

in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments.

Service provider, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the State or area plan.

Severe disability, as used to carry out the provisions of the Act, means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in three or more of the following major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

Single planning and service area State, means a State which was approved on or before October 1, 1980, as such and continues to operate as a single planning and service area.

State, as used in this part, means one or more of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State agency, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State plan administration, as used in this part, means funds used to carry out activities as set forth in section 307 of the Act (42 U.S.C. 3027) and other activities to fulfill the mission of the State agency as set forth in § 1321.5.

Supplemental foods, as used in this part, means foods that assist with maintaining health, but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as addi-

tional beverage or food items, and may be specified by State agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home-delivered meal services.

Voluntary contributions, as used in section 315(b) of the Act (42 U.S.C. 3030c-2(b)), means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Act.

Subpart B—State Agency Responsibilities

§ 1321.5 Mission of the State agency.

(a) The Act intends that the State agency shall be a leader on all aging issues on behalf of all older individuals and family caregivers in the State. The State agency shall proactively carry out a wide range of functions, including advocacy, planning, coordination, inter-agency collaboration, information sharing, training, monitoring, and evaluation. The State agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, communities throughout the State. These systems shall be designed to assist older individuals and family caregivers in leading independent, meaningful, and dignified lives in their own homes and communities.

(b) In States with multiple planning and service areas, the State agency shall designate area agencies on aging to assist in carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as area agencies on aging only those non-State agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.55.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Act are used to carry out the mission described for area agencies in § 1321.55.

§ 1321.7 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and part 1324 of this chapter and to serve as the effective and visible advocate for older adults within the State.

(b) The State agency shall have an adequate number of qualified staff to fulfill the functions prescribed in this part.

(c) The State agency shall establish, contract, or otherwise arrange with another agency or organization as permitted by section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), an Office of the State Long-Term Care Ombudsman. Such Office must be headed by a full-time Ombudsman and consist of other staff as appropriate to fulfill responsibilities as set forth in part 1324, subpart A, of this chapter.

(d) If a State statute establishes an Ombudsman program which will perform the functions of section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), the State agency continues to be responsible for assuring that the requirements of this program under the Act and as set forth in part 1324, subpart A, of this chapter, are met, notwithstanding any additional requirements or funding related to State law. In such cases where State law may conflict with the Act, the Governor shall confirm understanding of the State agency's continuing obligations under the Act through an assurance in the State plan.

(e) The State agency shall have as set forth in section 307(a)(13) (42 U.S.C. 3027(a)(13)) and section 731 of the Act (42 U.S.C. 3058j) and 45 CFR part 1324, subpart C, a Legal Assistance Developer, and such other personnel as appropriate to provide State leadership in developing legal assistance programs for older individuals throughout the State.

§ 1321.9 State agency policies and procedures.

(a) The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in this part and part 1324 of this chapter. These policies and procedures shall be developed in consulta-

tion with area agencies on aging, program participants, and other appropriate parties in the State. Except for the Ombudsman program as set forth in 45 CFR part 1324, subpart A and where otherwise indicated, the State agency policies may allow for such policies and procedures to be developed at the area agency on aging level. The State agency is responsible for implementing, monitoring, and enforcing policies and procedures, where:

(1) The policies and procedures developed by the State agency shall address how the State agency will monitor the programmatic and fiscal performance of all programs and activities initiated under this part for compliance with all requirements, and for quality and effectiveness. As set forth in sections 305(a)(2)(A) and 306(a) of the Act (42 U.S.C. 3025(a)(2)(A) and 3026(a)), and consistent with section 305(a)(1)(C) (42 U.S.C. 3025(a)(1)(C)), the State agency shall be responsible for monitoring the program 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, including:

(i) Evaluating each subrecipient's risk of noncompliance to ensure proper accountability and compliance with program requirements and achievement of performance goals;

(ii) Reviewing subrecipient policies and procedures; and

(iii) Ensuring that all subrecipients and subgrantees complete audits as required in 2 CFR part 200, subpart F and 45 CFR part 75, subpart F.

(2) The State agency may not delegate to another agency the authority to award or administer funds under this part.

(3) The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records, and other information maintained by the Ombudsman program, as set forth in part 1324, subpart A. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-

term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in §1324.11(e)(3) of this chapter.

(b) The State agency shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) Policies and procedures developed and implemented by the State agency shall address:

(1) Direct service provision for services as set forth in §§1321.85, 1321.87, 1321.89, 1321.9, and 1321.93, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) A listing and definitions of services that may be provided in the State with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided;

(iv) Definition of those within the State in greatest social need and greatest economic need;

(v) Specific actions the State agency will use or require the area agency to use to target services to meet the needs of those in greatest social need and greatest economic need;

(vi) How area agencies on aging may request to provide direct services under provisions of §1321.65(b)(7), where appropriate;

(vii) Actions to be taken by area agencies and direct service providers to implement requirements as set forth in paragraphs (c)(2)(x) through (xi) of this section; and

(viii) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Intrastate funding formula (IFF)*. Distribution of Title III funds via the intrastate funding formula or funds distribution plan and of Nutrition Services Incentive Program funds as set forth in §1321.49 or §1321.51 shall be maintained by the State agency where funds must be promptly disbursed.

(ii) *Non-Federal share (match)*. 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 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.

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(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;

(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.

(iii) *Transfers.* 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));

(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.

(iv) *State, Territory, and area plan administration.* State and Territory plan administration maximum allocation requirements must align with the approved intrastate funding formula or funds allocation plan as set forth in §1321.49 or §1321.51, as applicable. In addition:

(A) *State and Territory plan administration maximum allocation amounts.* State and Territory plan administration maximum allocation amounts may be taken from any part of the overall allotment to a State agency under Title III of the Act. Maximum allocation amounts are determined by the State agency's status as set forth in this paragraph (c)(2)(iv)(A) and paragraph (c)(2)(iv)(B) of this section:

(1) A State agency which serves a State with multiple planning and service areas may use the greater of \$750,000, per section 308(b)(2)(A) of the Act (42 U.S.C. 3028(b)(2)(A)), or five percent of the total Title III Award.

(2) A State agency which serves a single planning and service area State and is not listed in (3) below may elect to be subject to paragraph (c)(2)(iv)(A)(1) of this section or to the area plan administration limit of ten percent of the overall allotment to a State agency under Title III, as specified in section 308(a)(3) (42 U.S.C. 3028(a)(3)) of the Act.

(3) Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall have available the greater of \$100,000 or five percent of the total final Title III Award, as set forth in section 308(b)(2)(B) (42 U.S.C. 3028(b)(2)(B)) of the Act.

(B) *Area plan administration maximum allocation amounts.* Area plan administration maximum allocation amounts may be allocated to any part of the overall allotment to the State agency under Title III, with the exception of part D, for use by area agencies on aging for activities as set forth in sections 304(d)(1)(A) and 308 of the Act (42 U.S.C. 3024(d)(1)(A) and 3028) and in

§1321.57(b). Single planning and service area States may elect amounts for either State plan administration or area plan administration, as set forth in the Act and paragraph (c)(2)(iv)(A)(2) of this section.

(1) The State agency will determine the maximum amount of funding available for area plan administration from the total Title III allocation after deducting the amount of funding allocated for State plan administration and calculating a maximum of ten percent of this amount;

(2) The State agency may make no more than the amount calculated in paragraph (c)(2)(iv)(B)(1) of this section available to area agencies on aging for distribution in accordance with the intrastate funding formula as set forth in §1321.49; and

(3) Any amounts available to the State agency for State plan administration which the State agency determines are not needed for that purpose may be used to supplement the amount available for area plan administration (42 U.S.C. 3028(a)(2)).

(v) *Minimum adequate proportion.* The State agency will meet expectations for the minimum adequate proportion of funds expended by each area agency on aging and State agency to provide the categories of services of access services, in-home supportive services, and legal assistance, as identified in the approved State plan as set forth in §1321.27(i).

(vi) *Maintenance of effort.* The State agency will meet expectations regarding maintenance of effort, where:

(A) The State agency must expend 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 for Title III;

(B) The amount certified must at least meet minimum match requirements from State resources;

(C) 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; and

(D) Excess State match reported on the Federal financial report does not

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become part of the maintenance of effort unless the State agency certifies the excess.

(vii) *The State Long-Term Care Ombudsman Program.* The State agency shall maintain State Long-Term Care Ombudsman Program funding requirements, where:

(A) *Minimum Certification of Expenditures.* The State agency must expend annually under Title III and Title VII of the Act, respectively, for the Ombudsman program no less than the minimum amounts that are required to be expended by section 307(a)(9) of the Act (42 U.S.C. 3027(a)(9));

(B) *Expenditure Information.* The State agency must provide the Ombudsman with verifiable expenditure information for the annual certification of minimum expenditures and for completion of annual reports; and

(C) *Fiscal management and determination of resources.* Fiscal management and determination of resources appropriated or otherwise available for the operation of the Office are in compliance as set forth at §1324.13(f) of this chapter.

(viii) *Rural minimum expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where:

(A) The State agency shall establish a process and control for determining the definition of “rural areas” within their State;

(B) For each fiscal year, the State agency must spend on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services, as required by the Act; and

(C) The State agency must project the cost of providing such services for each fiscal year (including the cost of providing access to such services) and must specify a plan for meeting the needs for such services for each fiscal year.

(ix) *Reallotment.* The State agency shall maintain requirements for reallotment of funds, 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 pe-

riod 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.

(x) *Voluntary contributions.* Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act, consistent with section 315(b) (42 U.S.C. 3030c–2(b)). Policies and procedures related to voluntary contributions shall address these requirements:

(A) *Suggested contribution levels.* The suggested contribution levels shall be based on the actual cost of services;

(B) *Individuals encouraged to contribute.* Voluntary contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty level. Assets, savings, or other property owned by an older individual or family caregiver may not be considered when seeking voluntary contributions from any older individual or family caregiver;

(C) *Solicitation.* The method of solicitation must be noncoercive, and the solicitation:

(1) Must meet all the requirements of this provision; and

(2) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution.

(D) *Provisions to all service recipients.* All recipients of services shall be provided:

(1) An opportunity to voluntarily contribute to the cost of the service;

(2) Clear information, including information in alternative formats and in languages other than English in compliance with Federal civil rights

laws, explaining there is no obligation to contribute, and the contribution is voluntary;

(3) Protection of privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a voluntary contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all contributions are established; and

(H) Collection of program income. Amounts collected are considered program income and are subject to the requirements in 2 CFR 200.307 and in §1321.9(c)(2)(xii).

(xi) *Cost sharing.* A State agency is permitted under section 315(a) of the Act (42 U.S.C. 3030c-2(a)), to implement cost sharing for services funded by the Act by recipients of the services, except as provided for in paragraph (c)(2)(xi)(D) of this section. If the State agency allows for cost sharing, the State agency shall address these requirements:

(A) *Policies and procedures.* The State agency shall develop policies and procedures to be implemented statewide, including how an area agency on aging may request and receive a waiver of cost sharing policies, if the area agency on aging adequately demonstrates:

(1) A significant proportion of persons receiving services under the Act have incomes below the threshold established in State agency policies and procedures; or

(2) That cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(B) *Sliding contribution scale.* The State agency shall establish a sliding contribution scale and a description of the criteria to participate in cost sharing to be implemented statewide, which shall:

(1) Meet all the requirements of this provision;

(2) Be based solely on individual income and the cost of delivering services;

(3) Be communicated including in written materials and in alternative formats upon request;

(4) Explain there is no obligation to contribute, and the contribution is voluntary;

(5) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(6) Protect the privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(C) Individuals eligible to cost share. Individuals shall be determined eligible to cost share based solely on a confidential declaration of income and with no requirement for verification;

(D) Prohibitions on cost sharing. Cost sharing is prohibited as follows:

(1) By a low-income older individual if the income of such individual is at or below the Federal poverty level;

(2) If State agency policies and procedures specify other low-income individuals within the State excluded from cost sharing;

(3) For the following services:

(i) Information and assistance, outreach, benefits counseling, or case management services;

(ii) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;

(iii) Congregate and home-delivered meals; and

(iv) Any services delivered through Tribal organizations.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a cost sharing contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all cost sharing contributions are established; and

(H) Collection of program income. All cost sharing contributions collected are considered program income and are subject to the requirements of 2 CFR

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200.307, 45 CFR 75.307, and in § 1321.9(c)(2)(xii).

(xii) *Use of program income.* 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.

(xiii) *Private pay programs.* The State agency shall maintain requirements for private pay programs, where:

(A) State agencies, area agencies on aging, and service providers may provide private pay programs, subject to State and/or area agency policies and procedures;

(B) The State agency requires area agencies and service providers under the Act that establish private pay programs to develop policies and procedures to:

(1) Promote equity, fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements;

(ii) Meeting financial accountability requirements;

(iii) Prohibiting use of funds for direct services under Title III to support provision of service via private pay programs, except as a part of routine information and assistance or case management referrals; and

(2) Require that persons who receive information about private pay programs and who are eligible for services provided with Title III funds in the planning and service area be made aware of Title III-funded and any simi-

lar voluntary contributions-based service options, even if there is a waiting list for those services, on an initial and periodic basis to allow individuals to determine whether they will select voluntary contributions-based services or private pay programs.

(xiv) *Contracts and commercial relationships.* The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

(1) Contracts with health care payers;

(2) Private pay programs; or

(3) Other arrangements with entities or individuals that increase the availability of home-and community-based services and supports.

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(1) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements; and

(ii) Meeting financial accountability requirements.

(2) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

(i) All requirements for direct services provision are maintained, as set forth in this part and the Act, or

(ii) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and all other applicable Federal requirements.

(C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.

(xv) *Buildings, alterations or renovations, maintenance, and equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, including acquisition and replacement of equipment, may be an allowable use of funds, and the following apply:

(A) Costs are only allowable to the extent not payable by third parties through rental or other agreements;

(B) Costs must be allocated proportionally to the benefiting grant program;

(C) Construction and acquisition activities are only allowable for multipurpose senior centers. In addition to complying with the requirements of the Act, as set forth in section 312 (42 U.S.C. 3030b), as well as with all other applicable Federal laws, the grantee or subrecipient as applicable must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction, as applicable, has been funded with an award under Title III of the Act, that the requirements set forth in section 312 of the Act (42 U.S.C. 3030b) apply to the property, and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging;

(D) Altering and renovating activities are allowable for facilities providing direct services with funds provided as set forth in §§1321.85, 1321.87, 1321.89, and 1321.91 subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75;

(E) Altering and renovating activities are allowable for facilities used to conduct area plan administration activities with funds provided as set forth in paragraph (c)(2)(iv)(B) of this section, subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75; and

(F) Prior approval by the Assistant Secretary for Aging does not apply.

(xvi) *Supplement, not supplant.* Funds awarded under the Act for services provided under sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c-2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s-2), and 705(a)(4) (42 U.S.C. 3058d(a)(4)), must be used to supplement, not supplant existing Federal, State, and local funds expended to support those activities.

(xvii) *Monitoring of State plan assurances.* Monitoring for compliance for assurances identified in the approved State plan as set forth in §1321.27.

(xviii) *Advance funding.* If the State agency permits the advance of funding to meet immediate cash needs of area agencies on aging and service providers, the State agency shall have policies and procedures which comply with all applicable Federal requirements, including timeframes and amount limitations that may apply.

(xix) *Fixed amount subawards.* Fixed amount subawards up to the simplified acquisition threshold are allowed.

(3) The State plan process, including compliance with requirements as set forth in §§1321.27 and 1321.29.

(4) In States with multiple planning and service areas, the area plan process, including compliance with requirements as set forth in §1321.65.

§ 1321.11 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate, and comment on Federal, State, and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals or family caregivers, and recommend any changes in these which the State agency considers to be aligned with the interests identified in the Act;

(2) Provide technical assistance and training to agencies, organizations, associations, or individuals representing older individuals and family caregivers; and

(3) Review and comment on applications to State and Federal agencies for assistance relating to meeting the needs of older individuals and family caregivers.

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(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby.

§ 1321.13 Designation of and designation changes to planning and service areas.

(a) The State agency is responsible for designating distinct planning and service areas within the State.

(b) No State agency may designate the entire State as a single planning and service area, except for States designated as such on or before October 1, 1980.

(c) State agencies must have policies and procedures regarding designation of and changes to planning and service areas in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency. Such policies and procedures must address the following:

(1) The application process to change a planning and service area, if initiated outside of the State agency;

(2) How notice to interested parties will be provided;

(3) How need for the action will be documented;

(4) Provisions for conducting a public hearing;

(5) Provisions for involving area agencies on aging, service providers, and older individuals in the action or proceeding, such as offering other opportunities for feedback from interested parties;

(6) The appeals process for affected parties; and

(7) Timeframes that apply to each of the items under this paragraph (c).

(d) State agencies that seek to change one or more planning and service area designations must consider the following:

(1) The geographical distribution of older individuals in the State;

(2) The incidence of the need for services under the Act;

(3) The distribution of older individuals who have greatest economic need and greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individ-

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uals with limited English proficiency, and older individuals residing in rural areas) residing in such areas;

(4) The distribution of older individuals who are Native Americans residing in such areas;

(5) The distribution of resources available to provide such services under the Act;

(6) The boundaries of existing areas within the State which were drawn for the planning or administration of services under the Act;

(7) The location of units of general purpose local government, as defined in section 302(4) of the Act (2 U.S.C. 3022(4)), within the State; and

(8) Any other relevant factors.

(e) When the State agency issues a decision to change planning and service areas, it shall provide an explanation of its consideration of the factors in paragraph (d) of this section. Such explanations must be included in the State plan amendment submitted as set forth in § 1321.31(b) or State plan submitted as set forth in § 1321.33.

§ 1321.15 Interstate planning and service area.

(a) An interstate planning and service area is an agreement between the State agencies that have responsibility for administering the programs within the interstate area, in which the agreement increases the allotment of the State agency or agencies with lead responsibility and decreases the allotment of the State agency or agencies without the lead responsibility. The Governor of any State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary for Aging to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary for Aging approves such an application, the Assistant Secretary for Aging shall adjust the State agency allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate

planning and service area not within the State.

(b) Before requesting permission of the Assistant Secretary for Aging to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State agency, governing the administration of the interstate planning and service area.

(c) The lead State agency shall request permission of the Assistant Secretary for Aging to designate an interstate planning and service area by submitting the request, together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Assistant Secretary for Aging's approval for State agencies to designate an interstate planning and service area, the Assistant Secretary for Aging shall determine that all applicable requirements and procedures in §§ 1321.27 and 1321.29 are met.

(e) If the request is approved, the Assistant Secretary for Aging, based on the agreement between the State agencies, will increase the allocation(s) of the State agency or agencies with lead responsibility for administering the programs within the interstate area and will reduce the allocation(s) of the State agency or agencies without lead responsibility by one of these methods:

(1) Reallocation of funds in proportion to the number of individuals age 60 and over for funding provided under Title III, parts B, C, and D and in proportion to the number of individuals age 70 and over for funding provided under Title III, part E for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallocation of funds based on the intrastate funding formula of the State agency or agencies without lead responsibility.

(f) Each State agency that is a party to an interstate planning and service area agreement shall review and confirm their agreement as a part of their

State plan on aging as set forth in § 1321.27.

§ 1321.17 Appeal to the Departmental Appeals Board on planning and service area designation.

(a) This section sets forth the procedures for providing hearings to applicants for designation as a planning and service area under § 1321.13, whose application is denied by the State agency or § 1321.15, whose application is denied by the Assistant Secretary for Aging.

(b) Any applicant for designation as a planning and service area whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Departmental Appeals Board (DAB) in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency, if appealing subject to § 1321.13, or the Assistant Secretary for Aging, if appealing subject to § 1321.15, and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.19 Designation of and designation changes to area agencies.

(a) The State agency is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area. An area agency on aging may serve more than one planning and service area. An area agency that serves more than one planning and service area must maintain separate funding, planning, and advocacy responsibilities for each planning and service area. State agencies shall have policies and procedures regarding designation of area agencies on aging and changes to an agency's designation as an area agency on aging in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency and must address the following:

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(1) Provisions for designating an area agency on aging, including:

- (i) The application process;
- (ii) How notice to interested parties will be provided;
- (iii) How views offered by the unit(s) of general purpose local government in such area will be obtained and considered;
- (iv) How the State agency will provide the right of first refusal to a unit of general purpose local government if:
 - (A) Such unit demonstrates ability to meet the requirements as set forth by the State agency, in accordance with the Act; and
 - (B) The boundaries of such a unit and the boundaries of the area are reasonably contiguous.
- (v) How the State agency shall then give preference to an established office on aging if the unit of general purpose local government chooses not to exercise the right of first refusal;
- (vi) How the State agency will assume area agency on aging responsibilities in the event there are no successful applicants in the State agency's application process; and
- (vii) The appeals process for affected parties.

(2) Provisions for an area agency on aging that voluntarily relinquishes their area agency on aging designation, including that the State agency's written acceptance of the voluntary relinquishment of area agency on aging designation will be considered as the State agency's withdrawal of area agency on aging designation, and requirements under § 1321.21(b) will apply;

(3) Provisions for when the State agency takes action to withdraw an area agency on aging's designation, in accordance with § 1321.21;

(4) Provisions for when the State agency administers area agency on aging programs as provided for in section 306(f) (42 U.S.C. 3026(f)), where the Assistant Secretary for Aging may extend the 90-day period if the State agency requests an extension and demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension; and

(5) If a State agency previously designated the entire State as a single planning and service area, provisions for when the State agency designates

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one or more additional planning and service areas.

(b) For any of the actions listed in paragraph (a) of this section, the State agency must submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33;

(c) An area agency may be any of the following types of agencies:

(1) An established office on aging which is operating within a planning and service area;

(2) Any office or agency of a unit of general purpose local government, which is designated to function for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) Any non-State, local public, or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency, and which demonstrates the ability and willingness to engage in the planning or provision of a broad range of services under the Act within such planning and service area.

(d) A State agency may not designate any regional or local office of the State as an area agency.

§ 1321.21 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act (42 U.S.C. 3025), the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act, regulations and other guidance as set forth by the Assistant Secretary for Aging, terms and conditions of Federal grant awards

under the Act, or policies and procedures established and published by the State agency on aging;

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act;

(5) The State agency changes one or more planning and service area designations; or

(6) The area agency voluntarily requests the State agency withdraw its designation.

(b) If a State agency withdraws an area agency's designation under this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area;

(2) Submit a State plan amendment as set forth in §1321.31(b) or State plan as set forth in §1321.33; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Assistant Secretary for Aging may extend the 180-day period if a State agency:

(1) Notifies the Assistant Secretary for Aging in writing of its action under this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension. Need for the extension may include the State agency's reasonable but unsuccessful attempts to procure an applicant to serve as the area agency.

§1321.23 Appeal to the Departmental Appeals Board on area agency on aging withdrawal of designation.

(a) This section sets forth hearing procedures afforded to affected parties if the State agency initiates an action or proceeding to withdraw designation of an area agency on aging.

(b) Any area agency on aging that has appealed a State agency's decision to withdraw area agency on aging designation, and that has been provided a hearing and a written decision, may appeal the decision to the Departmental Appeals Board in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§1321.25 Duration, format, and effective date of the State plan.

(a) A State agency will follow the guidance issued by the Assistant Secretary for Aging regarding duration and formatting of the State plan. Unless otherwise indicated, a State agency may determine the format, how to collect information for the plan, and whether the plan will remain in effect for two, three, or four years.

(b) An approved State plan or amendment identified in §1321.31(a) becomes effective on the date designated by the Assistant Secretary for Aging.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in §1321.27 or §1321.31(a), until it is approved.

§1321.27 Content of State plan.

To receive a grant under this part, a State agency shall have an approved State plan as prescribed in section 307 of the Act (42 U.S.C. 3027). In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification of the sole State agency that the State has designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III and Title VII of the Act and any objectives established by the Assistant Secretary for Aging.

(c) Evidence that the State plan is informed by and based on area plans, except for single planning and service area States.

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(d) A description of how greatest economic need and greatest social need are determined and addressed by specifying:

(1) How the State agency defines greatest economic need and greatest social need, which shall include the populations as set forth in the §1321.3 definitions of greatest economic need and greatest social need; and

(2) The methods the State agency will use to target services to the populations identified in paragraph (d)(1) of this section, including how funds under the Act may be distributed to serve prioritized populations in accordance with requirements as set forth in §1321.49 or §1321.51, as appropriate.

(e) An intrastate funding formula or funds distribution plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area, in accordance with §1321.49 or §1321.51, as appropriate.

(f) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if applicable.

(g) Demonstration that the determination of greatest economic need and greatest social need specific to Native American persons is identified pursuant to communication among the State agency and Tribes, Tribal organizations, and Native communities, and that the services provided under this part will be coordinated, where applicable, with the services provided under Title VI of the Act and that the State agency shall require area agencies to provide outreach where there are older Native Americans in any planning and service area, including those living outside of reservations and other Tribal lands.

(h) Certification that any program development and coordination activities shall meet the following requirements:

(1) The State agency shall not fund program development and coordination activities as a cost of supportive services under area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

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(2) Program development and coordination activities must only be expended as a cost of State plan administration, area plan administration, and/or Title III, part B supportive services;

(3) State agencies and area agencies on aging shall, consistent with the area plan and budgeting cycles, submit the details of proposals to pay for program development and coordination as a cost of Title III, part B supportive services to the general public for review and comment; and

(4) Expenditure by the State agency and area agency on program development and coordination activities are intended to have a direct and positive impact on the enhancement of services for older individuals and family caregivers in the planning and service area.

(i) Specification of the minimum proportion of funds that will be expended by each area agency on aging and the State agency to provide each of the following categories of services:

(1) Access to services;

(2) In-home supportive services; and

(3) Legal assistance, as set forth in §1321.93.

(j) If the State agency allows for Title III, part C-1 funds to be used as set forth in §1321.87(a)(1)(i):

(1) 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 the impact on congregate meals program participation;

(2) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(3) Description of the eligibility criteria for service provision;

(4) Evidence of consultation with area agencies on aging, nutrition and other direct services providers, other interested parties, and the general public regarding the provision of such meals; and

(5) Description of how provision of such meals will be coordinated with area agencies on aging, nutrition and other direct services providers, and other interested parties.

(k) How the State agency will use funds for prevention of elder abuse, neglect, and exploitation as set forth in 45 CFR part 1324, subpart B.

(l) How the State agency will meet responsibilities for the Legal Assistance Developer, as set forth in 45 CFR part 1324, subpart C.

(m) Description of how the State agency will conduct monitoring that the assurances to which they attest are being met.

§ 1321.29 Public participation.

The State agency shall:

(a) Have mechanisms and varied methods to obtain the views of older individuals, family caregivers, service providers, and the public on a periodic basis, with a focus on those in greatest economic need and greatest social need;

(b) Consider those views in developing and administering the State plan and policies and procedures regarding services provided under the plan;

(c) Establish and comply with a reasonable minimum time period (at least 30 calendar days) for public review and comment on new State plans as set forth in § 1321.27 and State plan amendments requiring approval of the Assistant Secretary for Aging as set forth in § 1321.31(a). State agencies may request a waiver of the minimum time period from the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary;

(d) Ensure the documents noted in paragraph (c) of this section and final State plans and amendments are available to the public for review, as well as available in alternative formats and other languages if requested.

§ 1321.31 Amendments to the State plan.

(a) Subject to prior approval by the Assistant Secretary for Aging, a State agency shall amend the State plan whenever necessary to reflect:

(1) New or revised statutes or regulations as determined by the Assistant Secretary for Aging;

(2) An addition, deletion, or change to a State agency's goal, assurance, or information requirement statement;

(3) A change in the State agency's intrastate funding formula or funds

distribution plan for Title III funds, as set forth in § 1321.49 or § 1321.51;

(4) A request to waive State plan requirements as set forth in section 316 of the Act (42 U.S.C. 3030c-3), or as required by guidance as set forth by the Assistant Secretary for Aging; or

(5) Other changes as required by guidance as set forth by the Assistant Secretary for Aging.

(b) A State agency shall amend the State plan and notify the Assistant Secretary for Aging of an amendment not requiring prior approval whenever necessary and within 30 days of the action(s) listed in paragraphs (b)(1) through (6) of this section:

(1) A significant change in a State law, organization, policy, or State agency operation;

(2) A change in the name or organizational placement of the State agency;

(3) Distribution of State plan administration funds for demonstration projects;

(4) A change in planning and service area designation, as set forth in § 1321.13;

(5) A change in area agency on aging designation, as set forth in § 1321.19; or

(6) Exercising of major disaster declaration flexibilities, as set forth in § 1321.101.

(c) Information required by this section shall be submitted according to guidelines prescribed by the Assistant Secretary for Aging.

§ 1321.33 Submission of the State plan or plan amendment to the Assistant Secretary for Aging for approval.

(a) Each State plan, or plan amendment which requires approval of the Assistant Secretary for Aging as set forth at § 1321.31(a), shall be signed by the Governor, or the Governor's designee, and submitted to the Assistant Secretary for Aging to be considered for approval at least 90 calendar days before the proposed effective date of the plan or plan amendment according to guidance as set forth by the Assistant Secretary for Aging, except in the case of a waiver provided by the Assistant Secretary for Aging. Each State plan amendment which does not require the prior approval of the Assistant Secretary for Aging shall be submitted as set forth at § 1321.31(b).

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(b) In advance of the submission to the Assistant Secretary for Aging to be considered for approval, the State agency shall submit a draft of the plan or amendment to the appropriate ACL Regional Office at least 120 calendar days before the proposed effective date of the plan or plan amendment, except in the case of a waiver request or as otherwise provided in guidance as set forth by the Assistant Secretary for Aging. The State agency shall work with the ACL Regional Office in reviewing the plan or plan amendment for compliance.

§ 1321.35 Notification of State plan or State plan amendment approval or disapproval for changes requiring Assistant Secretary for Aging approval.

(a) The Assistant Secretary for Aging shall approve a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Assistant Secretary for Aging proposes to disapprove a State plan or amendment, the Assistant Secretary for Aging shall notify the Governor in writing, giving the reasons for the proposed disapproval, and inform the State agency that it may request a hearing on the proposed disapproval following the procedures described in guidance issued by the Assistant Secretary for Aging.

§ 1321.37 Notification of State plan amendment receipt for changes not requiring Assistant Secretary for Aging approval.

The State agency shall submit an amendment not requiring Assistant Secretary for Aging approval as set forth at § 1321.31(b) to the appropriate ACL Regional Office. The ACL Regional Office shall review the amendment to confirm the contents do not require approval of the Assistant Secretary for Aging and will acknowledge receipt of the State plan amendment by notifying the head of the State agency in writing.

§ 1321.39 Appeal to the Departmental Appeals Board regarding State plan on aging.

If the Assistant Secretary for Aging intends to disapprove a State plan or

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State plan amendment, the Assistant Secretary for Aging shall first afford the State agency notice and an opportunity for a hearing. Administrative reviews of State plan disapprovals, as provided for in sections 307(c) and 307(d) of the Act (42 U.S.C. 3027(c)–(d)) are performed by the Department Appeals Board in accordance with the procedures set forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.41 When a disapproval decision is effective.

(a) The Assistant Secretary for Aging shall specify the effective date for reduction and withholding of the State agency's grant upon a disapproval decision from the Departmental Appeals Board. This effective date may not be earlier than the date of the Departmental Appeals Board's decision or later than the first day of the next calendar quarter.

(b) A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and shall remain in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

§ 1321.43 How the State agency may appeal the Departmental Appeals Board's decision.

A State agency may appeal the final decision of the Departmental Appeals Board disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State agency shall file the appeal within 30 days of the Departmental Appeals Board's final decision.

§ 1321.45 How the Assistant Secretary for Aging may reallocate the State agency's withheld payments.

The Assistant Secretary for Aging may disburse funds withheld from the

State agency directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part, and which contains an agreement to meet the non-Federal share requirements.

§ 1321.47 Conflicts of interest policies and procedures for State agencies.

(a) State agencies must have policies and procedures regarding conflicts of interest, in accordance with the Act and all other applicable Federal requirements. These policies and procedures must safeguard against conflicts of interest on the part of the State agency, employees, 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. Conflicts of interest policies and procedures 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 State agency 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 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 sub-recipients, 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;

(9) Establishing the actions the State agency will require a Title III program to take in order 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 State agency or Title III program operates an Adult Protective Services or guardianship program.

(b) Individual conflicts include:

(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.

(c) Organizational conflicts include:

(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.

§ 1321.49 Intrastate funding formula.

(a) The State agency of a State with multiple planning and service areas, as part of its State plan, in accordance with guidelines issued by the Assistant Secretary for Aging, using the best available data, and after consultation with all area agencies on aging in the State, shall develop and publish for review and comment by older individuals, family caregivers, other appropriate agencies and organizations, and the general public, an intrastate funding formula for the allocation of funds specific to each planning and service area to area agencies on aging under Title III for supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver services prior to taking the steps as set forth in § 1321.33. The intrastate funding formula shall be made available for public review and comment for a reasonable minimum time period (at least 30 calendar days, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary). The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic need and greatest social need with particular attention to low-income minority older individuals. A separate formula may be provided for the evidence-based disease prevention and health promotion allocation to target areas that are medically underserved and in which there are large numbers of older individuals who have the greatest economic need and greatest social need for such services. The State agency shall review, update, and submit for approval to the Assistant Secretary for Aging its formula as needed.

(b) The publication for review and comment required by the preceding paragraph shall include:

(1) A descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic need and greatest social need, including addressing the populations identified pursuant to § 1321.27(d)(1), which includes the following components:

(i) A statement that discloses if and how, prior to distribution under the

intrastate funding formula to the area agencies on aging, funds are deducted from Title III funds for State plan administration, disaster set-aside funds as set forth in § 1321.99, and/or Long-Term Care Ombudsman Program allocations;

(ii) A statement that describes if a separate formula will be used for evidence-based disease prevention and health promotion allocation; and

(iii) A statement of how the State agency's Nutrition Services Incentive Program award will be distributed.

(2) A numerical mathematical statement of the actual funding formula to be used for all supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver allocations of Title III funds, including the separate numerical mathematical statement that may be provided for the evidence-based disease prevention and health promotion allocation, which includes:

(i) A descriptive statement of each factor and the weight or percentage used for each factor; and

(ii) Definitions of the terms used in the numerical mathematical statement.

(3) A listing of the population, economic, and social data to be used for each planning and service area in the State;

(4) A demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State by part of Title III; and

(5) The source of the best available data used to allocate funding through the intrastate funding formula, which may include:

(i) The most current U.S. Decennial Census results;

(ii) The most current and reliable American Community Survey results; and/or

(iii) Other high-quality data available to the State agency.

(c) In meeting the requirement in paragraph (a) of this section, the intrastate funding formula may not allow for:

(1) The State agency to hold funds at the State level except as outlined in paragraph (b)(1)(i) of this section;

(2) Exceeding the State plan and area plan administration caps set in the Act, as set forth at §1321.9(c)(2)(iv);

(3) Use of Title III, part D funds for area plan administration;

(4) A State agency to directly provide Title III funds to any entity other than a designated area agency on aging, with the exception of State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99; or

(5) Any other use in conflict with the Act.

(d) In meeting the requirement in paragraph (b)(1)(iii) of this section, the following apply:

(1) Cash must be promptly and equitably disbursed to recipients of grants or contracts for nutrition projects under the Act;

(2) The statement of distribution of grant funds and procedures for determining any commodities election amount must be followed;

(3) State agencies have the option to receive grant as cash and/or agricultural commodities; and

(4) State agencies may consult with the area agencies on aging to determine the amount of the commodities election.

(e) In meeting the requirements in this section, the following apply:

(1) Title VII funds are not required to be subject to the intrastate funding formula;

(2) Any funds allocated for the Long-Term Care Ombudsman Program under Title III, part B are not required to be subject to the intrastate funding formula;

(3) The intrastate funding formula may provide for a separate allocation of funds received under Title III, part D for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(i) Which are medically underserved; and

(ii) In which there are large numbers of individuals who have the greatest economic need and greatest social need for such services, including the populations the State agency identifies pursuant to §1321.27(d)(1).

(4) The State agency may determine the amount of funds available for area plan administration prior to deducting Title III, part B Ombudsman program funds and disaster set-aside funds as described in §1321.99;

(5) After deducting any State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99, the State agency must allocate all other Title III funding to area agencies on aging designated to serve each planning and service area;

(6) State agencies may reallocate funding within the State when an area agency on aging voluntarily or otherwise returns funds, subject to the State agency's policies and procedures which must include the following:

(i) If an area agency voluntarily returns funds, the area agency on aging must provide evidence that its governing board or chief elected official approves the return of funds;

(ii) Funds must be made available to all area agencies on aging who request funds available for reallocation;

(iii) The intrastate funding formula shall be proportionally adjusted based on area agencies on aging that request redistributed allocations; and

(iv) Title III funds subject to reallocation may only be reallocated to area agencies on aging via the proportionally adjusted intrastate funding formula described in paragraph (a) of this section.

(f) The State agency shall submit its proposed intrastate funding formula to the Assistant Secretary for Aging for prior approval as part of a State plan or State plan amendment as set forth in §1321.33.

§ 1321.51 Single planning and service area States.

(a) Unless otherwise specified, the State agency in single planning and service area States must meet the requirements in the Act and subpart C of this part, including maintaining an advisory council as set forth in §1321.63.

(b) As part of their State plan submission, single planning and service area States must provide a funds distribution plan which includes:

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(1) A descriptive statement as to how the State agency determines the geographical distribution of the Title III and Nutrition Services Incentive Program funding;

(2) How the State agency targets the funding to reach individuals with greatest economic need and greatest social need, with particular attention to low-income minority older individuals;

(3) At the option of the State agency, a numerical/mathematical statement as a part of their funds distribution plan; and

(4) Justification if the State agency determines it meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) of the Act (42 U.S.C. 3027(a)(8)(A)), no supportive services, except as set forth in paragraph (b)(4)(i)(B) of this section, nutrition services, disease prevention and health promotion, or family caregiver services will be directly provided by the State agency, unless, in the judgment of the State agency:

(A) Provision of such services by the State agency is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such State agency's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such State agency.

(ii) The State agency may directly provide case management, information and assistance services, and outreach.

(iii) Approval of the State agency to provide direct services may only be granted for a maximum of the State plan period. For each time that approval is granted to a State agency to provide direct services, the State agency must demonstrate the State agency's efforts to identify service providers prior to being granted a subsequent approval.

(c) Single planning and service area States must adhere to use of the funds distribution plan for Title III and Nutrition Services Incentive Program funds within the State. If a single planning and service area State agency revises their Title III funds distribution plan, they may do so by:

(1) Following their policies and procedures to publish the updated funds

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distribution plan for public review and comment for a reasonable minimum time period (30 calendar days or greater, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary); and

(2) Submitting the revised funds distribution plan for Assistant Secretary for Aging approval prior to implementing the changes as noted at § 1321.33.

§ 1321.53 State agency Title III and Title VI coordination responsibilities.

(a) For States where there are Title VI programs, the State agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in § 1322.13(a), must explain how the State's aging network, including area agencies and service providers, will coordinate with Title VI programs to ensure compliance with sections 306(a)(11)(B) and 307(a)(21)(A) of the Act (42 U.S.C. 3026(a)(11)(B) and 3027(a)(21)(A)). State agencies may meet these requirements through a Tribal consultation policy that includes Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) 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;

(2) The communication opportunities the State agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes, including coordinating with area agencies and service providers where applicable;

(4) How Title VI programs may refer individuals who are eligible for Title III and/or VII services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils, as set forth in § 1321.63.

Subpart C—Area Agency Responsibilities

§ 1321.55 Mission of the area agency.

(a) The Act intends that the area agency on aging shall be the lead on all aging issues on behalf of all older individuals and family caregivers in the planning and service area. The area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions including advocacy, planning, coordination, inter-agency collaboration, information sharing, monitoring, and evaluation. The area agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older individuals and family caregivers in leading independent, meaningful, healthy, and dignified lives in their own homes and communities.

(b) A comprehensive and coordinated community-based system described in of this section shall:

(1) Have a point of contact where anyone may go or contact for help, information, and/or referral on any aging issue;

(2) Provide information on a range of available public and private long-term care services and support options;

(3) Assure that these options are readily accessible to all older individuals and family caregivers, no matter what their income;

(4) Include a commitment of public, private, voluntary, and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, faith-based, civic, and fraternal organizations, including trusted leaders of communities in greatest economic need and greatest social need,

and older individuals and family caregivers in the community;

(6) Offer special help or targeted resources for the most vulnerable older individuals, family caregivers, and those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information and/or assistance is provided, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for vulnerable older individuals or family caregivers;

(9) Be tailored to the specific nature of the community and the needs of older adults in the community; and

(10) Have a board of directors comprised of leaders in the community, including leaders from groups identified as in greatest economic need and greatest social need, who have the respect, capacity, and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change, and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Act shall be used consistent with the definition of area plan administration as set forth in § 1321.3 to finance those activities necessary to achieve elements of a community-based system set forth in paragraph (b) of this section and consistent with the requirements for provision of direct services as set forth in §§ 1321.85 through 1321.93.

(d) The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State agency under § 1321.9.

§ 1321.57 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older individuals and family caregivers; or

(2) A separate organizational unit within a multipurpose agency which functions as the area agency on aging. Where the State agency designates a