

Proposed Rule:

Update to ACL's Older Americans Act Regulations

An overview for ACL's networks

The Administration for Community Living is seeking input on proposed updates to the regulations for its Older Americans Act (OAA) programs. Comments must be received (or postmarked) by 11:59 p.m. on August 15 2023. (Instructions for submitting comments and registering for an informational webinar can be found on [ACL.gov](https://acl.gov) and at the end of this overview.)

Summary

The last substantial update to most OAA program regulations was in 1988, and our world has changed dramatically in the 35 years since. The population of older adults has nearly doubled, and older adults are living longer than ever before. Their expectations for aging are different from those of earlier generations. Increased understanding of the impact of the social determinants of health is reshaping health care, as non-medical services that help people avoid hospitalization and institutional care – like those provided through OAA programs – are increasingly being incorporated into health care service delivery models. In addition, the OAA has been amended by Congress seven times since 1988.

One important thing has not changed: older adults overwhelmingly want to continue to live independently, in the community – and nearly 95 percent of them do.

Updates are needed to align regulations to the current statute and reflect the needs of today's older adults. The proposed rule addresses issues that have emerged since the last update and clarifies a number of requirements. It aims to better support the national aging network that delivers OAA services and improve program implementation, with the ultimate goal of better serving older adults. For example, the proposed rule:

- Clarifies requirements for state and area plans on aging and details requirements for coordination among tribal, state and local programs.
- Improves consistency of definitions and operations between state and tribal OAA programs.

- Clarifies and strengthens provisions for meeting OAA requirements for prioritizing people with the greatest social and economic needs.
- Specifies the broad range of people who can receive services, how funds can be used, fiscal requirements, and other requirements that apply across programs.
- Clarifies required state and local policies and procedures. For example, the proposed rule establishes expectations regarding conflicts of interest.
- Incorporates guidance for the National Family Caregiver Support Program and the Native American Caregiver Support Program, which were authorized since the last update to the OAA regulations.
- Addresses emergency preparedness and response, incorporating lessons from the COVID-19 pandemic.
- Establishes expectations for legal assistance and activities to prevent elder abuse.
- Clarifies the role of the aging network in defending against the imposition of guardianship and in promoting alternatives.
- Updates definitions, modernizes requirements and clarifies flexibilities within the senior nutrition programs. For example, ACL proposes provisions that would allow for continuation of innovations utilized during the COVID-19 pandemic, such as carry-out meals provided under the congregate meals program, in some circumstances.

The proposed rule is the culmination of many years of engagement with the national aging network. It also reflects input received through [a formal request for information](#) and a series of listening sessions, including formal tribal consultations and other engagement with Native American grantees.

ACL seeks feedback on the proposed rule from all who are interested in improving implementation of OAA programs and services. Input from the aging and disability networks and the people served by OAA programs is particularly crucial. Comments are welcome on any part of the proposed rule, but ACL also has asked specific questions in several key areas in which input is particularly needed.

Background on the Older Americans Act:

First passed in 1965 and last reauthorized on March 25, 2020, [the OAA](#) authorizes a wide range of programs and services that help older adults age in place. Through the aging services network, the OAA has helped older adults remain active and engaged in their communities to the great benefit of all. Because of the OAA, communities across the country are able to continue to draw upon the wealth of knowledge that comes only with life experience.

The services authorized by the OAA include:

- Home-delivered and congregate meals, support for family caregivers, preventive health services, personal and home care services, transportation, legal assistance, elder abuse prevention, and more (authorized under Title III - Grants for state and community programs on aging).
- Home and community-based services for Native American elders and caregivers (authorized under Title VI - Grants to Indian tribes and Native Hawaiian grantees for supportive, nutrition, and caregiver services).
- Ombudsman services for people who live in long-term care facilities, funding for prevention of elder abuse, and other elder rights programs (authorized under Title VII - Allotments for vulnerable elder rights protection activities).

ACL administers these provisions through its Administration on Aging. (The Department of Labor administers Title V of the OAA, the Senior Community Services Employment Program. It is not covered by ACL's proposed rule.)

Key Provisions of the Proposed Rule

Following is a brief overview of some of the key provisions of the proposed rule. Please note that this was written in more plain language, with a goal of being easier to understand for people who may not have an in-depth understanding of a given provision of the OAA. In addition, this overview includes only some of the highlights of the proposed rule; it does not include all of the provisions or complete details of the summarized provisions. Please use this document as a tool to help navigate the proposed rule; it should NOT be considered a substitute.

Roles and Responsibilities of State Agencies and Area Agencies on Aging:

The OAA authorizes grants to state agencies, which in turn provide funding to area agencies on aging (AAAs) to coordinate programs and advocate for older adults and family caregivers. State agencies and AAAs have both emphasized a need for additional guidance on a number of issues, including fiscal requirements, service delivery and avoiding conflicts of interest. To address those issues (and others), if finalized, the proposed rule would:

- Clarify requirements for state and area plans on aging. For example, the proposed rule would make clear that plans must describe:
 - How state agencies and AAAs will use OAA funding, how “greatest economic need” and “greatest social need” are determined and addressed, and how requirements for public participation are met (§ 1321.27 and § 1321.65).
 - How state agencies and AAAs will ensure coordination between programs that serve all older adults, including tribal elders (authorized under Title III) and those that specifically focus on tribal elders (authorized under Title VI) (§ 1321.53, § 1321.69, and § 1321.95).
- List requirements for designation of planning and service areas and area agencies on aging (§ 1321.13, § 1321.15, § 1321.17, § 1321.19, § 1321.21, and § 1321.23).
- Clarify the state agency's responsibility to establish and maintain policies and procedures to monitor the programmatic and fiscal performance of programs and activities carried out under Title III of the OAA and to ensure that its own – and its AAAs' – policies and procedures are aligned with ACL's data collection and reporting requirements (§ 1321.9(a) and (b)).

- Clarify policies and procedures that AAAs and service providers must follow, including setting requirements for client eligibility, assessment, and person-centered planning and detailing limitations on the frequency, amount, or type of service provided (§ 1321.9(c)(1)).
- List and clarify the policies and procedures that state agencies must establish and maintain regarding fiscal requirements, including distribution of Title III funds; non-federal share (match) requirements; permitted transfers; reallocation of funds; use of program income; private pay programs; contracts and commercial relationships; buildings, alterations or renovations, maintenance, and equipment; and advance funding (1321.9(c)(2)).
- Require state agencies to establish flexible and streamlined processes for AAAs to receive approval for contracts and commercial relationships. This provision is proposed in response to numerous questions about the appropriate roles, responsibilities, and oversight of such activities, feedback received in response to the RFI, and based on our observations of program activities. The provision is intended to promote and expand the ability of the aging network to engage in business activities while ensuring that the unique roles of OAA grantees are preserved. ACL specifically seeks comment on whether our proposed approach appropriately balances the need for clear policies and procedures with the need to have a workable approval process (§ 1321.9(c)(2)(xiv)).
- Define “conflicts of interest” and establish several requirements to prevent them. The scope of activities of entities that receive OAA funding has changed significantly since the last update to the OAA regulations, and the potential for conflicts of interest have increased. These provisions are intended to ensure the integrity of – and trust in – the activities carried out under the OAA. (§ 1321.3, § 1321.47, § 1321.67, and § 1321.73).

Serving Older Adults, Tribal Elders, and Family Caregivers with the Greatest Economic and Greatest Social Need:

Prioritizing people who have the greatest economic and social needs is one of the basic tenets of the OAA (OAA Section 305 (a)(2)(E)). The proposed rule clarifies requirements for states’ definitions of both needs, as well as expectations for serving those who meet them. It also clarifies expectations for ensuring that the perspectives of older people with the greatest economic and social

needs are incorporated into planning efforts. For example, if finalized, the proposed rule would:

- Establish standard expectations for what state agencies and AAAs must include in their definitions of greatest economic and greatest social need, while allowing state agencies and/or AAAs flexibility to include additional populations based upon local considerations. ACL is specifically seeking comment on whether this approach sufficiently identifies requirements while also offering appropriate flexibility (§ 1321.27 and § 1321.65).
- Require state and area plans to include how they will target funding to reach populations they have defined as having the greatest economic and/or social need. State agencies and AAAs must also seek and consider the views of people with the greatest economic and greatest social need when developing and administering their plans (§ 1321.27, § 1321.29, § 1321.49, § 1321.51, and § 1321.65).
- Require at least half of AAA advisory council members to be 60 years or older. These must include people from minority populations, and AAAs must make efforts to include people identified as having the greatest economic and greatest social need. Councils also must include family caregivers, and, when available, representatives of tribes, pueblos, and tribal aging programs (§ 1321.63).
- Require service providers to specify how they will satisfy the service needs of those identified as in the greatest economic or greatest social need (§ 1321.83).

Family Caregivers:

Family caregivers make it possible for millions of older adults to remain in their homes in the community. The provisions of the OAA that authorize ACL’s primary caregiver support programs – the National Family Caregiver Support Program and the Native American Caregiver Support Program, which together provide crucial services to nearly 800,000 caregivers – were authorized *after* the last substantial update to the OAA regulations. Consequently, regulations for these programs do not exist.

The proposed rule provides key definitions, implements statutory mandates and clarifies requirements for family caregiver support services, allowable uses of funds, and the method of funds distribution. For example, if finalized, the proposed rule would:

- Codify the definitions of “family caregiver” and “older relative caregiver” that have been used since the programs were established in 2000. Specifically:
 - » The term “family caregiver” includes unmarried partners, friends, or neighbors who are caring for an older adult or a person of any age with Alzheimer’s disease or a related disorder with neurological and organic brain dysfunction (§ 1321.3).
 - » The term “older relative caregiver” means a person who is at least 55 years old who lives with a child or a person with a disability for whom they are the primary caregiver and to whom they provide informal care. The proposed rule further delineates the specific relationships and circumstances that qualify and clarifies that when the person receiving care is an adult with a disability, the caregiver may be that person’s parent. (§ 1321.3).
 - » Include family caregivers as a service population for state agencies and AAAs (§ 1321.1, 1321.5, and 1321.55).
 - » Clarify allowable uses of funds for community-based family caregiver support services, as well as eligibility requirements for receiving services (§ 1321.91 & § 1322.29).
- » Allowing state agencies to set aside funding to exercise flexibilities related to a major disaster declaration (and specifying requirements for exercising such flexibilities). For example, the proposed rule would allow a state agency to procure items on a statewide level, subject to certain terms and conditions (§ 1321.99 and § 1321.101).
- Create a new section (Section 1322 Subpart Part D—Emergency & Disaster Requirements), which would support services specifically for Native American elders and family caregivers during emergencies and disasters with provisions such as:
 - » Requiring tribal organizations and Hawaiian Native grantees to establish emergency plans; coordinate activities with the state agency and any AAA providing Title III- and VII-funded services within the grantee’s approved service area; and have policies and procedures for how they will communicate and coordinate with external partners (§ 1322.33 and § 1322.37).
 - » Enabling tribal organizations and Hawaiian Native grantees to exercise flexibilities related to a major disaster declaration and specifying requirements for exercising such flexibilities (§ 1322.35).
 - » Enable the Assistant Secretary for Aging to modify emergency and disaster-related provisions set forth in the regulation when a major disaster or public health emergency is declared (§ 1321.105 and § 1322.39).

Emergency Preparedness and Response:

Emergencies and disasters have distinct and disproportionate impacts on older adults and family caregivers, and often create unique challenges for the aging services network. They also can trigger specific flexibilities in OAA programs. However, the current OAA regulations include limited guidance addressing these situations. The proposed rule includes several provisions for emergency preparedness and response, which reflect lessons learned from the COVID-19 pandemic and seek to address feedback received during the pandemic and through the RFI. For example, if finalized, the proposed rule would:

- Create a new section (Section 1321 Subpart E—Emergency & Response), which would support older adults and family caregivers, including those in tribal communities, during emergencies and disasters with provisions such as:
 - » Requiring state agencies and AAAs to establish emergency plans. They also would be required to have policies and procedures in place for communicating and coordinating with Title VI programs within their jurisdictions (§ 1321.97 and § 1321.103).

Nutrition Flexibilities and Modernization:

The congregate and home-delivered meals provided by the OAA Senior Nutrition Programs help to reduce hunger and food insecurity; provide an opportunity for older adults to engage with other people, which is critical to maintaining health and independence; and provide an opportunity to screen older adults for other needs before they become crises. The programs help more than two million older adults continue to live in the community each year.

The COVID-19 pandemic brought to light limitations in current nutrition regulations and highlighted the need for guidance to support innovation and response to emerging needs. ACL is proposing provisions that would modernize nutrition rules, reflect the evolving needs of both grantees and OAA participants, and alleviate uncertainty caused by relying on sub-regulatory guidance. The proposed rule also clarifies requirements for transfers of funds between programs. For example, if finalized, the nutrition services-related provisions of the proposed rule would:

- Clarify that home-delivered meals may be provided via home delivery, pick-up, carry-out, or drive-through; that eligibility for home-delivered meals is not limited to people who are “homebound;” that eligibility criteria may depend upon many factors; and that home-delivered meal participants may also be encouraged to participate in congregate meals programs (§ 1321.87 and § 1322.27).
- Allow for a limited number of “carry-out” and similar meals to be provided through the congregate meals program, in some circumstances. (§ 1321.87).
- Specify that nutrition education, nutrition counseling, and other nutrition services may be provided as part of both the congregate meals program and the home-delivered meals program (§ 1321.87 and § 1322.27).
- Clarify that Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal (§ 1321.87 and § 1322.27).
- Specify that applications for Title VI funds must include program objectives; a map and/or description of the geographic boundaries of the service area, which may include Bureau of Indian Affairs service maps; documentation of supportive and nutrition services capabilities; completion of a needs assessment and other assurances; and a tribal resolution, among other requirements (§ 1322.5).
- Specify program and fiscal requirements for which grantees should have established policies and procedures. For example, the rule would require Title VI grantees to have policies and procedures for: ensuring that their data collection and reporting align with ACL requirements, voluntary contributions, and buildings and equipment (§ 1322.13).

Elder Abuse Prevention, Legal Assistance, Guardianship, and Long-Term Care Ombudsman Programs:

An estimated one in ten adults over the age of 60 has experienced some form of elder abuse, which may reduce their quality of life and limit their independence. Title VII of the OAA authorizes activities that uphold the rights of older adults and prevent, detect, and respond to elder abuse, neglect, and exploitation. These play a critical role in promoting elder justice, ensuring that older adults can live safely in the community or in long-term care settings, and upholding their right to participate in decisions about their lives. For example, if finalized, the elder rights-related provisions of the proposed rule would:

Services for Native Americans Elders and Caregivers:

American Indians, Alaskan Natives, and Native Hawaiians (AI/AN/NH) have long experienced disproportionate poverty, barriers in accessing health care and related services, unequal education and employment opportunities, and cultural differences that have resulted in health disparities and lower life expectancy. Title VI of the OAA authorizes grants that provide nutrition and supportive services to AI/AN/NH elders to help them to live full, engaged lives in their communities.

The proposed rule clarifies what qualifies as a Title VI service; requirements for collaboration and coordination between programs for all older adults (authorized under Title III) and those specifically focused on tribal populations (Title VI programs); and allowable caregiver support services. It also addresses a need for technical assistance. For example, if approved, the proposed rule would:

- Combine sections 1322 and 1323 and incorporate requirements specific to Title VI part B, to reduce confusion and improve consistency in service provision to both AI/AN/NH elders and family caregivers (§ 1322).
- Establish expectations that tribal organizations and Native Hawaiian grantees coordinate with state agencies and AAAs regarding provision of services. The proposed rule also would explicitly incorporate requirements for coordination between Title III grantees and Title VI grantees into each applicable section of the regulations (§ 1321 & § 1322).
- Define “defense of guardianship” as advice to, and representation of, people to help them:
 - » Oppose appointment of a guardian; and/or
 - » Seek limitation and/or revocation of guardianship.
- The definition also includes assistance that diverts people from guardianship to less restrictive, more person-directed forms of decisional support whenever possible (§ 1321.93).
- Clarify the role of legal assistance providers as promoters of self-determination and person-directedness. The proposed rule also would require that legal assistance providers meet complex and evolving legal needs involving a range of private, public and governmental entities, programs and activities that may impact an older adult’s independence, choices, or financial security (§ 1321.93).
- Provide standards for selecting legal assistance providers funded under the OAA. For example, the rule would require that legal assistance providers

have demonstrated capacity to represent older adults at both administrative and judicial proceedings (§ 1321.93).

- Clarify that the state agency's obligations to develop policies and procedures extend to elder abuse prevention and legal assistance development programs, and that such programs must be addressed in state plans on aging (§ 1321.9(a) and § 1321.27).
- Provide clarity on the requirements that state agencies must meet with respect to the development and enhancement of programs to address elder abuse, neglect, and exploitation (§ 1324.201).
- Specify the purpose, role, and responsibilities of the legal assistance developer, and prohibit related conflicts of interests, including those related to guardianship (§ 1324.303).
- Add language to require policies and procedures to provide direction for the state long-term care ombudsman and representatives of the office for how to address situations where a resident is unable to communicate consent (§ 1324.11(e)(2) and § 1324.11(e)(3)(iv)).
- Require ombudsman programs to enter into memoranda of understanding with OAA legal assistance programs and licensure and certification entities for facilities and long-term care providers to ensure coordination between these entities. The proposed rule maintains and seeks comments regarding the other potential partners recommended in the 2015 rule, which include organizations in ACL's aging and disability networks (§ 1324.13(h)).

- Clarify prohibitions that preclude state government agencies from interfering with the functions of the Office of the Long-Term Care Ombudsman (§ 1324.11(e)(8)).

How to provide feedback

ACL seeks feedback from all who are interested in improving implementation of OAA programs and services. Input from the aging and disability networks and the people served by OAA programs is particularly crucial.

Starting June 16, comments can be submitted:

- Online at [Regulations.gov](https://www.regulations.gov). (Enter "2023-12829" in the search bar, select ACL's proposed rule, and then click the blue "comment" box at the top left of the page.)
- By mail to:
Administration for Community Living
Administration on Aging, Attention: ACL-AA17-P
330 C Street SW
Washington, DC 20201

Comments must be received (or postmarked) by 11:59 p.m. (Eastern) on August 15, 2023.

Learn more

- More information, including an expanded overview of key provisions of the proposed rule, can be found at [ACL.gov/OAArule](https://www.acl.gov/OAArule). An informational webinar will be held on Thursday, June 22 at 12:30 p.m. (Eastern). For details, please [see the Zoom registration page](#).
- The complete proposed rule can be found [on the website of the Federal Register](#).