

Final Rule:

# 2024 Update to ACL's Older Americans Act Regulations

## An overview for ACL's networks

On February 6, 2024, ACL released a final rule to update the regulations implementing its Older Americans Act (OAA) programs. The new regulations will take effect on March 15, 2024, but regulated entities have until October 1, 2025 to comply. ACL looks forward to working with partners in the aging network to implement the final rule, and will provide robust technical assistance and other resources to support states, tribes and tribal organizations, area agencies on aging, and others in the aging network in meeting its requirements.

### Summary

The first substantial update to most OAA program regulations since 1988, the 2024 Older Americans Act final rule aligns regulations to the current statute, 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 ensuring that the nation's growing population of older adults can continue to receive the services and supports they need to live – and thrive – in their own homes and communities.

The updated regulations reinforce and clarify policies and expectations, provide guidance for programs authorized since the last update, promote appropriate stewardship of OAA resources, and incorporate lessons learned during the COVID-19 pandemic. For example, the final 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 agency policies and procedures. For example, the final rule establishes expectations regarding conflicts of interest.
- Requires state agencies to establish flexible and streamlined processes for area agencies to receive approval for contracts and commercial relationships.
- Includes guidance for the National Family Caregiver Support Program and the Native American Caregiver Support Program, which were authorized since the last update.
- 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 OAA nutrition programs. For example, the rule allows for continuation of innovations developed during the pandemic, such as providing carry-out meals through the congregate meals program, in certain circumstances.

The release of the final rule is the culmination of many years of engagement with the national aging network. It also reflects input received through a [request for information \(RFI\)](#); a series of listening sessions, including consultations with tribes and other engagement with Native American grantees; and more than 750 comments received in response to the June 2023 [Notice of Proposed Rule Making \(NPRM\)](#), from a wide range of stakeholders including states, area agencies on aging, and national aging organizations. The thoughtful comments validated the overall direction of the proposed rule and provided information that ACL incorporated to further refine and strengthen the final rule.

## 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 helps 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 final rule.)

## Key Provisions of the Final Rule

Following is a brief overview of some of the key provisions of the final rule. Please note that this was written with a goal of providing a plainer-language description that is easier to understand for people who may not have an in-depth understanding of the technical provisions of the OAA. In addition, this overview includes only some of the highlights of the final 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 final 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), the final rule:

- Clarifies requirements for state and area plans on aging. For example, the final rule makes 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).
- Lists 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).
- Clarifies 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)).

- Clarifies 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)).
- Lists and clarifies 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)).
- Requires state agencies to establish flexible and streamlined processes for AAAs to receive approval for contracts and commercial relationships. This provision is included in the final rule in response to numerous questions about the appropriate roles, responsibilities, and oversight of such activities, feedback received in response to the RFI and NPRM, 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 (§ 1321.9(c)(2)(xiv)).
- Defines “conflicts of interest” and establishes 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 has 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).
- Establishes 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 (§ 1321.27 and § 1321.65).
- Requires state and area plans to include how they will 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).
- Requires 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).
- Requires service providers to specify how they will satisfy the service needs of those identified as in the greatest economic need and greatest social need (§ 1321.79).

## Family Caregivers:

Family caregivers make it possible for millions of older adults to remain in their homes in the community. The sections 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 did not exist.

The final 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, the final rule:

- Codifies 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).

## 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 final rule clarifies requirements for state agencies’ 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, the final rule:

- » 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 final 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).
  - » Includes family caregivers as a service population for state agencies and AAAs (§ 1321.1, § 1321.5, and § 1321.55).
  - » Clarifies allowable uses of funds for community-based family caregiver support services, as well as eligibility requirements for receiving services (§ 1321.91 & § 1322.29).
- Creates a new subpart (Part 1322 Subpart D — Emergency and Disaster Requirements), which supports 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. They also are required to have policies and procedures in place for communicating and coordinating with tribal, state, and local emergency management, as well as with the state agency and any AAA providing Title III- and VII-funded services within the grantee’s approved service area (§ 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).
  - Enabling 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 previous OAA regulations included limited guidance addressing these situations. The final rule includes several provisions for emergency preparedness and response, which reflect lessons learned from the COVID-19 pandemic and address feedback received during the pandemic and through the RFI and NPRM. For example, the final rule:

- Creates a new subpart (Part 1321 Subpart E — Emergency and Disaster Requirements), which supports 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 are required to have policies and procedures in place for communicating and coordinating with state, tribal, and local emergency management, as well as Title VI programs within their jurisdictions (§ 1321.97 and § 1321.103).
  - » 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 final rule allows a state agency to procure items on a statewide level, subject to certain terms and conditions (§ 1321.99 and § 1321.101).

## 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 the previous nutrition regulations and highlighted the need for guidance to support innovation and response to emerging needs. The final rule modernizes nutrition rules, reflecting the evolving needs of both grantees and OAA participants, and alleviates uncertainty caused by relying on sub-regulatory guidance. The final rule also clarifies requirements for transfers of funds between programs. For example, the nutrition services-related provisions of the final rule:

- 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).
- Specifies 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 area 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).
- Specifies program and fiscal requirements for which grantees should have established policies and procedures. For example, the rule requires 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).

## 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, supportive, and caregiver services to AI/AN/NH elders and family caregivers to help them to live full, engaged lives in their communities.

The final 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 needs for technical assistance. For example, the final rule:

- Combines parts 1322 and 1323 and incorporates requirements specific to Title VI part B, to reduce confusion and improve consistency in service provision to AI/AN/NH elders and family caregivers (*part 1322*).
- Establishes expectations that tribal organizations and Native Hawaiian grantees coordinate with state agencies and AAAs regarding provision of services. The final rule also explicitly incorporates requirements for coordination between Title III grantees and Title VI grantees into each applicable section of the regulations (*parts 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.
- Specify that defense of guardianship 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 final rule also requires 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).

## 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, the elder rights-related provisions of the final rule:

- Provide standards for selecting legal assistance providers funded under the OAA. For example, the rule requires 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 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 final rule maintains 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)).

## Effective Date and Compliance Information

The final rule will take effect on March 15, 2024 (30 days after it is officially published), and regulated entities have until October 1, 2025 to comply. In the coming months, ACL will share resources and provide robust technical assistance to support states, tribes and tribal organizations, area agencies on aging, and others in the aging network in meeting the requirements of the new regulations. ACL also will work with regulated entities in a supportive corrective action process if more time is needed to fully comply with specific provisions.

## Learn More

Save the dates for these upcoming webinars:

- **Informational Webinar:** Join ACL for an overview of the updated regulations on Thursday, Feb. 8 from 2-3 p.m. (Eastern).
- **"Back to Basics" technical assistance webinar:** On Thursday, Feb. 15 from 2-3:30 p.m. (Eastern), ACL will host the first in a series of webinars to support the network in implementing the updated regulations.

More information, including registration information for these webinars, a link to the final rule, and links to resources and technical assistance can be found at [ACL.gov/OAArule](https://acl.gov/OAArule).

The [final rule](#) was posted "on display" in the *Federal Register* on Feb. 6, 2024 and will be published officially on Feb. 14, 2024.