

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 117 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

**§ 12638. State Commissions on National and Community Service**

**(a) Existence required**

**(1) State Commission**

Except as provided in paragraph (2), to be eligible to receive a grant or allotment under division B or C or to receive a distribution of approved national service positions under division C, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

**(2) Alternative administrative entity**

The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this chapter. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under section 12582 of this title.

**(b) Appointment and size**

Except as provided in subsection (c)(3), the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio nonvoting members, as described in paragraph (3) or (4) of subsection (c).

**(c) Composition and membership**

**(1) Required members**

The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in subsection (a), (b), or (c) of section 12572 of this title.

(J) A representative of the volunteer sector.

**(2) Sources of other members**

The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

**(3) Corporation representative**

The representative of the Corporation designated under section 12651f(c) of this title for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State.

**(4) Ex officio State representatives**

The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

**(5) Limitation on number of State employees as members**

The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

**(d) Miscellaneous matters**

**(1) Membership balance**

The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party.

**(2) Terms**

Each member of the State Commission for a State shall serve for a term of 3 years, except that the chief executive officer of a State shall initially appoint a portion of the members to terms of 1 year and 2 years.

**(3) Vacancies**

If a vacancy occurs on a State Commission, a new member shall be appointed by the chief executive officer of the State and serve for the remainder of the term for which the prede-

cessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the State Commission.

**(4) Compensation**

A member of a State Commission or alternative administrative entity shall not receive any additional compensation by reason of service on the State Commission or alternative administrative entity, except that the State may authorize the reimbursement of travel expenses, including a per diem in lieu of subsistence, in the same manner as other employees serving intermittently in the service of the State.

**(5) Chairperson**

The voting members of a State Commission shall elect one of the voting members to serve as chairperson of the State Commission.

**(6) Limitation on member participation**

**(A) General limitation**

Except as provided in subparagraph (B), a voting member of the State Commission (or of an alternative administrative entity) shall not participate in the administration of the grant program (including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity) described in subsection (e)(9) if—

(i) a grant application relating to such program is pending before the Commission (or such entity); and

(ii) the application was submitted by a program or entity of which such member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

**(B) Exception**

If, as a result of the operation of subparagraph (A), the number of voting members of the Commission (or of such entity) is insufficient to establish a quorum for the purpose of administering such program, then voting members excluded from participation by subparagraph (A) may participate in the administration of such program, notwithstanding the limitation in subparagraph (A), to the extent permitted by regulations issued under section 12651d(b)(12) of this title by the Corporation.

**(C) Rule of construction**

Subparagraph (A) shall not be construed to limit the authority of any voting member of the Commission (or of such entity) to participate in—

(i) discussion of, and hearing and forums on—

(I) the general duties, policies, and operations of the Commission (or of such entity); or

(II) the general administration of such program; or

(ii) similar general matters relating to the Commission (or such entity).

**(e) Duties of a State Commission**

The State Commission or alternative administrative entity for a State shall be responsible for the following duties:

(1) Preparation of a national service plan for the State that—

(A) is developed, through an open and public process (such as through regional forums, hearings, and other means) that provides for maximum participation and input from the private sector, organizations, and public agencies, using service and volunteerism as strategies to meet critical community needs, including service through programs funded under the national service laws;

(B) covers a 3-year period, the beginning of which may be set by the State;

(C) is subject to approval by the chief executive officer of the State;

(D) includes measurable goals and outcomes for the State national service programs in the State consistent with the performance levels for national service programs as described in section 12639(k) of this title;

(E) ensures outreach to diverse community-based agencies that serve underrepresented populations, through established networks and registries at the State level, or through the development of such networks and registries;

(F) provides for effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws;

(G) is updated annually, reflecting changes in practices and policies that will improve the coordination and effectiveness of Federal, State, and local resources for service and volunteerism within the State;

(H) ensures outreach to, and coordination with, municipalities (including large cities) and county governments regarding the national service laws; and

(I) contains such information as the State Commission considers to be appropriate or as the Corporation may require.

(2) Preparation of the applications of the State under section 12582 of this title for financial assistance.

(3) Assistance in the preparation of the application of the State educational agency for assistance under section 12525 of this title.

(4) Preparation of the application of the State under section 12582 of this title for the approval of service positions that include the national service educational award described in division D.

(5) Make recommendations to the Corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(6) Make technical assistance available to enable applicants for assistance under section 12571 of this title—

(A) to plan and implement service programs; and

(B) to apply for assistance under the national service laws using, if appropriate, information and materials available through a

clearinghouse established under section 12653a<sup>1</sup> of this title.

(7) Assistance in the provision of health care and child care benefits under section 12594 of this title to participants in national service programs that receive assistance under section 12571 of this title.

(8) Development of a State system for the recruitment and placement of participants in programs that receive assistance under the national service laws and dissemination of information concerning national service programs that receive such assistance or approved national service positions.

(9) Administration of the grant program in support of national service programs that is conducted by the State using assistance provided to the State under section 12571 of this title, including selection, oversight, and evaluation of grant recipients.

(10) Development of projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the Corporation (to be made available in a case in which such a program requests such a project, method, material, or activity) or from the State using assistance provided under section 12571 of this title, for use by programs that request such projects, methods, materials, and activities.

**(f) Relief from administrative requirements**

Upon approval of a State plan submitted under subsection (e)(1), the Chief Executive Officer may waive for the State, or specify alternatives for the State to, administrative requirements (other than statutory provisions) otherwise applicable to grants made to States under the national service laws, including those requirements identified by the State as impeding the coordination and effectiveness of Federal, State, and local resources for service and volunteerism within the State.

**(g) State service plan for adults age 55 or older**

**(1) In general**

Notwithstanding any other provision of this section, to be eligible to receive a grant or allotment under division B or C or to receive a distribution of approved national service positions under division C, a State shall work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older.

**(2) Matters included**

The State service plan shall include—

(A) recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(B) recommendations to the State agency (as defined in section 3002 of this title) on—

(i) a marketing outreach plan to businesses; and

(ii) outreach to—

(I) nonprofit organizations;

(II) the State educational agency;

(III) institutions of higher education;

and

(IV) other State agencies;

(C) recommendations for civic engagement and multigenerational activities, such as—

(i) early childhood education and care, family literacy, and after school programs;

(ii) respite services for adults age 55 or older and caregivers; and

(iii) transitions for older adults age 55 or older to purposeful work in their post-career lives; and

(D) recommendations for encouraging the development of Encore service programs in the State.

**(3) Knowledge base**

The State service plan shall incorporate the current knowledge base (as of the time of the plan) regarding—

(A) the economic impact of the roles of workers age 55 or older in the economy;

(B) the social impact of the roles of such workers in the community; and

(C) the health and social benefits of active engagement for adults age 55 or older.

**(4) Publication**

The State service plan shall be made available to the public and be transmitted to the Chief Executive Officer.

**(h) Activity ineligible for assistance**

A State Commission or alternative administrative entity may not directly carry out any national service program that receives assistance under section 12571 of this title.

**(i) Delegation**

Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties to a State agency or public or private nonprofit organization.

**(j) Approval of State Commission or alternative**

**(1) Submission to Corporation**

The chief executive officer for a State shall notify the Corporation of the establishment or designation of the State Commission or use of an alternative administrative entity for the State. The notification shall include a description of—

(A) the composition and membership of the State Commission or alternative administrative entity; and

(B) the authority of the State Commission or alternative administrative entity regarding national service activities carried out by the State.

**(2) Approval of alternative administrative entity**

Any designation of a State Commission or use of an alternative administrative entity to carry out the duties of a State Commission shall be subject to the approval of the Corporation, which shall not be unreasonably withheld. The Corporation shall approve an alternative administrative entity if such entity

<sup>1</sup> See References in Text note below.

provides for individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the duties described in paragraphs (1) through (4) of subsection (e).

**(3) Rejection**

The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements of this section. The Corporation may reject a request to use an alternative administrative entity in lieu of a State Commission if the Corporation determines that the entity does not provide for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role as described in paragraph (2). If the Corporation rejects a State Commission or alternative administrative entity under this paragraph, the Corporation shall promptly notify the State of the reasons for the rejection.

**(4) Resubmission and reconsideration**

The Corporation shall provide a State notified under paragraph (3) with a reasonable opportunity to revise the rejected State Commission or alternative administrative entity. At the request of the State, the Corporation shall provide technical assistance to the State as part of the revision process. The Corporation shall promptly reconsider any resubmission of a notification under paragraph (1) or application to use an alternative administrative entity under paragraph (2).

**(5) Subsequent changes**

This subsection shall also apply to any change in the composition or duties of a State Commission or an alternative administrative entity made after approval of the State Commission or the alternative administrative entity.

**(6) Rights**

An alternative administrative entity approved by the Corporation under this subsection shall have the same rights as a State Commission.

**(k) Coordination**

**(1) Coordination with other State agencies**

The State Commission or alternative administrative entity for a State shall coordinate the activities of the Commission or entity under this chapter with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

**(2) Coordination with volunteer service programs**

**(A) In general**

The State Commission or alternative administrative entity for a State shall coordinate functions of the Commission or entity

(including recruitment, public awareness, and training activities) with such functions of any division of the Corporation that carries out volunteer service programs in the State.

**(B) Agreement**

In coordinating functions under this paragraph, such Commission or entity, and such division, may enter into an agreement to—

- (i) carry out such a function jointly;
- (ii) to<sup>2</sup> assign responsibility for such a function to the Commission or entity; or
- (iii) to<sup>2</sup> assign responsibility for such a function to the division.

**(C) Information**

The State Commission or alternative entity for a State, and the head of any such division, shall exchange information about—

- (i) the programs carried out in the State by the Commission, entity, or division, as appropriate; and
- (ii) opportunities to coordinate activities.

**(l) Liability**

**(1) Liability of State**

Except as provided in paragraph (2)(B), a State shall agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or alternative administrative entity of the State, within the scope of the service of the member on the State Commission or alternative administrative entity.

**(2) Other claims**

**(A) In general**

A member of the State Commission or alternative administrative entity shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the State Commission or alternative administrative entity.

**(B) Limitation**

This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the State Commission or alternative administrative entity.

**(3) Effect on other law**

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such service;

(B) to affect any other right or remedy against the State under applicable law, or against any person other than a member of the State Commission or alternative administrative entity; or

(C) to limit or alter in any way the immunities that are available under applicable

<sup>2</sup>So in original. The word "to" probably should not appear.

law for State officials and employees not described in this subsection.

(Pub. L. 101-610, title I, § 178, as added and amended Pub. L. 103-82, title II, § 201(a), title IV, § 405(p)(1), Sept. 21, 1993, 107 Stat. 867, 922; Pub. L. 111-13, title I, § 1606, Apr. 21, 2009, 123 Stat. 1530.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (k)(1), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (c)(2)(E) and (e)(5), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

Section 12653a of this title, referred to in subsec. (e)(6)(B), was in the original "section 198A", meaning section 198A of Pub. L. 101-610, as added by section 104(c) of Pub. L. 103-82, which was repealed, and section 198B was redesignated section 198A, by Pub. L. 111-13, title I, § 1803(a)(1), (b), Apr. 21, 2009, 123 Stat. 1554. Provisions similar to section 12653a are now contained in section 12653o of this title.

The Community Services Block Grant Act, referred to in subsec. (k)(1), is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 12638, Pub. L. 101-610, title I, § 178, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102-10, § 8(1), Mar. 12, 1991, 105 Stat. 31, provided that States applying for assistance under this subchapter be encouraged to establish a State Advisory Board for National and Community Service and set out additional provisions for membership and duties of such boards, prior to repeal by Pub. L. 103-82, § 201(a).

#### AMENDMENTS

2009—Subsec. (a)(2). Pub. L. 111-13, § 1606(1), substituted "section 12582" for "sections 12543 and 12582". Subsec. (c)(1)(I). Pub. L. 111-13, § 1606(2)(A), substituted "subsection (a), (b), or (c) of section 12572 of this title." for "section 12572(a) of this title, such as a youth corps program described in section 12572(a)(2) of this title."

Subsec. (c)(1)(J). Pub. L. 111-13, § 1606(2)(B), added subpar. (J).

Subsec. (c)(3). Pub. L. 111-13, § 1606(3), struck out " , unless the State permits the representative to serve as a voting member of the State Commission or alternative administrative entity" before period at end.

Subsec. (d)(6)(B). Pub. L. 111-13, § 1606(4), substituted "section 12651d(b)(12)" for "section 12651d(b)(11)".

Subsec. (e)(1). Pub. L. 111-13, § 1606(5)(A), added par. (1) and struck out former par. (1) which related to preparation of a national service plan for the State.

Subsec. (e)(2). Pub. L. 111-13, § 1606(5)(B), substituted "section 12582" for "sections 12543 and 12582".

Subsecs. (f) to (l). Pub. L. 111-13, § 1606(6), (7), added subsecs. (f) and (g) and redesignated former subsecs. (f) to (j) as (h) to (l), respectively.

1993—Subsec. (i)(2)(A). Pub. L. 103-82, § 405(p)(1), substituted "the Corporation" for "ACTION, or of the Corporation," before "that carries out".

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-13 effective Oct. 1, 2009, see section 6101(a) of Pub. L. 111-13, set out as a note under section 4950 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(1) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Pub. L. 103-82, title II, § 201(c), Sept. 21, 1993, 107 Stat. 873, provided that: "The amendments made by this section [enacting this section and repealing former section 12638 of this title] shall take effect on October 1, 1993."

#### TRANSITIONAL PROVISIONS

Pub. L. 103-82, title II, § 201(d), Sept. 21, 1993, 107 Stat. 873, provided that:

"(1) USE OF ALTERNATIVES TO STATE COMMISSION.—If a State does not have a State Commission on National and Community Service that satisfies the requirements specified in section 178 of the National and Community Service Act of 1990 [42 U.S.C. 12638], as amended by subsection (a), the Corporation for National and Community Service may authorize the chief executive officer of the State to use an existing agency of the State to perform the duties otherwise reserved to a State Commission under subsection (e) of such section.

"(2) APPLICATION OF SUBSECTION.—This subsection shall apply only during the 27-month period beginning on the date of the enactment of this Act [Sept. 21, 1993]."

### § 12639. Evaluation

#### (a) In general

The Corporation shall provide, directly or through grants or contracts, for the continuing evaluation of programs that receive assistance under the national service laws, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of programs receiving assistance under the national service laws in achieving stated goals and the costs associated with such programs, including an evaluation of each such program's performance based on the performance levels established under subsection (k); and

(2) the effectiveness of the structure and mechanisms for delivery of services, such as the effective utilization of the participants' time, the management of the participants, and the ease with which recipients were able to receive services, to maximize the cost effectiveness and the impact of such programs.

#### (b) Comparisons

The Corporation shall provide for inclusion in the evaluations required under subsection (a), where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

#### (c) Conducting evaluations

Evaluations of programs under subsection (a) shall be conducted by individuals who are not directly involved in the administration of such program.

#### (d) Standards

The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

#### (e) Community participation

In evaluating a program receiving assistance under the national service laws, the Corporation