



OREGON DEPARTMENT OF
Human Services
Aging and People with Disabilities

Oregon State Unit on Aging: Older Americans Act Policies and Procedures

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Policy Development Process

For the purposes of compliance with Older Americans Act federal regulations, Oregon SUA considers this document, monitoring guidance, AAA contractual language, the Intrastate Funding Formula, and the [148/150 Fiscal Reporting Document](#) to function as policy and procedure for Oregon SUA's operations of Older Americans Act programs.

SUA Procedure

The State Unit on Aging (SUA) shall develop and implement policies and procedures governing all aspects of programs operated as set forth in 45 CFR 1321 and 45 CFR 1324. These policies and procedures shall be developed in consultation with area agencies on aging (AAAs), program participants, and other appropriate parties in the State.

AAA Procedure

Each AAA in Oregon shall develop and implement policies and procedures in compliance with the SUA policies and procedures included in this manual, 45 CFR 1321, 45 CFR 1324, the Older Americans Act (OAA), and all other applicable State and Federal requirements. These policies and procedures shall be developed in consultation with other interested parties in the planning and service area (PSA). The AAA is responsible for enforcing these policies and procedures.

Compliance with Contract Language and Monitoring Procedures

Oregon SUA is required to monitor the programmatic and financial activities of subrecipients and subgrantees to ensure that grant awards are used for the authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of the grant award. To fulfill this requirement, Oregon SUA will conduct periodic quantitative and qualitative monitoring of AAA programs and financial activities through programmatic monitoring, contracts and fiscal monitoring, and annual fiscal audits.

These monitoring requirements are further detailed in AAA contractual language. AAA contractual language includes provisions that require AAAs to develop a performance management framework to include objectives and metrics based on adherence to program standards. In addition, contract language requires that AAAs monitor their providers for quality and effectiveness in delivery of services. Oregon SUA encourages AAAs to make the results of their monitoring of providers publicly available.

III-B Consumer Eligibility, Assessment, and Person-Centered Planning

Policy Statement

Consumers must meet the program eligibility requirements set in the OAA to receive OAA-funded services. Consumers shall undergo an initial assessment

to establish need and determine eligibility. A reassessment shall occur annually. Where applicable, the consumer shall be an active partner in the planning and coordination of services. An individual must be age 60 or older at the time of service to be eligible to participate in services under the OAA, unless the OAA otherwise provides an explicit exception. Exceptions are limited to the following specific services:

1. Nutrition services:
 - a. Services shall be available to spouses of any age of older individuals.
 - b. Services may be available to:
 - i. A person with a disability who lives with an adult age 60 or older or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and
 - ii. A volunteer during meal hours.
2. Family caregiver support services for:
 - a. Adults caring for older adults and adults caring for individuals of any age with Alzheimer's or a related disorder.
 - b. Older relative caregivers who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

- c. Older relative caregivers who are caring for individuals aged 18 to 59 with disabilities and who may be of any relationship, including the biological or adoptive parent.
- 3. Services such as information and assistance and public education, where recipients of information may not be age 60 or older, but the information is targeted to those who are age 60 or older and/or benefits those who are age 60 or older.

SUA Procedure

The SUA shall annually monitor for policy compliance and review consumer intake forms and case notes to ensure assessments and reassessments are completed as required.

AAA Procedure

As part of the intake process, the AAA shall conduct an assessment to establish need and determine program eligibility. Factors to consider are greatest economic need and greatest social need. The AAA shall refer to its policies and procedures for prioritization, target populations, and wait listing to ensure that the eligible consumers with the greatest need are served first. After the initial assessment, reassessments shall be conducted annually.

Grievance Process

Policy Statement

Reference: 45 CFR 1321.9(b)(1)(viii)

The SUA and AAAs shall have grievance procedures in place to address older individuals and family caregivers who are dissatisfied with or denied services.

Individuals served through Title III-funded programs have the right to respectful and responsive services. Oregon SUA is committed to ensuring a simple grievance process is available to older individuals and family caregivers. The grievance process is designed to bring complaints forward related to dissatisfaction with or denial of services under the Older Americans Act and have them resolved in a timely manner.

Oregon SUA recognizes the limited funding available to provide services. The grievance process is not in place to require service providers or AAAs to provide services to individuals or family caregivers if resources are not available to provide those services, if the individuals filing a grievance are not eligible to receive services, or if individuals filing grievances do not meet prioritization criteria related to having greatest social need and/or greatest economic need. However, the grievance process must be available to all older individuals and family caregivers to address complaints related to dissatisfaction with or denial of services under the Older Americans Act.

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The grievance process must include an opportunity for individuals to file an appeal if they are unsatisfied with the initial resolution by the service provider. AAAs must have a grievance process for individuals if they wish to appeal the grievance resolution from the service provider. Likewise, the individual may subsequently appeal the AAA's decision to Oregon SUA.

SUA Procedure

If an individual chooses to appeal previous responses to their complaint from both the service provider and/or the AAA (if the AAA is the service provider), the individual or their representative may file a grievance with Oregon SUA. Oregon SUA must provide the individual appealing the prior responses to their grievance with an opportunity to explain why they are appealing.

Oregon SUA may work with the AAA to more fully address the individual's complaint or refer the individual to another service provider as a potential avenue to remedy the complaint. Oregon SUA must make reasonable effort to address the underlying grievance within the limits of available funding and other relevant circumstances.

Oregon SUA must respond to the complainant in writing within 21 calendar days of receiving the grievance.

Oregon SUA shall review the AAA Grievance Procedure during annual monitoring (this will be requested during the first year of the 4-year area plan

cycle and then annually if any changes have been made to the policy and procedure). If grievances are filed, the AAA shall include related documentation as part of the annual monitoring.

AAA Procedure

AAAs must develop policies and procedures for a grievance process. AAA Grievance Processes must include the following:

1. Information about how to file a grievance related to dissatisfaction or denial of services is made available to all recipients of services. Notices about grievance processes must be posted prominently at AAA offices and on AAA websites.
2. AAAs must accept verbal or written complaints if an individual has already filed a complaint directly with a service provider and has received a documented response from the service provider as outlined below.
3. The AAA must review the original complaint and the service provider's response. The AAA may choose to conduct additional inquiry based on the unique circumstances of the situation or may determine the service provider already appropriately addressed the situation.
4. The AAA may work with the service provider to more fully address the individual's complaint or refer the individual to another service provider as a potential avenue to remedy the complaint. AAAs must make

reasonable effort to address the underlying grievance within the limits of available funding and other relevant circumstances.

5. In any case, the AAA must respond to the complainant in writing within 21 calendar days of receiving the grievance.
6. AAAs receiving a documented grievance must report this information in writing to Oregon SUA, along with the resolution to the complaint, within 30 calendar days of receiving the complaint. Information reported to Oregon SUA must include the written complaint and the AAA's response.
7. AAAs must also maintain documentation about complaints filed and use that information as part of their monitoring and oversight processes for service providers.
8. Service providers and AAAs must maintain documentation associated with grievances for a minimum of four years from the date the complaint or grievance was filed.

AAAs contracting with service providers must require that the entity providing services develops policies and procedures for a grievance process. Grievance Processes must include the following:

1. Information about how to file a grievance related to dissatisfaction or denial of services is made available to all recipients of services. Notices about grievance processes must be posted prominently at congregate

dining sites; at the offices of service providers; and on the websites of service providers.

2. A complaint form that includes fields for an individual's contact information as well as the nature of the complaint and what, specifically, the individual would like to have resolved. Forms must be made available in alternate languages upon request.
3. Verbal or written complaints must be accepted. Individuals may request assistance in filing a complaint; if such a request is made, the service provider must assist the individual in filing a complaint. If the complaint is verbal, the service provider must document the filing of the complaint in writing as explained by the individual filing the grievance.
4. A service provider and/or AAA who has received a complaint must assess the complaint and determine whether the complaint involves immediate health or safety issues for the individual filing the complaint. The service provider and/or AAA must address any health and safety-related complaints promptly, including by referring an individual to other community-based services if that service provider is unable to provide services to the individual.
5. Service providers and/or AAAs must make reasonable efforts to address the underlying grievance within the limits of available funding and other relevant circumstances.
6. A service provider and/or AAA must follow up in writing with the individual filing a grievance with a response to the issue the individual

has raised within 14 calendar days of receiving the complaint. The response must include whether or not the individual's grievance can be remedied, how it can remedied, or if the complaint cannot be remedied, an explanation of the reason why this is the case. Service providers and/or AAAs should aim to resolve all complaints within 30 calendar days of receipt. If the complaint is not resolved in 30 calendar days, the service provider and/or AAA will document the reason for the delay and a plan for resolution.

7. Service providers receiving a documented grievance must report this information in writing to the AAA with which they are contracted, within seven calendar days of receiving the complaint. Service providers must also report resolution of the complaint, within 30 calendar days of receiving the complaint. Information reported to the AAA must include the written complaint, the completed form authorizing a representative to act on the older adult's behalf if one was completed, and the service provider's written response to the grievance.

Area Plan Process

Policy Statement

According to OAA Section 306(a), each AAA shall prepare and develop its Area Plan for the multi-year period determined by the SUA, typically 2-4 years. The Area Plan submitted by the AAA to the SUA for review and approval shall be in the uniform format developed by the SUA.

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An Area Plan is the document submitted by the AAA to the SUA to define how the AAA will apply the Older Americans Act (OAA) and state grants for services in the comprehensive and coordinated service delivery system within the planning and service area. Through the Area Plan, the AAAs commit to administering funded activities in accordance with all OAA and SUA requirements. The Area Plan describes the AAA's efforts for continual development and maintenance of a comprehensive and coordinated service delivery system for older adults, adults with disabilities, and caregivers.

The area plan shall be prepared in accordance with content, duration and formatting requirements as required by Oregon SUA.

Oregon AAA area plans shall include:

1. Identification within each planning and service area of the populations in greatest economic need and greatest social need, as defined by Oregon SUA.
2. Assessment and evaluation of unmet need for supportive services, nutrition services, evidence-based disease prevention and health promotion services, family caregiver support services, and multipurpose senior centers, using objectively collected and statistically valid data, to the greatest extent possible. The evaluations shall consider all services in these categories regardless of the source of funding for the service.

3. Evidence of public participation in the development of the plan, including:
 - a. How each AAA periodically seeks the views of older individuals, family caregivers, service providers and the public, with a focus on those in greatest economic need and greatest social need.
 - b. A minimum 30 calendar day period during which the area plan is available for public review and comment.
 - c. That area plans are accessible in a public location and available in print by request.
4. The services, including a definition of each type of service; the number of individuals to be served; the type and number of units to be provided; and corresponding expenditures proposed to be provided with OAA and other funds.
5. Plans for how direct service funds will be distributed in order to address populations identified in greatest economic need and greatest social need, as identified by Oregon SUA.
6. Requests for waivers to provide direct services;
7. Minimum adequate proportion requirements as identified in Oregon SUA's approved State Plan;
8. Requirements for program development and coordination activities as described by Oregon SUA.

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9. The identity of each provider/contractor the AAA has a contract with to provide any service to older individuals, service(s) provided and the funding source.
10. Other information as is specified in the transmitted Area Plan Instructions.

Area plans shall incorporate services which address the incidence of hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions.

Area plans shall provide, to the extent feasible, for OAA services to be provided through self-direction.

Area plans shall develop objectives that coordinate with State Plan goals for services under the OAA.

The Area Plan will be updated annually during the duration of the plan. The date that the update is due, and the format required will be included in the Area Plan Instruction transmittal provided by the Oregon SUA.

An AAA shall amend the plan if:

- a new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan provision;
- the AAA proposes to change the designation of the single organizational unit or component unit; or

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- Oregon SUA requires further amendments.

Failure to comply with the Area Plan requirements listed in this Manual and the Oregon SUA Area Plan guidelines will result in a delay or rejection of the Area Plan. Funding, as well as other support, may not be provided until all components of the Area Plan are received and approved by Oregon SUA.

Any Area Plan or amendment not in substantial conformity with the OAA, federal regulations, and the SUA policy shall be rejected. A Plan will not be rejected prior to an offer of technical assistance and until efforts at problem resolution have been exhausted. When Oregon SUA disapproves an Area Plan, the AAA shall be notified in writing and informed of the opportunity for an administrative review. If, after providing the AAA proper opportunity for an administrative review, Oregon SUA still finds the Area Plan unacceptable, it shall reject the plan and may:

- withhold further payments to the AAA;
- terminate funds, with written notification by Oregon SUA to the Administration for Community Living (ACL);
- provide a plan for the continuity of services in the affected planning and service area;
- designate a new AAA in a timely manner;
- perform the responsibilities of the AAA, if necessary; or
- assign AAA responsibilities to another agency in the planning and service area.

SUA Procedure

Oregon SUA shall provide the AAAs with Area Plan Instructions, outlining required content, format and timeline for submission.

Upon receipt of Area Plan submissions, each Area Plan is reviewed by multiple staff within Oregon SUA, including AAA liaisons and program area leads. Plans may also be reviewed by external constituents including members of APD advisory commissions. Staff use the written instructions provided to the AAA as basis for the review. Based upon the reviews, the AAA will be notified in writing of the Area Plan's approval or any corrective actions needed. Technical assistance may be provided as appropriate.

Oregon SUA will approve an Area Plan or amendment when the plan meets all of the requirements in this Manual, or as otherwise prescribed by Oregon SUA. Periodic monitoring of Area Plan compliance will be completed by Oregon SUA.

AAA Procedure

The AAA shall conduct an assessment of unmet needs, using the best available data and ensuring statistical validity where possible.

The AAA shall engage its Advisory Council to advise on the development of the Plan and will submit the Area Plans and amendments to its Advisory Council for review and comment at least one week prior to holding a public hearing in

the region. A complete copy of the Area Plan and Area Plan budget shall be available to the public on its agency web site for 30 days before the hearing for review and after the public hearing(s).

Special notices shall be sent to providers and potential providers of the AAA, organizations of older persons, and other public and private agencies in the planning and service area. Notices of public hearing(s) shall be published in a language other than English, when deemed appropriate by the AAA. All notices of the public hearing shall specify where interested parties may obtain copies of the Area Plan, and copies of the plan should be placed on the AAA website at least two weeks before each hearing is held.

To ensure maximum attendance by interested parties, including older persons and persons with disabilities, public hearings shall be held in barrier-free facilities and shall be scheduled at convenient times and locations. Procedures for review and analysis of comments received shall be explained. All records of public hearings shall be on file at the AAA as a part of the Official Area Plan File. Comments collected at the public hearings become part of the Area Plan.

Non-Federal Share (Match) Policy

Policy Statement

As set forth in sections 301(d)(1) (42 U.S.C. 3021(d)(1)), 304(c) (42 U.S.C. 3024(c)), 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)), 304(d)(1)(D) (42 U.S.C. 3024(d)(1)(D)), 304(d)(2) (42 U.S.C. 3024(d)(2)), 309(b) (42 U.S.C. 3029(b)),

316(b)(5) (42 U.S.C. 3030c-3(b)(5)), and 373(h)(2) (42 U.S.C. 3030s-2(h)(2)) of the Older Americans Act, the State agency shall maintain statewide match requirements, where:

- A. The match may be made by State and/or local public sources except as set forth in paragraph (c)(2)(ii)(C) of this section.
- B. Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be accepted if the funds meet the specified criteria for match. A State agency may not require only cash as a match requirement.
- C. State or local public resources used to fund a program which uses a means test shall not be used to meet the match.
- D. Proceeds from fundraising activities may be used to meet the match as long as no Federal funds were used in the fundraising activity. Fundraising activities are unallowable costs without prior written approval, as set forth in 2 CFR 200.442.
- E. A State agency may use State and local funds expended for a non-Title III funded program to meet the match requirement for Title III expenditures when the non-Title III funded program:
 - 1) Is directly administered by the State or area agency;
 - 2) Does not conflict with requirements of the Act;
 - 3) Is used to match only the Title III program and not any other Federal program; and

- 4) Includes procedures to track and account expenditures used as match for a Title III program or service.
- F. Match requirements for area agencies are determined by the State agency.
 - G. Match requirements for direct service providers are determined by the State and/or area agency.
 - H. A State or area agency may determine a match in excess of required amounts.
 - I. Other Federal funds may not be used to meet required match unless there is specific statutory authority.
 - J. The required statewide match for grants awarded under Title III of the Act is as follows:
 - 1) *Administration*. Federal funding for State, Territory, and area plan administration may not account for more than 75 percent of the total funding expended and requires a 25 percent match. As set forth in 2 CFR 200.306(c), prior written approval is hereby granted for unrecovered indirect costs to be used as match.
 - 2) *Supportive services and nutrition services*.
 - i. Federal funding for services funded under supportive services as set forth in §1321.85, less the portion of funds used for the Ombudsman program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

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- ii. Federal funding for services funded under nutrition services as set forth in §1321.87, less funds provided under the Nutrition Services Incentive Program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;
 - iii. One-third ($\frac{1}{3}$) of the 15 percent match must be met from State resources, and the remaining two-thirds ($\frac{2}{3}$) match may be met by State or local resources;
 - iv. The match for supportive services and nutrition services may be pooled.
- 3) *Family caregiver support services.* The Federal funding for services funded under family caregiver support services as set forth in § 1321.91 may not account for more than 75 percent of the total dollars expended and requires a 25 percent match.
- 4) Services not requiring match. Services for which no match is required include:
- i. Evidence-based disease prevention and health promotion services as set forth in §1321.89;
 - ii. The Nutrition Services Incentive Program; and
 - iii. The portion of funds from supportive services used for the Ombudsman program.

Procedure

Match requirements are detailed and reported in the [148/150 Fiscal Reporting](#)

[Document.](#)

Oregon SUA and AAAs shall meet non-federal share matching requirements as set forth in the OAA and in 1321.9(c)(2)(ii) as described above.

Permitted Transfers

Policy Statement

Transfer of service allotments elected by the State agency which must meet the following requirements:

- A. A State agency must provide notification of the transfer amounts elected pursuant to guidance as set forth by the Assistant Secretary for Aging;
- B. A State agency shall not delegate to an area agency on aging or any other entity the authority to make a transfer;
- C. A State agency may only elect to transfer between the Title III, part B Supportive Services and Senior Centers, part C-1 Congregate Nutrition Services, and part C-2 Home-Delivered Nutrition Services grant awards;
 - 1) The State agency may elect to transfer up to 40 percent between the Title III, part C-1 and part C-2 grant awards, per section 308(b)(4)(A) of the Act (42 U.S.C. 3028(b)(4)(A));

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- i. The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 40 percent transfer limit.
 - ii. The State agency may request a waiver up to an additional 10 percent between the Title III part C-1 and part C-2 grant awards, per section 308(b)(4)(B) of the Act (42 U.S.C. 3028(b)(4)(B)).
- 2) The State agency may elect to transfer up to 30 percent between Title III, parts B and C, per section 308(b)(5)(A) of the Act (42 U.S.C. 3028(b)(5)(A)); and
 - i. The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 30 percent limitation between parts B and C, per section 316(b)(4) of the Act (42 U.S.C. 3030c-3(b)(4));
- D. Percentages subject to transfer are calculated based on the total original Title III award allotted;
- E. Transfer limitations apply to the State agency in aggregate;
- F. State agencies, in consultation with area agencies, shall:
 - 1) Ensure the process used by the State agencies in transferring funds under this section (including requirements relating to the authority and timing of such transfers) is simplified and clarified to reduce administrative barriers; and

- 2) With respect to transfers between parts C-1 and C-2, direct limited resources to the greatest nutrition service needs at the community level; and
- G. State agencies do not have to apply equal limitations on transfers to each area agency on aging.

Procedure

Permitted Transfers are detailed and reported in the [148/150 Fiscal Reporting Document](#). AAAs should use the [Request to Transfer Funds](#) form to submit transfer requests to the Oregon SUA. Oregon SUA and AAAs shall meet transfers requirements as set forth in the OAA and in 1321.9(c)(2)(iii), as described above.

Minimum Adequate Proportion of Funds

Minimum Adequate Proportions of Funds for access services, in-home supportive services, and legal assistance are detailed and reported in the SUA Intrastate Funding Formula and the [148/150 Fiscal Reporting Document](#).

Maintenance of Effort

Policy Statement

Oregon SUA must spend for both services and administration at least the average amount of State funds reported and certified as expended under the State plan for these activities for the three previous fiscal years. If Oregon SUA

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spends less than this amount, the Assistant Secretary for Aging reduces the State's allotments for services under Title III by a percentage equal to the percentage by which the State reduced its expenditures.

The amount certified must at least meet minimum match requirements from State resources. Any amount of State resources included in the Title III maintenance of effort certification that exceeds the minimum amount mandated becomes part of the permanent maintenance of effort. Excess State match reported on the Federal financial report does not become part of the maintenance of effort unless the State agency certifies the excess.

In general, federal funds should not be used to supplant state or local resources in place prior to the award. Federal funds should be used to expand services, unless otherwise specified in law or regulation. Except as provided in Sec. 374 of the Older Americans Act, there is no statutory basis for Maintenance of Effort requirements for AAAs or their service providers.

SUA Procedure

Oregon SUA is required to certify maintenance of effort has been met by August 1 of each year for the federal fiscal year that ended September 30 of the prior calendar year.

Oregon SUA will document how it meets its maintenance of effort requirement by certifying amounts needed to meet MOE requirements expended on the

Federal financial report.

AAA Procedure

N/A as the SUA expends these funds.

Rural Minimum Expenditures

Policy Statement

Oregon SUA will ensure that it will maintain at least minimum expenditures in each fiscal year on services for older individuals residing in rural areas as required by the OAA, which requires at least as much be spent for these services as in fiscal year 2000.

The Oregon SUA refers to rural as a type of developed environment in which the consumer lives as defined by the rural-urban commuting area (RUCA) codes defined at the zip code level. In Oregon, any geographic areas ten or more miles from the centroid of a population center of 40,000 people or more are considered rural.

Procedure

Oregon SUA documents assurances for rural minimum expenditures and funding allocations for rural areas in the State Plan on Aging Information Requirements section and Intrastate Funding Formula.

Reallotment of Funds

Policy Statement

If there are funds which will not be expended by the end of the fiscal year, Oregon SUA will follow federal guidance in 1321.9(c)(2)(ix) where:

(A) The State agency must annually review and notify the Assistant Secretary for Aging prior to the end of the fiscal year in which grant funds were awarded if there is funding that will not be expended within the grant period for Title III or VII that the State agency will release to the Assistant Secretary for Aging.

(B) The State agency must annually review and notify the Assistant Secretary for Aging of the amount of any released Title III or VII funding from other State agencies that the State agency requests to receive and expend within the grant period from the Assistant Secretary for Aging.

(C) The State agency must use its intrastate funding formula or funds distribution plan, as set forth in §1321.49 or §1321.51, to distribute any Title III funds that the Assistant Secretary for Aging reallots pursuant to the State agency's notification under paragraph (c)(2)(ix)(B) of this section.

Program Income

Policy Statement

Oregon SUA and AAAs shall meet the Program Income requirements as set

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forth in the OAA and in 1321.9(c)(2)(xii) below.

Program income is subject to the requirements in 2 CFR 200.307 and 45 CFR 75.307 and as follows:

- (A) Voluntary contributions and cost sharing payments are considered program income;
- (B) Program income collected must be used to expand a service funded under the Title III grant award pursuant to which the income was originally collected;
- (C) The State agency must use the addition alternative as set forth in 2 CFR 200.307(e)(2) and 45 CFR 75.307(e)(2) when reporting program income, and prior approval of the addition alternative from the Assistant Secretary for Aging is not required;
- (D) Program income must be expended or disbursed prior to requesting additional Federal funds; and
- (E) Program income may not be used to match grant awards funded by the Act without prior approval.

SUA Procedure

Program Income requirements are detailed in the [148/150 Fiscal Reporting Document](#).

AAA Procedure

AAAs shall report program income using the [148/150 Fiscal Reporting Document](#) and follow the requirements detailed in that document.

Private Pay Programs

Policy Statement

The SUA does not currently allow for the use of Private Pay arrangements for Older Americans Act Programs.

Contracts and Commercial Relationships

References

[45 CFR 1321.9\(c\)\(2\)\(xiv\)](#)

[Older Americans Act \(OAA\)](#)

[Administration on Aging Informational Bulletin November 2024](#)

State Units on Aging (SUA) are the designated state-level agencies responsible for developing and administering multi-year state plans that advocate for and provide assistance to older residents, their families, and adults with physical disabilities. In Oregon, the designated SUA is the Aging and People with Disabilities (APD) program.

The SUA encourages Area Agencies on Aging (AAA) to establish comprehensive and coordinated systems for supportive, nutrition, and other services for older adults in our state by leveraging resources beyond Older

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Americans Act (OAA) funding. Through contracts and commercial relationships (“agreements”), AAAs can use both government and private funding to serve more older adults in need. Through this policy, the SUA intends to facilitate increased access to aging services in our state while ensuring responsible oversight of federal funds and protecting the integrity of our aging services network.

Consistent with section 212 of the OAA, AAAs may use OAA funding to develop or initiate section 212 agreements.

AAAs must obtain prior approval from the SUA for agreements:

- With any entity (both for-profit and non-profit);
- For the AAA to provide goods or services included under the OAA to individuals that are not receiving those services under the Act;
- In exchange for reimbursement or other financial consideration, with the expectation that the agreement will result in a return on the investment and reimbursement of initial costs; and
- Regardless of whether OAA funding is or is not used.¹

All section 212 agreements must incorporate a guarantee that any OAA costs used in the development will be reimbursed to the AAA by the third-party entity. In addition, the OAA requires that any amount of payment to the AAA

¹ For examples of agreements that require prior approval, see [Examples](#).

that exceeds this initial reimbursement will be used to provide, or support the provision of, OAA services.

The SUA is required to maintain oversight of federal funds and shall develop and publish procedures to provide the information necessary to comply with this federal regulation.

Procedure

AAAs will submit their requests for prior approval to the SUA using the [Section 212 Agreements Information Form](#) (“Form”), which includes:

- The agreement information page;
- Section 1: Pre-approval checklist;
- Section 2: Risk Assessment; and
- Section 3: Assurances.

Note: If a non-disclosure or other confidentiality agreement prevents the AAA from disclosing required information, the AAA should submit publicly available information and attach a copy of the confidentiality agreement (redacted if necessary) to the Form.

For agreements involving multiple AAAs, one entity may submit information for prior approval on behalf of the group. The anticipated contractual expectations of each AAA must be clear in the information submitted.

Service providers sub-contracted for work to execute an approved agreement

are not required to separately seek prior approval.

Types of Agreements

Agreements are either categorically pre-approved or require review prior to approval. For both types, AAAs must provide assurances of compliance with certain requirements under the Act, which are listed in section 3 of the approval form. AAAs must also incorporate standard language related to conflicts of interest and compliance with SUA data use policies into each of the prospective agreements for which they are seeking approval.

Categorically pre-approved agreements

Unless an exception* is noted, the SUA categorically pre-approves the following types of agreements, contingent on receipt of the minimum information outlined in the Form:

- Agreements with local, state, and federal governmental entities;
- Agreements with other AAAs.

For these agreements, the AAA must submit the agreement information page and Sections 1 and 3 of the Form to sua.email@odhsoha.oregon.gov not later than 45 days after the agreement first goes into effect.

***Eligibility exception:** If a AAA has received an audit report within the previous twelve months with financial findings attributed to or associated with the AAA, and resulting in significant findings requiring a management

response, the AAA is not eligible for the categorical approval of agreements, including the types of agreements listed above. Instead, AAAs in such situations must submit requests for approval of each individual prospective agreement.

Agreements requiring prior approval

For AAA agreements that require approval by the SUA prior to contract execution, the AAA must complete the full Form and submit it to

sua.email@odhsoha.oregon.gov.

AAAs may submit the Form whenever necessary to receive approval prior to establishing a section 212 agreement. The SUA shall review AAA requests to enter into these agreements within no longer than ten business days of submission by the AAA to the SUA. SUA decisions will be communicated in writing.

Risk-screening

In addition to the agreement information page and Sections 1 and 3 of the Form, AAAs must assess prospective agreements that require prior approval for risk, [according to the criteria identified in section 2 of the approval form](#). If one or more of the identified risks are present, the SUA will not approve without discussion with or the provision of further information from the AAA.

Additional Requirements for All Agreements

Annual requirement

AAAs will annually submit, in conjunction with but separate from the Area Plan, an aggregate list of categorically pre-approved agreements and agreements requiring prior approval (preferably as a spreadsheet or table), with an aggregate re-attestation to the assurances. The list is to contain:

1. The name of entity with whom the agreement has been made or type of entity if a non-disclosure agreement prevents disclosure, and
2. Contract/agreement number (if available)
 - a. If no contract or agreement number is available, a brief statement of the scope of work.

In addition to the list, the Annual Submission of Aggregate Agreement List form must be signed and submitted.

Periodic review

If there are no changes to the AAA agreement requiring notification to the SUA (see next section) after it has been approved, the Form must be resubmitted after 5 years.

- For categorically pre-approved agreements, the Form will include the agreement information page and Sections 1 and 3.

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- For agreements that required SUA approval, all sections of the Form will be submitted.

While the SUA will have the information available through the initial Form submissions and the aggregate agreement list, it is the responsibility of the AAA to track the 5-year period from the date of execution of their agreements.

Notice of changes to an approved agreement

For those agreements that have gone through the approval process with the SUA, if one of the following occurs, the AAA must notify the SUA, and the full prior approval documentation will be required:

- a change in the scope of work,
- early termination of the agreement, and/or
- a 10% change in the budget to the agreement(s).

Section 212 Agreements Information Form

Complete and return this form, including the required criteria approval and signatures on the following pages, to sua.email@odhsoha.oregon.gov.

Contact Information:

Name of Area Agency on Aging: _____

Address: _____

AAA Contact for Section 212 Activities:

Name: _____

Email: _____ Phone number: _____

Information Related to Prospective Agreement(s):

Name of entity*: _____

Type of entity: _____

*If a non-disclosure agreement prevents you from disclosing the name of the entity, please ensure you disclose the type of entity.

Specific services OR types of services to be provided: _____

Will multiple AAAs have contractual obligations under this agreement or these agreements?

☐ NO ☐ YES

If **YES**, please identify the AAAs and describe the obligations of each:

Will Older Americans Act (OAA) funds or resources (e.g., administrative overhead, data systems, staffing) be used in implementing the agreement(s)?

☐ NO ☐ YES

If **YES**, estimated OAA costs incurred: _____

Estimate of total costs incurred: _____

Period Of Performance: _____

Approval Criteria

1. Pre-approved categories of agreements

- a) Is this proposed agreement/are these proposed agreements (check all that apply):
- ☐ With a local, state, or federal governmental entity or entities?
 - ☐ With other AAAs?
- b) Has any AAA associated with this agreement received an audit report within the previous twelve months with financial findings attributed to or associated with the AAA, resulting in significant findings requiring a management response?
- ☐ Yes. (Please complete all sections of the Form and await approval before entering into agreement.)
 - ☐ No. (If you checked any items under 1.a, your agreement is categorically pre-approved; please skip #2 – Risk Assessment and complete #3 – Assurances.)

2. Risk Assessment

To assess for any potential risks associated with the proposed agreement(s), complete the following Potential Risks and Entity Research sections.

- a) Potential Risks: Mark any of the potential risks that are relevant to this application for prior approval:
- ☐ The AAA has failed to complete and submit a required audit in a timely manner, unless an exception was approved;

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- ☐ There has been turnover of AAA leadership or vacancies in key positions (such as CEO/Executive Director, COO/Operations Director, CFO/Fiscal Director, or other key staff) within the last 12 months;
- ☐ The state (or other compliance entity) has recently audited the AAA and made significant financial audit findings attributed to or associated with the AAA and requiring a management response;
- ☐ The AAA is involved in contracts to provide multiple services across multiple jurisdictions/state lines;
- ☐ There are conflicts of interest² involving the AAA that have not been removed or remedied;
- ☐ The proposed agreement to deliver services represents more than 25% percent of the AAA's portion of the agency's total annual allocation;

Entity Research

AAAs must do at minimum the following research on the proposed contracting entity and notify the SUA of any negative results:

- ☐ Search the entity name and/or Unique Entity ID (UEID) on [SAM.gov](https://sam.gov). If the entity is not in SAM.gov,

²[45 CFR 1321.67](https://www.ecfr.gov/current/title-45/chapter-I/subchapter-B/part-1321/subpart-67)

- Perform a web search on potential fraudulent activity and/or business authenticity of the entity
- ☐ Perform a business license search for the entity through the [Oregon Secretary of State website](#),
- ☐ Search for the entity in the [Health & Human Services Exclusion Database](#)

If you check-marked any of the items in the “Potential Risks” list of section #2, please provide an attachment describing, for each potential risk that has been checked, either (a) why the AAA does not believe the criteria presents a risk in the case of the proposed agreement(s) or (b) how the AAA intends to mitigate any actual risk. **The SUA may request further discussion or documentation prior to making a final determination about the agreement(s).**

3. Assurances

By signing below and submitting this form, the AAA attests to the truth of the following assurances:

- a. All conflict of interest requirements under [45 CFR 1321.67](#) and contained in the Oregon State Unit on Aging (SUA) Conflict of Interest Policy have been met.
- b. All required assurances and conflict of interest policies required by the SUA’s policies and procedures will be memorialized in writing as a component of finalizing the proposed contract(s) or commercial relationship(s).

c. Section 212(a) assurances.

1. If funds provided under the Older Americans Act (OAA) are initially used to pay part or all of a cost incurred by the AAA in developing and carrying out an agreement, the agreement will guarantee that the cost is reimbursed to the AAA;
2. If an agreement provides for the provision of one or more services, of the type provided under the OAA by or on behalf of the AAA, to an individual or entity seeking to receive such services:
 - i. The individuals and entities will only be required to purchase such services at their fair market rate;
 - ii. All costs incurred by the AAA in providing such services (and not otherwise reimbursed), are reimbursed to the AAA;
 - iii. The AAA will report the rates for providing such services under the agreement in accordance with sections 212(b) and 212(c) of the OAA, and the rates will be consistent with the prevailing market rate for provision of such services in the relevant geographic area as determined by the SUA or AAA (as applicable); and
 - iv. Any amount of payment to the AAA under the agreement that exceeds reimbursement of the AAA's costs will be used to provide, or support the provision of, OAA services.

d. Section 212(b) assurances. The prospective contract(s) or commercial relationship(s) for which the AAA is seeking approval will not:

1. Be made without the prior approval of the SUA, after timely submission of all relevant documents related to the agreement including information on all costs incurred;³
2. Directly or indirectly provide for, or have the effect of, paying, reimbursing, subsidizing, or otherwise compensating an individual or entity in an amount that exceeds the fair market value of the services subject to such agreement;
3. Result in the displacement of services otherwise available to an older individual with greatest social need, an older individual with greatest economic need, or an older individual who is at risk for institutional placement; or
4. In any other way compromise, undermine, or be inconsistent with the objective of servicing the needs of older individuals, as determined by the Assistant Secretary for Aging, U.S. Department of Health and Human Services.

e. Section 306(a) assurances. The AAA will:

1. Maintain the integrity and public purpose of services provided, and service providers, under the OAA in all contractual and commercial relationships;

³Submission of this form and any subsequent documentation requested by the SUA constitutes satisfaction of the obligation to submit all relevant documents related to the agreement, including information on all costs estimated to be incurred.

2. Disclose the identity of each nongovernmental entity with which they have a contract or commercial relationship relating to providing any service to older individuals and the nature of such contract or such relationship;
3. Demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under the OAA by such agency has not resulted and will not result from such contract or such relationship;
4. Demonstrate that the quantity or quality of the services to be provided under the OAA by such agency will be enhanced as a result of such contract or such relationship;
5. If requested, disclose all sources and expenditures of funds such agency receives or expends to provide services to older individuals; and
6. Avoid giving preference in receiving services under this title to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this title; and use funds provided under this title to provide benefits and services to older individuals, giving priority to older individuals identified in section 306(a)(4)(A)(i), and in compliance with these assurances and the limitations specified in section 212.

- f. The AAA will annually disclose the information required by section 306(a)(13) and section 212 to the SUA, including:
 - 1. The name and type of entity of any parties to contracts or commercial relationships with the AAA; and
 - 2. The services the AAA provides as a party to those contracts or commercial relationships.
- g. The AAA attests that it will comply with SUA data use policies, including maintaining confidentiality and compliance with the Health Insurance Portability and Accountability Act (HIPAA) and other state and federal laws related to privacy and confidentiality.

4. Signatures

_____	_____
Submitting AAA Authorized Signature	Printed Name
_____	_____
Title	Date

Any AAAs included in the agreement(s) described in this form:

Annual Submission of Aggregate Agreement List

By submitting the attached aggregate list of current contracts and agreements and signing below, the Area Agency on Aging attests to the truth of the original assurances provided with the submission of the approval form(s).

(Name of AAA)

Signatures

Submitting AAA Authorized Signature

Printed Name

Title

Date

Examples

These examples are taken from The Administration on Aging's November 2024 Informational Bulletin, "Older Americans Act: Understanding Section 212."

Determining Which Agreements Require Prior Approval

Section 212 of the OAA permits AAAs to enter into agreements **"to provide services to individuals or entities not otherwise receiving services under this Act,"** subject to a number of conditions. One of those conditions is the requirement that the AAA receive prior approval from the SUA before entering into the agreement. Section 212 applies equally to contracts and commercial relationships executed with and without OAA resources.⁴

Understanding What it Means to Provide "services to individuals or entities not otherwise receiving services under this Act."

AAAs serve many individuals under the OAA. However, the OAA is not intended to fund all services to meet all the needs of all older individuals and family caregivers. Through section 212, the OAA encourages AAAs to expand their services beyond the needs that OAA funding can meet, as part of their responsibility to facilitate the provision of services in their planning and service area.

SUAs are ultimately responsible for determining whether a contract or

⁴ 89 FR 11589.

commercial relationship is an agreement that requires prior approval under section 212. However, below are a few guiding questions to help SUAs and AAAs better understand when an agreement is “to provide services to individuals or entities not otherwise receiving services” under the OAA. Section 212 only requires prior approval for those kinds of agreements.

Question 1: What is the funding source?

Non-OAA Funding

- An agreement **is** subject to prior approval under section 212 if a AAA is receiving a non-OAA source of funding to provide or facilitate the provision of services.
 - *Example:* A AAA seeks to provide home-delivered meals through a contract with funding from a local hospital system or health plan.
 - *Example:* A AAA seeks to provide direct services under private pay arrangements.
 - In both of these examples, the AAA is seeking to provide direct services in return for reimbursement from non-OAA funding. Therefore, the agreements require prior approval.

OAA Funding

- An agreement **is not** subject to prior approval under section 212 if a AAA is using OAA funding to pay another entity (i.e., a service provider) to provide OAA services to OAA clients, in accordance with its area plan.
 - *Example:* A AAA provides transportation services with OAA and other matching funding to clients in its planning and service area by contracting with a transportation service provider.
 - *Example:* A AAA is a direct service provider of home-delivered meals using OAA funding. The AAA establishes agreements with service providers to help support its home-delivered meals program. The SUA approves this arrangement as part of the area plan process.⁵
 - In this example, the AAA sought and received approval from the SUA to provide direct services using OAA funding. Any contracts necessary to support that program **are not** subject to prior approval under section 212.
 - In both of these examples, the AAA's activities are already approved under the area plan. These are not section 212 agreements.

5 Consistent with section 307(a)(8)(A) of the Act and 42 CFR 1321.65(b)(7).

- An agreement **is not** subject to prior approval under section 212 if a AAA is using OAA funding to pay an entity to meet the administrative needs necessary to enable the AAA to fulfill its obligations under the OAA.
 - *Example:* The AAA has contracts for utility, janitorial, and other services for the AAA's primary office building.
 - These agreements are required for a AAA to fulfill its responsibilities under the area plan. They are not section 212 agreements and do not require prior approval.

Question 2: Who are the clients that will be served through the agreement? How is the AAA determining who is eligible for these services?

Clients are identified by another entity

- If the AAA is arranging for services to be provided to a group of clients identified by another entity, the agreement **is** subject to prior approval under section 212. This is true even if the clients would be eligible for the AAA's Title III OAA services under the Act.
 - *Example:* A AAA makes home-delivered meals available to older adults through Title III funding. They have enough capacity to make additional home-delivered meals available to participants in a Medicare Advantage plan who need

time-limited assistance. The plan seeks to contract with the AAA to provide home-delivered meals for clients identified by the plan.

- In this example, the AAA must receive prior approval before entering the contract.
- If the AAA is arranging to provide specific services to a subset of existing OAA clients, but a third-party entity establishes the criteria for determining who among the clients will receive services, the agreement **is** subject to prior approval under section 212.
 - *Example:* The AAA provides caregiver support services to eligible individuals under the Act. Some clients who receive home-delivered meals under the Act are seeking caregiver support. Several of these clients are members of a health plan. The health plan arranges to pay the AAA to provide caregiver support to those clients.
 - In this example, the AAA must receive prior approval before entering the contract. Even though the same clients could have received the same services through the use of OAA funding, in this example the clients “jump” to the front of the line and receive services immediately, regardless of any potential waitlist, because the health plan is paying for the service.

Question 3: What are the services being provided?

Non-OAA Funded Services

- If the services are only available to private pay clients or entities, the agreement **is** subject to prior approval under section 212.
 - *Example:* A AAA seeks to expand its congregate meals program and make medically- tailored meals available to private pay clients with diabetes, cardiovascular conditions, and other health needs (or entities on their behalf).
 - In this example, the private pay program requires prior approval under section 212, because these medically-tailored meals would not otherwise be available as part of the congregate meals program due to funding constraints, and individuals would not otherwise be able to receive these services. However, the AAA would seek approval for the whole private pay program, and not for each individual arrangement.
- If the AAA is providing (or facilitating the provision of) allowable OAA services to individuals who do not meet the eligibility requirements under the Act, the agreement **is** subject to prior approval under section 212.

- *Example:* A AAA provides care coordination to eligible adults age 60 and older and family caregivers using OAA funding, consistent with its approved area plan. The AAA wants to provide this service for a fee to individuals seeking services who do not meet OAA eligibility requirements (for example, individuals under age 60).
 - In this example, the AAA would seek prior approval under section 212 for this private pay program.

OAA Funded Services

- If the AAA is providing (or facilitating the provision of) allowable OAA services and making them available through OAA funds to individuals that meet the eligibility requirements under the Act, the agreement **is not** subject to prior approval under section 212.
 - *Example:* A AAA provides physical activity classes to adults age 60 and older using OAA funding, consistent with its approved area plan.
 - In this example, section 212 does not require prior approval for any arrangement to provide new or different physical activity classes with the same attendee criteria; other SUA policies and procedures regarding OAA-funded activities would apply.

Supplement, Not Supplant (Additive Method)

Policy Statement

Funds awarded under the Older Americans Act must be used to supplement, not supplant, existing Federal, State, and local funds expended to support services for older Oregonians. Within this context, “supplement” is defined as increasing the amount of resources spent on services for older adults by adding Older Americans Act funding to previously committed Federal, state or local sources paying for services for older adults or providing a new service not previously paid for by another funding source. Local sources include “funds from fundraising activities, reserve funds, bequests, or cash or third-party in-kind contributions from non-consumer community members or organizations.” Conversely, “supplant” means reducing other Federal, state, or local funding sources spent on services for older adults by substituting Older Americans Act funding in their place.

SUA Procedure

Oregon SUA must ensure Older Americans Act funds are used to supplement, not supplant, existing Federal, State, and local funds expended to provide services.

In addition, Oregon SUA must ensure voluntary contributions are used

by the AAA to expand services for which the contributions were received.

AAA Procedure

AAAs must ensure Older Americans Act funds are used to supplement, not supplant, existing Federal, State, and local funds expended to provide services. AAAs must establish policies and procedures for service providers align with this policy and procedure.

In addition, the AAA must ensure voluntary contributions are used by the AAA to expand services for which the contributions were received. Possible evidence may include agency budgets, and back-up documentation demonstrating funding is supplementing existing Federal, State, and local funds.

Advance Funding

Policy Statement

SUA allows for Advance Payment requests via [150-WC Request for Working Capital](#).

Fixed Amount Subawards

Policy Statement

The AAA shall follow all applicable Federal and State standards in awarding sub grants and contracts. Fixed amount subawards up to the

simplified acquisition threshold are allowed. For a definition of “simplified acquisition threshold” see 2 CFR 200.1 and 45 CFR 75.2. ACL shall provide technical assistance, as needed, regarding 45 CFR 1321.9(c)(2)(xix). Contracting procedures, including fixed amount subawards, shall incorporate free and open competition as intended by the OAA.

Designation and Withdrawal of Planning and Service Area

Appeals Process for Denial

Oregon SUA will follow the process outlined in [ORS 410, OAR Chapter 411, Division 2](#) for designation and withdrawal of Planning and Service Areas. Oregon SUA also follows the process outlined in [ORS 410, OAR Chapter 411, Division 2](#) for Appeals Processes for denial of a Planning and Service Area.

Conflict of Interest

Purpose and Applicability

(Reference: [45 CFR 1321.47](#))

To safeguard against conflicts of interest on the part of the State Unit on Aging (SUA), employees, volunteers, trainees and interns who have responsibilities relating to Older American Act Title III programs, including Area Agencies on Aging (AAAs), their governing boards,

advisory councils, staff, and volunteers. SUA staff, SUA contractors, AAA staff, and AAA Contractors must continually ensure no conflicts exist.

Policy

Anyone who works on programs funded by or receives funding from the OAA must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels, including:

1. Ensuring that SUA employees and agents administering Title III programs do not have a financial interest in a Title III program.
2. Removing and remedying actual, perceived, or potential conflicts that arise due to an employee or agent's financial interest in a Title III program.
3. Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in a Title III program.
4. Ensuring that no individual or member of the immediate family of an individual involved in the administration or provision of a Title III program has a conflict of interest.
5. Requiring that other agencies that operate a Title III program have policies in place to prohibit the employment or appointment of Title III program decision-makers, staff, or volunteers with a conflict that cannot be adequately removed or remedied.

6. Requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a conflict of interest, or who has an immediate family member with a conflict of interest, which cannot be adequately removed or remedied.
7. Ensuring that no organization which provides a Title III service is subject to a conflict of interest.
8. Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value (ORS 244.025).
9. Establishing the actions the SUA shall require a Title III program to take to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and
10. Documenting conflict of interest mitigation strategies, as necessary and appropriate, when a SUA or Title III program operates an Adult Protective Services or guardianship program.

Individual conflicts include:

- a) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit or experience personal detriment from actions or decisions made in their official capacity.
- b) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust.
- c) One or more conflicts between competing duties; and
- d) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging (ASA) and/or by SUA policies.

Organizational conflicts include:

- a) One or more conflicts between competing duties, programs, and/or services; and
- b) Other conflicts of interest identified in guidance issued by the ASA and/or by SUA policies.

SUA/CSSU Procedure

Upon hire and annually thereafter during the first quarter of the State Fiscal Year (SFY), all SUA/CSSU (Community Services and Support Unit) staff who administer or oversee the work on the OAA programs shall complete the **Oregon Older Americans Act (OAA) Program**

Individual Conflict of Interest Screening form (Attachment A).

The completed form must be turned in to the CSSU Manager. Once reviewed and approved, the form shall be saved in each employee's file by the appropriate fiscal year. At a minimum the following employees must complete the document: all CSSU staff who work within the OAA Program.

If an actual or perceived conflict of interest is identified, the CSSU Employee involved will complete the **OAA Title III Program Individual Conflict of Interest Identification, Removal, and Remedy form (Attachment B)**, which must be completed to ensure that the conflict is removed or remedied. If the conflict cannot be removed or remedied, the employee shall no longer be able to work on or oversee the specific OAA Program. The completed form must be turned in to the CSSU Manager. The form shall be saved in each employee's file by the appropriate fiscal year.

All CSSU staff will also complete the **ODHS Policy and Process Summary (DHS 2400)** as directed by ODHS|OHA 060-002 Policy including completion of MSC 0104 Conflict of Interest Determination when a conflict is identified.

On the first working day of each SFY, and more often if changes occur in the management structure of ODHS, the CSSU Manager, or their

designee, shall complete an **Older Americans Act (OAA) Program Organizational Conflict of Interest Screening form**

(Attachment C). The form must be reviewed and approved by the APD Long Term Services and Supports Administrator. Once approved the form shall be maintained in the CSSU shared drive by the appropriate fiscal year.

If a conflict of interest is identified, then the APD Long Term Services and Supports Administrator shall work with the CSSU Manager to remove or remedy the conflict and complete the Older Americans Act (OAA) Title III Program Organizational Conflict of Interest Identification, Removal, and Remedy form (Attachment F). This must be completed to ensure that the conflict is removed or remedied. The completed form shall be maintained in the CSSU shared drive by the appropriate fiscal year.

The SUA/CSSU shall review a random sample of AAA Individual Conflict of Interest forms during Contract and Fiscal Monitoring to ensure they have been completed upon hire or annually and to ensure that any identified conflict has been removed or remedied and is described on the Individual Conflict of Interest Identification, Removal or Remedy form. Additionally, AAAs must provide a copy of their Organizational Conflict of Interest form during their designated Contract and Fiscal program monitoring period each biennium. If any conflicts were

identified, the AAA will provide a copy of the completed Organizational Conflict of Interest Identification, Remedy or Removal form.

Additionally, the SUA shall review a random sample of the AAAs' monitoring of their board, advisory council, volunteers, and contractors to ensure they have monitored each of them for the same requirements.

AAA Procedure ([45 CFR 1321.67](#))

The area agency must have policies and procedures regarding conflicts of interest in accordance with the OAA, guidance as set forth by the ASA, and SUA policies and procedures, as set forth at [45 CFR 1321.47](#).

These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board, advisory council members, volunteers, and awardees who have responsibilities relating to the area agency's grants and contracts.

Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels, including:

1. Reviewing service utilization and financial incentives to ensure agency employees, governing board and advisory council members, grantees, contractors, and other awardees who serve

multiple roles, such as assessment and service delivery, are appropriately stewarding Federal resources while fostering services to enhance access to community living.

2. Ensuring that the AAA employees and agents administering Title III programs do not have a financial interest in Title III programs.
3. Complying with 45 CFR 1324.21 of this chapter regarding the Ombudsman program, as appropriate.
4. Removing and remedying any actual, perceived, or potential conflict between the AAA and the AAA employee or contractor's financial interest in a Title III program.
5. Establishing monitoring and oversight, including periodic reviews, to identify conflicts of interest in the Title III program.
6. Ensuring that no individual, or member of the immediate family of an individual, involved in Title III programs has a conflict of interest.
7. Requiring that agencies to which the area agency provides Title III funds have policies in place to prohibit the employment or appointment of Title III program decision makers, staff, or volunteers with conflicts that cannot be adequately removed or remedied.
8. Requiring that Title III programs take reasonable steps to refuse, suspend or remove Title III program responsibilities of an individual who has a conflict of interest, or who has a member of

the immediate family with a conflict of interest, that cannot be adequately removed or remedied.

9. Complying with the SUA's periodic review and identification of conflicts of the Title III program.
10. Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value.
11. Establishing the actions the area agency shall require Title III programs to take to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and
12. Documentation of conflict-of-interest mitigation strategies, as necessary and appropriate, when operating an Adult Protective Services or guardianship program.
13. Complying with 45 CFR 1321.63 (d) regarding area agency advisory council. The Advisory council shall not operate as a board of directors for the area agency. Individuals may not serve on both the advisory council and the board of directors for the same entity. Members of an advisory council may act as liaison with a board of directors.

The AAA must have an Individual Conflict of Interest Screening form, which must be completed upon hire for all:

- AAA Staff
- Board members
- Advisory council members
- Volunteers

AAAs will identify their method for annual attestation/recertification of COI policies with AAA staff, board members, advisory council members, and volunteers. **(See Attachment A - Individual Conflict of Interest Form Example.)**

The AAA must develop an Individual Conflict of Interest Identification, Removal, and Remedy form to complete if any conflict is identified.

(See Attachment B - Individual Conflict of Interest Identification, Removal or Remedy Form Example.) These forms must be reviewed and approved by AAA management signature, and a copy must be provided if requested by the SUA.

Contractors (anyone funded by the AAA with Older American Act funds) and/or providers must also acknowledge potential conflicts of interest through form completion, contract language and attestation, or other means determined by the AAA.

AAAs shall conduct monitoring of their contractors, to ensure compliance, which includes the following:

- Adherence to contract language requiring contractors to have their own Conflict of Interest policy and procedures that cover their Organization, Staff, Boards, Councils, and volunteers; along with a review process in place.
- That any identified conflicts have been removed or remedied by the contractor in a formal documentation process and available upon request by AAA.
- AAAs should review a random sample of completed documentation for contractor staff who administer or work in program(s) funded with Older American Act funds.

The AAA must have an Organizational Conflict of Interest form to be completed for the AAA as a whole entity. **(See Attachment C -**

Organizational Conflict of Interest Form Example.) The AAA must develop an Organizational Conflict of Interest Identification, Removal, and Remedy form to complete if any conflict is identified.

(See Attachment D - Organizational Conflict of Interest Identification, Removal, or Remedy Form Example.) These forms must be completed on the first working day of each new fiscal year (July 1). These forms must be reviewed and approved by AAA

management signature, and a copy must be provided if requested by the SUA.

References

Attachment A - Individual Conflict of Interest Screening Example

Attachment B - Individual Conflict of Interest Identification, Removal or Remedy Example

Attachment C - Organizational Conflict of Interest Example

Attachment D - Organizational Conflict of Interest Identification, Remedy or Removal Example

Older Americans Act (OAA) Title VI and Title III Coordination

Definitions

Aging Network – The national Aging Network is a partnership of federal, state, Tribal (including Tribal Organizations, Federally Recognized Tribes and Native Hawaiian organizations), and local partners. Collectively, the State Units on Aging (SUAs), Area Agencies on Aging (AAAs), Tribal and Native Hawaiian organizations, and thousands of aging and social service providers in local communities across the country comprise the Aging Network.

State Unit on Aging (SUA)/State agency – SUAs are the designated state-level agencies that are responsible for developing and administering multi-year state plans that advocate for and provide assistance to older residents, their families, and, in many states, for adults with physical disabilities. "State Unit on Aging" is a general term, and in Oregon the designated SUA is the Aging and People with Disabilities (APD) program. SUA and state agency are interchangeable for the purposes of this policy.

OAA Title VI program – Eligible Tribal Organizations (federally recognized American Indian/Alaska Native Tribes and Native Hawaiian organizations) who receive grants to support delivery of home and community-based supportive services for their elders, including nutrition and support for family and informal caregivers. Title VI grantees receive funding from, and have a direct relationship with, the federal government.

OAA Title VII – Title VII authorizes grants to states for vulnerable elder rights protection activities. It focuses on protecting the rights of older adults, particularly those who are vulnerable, and includes programs like the long-term care ombudsman program and elder abuse prevention efforts. It also encompasses legal assistance development and benefits outreach.

Purpose

Under Title III of the Older Americans Act (OAA) the designated SUA must have policies and procedures that explain how the State's aging network will coordinate with Title VI programs to ensure compliance with relevant sections of the law. In addition, coordination and collaboration can avoid duplication of services, provide greater access to services for Tribal Elders and caregivers, and can establish productive working relationships across agencies and entities.

Federal rules ([45 CFR 1321.53](#)) require SUAs to have policies and procedures in place to address:

- How the State's aging network, including area agencies on aging and service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII;
- The communication opportunities the SUA will make available to Title VI programs, including technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;
- The methods for collaboration on and sharing of program information and changes, including coordinating with area agencies and service providers where applicable;

- How Title VI programs may refer individuals who are eligible for Title III and/or VII services;
- How services will be provided in a culturally appropriate and trauma-informed manner; and
- Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils, as set forth in [§ 1321.63](#).

AAAs and Title VI programs are also required to have policies and procedures that explain how each will coordinate with the other(s) within their respective service area(s). Collectively, SUAs, AAAs and Title VI grantees are subject to the Title III/Title VI coordination requirements (as specified in [§ 1321.53](#), [§ 1321.69](#) and [§ 1322.31](#), respectively).

Applicability

This policy applies primarily to the SUA, with its coordination responsibilities required by federal law. In addition, the SUA's policies and procedures must explain how the State's aging network, including AAAs, will coordinate with Title VI programs to ensure compliance with the OAA. This policy additionally encompasses some of the work and responsibilities of the APD Tribal Affairs Consultant as primary liaison between APD and the Nine Federally Recognized Tribes and facilitator

of the Tribal Navigator Program.

Policy

Oregon Department of Human Services' APD program, as the designated State Unit on Aging, will promote active opportunities and ensure that coordination occurs between the SUA, AAAs, and Title VI programs and that focused outreach, and referrals will be provided to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or Title VII of the OAA.

Procedures

The SUA will work collaboratively with Title VI programs and contracted APD Tribal Navigators to disseminate information and resources to Tribal elders and family caregivers, as appropriate and desired. SUA outreach efforts will be driven by recommendations, requests and input from Title VI grantees, APD Tribal Navigators and Tribal Nations.

Additionally, AAAs are required, as part of the Area Plan on Aging process, to identify and describe how they will coordinate with each of the tribe(s) within their service area to provide services for older American Indians and specifically how the AAA will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII.

Outreach activities involve delivering support and resources to Tribal elders and family caregiver populations, many of whom may be hard to reach, isolated and/or withdrawn. Examples of focused outreach include:

- Community outreach to identify, contact, and establish a positive relationship with communities and Elders with increased risk for specific health conditions in order to promote better health outcomes
- Mailings, phone calls, meetings, newsletters, conferences (Golden Years, Native Caring Conference, etc.)
- Social media
- Information provided with meals and other services
- Home visits
- Case management
- Information provided by local APD Tribal Navigators

Consistent and regular communication channels are established between the APD Tribal Affairs Consultant, Tribal Liaison in the Community Services and Supports Unit (CSSU) and Title VI programs. This includes meetings, email distribution lists, sharing of staff contact information and lists, presentations, workgroups and public hearings. The SUA, through the CSSU Tribal Liaison and the APD Tribal Affairs

Consultant, will make available and communicate to Title VI programs, as part of routine business, information about Title III or other funding opportunities and will provide technical assistance on how to apply for Title III or other funding opportunities as requested.

The SUA, working collaboratively with Title VI programs, Tribal Organizations, APD Tribal Navigators and AAAs, will coordinate annual Title VI Statewide Meet and Greet, and consistent and more frequent Regional Meet and Greet. These will bring together State agency leadership, Title VI programs, APD Tribal Navigators, representatives and staff from Tribal Organizations, AAA leadership and SUA staff.

These 1-2 day gatherings allow for:

- Individuals from across the aging network to come together, meet, and build relationships
- Collaboration on and sharing of program information and changes (e.g., new programs, budget, upcoming events, advocacy opportunities, staff changes, introduction of staff)
- Meaningful cultural exchange and supporting the delivery of services grounded in cultural respect and trauma aware care
- Communication and coordination

APD will provide ongoing support for the annual Native Caring Conference, at the direction of Title VI grantees.

Referral processes and protocols are established at the local level between Title VI programs, APD Tribal Navigators, AAAs and local APD offices across the state. All APD offices and AAAs should be routinely referring to the APD Tribal Navigator program when working with a known Tribal member. Referral processes include:

- Identification of single points of contact to the greatest extent possible
- Use of specific referral forms
- Email
- Personal contact
- Self-referral

The SUA will actively seek input on the State Plan on Aging from Title VI programs, Tribal Organizations and Urban Indian Health Centers.

Members are periodically invited to serve and advise on plan development workgroups, and recommendations and feedback are solicited. AAAs are also strongly encouraged to provide opportunities for Title VI programs to provide feedback, input and direction in the shaping and implementation of Area Plans on Aging.

Opportunities to serve on advisory councils, workgroups, and boards, including AAA advisory councils, will be routinely communicated to Title VI grantees, APD Tribal Navigators and other Tribal

representatives.

The SUA will take the lead role in coordination for emergency and disaster preparedness planning, response, and recovery between the SUA, AAAs, and Title VI grantees. AAAs must partner with the SUA and Title VI grantees to coordinate emergency and disaster preparedness planning, response, and recovery in collaboration with Title VI grantees in their planning and service areas. ([45 CFR 1321.103](#))

The APD Tribal Affairs Consultant will attend regular ODHS Director's Convening/770 meetings for information sharing and communication opportunities, as appropriate.

The Oregon Department of Human Services Tribal Consultation and Urban Indian Health Program Confer Policy states:

"The State acknowledges under the Older Americans Act and Administration for Community Living guidance there are specific requirements related to State provided assurances related to services and increased access to services for older individuals who are AI/AN. These requirements are set forth in Sections 306 (a)(11) and 307(a)(21) of the Older Americans Act of 1965 as amended; August 5, 2021, State Unit on Aging Directors Letter #01-2021."

Older Americans Act (OAA) Title III C-1 Carryout

Carryout Meals Funded through Title III C-1 (Congregate Meal Funding)

Definitions

State Unit on Aging (SUA)/State Agency – SUAs are the designated state-level agencies that are responsible for developing and administering multi-year state plans that advocate for and provide assistance to older residents, their families, and, in many states, for adults with physical disabilities. "State Unit on Aging" is a general term, and in Oregon the designated SUA is the Aging and People with Disabilities (APD) program. SUA and state agency are interchangeable for the purposes of this policy.

Area Agency on Aging (AAA) – An entity designated under section 305(a)(2)(A) of the Older Americans Act or a State agency performing the functions of an area agency on aging under section 305(b)(5).

(Source: OAA)

Title III Expenditures – Outlays or payments made by the State Unit on Aging and/or Area Agencies on Aging using Title III-B, C, D, or E Older Americans Act federal funds to provide an allowable service. Congregate Meals funded by the Older Americans Act are identified as Title III C-1, Home Delivered Meals are identified as Title III C-2.

Carryout – A meal that a non-homebound participant receives at a congregate setting but does not consume in the congregate setting. This can include drive-thru and to-go meals. Carryout meals funded through Title III C-1 can only be provided if it is included as part of an approved State Plan ([45 CFR 1321.27](#)) or State plan amendment ([45 CFR1321.31\(a\)](#)).

Purpose

To outline policy and procedure for Area Agencies on Aging (AAAs) to offer carryout meals funded through Older Americans Act (OAA) Title III C-1 (Congregate Meal Funding).

Policy

(Reference: [45 CFR 1321.87\(a\)\(2\)](#))

A carryout meal is a meal that a non-homebound participant receives at a congregate setting but does not consume in the congregate setting. This can include drive-thru and to-go meals. Carryout meals funded through Title III C-1 can only be provided if it is included as part of an approved State Plan ([45 CFR 1321.27](#)) or State plan amendment ([45 CFR1321.31\(a\)](#)). Carryout meals funded through Title III C-1 shall meet Older Americans Act (OAA) Nutrition Requirements for Meals, Policy, and [45 CFR 1321.65\(b\)\(10\)](#).

SUA Procedure

The SUA shall submit a state plan amendment to include Carryout – Congregate. [\(45 CFR 1321.87\(a\)\(1\)\(i\)\)](#). Carryout – Congregate cannot be funded through OAA Title III C-1 funding until the State Plan amendment allowing this service has been approved by the Administration for Community Living (ACL). Once the SUA has received ACL approval, the AAAs will be notified.

The SUA shall review each general waiver request and submit a written acceptance or denial within 15 days. If a waiver request is denied due to a lack of information, the SUA shall explain in writing that the AAA can resubmit it with additional information.

If the AAA provides carryout meals funded through Title III C-1, the SUA shall review a sample of documentation for this service during annual monitoring.

AAA Procedure

If an AAA chooses to provide carryout meals using Title III C-1 funding, it shall complete a general waiver request and submit to the State Unit on Aging. The AAA cannot provide carryout meals using Title III C-1 funding until this waiver has been approved and carryout meals using Title III C-1 funding have been added to the Oregon State Plan on Aging.

1. The AAA shall provide a written description of the following in the waiver request:
 - a. How the Carryout – Congregate program shall be provided.
Including,
 - i. Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor impact on congregate meals program participation.
 - ii. Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need.
 - iii. Description of the eligibility criteria for service provision.
 - iv. Evidence of consultation with nutrition and other direct services providers, other interested parties, and the public regarding the need for and provision of such meals; and
 - v. Description of how provision of such meals will be coordinated with nutrition and other direct services providers and other interested parties.
 - vi. How the carryout meals will complement the congregate program
 - vii. In what situations the Carryout – Congregate program shall be offered.

- viii. How the funding shall be tracked to ensure that no more than 25% of Title III C-1 funding is used for the Carryout – Congregate program
 - a. The locations where the Carryout – Congregate program shall be available.
 - b. How participants shall be prioritized if there is a waiting list.

If the general waiver request to provide carryout meals is approved,

- A. The AAA shall include Carryout – Congregate in its area plan and shall be valid for the duration of the Area Plan.
- B. The meal units shall be counted as Carryout – Congregate. If OAA funding is used to provide the carryout meals, Title III C-1 funding shall be used.
- C. If a waitlist is established for congregate meals, the AAA shall create a prioritization tool to prioritize congregate meal recipients over Carryout – Congregate participants.

Legal Assistance Developer

The Legal Assistance Developer (LAD) position was established in the OAA (42 USC Sec. 3058j). The LAD is charged with providing state leadership in developing legal assistance programs throughout Oregon for individuals over the age of 60. The role of the LAD is to ensure:

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1. State leadership in securing and maintaining the legal rights of older individuals;
2. State capacity for coordinating the provision of legal assistance, including prioritizing such services provided to individuals with greatest economic or social need;
3. State capacity to provide technical assistance, training and other support to Oregon's AAAs, legal assistance providers, the State Long-Term Care Ombudsman program, adult protective services and others as appropriate;
4. State capacity to promote financial management services to older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;
5. State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;
6. State capacity to improve the quality and quantity of legal services provided to older individuals.

SUA Procedure

Oregon SUA will identify a position or a contract with an organization to designate the Legal Assistance Developer and ensure that the

person or organization holding that position has the knowledge, resources and capacity to fulfill the role outlined above.

Oregon SUA shall not designate as LAD any individual who is:

Serving as a director of adult protective services, or as legal counsel to adult protective services;

1. Serving as a State Long Term Care Ombudsman, or as legal counsel to the State Long Term Care Ombudsman program;
2. Serving as a hearing officer, administrative law judge, trier of fact or counsel to these positions in an administrative proceeding related to the legal rights of older individuals, such as one in which a legal assistance provider may appear;
3. Serving as counsel or a party to an administrative proceeding related to long-term care settings, including residential settings;
4. Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions;
5. Serving as a public or private guardian, conservator, or fiduciary, or operating such a program, or serving as counsel to these positions or programs.

Oregon SUA shall ensure that any actual or potential conflicts of interest or circumstances that lead to the appearance of a conflict of

interest are identified; and that any actual or potential conflict of interest is removed or remedied, as outlined in the Conflicts of Interest policy.

AAA Procedure

The AAAs will coordinate with the LAD to support the provision of training and technical assistance on Legal Assistance Services, participating in trainings as appropriate.

The AAAs shall collaborate with the LAD as appropriate on activities designed to enhance access to legal assistance by older adults in Oregon.

Legal Assistance

Definitions

Legal Assistance – Legal advice and/or representation provided by an attorney to older individuals with economic or social needs, per section 102(33) of the Act (42 U.S.C. 3002(33)). Legal assistance may include, to the extent feasible, counseling, or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney, and counseling or representation by a non-lawyer as permitted by law.

Representation may include interpreting law, regulations, court rules,

and legal procedures; recommending a course of action based on the facts of the case; and providing counseling.

Fee Generating Case – Any case or matter which, if undertaken on behalf of an eligible consumer by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a consumer, from public funds, or from the opposing party.

Policy Statement

This policy establishes the requirements and procedures for the provision of legal assistance services to older individuals, pursuant to the Older Americans Act (OAA) and 45 CFR §1321.93. It ensures that Oregon SUA supports the development and delivery of high-quality legal assistance targeted to the most vulnerable elders.

OAA funded legal assistance, to the extent practicable, supplements and does not duplicate or supplant legal services provided with funding from other sources, including grants made by the Legal Services Corporation.

Legal assistance supplements existing sources of legal services through focusing legal assistance delivery and provider capacity in the specific areas of law affecting older adults with greatest economic

need or greatest social need;

Priority areas for legal assistance include:

- Income maintenance (Social Security, SSI, pensions)
- Health care access (Medicare, Medicaid)
- Long-term care (nursing homes, home care)
- Housing and utilities
- Protection from abuse, neglect, and exploitation
- Defense against guardianship or inappropriate fiduciary control
- Age discrimination in employment or access to services

Exclusions:

No legal assistance provider shall use OAA funds to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

Means testing for legal assistance is strictly prohibited. Neither the AAA nor the providers of legal assistance may ask older persons to disclose information about income or resources *as a condition for providing legal assistance*.

SUA Procedure

Oregon SUA shall designate the minimum proportion of Title III-B funds and require the expenditure of at least that amount for each planning and service area for legal assistance.

Minimum proportion of funds requirements and percentages are detailed in the [148/150 Fiscal Reporting Document](#).

Oregon SUA shall employ or designate a Legal Assistance Developer (LAD) who will provide state leadership in securing the legal rights of older adults and maintaining the state's capacity to maintain and enhance the provision of legal assistance consistent with 45 CFR 1321.93 by:

1. Coordinating the provision of legal assistance, including prioritizing services to older adults with greatest economic or greatest social need;
2. Providing training and technical assistance to the AAAs, legal assistance providers, APS, the State long-term care ombudsman program, and other service providers;
3. Promoting activities to increase awareness of and access to financial management and legal assistance for older adults at risk of guardianship or other fiduciary proceedings;

4. Promoting activities to assist older adults in understanding their rights, exercising choices, and benefiting from other services.

The Oregon Legal Assistance Developer shall conduct annual monitoring of the legal assistance program.

AAA Procedure

1. The area agency on aging shall award at a minimum the required adequate proportion of Title III, part B funds designated by Oregon SUA to procure legal assistance for older residents of the planning and service area.
2. The area agencies on aging shall select and procure through contract legal assistance providers best able to provide legal assistance and meets the following standards:
 - a. Has staff with expertise in elder law and other specific areas of law affecting older persons in economic or social need (for example, public benefits, institutionalization, and alternatives to institutionalization);
 - b. Demonstrate expertise in specific areas of law that are given priority in the Act, including income and public entitlement benefits, health care, long-term care, nutrition, consumer law, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship as defined in 45 CFR 1321.93(d)(i)-(ii).

- c. Demonstrates the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with social or economic need;
- d. Demonstrates the capacity to provide support to other advocacy efforts such as the Long Term Care Ombudsman program, including requiring a memorandum of agreement between the State Long Term Care Ombudsman and the legal assistance provider(s) as required by section 712(h)(8) of the Act; and
- e. Demonstrates the capacity to effectively deliver legal assistance to institutionalized, isolated, and/or homebound individuals effectively.

The AAA may not require any provider of legal assistance under this title to reveal any information that is protected by attorney-client privilege.

The AAA shall attempt to involve the private bar in legal assistance activities, including groups within the private bar who provide services to older individuals on a pro bono and reduced fee basis.

Minimum Contract Requirements

The contract shall specify that legal assistance provider(s) shall demonstrate capacity to:

1. Maintain the expertise required to capably handle matters

related to the priority case type areas specified under the Act, including income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense of guardianship (as defined in paragraph (d)(2)(i) of this section).

2. Provide legal assistance to meet complex and evolving legal needs that may arise involving a range of private, public, and governmental entities, programs, and activities that may impact an older adult's independence, choice, or financial security;
3. Prioritize representation and advice that focus on the specific areas of law that give rise to problems that are disparately experienced by older adults with economic or social need.
4. Maintain the expertise and capacity to deliver a full range of legal assistance, from brief service and advice through representation in hearings, trials, and other administrative and judicial proceedings in the areas of law affecting such older individuals with economic or social need.
5. Engage in reasonable efforts to involve the private bar in legal assistance activities authorized under the Act, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis.

6. Maintain the capacity for and provision of effective administrative and judicial representation.

- a. ***Effective administrative and judicial representation*** means the expertise and ability to provide the range of services necessary to adequately address the needs of older adults through legal assistance in administrative and judicial forums, as required under the Act. This includes providing the full range of legal services, from brief service and advice through representation in administrative and judicial proceedings.

7. Conduct administrative and judicial advocacy as is necessary to meet the legal needs of older adults with economic or social need, focusing on such individuals with the greatest economic need or greatest social need:

- a. ***Economic need*** means the need for legal assistance resulting from income at or below the Federal poverty level, as defined in section 102(44) of the Act (42 U.S.C. 3002(44)), that is insufficient to meet the legal needs of an older individual or that causes barriers to attaining legal assistance to assert the rights of older individuals as articulated in the Act and in the laws, regulations, and Constitution.

- b. ***Social need*** means the need for legal assistance resulting from social factors, as defined by in section 102(24) of the Act (42 U.S.C. 3002(24)), that cause barriers to attaining legal assistance to assert the rights of older individuals.
8. Maintain the capacity to provide effective legal assistance and legal support to other advocacy efforts, including, but not limited to, the Long-Term Care Ombudsman Program serving the planning and service area, as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)), and maintain the capacity to form, develop and maintain partnerships that support older adults' independence, choice, or financial security.
9. Maintain and exercise the capacity to effectively provide legal assistance to older adults regardless of whether they reside in community or congregate settings, and to provide legal assistance to older individuals who are confined to their home, and older adults whose access to legal assistance may be limited by geography or isolation.
10. Maintain the capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited-English proficient (LEP), including in oral and written communication.

- a. Legal assistance provider(s) shall take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited English-speaking proficiency and other communication needs;
 - b. Such reasonable steps require an individualized assessment of the legal services needs of individuals who are seeking legal assistance and legal assistance consumers to understand and participate in the legal process (as determined by each individual); and
 - c. Legal assistance provider(s) are responsible for providing access to interpretation, translation, and auxiliary aids and services to meet older individuals' legal assistance needs.
11. Meet the following legal assistance provider requirements:
- a. A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.
 - b. A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for

which an older person may be eligible.

- c. A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.
- 12. Legal assistance providers that are not housed within Legal Services Corporation grantee entities shall coordinate their services with existing Legal Services Corporation projects to concentrate funds under this Act in providing legal assistance to older adults with the greatest economic need or greatest social need.
 - 13. Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible consumer, or to interfere with the fulfillment of any attorney's professional responsibilities to a consumer.
 - 14. Legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable Rules of Professional Conduct, including, but not limited to, the obligation to preserve the attorney-client privilege.

The contract shall include provisions:

1. Describing the duty of the area agency to refer older adults to the legal assistance provider(s) with whom the area agency contracts. In fulfilling this duty, the area agency on aging is precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.
2. Requiring the contracted legal assistance provider(s) to maintain capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited English proficient (LEP), including in oral and written communication, and to ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services where necessary.
 - a. This includes requiring legal assistance providers take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited-English proficiency, including an individualized assessment of an individual's need to understand and participate in the legal process (as determined by each individual).

- b. This includes stating the responsibility of the legal assistance provider to provide access to interpretation and translation services to meet consumers' needs.
 - c. This includes taking appropriate steps to ensure communications with persons with disabilities are as effective as communication with others, including by providing appropriate auxiliary aids and services where necessary to afford qualified persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, legal assistance.
- 3. Providing that the area agency on aging will provide outreach activities that will include information about the availability of legal assistance to address problems experienced by older adults that may have legal solutions, such as those referenced in sections 306(a)(4)(B) and 306(a)(19) of the Act (42 U.S.C. 3026(a)(4)(B) and 3026(a)(19)). This includes outreach to:
 - a. Older adults with greatest economic need due to low income and to those with greatest social need, including minority older individuals; and
 - b. Older adults of underserved communities, including:

- i. Older adults with limited-English proficiency and/or whose primary language is not English;
 - ii. Older adults with severe disabilities;
 - iii. Older adults living in rural areas;
 - iv. Older adults at risk for institutional placement; and
 - v. Older adults with Alzheimer's disease and related disorders with neurological and organic brain dysfunction and their caregivers.
4. Providing that legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable State Rules of Professional Conduct.
5. Requiring that if the legal assistance provider(s) contracted by the area agency is located within a Legal Services Corporation grantee entity, that the legal assistance provider(s) shall adhere to the specific restrictions on activities and consumer representation in the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*). Exempted from this requirement are:
- a. Restrictions governing eligibility for legal assistance under

such Act;

- b. Restrictions for membership of governing boards; and
- c. Any additional provisions as determined appropriate by the Assistant Secretary for Aging.

Legal assistance provider prohibited activities.

1. A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:
 - a. No provider or its employees shall contribute or make available funds, personnel, or equipment provided under the Act to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;
 - b. No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office; or
 - c. While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political

activity.

2. No funds made available under the Act shall be used for lobbying activities including, but not limited to, any activities intended to influence any decision or activity by a nonjudicial Federal, State, or local individual or body.
3. A provider may use funds provided by private sources to engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act;
4. While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall:
 - a. Participate in any public demonstration, picketing, boycott, or strike, whether in person or online, except as permitted by law in connection with the employee's own employment situation;
 - b. Encourage, direct, or coerce others to engage in such activities; or

- c. At any time engage in or encourage others to engage in:
 - i. Rioting or civil disturbance;
 - ii. Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction;
 - iii. Any illegal activity;
 - iv. Any intentional identification of programs funded under the Act or recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office; or
 - v. None of the funds made available under the Act may be used to pay dues exceeding a reasonable amount per legal assistance provider per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations. Such dues may not be used to engage in activities for which Older Americans Act funds cannot be directly used.
- 5. Nothing in this section is intended to prohibit an employee from:
 - a. Communicating with a governmental agency for the

purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

- b. Informing a consumer about a new or proposed statute, executive order, or administrative regulation relevant to the consumer's legal matter;
- c. Responding to an individual consumer's request for advice only with respect to the consumer's own communications to officials unless otherwise prohibited by the Act, Title III regulations or other applicable law. This provision does not authorize publication or training of consumers on lobbying techniques or the composition of a communication for the consumer's use;
- d. Making direct contact with the area agency for any purpose; or
- e. Testifying before a government agency, legislative body, or committee at the request of the government agency, legislative body, or committee.

Attachments

Attachment A - Individual Conflict of Interest Screening Example

Individual Conflict of Interest Screening - State Unit on Aging Employees Involved with the Older Americans Act (OAA) Programs

In accordance with OAA Final Rule, 45 CFR 1321, all State Unit on Aging staff and agents of the State who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers must be screened for Conflicts of Interest prior to performing the functions of the SUA and annually thereafter.

Individual COI exists if (1) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit from actions or decisions made in their official capacity; (2) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust; (3) One or more conflicts between competing duties; and (4) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

Immediate family pertaining to conflicts of interest, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

In the past 12 months, have you or an immediate family member:

1. Maintained ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when you or immediate family member is in a position to derive benefit from actions or decisions made in their official capacity?

☐ Yes ☐ No

2. Had one or more conflicts between private interests and the official responsibilities the State Unit on Aging's implementation of OAA Title III programs?

☐ Yes ☐ No

3. Had a conflict between competing duties such as OAA and the Office of the Long-Term Care Ombudsman, Adult Protective Services, or licensing, regulatory or ownership of a long-term care facility?

☐ Yes ☐ No

4. Solicited or accepted gratuities, favors, or anything of monetary value from grantees, contractors, and/or subrecipients, except

where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value?

☐ Yes ☐ No

Answering “Yes” to any of these questions indicates a potential conflict of interest. If a conflict of interest is identified, the “Conflict of Interest Identification, Removal and Remedy Form” must be completed and submitted to the CSSU Manager for review and approval.

Failure to identify and remove a conflict of interest could result in disciplinary action or termination of employment.

☐ I certify that I have read and understand this COI form and I have no conflicts.

☐ I certify that I have read and understand this COI form and I notified the CSSU Manager.

_____	_____	_____
Employee Name	Signature	Date

_____	_____	_____
Employee Name	Signature	Date

**Attachment B - Individual Conflict of Interest Identification,
Removal or Remedy Example**

State Unit on Aging Employees Involved with the Older Americans Act
(OAA) Title III Program - Individual Conflict of Interest Identification,
Removal, and Remedy

Name of individual completing form:

Click or tap here to enter text.

Date conflict was identified:

Click or tap to enter a date.

Name of the person with the identified conflict:

Click or tap here to enter text.

**If there is an answer of “yes” to any of the questions on the “State
Unit on Aging Employees Involved with the Older Americans Act
Title III Program Individual Conflict of Interest Screening Form”
form, you must complete the information below for each yes
answer.**

Click or tap here to enter text.

Please indicate the number of the identified conflict of interest as

indicated on the form (1-4) and describe the conflict below:

Click or tap here to enter text.

Number(s) which corresponds to the identified conflicts:

Click or tap here to enter text.

Please describe the conflict:

Click or tap here to enter text.

Describe how the conflict will be remedied or removed:

Click or tap here to enter text.

What is the expected duration of the identified conflict and plan?

Click or tap here to enter text.

_____	_____	_____
Employee Name	Signature	Date
_____	_____	_____
Employee Name	Signature	Date

Attachment C - Organizational Conflict of Interest Example

State Unit on Aging Organizational Conflict of Interest Form

In accordance with OAA Final Rule, 45 CFR 1321, the State Unit on Aging (SUA) must have policies and procedures to ensure no organizational conflicts of interest (COI) exist.

Organizations involved in the establishment of the Older Americans Act (OAA) and the individuals who carry out the duties of the OAA, the SUA, AAAs, and Provider Agencies must be free from conflicts of interest, pursuant to Section 712(f) of the Older Americans Act, 45 CFR 1321, and policies developed by the SUA.

The SUA shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the SUA.

It is the duty of all SUA employees to identify and report any conflict of interest to the Division Director. Organizational conflicts include any conflict that may impact the effectiveness and credibility of the work of the SUA.

An Organizational Conflict of Interest includes: (1) One or more conflicts between competing duties, programs, and/or services; and (2) Other conflicts of interest identified in guidance issued by the

Assistant Secretary for Aging and/or by State agency policies.

To your knowledge, do any organizational conflicts exist within the SUA's duties, programs, and/or services?

☐ Yes ☐ No

Organizational Conflicts of Interest also include, but are not limited to, placement of the State Long Term Care Ombudsman Program, or requiring the State Long Term Care Ombudsman Program staff to perform activities in an organization that meet any of the following:

1. Is responsible for the licensing, surveying, or certifying long-term care facilities.

☐ Yes ☐ No

2. Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities.

☐ Yes ☐ No

3. Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility.

☐ Yes ☐ No

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4. Has governing board members with any ownership, investment, or employment in long-term care facilities.

☐ Yes ☐ No

5. Provides long-term care to residents of long-term care facilities, including the provisions of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities.

☐ Yes ☐ No

6. Provides long-term care coordination or case management for residents of long-term care facilities.

☐ Yes ☐ No

7. Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan amendment under subsection (i), (j), or (k) of section 1915 of the Social Security Act (24 U.S.C. 1396n).

☐ Yes ☐ No

8. Sets reimbursement rates for long-term care facilities.

☐ Yes ☐ No

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9. Sets reimbursement rates for long-term care services.

☐ Yes ☐ No

10. Provides adult protective services.

☐ Yes ☐ No

11. Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facility placements.

☐ Yes ☐ No

12. Conducts preadmission screening for long-term care facility placements.

☐ Yes ☐ No

13. Makes decisions regarding admission or discharge of individuals to or from long-term care facilities.

☐ Yes ☐ No

14. Provides guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

☐ Yes ☐ No

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Answering “Yes” to any of these questions indicates a potential organizational conflict of interest. If a conflict of interest is identified, the “Organizational Conflict of Interest Identification, Removal and Remedy Form” must be completed and submitted to the SUA Director for review and approval.

Failure to identify and remove a conflict of interest could result in disciplinary action or termination of employment.

☐ I certify that I have read and understand this COI form and I have no conflicts.

☐ I certify that I have read and understand this COI form and I notified the SUA Director.

_____	_____	
Employee Name	Signature	Date

_____	_____	
Employee Name	Signature	Date

Attachment D - Organizational Conflict of Interest Identification, Remedy or Removal Example

State Unit on Aging Employees Involved with the Older Americans Act (OAA) Title III Program Organizational Conflict of Interest Identification, Removal, and Remedy

Name of individual completing form:

Click or tap here to enter text.

Organization form being completed for:

Click or tap here to enter text.

Date conflict was identified:

Click or tap to enter a date.

Name of the person with the identified conflict:

Click or tap here to enter text.

If there is an answer of “yes” to any of the questions on the “State Unit on Aging Organizational Conflict of Interest Screening Form” form, SUA Manager must complete the information below for each yes answer.

Please indicate the number of the identified conflict of interest as

indicated on the form (1-4) and describe the conflict below:

Click or tap here to enter text.

Number(s) which corresponds to the identified conflicts:

Click or tap here to enter text.

Please describe the conflict:

Click or tap here to enter text.

Describe how the conflict will be remedied or removed:

Click or tap here to enter text.

What is the expected duration of the identified conflict and plan?

Click or tap here to enter text.

_____	_____	_____
SUA Manager Name	Signature	Date
_____	_____	_____
APD Director Name	Signature	Date