps the grantee will take to meet the national performance measures in the next program year.
- (C) AFTER SECOND YEAR OF FAILURE- If a grantee fails to meet the national performance measures for a second consecutive program year, the Secretary shall conduct a national competition to award, for the first full program year following the determination (minimizing, to the extent possible, the disruption of services provided to enrollees), an amount equal to 25 percent of the funds awarded to the grantee for such year.
- (D) COMPETITION AFTER THIRD CONSECUTIVE YEAR OF FAILURE- If a grantee fails to meet the national performance measures for a third consecutive program year, the Secretary shall conduct a national competition to award the amount of the grant remaining after deduction of the portion specified in subparagraph (C) for the first full program year following the determination. The eligible applicant that receives the grant through the national competition shall continue service to the geographic areas formerly served by the grantee that previously received the grant.

(3) COMPETITION REQUIREMENTS FOR PUBLIC AND PRIVATE NONPROFIT AGENCIES AND ORGANIZATIONS IN A STATE-

- (A) IN GENERAL- In addition to the actions required under paragraph (2), the Secretary shall take corrective action if the Secretary determines at the end of any program year that, despite meeting the established national performance measures, a public or private nonprofit agency or organization that is a grantee has attained levels of performance 20 percent or more below the national performance measures with respect to the project carried out in a State and has failed to meet the performance measures as established by the Secretary for the State grantee in such State, and there are not factors, such as the factors described in section 513(a)(2)(B), or size of the project, that justify the performance.
- (B) FIRST YEAR OF FAILURE- After the first program year of failure to meet the performance criteria described in subparagraph (A), the Secretary shall require a corrective action plan, and may require the transfer of the responsibility for the project to other grantees, provide technical assistance, and take other appropriate actions.
- (C) SECOND YEAR OF FAILURE- After the second consecutive program year of failure to meet the performance criteria described in subparagraph (A), the corrective actions to be taken by the Secretary may include the transfer of the responsibility for a portion or all of the project to a State or public or private nonprofit agency or organization, or a competition for a portion or all of the

funds to carry out such project among all eligible entities that meet the responsibility tests under section 514(d) except for the grantee that is the subject of the corrective action.

(D) **THIRD YEAR OF FAILURE-** After the third consecutive program year of failure to meet the performance criteria described in subparagraph (A), the Secretary shall conduct a competition for the funds to carry out such project among all eligible entities that meet the responsibility tests under section 514(d) except for the grantee that is the subject of the corrective action.

(4) **REQUEST BY GOVERNOR-** Upon the request of the Governor of a State for a review of the performance of a public or private nonprofit agency or organization within the State, the Secretary shall undertake such a review in accordance with the criteria described in paragraph (3)(A). If the performance of such grantee is not justified under such criteria, the Secretary shall take corrective action in accordance with paragraph (3).

(f) **PERFORMANCE MEASURES AND COMPETITION FOR STATES-**

(1) **IN GENERAL-** Not later than 120 days after the end of the program year, the Secretary shall determine if a State grantee has met the performance measures established pursuant to section 513(a)(4).

(2) **TECHNICAL ASSISTANCE AND CORRECTIVE ACTION PLAN-** If a State that receives a grant fails to meet the performance measures for a program year, the Secretary shall provide technical assistance and require the State to submit a corrective action plan not later than 160 days after the end of the program year.

(3) **CONTENT-** The plan described in paragraph (2) shall detail the steps the State will take to meet the standards.

(4) **FAILURE TO MEET PERFORMANCE MEASURES FOR SECOND AND THIRD YEARS-**

(A) **AFTER SECOND YEAR OF FAILURE-** If a State fails to meet the performance measures for a second consecutive program year, the Secretary shall provide for the conduct by the State of a competition to award, for the first full program year following the determination (minimizing, to the extent possible, the disruption of services provided to enrollees), an amount equal to 25 percent of the funds available to the State for such year.

(B) **AFTER THIRD YEAR OF FAILURE-** If the State fails to meet the performance measures for a third consecutive program year, the Secretary shall provide for the conduct by the State of a competition to award the funds allocated to the State for the first full program year following the Secretary's determination that the State has not met the performance measures.

## **SECTION 515 AUTHORIZATION OF APPROPRIATIONS**

(a) There is authorized to be appropriated to carry out this title--

(1) \$475,000,000 for fiscal year 2001 and such sums as may be necessary for fiscal year 2002 through 2005; and

(2) such additional sums as may be necessary for each such fiscal year to enable the Secretary, through programs under this title, to provide for at least 70,000 part-time employment positions for eligible individuals.

For purposes of paragraph (2), 'part-time employment position' means an employment position within a workweek of at least 20 hours.

(b) Amounts appropriated under this section for any fiscal year shall be available for obligation during the annual period which begins on July 1 of the calendar year immediately following the beginning of such fiscal year and which ends on June 30 of the following calendar year. The Secretary may extend the period during which such amounts may be obligated or expended in the case of a particular organization or agency receiving funds under this title if the Secretary determines that such extension is necessary to ensure the effective use of such funds by such organization or agency.

(c) At the end of the program year, the Secretary may recapture any unexpended funds for the program year, and reobligate such funds within the 2 succeeding program years for--

- (1) incentive grants;
- (2) technical assistance; or
- (3) grants or contracts for any other program under this title.

## **SECTION 516 DEFINITIONS**

In this title:

(1) **COMMUNITY SERVICE**- The term 'community service' means social, health, welfare, and educational services (including literacy tutoring), legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; weatherization activities; economic development; and such other services essential and necessary to the community as the Secretary, by regulation, may prescribe.

(2) **ELIGIBLE INDIVIDUALS**- The term 'eligible individuals' means an individual who is 55 years old or older, who has a low income (including any such individual whose income is not more than 125 percent of the poverty guidelines established by the Office of Management and Budget), except that, pursuant to regulations prescribed by the Secretary, any such individual who is 60 years old or older shall have priority for the work opportunities provided for under this title.

(3) **PACIFIC ISLAND AND ASIAN AMERICANS**- The term 'Pacific Island and Asian Americans' means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

(4) **PROGRAM**- The term 'program' means the older American community service employment program established under this title.'