Analysis of the Older Americans Act 2024 Final Regulations

Notes:

- This is not a comprehensive analysis of the entire set of regulations, but rather a crosswalk of the provisions we addressed in our August 15, 2023 comment letter in response to the proposed regulations.
- The page numbers referenced throughout this document refer to an advance copy of the final 2024 OAA regulations. The advance copy and published copy in the Federal Register contain the same language and are only different in appearance and organization; there is **no difference** in content.
- You may note that ACL's commentary contains footnote citations; we did not remove these so that if you have questions about one, you can turn to the final regulation language for the actual footnote.
- Any red text in the "Final Regulation Language" column denotes changes ACL made compared to the "Proposed Regulation" column. Red text in the "USAging Recommendation/Comment" column notes the proposed change detailed in our comment letter.
- If you have any questions, please contact the policy team at policy@usaging.org.

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§ 1321.9(c)(2)(xiv) State Agency policies and procedures (Contracts and Commercial Relationships) (xiv) Contracts and Commercial Relationships. The State	ACL must amend 1321.9(c)(2)(xiv) in the final rule. USAging suggests at least one of the following approaches: 1) Amend the regulation to make clear that the contracting language	**(PDF PAGE 328)** **(xiv) Contracts and commercial relationships.** The State agency shall maintain requirements for contracts and commercial relationships, where: (A) State	**Excerpted language only:** **(PDF PAGES 72-73)** In response to numerous questions about the appropriate roles, responsibilities, and oversight of such activities, feedback	**USAging: ACL declined to accept our proposed changes, as we expected. ACL reads the statute to mean that SUAs have some specific oversight responsibilities related to AAA contracting**

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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	in 1321.9 only pertains to approvals of contracts that use OAA funding and are with a profitmaking entity. Our suggested edits follow (in red). (xiv) Contracts and Commercial Relationships. The State agency shall maintain requirements for contracts and commercial relationships that are, in part or full, supported by OAA funding, 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	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)	received in response to the RFI and the NPRM, and based on our observations of program activities, this final rule clarifies the policies and procedures that State agencies must establish related to all contracts and commercial relationships in subsection § 1321.9(c)(2)(xiv). We intend this rule to respond to numerous concerns from AAAs regarding inconsistent State agency approaches to contracts and commercial relationships, as well as concerns from State agencies about the level of risk and associated oversight required. We encourage a review and approval process that complies with the statutory requirements found in section 212 117 and throughout Title III but is not onerous, can be	**activity even when OAA funding is not used in any way. USAging has fully prepared for this regulatory result since we submitted our comments and will be pushing Congress for changes to the law to correct what we believe is an overreach of state authority. See our OAA reauthorization recommendations for more details on our position and join us in advocating for this correction in the 2024 OAA reauthorization.** **We note that ACL did remove a few words from their original language that referenced aligning with guidance from the Assistant Secretary on Aging. USAging will be discussing this with**

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policies and procedures to: (1) Promote fairness, inclusion, and adherence to the requirements of the Act, including: (i) Meeting conflict of interest requirements; (ii) Meeting financial accountability requirements; and (iii) Aligning with guidance as set forth by the Assistant Secretary for Aging. (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 in guidance as set forth by the	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 that are supported by OAA funding 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; (ii) Meeting financial accountability requirements; and (iii) Aligning with guidance as set forth by the Assistant	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	implemented easily, and does not cause undue delay. We anticipate providing technical assistance in this area to State agencies and AAAs. As a component of these policies and procedures, and consistent with their authority under sections 305(a)(1)(C),118 306(a),119 306(b),120 and 212(b)(1),121 State agencies must establish processes for AAAs to receive prior approval for contracts and commercial relationships permitted under section 212 of the Act.122 We expect such processes to be flexible and streamlined. This provision will help ensure that the activities of recipients and subrecipients of funding further the intended benefits of the Act and do not compromise core responsibilities or the	**ACL to better understand the rationale behind this change and any implications for AAAs.** **However, since this regulation is now final, it's important for AAAs to focus on what ACL has said in both the regulatory language and in their commentary, the latter of which is excerpted in the column to the left. They have helpfully made clear in the commentary that they intend for the states' processes for approval of contracting activities to be "flexible and streamlined," "transparent and not overly burdensome" and not at odds with promoting and expanding the ability of the Aging Network**

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Assistant Secretary for Aging. (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;	Secretary for Aging. (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 in guidance as set forth by the Assistant Secretary for Aging. (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	approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.	statutory mission of State agencies, AAAs, and service providers. Through these requirements, we intend to promote and expand the ability of the aging network to engage in business activities. **(PDF PAGE 67)** We agree that State agency oversight policies and procedures should be streamlined, transparent, not overly burdensome to either the State or the subrecipients of Federal funds, and commensurate to the degree of risk associated with a specific contract or commercial relationship. Like most commenters who raised this issue, we do not believe it should usually be necessary for State agencies to review contract documents in order to approve the establishment of a	**to engage in business activities.** **It's also important to note that ACL is *not* saying that the SUA *must* sign off or approve a AAA or provider's individual contracts. Rather, ACL notes that SUAs must establish policies and procedures for AAAs/providers "to receive approval to establish contracts and commercial relationships and participate in [related] activities." We read this as a higher level of review that assures the SUA that such activities do not conflict with the Act's requirements. ACL specifically said: "we do not believe it should usually be necessary for State agencies to review contract documents in**

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	and participate in activities related to contracts and commercial relationships when such contracts and relationships are supported by OAA funding; 2) Given the debate over what the statute indicates and the extraordinary high risk that getting this regulation wrong will undo more than a decade's worth of work and disrupt or eliminate services for millions of older adults, caregivers and people with disabilities, ***we also urge ACL to strike 1321.9(c)(2)(xiv) entirely if the above changes are not incorporated into the final rule.*** This allows time for Congress to weigh in on the intent of the statute and what the OAA needs to look like in 2023 and beyond. 3) If		contract or commercial relationship. As we stated in the proposed rule, we expect State agency approval processes to be flexible, reflecting the needs of the older individuals served and the abilities of AAAs and service providers to engage in contracts and commercial relationships.129 We believe that requiring State agencies to establish clear policies and procedures for approval processes, developed in consultation with AAAs, will expedite the establishment of important partnerships. **(PDF PAGE 77)** The State agency could decide as a matter of policy that all contracts and commercial relationships to expand the reach of services will be approved unless	**order to approve the establishment of a contract or commercial relationship." (PDF PAGE 67) And, "state agencies have the discretion to request to review contract documents if they deem it necessary to determine whether the contract or commercial relationship may be approved, consistent with their policies and procedures. However, subrecipients should generally be able to provide sufficient information to address these concerns without having to share contract documents for review." (PDF PAGE 79)** **We are also pleased that ACL's commentary includes**

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	neither is acceptable to ACL, ***USAging urges ACL to set a longer implementation period for this portion of the regulation*** so that Congress may be consulted during its 2024 reauthorization period and the Act aligned accordingly. Contracting Using OAA Funds: USAging does support, as was mentioned, SUA approval of AAAs' ability to engage in commercial relationships and contracts when OAA funding is involved. ***If our suggested changes under Recommendation 1 are accepted by ACL, we would make the following additional changes to that section of the rule (in blue):*** (C) The State agency shall, through the area plan or other		certain concerning conditions exist (for example, if a AAA is under a corrective action plan). Under such a policy, AAAs would provide assurances that proposed agreements do not meet any exclusionary criteria. State agencies might decide that certain kinds of arrangements pose more risk than others. For example, contracts that involve a AAA on a corrective action plan or contracts that are disproportionately large compared to a AAA's overall budget may be considered to pose more risk. As we discussed in the proposed rule, State agencies could consider the potential risks of different kinds of contracts and commercial relationships as they develop and implement the most efficient and least	**a reference to the importance of involving AAAs in the development of the SUA's policies and procedures around this review of contracting activities. ACL: "We believe that requiring State agencies to establish clear policies and procedures for approval processes, *developed in consultation with AAAs*, will expedite the establishment of important partnerships." (PDF PAGE 67, emphasis added by USAging)** **USAging will continue our work with ACL and ADvancing States to inform any subregulatory guidance or training and technical assistance provided to states and AAAs. It's**

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	process, develop policies and procedures for area agencies on aging and service providers to receive blanket approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships when such contracts and relationships are supported by OAA funding; such policies and procedures around blanket approval should not be onerous, impede or cause undue delays in securing such contracts or engaging in contracting relationships;		burdensome approval processes possible.131 State agencies have the discretion to decide whether it is appropriate to incorporate template language into agreements, standard assurances, or to use other methods of standardization. **(PDF PAGE 78)** We agree with commenters who noted that State agencies are not parties to these contracts and commercial relationships; however, that has no bearing on their authority to review and approve them. State agencies are responsible for reviewing and approving certain contracts and commercial relationships, consistent with sections 305(a)(1)(C),136 306(a),137 306(b) and 212(b)(1) of the Act. Engaging in these	**also critical that AAAs advocate with their SUAs as such policies and procedures are amended or developed based on the new regulation.**

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			responsibilities does not make the State agency a party to the contract or commercial relationship under review. **(PDF PAGE 79)** We prefer to leave State agencies the discretion to decide the details of their policies and procedures related to review and approval of contracts and commercial relationships (including pre-approval of agreements described in section 212 of the Act)140 because circumstances vary across States and the State agency is ultimately responsible for ensuring the appropriate use of Federal funds granted to the State. However, in developing their policies and procedures, State agencies should consider the government interests in reviewing the potential contract or commercial	

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			relationship (including, among other concerns, any potential COI and whether appropriate firewalls exist to mitigate them; whether the AAA is meeting existing obligations under the Act; and potential risks to the AAA, the aging services network, or to the individuals served by the AAA associated with the proposed contract or commercial relationship). Section 306(a) of the Act sets forth many of these interests in the form of assurances that AAAs must offer for area plan approval.141 State agencies have the discretion to request to review contract documents if they deem it necessary to determine whether the contract or commercial relationship may be approved, consistent with their policies and procedures. However, subrecipients	

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			should generally be able to provide sufficient information to address these concerns without having to share contract documents for review. This should include, at a minimum, information related to the proposed partnering entity,142 the proposed services to be provided, and specific assurances related to other requirements under section 212(b).143 We intend to provide tools and examples that State agencies may, at their discretion, adapt and use. We intend the delayed compliance date for this provision to provide adequate time for State agencies and subrecipients to adopt compliant policies and to engage in technical assistance as needed. **(PDF PAGE 81)** We disagree with commenters who	

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			described State oversight in this area as an overreach. Our interpretation of the statute is that the Act applies to agreements "[...] to provide services to individuals or entities not otherwise receiving services under this Act [...]" regardless of whether OAA funds are directly expended as part of the agreement.	
§ 1321.47, § 1321.67 Conflicts of Interest (COI) Policies and Procedures for States, AAAs **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 guidance as set forth by the Assistant Secretary for Aging. These policies	***The final regulation should not suggest or state that these or similar potential organizational COIs can't be prevented or remedied.*** We do not believe this is ACL's intention, but many in the field are concerned about a) whether saying something is a COI is enough to prevent a state or AAA from operating multiple programs at all and b) that subsequent state policies and procedures	**(PDF PAGE 345)** **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	**(PDF PAGE 169-170)** **1321.47** Comment: A few commenters pointed out the potential for COI when a State agency or a AAA is lobbied by private interest or establishes contracts and commercial relationships with private entities. Response: We agree that COI may arise in the context of contracts and commercial relationships with private entities. As detailed in the discussion	**USAging: We appreciate that ACL clarified that it is not an inherent conflict-of-interest to co-locate certain programs in one state or area agency on aging, but that all mitigation processes must be in place.** **In the case of guardianship or Adult Protective Services functions, ACL added language to the regulation to**

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and procedures must safeguard against conflicts of interest on the part of the State, 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 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	could treat potential conflicts as irremediable rather than focusing on conflict prevention with well-proven tools such as firewalls and clear policies.	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	of § 1321.9(c)(2), a State agency should consider the potential for a heightened risk of COI when developing policies and procedures for approving such agreements. ACL will continue to provide sub-regulatory guidance and technical assistance related to COI in contracts and commercial relationships for grantees and subrecipients. **(PDF PAGE 170)** Comment: A few commenters sought to clarify that it may not be a COI for a State agency to operate both OAA programs and APS or a public guardianship program, for example. A commenter noted that such arrangements strengthen the ability of an agency to improve the lives of older adults and influence policy.	**specifically document those COI mitigation strategies, a reasonable compromise and protection that will allow AAAs serving as guardians of last resort or co-located with APS programs to continue their critical work. We applaud this approach by ACL.**

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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		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	Comments reiterated that this situation is not uncommon and requested clarity as to whether specific scenarios represent COI that cannot be mitigated. We received several comments that described how the commenters mitigated the potential COI with guardianship programs. For example, they only served as guardian of last resort; promoted the use of alternatives to guardianship; provided for defense of guardianship through another funding source; and generally adhered to the ethical standards for guardians developed by the National Guardianship Association. Response: Whether a COI exists due to co-location of APS and guardianship programs, and whether it can be	

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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; and (9) Establishing the actions		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; (9) Establishing the actions the State agency will require a Title III program to take in order to remedy or remove	mitigated, is fact-dependent. **This provision does not suggest that certain programs may not be located in State agencies**. Rather, State agencies should carefully evaluate the potential for COI to arise when programs are co-located and should create and maintain robust polices, firewalls, monitoring, and remediation as necessary. To address concerns, **however, we have amended §1321.47 to require the State agency to document COI mitigation strategies, as necessary and appropriate, when a State agency or Title III program operates an APS or guardianship program.** **1321.67** Comment: We received	

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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. (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		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	numerous comments on COI related to guardianship programs administered by AAAs. Several commenters wrote in support of allowing AAAs to serve as public guardians. Some noted that such programs are a last resort. A commenter offered that allowing a AAA to serve as a guardian was preferable to relying on a for-profit entity, where the presence of a profit motive heightens the risk of abuse. One commenter wrote that guardianship programs hosted by AAAs were particularly important in rural communities, where other options may not be readily available. Many commenters stressed the necessity of appropriate safeguards and firewalls for guardianship programs co-located in or administered by AAAs.	

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person in a position of trust; (3) One or more conflicts between competing duties; and (4) Other conflicts of interest as identified in guidance as set forth 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 as identified in guidance as set forth by the Assistant Secretary for Aging and/or by State agency policies. **§ 1321.67 Conflicts of interest policies and procedures for Area Agencies on Aging.** (a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act,		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. **(PDF PAGE 362)** **1321.67**	Some commenters provided examples of successful guardianship programs administered by AAAs. Commenters stressed that such programs can be ethically and efficiently administered alongside other Title III programs with appropriate measures to protect from COI and further detailed the process by which their State agency or a AAA establishes firewalls to protect against conflicts. As discussed in response to comments to § 1321.47, commenters described mitigation strategies such as serving as guardian of last resort; promoting the use of alternatives to guardianship; and providing for defense of guardianship through another funding source. A number of other commenters, however, held that it is in the	

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guidance as set forth by the Assistant Secretary for Aging, and State policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, 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		(a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the Assistant Secretary for Aging, and State agency policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, 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	public interest to prohibit AAAs from being appointed as guardians and that an inherent and irremediable COI exists for a AAA hosting a guardianship program. One commenter offered an example wherein individuals remained in a nursing home when they should have received care in the community due to a COI in a AAA guardianship program. Response: We appreciate commenters who responded to our request for input regarding AAAs conducting guardianship programs or being appointed the guardian for an older person. We recognize the potential for COI and are sensitive to the gravity of such situations and concerns of commenters who believe such conflicts are irredeemable. However, we decline to completely	

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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 area agency on aging employees and agents administering Title III programs do not have a financial interest in Title III programs; (3) Complying with 45 CFR 1324.21 regarding the Ombudsman program, as appropriate; (4) Removing and remedying any actual, perceived, or potential conflict between the area agency on aging and the area agency on aging		conflicts of interest at organizational and individual levels, including: (1) Reviewing service utilization and financial incentives to ensure agency employees, governing board and 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 area agency on aging employees and agents administering Title III programs do not have a financial interest in Title III programs; (3) Complying with § 1324.21 of this chapter regarding the Ombudsman program, as appropriate; (4) Removing and remedying	prohibit AAAs from hosting guardianship programs or serving as guardians to older adults. As noted by some commenters, oftentimes these programs and appointments exist because no other alternative is available. Furthermore, some State statutes appoint the AAA or State agency to serve as guardian in cases where no other entity is available or appropriate. We agree that policies and procedures including firewalls and other safeguards are necessary to protect against COI for AAAs that serve as guardians. Therefore, we have amended both § 1321.47 and § 1321.67 to require documentation of COI mitigation strategies, as necessary and appropriate, when a State agency, AAA, or Title III program operates an Adult	

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employee or contractor's financial interest in a Title III program; (5) Establishing robust 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		any actual, perceived, or potential conflict between the area agency on aging and the area agency on aging employee or contractor's financial interest in a Title III program; (5) Establishing robust 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	Protective Services or guardianship program. We will continue to provide technical assistance to State agencies and AAAs.	

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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 State agency'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; and (11) Establishing the actions the area agency will require Title III programs		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 State agency'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		

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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. (b) [Reserved]		an unsolicited item of nominal value; (11) Establishing the actions the area agency will require Title III programs 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 (12) Documentation of conflict of interest mitigation strategies, as necessary and appropriate, when operating an Adult Protective Services or guardianship program. (b) [Reserved]		
§ 1321.93 Legal Assistance and Guardianship (2) Standards for selection of legal assistance providers. Area agencies on aging shall adhere to the following standards in	We suggest that some or all the new additions to the regulation be softened to better accommodate the range of state, AAA and provider experiences in different parts of the country. Specifically:	**1321.93 Legal Assistance** **(PDF PAGE 376)** (2) Standards for selection of legal assistance providers. Area agencies on aging shall adhere to the	**1321.93 Legal Assistance** **(PDF PAGE 148)** Section 1321.93(c) sets forth the requirements for the AAA regarding legal assistance. Similar to the State agency	**USAging: ACL did not take our suggested changes to this section, so no further flexibility will be available to AAAs in the selection of legal assistance providers and the rule that AAAs may not pre-screen**

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selecting legal assistance providers: (i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and (ii) The area agency on aging must select the legal assistance provider(s) that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act, these regulations, and guidance as set forth by the Assistant Secretary for Aging for provision of legal assistance. (d) Standards for legal assistance provider selection. Selected legal assistance providers shall	• ***Sec. 1321.93 (d)(2): We recommend adding "wherever possible" after "including" but before "income and public entitlement benefits…"*** • ***Provide flexibility for providers on meeting the language and accessibility requirements, which only apply to this section of the OAA.*** *Philosophically, this is important, but given the resource limitations in certain areas of the country, flexibility would be welcome.* We also are concerned that in one instance, the legal assistance language does not reflect the AAA's important role in providing Information and Referral (I&R) and other screening or assessment roles, even	following standards in selecting legal assistance providers: (i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and (ii) The area agency on aging must select the legal assistance provider(s) that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act and all applicable Federal requirements for provision of legal assistance. (d) Standards for legal assistance provider selection. Selected legal assistance providers shall exhibit the capacity to: (1)	requirement to designate a minimum percentage of Title III, part B funds to be directed toward legal assistance, the AAAs must take that minimum percentage from the State agency and expend at least that sum, if not more, in an adequate proportion of funding on legal assistance and enter into a contract to procure legal assistance. The final rule reflects the statute and existing regulation in stating requirements for the AAAs to follow when selecting the best qualified provider for legal assistance, including that the selected provider demonstrate expertise in specific areas of law that are given priority in the Act, which are income, health care, long-term care, nutrition, housing, utilities, protective	**potential legal services clients remains unchanged in the final regulation.** **However, ACL did add language that suggests that allows AAAs some leeway in terms of the types of expertise the legal providers must have, adding at the end of the list of subject areas, "prioritizing focus from among the areas of law based on the needs of the community served," a modest concession to our concerns about finding providers with such extensive expertise, especially in certain areas of the country.** **We have no objection to ACL's additional clarification about the very narrow instances where OAA legal**

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exhibit the capacity to: (1) Retain staff with expertise in specific areas of law affecting older persons with economic or social need, including public benefits, resident rights, and alternatives to institutionalization; and (2) 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, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship.	as related to access to legal services. Legal assistance is just one of many services coordinated by AAAs and it should not be so siloed and weighed down by regulations that it limits the holistic and person-centered approach to all OAA services that the Act demands. ***ACL should strike the language in 1321.93 (e)(3)(i) that precludes the AAA from pre-screening older adults seeking legal assistance.*** We are also very concerned by ACL's request for feedback on "if operating a guardianship program or accepting a guardianship appointment of an older person should be a prohibited conflict for AAAs, since the Act requires AAAs to advocate for the rights of older people, including in	Retain staff with expertise in specific areas of law affecting older individuals with economic or social need, including the priority areas identified in the Act; (2) 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, prioritizing focus from among the areas of law based on the needs of the community served;	services, abuse, neglect, age, discrimination, and defense against guardianship. Section 1321.93(e) also sets forth standards for contracting between AAAs and legal assistance providers, including requiring the selected provider to assist individuals with LEP, including in oral and written communication. The selected provider must also ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services where necessary. We also clarify that the AAA 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.	**services dollars may be used to support an older adult who is seeking guardianship over another person.**

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	guardianship arrangements." (pages 39590-91) As already noted in the COI section of our comments, these concerns can be mitigated with appropriate COI policies and firewalls. AAAs already work diligently to prevent real or perceived COI across their agencies. **USAging agrees that it is reasonable for ACL to regulate that the vast majority of OAA legal assistance dollars being spent on guardianship issues be limited to "defense of guardianship."** ***However, we do not agree that a state or AAA's role in providing OAA legal assistance presents an irremediable COI with playing a role in the state or local***		(PDF Pages 150-151) The other area of focus is guardianship and alternatives to guardianship. Section 307(a)(11)(E) of the Act also states: "[...] area agencies on aging will give priority to legal assistance related to [...] defense of guardianship[.]"222 We interpret this provision to include advice to and representation of older individuals at risk of guardianship to oppose appointment of a guardian and representation to seek revocation of or limitations on a guardianship. It also includes assistance that diverts individuals from guardianship to less restrictive, more person directed forms of decision support such as health care and financial powers of attorney, advance directives and	

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	guardianship system, assuming the proper firewalls and COI policies are in place.		supported decision-making, whichever tools the client prefers, whenever possible. Despite the clear prioritization of legal assistance to defend against imposition of guardianship of an older person, the Act in section 321(a)(6)(B)(ii) also states Title III, part B legal services may be used for legal representation "in guardianship proceedings of older individuals who seek to become guardians, if other adequate representation is unavailable in the proceedings[.]"223 The language in section 321(a)(6)(B)(ii)224 and the language in section 307(a)(11)(E)225 have been interpreted by some AAAs and some contracted legal providers as meaning funding under the Act can be used to petition	

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			for guardianship of an older adult, rather than defending older adults against guardianship. Specifically, our goal is to clarify the role of legal assistance providers to promote self-determination and person-directedness and support older individuals to make their own decisions in the event of future diminished decisional capacity. Additionally, public guardianship programs in some States, and private practitioners in all States, are generally more available and willing to represent petitioners to establish guardianship over another adult than they are to represent older adults over whom guardianship is sought. The primary role of legal assistance providers is to represent older adults who are or may be	

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			subjected to guardianship to advance their values and wishes in decision-making. Legal assistance resources are scarce and accordingly should be preserved to represent older adults' basic rights to make their own decisions. ACL believes that legal assistance should not be used to represent a petitioner for guardianship of an older person except in the rarest of circumstances. The final rule includes the statutory exception in the regulations, and it will apply in the very limited situation of (1) someone who is eligible for Older Americans Act services, (2) who seeks to become a guardian of another individual when no other alternatives to guardianship are appropriate, and (3) where no other adequate representation is	

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			available. The legal assistance provider undertaking such representation would have to establish that the petitioner is over 60, and that no alternatives to guardianship, as discussed above, are available. The provider would also have to establish that no other adequate representation is available through public guardianship programs that many States have established, through bar associations and other pro bono services, or through hospitals, nursing homes, APS, or other entities and practitioners that represent petitioners for guardianship. A legal assistance program that would bring guardianship proceedings as part of its normal course of business, that represents a relative of an older person as petitioner at	

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			the request of a hospital or nursing facility to seek the appointment of a guardian to make health care decisions, or that undertakes representation at the behest of APS would not satisfy our interpretation of the limited applicability of the exception. These parties have access to counsel for representation in petitioning for guardianship.	
§ 1321.87 Nutrition Services (a) Nutrition services are community-based interventions as set forth in Title III, Part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services. (1)	We strongly support ACL's recommendation to allow for "grab-and-go"–style meal delivery under the OAA Title III C1 congregate meals program, as it allows AAAs more flexibility to meet the nutritional and social needs of older adults in a person-centered way. However, we ask ACL to consider altering this C1 improvement to:	**(PDF PAGE 371 – 374) § 1321.87 Nutrition services.** (a) Nutrition services are community-based interventions as set forth in Title III, part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other	**(PDF PAGE 189-190) § 1321.87 Nutrition services.** New § 1321.87 clarifies the nutrition services set forth in Title III, part C of the Act— which includes congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.269 Based on experiences during the COVID-19 PHE and numerous	**USAging: ACL accepted our recommendation to increase the percentage of funding that is allowed to be spent on this alternative format (grab and go, etc.) to 25 percent (after all transfers). They retained kept language clarifying that an individual does not need to be homebound to receive**

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Congregate Meals are meals provided under Title III C–1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in person, except where: (i) If included as part of an approved State plan as set forth in § 1321.27 or State plan amendment as set forth in § 1321.31(a), and area plan or plan amendment as set forth in § 1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carryout, drive-through, or similar meals may be provided under Title III C–1; (ii) Meals provided as set forth in (A) shall: (A) Not exceed 20 percent of the funds expended by the State agency under Title III C–1; (B) Not exceed 20 percent of the funds expended by any area	• ***Allow AAAs to offer this service regardless of the SUA's interest in mandating or offering it statewide.*** This is too important of a flexibility to be fully at the state's discretion, as it is a great example of customizing services to meet the current needs of AAA clients at the local level and being as responsive as possible to offering older adults a range of service options including those they actually want to receive. • ***Increase the percentage of funding that is allowed to be spent on this alternative format to 25 percent.*** If the goal is flexibility and given the tremendous	nutrition services. (1) Congregate meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in-person, except where: (i) If included as part of an approved State plan as set forth in § 1321.27 or State plan amendment as set forth in § 1321.31(a) and area plan or plan amendment as set forth in § 1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carry-out, drive-through, or similar meals may be provided under Title III, part C-1; (ii) Meals provided as set	requests for flexibility in provision of meals, we set forth that meals provided under Title III, part C-1 of the Act may be used for shelf-stable, pick-up, carry-out, drive-through or similar meals, if they are done to complement the congregate meal program and comply with certain requirements as set forth. We also clarify that home-delivered meals may be provided via home delivery, pick-up, carry-out, or drive-through and that eligibility for home-delivered meals is not limited to those who may be identified as "homebound," that eligibility criteria may consider multiple factors, and that meal participants may also be encouraged to attend congregate meals and other activities, as feasible, based on a	**OAA Title III C2 home-delivered meals. Additionally, they maintained language that makes explicit that a SUA does not have to apply equal limitations on transfers to each AAA as long as their overall amount statewide remains under the transfer limit, both of which USAging supported.** **However, ACL did not accept our recommendation to allow AAAs to offer grab-and-go meal delivery regardless of the SUA's interest in mandating or offering it statewide, citing the state's authority in the Act to make such decisions.**

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agency on aging under Title III C–1; (iii) Meals provided as set forth in (i) may be provided to complement the congregate meal program: (A) During disaster or emergency situations affecting the provision of nutrition services; (B) To older individuals who have an occasional need for such meal; and/or (C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need. (2) Home-delivered meals are meals provided under Title III–C–2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate	expansion of this form of service delivery during COVID-19, USAging believes a slightly higher cap is needed in order to respond to local and changing needs. • ***Make it easier to use this new flexibility by reducing the amount of documentation the SUA, AAA and providers need to manage.*** We appreciate the intent behind this given the congregate meal program's focus on socialization, but a modestly staffed SUA may be reluctant to take up the option due to the added paperwork or complexity, which limits the AAA's ability to take a person-centered approach with its clients. We	forth in paragraph (a)(1)(i) of this section shall: (A) Not exceed 25 percent of the funds expended by the State agency under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed; (B) Not exceed 25 percent of the funds expended by any area agency on aging under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed. (iii) Meals provided as set forth in paragraph (a)(1)(i) of this section may be provided to complement the congregate meal program: (A) During disaster or emergency situations affecting the	person-centered approach and local service availability. We specify that nutrition education, nutrition counseling, and other nutrition services may be provided with funds under Title III, parts C-1 or C-2 of the Act. As required by section 331(1), we set forth requirements to determine the frequency of meals in areas where five or more days a week of service is not feasible.270 This provision also clarifies that funds must be distributed through an approved IFF or funds distribution plan, as articulated in the State plan. Finally, this provision sets forth requirements for NSIP allocations. NSIP allocations are based on the number of meals reported by the State agency which meet	

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setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out or drive-through, or through other service as determined by the plan. (i) Eligibility criteria for home delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors pertaining to their need for the service, including social and economic need. (ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person centered approach and local service availability. (3)	also desire a lighter approach to documentation as we are cognizant of the burden of tracking on the providers as well as AAAs. USAging is calling on ACL to clarify, in the final rule or in subregulatory guidance, whether the proposed 20 percent of C1 funding is calculated based on the total allocation to the state or AAA, or the allocation *after* any transfers have been made (i.e., C1-C2 transfers, as well as C-B). **USAging supports ACL's clarification that an individual does not need to be homebound to receive an OAA Title III C2 home-delivered meal** and that a AAA or provider may be allowed to encourage a home-delivered meal client to	provision of nutrition services; (B) To older individuals who have an occasional need for such meal; and/or (C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need. (2) Home-delivered meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be	certain requirements, as specified. State agencies may choose to receive their allocation grants as cash, commodities, or a combination thereof. NSIP funds may only be used to purchase domestically produced foods (definition included in § 1321.3) used in a meal, as set forth under the Act. We intend for this provision to answer many questions we have received regarding the proper use of funds under the NSIP. Comment: We received comments asking to modify the 20 percent limit on shelf-stable, pick-up, carry-out, drive-through, or similar meals with Title III, part C-1 funds as set forth in § 1321.87(a)(1)(ii) and to clarify if the 20 percent limit is to be calculated based on the original allocation to the State or after completion of any	

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Nutrition education is information provided under Title III–C–1 or 2 which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants. (4) Nutrition counseling is a service provided under Title III–C–1 or 2 which must align with the Nutrition Care Process of the Academy for Nutrition and Dietetics. Congregate and home delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, and the availability of resources and of expertise of a Registered Dietitian	attend a congregate setting for other activities—both of which reflect a person-centered approach. We trust AAAs will continue to be judicious and thoughtful as they prioritize those most in need of services and adjust to local resources and conditions. The limited funding available for all OAA services should not be a justification for overly strict guidelines that do not reflect the roles of AAAs to determine local needs and leverage local resources to meet those needs. **We also appreciate ACL's updating of Sec. 1321.9 (c)(2)(iii)(F)** to include language that makes explicit that a SUA does not have to apply equal limitations on transfers to each AAA. This allows AAAs with higher need to execute	provided via home delivery, pick-up, carry-out, drive-through, or similar meals. (i) Eligibility criteria for home-delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors pertaining to their need for the service, including social need and economic need. (ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability. (3) Nutrition education is information provided under Title III, parts C-1 or 2 which provides	transfers. Response: Congress appropriates separate funds for congregate and home-delivered meals, as set forth by the Act. ACL believes that offering a limited number of shelf-stable, pickup, carry-out, drive-through, or similar meals to complement the congregate meals program and meet unique needs of program participants in greatest economic need and greatest social need is allowable and aligned with the purpose of these funds as appropriated. Based on the feedback we received, we believe that a limit of up to 25 percent, to be calculated based on the final amount of the Title III, part C-1 award after all transfers as set forth in § 1321.9(c)(2)(iii), is a reasonable approach to provide some flexibility	

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Nutritionist. (5) Other Nutrition Services include additional services provided under Title III–C–1 or 2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries. (b) State and/or area agency policies and procedures shall define how the availability of meals five or more days per week is determined by taking into consideration availability of resources, the community's need for nutrition services as described in the State and area plan, and whether the decision will be made by each nutrition provider or meal site within a planning and service area. (c) All funds provided under Title III–	transfers greater than the statewide limit to better meet the needs of older adults in their PSAs.	individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants. (4) Nutrition counseling is a service provided under Title III, parts C-1 or 2 which must align with the Academy of Nutrition and Dietetics. Congregate and home-delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, the availability of resources, and the expertise of a Registered Dietitian Nutritionist. (5) Other nutrition services include additional services provided under Title III, parts C-1 or 2 that may	while retaining the important aspects of the congregate meals program. As a result, ACL has modified the provisions at § 1321.87(a)(1)(ii)(A) to read "Not exceed 25 percent of the funds expended by the State agency under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed;" and at § 1321.87(a)(1)(ii)(B) to read, "Not exceed 25 percent of the funds expended by any area agency on aging under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed." Comment: We received comments asking to	

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C of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51. (d) Nutrition Services Incentive Program allocations are available to States and territories that provide nutrition services where: (1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the State agency which meet the following requirements: (i) The meal is served to an individual who is eligible to receive services under the Act; (ii) The meal is served to an individual who has not been means tested to receive the meal; (iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service; (iv) The meal meets the other		be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries. (b) State agencies shall establish policies and procedures that define a nutrition project and include how a nutrition project will provide meals and nutrition services five or more days per week in accordance with the Act. The definition of nutrition project established by the State agency must consider the availability of resources and the community's need for nutrition services as described in the State and area plans. (c) All funds provided under Title III, part C of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51. (d) Nutrition	allow State agencies and/or AAAs to make decisions on whether to provide shelf-stable, pick-up, carry-out, drive-through, or similar meals with Title III, part C-1 funds as set forth in § 1321.87(a)(1)(i), without AAAs requiring the State agency's approval, the provision of such meals statewide, or demonstration that such meals complement the congregate meal program. Response: Congress appropriates separate funds for congregate and home-delivered meals, as set forth by the Act. The State agency is responsible for policies and procedures to implement programs under the Act, as well as for making the decision about whether or not to permit the provision of shelf-stable, pick-up, carry-out, drive-through,	

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requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 (42 U.S.C. 3030g–22); and (v) The meal is served by an agency that has a grant or contract with a State agency or area agency. (2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities. (3) Nutrition Services Incentive Program funds may only be used to purchase domestically-produced foods used in a meal as set forth under the Act. (4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).		Services Incentive Program allocations are available to States and Territories that provide nutrition services where: (1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the State agency which meet the following requirements: (i) The meal is served to an individual who is eligible to receive services under the Act; (ii) The meal is served to an individual who has not been means-tested to receive the meal; (iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service; (iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans	or similar meals. The State agency is responsible for ensuring program requirements are met, including reporting to ACL. We note that nothing in this provision requires this option to be offered statewide; if State agencies choose to permit the provision of these types of meals using Title III, part C-1 funds, that decision must be incorporated into the applicable State and area plans. **For these reasons, we decline to amend the requirements in the final rule.** We encourage that if this option is pursued, the State agency and area agencies use streamlined processes for documenting the use of this option in State and area plans, for monitoring the use of this option, and for	

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		and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21); and (v) The meal is served by an agency that has a grant or contract with a State agency or area agency. (2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities. (3) Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal as set forth under the Act. (4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).	reporting on the use of this option.	
§ 1321.9(c)(ii) Non-Federal Share Match	USAging believes this new requirement would place an undue burden	**(PDF PAGE 317)** **(ii) Non-Federal share**	**(PDF PAGE 50-51)** **§ 1321.9(c)(2)(ii)**	**USAging: ACL did not alter the language in this section, citing the**

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(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)), 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 § 1321.9(c)(2)(B)(x)(b)(1) . (B) Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be	on AAAs, adding unnecessary barriers to the match-raising process for the non-federal share. To address this, ***USAging recommends ACL remove the new language requiring that match sources are not from means-tested programs by striking (c)(2)(ii)(C) and reordering the rest of the section accordingly.***	**(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	**Non-Federal share (match).** The provision contained in § 1321.47 (Statewide non-Federal share requirements) of the existing regulation is redesignated here as § 1321.9(c)(2)(ii) and revised. The Act includes requirements for non-Federal share (match) funds from State or local sources, as set forth in sections 301(d)(1),73 304(c),74 304(d)(1)(A),75 304(d)(1)(D),76 304(d)(2),77 309(b),78 316(b)(5),79 and 373(h)(2).80 We consolidate and streamline the requirements by listing the requirements and considerations that apply to such funds. We have received frequent technical assistance requests concerning the allowability of using	**Act's prohibition on means testing as the rationale for the regulation limiting match sources to non-means-tested programs.**

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accepted if the funds meet the specified criteria for match. A State 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.		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.	funding for services that are means tested for match. We clarify that State or local public resources used to fund a program which uses a means test shall not be used to meet match requirements. We also clarify that a State agency or AAA may determine match in excess of required amounts, and we clarify match requirements that apply to service and administration costs for each type of grant award under Title III of the Act. We also provide prior written approval for unrecovered indirect costs to be used as match. Comment: We received multiple comments supporting the use of means tested funds to count toward the required match. In addition, many commenters requested	

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			clarification on, or objected to, § 1321.9(c)(2)(ii)(C), which provides that "State or local public resources used to fund a program which uses a means test shall not be used to meet the match." Response: The prohibition against using State or local public resources which use a means test to count toward match is due to the prohibition against means testing in the OAA under section 315(b)(3).81 Match for the federal grant is the non-federal share of the total project costs that a grantee is required to contribute to achieve the purposes of the award and allowability of costs must conform to any limitations or exclusions set forth in the Federal award, 2 CFR 200.403(b) and 45 CFR 75.403(b). Therefore, match must	

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			meet the same requirements that apply to allowed costs under the Act, and the Act prohibits means testing. Accordingly, we maintain the regulatory language of § 1321.9(c)(2)(ii)(C) as proposed. ACL will further address this requirement through technical assistance, as needed.	
§ 1321.9(c)(2)(viii) Rural Minimum Expenditures **(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	***USAging recommends ACL amend Sec. 1321.9(c)(2)(viii) before publishing a final rule.*** USAging suggests the following approach, with our additions in red, but any language that requires SUAs to consult AAAs in the process to determine rural areas and the creation of the plan to meet the needs of rural areas would be acceptable: • *§ 1321.9(c)(2)(viii). Rural Minimum*	**(PDF PAGE 323)** **(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	**(PDF PAGE 59)** **§ 1321.9(c)(2)(viii) Rural minimum expenditures.** The final rule requires State agencies to develop fiscal policies and procedures related to requirements under the Act, corresponding to section 307(a)(3)(B).91 These requirements include that the State agency must: expend not less than the amount expended in accordance with the level set in the Act for services for older	**USAging: ACL did not incorporate or address through their commentary language either of our recommended changes to the proposed language.**

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on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services for fiscal year 2000, 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.	*Expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where: (A) The State agency, in consultation with AAAs, shall establish a process and control for determining the definition of ''rural areas'' within their State; … (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, in consultation with AAAs and via the area plans, for	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.	individuals residing in rural areas, project the cost of providing such services, and specify a plan for meeting the needs for such services. To implement these requirements, we set forth that the State agency establish a process and control for determining how rural areas within the State shall be defined.	

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	meeting the needs for such services for each fiscal year;			
§ 1321.9(c)(2)(xi) Cost Sharing (xi) Cost Sharing. A state 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 § 1321.9(c)(2)(xi)(D). 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	***USAging urges ACL to make the following change before publishing a final rule.*** USAging suggests the following approach but any language that allows AAAs to make the decision to implement cost-sharing would be acceptable: • *"Section 1321.9(c)(2)(xi) Cost Sharing.* A state 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 § 1321.9(c)(2)(xi)(D). ~~If the State agency allows for cost~~	**(PDF PAGE 325-326)** **(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	**(PDF PAGE 68)** **§ 1321.9(c)(2)(xi) Cost sharing.** Comment: ACL received many comments regarding this section. There was disagreement among the commenters about this section. Some commenters expressed that the section helped to clarify the requirements of the Act. Most commenters, however, had issues with the concept of cost sharing as set forth in the provision (some felt the concept should be eliminated) or had issues with the process as set forth in the provision (many felt decisions as to cost sharing should be made at the area agency level).	**USAging: ACL did not opt to incorporate our language, citing statute limitations that give sole authority over whether cost-sharing should be implemented to the SUA.**

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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	~~sharing, the~~ State agencies may implement cost sharing statewide or allow at the option of each area agency on aging. In either case, the State agency shall address these requirements:…"	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	Response: ACL appreciates these comments but declines to make the commenters' requested changes to this section. The requirements in § 1329.9(c)(2)(xi) is mandated by section 315 of the Act.110	

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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		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		

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of such individual is at or below the Federal poverty line is prohibited; (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;		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;		
§ 1321.9(c)(2)(xiii) Private Pay Programs (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	USAging appreciates that ACL is requiring SUAs to establish requirements for private pay programs, enabling AAAs and providers that wish to leverage OAA funding to create additional options for older adults can do so with appropriate guidance from the SUA that is based on this rule and the statute. It's important to note that not only do private pay programs extend the AAA's ability to serve	**(PDF PAGE 327)** **(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	**(PDF PAGE 71)** **§ 1321.9(c)(2)(xiii) Private pay programs.** AAAs and service providers may, in addition to programs supported by funding received under the Act, offer separate private pay programs for which individual consumers agree to pay to receive services. These private pay programs may offer similar or the same services as those funded	**USAging: We are pleased that ACL did not modify their proposed language, which makes clear that SUAs must establish requirements for private pay programs, so that AAAs that wish to leverage OAA funding to create additional options for older adults via private pay will receive appropriate**

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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	more older adults overall, these programs also leverage additional funding that is used to serve more clients under the OAA.	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	under Title III. We add paragraph (c)(2)(xiii) to this provision to provide guidance as to policies and procedures that should be in place to ensure that private pay programs offered by AAAs and service providers do not compromise core responsibilities under the Act. One such core responsibility, for example, is to ensure that individuals who receive information about private pay programs and who are eligible for services provided with Title III funds also are made aware of Title III-funded services and waitlist opportunities for those services.	**guidance from their state.**

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aware of Title III-funded and any similar 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.		and any similar 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.		
§ 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 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) States must have policies and procedures	USAging appreciates the clarity of this section including: • subsection (b) which makes clear that a AAA-model state cannot decide to become a single-PSA state; and • the detail provided to states regarding what their policies and procedures must include, such as notice to interested parties and provisions for including AAAs, providers and older	**(PDF PAGES 331-332)** **§ 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	**(PDF PAGES 92-93)** **§ 1321.13 Designation of and designation changes to planning and service areas.** Section 1321.29 of the existing regulation (Designation of planning and service areas) is redesignated here as § 1321.13 and is retitled to better reflect the content of the revised provision. Section 305 of the Act requires the State agency to divide the State into distinct PSAs and subsequently	**USAging: ACL made no changes to this section, which we support.**

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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 stakeholder feedback,	adults in the action or proceeding.	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	designate a AAA to serve each PSA.173 The Act allowed for exceptions for some State agencies to designate the entire State as a single PSA; however, this option only remains for States that did so on or before October 1, 1980. Single PSA States may be geographically small, such as Rhode Island, or may be sparsely populated relative to their geography, such as Alaska. Dividing States into distinct PSAs allows for a local approach to the planning, coordination, advocacy, and administration responsibilities as required under the Act. We revise this section to affirm the State agencies' obligations to have policies and procedures in place to ensure that the State agency process of designating and changing	

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(6) The appeals process for affected parties, and (7) Timeframes that apply to each of the items under (c). (d) States 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 or greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such areas; (4) The distribution of older individuals who are		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 individuals with limited English proficiency, and older individuals residing in rural areas) residing in	PSAs will be transparent, will hold the State agency accountable for its decisions, and will afford due process to affected parties. We also describe factors that a State agency should take into account when it considers changing a PSA designation, consistent with the aims of the Act. These factors include the geographical distribution of older individuals in the State, the incidence of the need for services under the Act, the distribution of older individuals with greatest economic need and greatest social need, the distribution of older individuals who are Native Americans, the distribution of resources under the Act, the boundaries of existing areas within the State, and the location of units of general purpose local government. Since all	

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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, 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 § 1321.15(d). Such explanations must be included in the State plan amendment submitted as set forth in § 1321.31(b) or State		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	States now have designated PSAs, we provide greater detail on the requirements for changing PSAs, as specified in the Act, based on questions we have received and areas of confusion that have been expressed. For example, we anticipate that our requirement that State agencies must consider the listed factors will resolve confusion over how State agencies should make decisions about whether and how to change PSA designations.	

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plan submitted as set forth in § 1321.33.		included in the State plan amendment submitted as set forth in § 1321.31(b) or State plan submitted as set forth in § 1321.33.		
§ 1321.21 Withdrawal of Area Agency Designation § 1321.21 Withdrawal of area agency designation. (a) In carrying out section 305 of the Act, 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	USAging thanks ACL for the update made in (a)(4) and we are in general support of ACL's proposed regulatory language on the protocols that states must follow when withdrawing a AAA designation, with one exception. Under (d)(3), which aims to address when a SUA is unsuccessful in procuring a new applicant to serve as the AAA, the rule indicates that reasonable attempts "include conducting a procurement [for a AAA] no less than once per State plan on aging period." USAging believes this is too long of a period for a SUA to remain as the functional AAA for that planning	**(PDF PAGES 336-337)** **§ 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	**(PDF PAGES 96-99)** Section 1321.35 of the existing regulation (Withdrawal of area agency designation) is redesignated here as § 1321.21. We include changes to paragraph (a) to clarify the circumstances under which a State agency may withdraw a AAA designation. These include failure to comply with all applicable Federal requirements or policies and procedures established and published by the State agency; a State agency decision to change one or more PSA designations; and a AAA voluntary request for withdrawal of their designation. In	**USAging: ACL accepted our suggested change here and struck the final sentence in this section, which read "Reasonable attempts include conducting a procurement for an applicant to serve as an area agency no less than once per State plan on aging period."**

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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 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	and service area, given that state plans are often not updated for three or more years. While we appreciate the need for flexibility for states in this regard, we do not want SUAs functioning as AAAs for an extended period of time and call on ACL to include clear language in the final regulations to prevent this, as we don't believe it is in keeping with the very intentional structure of the OAA. ***We recommend striking the final sentence in (d)(3).***	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 §	paragraph (b) we include a clarification that changes to the designation of a AAA must be included in the State plan on aging or an amendment to the State plan, with appropriate cross-references. In paragraph (d) we detail that a State agency may request an extension of time to perform the responsibilities of a AAA after such designation has been withdrawn if the State agency has made reasonable but unsuccessful attempts to procure another entity to be designated as the AAA.	

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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 of this section; (2) Requests an extension; and (3)		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)		

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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. Reasonable attempts include conducting a procurement for an applicant to serve as an area agency no less than once per State plan on aging period.		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.		
§ 1321.27(c) Content of State Plan § 1321.27 Content of State plan. To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act (42 U.S.C. 3026). In addition to meeting the requirements of section	USAging applauds ACL for including language that reflects USAging's June 2022 recommendation, as well as our read of the statute, that all state plans should be built upon area plans and not the other way around. It is notable that area plans are mentioned earlier in the statute than state	**(PDF PAGES 338-339)** **§ 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	**(PDF PAGE 108)** Comment: A commenter noted that § 1321.27(c) requires that all State plans are to be informed by and based on area plans, while single PSA States have no area plans. Response: We appreciate this comment and have revised the provision to clarify.	**USAging: ACL preserved the language included in the proposed rule that requires state plans to be informed by and based on area plans, which was suggested by USAging in our June 2022 RFI response to the existing regulations. We note ACL did add**

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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.	plans, despite other state duties being listed earlier. ***We are glad to see the inclusion of ACL's "informed by and based on" language and urge it to remain the same in the final rule.***	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.		**language specifying that the requirement does not apply to single planning and service area states, a reasonable clarification that has no effect on states with AAAs.**
§ 1321.27(h)(1) Program Development and Coordination Activities (in the State Plan section) (h) Certification that any program development and coordination activities shall meet the following requirements: (1) The State agency shall not fund program development and	USAging requests ACL to provide further clarification on the language in (h)(1) that limits the SUA to "funding program development and coordination activities as a cost of supportive services until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of	**(PDF PAGE 339-340)** (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	**(PDF PAGE 100)** As a part of their responsibilities under the State plan, State agencies engage in program development and coordination activities to meet the needs of older adults. State agencies are also encouraged to translate activities, data, and outcomes into proven	**USAging: ACL declined to take our suggested edit. We have further questions about this provision for ACL. We also note that the state plan section has updated language that reflects the new option under Title III C1 to offer grab-and-go meals.**

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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;	area plans." This presents a logistical problem for states and AAAs. AAAs need access to funding for program development and coordination throughout the year, not just after their administrative funding has been expended. Intentional planning and development leads to better managed spending, and, as currently worded, the proposed rule discounts the fact that funding may not be spent up to the 10 percent because there is a need for program development and coordination activities to move the spending plan forward. Many SUAs allow AAAs to bill their program development funding as they use it throughout the year, and we are concerned that the proposed language	percent of the total of its combined allotments under Title III on the administration of area plans;	best practices, which can be used to leverage additional funding and to build capacity for long-term care systems and services in the State, beyond what the Act alone can support. State agencies also work in conjunction with and support of AAAs who lead such efforts, including integrating health and social services delivery systems. The final rule requires State agencies to certify as a part of their State plans that they will meet certain requirements, including what funding sources can be used for program development and coordination activities and what conditions apply to use of these funds. We specify that funds for program development and coordination activities may only be expended as a cost of State plan	

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	would create a barrier to SUAs and AAAs. ***We propose the following edit:*** • "(h)(1)~~The State agency shall not fund~~ Before allocating funding for program development and coordination activities as a cost of supportive services, the State agency must have a plan to fully expend ~~until it has first spent~~ 10 percent of the total of its combined allotments under Title III on the administration of area plans."		administration, area plan administration, or Title III, part B supportive services, under limited circumstances.	
§ 1321.55 Mission of the Area Agency, Board of Directors, Focal Points § 1321.55 Mission of the area agency. (a) The Act intends that the area agency on aging shall be	USAging appreciates ACL's removal of the archaic focal point language that was previously in this section of the rule—it was not the appropriate place for a focal point reference and did not reflect how	**(PDF PAGES 353-355)** **§ 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	**(PDF PAGES 122-123)** Comment: Many commenters shared concerns about § 1321.55(b)(10) related to an area agency board of directors. Several commenters	**USAging: ACL declined to incorporate our requested change to a reference to the board of directors in this section. They provided commentary on why the language as written is broad**

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the lead on all aging issues on behalf of all older persons 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 persons and family caregivers in leading independent, meaningful, healthy, and dignified	the Aging Network functions presently or will function in the future. However, one change made by ACL in the updating of these regulations is of concern. In (b)(10), language was changed regarding the importance of AAAs engaging with community leaders to meet their missions. By changing "Be directed by" to "Have a board of directors comprised of" leaders, ACL has inadvertently created a problem. This term is not broad enough to apply to all AAAs since a majority of AAAs do not have a traditional board of directors governing their agency due to having a governance structure based in counties, councils of government, municipalities and other governmental entities.	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	recommended that ACL amend the provision to eliminate the phrase "board of directors" and to instead require area agencies to have an advisory council or to "engage with" leaders in the community, including leaders from groups identified as in the greatest economic need and greatest social need. Some commenters noted that many area agencies are part of local governments and may not have the authority to establish a board of directors. Other commenters recommended that ACL remove the requirement for a board of directors to include leaders from groups identified as in greatest economic and greatest social need. Response: ACL appreciates the comments related to the	**enough to ensure all AAAs can meet this requirement regardless of their structure and promised to provide technical assistance should questions arise from the field.** **ACL maintained their removal of focal points in this section, which USAging supported.**

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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 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 persons 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,	The governmental boards or similar structures (e.g., county board of supervisors) that govern those agencies have a much broader scope and do not provide the level of advising to the AAA that we believe the statute is calling for in this section. We believe the statute in this case refers to the advisory council set out in another section of the statute and detailed in § 1321.63 of the proposed rule. ***Our recommendation, therefore, is to strike, in (b)(10), the first seven words and replace them with "Engage with."*** • "(10) ~~Have a board of directors comprised of~~ Engage with leaders in the community..." An alternative approach would be to clearly	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	regulatory text in § 1321.55(b)(10) and notes that both governmental and not-for-profit area agencies need an entity to be responsible for governance, including legal and fiduciary responsibilities. The OAA requires area agencies to establish advisory councils which have distinct responsibilities related to the responsibilities of an area agency that are separate and apart from the governance responsibilities of a board of directors. We note that this provision contains only minor changes from the existing rule which stated, "(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs,	

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including trusted leaders of communities in greatest economic need or greatest social need, and older persons and family caregivers in the community; (6) Offer special help or targeted resources for the most vulnerable older persons, 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 persons 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	reference the advisory council: • "(10) Use an advisory council as set forth in § 1321.63 to engage with leaders in the community…" Whichever approach ACL selects, this is an important fix to make in the final rule.	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	design solutions, track overall success, stimulate change and plan community responses for the present and for the future." Thus, we decline to eliminate the regulatory text which states, "(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." We acknowledge that governance responsibilities for government-based area agencies often reside with an elected Board of	

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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		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	Commissioners or other elected officials. In this specific governance structure, an area agency may not have authority to establish a separate board of directors for the area agency or to broaden the composition of an elected board to include leaders from groups identified as in the greatest economic and greatest social need. For this reason, ACL will provide technical assistance regarding government-based area agencies who do not have the authority to establish a separate board of directors that includes leaders of groups identified as in greatest economic need and greatest social need to ensure the needs of these populations are reflected in the composition of the board of directors for the AAA.	

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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 under § 1321.9.		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 § 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 persons and family caregivers; or (2) A separate organizational unit within a multi-purpose agency which functions as the area agency on aging. Where	USAging thanks ACL for the modest but important change made in (a)(2) that best reflects the range of AAA governance structures. We have no further edits to this section of the proposed rule.	**(PDF PAGE 355)** **§ 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 separate	**(PDF PAGES 124-125)** **§ 1321.57 Organization and staffing of the area agency.** The provision contained in § 1321.55 of the existing regulation (Organization and staffing of the area agency) is redesignated here as § 1321.57. The existing language in paragraph (a)(2) of this provision prohibits a separate organizational unit within a multipurpose agency which functions as the	**USAging: ACL maintained the language in (a)(2) reflecting the range of AAA governance structures in the final rule, which we support.**

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the State agency designates a separate organizational unit of a multipurpose agency that has previously been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act (42 U.S.C. 3025(b)(5)(B)). (b) The area agency, once designated, is responsible for providing adequate and qualified staff to facilitate the performance of the functions as set forth in this part. Such functions, except for provision of direct services, are area plan administration functions. (c) The designated area agency shall continue to function in that capacity until either: (1) The State agency withdraws the designation of the area agency as provided in § 1321.21(a)(1) through		organizational unit of a multipurpose agency that has previously been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act (42 U.S.C. 3025(b)(5)(B)). (b) The area agency, once designated, is responsible for providing for adequate and qualified staff to facilitate the performance of the functions as set forth in this part. Such functions, except for provision of direct services, are considered to be area plan administration functions. (c) The designated area agency shall continue to function in that capacity until either: (1) The State agency withdraws the designation of the area agency as provided in § 1321.21(a)(1) through (5); or (2) The area	AAA from having any purpose other than serving as a AAA. The Act promotes AAAs as innovative, collaborative organizations which adapt to ever-evolving social service, health, and economic climates. We eliminate this prohibition to provide more flexibility to AAAs to conduct their operations, subject to State agency policies and procedures. Adequate safeguards exist in the Act and in the regulation (such as requirements with respect to COI) to render this restriction unnecessary.	

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(5); or (2) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency as provided in § 1321.21(a)(6).		agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency as provided in § 1321.21(a)(6).		
§ 1321.59 Area Agency Policies and Procedures § 1321.59 Area agency policies and procedures. (a) The area agency on aging shall develop policies and procedures in compliance with State policies and procedures, including those required under § 1321.9, governing all aspects of programs operated under this part, including those related to conflict of interest, and be in alignment with the Act and guidance as set forth by the Assistant Secretary for Aging. These policies and procedures shall be developed in consultation	USAging applauds ACL's language in this new section which reinforces the AAA's role in developing policies and procedures of its own, in compliance with the state's rules, that govern all aspects of OAA programs. We thank ACL for acknowledging the authorities AAAs have in the Act.	**(PDF PAGES 355-356)** **§ 1321.59 Area agency policies and procedures.** (a) The area agency on aging shall develop policies and procedures in compliance with State agency policies and procedures, including those required under § 1321.9, governing all aspects of programs operated under this part, including those related to conflict of interest, and be in alignment with the Act and all other applicable Federal requirements. These policies and procedures shall be developed in consultation with other appropriate parties in the planning	**(PDF PAGES 175-176)** Comment: ACL received many comments regarding the roles of both area agencies and State agencies in developing policies and procedures for the area agency. Most of these comments expressed support for the proposed provision as detailed in § 1321.59(a) and the reinforcement of an area agency's responsibility for developing their own policies and procedures, in compliance with the State agency's rules. A variety of commenters recommended that State agencies and program participants explicitly be consulted with	**USAging: ACL maintained language reinforcing the AAA's role in developing policies and procedures of its own, in compliance with the state's rules, that govern all aspects of OAA programs. AAAs may find the ACL commentary (left) on this provision helpful in discussions with their SUAs on this topic.**

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with other appropriate parties in the planning and service area. (b) The policies and procedures developed by the area agency shall address the manner in which the area agency will monitor the programmatic and fiscal performance of all programs, direct service providers, and activities initiated under this part for quality and effectiveness. Quality monitoring and measurement results are encouraged to be publicly available in a format that may be understood by older persons, family caregivers, and their families. (c) The area agency is responsible for enforcement of these policies and procedures. (d) The area agency may not delegate to another agency the authority to award or administer funds under this part.		and service area. (b) The policies and procedures developed by the area agency shall address the manner in which the area agency will monitor the programmatic and fiscal performance of all programs, direct service providers, and activities initiated under this part for quality and effectiveness. Quality monitoring and measurement results are encouraged to be publicly available in a format that may be understood by older individuals, family caregivers, and their families. (c) The area agency is responsible for enforcement of these policies and procedures. (d) The area agency may not delegate to another agency the authority to award or administer funds under this part.	surrounding the development of area agency policies and procedures. Response: ACL appreciates comments regarding the development of area agency policies and procedures. As commenters noted, area agencies have the authority and responsibility to develop their own policies and procedures. These policies and procedures must be developed in compliance with all State agency policies and procedures, including those detailed in § 1321.9, and be in alignment with the Act and all applicable Federal requirements, and, where appropriate, in consultation with other parties in the PSAs. ACL maintains that the rule provides area agencies	

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			the flexibility to develop policies and procedures that align with the needs of their individual PSAs. Area agencies have full authority to consult with State agencies in the development of policies and procedures, as appropriate. Further, the Act requires area agencies to establish advisory councils who help with developing and administering the area plan; § 1321.63 requires the councils to be representative of program participants or those that are eligible to participate and to solicit and incorporate public input into the area plan, which will help ensure that the perspectives of older adults are incorporated into area agency policies and procedures.	
§ 1321.63 Area Agency Advisory Council	USAging salutes the importance of AAA advisory councils to	**(PDF PAGES 357-359)** **§ 1321.63 Area**	**(PDF PAGES 132-133)** Comment: ACL received	**USAging: ACL did not incorporate our recommended change**

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§ 1321.63 Area agency advisory council. (a) Functions of council. The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons and family and older relative caregivers in the planning and service area. The council shall advise the agency relative to: (1) Developing and administering the area plan; (2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public; (3) Conducting public hearings; (4) Representing the interest	ensure AAAs' work is informed and advised by the experiences of the diverse array of populations the agency serves. USAging commends ACL's proposed regulations to affirm the importance of advisory councils, as well as the proposed language that helps to ensure representatives of the communities served by the AAA are included on the council. However, in some cases AAAs may need more flexibility given local recruitment challenges and nationwide declines in volunteers. USAging is proposing that ACL amend the language in (b)(1) to specify that the council should be composed of a significant number of older adults, reaching at least 50 percent *where possible.* We note that the statute	**agency advisory council.** (a) Functions of council. The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older individuals and family and older relative caregivers specific to each planning and service area. The council shall advise the agency relative to: (1) Developing and administering the area plan; (2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public; (3) Conducting public hearings; (4) Representing the interests of older individuals and family	many comments regarding proposed § 1321.63(b)(1) which requires that the majority, or more than 50 percent, of area agency advisory council members be older persons, including minority individuals who are participants or who are eligible to participate in the programs. Most of these commenters expressed support for this requirement and noted the importance of ensuring that the service populations' perspectives are included in area agency plans and policies. Some commenters specifically supported the inclusion of older adults with the greatest economic or greatest social need, including LGBTQI+ older adults and people with HIV. Other commenters requested flexibility surrounding advisory	**in this section, including offering some leeway to AAAs to have an advisory council comprised of less than 50 percent older adult members if necessary.** **ACL notes in its commentary that the regulation *encourages but does not require* area agencies to appoint advisory council members representing those identified as in the greatest economic or greatest social need.** **ACL also amended this section to add language that makes clear that the AAA's advisory council may not function as an actual board of directors, nor may any individual serve on both entities at the same time.**

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of older persons and family caregivers; and (5) Reviewing and commenting on community policies, programs and actions which affect older persons and family caregivers with the intent of assuring maximum coordination and responsiveness to older persons and family caregivers. (b) Composition of council. The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of: (1) More	does not set a minimum percentage of the council that must be older adults and, while USAging agrees that this should be the top priority in recruiting for the advisory councils, a too-rigid federal directive can create occasional difficulties or challenges in certain circumstances. We appreciate the language in (b)(9) that notes the final populations to recruit may be "as available" and urge ACL to retain that language. Therefore, ***USAging recommends ACL amend 1321.63 before publishing a final rule.*** USAging suggests the following approach but any language that makes Area Agency Advisory Council composition requirements more flexible would be acceptable:	caregivers; and (5) Reviewing and commenting on community policies, programs and actions which affect older individuals and family caregivers with the intent of assuring maximum coordination and responsiveness to older individuals and family caregivers. (b) Composition of council. The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of: (1) More than 50 percent older	council composition because of concerns related to recruiting volunteer advisory council members, including those in rural communities, and with the greatest economic or greatest social need. One commenter specifically requested that we define the term "efforts" in relation to including those identified as in the greatest economic need and greatest social need. Response: ACL appreciates comments regarding the proposed requirements that the majority of advisory council members be older persons who are eligible to participate in area agency programming and that area agencies must intentionally seek to include those in the greatest economic and greatest social need. The	

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than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include those identified as in greatest economic need or greatest social need in § 1321.65(b)(2); (2) Representatives of older persons; (3) Family caregivers, including older relative caregivers; (4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate); (5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers; (6) Persons with leadership	• "(b)(1) ~~More than 50 percent~~ Significant numbers of older persons, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include those identified as in greatest economic need or greatest social need in § 1321.65(b)(2); whenever possible, older persons should represent more than 50 percent of advisory council members;"	individuals, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include individuals identified as in greatest economic need and individuals identified as in greatest social need in § 1321.65(b)(2); (2) Representatives of older individuals; (3) Family caregivers, which may include older relative caregivers; (4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate); (5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other	primary focus of the advisory council is to assist the area agency in coordinating community-based systems of services for all older persons and family and older relative caregivers in the PSA. The inclusion of older adult members who have the greatest economic or greatest social need will help to ensure that the perspectives of these communities are represented in the area plan. For this reason, we are maintaining § 1321.63(b)(1) as proposed and emphasize that the language encourages but does not require area agencies to appoint advisory council members representing those identified as in the greatest economic or greatest social need. This provides area agencies the flexibility sought by several commenters	

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experience in the private and voluntary sectors; (7) Local elected officials; (8) The general public; and (9) As available: (i) Representatives from Indian Tribes, Pueblos, or tribal aging programs; and (ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability. (c) Review by advisory council. The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.		service providers; (6) Persons with leadership experience in the private and voluntary sectors; (7) Local elected officials; (8) The general public; and (9) As available: (i) Representatives from Indian Tribes, Pueblos, or Tribal aging programs; and (ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability. (c) Review by advisory council. The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval. (d) Conflicts of interest. The advisory council shall not operate as a board of directors for the area agency. Individuals may not serve on both the	regarding council composition due to concerns about volunteer recruitment. ACL will continue to provide technical assistance regarding recruiting older adult advisory council member volunteers in diverse geographical settings, including those identified as in the greatest economic or greatest social need, including how an area agency can demonstrate "effort" to recruit older adult advisory council members with the greatest economic or greatest social need.	

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		advisory council and the board of directors for the same entity.		
§ 1321.69, § 1322.31 Title III and Title VI Coordination **§ 1322.31 Title VI and Title III coordination.** A Tribal organization or Hawaiian Native grantee under Title VI of the Act must have policies and procedures that outline how they will coordinate with any State agency and any applicable area agency on aging providing Title III and/or VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area for which older Native Americans and family caregivers are eligible to ensure compliance with sections 614(a)(11) (42 U.S.C. 3057e(a)(11)) and 624(a)(3) (42 U.S.C.	USAging supports the sections that remind SUAs, AAAs and Title VI programs of their respective responsibilities to coordinate between Title III entities and Title VI grantees. We believe the language as written is appropriate given the important role of coordination and what is reasonable to expect each party to offer the others.	**(PDF PAGE 415)** **§ 1322.31 Title VI and Title III coordination.** (a) A Tribal organization or Hawaiian Native grantee under Title VI of the Act must have policies and procedures, developed in coordination with the relevant State agency, area agency or agencies, and service provider(s) that explain how the Title VI program will coordinate with Title III and/or VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area for which older Native Americans and family caregivers are eligible to ensure compliance with sections 614(a)(11) and 624(a)(3) of the Act (42	**§ 1322.31 ACL commentary can be found on PDF pages 235-238.** **§ 1321.69 ACL commentary can be found on PDF pages 180-183.**	**USAging: ACL made several wording changes designed to involve the Title VI director(s) in a AAA's PSA in the development of the Title III–Title VI coordination plan; to make clear that training and technical assistance is one of the communication opportunities that should be reflected in the policy and procedures on coordination; and to add language around services deployed as a result of coordination required to be culturally appropriate and trauma-informed.**

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3057e(a)(3)) of the Act, respectively. A Tribal organization or Hawaiian Native grantee may meet these requirements by participating in tribal consultation with States. Policies and procedures shall address: (a) How Tribal organization or Hawaiian Native grantee will provide outreach to tribal elders and family caregivers regarding services for which they may be eligible under Title III, and (b) How the Tribal organization or Hawaiian Native grantee will coordinate with Title III and VII programs including: (1) Communication opportunities a Tribal organization or Hawaiian Native grantee will make available to Title III and VII programs, such as meetings, email distribution lists, and presentations, (2) Methods for collaboration		U.S.C. 3057e(a)(11) and 3057j(a)(3)), respectively. A Tribal organization or Hawaiian Native grantee may meet these requirements by participating in Tribal consultation with the State agency regarding Title VI programs. (b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address: (1) How the Tribal organization or Hawaiian Native grantee will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII of the Act; (2) The communication opportunities the Tribal organization or Hawaiian Native grantee will make available to Title III and VII programs, to include meetings, email		

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on and sharing of program information and changes, (3) Processes for how Title VI programs may refer individuals who are eligible for Title III services; (4) Processes for providing feedback on the State plan on aging and any area plans on aging providing Title III and VII funded services within the Tribal organization's or Hawaiian Native grantee's approved service area.		distribution lists, and presentations; (3) The methods for collaboration on and sharing of program information and changes; (4) How Title VI programs may refer individuals who are eligible for Title III services; (5) How services will be provided in a culturally appropriate and trauma-informed manner; and (6) Processes the Title VI program will use for providing feedback on the State plan on aging and any area plans on aging relevant to the Tribal organization's or Hawaiian Native grantee's approved service area. (c) The Title VI program director, as set forth in § 1322.13(a), shall participate in the development of policies and procedures as set forth in §§ 1321.53, 1321.69, and 1321.95 of		

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§ 1321.69 Area Agency on Aging Title III and Title VI coordination responsibilities. (a) For planning and service areas where there are Title VI programs, the area agency's policies and procedures must explain how the area agency's aging network, including local service providers, will coordinate with Title VI programs. Such policies and procedures must at a minimum address: (1) How outreach will be provided to tribal elders and family caregivers regarding services for which they may be eligible under Title III; (2) The communication opportunities the area agency will make available to Title VI programs, such as		this chapter. **(PDF PAGES 363-364)** **§ 1321.69 Area agency on aging Title III and Title VI coordination responsibilities.** (a) For planning and service areas where there are Title VI programs, the area 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 area agency's aging network, including service providers, will coordinate with Title VI programs to ensure compliance with section 306(a)(11)(B) of the Act (42 U.S.C. 3026(a)(11)(B)). (b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address: (1) How the area agency's		

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meetings, email distribution lists, and public hearings; (3) The methods for collaboration on and sharing of program information and changes; (4) How Title VI programs may refer individuals who are eligible for Title III services; and (5) How services will be provided in a culturally appropriate manner. (b) Policies and procedures may also address: (1) Opportunities to serve on area agency advisory councils, workgroups, and boards, and (2) Opportunities to receive notice of Title III and other funding opportunities via the area agency.		aging network, including service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III; (2) The communication opportunities the area 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 service providers where applicable; (4) How Title VI programs may refer individuals who are eligible for Title III		

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		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.		
§ 1321.75 Confidentiality and Disclosure of Information **§ 1321.75 Confidentiality and disclosure of information.** (a) State agencies and area agencies on aging shall have procedures to protect the confidentiality of information about older persons and family caregivers collected in the conduct of their responsibilities. The procedures shall ensure	Maintaining confidentiality is an important safeguard when operating OAA programs and services. USAging has concerns, however, that in (f), the language, while accurate, may not be clear enough for the Aging Network to consistently interpret and implement. Specifically, the naming of the Health Insurance Portability and Accountability Act (HIPAA) may be misunderstood to apply to all OAA-funded entities or activities, regardless of whether	**(PDF PAGES 366-367)** **§ 1321.75 Confidentiality and disclosure of information.** (a) State agencies and area agencies on aging shall have procedures to protect the confidentiality of information about older individuals and family caregivers collected in the conduct of their responsibilities. The procedures shall ensure that no information about an older person or family caregiver, or	**(PDF PAGE 144)** Comment: One commenter noted that expressly including HIPAA in this provision may cause confusion and might imply that all OAA-funded activities are implicated under that law. Response: ACL appreciates this comment. To avoid confusion, we have removed the reference to HIPAA and have clarified that State agencies' policies and procedures must comply with all	**USAging: ACL accepted our suggestion and removed the reference to HIPPA in the final regulations.**

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that no information about an older person or family caregiver, or obtained from an older person or family caregiver by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of their legal representative, unless the disclosure is required by court order, or for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies. (b) A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR	the AAA's or provider's status or activities outside of make them required to be HIPAA compliant. ***We believe the simplest way to ensure clarity is to remove the one example of HIPAA and we suggest it be amended to read:*** • "State agencies policies and procedures must comply with all applicable Federal laws, codes, rules, and regulations, ~~including the Health Insurance Portability and Accountability Act (HIPAA),~~ as well as guidance..."	obtained from an older person or family caregiver by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of their legal representative, unless the disclosure is required by law or court order, or for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies. (b) A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR part 1324, subpart A. State agencies must comply	applicable Federal requirements. However, we note that it is increasingly common for OAA recipients to be engaged in activities that make them HIPAA-covered entities and we encourage grantees and subrecipients to be aware of any associated legal obligations. § 1321.79 Responsibilities of service providers under State and area plans.	

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1324, subpart A—State Long-Term Care Ombudsman Program. State agencies must comply with confidentiality and disclosure of information provisions as directed in 45 CFR 1324, as appropriate. (c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege. (d) State agencies must have policies and procedures that ensure that entities providing services under this title promote the rights of each older individual who receives such services. Such rights include the right to confidentiality of records relating to such individual. (e) State agencies' policies and procedures must explain		with confidentiality and disclosure of information provisions as directed in 45 CFR part 1324, as appropriate. (c) A State or area agency on aging shall not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege. (d) State agencies must have policies and procedures that ensure that entities providing services under this title promote the rights of each older individual who receives such services. Such rights include the right to confidentiality of records relating to such individual. (e) State agencies' policies and procedures must explain that individual information and records may be shared with other State and local agencies, community-		

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that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers in order to provide services. (f) State agencies' policies and procedures must comply with all applicable Federal laws, codes, rules, and regulations, including the Health Insurance and Portability and Accountability Act (HIPAA), as well as guidance as the State determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and Personal Health Information (PHI) in the provision of Title III services under the Act.		based organizations, and health care providers and payers in order to provide services. (f) State agencies' policies and procedures must comply with all applicable Federal laws as well as guidance as the State determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and personal health information in the provision of Title III services under the Act. State agencies are encouraged to consult with Tribes regarding any Tribal data sovereignty expectations that may apply.		
§ 1321.85 Supportive Services	***USAging recommends slightly amending this section*** by striking in	**(PDF PAGES 370-371)** **§ 1321.85 Supportive**	**(PDF PAGES 188-189)** Comment: Several	**USAging: ACL declined to implement our recommended change**

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§ 1321.85 Supportive services. (a) Supportive services are community-based interventions set forth in the Act under Title III Part B, section 321 (42 U.S.C. 3030d) which meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services. (b) State agencies may allow use of Title III, Part B funds for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging. (c) For those Title III, Part B services intended to benefit family caregivers, such as those provided under	(a), "which may include multipurpose senior centers" after "access services." A senior center in and of itself is not a service and is not listed as such in the statute as one of the 26 services a AAA can provide under Title III B Section 321(a). We are not challenging the use of III B funding to, as specified in the law under Section 321(b) and in the proposed rule under 1321.85(b), acquire, construct or renovate multipurpose senior centers, but we do not believe that calling out a specific type of location in the rule adds particular value when there are many other services that III B funds, as well as other types of providers or locations used to deliver those services.	**services.** (a) Supportive services are community-based interventions set forth in the Act under Title III, part B, section 321 (42 U.S.C. 3030d) which meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services. (b) State agencies may allow use of Title III, part B funds for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging. (c) For those Title III, part B services intended to benefit family caregivers, such as those provided under sections 321(a)(6)(C),	commenters recommended changes to this section to make clear that while expenditures for multipurpose senior centers should be allowable, a multipurpose senior center is not in and of itself a service. Response: In referencing supports which may be provided with funds under the Act, multipurpose senior centers are mentioned multiple times, including in section 301(a)(1) regarding the purpose of Title III,262 section 303 regarding authorization of appropriations and uses of funds,263 section 304 regarding allotment and Federal share,264 section 306(a)(1). regarding area plans on aging,265 and in the title of Part B, "Supportive Services and Senior Centers."266 We note	**here, asserting a multipurpose senior center may be defined as a service in and of itself.**

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section 321(a)(6)(C) (42 U.S.C. 3030d(a)(6)(C)), section 321(a)(19) (42 U.S.C. 3030d(a)(19)), and section 321(a)(21) (42 U.S.C. 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III–E. (d) All funds provided under Title III– B of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.		321(a)(19), and 321(a)(21) of the Act (42 U.S.C. 3030d(a)(6)(C), 3030d(a)(19), and 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III, part E. (d) All funds provided under Title III, part B of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.	that some in the aging network may implement multipurpose senior centers as a service, consistent with section 321(a)267, which authorizes services that promote or support social connectedness and reduce negative health effects associated with social isolation and any other services necessary for the general welfare of older individuals; The service of multipurpose senior centers may track measures such as number of visits, number of unduplicated persons served, and hours of staff/volunteer time. For the purposes of including multipurpose senior centers as an allowable expenditure of funds appropriated under Title III, part B as set forth at § 1321.71(a)(1) and an allowable access service to meet minimum adequate proportion	

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			provisions as set forth at § 1321.27(i), we consider multipurpose senior centers to be a supportive service and decline to make changes to this provision. We have made an edit at § 1321.3 (Definitions) to indicate "[...] as used in § 1321.85, facilitation of services in such a facility."	
§ 1321.99 Setting Aside Funds to Address Disasters **§ 1321.99 Setting aside funds to address disasters.** (a) Section 310 of the Act (42 U.S.C. 3030) authorizes the use of funds during Presidentially declared major disaster declarations under the Stafford Act without regard to distribution through the State's intrastate funding formula or funds distribution plan when	USAging is concerned that ACL's language allowing SUAs to set aside funds to address disasters is too broad and doesn't guarantee that AAAs will receive the set-aside-yet-unused funds in a manner timely enough to spend them before the end of the fiscal year. To address this, USAging recommends ACL change the language to ensure the funds are redistributed back to AAAs if unused. Furthermore, we	**(PDF PAGES 389-390)** **§ 1321.99 Setting aside funds to address disasters.** (a) Section 310 of the Act (42 U.S.C. 3030) authorizes the use of funds during Presidentially declared major disaster declarations under the Stafford Act (42 U.S.C. 5121-5207) without regard to distribution through the State agency's intrastate funding formula or funds distribution plan when the following apply: (1)	**(PDF PAGES 211-212)** As a note, funds awarded within 30 days of the end of the fiscal year in which the funds were received may have a project period that exconftends to the length of the State agency's award, subject to the State agency's policies and procedures. For example, if FY 2024 funds set aside were not used under this provision, they would need to be awarded through the IFF or funds	**USAging: ACL declined to increase to 45 days the time allowed AAAs to spend undistributed disaster funds at the end of a year, per our recommendation. ACL argues in their commentary that given typical state funding cycles, AAAs would have much longer than 30 days to expend the funding.**

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the following apply: (1) Title III services are impacted; and (2) Flexibility is needed as determined by the State agency. (b) When implementing this authority, State agencies may set aside funds from their Title III allocations, if specified as being allowed to be withheld for the purpose in their approved intrastate funding formula or funds distribution plan. The following apply for use of set aside funds: (1) State agencies must submit a State plan amendment as set forth at § 1321.31(b), when the State agency awards the funds for use within all or part of a planning and service area covered by a specific major disaster declaration where Title III services are impacted. The State plan amendment must at a minimum include the	recommend returning the unused funds to AAAs sooner than the last month of the fiscal year to give AAAs a more reasonable timeframe to expend the funds. Thirty days does not give AAAs enough time to properly use the funds, potentially resulting in unused funds. As such, we recommend giving AAAs at least 45 days to spend the funds. We also recommend the state notify the AAA of the forthcoming redistributed funds at least 60 days in advance of the end of the fiscal year, to help the AAA plan for the infusion of funding. Finally, to ensure fairness across planning and service areas, USAging recommends ACL make clear that the SUAs must use the intrastate funding formula to redistribute any unused set-aside	Title III services are impacted; and (2) Flexibility is needed as determined by the State agency. (b) When implementing this authority, State agencies may set aside funds, up to five percent of their total Title III allocations, if specified as being allowed to be withheld for the purpose in their approved intrastate funding formula or funds distribution plan, or with prior approval from the Assistant Secretary for Aging. The following apply for use of set aside funds: (1) Set aside funds that are awarded under this provision must comply with the requirements at § 1321.101; and (2) The State agency must have policies and procedures in place to award funds set aside through the intrastate funding formula, as set forth in §	distribution plan by August 31, 2024. They could have a project period ending up to September 30, 2025, subject to the State agency's policies and procedures. As funds provided under Title III of the Act typically have a project period of two years, ACL believes this provides sufficient time for AAAs and service providers to use the funds. ACL encourages the State agency, AAAs, and service providers to be in communication regarding the status of and expectations for use of these funds. We have added the cross-references for the IFF provision (§ 1321.49) and funds distribution plan (§ 1321.51(b)) to § 1321.99(b)(2) for clarity. Additionally, use of the flexibility set forth at § 1321.99 is not required, and some State agencies	

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specific entities receiving such funds; the amount, source, and intended use for such funds; and other such justification of the use of such funds. (2) Set aside funds that are awarded under this provision must comply with the requirements under § 1321.101(b) through (e), and (3) The State agency must have policies and procedures in place to award funds through the intrastate funding formula or funds distribution plan if there are no funds awarded subject to this provision within 30 days of the end of the fiscal year in which the funds were received.	funding. ***Our suggested changes to 1321.99 (b)(3):*** • "(3) The State agency must have policies and procedures in place to award funds through the intrastate funding formula ~~or funds distribution plan~~ if there are no funds awarded subject to this provision within ~~30~~ 45 days of the end of the fiscal year in which the funds were received. Furthermore, the State agency is encouraged to notify area agencies on aging of the pending distribution no later than 60 days from the end of the fiscal year."	1321.49, or funds distribution plan, as set forth in § 1321.51(b), if there are no funds awarded subject to this provision within 30 days of the end of the fiscal year in which the funds were received.	may elect not to pursue this option given limited availability of funds or for other reasons. Other State agencies may provide for emergency and disaster preparedness or response through funds awarded through their existing IFFs or funds distribution plans. This provision offers an opportunity for State agencies to consult with AAAs, service providers, and the general public prior to setting aside funds to address disasters. We believe that as set forth, these provisions provide the appropriate balance of flexibility to State agencies during disaster-related emergencies, and decline to make further changes at § 1321.99.	
Part 1322 Grants to Indian Tribes and Native Hawaiian	Generally, USAging supports the added definitions and updates	**No regulatory language to include**	**No commentary language to include**	**USAging: ACL did not specifically address our comments in their**

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Grantees for Supportive, Nutrition and Caregiver Services	for the Title VI Native American Aging Programs regulations. However, for Title VI programs to implement the proposed regulations, USAging believes that generous ACL technical assistance must be provided to Title VI programs, as we are concerned that some may encounter difficulty in developing the more-robust policies and procedures required of this regulatory update. Title VI programs are drastically underfunded and are chronically understaffed, with overworked staff often carrying out the responsibilities of multiple roles at once. According to USAging's National Survey of Title VI Programs 2020 Report, half of Title VI programs have two or fewer full-time staff and			**commentary on the rule but has announced a series of webinars to assist with implementation and technical assistance.**

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	two or fewer part-time staff. It is imperative that ACL provides Title VI programs with the training, technical assistance and administrative support they will need to continue serving their populations under the new rule.			
§ 1324.303 Legal Assistance Developer **§ 1324.303 Legal Assistance Developer.** (a) In accordance with section 731 of the Act (42 U.S.C. 3058j), the State agency shall designate an individual who shall be known as a State Legal Assistance Developer, and other personnel, sufficient to ensure— (1) State leadership in securing and maintaining the legal rights of older individuals; (2) State	USAging supports the role of a statewide legal services developer and the benefit that having such a role, especially when filled by a full-time employee, can bring to state and local legal assistance efforts and the legal needs of older adults. However, much as with the Legal Assistance section of the regulations, we are concerned that ACL's proposed language does not reflect the on-the-	**(PDF PAGES 454-458)** **§ 1324.303 Legal Assistance Developer.** (a) State Legal Assistance Developer. In accordance with section 731 of the Act (42 U.S.C. 3058j), the State agency shall designate an individual who shall be known as a State Legal Assistance Developer, and other personnel, sufficient to ensure: (1) State leadership in securing and maintaining the legal rights of older individuals; (2) State	**(PDF PAGES 269-270)** Comment: Section 1324.303 sets forth the requirements for the LAD, pursuant to section 731 of the OAA.357 Several commenters were appreciative of the clarification regarding the roles and responsibilities of the LAD. Most, however, discussed challenges facing the position, including a lack of adequate funding and its designation as a part-time position. Some described the LAD as	**USAging: ACL addressed our concern in their commentary by essentially saying funding is outside their scope and therefore the agency cannot weigh in on the matter.**

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capacity for coordinating the provision of legal assistance, in accordance with section 102(23) and (24) and consistent with section 102(33) of the Act (42 U.S.C. 3002(33)), to include prioritizing such services provided to individuals with greatest economic need, or greatest social need; (3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, long-term care Ombudsmen programs, adult protective services, and other service providers under the Act; (i) The Legal Assistance Developer shall utilize the trainings, case consultations, and technical assistance provided by the support and technical assistance entity established	ground realities in some states and areas of the country. Funding for activities under OAA Title VII is extremely limited, and while we would welcome increased investments by Congress in all Title VII programs, including but not limited to the legal assistance developer, we are worried that SUAs will not be able to fulfill these new requirements for legal assistance developer without considerably increased appropriations.	capacity for coordinating the provision of legal assistance, in accordance with section 102(23) and (24) and consistent with section 102(33) of the Act (42 U.S.C. 3002(23), (24), (33)), to include prioritizing such services provided to individuals with greatest economic need, or greatest social need; (3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, Long-Term Care Ombudsman programs, adult protective services, and other service providers under the Act; (i) The Legal Assistance Developer shall utilize the trainings, case consultations, and technical assistance provided by the support and technical assistance entity established	wearing many hats and noted that many LADs are not lawyers, potentially hindering their ability to support the needs of the legal assistance program, including support for legal assistance and elder rights education, and coordination with the Ombudsman program and APS. One commenter stated that it is a misnomer to designate subpart C of the regulations as a State Legal Assistance Development Program, since the Act refers only to the designation of a person as LAD, and to the optional activities a State agency may choose to have the LAD undertake. Additionally, most LAD positions are not full-time, and section 731 of the Act only refers to an individual working as the LAD. Commenters requested that the	

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pursuant to section 420(c) of the Act (42 U.S.C. 3032i(c)). (ii) [Reserved] (4) State capacity to promote financial management services to older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings; (i) In so doing, the Legal Assistance Developer shall take into consideration promotion of activities to increase awareness of and access to self-directed financial management services and legal assistance and; (ii) The Legal Assistance Developer shall also take into consideration promotion of activities that proactively enable older adults and those they designate as decisional supporters through powers of attorney, health care proxies, supported decision making		pursuant to section 420(c) of the Act (42 U.S.C. 3032i(c)). (ii) [Reserved] (4) State capacity to promote financial management services to older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings; (i) In so doing, the Legal Assistance Developer shall take into consideration promotion of activities to increase awareness of and access to self-directed financial management services and legal assistance and; (ii) The Legal Assistance Developer shall also take into consideration promotion of activities that proactively enable older adults and those they designate as decisional supporters through powers of attorney, health care proxies, supported decision making and	regulations require the LAD to be a full-time position staffed by an attorney. Response: ACL appreciates the comments. It is our intent to set out expectations for the duties of the LAD, including coordination of the provision of legal assistance, consistent with the provisions of the Act. However, it is outside the scope of the regulations to address funding issues. We also cannot mandate that the LAD be a full-time position and/or staffed by an attorney. Nevertheless, we remind State agencies that § 1324.303(b) requires them to ensure that the LAD has the knowledge, resources, and capacity to carry out the functions of the position. The Act does not require professional	

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agreements, and similar instruments or approaches to be connected to resources and education to manage their finances so as to limit their risk for guardianship, conservatorship, or more restrictive 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; (i) In so doing, the Legal Assistance Developer shall take into consideration engaging in activities aimed at preserving an individual's rights or autonomy, including, but not limited		similar instruments or approaches to be connected to resources and education to manage their finances and the decisions they make about their lives so as to limit their risk for guardianship, conservatorship, or more restrictive 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; (i) In so doing, the Legal Assistance Developer shall take into consideration engaging in activities aimed at preserving an individual's rights or autonomy,	qualifications for the individual a State agency designates as the LAD, nor does the Act require, as it does for other statutorily designated positions, such as the Ombudsman, that the LAD be a full-time position. Accordingly, these matters are beyond the scope of our regulatory authority. We have made one change to the regulatory text in response to the comments. Given that section 731 of the OAA358 requires the State agency to provide the assistance of an individual, rather than a program, we have modified the title of subpart C of these regulations to State Legal Assistance Development. The title mirrors the title of section 731 of the OAA.	

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to, increasing awareness of and access to least-restrictive alternatives to guardianship, conservatorship, or more restrictive fiduciary proceedings, such as supported decision making, and legal assistance; (ii) In so doing, the Legal Assistance Developer shall adhere to the restrictions contained in section 321(a)(6)(B)(i) of the Act (42 U.S.C. 3030d(a)(6)(B)(i)) regarding the involvement of legal assistance providers in guardianship proceedings, and shall apply these restrictions to conservatorship and other fiduciary proceedings; (iii) In undertaking this activity, the Legal Assistance Developer shall take into consideration coordination of efforts with legal assistance		including, but not limited to, increasing awareness of and access to least-restrictive alternatives to guardianship, conservatorship, or more restrictive fiduciary proceedings, such as supported decision making, and legal assistance; (ii) In so doing, the Legal Assistance Developer shall adhere to the restrictions contained in section 321(a)(6)(B)(i) of the Act (42 U.S.C. 3030d(a)(6)(B)(i)) regarding the involvement of legal assistance providers in guardianship proceedings, and shall apply these restrictions to conservatorship and other fiduciary proceedings; (iii) In undertaking this activity, the Legal Assistance Developer shall take into consideration coordination of efforts		

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providers funded under the Act contracted by area agencies on aging, any Bar Association Elder Law Section, and other elder rights or entities active in the State. (6) State capacity to improve the quality and quantity of legal services provided to older individuals. (b) The activities designated by the State agency for the Legal Assistance Developer, in accordance with paragraphs (a)(1) through (6) of this section, shall be contained in the State plan, per section 307 of the Act and as set forth in § 1321.27. (c) The State agency shall ensure that the Legal Assistance Developer has the knowledge, resources, and capacity to conduct the activities outlined in paragraph (a) of this section. (d) Conflicts of interest. (1)		with legal assistance providers funded under the Act contracted by area agencies on aging, any Bar Association Elder Law section, and other elder rights or entities active in the State. (6) State capacity to improve the quality and quantity of legal services provided to older individuals. (b) State plan. The activities designated by the State agency for the Legal Assistance Developer, in accordance with paragraphs (a)(1) through (6) of this section, shall be contained in the State plan, per section 307 of the Act (42 U.S.C. 3027) and as set forth in § 1321.27 of this chapter. (c) Knowledge, resources, and capacity. The State agency shall ensure that the Legal Assistance Developer has the knowledge,		

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In designating a Legal Assistance Developer, the State agency shall consider any potential conflicts of interest posed by any candidate for the role, and take steps to prevent, remedy, or remove such conflicts of interest. (2) In designating a Legal Assistance Developer, the State agency shall consider both organizational and individual interests that may impact the effectiveness and credibility of the work of the Legal Assistance Developer to coordinate legal assistance and work to secure, protect, and promote the legal rights of older adults in the State. (i) This includes holding a position or performing duties that could lead to decisions that are or have the appearance of being contrary to the Legal		resources, and capacity to conduct the activities outlined in paragraph (a) of this section. (d) Conflicts of interest. (1) In designating a Legal Assistance Developer, the State agency shall consider any potential conflicts of interest posed by any candidate for the role, and take steps to prevent, remedy, or remove such conflicts of interest. (2) In designating a Legal Assistance Developer, the State agency shall consider both organizational and individual interests that may impact the effectiveness and credibility of the work of the Legal Assistance Developer to coordinate legal assistance and work to secure, protect, and promote the legal rights of older adults in the State. (i) This includes holding a position or		

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Assistance Developer's duties as defined in this section and contained in the State plan as set forth in § 1321.27 of this chapter. (ii) [Reserved] (3) The State agency shall not designate as Legal Assistance Developer any individual who is: (i) Serving as a director of adult protective services, or as a legal counsel to adult protective services; (ii) Serving as a State Long-Term Care Ombudsman, or as legal counsel to a State Long-Term Care Ombudsman program; (iii) 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 adults, such as one in which a legal assistance provider might appear; (iv) Serving as legal		performing duties that could lead to decisions that are or have the appearance of being contrary to the Legal Assistance Developer's duties as defined in this section and contained in the State plan as set forth in § 1321.27 of this chapter. (ii) [Reserved] (3) The State agency shall not designate as Legal Assistance Developer any individual who is: (i) Serving as a director of adult protective services, or as legal counsel to adult protective services; (ii) Serving as a State Long-Term Care Ombudsman, or as legal counsel to a State Long-Term Care Ombudsman Program; (iii) Serving as a hearing officer, administrative law judge, trier of fact or counsel to these positions in an administrative proceeding related to the		

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counsel or a party to an administrative proceeding related to long-term care settings, including residential settings; (v) Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions; (vi) Serving as a public or private guardian, conservator, or fiduciary or operating such a program, or serving as counsel to these positions or programs. (4) The State agency and the Legal Assistance Developer shall be responsible for identifying any other actual and potential conflicts of interest and circumstances that may lead to the appearance of a conflict of interest; identifying processes for preventing conflicts of		legal rights of older adults, such as one in which a legal assistance provider might appear; (iv) Serving as legal counsel or a party to an administrative proceeding related to long-term care settings, including residential settings; (v) Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions; (vi) Serving as a public or private guardian, conservator, or fiduciary or operating such a program, or serving as counsel to these positions or programs. (4) The State agency and the Legal Assistance Developer shall be responsible for identifying any other actual and potential conflicts of interest and		

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interest and, where a conflict of interest has been identified, for removing or remedying the conflict. (5) The State agency shall develop and implement policies and procedures to ensure that the Legal Assistance Developer is not required or permitted to hold positions or perform duties that would constitute a conflict of interest.		circumstances that may lead to the appearance of a conflict of interest; identifying processes for preventing conflicts of interest and, where a conflict of interest has been identified, for removing or remedying the conflict. (5) The State agency shall develop and implement policies and procedures to ensure that the Legal Assistance Developer is not required or permitted to hold positions or perform duties that would constitute a conflict of interest.		
Implementation Timeline	USAging recommends ACL set an implementation of three years following the release of the final rule.			**USAging: ACL did not accept our request for an implementation period of three years. Instead, the new regulations will take effect on March 15, 2024, but regulated entities have until October 1, 2025, to comply.**

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February 2024