



August 15, 2023

Ms. Amy Wiatr-Rodriguez
Director of Regional Operations
Administration for Community Living
U.S. Department of Health and Human Services
330 C Street SW
Washington, DC 20201

RE: Notice of proposed rulemaking (NPRM): Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities (RIN 0985-AA17)

Dear Director Wiatr-Rodriguez:

On behalf of Meals on Wheels America, the nationwide network of community-based senior nutrition providers and the individuals they serve, thank you for the opportunity to respond to the proposed rulemaking to update Older Americans Act (OAA or the Act) regulations for the first time in over three decades. We commend the Administration for Community Living (ACL), under the leadership of the U.S. Department of Health and Human Services (HHS), for the commitment in this considerable effort to modernize and improve the implementing regulations for OAA programs authorized under Titles III, VI and VII of the Act. Strong and effective implementation of the OAA is critical in responding to and providing services for older Americans and caregivers across the country. As many OAA programs and the Act itself surpass 50 years of service, we appreciate the timing for updating these regulations, particularly given significant and ongoing demographic shifts within the aging population, past and upcoming reauthorizations of the OAA, increasing competition with the private sector, and the lasting impacts of the COVID-19 pandemic.

As acknowledged in our response to ACL's Request for Information (RFI) last year on this subject and alluded to above, we believe we are at a crossroads as well as an exciting time for OAA programs. We agree that making updates to the regulations is an important step in adapting our nation's aging and nutrition services to meet the current and future needs of an evolving and growing demographic in addition to ensuring this vital network continues to thrive for decades to come. As with other feedback provided throughout this process, Meals on Wheels America is viewing OAA regulations through the lens of senior nutrition providers nationwide and with the principle that this process does no harm to key services, supports and/or our on-the-ground operations.

We are pleased to offer the following comments and recommendations for consideration in the development of a final rule for the updated OAA regulations. While the information we provide

below relates primarily to aspects of the proposed rule that address *Grants to State and Community Programs on Aging* [Title III] (pages 39572-39594)([45 CFR part 1321](#)), we encourage application of recommendations to other sets of regulations, as appropriate.

GENERAL AND SUPPORTIVE COMMENTS

Thanks to the attention and stakeholder engagement of ACL through this process, the proposed regulations deliver an appropriate balance of guidance for the various parties and interests that are involved in OAA Title III, VI and VII programs and services. As a national leader and representative of the senior nutrition network, we are pleased to find a number of areas in the proposed rule that incorporate the feedback and recommendations we provided through our RFI comments last year. We appreciate ACL for considering the input of its aging network partners and in advancing this administrative priority. Again, it could not come at a more important time for older adults and their families and caregivers. Below are several of the comments we received from our Members—local community-based senior nutrition providers:

“I am very excited about updates coming to OAA regulations and ACL's guidance. These programs have in some cases become outdated. The seniors of 1972 are not the seniors of 2023.”

“I am pleased that the ACL is asking OAA providers for their input on updating current OAA regulations and that they see a need to update them.”

“It is so important and well overdue!”

Meals on Wheels America and our Members also welcome the greater detail and clarity around requirements and certain procedures and processes offered in the proposed regulations. We believe that these changes will support implementation of various roles and functions under the OAA and foster continued innovation and expansion of OAA services, as was discovered through the challenges faced and lessons learned while adapting and delivering services during the pandemic.

Below are our comments and feedback for several provisions and topics within the proposed rulemaking that we find *beneficial and urge to be included* in the final rule.

NUTRITION PROGRAM FLEXIBILITIES AND MODERNIZATION [[§ 1321.87](#)]

We support the updated definitions and language to modernize guidance for OAA Title III-C nutrition services and clarify the flexibilities that are permissible by law. The specific provisions under this section that we commend include:

- Clarification that Title III C-2 home-delivered meals may be provided via home delivery, pick-up, carry-out or drive-through.
- Clarification that Title III C-1 resources may be used to provide for a limited number of shelf stable, pick-up, carry-out, drive-through or similar meals, if they are done to complement the congregate meal program and comply with certain requirements and circumstances.

- Clarification that funds under Title III C-1 and C-2 can be used for nutrition education, nutrition counseling and other nutrition services.
- Clarification that home-delivered meals are not limited to those who may be identified as homebound, and eligibility criteria may consider factors including ability to leave home unassisted, ability to shop for and prepare nutritious meals, mental health, degree of disability or other relevant factors pertaining to their need for the service, including social and economic need.

Notwithstanding the above, we believe the regulations could go further in providing greater flexibility and specific language to adequately modernize and clarify what is permissible under the Act, such as clear wording to permit and even encourage the distribution of leftovers, the use of person-centered culturally appropriate meals and medically tailored meals, and the expansion of menu choice. Nonetheless, we are glad to see the overall clarification around several policies that enable senior nutrition providers to adapt their services to best address the needs of the older adults in the community. This was reflected in much of the feedback and commentary we received from local providers:

“We are looking forward to the grab-and-go meals becoming an option. I personally know of situations where one spouse is sick and not able to make it into the center, but their spouse (who is not able to cook well) can come and pick up meals for them to share.”

“I like to know that there is this flexibility should there be an emergency at a specific site. It can also help some individual situations.”

“We see a need for grab-and-go meals for some of our veterans who are not comfortable in large groups, yet are not homebound. Also, one spouse who is home recovering from an illness, yet the well spouse likes coming to the lunch site to socialize and then take the meals home to eat with the spouse, thus, socialization is achieved.”³

Further, we recommend that the final rule includes additional guidance for pick-up, carry-out, drive-through or similar meal distribution systems to ensure that the direct service role, experience and expertise of community-based senior nutrition programs in fulfilling the purposes of Title III-C of the OAA – to reduce hunger, food insecurity and malnutrition, promote socialization, and promote the health and well-being of older people – are retained and remain intact for any Title III expenditures. We believe that this important and alternative nutrition services model that was widely adopted during the pandemic is considered as a complement to congregate meals and not as a replacement for, or in lieu of, home-delivered meals. Delivery of OAA nutrition services goes beyond the provision of meals and should be clearly recognized and articulated as State Units on Aging (SUA) and Area Agencies on Aging (AAA) develop policies, procedures, plans, and contracts going forward.

UPDATED PURPOSE OF NUTRITION PROGRAM IN AREA PLAN SUBMISSIONS [§ 1321.65]

We support the proposed language that incorporates changes to the nutrition program to align with the current statute and reflects the requirement for area plans to include services that

address hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions.

UPDATED DEFINITIONS [§ 1321.3]

- ***Greatest Social Need & Greatest Economic Need:***
We support the equity and inclusion-focused language that has been incorporated into guidance around greatest social need, adding that it should also include in the definition consideration of other non-economic factors, such as LGBTQI+ identity, that may contribute to cultural, social, or geographic isolation. Similarly for greatest economic need, the regulations clarify that a variety of local conditions and individual situations other than income alone could factor into an individual's level of economic need. Given the often personal and sensitive factors that make up these definitions, it is critical to emphasize the protection of such information. We believe the regulations could go further to assure that federal and statewide anti-discrimination policies and data security procedures are instituted for older adults for whom OAA programs and services are targeted.
- ***In-home Supportive Services:***
We appreciate the attention to issues like social connection, home-safety, and other supportive services to enable independence and well-being for older adults in their homes. We concur with the updated language in the definition for in-home supportive services and encourage ACL to further expand the use of in-home supportive services offered under the OAA. In fact, these kinds of supportive services are one of the key areas that distinguish OAA programs from for-profit entities focused on meal preparation and/or food distribution alone.
- ***Service Provider:***
The proposed rule does not make significant updates to the definition of “service provider.” In the RFI process, we recommended that ACL revise the service provider definition so that it captures the value of OAA services being rooted in the community, among many other things, including the benefits of nonprofit staff, volunteers trained and educated in aiding older adults and caregivers. For many OAA nutrition and other service providers, the unique expertise of locally based organizations in meeting the needs of individuals in their own service area and their understanding of the distinct interplay of resources and connection to other local services are essential to meeting the purposes of the law. We believe that this clarifying definition is critical to maintaining the integrity of the OAA structure and system as established in the Act, and that ACL should take every opportunity to reemphasize and support the valuable contributions of community-based organizations.

NUTRITION SERVICES INCENTIVE PROGRAM (NSIP) REQUIREMENTS [§ 1321.87§; 1321.9(c)(2)]

We support the program requirements that are stated and clarified in the rule, including that states have the option to receive NSIP allocation grants as cash, commodities or a combination of both, and that funds can only be used to purchase domestically produced foods used in meals. While the proposed language provides clarity, we note that there are often alternative and more cost-effective food options that senior nutrition programs can purchase and urge ACL to

consider options for waivers, in some circumstances. Furthermore, we support the additional clarification of requirements for NSIP and the language regarding the Intrastate Funding Formula [[§ 1321.49](#)] that notes the speed at which NSIP funding must be disbursed, ensuring it is equitably and promptly distributed.

STATE AGENCY POLICIES AND PROCEDURES [[§ 1321.9](#)]

- **Funding Transfers [[§ 1321.9\(c\)\(2\)\(iii\)](#)]**

We support the listing and clarification of the statutory allowances for transfers of funds in this section: 30% between Supportive Services (Title III-B) and Nutrition Services (Title III-C); and 40% between Congregate (Title III Part C-1) and Home-delivered meals (Title III Part C-2). In the requirements listed for nutrition services [[§ 1321.87\(a\)\(1\)\(ii\)](#)], however, it is unclear if the 20% expenditures limit for pick-up, carry-out or drive-through congregate meals applies to funding allocations *before or after* the Title III B-C and/or Title III C1-C2 transfers. We request that the 20% expenditure limit be eliminated in the final rule, as it creates an unnecessary administrative hurdle. At a minimum, exceptions should be provided for times of extreme weather conditions and/or other emergency situations impacting local communities.

We are pleased to see language cautioning against transitioning money away from Title III-B and Title III-C services for which they were appropriated and intended by Congress, and we appreciate the acknowledgement of the law's limitation on the ability to permanently allow 100% transfer authority between nutrition funds, as permitted during the COVID-19 Public Health Emergency. Regardless, enhanced flexibility remains a top priority for many OAA nutrition service providers. As one senior nutrition program representative recently noted to us:

“The final language must include as much flexibility as possible for funding of congregate and HDM funds. The ‘boots on the ground’ who are providing services should be allowed to make decisions based on the people they serve.”

As we have repeatedly expressed in past recommendations, we consider the authorized percentages and limits on transfer authority between the nutrition services to be arbitrary and unnecessarily burdensome as they further complicate the movement and use of resources for nutrition providers at the state and local levels.

- **Private pay programs [[§ 1321.9\(c\)\(2\)\(xiii\)](#)]**

We appreciate clarifying requirements around the policies and procedures for Title III providers to offer private pay programs not funded by the OAA (e.g., nutrition providers may offer separate private pay programs where the individual consumer agrees to pay to receive services, and these programs can provide the same or similar services as those in Title III).

- **Voluntary Contributions [[§ 1321.9\(c\)\(2\)\(x\)](#)] & Cost Sharing [[§ 1321.9\(c\)\(2\)\(xi\)](#)]**

As cost sharing is statutorily prohibited for nutrition services, we appreciate the acknowledgement and clarification in the proposed regulations that cost sharing is not permitted for certain programs. Further, we fully support the language in this section and the updated definitions [[§ 1321.3](#)] that the funds accepted from voluntary contributions

for a particular service must be used for expansion of that service. We also support clarification that voluntary contributions cannot be solicited coercively.

In incorporating a discussion about voluntary contributions in these proposed regulations, ACL should strongly emphasize that a voluntary contribution made by an individual to support the services being provided is not a “payment” for purposes of Section 170(e)(3) of the Internal Revenue Code, which provides for deductions of qualified contributions of food inventory, among other things. Meals on Wheels America Members report that they have been denied the opportunity to receive food inventory as a transferee/donee from their local food bank precisely because the meal provider accepts permissible voluntary contributions pursuant to this section of the regulations.

According to Section 170(e)(3) of the IRS Code, donated property must be, among other things, used for the care of the ill, needy, or infants, whether transferred to such individuals directly or to others for the care of such individuals. However, a donation of wholesome food inventory will not qualify under this section, if the donee-organization receiving the food inventory “requires or receives any money, property, or services for the transfer or use of property” contributed under section 170(e)(3). Hence the interpretation by some food banks and/or other donors that voluntary donations constitute the receipt of money; therefore, preventing the donation of food inventory to local community nutrition providers even though Section 170(e)(3) of the Internal Revenue Code provides an exception for fees that a) are small or nominal in relation to the value of the transferred property and is not determined by this value; and b) are designed to reimburse the donee-organization for its administrative, warehousing or similar costs.

We do not believe that Congress, by providing for the acceptance of voluntary contributions from recipients of OAA Title III services, intended to create an obstacle that would prevent local food banks and/or other potential donors from sharing their food inventory with otherwise eligible senior nutrition providers. ACL’s proposed regulations help by beginning to frame voluntary contributions as having to be used for the expansion of the service category (as opposed to a payment for the food). However, to prevent future uncertainty or confusion among local food banks and other potential donors, ACL should reinforce the position by affirmatively declaring in these regulations that voluntary contributions from meal recipients do not constitute a payment or the receipt of money for the acceptance of food inventory.

- **Data Collection and Reporting Requirements [[§ 1321.9\(b\)](#)]**

We are encouraged by the updated provisions that provide clarity on data collection and reporting policies and procedures, including the new proposed definition for “best available data” [[§ 1321.3](#)]. They add important details that will create greater awareness and a better foundation for understanding the administrative requirements that directly impact the allocation of funding for agencies and service providers.

- **Contracts and Commercial Relationships [[§ 1321.9\(c\)\(2\)\(xiv\)](#)]**

As we noted in our RFI response comments last year, senior nutrition services can support improvements in health outcomes and quality of life and significantly reduce our nation’s health care costs by helping older adults avoid preventable emergency room visits, hospital admissions and readmissions, extended stays in rehab and premature

institutionalization. Many local nutrition providers have already established or are seeking health care contracts and reimbursement for services. We are encouraged by the clarification that health care contracts are permissible for OAA providers and are neither mutually exclusive with, nor intended to supplant, OAA funding streams. Additionally, the proposed regulations provide clarity that we believe will help address a lack of consistency in how contracts are implemented among AAAs and local OAA service providers across states and nationwide.

We believe that contracting and the approval process for commercial relationships should not be burdensome or hurt the end user. Furthermore, while we agree that some level of guidance and oversight from the state agency could be helpful for OAA providers seeking to enter into new contracts, we think these providers should be able to maintain their flexibility and independence in determining with whom and how they choose to enter into business relationships at the local level. Relationships with entities like health plans, for example, are of significant value to local senior nutrition providers in that they not only supplement governmental sources of revenue, but they often connect these providers and their services to older adults in their communities who need, or will need, additional assistance.

- **Conflict of Interest Definition & Requirements [[§ 1321.3](#)]**

We are pleased that the proposed rulemaking outlines comprehensive parameters for avoiding, addressing, and monitoring conflicts of interest at all levels of the OAA. The NPRM noted that policies and procedures must be established at these levels to ensure that both actual and perceived conflicts of interest are identified, removed, and remedied at both the organizational and individual levels. Conflicts of interest pose an insidious issue that could place agencies at a true disadvantage; moreover, they undermine the trust that is expected among the various regulatory levels of the OAA. Mutual trust and transparency are essential within the OAA framework as a foundation for gaining the respect and confidence of older adults and caregivers, who rightly expect that these agencies should be acting in their best interests without undue influence.

We are pleased that the proposed regulations recognize and address the undue influence of grantees, contractors and subrecipients of OAA funds. The prohibitions against the acceptance of gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients are essential to ensuring that decisions are made in the best interests of the people being served. Steps need to be taken to ensure fairness and transparency throughout the contracting process, particularly with the increasing influx of private sector competitors with substantial marketing and lobbying resources.

We have three comments on the proposed conflict of interest regulations. First, it must be clear that requirements imposed on individuals, for example as set forth in §1321.47(b), are above and beyond the organizational and individual requirements outlined in §1321.47(a). Conflicts of interest start with individuals, and it is fitting that the obligations affecting individuals are more expansive and encompassing than the organizational requirements. Second, an essential element associated with the effective implementation of these requirements is training on the purposes and execution of these regulations. The policies and procedures should require both training and disclosure of any potential conflicts upon hire and at least annually thereafter. The policies also should

spell out how an employee should comply with requirements if a conflict, or a perceived conflict, arises in between annual disclosures. Further, the policies and procedures providing for conflict disclosures should affect all employees and contractors who are in the decision-making chain. Finally, ACL should examine the role of influence and lobbying activities on state agencies and AAA employees by companies or others seeking OAA contracts. This is tied to the promotion of transparency in the proposed regulations and the prohibition against the acceptance of gratuities, favors and related benefits.

EMERGENCY AND DISASTER PLANNING REQUIREMENTS

We support how the proposed regulations address emergency preparedness and response policies using the lessons learned by the aging network during the COVID-19 Public Health Emergency [[Subpart E](#)]. Given the additional risks posed to older adults during the pandemic and in other public health or natural disaster emergencies, we believe that policies and procedures must be in place at all levels of the network to ensure minimal disruptions to services and that the health and safety of staff, volunteers and clients are protected.

COMMUNICATION, TRANSPARENCY AND COLLABORATION

We also requested in our RFI comments that ACL incorporate language and guidance through every part of the regulations to ensure state agencies, AAAs and local providers have clear lines of communication so that they can share information and collaborate with each other and other agencies on all aspects of OAA implementation, particularly as related to distribution of funds. We believe the proposed regulations – including sections like the coordination efforts between Title III and VI services [[§ 1321.53](#)], as well as for emergency and disaster planning [[§ 1321.97](#)] – will help facilitate clear communication channels and transparency for maximum efficiency and coordination through the different levels and geographies of the aging network.

ADDITIONAL RECOMMENDATIONS FOR THE FUTURE

While we are proponents for many of the new and updated policies set forth by the NPRM, below we offer several additional recommendations and considerations to be addressed in the final rule, the federal budget and appropriations processes and/or the upcoming OAA reauthorization.

FUNDING PARITY AND ADJUSTMENTS FOR NUTRITION PROGRAMS

ACL should improve budget allocations between congregate and home-delivered meal programs. In Fiscal Year (FY) 2023, appropriations for home-delivered meals accounted for only 40% of the total Title III-C federal funding. If Title III C-2 is to be prioritized and considered as the primary program for the allowance of carry-out, grab-and-go, curbside and other innovative delivery models over the C-1 congregate meal program as proposed, it will be essential to account and readjust for this disproportionate use through ACL's annual budget and authorizations requests. We have advocated for a greater proportion of total nutrition funding to be allocated to home-delivered meals due to the persistent need for this service and flexibility that resulted from the pandemic. As home-delivered meals and other innovative service models remain in high demand today, we believe that greater parity for adequate support and resources within the Title III nutrition program is crucial.

Further, we encourage greater adoption of widely used terminology for this guidance and for other purposes. A reevaluation of federal nutrition program terminology may incorporate more inclusive, accurate and/or appealing labels and connotations for nutrition services. For instance, leveraging alternative terminology that exists around home-delivered and congregate meal services – like “Meals on Wheels” or “community meals,” respectively – could be a valuable mechanism for further modernization and even greater engagement in these programs. Another example where we believe special consideration in language and terminology should be made is around the flexible nutrition services models. While we strongly support flexibilities established and granted through these proposed regulations, terms like “grab-and-go,” “carry-out” or “drive through” are not technically home-delivered meal models in name or practice, so we urge careful consideration of terms that are selected for future guidance so that it is not confusing to the people for whom it is designed to serve.

MEAL CHOICE AND SUPPORT FOR RANGE OF SERVICE OFFERINGS

As we noted in the RFI process last year, we recommend that ACL use the regulations to ensure that state agencies, AAAs and local providers are aware of the definitions, uses and importance of culturally appropriate meals, medically tailored meals, fresh produce, and locally sourced food, as included in the statute.

REIMBURSEMENT RATES AND PAYMENTS

We shared in our comments in the RFI process that there is wide variation in per unit reimbursement rates and payment schedules across the aging network. Rates often remain stagnant for years on end and do not account for increased operational and food costs, leaving local service providers to subsidize the full expense of services with other funding sources. Additionally, rates often do not account for the higher inherent costs of certain foods, such as medically tailored meals and culturally appropriate meals that providers on all levels want to deliver but which can be cost prohibitive. We recommend that regulatory guidance be provided and reviewed during the state and area planning processes and that consideration be given to implementing a model that would routinely update per-meal reimbursement rates and agreed upon payment schedules.

ENHANCED DATA COLLECTION AND REPORTING

We believe that adequate data collection and reporting is critically important and must be able to demonstrate that programs like OAA nutrition services are meeting their purposes under the law. Accurate outcomes data can achieve this and help when making the case for resources. We encourage ACL to build on the proposed guidance within the updated regulations to further improve the consistency and standardization of data collection and reporting to assist providers at all levels so that information provided by the network can be better analyzed, interpreted, and compared among geographies, demographics and across time. Additional guidance and oversight of data collection – particularly in the case of the emergency funding streams and reimbursements – would be valuable for all levels of aging services providers and administrators that rely on this data. In doing so, we would urge ACL to consider the administrative burden and costs involved with accurately collecting and reporting data and safely sharing it.

LIMITED PUBLIC REVIEW-COMMENT PERIOD AND EFFECTIVE & COMPLIANCE DATES

A principal challenge faced by our network is the limited public review period for interested parties to provide feedback on the proposed regulations. We believe that a 60-day public review and comment period has not allowed for sufficient time to review, collaborate, and respond adequately to the proposal. We urge ACL to include additional time, as requested in a [letter](#) signed by our organization and 16 others directly involved with OAA policy, in future public review and comment opportunities. We also urge more frequent review and revision schedules for the regulations to ensure the current guidance and resources remain relevant and applicable to the large network of agencies and providers that rely on them.

Furthermore, we urge ACL to set feasible effective and compliance dates for each of the major provisions upon issuing a final rule. We believe this is essential to ensure that the range of providers who must comply with the updated regulations under these Titles have enough time and are not burdened by the implementation process. We also recommend setting prolonged effective and compliance dates so that adequate evaluation and/or study of the impact of these updated rules and requirements on “end-users” (i.e., older adults, caregivers, and people with disabilities) and their OAA service provider(s) can be conducted to assure that there are no harmful effects or unintended negative outcomes.

OPPORTUNITIES FOR THE UPCOMING OLDER AMERICANS ACT REAUTHORIZATION

With another reauthorization of the OAA approaching next year, we look forward to working together to address issues and policies through legislation. As this process to update the federal regulations has underscored, the law provides a critical foundation for regulatory guidance and implementation of key OAA programs like congregate and home-delivered nutrition services. We will continue to advocate for, and work with both ACL and Congress on, establishing and amending policies to support OAA nutrition providers during the upcoming reauthorization, including:

- 100% funding transfer authority between OAA Title III-C home-delivered and congregate nutrition services, as allowed during the COVID-19 Public Health Emergency.
- Increasing funding authorization levels for all OAA programs, particularly as current funding and reimbursement rates are not keeping pace with increasing demand for nutrition services and sustained higher operating costs.
- Prioritizing community-based organizations and public entities, such as AAAs, county governments, tribes, nonprofit service providers or volunteer organizations, to receive grant awards and/or enter contracts to carry out the provision Title III services.

To conclude, we believe proposed regulations generally provide clear and practical guidance that will support the national network of administrators and providers delivering OAA services. We are grateful to ACL and HHS for dedicated leadership at the federal level to provide updated direction and communication to help improve understanding and coordination across the aging network, making it easier for providers at all levels to better implement, adapt and target their services for older adults. We support the attention given to strengthening the written guidance for these essential aging services, which are critically needed to improve the delivery, access, and implementation of long-term care for older adults both now and in the years to come. We urge

you to consider the feedback provided above as you identify opportunities to further refine and improve the written regulations for the final rule.

Thank you again for the opportunity to comment on this NPRM. We look forward to working with you and serving as a resource as you continue to develop, introduce and ultimately implement it. Please do not hesitate to reach out to me or Chief Government and External Affairs Officer Erika Debrick Kelly (erika@mealsonwheelsamerica.org) for more information.

Sincerely,

A handwritten signature in blue ink that reads "Ellie Hollander". The signature is written in a cursive, flowing style.

Ellie Hollander
President and CEO