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OLDER AMERICANS ACT OF 1965*

TITLE V--COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

short title

Sec. 501. This title may be cited as the "Older American Community Service Employment Act".

older american community service employment program

Sec. 502.(a) In order to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are fifty-five years or older and who have poor employment prospects, the Secretary of Labor (hereinafter in this title referred to as the "Secretary") is authorized to establish an older American community service employment program.

(b)(1) In order to carry out the provisions of this title, the Secretary is authorized to enter into agreements with public or private nonprofit agencies or organizations, including national 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) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities;

(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 title 26, 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;



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(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 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 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--

(I) the participants' skills and talents;

(II) their need for supportive services; and

(III) their physical capabilities;

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except to the extent such project has, for the particular participant involved, an assessment of such skills and talents, such need, or such capabilities prepared recently pursuant to another employment or training program (such as a program under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 3201 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 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 authorize funds to be used, to the extent feasible, to include individuals participating in such project under any State unemployment insurance plan; and

(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, 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.

(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 prime sponsors, labor organizations, groups representing business and industry and workers as well as to individual employers, where appropriate.

(4) The Secretary may enter into an agreement with the Administrator of the Environmental Protection Agency to establish a Senior Environmental Employment Corps.

(c)(1) The Secretary is authorized to pay 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 fiscal year 1987 and each fiscal year thereafter 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 public or private nonprofit agency or organization with which the Secretary has an agreement under subsection (b) of this section, 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 public or private nonprofit agency or organization with which the Secretary has an agreement under subsection (b) of this section 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 exceed 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.

(d)(1) Whenever a national organization or other program sponsor conducts a project within a planning and service area in a State such organization or program sponsor 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, 30 days prior to undertaking the project, for review and comment according to guidelines the Secretary shall issue to assure efficient and effective coordination of programs under this title.

(2) The Secretary shall review on his own initiative or at the request of any public or private agency or organization, or an agency of the State government, the distribution of programs under this title within the State including the distribution between urban and rural areas within the State. For each proposed reallocation of programs within a State, the Secretary shall give notice and opportunity for a hearing on the record by all interested individuals and make a written determination of his findings and decision.

(e)(1) The Secretary, in addition to any other authority contained in this title, shall conduct experimental 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 experimental projects authorized by this subsection. The Secretary, from amounts reserved under section 506(a)(2)(A) 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 section 124 of the Job Training Partnership Act (29 U.S.C. 1534).

(3)(A) The Secretary shall carry out an evaluation of the second career training and job placement projects authorized by this subsection.

(B) The evaluation shall include but not be limited to the projects described in paragraph (2).

(C) The Secretary shall prepare and submit, not later than one year after December 29, 1981, to the Congress an interim report describing agreements entered into under paragraph (1) and the design for the evaluation required by this paragraph. The Secretary shall prepare and submit to the President and the Congress a final report on the evaluation required by this paragraph not later than February 1, 1984, together with his findings and such recommendations, including recommendations for additional legislation, as the Secretary deems appropriate.

(D) The Secretary shall make the final report submitted under subparagraph (C) available to interested private business concerns.

(4) For the purpose of this subsection, "eligible individual" means any individual who is 55 years of age or older and who has an income equal to or less than the intermediate level retired couples budget as determined annually by the Bureau of Labor Statistics.

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administration

Sec. 503.(a) In order to effectively carry out the provisions of this title, the Secretary shall, through the Commissioner of the Administration on Aging, consult with the State agency on aging designated under section 305(a)(1) and the appropriate area agencies on aging established under section 305(a)(2) with regard to--

(1)(A) the localities in which community service projects of the type authorized by this title are most needed;

(B) consideration of the employment situations and the type of skills possessed by available local individuals who are eligible to participate; and

(C) potential projects and the number and percentage of eligible individuals in the local population.

(2) The Secretary of Labor and the Commissioner shall coordinate the programs under this title and the programs under titles III, IV, VI to increase job opportunities available to older individuals.

(b)(1) The Secretary shall coordinate the program assisted under this title with programs authorized under the Job Training Partnership Act, the Community Services Block Grant Act, and the Vocational Education Act of 1984. The Secretary shall coordinate the

administration of this title with the administration of titles III, IV, and VI by the Commissioner 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 chapter may not be used to carry out any program under the Job Training Partnership Act, the Community Services Block Grant Act, or the Vocational Education Act of 1984. 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.

(2) 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) In carrying out the provisions of this title, the Secretary may fund and expand projects concerning the Senior Environmental Employment Corps and energy conservation from sums appropriated under section 508 for such fiscal year.

participants not federal employees

Sec. 504.(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.

(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.

interagency cooperation

SEC. 505.(a) The Secretary shall consult with, and obtain the written views of, the Commissioner 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) In administering projects under this title concerning the Senior Environmental Employment Corps and energy conservation, the Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Energy and shall enter into an agreement with the Administrator and the Secretary of Energy to coordinate programs conducted by them with such projects.

(d)(1) The Secretary shall promote and coordinate carrying out projects under this title jointly with programs, projects, or activities under other Acts 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 employment and training programs in which eligible individuals may participate that are carried out under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

equitable distribution of assistance

Sec. 506.(a)(1)(A) Subject to subparagraph (B) and paragraph (2), from sums appropriated under this title for each fiscal year, the Secretary shall first reserve such sums as may be necessary for national grants or contracts with public agencies and public or nonprofit private organizations to maintain the level of activities carried on under such grants or contracts at least at the level of such activities supported under this title and under any other provision of Federal law relating to community service employment programs for older Americans in fiscal year 1978.

(B)(i)(I) For each fiscal year in which the sums under this title exceeds the amount appropriated under this title for fiscal year 1978, the Secretary shall reserve not more than 45 percent of such excess, except as provided in subclause (II), to carry out clauses (ii), (iii), and (iv).

(II) The Secretary shall reserve a sum sufficient to carry out clauses (iii) and (iv).

(III) The Secretary in awarding grants and contracts under this paragraph from the sum reserved under this paragraph shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts designed to achieve the allotment among the States described in paragraph (3) of this subsection.

(ii) The Secretary shall reserve such sums as may be necessary for national grants or contracts 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.

(iii) If the amount appropriated under this title for a fiscal year exceeds 102 percent of the amount appropriated under this title for fiscal year 1991, for each fiscal year described in clause (iv), the Secretary shall reserve for recipients of national grants and contracts under this paragraph such portion of the excess amount as the Secretary

determines to be appropriate and is--

(I) at least 25 percent of the excess amount; pr

(II) the portion required to increase the amount made available under this paragraph to each of the recipients so that the amount equals 1.3 percent of the amount appropriated under this title for fiscal year 1991.

(iv) From the portion reserved under clause (iii), the Secretary shall increase the amount made available under this paragraph to each of the recipients--

(I) for each fiscal year before the fiscal year described in subclause (II), so that such amount equals, or more closely approaches, such 1.3 percent; and

(II) for the first fiscal year for which the portion is sufficient to available under this paragraph to each of the recipients the amount equal to such 1.3 percent, so that such amount is not less than such 1.3 percent.

(v) For each fiscal year after the fiscal year described in clause (ii)(II), the Secretary shall make available under this paragraph to each of the recipients an amount not less than such 1.3 percent.

(C) Preference in awarding grants or contracts under this paragraph shall be given to national organizations, and agencies, of proven ability in providing employment services to eligible individuals under this program and similar programs. The Secretary, in awarding grants and contracts under this section, 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, subject to subparagraph (B)(i)(III).

(2)(A) From sums appropriated under this title for each fiscal year after September 30, 1978, the Secretary shall reserve an amount which is at least 1 percent but not more than 3 percent of the amount appropriated in excess of the amount appropriated for fiscal year 1978 for the purpose of entering into agreements under section 502(e), relating to improved transition to private employment.

(B) After the Secretary makes the reservations required by paragraph (i)(B) and subparagraph (A), the remainder of such excess shall be allotted to the appropriate public agency of each State pursuant to paragraph (3).

(3) The Secretary shall allot to the State agency on aging of each State the remainder of the sums appropriated for any fiscal year under section 508 of this title so that each State will receive an amount which bears the same ratio to such remainder as the product of the number of persons aged fifty-five or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except that (A) no State shall be allotted less than one-half of 1 percent of the remainder of the sums appropriated for the fiscal year for which the determination is made, or \$100,000, whichever is greater, and (B) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount which is not less than one-fourth of 1 percent of the remainder of the sums appropriated for the fiscal year for which the determination is made, or \$50,000, whichever is greater. For the purpose of the exception contained in this paragraph the term "State" does not include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust

Territory of the Pacific Islands.

(4) For the purpose of this subsection--

(A) 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 (i) the allotment percentage shall in no case be more than 75 percent or less than 33 percent, and (ii) the allotment percentage for the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall be 75 percent;

(B) the number of persons aged fifty-five 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

(C) for the purpose of determining the allotment percentage, the term "United States" means the fifty States and the District of Columbia.

(b) The amount allotted for projects within any State under subsection (a) of this section for any fiscal year which the Secretary determines will not be required for such year shall be reallocated, from time to time and on such dates during such year as the Secretary may fix, to projects within other States in proportion to the original allotments to projects within such States under subsection (a) of this section for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates that projects within such State need and will be able to use for such year; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) of this section for such year.

(c) The amount apportioned for projects within each State under subsection (a) of this section shall be apportioned among areas within each such State in an equitable manner, taking into consideration (1) the proportion which eligible individuals in each such area bears to the total number of such individuals, respectively, in that State, (2) the relative distribution of such individuals residing in rural and urban areas within the State, and (3) the relative distribution of (A) such individuals who are individuals with the greatest economic need, (B) such individuals who are minority individuals, and (C) such individuals who are individuals with greatest social need.

(d) The Secretary shall require the State agency for each State receiving funds under this title to report at the beginning of each fiscal year on such State's compliance with section (c) of this section. 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 allotted to each such project.

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definitions

Sec. 507. As used in this title--

(1) the term "eligible individuals" means an individual who is fifty-five 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 sixty years old or older shall have priority for the work opportunities provided for under this title;

(2) 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;

(3) the term "program" means the older American community service employment program established under this title; and

(4) 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.

authorization of appropriations

Sec. 508.(a) There is authorized to be appropriated to carry out this title--

(1) \$470,671,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993, 1994, and 1995; 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 used 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. Any such extension shall be for a period of not more than 60 days after the end of such annual period.

Sec. 509. 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.

dual eligibility

Sec. 510. In the case of projects under this title carried out jointly with programs carried out under the Job Training Partnership Act, eligible individuals shall be deemed to satisfy

the requirements of section 203 of such Act (29 U.S.C. 1603) that are applicable to adults.

treatment of assistance

Sec. 511. 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)).

*As amended by the Older Americans Act technical amendments of 1994

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U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

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