



June 6, 2022

Ms. Alison Barkoff
Acting Administrator and Assistant Secretary for Aging
Administration for Community Living
Washington, DC 20201

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
Washington, DC 20201

Re: Request for Information: Older Americans Act Regulations

Dear Acting Administrator and Assistant Secretary Barkoff and Secretary Becerra:

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 Request for Information (RFI) on Older Americans Act (OAA) regulations. We commend the Administration for Community Living (ACL), under the leadership of the Department of Health and Human Services (HHS), for your attention to updating and modernizing regulations for programs authorized under Titles III, VI, and VII of the OAA. The importance of the OAA in responding to and providing services for older Americans for over 50 years cannot be overstated. The timing for updating regulations is ideal considering ongoing demographic shifts within an aging population, the 2020 reauthorization of the OAA and the lasting impacts of the COVID-19 pandemic.

We are at a crossroads and an exciting time for OAA programs. Updating these regulations is an important step in bolstering the already stellar impact of our nation's aging and nutrition services and ensuring these vital services and supports continue to thrive. 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 our on-the-ground operations. Having said that, we are proponents of modernizing and strengthening guidance for OAA programs as put forth by this RFI. Updated rulemaking for the various Titles and programs will enable local providers to better implement services as intended and authorized in the law and ultimately enhance support for older adults in their homes and communities.

We offer the following recommendations and information for consideration in updating OAA regulations. We categorized our recommendations into the following eleven themes and provided specific technical examples where possible. The information below relates to [45 CFR part 1321](#)—Grants to State and Community Programs on Aging, though we encourage application of appropriate recommendations to other sets of regulations, as well.

EQUITY AND GREATEST SOCIAL AND ECONOMIC NEED

We commend ACL for its stated focus on equity and utilizing an inclusive lens in updating OAA regulations. We urge inclusion and contemporizing of equity-based language throughout all Titles and that anti-discrimination language be explicitly inserted where possible. We also encourage ACL to update all language related to targeting, including that related to greatest social and economic need, to reflect the current statute and in ways that reflect a diverse demographic that will continue to experience shifts in future years. We offer two examples below, and we encourage these suggestions to be considered throughout all Parts and Subparts of the regulations.

Subpart B – State Agency Responsibilities, 1321.17 Content of State Plan, (f) (9)

ADD: The state agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such forms as the Commissioner directs. **This includes data that accurately captures older individuals of underserved communities and/or those targeted for services including older adults who are in greatest social and economic need, including those who are low-income; are a racial or ethnic minority; live in a rural community; have limited English proficiency; and/or are at risk of institutionalization; and/or identify as LGBTQ+.**

Subpart C – Area Agency Responsibilities, 1321.53 Mission of the area agency, (b) (3)

ADD and DELETE and CHANGE: Assure that these options are readily accessible to all older persons **without discrimination:** ~~The independent, semi-dependent, and totally dependent, n~~ **o** matter ~~what~~ **or level of independence;**

NUTRITION-RELATED FLEXIBILITIES

We encourage ACL to modernize OAA regulations to ensure clear instruction, communication, and transparency regarding nutrition-related flexibilities, including those as provided during the COVID-19 pandemic.

ADD: State Agencies and Area Agencies on Aging shall make clear and public how policies such as, but not limited to, Grab & Go meals, take-away meals, leftover food, person-centered culturally appropriate meals, medically tailored meals, and menu choice, are permissible under federal statute; and shall clearly communicate specific state and local policy and funding streams related to such flexibilities directly to local providers. State Agencies and Area Agencies on Aging shall provide an established method of communicating policies with local providers and will leverage them and persons with lived experience in developing state and local policies.

TRANSFER OF FUNDING BETWEEN TITLE III PROGRAMS

The ability to transfer funding between congregate (Title III C1) and home-delivered (Title III C2) nutrition programs remains a critical authority to direct limited resources to the greatest service needs in a community. Accordingly, the regulations need updating to reflect current transfer funding percentages between congregate and home-delivered nutrition services. We also

encourage ACL to further update regulations to ensure clear instruction regarding the transfer process and emphasize Congressional intent that statutory appropriations increases for nutrition services (Title III C1 and C2) be used for such purposes as intended.

Subpart B – State Agency Responsibilities, Section 1321.45 Transfer between congregate and home-delivered nutrition service allotments

CHANGE: Update 30 percent to **40 percent** in all parts of this section

ADD: (c) State Agencies and Area Agencies on Aging shall routinely seek out and use data from local service providers to inform decisions regarding transfer allotments and clearly communicate the amount and reasoning behind them on a routine basis to local providers.

ADD: The links between supportive services (Title III B) and nutrition services (Title III C) are inextricable and should not be minimized. The statutory authority for transfer allows State Agencies to adapt the use of funding to the greatest needs that exist or arise in a community and avoid one-size-fits-all models of programming. The current flexibility of transfer authority allows State and Area Agencies on Aging to accurately identify the units of service being provided under the Act and the unit cost of those services. Unless such transfers support, facilitate, or foster participation in senior nutrition programs with a high prevalence of food insecurity, State Agencies are discouraged from diverting funding provided for nutrition services to non-nutrition expenditures. In particular, appropriations increases provided for nutrition services should be used to directly support, facilitate, or foster nutrition programs, and should not be transferred to non-nutrition-related supportive services.

DEFINITIONS

The definitions included in the current regulations do not match the statute. We request ACL update all definitions and include additional definitions, as needed. We encourage ACL to account for potential modernization of terms and dollar amounts in the future for all updated definitions.

We further encourage inclusion of a definition of service provider that captures the value of OAA services being rooted in the community and the unique expertise of locally based organizations in meeting the needs of individuals in their own community as they understand the distinct interplay of resources and connection to other local services that are essential to meeting the purposes of the law.

PURPOSES OF THE OAA NUTRITION PROGRAM

Through the most recent reauthorization process, the purposes of the Nutrition Program have been amended and made clear to 1) reduce hunger, food insecurity, and malnutrition; 2) promote socialization of older individuals; and 3) promote the health and well-being of older individuals. We encourage ACL to note the importance of the updated and multi-faceted purposes of the Nutrition Program, including social connection and malnutrition, throughout the updated regulations.

SUPPORT FOR A RANGE OF NUTRITION OFFERINGS

Local nutrition providers recognize the importance of providing appropriate healthy nutrition options to older individuals. We recommend that ACL utilize the regulations to ensure that State Agencies, Area Agencies on Aging, 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.

VOLUNTARY CONTRIBUTIONS

Within updated regulations, we encourage ACL to provide clarity regarding voluntary contributions for nutrition services providers, including language that such contributions collected are used to supplement and not supplant federal appropriations and/or state or local funding provided. Further, in order to enable local nutrition providers greater access to donations of food inventory under 26 U.S.C. 170(e)(3), we encourage ACL to clarify that a voluntary contribution provided by a recipient of meals does not constitute an “exchange for money” that may otherwise preclude the use by such nutrition provider of donated food inventory.

REIMBURSEMENT RATES AND PAYMENT

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 take into account 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 like medically tailored meals and culturally appropriate meals that providers on all levels want to deliver but that 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.

CONSISTENT DATA COLLECTION AND STANDARDIZED REPORTING REQUIREMENTS

We encourage ACL to establish guidance within updated regulations that assists providers at all levels to understand methods of data collection and reporting requirements so that information from such providers is consistent and can be best analyzed, interpreted, and compared among geographies 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.

HEALTHCARE CONTRACTS AND COMMUNITY-BASED ORGANIZATIONS

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 already have established or are seeking out healthcare contracts and reimbursement for services. We recommend that ACL make clear within updated regulations that healthcare contracts are permissible for OAA providers and are neither mutually exclusive with nor intended to supplant OAA funding streams.

COMMUNICATION AND TRANSPARENCY

Lastly, we recommend that ACL incorporates language and guidance through every part of the regulations to ensure State Agencies, Area Agencies on Aging, and local providers have clear lines of communication and can share information in a transparent manner related to all aspects of OAA provision.

Thank you again for the opportunity to respond to the RFI regarding OAA regulations. Clear guidance and communication through regulatory policy at the federal level will improve understanding and coordination across the aging network, making it easier for States, Area Agencies on Aging and providers at all levels to better implement, adapt and target their services. We applaud 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 look forward to working with you and serving as a resource. Please do not hesitate to reach out with questions.

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