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June 6, 2022

Alison Barkoff
Acting Assistant Secretary for Aging and Administrator
Administration for Community Living
330 C St. NW
Washington, DC 20201

Submitted electronically via: OAAregulations@acl.hhs.gov

Dear Acting Assistant Secretary Barkoff:

On behalf of ADvancing States, I am writing in response to the Request for Information: Older Americans Act Regulations (RIN 0985-AA17) published in the Federal Register May 6, 2022. ADvancing States is a nonpartisan association of state government agencies that represents the nation's 56 state and territorial agencies on aging and disabilities. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services for older adults and persons with disabilities. Our members administer a wide range of services and supports for older adults and people with disabilities, including overseeing Older Americans Act (OAA) programs and services in every state. Together with our members, we work to design, improve, and sustain state systems delivering long-term services and supports for people who are older or have a disability and for their caregivers.

ADvancing States welcomes this opportunity to work with the Administration for Community Living (ACL) and Administration on Aging (AoA) on updating regulations pertaining to the Older Americans Act (OAA). As you know, many of the rules impacting the OAA were last updated in 1988—at that time, ADvancing States was still known by our previous name, the National Association of State Units on Aging, or NASUA. ADvancing States has a long history of working with our state members to improve programs and services provided under the OAA, and we look forward to working with ACL/AoA on modernizing the regulations to both reflect the current landscape, as well as to align the regulations with current statute.

In addition to the specific feedback below, we wanted to first discuss the opportunity available to ACL as it works to update these rules. As you know, programs for older adults have evolved over the past 30 years to improve participant control and person-centered services and supports. We recommend that ACL infuse the principles of person-centered thinking and ensure that the regulations further strengthen participant control of services.

For ease of reading and reference, we have organized our comments by OAA Title, and have provided specific detail and in the format requested in the RFI to the degree practicable. We have not limited our comments to Titles III, VI, and VII, but have instead provided considerations on all Titles where states felt it was important to provide feedback.

Title II: Administration on Aging

Citation: OAA Title II

Nature of the Comment: Addition

Background: The Administration for Community Living was established in 2012 to create a unified, consistent approach to administration of aging and disability programs. However, ACL was not codified in regulations.

Detail/Benefits: A regulatory structure for ACL would be helpful, particularly in relation to the dual role of the Assistant Secretary on Aging and the ACL Administrator. The ACL regulations could be a new subpart under part 1321 that provide clarification around the various requirements for the AoA in the Act. Some examples include, but are not limited to:

- Codifying the Assistant Secretary’s Role in Implementing and Supporting States and area agencies on aging (AAAs) in OAA Section 212, including promulgating uniform monitoring procedures and reporting requirements;
- The Research, Demonstration, and Evaluation Center established by Section 201(g)(1) of the OAA;
- ACL’s role in coordinating home and community-based services across the Federal government;
- Appropriate use of gifts and donations as well as gifts/donations that must be declined.

Title III: Grants for State and Community Programs on Aging

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart A, Sec. 1321.3 – Definitions

Nature of the Comment: Modification

Background: We recommend revamping the definitions section to remove outdated language and replace it with inclusive, person-centered, definitions; establish clarification of important parts of the Act; and remove unnecessary definitions that do not further the goals of the Act.

Detail/Benefits: We recommend that ACL remove unnecessary definitions, such as construction, and focus on specific definitions that are core components of OAA service delivery. Examples include:

- Definitions of Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs): guidance and instructions have some specifics around the six ADLs and other components of ADL/IADL; however, there is nothing in regulation;
- “Social and economic need” should also have some structure included to ensure that there is clarity and consistency regarding expectation;

- ACL has prioritized “business acumen” for many years, yet there is no regulatory or statutory definition;
- Further clarification of “multipurpose senior centers;”
- Further clarification regarding virtual senior centers and allowable activities.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart A, Sec. 1321.3 – Definitions

Nature of the Comment: Addition

Background: The regulations at 45 CFR 1322.3 define “Older Indians” as those individuals who have attained the minimum age determined by the tribe for services. However, neither the statute nor regulations for OAA Title III include a definition of “Older Indian” for purposes of delivering services. Therefore, some Older Indians are able to receive services through Title VI but not Title III. This creates significant challenges for states that attempt to coordinate with their tribal OAA programs and exacerbates inequities in service delivery.

Detail/Benefits: In order to align services and promote coordination between state and tribal agencies, we recommend the following additions to Sec. 1321.3:

Older Indian has the meaning as defined in 45 CFR 1322.3 or any subsequent regulation.

Older Adult means an individual who is 60 years of age or older, or an Older Indian as defined in this section.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart B, Sec. 1321.45 Transfer between congregate and home-delivered nutrition service allotments

Nature of the Comment: Change

Background: The current rules limit transfers between OAA congregate and home delivered nutrition services to 30%, which is different than the statute. We recommend that ACL remove the percentages from the regulation as they currently do not align with the statute. Instead, we recommend that the regulation refer to the statute at 308(b)(4)(A). This way, if the percentage changes in the law it does not require additional changes in the regulation. Further, we strongly encourage ACL to continue exploring ways to maximize transfer authority – including seeking legislation to allow for 100% transfers between the two programs. In lieu of statutory changes, we recommend that this regulation provide presumptive approval for all transfers up to the statutory maximum to minimize state burdens in requesting a transfer. For those transfers exceeding the limit in 308(b)(4)(A), as allowed by 308(b)(4)(B), we recommend ACL develop a standardized template for requesting such transfers.

Detail/Benefits: The removal of percentages will align regulations with the statute. The presumptive transfer will reduce administrative burden for states and ACL, as states continually report administrative challenges with requesting and enacting transfers between congregate and home-delivered meal allotments.

Citation: 45 CFR Part 1321—Grants to State and Community Programs

Nature of the Comment: Addition

Background: The OAA Reauthorization of 2020 allowed AAAs to use Title III funding for pursuing contracts with for-profit companies, such as insurance providers, hospitals, or accountable care organizations. Additionally, section 212 contains several safeguards to prevent the misuse of OAA funding. However, there remain questions and challenges with effectuating proper oversight of the use of Title III funding for this purpose. In addition to the recommendations below, we would like to highlight the letter sent to ACL in 2021 requesting guidance on utilizing OAA funding to establish private contracts. We have attached the letter to these comments in Appendix A for reference.

Detail/Benefits: To provide proper oversight of OAA funding used to establish private contracts, we recommend ACL create a new subsection in Sec. 1321 Subpart B. The subsection should include specific policies to:

- Clarify limitations on the use of OAA funds by AAAs to establish and develop contracts for non-OAA services;
- Ensure states' ability to monitor contracts with profit-making entities that have no OAA dollars associated but are being used to generate revenue to support OAA programs;
- Protect against double counting of costs amongst OAA funds and contracts that they are unable to monitor;
- Ensure open records statutes are adhered to when OAA funds are used for the development of those agreements;
- Establish protections to ensure that OAA Title III services and individuals served through OAA remain the priority regardless of any other contracts in place;
- Prevent different levels and quality of service based on payor source;
- Maintain the strong role of participants and community guidance and oversight for program development and decision-making;
- Ensure any OAA funds used for the development of new services or expansion into new regions is refunded to the OAA in a reasonable amount of time;
- Establish protections to prevent OAA resources to be used for development or expansion of private-pay contracting (including the development of community integrated health networks/network lead entity structures) without a corresponding need; and
- Create strong conflict-of-interest protections that prevent steering of participants based on payment source, as well as establish strong safeguards when providing counseling regarding entities that are sources of payment.

Citation: 45 CFR Part 1321—Grants to State and Community Programs

Nature of the Comment: Addition

Background: The OAA Reauthorization of 2020 included language that requires state and area plans to include data to determine the services needed by older individuals who were the focus of resource centers funded under Title IV in fiscal year 2019.

Detail/Benefits: As there were a wide range of resource centers, and there is uncertainty regarding whether this provision establishes mandates around service prioritization, we recommend that ACL provide clarification on the populations included in this provision as well as the state and area responsibilities for compiling and reporting that data.

Citation: 45 CFR Part 1321.65 Responsibilities of service providers under area plans

Nature of the Comment: Addition

Background: Service providers sometimes perform assessments to determine whether individuals should receive services. This can lead to real or perceived conflicts-of-interest.

Detail/Benefits: We recommend ACL establish safeguards to ensure OAA resources are appropriately used and targeted to individuals with the greatest social/economic need. An example of conflict-of-interest language that could be applicable to the OAA is found in 42 CFR 441.301(c)(1)(vi).

Citation: OAA Section 215

Nature of the Comment: Addition

Background: We recommend ACL codify in regulation Section 215 of the Act regarding culturally appropriate and medically tailored meals

Detail/Benefits: Without medically tailored meals, older adults can experience negative health outcomes such as malnutrition due to refusing food or pain from eating food that is difficult to chew or digest. Additionally, providing choices in line with the varied diets of different cultures is crucial to ensuring older adults can remain healthy and happy as they age in place. Sometimes these meals may not fully align with the standardized dietary guidelines. We therefore recommend that ACL provide some flexibility to deviate from those guidelines when it is medically necessary and/or culturally appropriate.

Citation: OAA Section 102

Nature of the Comment: Addition

Background: OAA Sec. 102(4) establishes Aging and Disability Resource Centers (ADRCs) and defines their roles and responsibilities. ADRCs are intended to provide comprehensive services and supports to both older adults and people with disabilities. Due to the lack of funding for ADRCs, many states use OAA Title III-B funds to support their programs; however, ACL guidance prevents the III-B funding from serving people with disabilities under the age of 60.

Detail/Benefits: We recommend ACL codify ADRCs, as defined in OAA Sec. 102(4), and clarify that ADRCs are intended to serve both older adults and people with disabilities. Due to the definition of ADRC in the Act, ACL should clarify that III-B funding can be used to support all populations included in the Sec. 102(4) definition, including individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Addition

Background: Due to the pandemic and resulting restrictions on congregate activities, many states and providers established “grab-and-go” meals programs. These programs are extremely successful and are delivered from meals sites that are historically funded by congregate meals programs. Despite the socialization that frequently occurs when individuals come to the center to pick up meals, current guidance requires states to count these as home delivered meals rather than congregate meals. Due to the substantially larger funding amount provided to the congregate meals programs, this guidance inherently limits the ability of states to expand grab-and-go meals while also maintaining their home delivered meals programs.

Detail/Benefits: We recommend ACL clarify the role of grab-and-go meals in Title III C meals programs and allow states to charge these meals to the C-1 congregate meals program. The inability to use C1 dollars limits states from providing grab-and-go meals to a larger population of older adults. Due to the pandemic, older adults may be less inclined to gather at congregate meal sites. In addition, an increased number of older adults are continuing to work. Due to this, they either are not home to receive home delivered meals which are provided under C2 funding, or do not have the time to sit down at meal sites. Increasing flexibility so C1 dollars can be spent on grab-and-go meals would address this issue. Grab-and-go meals are an affordable option that can be person-centered and promote choice and independence. This strongly supports the intent of the Act.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging

Nature of the Comment: Addition

Background: Title III-D Disease Prevention and Health Promotion Services requires additional clarification. Currently, all III-D services must be “evidence-based” using a definition provided by sub-regulatory guidance. However, “evidence-based” is not currently defined in the Act or regulations. We encourage ACL to use a more flexible definition for evidence based than what ACL has been using in current sub-regulatory guidance. Additionally, we want to stress that Sec. 102(14) establishes a definition for disease prevention and health promotion services that is more expansive than current guidance. For example, current guidance limits services to only those that are evidence-based; however, Sec. 102(14) includes a wide range of screening, education, and counseling programs beyond evidence-based health promotion activities. We recognize appropriations bills have included language requiring that programs funded under Sec. 361 of the OAA be evidence-based; however, we recommend these regulations provide clarification that not all disease prevention and health promotion programs must fit the evidence-based program (EBP) definition. We also believe ACL should establish a better process for identifying and allowing EBPs outside of the current contractor-based model. Lastly, the proliferation of remote delivery during the pandemic has drastically increased access to EBPs; however, it is unclear how remotely delivered programs fit with the EBP model. We recommend incorporating remote delivery into the definition of allowable EBPs.

Detail/Benefits: The clarification would allow additional services and supports that can be flexible and meet the needs of participants, families, and communities.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging

Nature of the Comment: Addition

Background: The Title III-E National Family Caregiver Support Program (NFCSP) was established after the OAA regulations were promulgated. We recommend ACL establish regulatory structure for the program. If ACL decides to promulgate rules for III-E, we encourage ACL to support flexible state delivery of caregiver programs.

Detail/Benefits: The NFCSP would benefit from the establishment of a clear regulatory structure. In addition to the broad requirements and functions of the program, there is a specific need for clarity regarding:

- Living arrangements that are eligible under this program (ie: live together, apart, both, doesn't matter);
- Allowable uses of "supplemental services" and clarity regarding the definition of "temporary";
- Services that primarily helps the client but ultimately ends up supporting the caregiver, such as incontinence pads;
- Clarify potential supports under NFCSP to ensure that broad interventions are available beyond support groups and other light-touch activities;
- Provide structure regarding existing reporting expectations; and
- Delineate the roles and responsibilities for assessment and services.

We further encourage ACL to work to build the evidence base for respite and other NFCSP services

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Addition

Background: The Title III-C Nutrition Program has many rules and requirements; however, there are also several misconceptions about what can and cannot be done with the funding. We recommend ACL codify the guidance provided in the "Did you Know?" document about III-C.¹

Detail/Benefits: Establishing regulations that codify the flexibilities explained in this guidance would provide clear explanation of the allowable uses of funds and promote further flexibility of services.

Citation: 45 CFR Part 1321.47 Statewide non-Federal share requirements

Nature of the Comment: Modification

Background: Section 1321.47 includes dated references to programs that no longer exist and does not reflect the different matching requirements for various parts of the Act.

Detail/Benefits: Updating the matching requirements to current law and practice would reduce confusion from conflicting regulations.

¹ <https://nutritionandagingresourcehub.org/wp-content/uploads/2015/05/OAA-Nutrition-Program-Did-You-Know-5-28-15-1.pdf>

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Modification

Background: Section 1321.71 prohibits payment of dues exceeding \$100 to any organization. This language is extremely dated and we recommend removing the \$100 limit and instead allowing the State to set the maximum amount for such dues.

Detail/Benefits: Providing state discretion will allow the limits to be updated due to inflation and other dynamics while maintaining safeguards on grantee use of funds.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Clarification

Background: Section 1321.69 establishes requirements regarding service priority for frail, homebound or isolated elderly individuals. It is unclear how these interface with the requirements to prioritize individuals with the greatest social and economic need. Clarification is needed regarding whether this is a subset of that prioritization, an additional requirement beyond this prioritization, or a legacy definition that greatest social/economic need replaced. We additionally request ACL update this language to include person-centered and empowering language instead of the current references to “frail” and “homebound” individuals.

Detail/Benefits: Clarification regarding the greatest social and economic need as well as the service priority requirements of 1321.69 will assist states prioritize service recipients and address equity issues. We further recommend ACL include additional information on how equitable delivery of services would be defined and assessed.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Addition/Clarification

Background: There are a wide range of services included in the OAA, yet the limited funding for the program requires prioritization of services and recipients. We recommend ACL clarify the requirements and the options afforded to states and local providers when delivering OAA services.

Detail/Benefits: We recommend ACL include a section that provides the following guidance and clarification regarding:

- The requirement to offer opportunities for socialization but to not mandate that people participate and provide individual autonomy;
- Define services the AAAs must provide and which services the AAA may provide:
 - Clarify the services required to be provided to all older adults (e.g., I&R);
 - Clarify services that are required to be provided by the AAA, but not necessarily to all older adults because funding is limited/waitlist (e.g., meals); and
 - Clarify the services that are optional to provide.
- Reaffirm a SUA's authority to add additional required services for AAAs in the state.

Citation: 45 CFR Part 1321—Grants to State and Community Programs on Aging, Subpart D, Service Requirements

Nature of the Comment: Addition

Background: Medicaid programs are generally the “payer of last resort,” which means that Medicaid is only supposed to fund services when all other payment sources have been exhausted. However, both ACL and CMS have provided guidance clarifying Medicaid may pay for services before seeking OAA reimbursement due to the limited availability of OAA funding. Although this guidance has been released, it is not codified in regulation.

Detail/Benefits: We recommend that ACL include language codifying that Medicaid may pay for services without first seeking OAA payment.

Title VI: Grants for Native Americans

Citation: N/A

Nature of the Comment: Addition

Background: Title VI of the OAA receives substantially less funding than Title III. Many states with large tribal populations seek to coordinate with and supplement Title VI programs; however, coordination can be challenging.

Detail/Benefits: We recommend ACL include language that establishes requirements for states to coordinate and consult with tribal aging organizations and also requires those tribal organizations to consult and coordinate with state agencies.

Title VII: Vulnerable Elder Rights Protection Activities

Citation: 45 CFR Part 1324, Subpart A, State Long Term Care Ombudsman Program, Sec. 1324.21, subsections a(3) and b(3)(iii)

Nature of the Comment: Modification

Background: Conflict of interest (COI) regulations create confusion and may limit the ability of some qualified, independent entities from serving as the ombudsman or supporting ombudsman functions. The language regarding possible organizational COI includes receiving grants or donations from a long-term care facility. Later, the regulations include a definition of COI that cannot be remedied in any way that would allow the organization to host the ombudsman program. The current structure may inadvertently conflate the two scenarios.

Detail/Benefits: We recommend ACL separate the listing of possible organizational COIs into two parts: investment interests as one possible COI (which cannot be remedied) and grants/donations as another possible COI (which can be remedied).

Equity

Citation: N/A

Nature of the Comment: Modifications and Additions

Background: To promote equity within OAA services, greater representation of populations served by the program is needed. ACL could consider language that encourages advisory councils formed for planning processes to be reflective of the equity priorities (i.e.: clarify greatest social/economic need definitions and then ensure representatives are reflected in the councils). We also recognize that language matters and there are numerous areas where outdated definitions contain language currently considered pejorative.

Detail/Benefits: We recommend ACL include language providing guidance around the different groups included in the greatest social/economic need prioritization and clarifying that advisory councils at the federal, state, and local levels should be reflective of those groups. We also recommend ACL update all definitions and other references to reflect acceptable identification from older adults, Tribal representatives, and other populations referenced in the regulations. The language should also include current accepted standards using person-first/person-centered language. This can only be done with appropriate consultation of populations served.

We appreciate the opportunity to comment on this important topic. We recognize that updating these regulations will be a substantial effort and will take a significant amount of time. We request you continue to engage frequently with state agencies on this issue in recognition of the critical role states play in the Act and serving older Americans. We further request the opportunity to discuss ACL's thoughts on regulations and provide feedback on more substantial proposals before they are included in a formal Notice of Proposed Rulemaking. If you have any questions regarding this letter, please feel free to contact Adam Mosey at amosey@advancingstates.org and Damon Terzaghi at dterzaghi@advancingstates.org.

Sincerely,



Martha Roherty
Executive Director
Advancing States

APPENDIX A

OLDER AMERICANS ACT OF 1965

[Public Law 89–73] [As Amended Through P.L. 116–131, Enacted March 25, 2020]

SEC. 212. CONTRACTING AND GRANT AUTHORITY; PRIVATE PAY RELATIONSHIPS; APPROPRIATE USE OF FUNDS

The questions and comments within this document are derived from conversations amongst State Unit on Aging (SUA) representatives in the State-Community Collaborative Think Tank, funded by the Administration for Community Living (ACL). The ten states represented in the State-Community Collaborative Think Tank discussed how to implement the amended requirements within SEC. 212. CONTRACTING AND GRANT AUTHORITY; PRIVATE PAY RELATIONSHIPS; APPROPRIATE USE OF FUNDS of the Older Americans Act of 1965 [Public Law 89–73] [As Amended Through P.L. 116–131, Enacted March 25, 2020]. Specifically this discussion focused on the application and implementation of these rules for and with recipients of Older Americans Act grants or contracts who enter into agreements with profitmaking organizations. The discussion resulted in ideas to meet the requirements, identification of areas of concern and questions that require additional guidance from ACL.

(a) IN GENERAL.—Subject to subsection (b), this Act shall not be construed to prevent a recipient of a grant or a contract under this Act (other than title V) from entering into an agreement with a profitmaking organization for the recipient to provide services to individuals or entities not otherwise receiving services under this Act, provided that—

Question(s):

- ***How should a SUA determine what a “recipient of a grant or contract” is, especially when AAA is part of a larger organization or the AAA has subsidiaries?***
 - SUAs comment that they are and should not be the determining entity of who the recipient of a grant or contract is. The AAA would determine, but the SUA would review. – ACL: Is this the correct understanding?
- ***How should ‘profitmaking entity’ be defined?***
- ***Does ‘to provide services to individuals or entities not otherwise receiving services under this Act’ mean any service under the Act?*** For example, if a senior is receiving HDM under Title III, can they receive day activity health services under a profiting making organization? They are not the same service, but the senior is receiving services under the Act.
- ***How are AAA’s or AAA Associations that create separate non-profits or LLCs affected by these regulations?***
 - ACL: SUAs are looking for specific guidance from ACL on this question.

(1) funds provided under this Act to such recipient are initially used by the recipient to pay part or all of a cost incurred by the recipient in developing and carrying out such agreement, such agreement guarantees that the cost is reimbursed to the recipient;

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Question(s):

- ***Is there a timeline for when OAA fund recipients must be reimbursed for costs encountered in pursuing agreement as described in (a)(1)?***

(a)(2) if such agreement provides for the provision of 1 or more services, of the type provided under this Act by or on behalf of such recipient, to an individual or entity seeking to receive such services—

(A) the individuals and entities may only purchase such services at their fair market rate;

Question(s):

- ***How and how often will fair market rates be determined? Who will determine the prevailing market rate (SUA or AAA)?***
 - SUAs recommend that the burden remains on the AAA through various methods:
 - Bid for contract
 - Universal cost
 - Use of a common administrator
 - Cost reporting
 - SUAs also state that rates would be set annually. Information may be collected as a part of the Annual Area Plan submission, with possible changes mid-year. We discussed the potential to create a template that can be used by SUAs to capture the information needed to comply with the 212 update.
- ***How should COI be addressed if AAA determines market rates?***
 - SUA will monitor to ensure appropriate use of OAA funds
 - AAAs must document that costs are being covered by the outside funder when effort is specifically linked to that agreement.

(B) all costs incurred by the recipient in providing such services (and not otherwise reimbursed under paragraph (1)), are reimbursed to such recipient; and

(C) the recipient reports the rates for providing such services under such agreement in accordance with subsection (c) and the rates are consistent with the prevailing market rate for provision of such services in the relevant geographic area as determined by the SUA or area agency on aging (as applicable); and

(a)(3) any amount of payment to the recipient under the agreement that exceeds reimbursement under this subsection of the recipient's costs is used to provide, or support the provision of, services under this Act.

Question(s):

- ***What assurances need to be in place to ensure that overpayments go back into the program?***
 - SUAs would monitor this through cost reporting; although they state that there are oversight limitations and the potential for double-dipping.
 - SUAs may require AAAs to have Cost Allocation Plans that the SUA must approve annually and monitor a sample after the fact. Would this suffice?
- ***What authority would a SUA have to require that if the entity is a separate non-profit/LLC set up by the AAA or AAA Association?***
 - ACL: These are questions/issues that SUAs would like more specific guidance on.

(b) ENSURING APPROPRIATE USE OF FUNDS.—An agreement described in subsection (a) may not—

(b)(1) be made without the prior approval of the State agency (or, in the case of a grantee under title VI, without the prior recommendation of the Director of the Office for American Indian, Alaska Native, and Native Hawaiian Aging and the prior approval of the Assistant Secretary), after timely submission of all relevant documents related to the agreement including information on all costs incurred;

Question(s):

- ***If the contracts need to be approved by the SUA, does the SUA become a party to the contract?***
- ***With SUA approval of the contract, what is the risk to the SUA if the AAA performs poorly or unethically or if there are terms within the agreements that the SUA does not fully understand?***
- ***Is the SUA or OAA financially responsible if the AAA does not have enough reserves to cover expenses as a result of their outside contracts?***
- ***Will the SUA be required to approve provider level agreements OR is it only agreements that the AAA enters into? If the SUA does not need to approve provider level agreements, would the AAA then need to approve the agreement for the local provider?***
- ***What does the approval process look like?***
- ***How will you make your determination? What criteria needs to be met?***
 - Establish standard language in contracts to expedite approval; consider including a segment about SUA SDOH goals.

- ***What skills and capacity do you need at the SUA to review agreements?***
 - Need shared understanding of SUAs' rights and authority to be aware of details within other contracts that AAAs have; the SUAs have the ability to review contract details to ensure no displacement.
 - SUAs unanimously state that they do not have the resources, including staff time and expertise, to review everything.
- ***What relevant documents do you need?***
 - Include necessary details in the area plan process; including who the contract is with, services, role, market rate determination, calculation and supporting materials, essential COI information, statement of how new funds may be used to enhance or increase services for older adults.
- ***How do open records statutes apply to these agreements? E.g. health plan agreements likely include non-disclosure or confidentiality language that may conflict with open records rules.***
- ***How will the additional expense for the enhanced review and approval be reimbursed?***

(b)(2) directly or indirectly provide for, or have the effect of, paying, reimbursing, subsidizing, or otherwise compensating an individual or entity in an amount that exceeds the fair market value of the services subject to such agreement;

Question(s):

- ***Will you maintain a catalog of fair market rates? Will you share these in advance to the AAA?***
 - Not likely
 - Rates may be different depending on market (Urban vs Rural), statewide rates may not work.
- ***Will you re-assess fair market rates over time?***
 - ***If so, will you monitor that AAAs are adjusting their rates as necessary? How and at what intervals?***
 - Annually, during annual plan process
 - Sub-recipient monitoring (desk auditing, site visits) would need to be built out further to include these elements.

(b)(3) result in the displacement of services otherwise available to an older individual with greatest social need, an older individual with greatest economic need, or an older individual who is at risk for institutional placement; or

Question(s):

- ***Could this rule create a situation where providers currently providing services under Title III no longer choose to contract to provide those services if they can get paid more through agreements with private entities?***
- ***If AAAs have historically paid providers less than market rates (such as with senior nutrition) and relied on provider's fundraising and donations, how can we ensure providers are still willing to serve OAA participants compared to other contracts where they would receive "fair market" rates?***
- ***How will you monitor to ensure that there is no displacement?***
 - DON-R scores, quality scores, waitlist increases, monitoring of needs, services provided over shorter time periods; disclosure/attestation required during annual plan process to declare that AA will not displace clients.
 - Focus on OAA spending reductions when AAAs begin working with another payer. (is this due to OAA being payer of last resort? Displacement? Priorities? Is there an opportunity to increase services, serve more or better, or for additional outreach)

(b)(4) in any other way compromise, undermine, or be inconsistent with the objective of serving the needs of older individuals, as determined by the Assistant Secretary.

Question(s):

- ***What will you look for in the agreement to ensure it meets the needs of older adults?***
- ***Will you perform ongoing monitoring to ensure that AAAs are implementing the agreement correctly and that the agreement is still meeting the requirements described above?***
 - ***If so, what will the monitoring process look like? What will you do if issues are found? Will there be an opportunity to amend policies or the agreement? What would this remediation process look like?***
 - Conduct regular checks on documentation that they are not using the public funds incorrectly. Ensure that they are following consistent and best practices. SUAs will need additional fiscal staff for these monitoring requirements.
 - Obtain a summary of the annual cost allocation plan and the federal acceptance letter of their indirect rate.
- ***If required, would an annual audit of the network lead entity (NLE), oftentimes AAA's, be acceptable as a method to ensure appropriate use of funds? If so, who would pay for the annual audit?***

- ***What authority does the SUA have to mandate remediation or corrective action if it believes one or more of these statutory requirements is not met?***

(c) MONITORING AND REPORTING.—To ensure that any agreement described in subsection (a) complies with the requirements of this section and other applicable provisions of this Act, the Assistant Secretary shall develop and implement uniform monitoring procedures and reporting requirements consistent with the provisions of subparagraphs (A) through (E) of section 306(a)(13) in consultation with the State agencies and area agencies on aging. The Assistant Secretary shall annually prepare and submit to the chairpersons and ranking members of the appropriate committees of Congress a report analyzing all such agreements, and the costs incurred and services provided under the agreements. This report shall contain information on the number of the agreements per State, summaries of all the agreements, and information on the type of organizations participating in the agreements, types of services provided under the agreements, and the net proceeds from, and documentation of funds spent and reimbursed, under the agreements.

Questions(s):

- ***What should the uniform monitoring procedures and reporting requirements look like?***
 - Could possibly look like what happens in the Area Development Districts where their reporting is submitted to the SUA; the SUA does nothing with it, and forwards it to the Asst. Secretary.
- ***Assistant Secretary Annual report needs to include: number of agreements, summaries, types of organizations, types of services, net proceeds from and funds spent and reimbursed.***
 - ***What needs to be included in the summary? Format?***
 - ***How will this information be collected so that it can be submitted to the Assistant Secretary?***
- ***What does the timeline look like for information to come from AAAs/NLEs to the SUA for review/compilation and submission to Asst. Secretary?***
 - ***Note:*** Documentation would need to be for the previous year since it may take 3-6 months for the AAAs and SUAs to compile the information and seek leadership approval for federal submission.
- ***What is the cost of the reporting requirements?***
- ***What systems need to be in place to conduct the reporting?***
 - Data collection system
 - Summary and documentation components will need a specified process and format to make creation and approvals more efficient.

- ***Are there specific elements that you will need AAAs to document/report to enable you to conduct state level reports? If so will you need to outline these in the agreements?***
 - Ideally ACL would collect the information directly from the AAAs
 - Could possibly be a summary of information from the Area Plan.
- ***What challenges does the reporting create?***
- ***What expertise is needed to conduct the reporting?***

NOTE: (c) is one of the most complicated sections. SUAs fear that the volume of reporting will paralyze the efforts that are being made. AAAs regularly ask for less reporting and this is significantly more than what they already do. SUAs feel that this goes beyond the minimum necessary. SUAs wonder if ACL will go directly to the AAAs to collect this information or if it will be expected to go through the SUA. Will there be a phase-in of these expectations? The cost of the data collection needs to be reviewed and highlighted as a new expense to AAAs and/or the SUA. SUAs recommend that the absolute minimum necessary is submitted in this report; it should be a subset of what is determined to be monitored.

(d) TIMELY REIMBURSEMENT.—All reimbursements made under this section shall be made in a timely manner, according to standards specified by the Assistant Secretary.

Question(s):

- ***What timeliness standards would you recommend?***
 - 3 years with closeout timeframe for initial development costs.
- ***Are there timeliness standards recommended for general payment to the recipient?***
- ***Is there a component of timeliness for applying payment received to OAA services as specified in (A)(3)? For example, does payment have to be applied to services within that same budget year? Can it be stored in temporary reserves/for how long?***
- ***What reimbursements are we talking about? Costs to enter into agreements? How tracked?***
 - SUAs are comfortable with a % of admin for a specific period of time to initiate contracting efforts; but believe that there should be a cut-off period where the AAA would be responsible for their efforts.
 - What is the time of identification for accounting?
 - Is the intent for reimbursements to go back into OAA services, the SUA or ACL? How would this be tracked?

(e) COST.—In this section, the term “cost” means an expense, including an administrative expense, incurred by a recipient in developing or carrying out an agreement described in subsection (a), whether the recipient contributed funds, staff time, or other plant, equipment, or services to meet the expense.

Question(s):

- ***Are admin expenses unlimited or is there a cap rate to what amount of administrative expense is appropriate and reasonable?***
 - Federal acceptance letter of indirect rate would be utilized where possible. However, some organizations would have an indirect cost rate and some would not.
 - SUAs would support some type of limit of time and expenses.
- ***What is the expectation for SUA to ensure a provider is not receiving payment from multiple sources (private, Title XIX, Title III, etc.)?***
 - Tracking can be difficult without a uniform identifier, e.g. Social Security Numbers cannot be obtained for Title III services.
- ***Is there a mechanism to prevent double counting of costs? For example, how would a resource such as office space be measured across multiple agreements?***
 - SUAs feel that this is the most important question in this section. There needs to be a mechanism to prevent double counting of costs. It is the AAAs responsibility to prove that they are not double counting.
 - The counting of revenues streams is accounted for in the area plans. These need to be delineated between what they are covering.
 - SUAs want NLEs to provide assurance that they have a mechanism to track revenue & cost.
 - Some NLEs have pushed back on SUAs because they do not want to share their financial information.
 - There is a tension between SUAs ability to monitor potential displacement and appropriate use of OAA funds and AAAs ability to keep certain portions of their business private. SUAs feel that NLEs need to be transparent in their businesses if they want SUA assistance with contracting efforts.
 - The cost of securing an outside agreement with a payer seems to overlap with the work that AAAs already do to create new contracts. SUAs would look for pro-rated accounting of staff time if a fully OAA funded staff person is focusing on health plan contracts.