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Older Americans Act: 106th Congress Legislation

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ABSTRACT

Authorizations of appropriations for the Older Americans Act expired at the end of FY1995. Neither the 104th nor the 105th Congress reauthorized the program due to controversy about certain proposals, although legislation was considered. Funding for the Act has been continued by appropriations law. H.R. 782 was approved by the House Committee on Education and the Workforce on September 15, 1999 and scheduled to be considered by the full House on October 4 under suspension of the House rules; however, the bill was not considered. S. 1536 was introduced August 5, 1999. This report describes 106th Congress legislation and discusses various reauthorization issues. It will be updated as legislative activity occurs.

Older Americans Act: 106th Congress Legislation

Summary

Authorizations of appropriations for Older Americans Act programs expired at the end of FY1995. The Act, funded at $1.4 billion in FY1999, has been reauthorized 12 times, the last time in 1992. Although legislation was considered in the 104th and 105th Congresses, reauthorization legislation was not enacted due to controversy about a number of proposals. Appropriations laws for FY1996 through FY1999 have continued the programs.

The Act's most visible program, the elderly nutrition program, provides about 240 million congregate and home-delivered meals to over 3 million older persons annually. Other services it funds include a wide range of supportive services, such as home care services for the frail elderly, ombudsman services for residents of long-term care facilities, and elder abuse prevention services.

H.R. 782, was approved with bipartisan support by the House Committee on Education and the Workforce on September 15, 1999; it would reauthorize the Act through FY2004. H.R. 782 was scheduled to be considered by the House under "suspension of the rules" (which requires a two-thirds majority vote for passage) on October 4, 1999. However, the bill was not considered due to controversy among some Members about some provisions in the bill and about the suspension of the rules for floor action. **S. 1536** was introduced by the Chairman of the Subcommittee on Aging, Committee on Health, Education, Labor and Pensions on August 5, 1999; it would reauthorize the Act through FY2004. Both bills address issues which have been in controversy during the past two Congresses, and other topics that have surfaced in the 106th Congress.

Both H.R. 782 and S. 1536 would authorize appropriations for a National Family Caregiver Support Program, similar to the Administration's FY2000 caregiver proposal. Both would consolidate some authorizations of appropriations for programs currently authorized. They would retain separate authorizations of appropriations for the congregate and home-delivered nutrition programs, but expand a state's authority to transfer funds between these programs.

A controversial issue during the past two Congresses and continuing in the 106th Congress is a proposal to change the way that funds are allocated to grantees under the senior community service employment program (Title V of the Act). Both bills would require that national organization grantees receive 55% of total funds, and state agency grantees receive 45%, rather than 78% to national organizations and 22% to state agencies which occurs now. During debate by the House Education and Workforce Committee, an amendment to retain the 78%/22% funding division was offered and defeated. In addition, both bills would require the Secretary of the Department of Labor (DoL) to establish performance measures for the program.

S. 1536, but not H.R. 782, would allow states to impose mandatory cost-sharing for certain Title III services older persons receive. S. 1536, but not H.R. 782, would clarify that the Title III formula allocation is to be based on the most recent population data on number of persons age 60 and over.

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Older Americans Act: 106th Congress Legislation

Brief Legislative Background

Authorizations of appropriations for programs under the Older Americans Act expired at the end of FY1995. For FY1996-FY1999, programs have continued to be funded through appropriations legislation for the Departments of Labor, Health and Human Services, Education and Related Agencies, and the Department of Agriculture.[1]

In the past, the Act has received wide bipartisan congressional support. However, beginning with the 104th Congress, and continuing through the 105th Congress, Members of Congress differed about certain proposals that were under discussion as part of the reauthorization. As a result of the controversy around these issues, the 104th and 105th Congresses took no final action.

In the 105th Congress, legislation to reauthorize the Act was introduced by the then-Chairman of the Subcommittee on Early Childhood, Youth and Families of the House Education and the Workforce Committee (H.R. 4099, Representative Riggs), which had responsibility for the Act. However, no further action was taken on the bill. The Chairman of the Subcommittee on Aging of the Senate Labor and Human Resources Committee, which had responsibility for the Act, did not introduce legislation in the 105th Congress.

By early summer 1998, some Members of Congress were concerned that there was no action on reauthorization. In response to rising criticism from constituents and constituent organizations about the lack of action, two bills that would have reauthorized the Act through FY2001 were introduced. These bills would have simply reauthorized appropriations for programs in the Act, but made no substantive program changes (S. 2295, Senator McCain and H.R. 4344, Representative DeFazio). They received substantial congressional support — S. 2295 had 67 co-sponsors, and H.R. 4344 had 188 co-sponsors. No further action was taken on these bills.[2]

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[1] For information on FY1998 and FY1999 funding, and the FY2000 request, see CRS Report 95-917, *Older Americans Act: Programs and Funding*, by Carol O'Shaughnessy and Celinda Franco.

[2] For a discussion of 105th Congress legislation, see CRS Report 96-976, *Older Americans Act: 105th Congress Issues*, by Carol O'Shaughnessy.

In the 104th Congress, legislation to reauthorize the Act was reported by both the House Economic and Educational Opportunities (EEO)[3] Committee and the Senate Labor and Human Resources Committee, but not with bipartisan agreement.[4] However, the bills were not acted upon by either chamber.

106th Congress Proposals

H.R. 782, the Older Americans Act of 1999, was approved by the Committee on Education and the Workforce on September 15, 1999. H.R. 782 was scheduled to be considered by the House under "suspension of the rules" (which requires a two-thirds majority vote for passage) on October 4, 1999. However, the bill was not taken up due to controversy about provisions in the bill, including the proposal for changing the Title III funding formula to states and restructuring the Title V senior community service employment program (these issues are discussed below). In addition, there was concern that the bill was to be brought up under suspension of the House rules which would have meant that no floor amendments would have been allowed.

S. 1536, the Older Americans Act Amendments of 1999, was introduced by Senator DeWine, Chairman of the Subcommittee on Aging of the Committee on Health, Education, Labor and Pensions, on August 5, 1999. H.R. 782 and S. 1536 would authorize the Act's programs though FY2004. Both bills address the issues which have been in controversy during the past two Congresses, in addition to some other topics that have surfaced in the 106th Congress.

In general, both H.R. 782 and S. 1536 contain similar provisions regarding the following provisions, but differ in some aspects. Among other things, the bills would:

- authorize appropriations for a National Family Caregiver Support Program, similar to the Administration's FY2000 caregiver proposal;
- reduce the number of separate titles and authorizations of appropriations by consolidating authority for the long-term care ombudsman and the elder abuse prevention programs and by eliminating authority for programs that are not currently funded;
- retain separate authorization of appropriations for the congregate and home-delivered nutrition programs, and expand a state's authority to transfer funds between these programs;
- transfer a portion of senior community service employment funds currently administered by national organizations to state agencies, so that national organizations' share of funds would be reduced from 78% to 55% of total appropriations, and states' share would increase from 22% to 45%;

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[3] This House committee changed its name in the 105th Congress to the House Education and the Workforce Committee.

[4] H.R. 2570 was reported by the House Economic and Educational Opportunities (EEO) Committee on April 25, 1996; S. 1643 was reported by the Senate Labor and Human Resources Committee on July 31, 1996. For a discussion of these bills, see CRS Report 95-32, *Older Americans Act: 104th Congress Legislation*, by Carol O'Shaughnessy.

- require the Secretary of the Department of Labor (DoL) to establish performance measures for the senior community service employment program;
- clarify that state and area agencies on aging may provide case management services under certain circumstances; and
- retain authority for voluntary contributions by older persons toward the costs of services.

S. 1536, but not H.R. 782, would:

- clarify that the Title III formula allocation is to be based on the most recent population data, while stipulating that no state will receive less than it received in FY1999; and
- allow states to impose mandatory cost-sharing for certain Title III services older persons receive.

Other Legislation. A number of other bills have been introduced in the 106th Congress that would reauthorize and/or amend the Act, and/or authorize the Administration's caregiver proposal (or a modified version). **S. 10** (Senator Daschle) and **H.R. 773** (Representative DeFazio) would reauthorize the Act through FY2002. Neither S. 10 nor H.R. 773 would address Older Americans Act issues that have been in controversy for the past two Congresses.

The Administration's Older Americans Act reauthorization proposal, which includes the caregiver proposal, has been introduced by request as **H.R. 1637** (Representative Martinez) and as **S. 1203** (Senator Mikulski). In addition, **S. 10**, **S. 707** (Senator Grassley), and **H.R. 1341** (Representative Martinez) would authorize the family caregiver support proposal modeled on the Administration's bill, with no other substantive amendments.[5]

Issues in Reauthorization

The following discusses issues that were raised as part of the reauthorization process during the last two Congresses and continue to be reviewed in the 106th Congress. It discusses how H.R. 782 and S. 1536 would address these and other issues that have surfaced during the 106th Congress.

Consolidation of Older Americans Act Programs

Current law authorizes 20 programs under the Act (although some have never been funded). Similar to legislation in the previous Congresses, both H.R. 782 and S. 1536 would streamline certain programs now authorized under the Act and eliminate authorizations for programs not currently funded. H.R. 782 would reduce the number of authorized programs to 11; S. 1536 would reduce the number to 14.

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[5] Unlike the Administration's caregiver proposal, however, these bills would not authorize cost-sharing by participants toward the cost of caregiver services they receive through the program.

Research, Training and Demonstration Authority. Both bills would eliminate Title IV which, under current law, authorizes appropriations for research, training, and demonstration activities that are the responsibility of the Assistant Secretary for Aging. Instead, H. R. 782 would authorize these activities under Title I (General Provisions). S. 1536 would authorize these activities as part of a revised Title III (Grants for State and Community Programs on Aging).

H.R. 782 would authorize $18.4 million for research, training, and demonstration activities, of which specified amounts would be set aside for the following activities: up to $1 million for a nationwide toll-free telephone line on information on community services for older persons; at least $540,000 for education and training by Hispanic Centers of Excellence in Applied Gerontology; at least $1.2 million for education and training by Historically Black Colleges and Universities; at least $1 million for pension rights demonstrations; and at least $1.5 million for health care demonstrations in rural areas.

S. 1536 would authorize such sums as may be necessary for research, training and demonstration activities. In addition, it would authorize funds to various entities to carry out pension counseling programs.

Long-Term Care Ombudsman and Elder Abuse Prevention Programs. H.R. 782 and S. 1536 would consolidate authorizations of appropriations for the long-term care ombudsman and elder abuse prevention programs. Under current law, they are separately authorized in Title VII. The bills would also repeal authorization of appropriations for the following Title VII programs: state elder rights and legal assistance, and outreach, counseling, and assistance. These programs are not currently funded.

Congregate and Home-delivered Nutrition Programs. Bills in previous Congresses would have consolidated authorizations of appropriations for the congregate and home-delivered nutrition programs. Currently, the congregate program receives more than three times the amount of funds than the home-delivered program, even though about 50% of meals served are provided in congregate settings and 50% are home-delivered. The law allows states to transfer 30% of funds between these two programs, with approval by the Assistant Secretary for Aging. An additional 10% may be transferred under a waiver approved by the Assistant Secretary. In recent years, states have tended to transfer funds from the congregate program to meet the growing need for home-delivered meals.

Neither H.R. 782 nor S. 1536 would consolidate authorizations of funds for congregate and home-delivered nutrition programs. Some nutrition services advocates wanted to keep the programs separately authorized to protect the viability of both programs.

While both bills retain separate programs, they would increase a state's authority to transfer funds between the programs. H.R. 782 would allow a state to transfer up to 50% of its allotted funds between the two programs, without receiving approval by the Assistant Secretary. S. 1536 would allow a state to transfer up to 30% of funds between these two allotments. It also would allow a state to transfer any amount above 30% as long as such transfer would not jeopardize a state's congregate or home-delivered meals programs. S. 1536 would retain the current law provisions requiring Assistant Secretary approval of transfers by states.

Restructuring the Senior Community Service Employment Program

The Senior Community Service Employment program, authorized under Title V of the Act, provides opportunities for part-time employment in community service activities for unemployed, low-income older persons who have poor employment prospects. The program is funded at $440 million in FY1999, representing 30% of Older Americans Act funds. It is administered by DoL, which awards funds directly to national sponsoring organizations and to states. The grantees and their FY1999 funding levels are shown in **Table 1**.

Table 1. FY1999 Funding to National Organizations and State Sponsors

Sponsor	FY1999 amount (millions)	Percent of total
American Association of Retired Persons	$50.6	11.6
Asociación Nacional Por Personas Mayores	13.2	3.0
Green Thumb	106.6	24.3
National Caucus and Center on the Black Aged	13.0	3.0
National Council on the Aging	38.0	8.7
National Council of Senior Citizens	64.4	14.7
National Urban League	15.3	3.5
National Indian Council on Aging	6.0	1.4
National Asian Pacific Center on Aging	6.0	1.4
U.S. Forest Service	28.4	6.5
National organization sponsors, total	$341.5	78.0
State agencies, total	$96.3[a]	22.0
Total	**$437.8**[b]	100.0

a. This amount includes funds allocated to the territories.
b. This amount differs from the total appropriation of $440.2 million due to a set-aside by DoL of $2.4 million for experimental projects under Section 502(e) of the Act.

Beginning in the 104th Congress and continuing through the 106th Congress, some Members of Congress have been concerned about certain aspects of how the program is administered. Some Members want more funds to be distributed to states, rather than having the majority of funds distributed to the same national organizations every year, as is required by Appropriation Committee directives. Other issues include the noncompetitive manner in which funds are awarded to national organizations by DoL, and how funding is used. A General Accounting Office (GAO) report completed in 1995 focused attention on these issues. GAO reviewed DoL's method of awarding funds, the allocation of funds to states, and grantee use of funds. The GAO report concluded that the program could be improved by assuring more equitable distribution of funds nationally, by enforcing statutory limits on use of funds for administration, and by applying procedures for competition for funds by sponsors, among other things.[6]

Like the 104th and 105th Congress reauthorization proposals, H.R. 782 and S. 1536 would restructure the program, in part, to respond to the GAO findings. Both proposals would give states more control of the administration of the program and introduce competition for funds among prospective grantee organizations. The bills would make changes in (1) the distribution of funds by the federal government; (2) formula allocations to grantees; and (3) requirements regarding use of funds by grantees for administration and other enrollee costs. These and other issues are discussed below.

Distribution of Community Service Employment Funds by the Federal Government. For many years, Appropriations Committee directives have stipulated that national organizations are to receive 78% of the total Title V funds, and states, 22%.[7] The Appropriations Committee directives differ from the authorizing statute. The statute stipulates that funds be awarded to national public and non-profit private organizations at the level they received funds in 1978; 55% of any funds in excess of the 1978 funding level is to be distributed to state agencies, and 45% to national organizations. However, for most years since 1978, the Appropriations Committee has stipulated the 78%/22% split of funds. Generally, DoL has allotted funds to national organizations on a noncompetitive basis.

National organizations receive funds to administer the program in all but three states; in many states, multiple national organizations administer programs in addition to a designated state agency (usually the state agency on aging). For example, in seven states, each with Title V FY1999 funding of $15 million or more, seven or eight national sponsors administer the program in addition to the state agency (California,

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[6] U.S. General Accounting Office. *Senior Community Service Employment Program Delivery Could Be Improved Through Legislative and Administrative Actions.* GAO/HEHS-96-4. November 1995.

[7] Despite requirements in the authorizing statute that states are to receive a larger portion of funds, appropriations law for many years has stipulated that 78% of funds be distributed to national organizations and 22% to states. This has been a long-standing issue. In the 1978 reauthorization of the Older Americans Act, the Senate Labor and Human Resources Committee expressed concern about the "circumvention" by the Appropriations Committee of the authorizing committee formula.

In more recent action on the funding split, the House Appropriations Committee proposed to increase the amount of funding allocated to states to 35% of the total for FY1997, thereby reducing funds to national organizations to 65%. This action was taken in part based on recognition that the House authorizing committee was moving toward transferring all Title V funding to the states. However, in final action on FY1997 appropriations (P.L. 104-208), Congress continued to stipulate the 78%/22% split for national organizations and states, as it has done in the past.

Florida, Illinois, New York, Ohio, Pennsylvania, and Texas). In most states, at least three or four national organizations administer the program in addition to the state agency.

In its report, GAO noted that there is inequitable distribution of funding within some states as well as duplication of effort among national and state sponsors. Some state agencies have been concerned about the duplication of national organizations' activities that is caused by the distribution of funds to multiple organizations within a state. In addition, states maintain that because they administer only 22% of total funds in a state, their ability to coordinate operations of the program is very limited.

Previous Congresses' bills would have changed this distribution and would have either (1) transferred *all* funds now administered by national organizations to states, or (2) transferred only a portion of funds now administered by national organizations to states.

Both H.R. 782 and S. 1536 would transfer more of total funds to states. H.R. 782 would gradually transfer funds to states so that by FY2004, national organizations would receive 55% of total funds and state agencies would receive 45%. S.1536 would apply the 55%/45% split to national organizations and state agencies immediately. Under both bills, each state would receive no less than it received in FY1999.

S. 1536 would give states more control of funds and more authority as to how the program operates in the state. First, the bill would require that, of the amount DoL allots to each state, 55% be awarded to national organizations that operate in the state, and 45% be awarded to the state agency. This would reduce national organizations' share of funds in a state from 78% of the total, and increase the state agency's share from the 22% it currently receives. As in H.R. 782, no state would receive less than it received in FY1999. Second, the bill would give each state agency an opportunity to have more authority over the program. The bill would allow a state agency on aging to evaluate the state's priorities regarding the need for Title V services. If a state agency performs this evaluation, it would be required to determine where services are most needed, taking into consideration the following: the employment situations and skills of older persons who may be eligible; and the potential projects and the number of persons who may be eligible to participate in projects in the area.

Proponents of the approach to equalize funds for national organizations and state agencies within a state indicate that costs of program administration and duplication of effort would decrease since there would be fewer organizations that would administer the program in some states. Proponents also say that giving states more leverage in funding decisions would increase coordination of effort among all grantees in states.

The restructuring of the senior community service employment program generated substantial controversy during the 104th and 105th Congresses, and the controversy continues during this Congress. Some existing national organization grantees express concern that their continued existence would be threatened if more program funding were to be shifted to states. They are also concerned that restructuring could result in disruption of jobs for some existing enrollees. A number of organizations and some Members of Congress have indicated that the program has operated well under the national organizations' administration, and that because of the long-standing association of some of the organizations with the program, they have the needed expertise to continue administering the majority of funds. The Department of Labor opposes the funding restructuring.

The controversy was brought up during the Committee mark-up of H.R. 782. An amendment was offered by Representative Andrews to codify in the authorizing statute the current distribution of 78% of funds for grants to national organizations. The amendment failed. Both the Chairman of the Committee, Representative Goodling, and Representative Martinez, Ranking Member of the Postsecondary Education Training and Life-Long Learning Subcommittee, indicated that if such an amendment were offered on the House floor, they would oppose it. This debate will likely continue when the bill is considered on the House floor.

Formula Allocations to Grantees. Title V funding is distributed to national organizations and states using a combination of factors, including a "hold harmless" that guarantees money for employment positions held by national organizations in each state in 1978, and a formula based on states' relative share of persons aged 55 and over and per capita income. In FY1999, 63% of total funds has been distributed according to the hold harmless provision ($276.6 million out of $440.2 million for July 1, 1999-June 30, 2000 program year); the balance is distributed according to the most recent data on each state's relative population of persons aged 55 and over and per capita income. Because the hold harmless provision is based on a 1978 state-by-state distribution of positions held by national organizations, it does not ensure equitable distribution of funds across all states. In its report on the program, GAO recommended that if Congress wishes to ensure equitable distribution of funds, it should consider amending or eliminating the hold harmless provision.

Both H.R. 782 and S. 1536 build upon the current methodology for distribution of funds, but would update formula allocations for any funds in excess of the FY1999 level. Although the bills differ in approach, the intent of both proposals is that states would receive the same amount as they received in FY1999. Any funds in excess of the FY1999 level would be distributed according to the most recent data on a state's share of persons age 55 and over and state per capita income.

Use of Funds for Enrollee Wages/Fringe Benefits, Administration, and Other Enrollee Costs. Currently, Title V funds are used for (1) enrollee wages and fringe benefits; (2) administration; and (3) other enrollee costs. DoL regulations require that at least 75% of funds be used for enrollee wages and fringe benefits. The law specifies that grantees are allowed to use up to 13.5% of federal funds for administration (and up to 15% of federal funds under a waiver approved by Secretary of DoL). Any remaining funds may be used for "other enrollee costs" that, under current DoL regulations, may include recruitment and orientation of enrollees and supportive services for enrollees, among other things.

In its review, GAO found that most national organizations and some state sponsors had budgeted administrative costs in excess of the statutory limit by inappropriately classifying them as "other enrollee costs," thus increasing the total amount for administration above the statutory limits. Some observers have noted that there may need to be legislative language clarifying the classification of these activities in order to avoid use of program funds for administration in excess of the statutory limit, as GAO found in the past.

Both H.R. 782 and S. 1536 would retain the same limit on administrative costs as in current law, that is, a grantee may use up to 13.5% of its funds (with a waiver up to 15%) for administration. However, both H.R. 782 and S. 1536 would change the way sponsors may use funds for "other enrollee costs."

H.R. 782 would stipulate that no less than 85% of total funds may be used for enrollee wages and fringe benefits (as compared to the current regulatory requirement of 75%). The bill would allow sponsors to use up to 5% of these funds for "other enrollee costs," that is, for employment-related counseling, supportive services, and transportation.

S. 1536 takes a different approach to use of funds for enrollee wages and fringe benefits and "other enrollee costs." First, it does not place a floor on how much of funds must be used for wages and fringe benefits. Second, it would add a definition of administrative costs that would include some of the costs that are currently defined by DoL as "other enrollee costs." This would effectively force sponsors to use administrative funds to carry out these functions. Included in the definition of administrative costs are participant training and job-related or personal counseling of participants (in addition to program administrative costs, such as salaries, wages, and fringe benefits of project administrators, among other things). However, it should be pointed out that the definition in the bill would not specifically include such things as assessment, recruitment, and orientation of enrollees which are now defined by DoL as "other enrollees costs." This could allow sponsors to use funds that are not classified as administrative costs for these functions.

Performance Standards. One of the areas that was under discussion during the two previous Congresses was the need to establish performance standards for Title V grantees. Current law does not establish standards.

Both H.R. 782 and S. 1536 would require the Secretary of Labor to establish performance standards. H.R. 782 would require that the standards include the following:

- a requirement that at least 18% of participants be placed in unsubsidized placement annually (current regulations require that a number equal to at least 20% of employment positions be transferred to unsubsidized employment annually);
- a requirement that a specific percentage increase in the number of employment opportunities be provided in hard-to-serve areas, including rural areas, areas with high unemployment, and areas with significant population groups of underserved older persons;
- a measurement of the number of older persons who receive services and of consumer satisfaction;
- a requirement for a specific percentage increase in employment opportunities in underserved areas;

- measurement of coordination with other employment and training programs.

The bill allows for adjustments in the standards based on state circumstances and technical assistance to those who fail to meet the standards, and requires reports on the extent to which grantees meet the standards.

S. 1536 would require DoL to develop performance indicators, addressing the following areas:

- number of persons served;
- community services provided;
- entry into, and retention in, unsubsidized employment;
- entry into, and duration of, subsidized employment;
- rate of pay and benefits in unsubsidized employment;
- rate of pay and benefits in subsidized employment; and
- any additional indicators determined by the Secretary.

Both bills require corrective action if a grantee or a subgrantee of the state does not achieve established levels of performance. H.R. 782 allows the Secretary to reduce funds to a grantee if the grantee fails to meet performance standards in any one fiscal year. If failure occurs for 3 consecutive years, the Secretary is required to reduce grantee funds. S. 1536 requires that if a grantee or subgrantee fails to meet performance measures for 2 consecutive years, then it must compete for funds at the national or state level.

Negligent or Fraudulent Activities of Project Grantees. In the past, GAO has performed audits of national organizations and found that funds by certain national organizations were used inappropriately. During the 106th Congress, there has been concern among some Members of Congress about the findings of an audit of the National Council of Senior Citizens (NCSC) Title V grant by the Inspector General (IG) of DoL. The NCSC is the second largest of the national organization recipients; in FY1999, it received $65 million, representing 15% of the total Title V appropriation.

In February 1999, the IG issued a final audit of NCSC (and its successor grantee, the National Senior Citizens Education and Research Center (NSCERC). The audit covered operations of the grantee for 1992-1994. It questioned more than $6 million of a total of more than $180 million audited. The NCSC/NSCERC is in the process of negotiating with DoL to informally resolve the disallowed costs. According to DoL, if an informal resolution is not achieved, DoL will issue a final determination which will then initiate formal audit resolution proceedings. While the audit resolution proceeds, DoL has issued conditions to the FY1999 grant award to ensure that program funds are spent appropriately. These conditions include use of funds during the current program year and changes in the organizational relationships of staff of NCSC and NSCERC.

Partially in response to these audit findings, S. 1536 would add a number of provisions that are designed to prevent inappropriate use of funds by grantees. First, the bill would require the Secretary of DoL to monitor financial assistance to grantees to determine whether they are complying with the law. Second, it would require each grantee to comply with the applicable cost principles and appropriate administrative requirements contained in circulars or rules of the Office of Management and Budget (OMB). In addition, the bill would require grantees to keep records to permit tracing of funds in a form adequate to ensure they are not spent unlawfully, among other things.

H.R. 782 does not contain these provisions, but contains general provisions regarding misuse of all funds under the Act. It would require that if providers have not used funds in compliance with the Act or regulations under the Act, then the Assistant Secretary for Aging, in the case of all programs except Title V, or the Secretary of Labor, in the case of Title V, may bar providers from receiving funds for a period of up to 5 years.

Coordination with the Workforce Investment System and Focus on Private Sector Employment. The Workforce Investment Act (WIA) was enacted in 1998 with the aim of consolidating and coordinating employment and training programs across the Nation. S. 1536 would establish a number of requirements aimed at coordinating the Title V program with the workforce investment system established by WIA. First, it would require that a Title V project participate in a one-stop delivery system in the local workforce investment area established under WIA, and that it develop a memorandum of understanding with the local workforce investment board. In addition, the bill would allow assessments of older individuals for participation in either Title V projects or under WIA (Subtitle B of Title I) to be used for the other program.

H.R. 782 does not contain the specific WIA coordination requirements in S. 1536 although it does require that Title V grantees coordinate with other employment and training programs in the state.

Placement of Participants in the Private Sector and In Other Unsubsidized Employment. The main purpose of the Title V program is to place low-income older individuals with poor employment prospects in subsidized employment so that they may increase their income and provide a source of labor to expand community services. While this goal substantially defines the program, in the past legislative provisions have given some attention to placement of participants in unsubsidized employment.[8] Amendments to the Act in 1981 required DoL to use some Title V funds for experimental projects designed to place participants in second career training and in private business (Section 502(e) of the Act). Under this provision, the Secretary is required to reserve at least 1%, but no more than 3%, of funds in excess of the 1978 appropriations for this purpose. In FY1999, DoL has reserved $2.4 million for Section 502(e) projects, or 1.5% of funds in excess of the 1978 amount.

S. 1536 would go further to emphasize the role of the program regarding placement of enrollees in unsubsidized employment. It would amend the Act to state

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[8] In addition, DoL regulations require that grantees attempt to achieve placement of enrollees in unsubsidized employment. The regulations require that each grantee strive to place at least 20% of their authorized positions in unsubsidized employment. Generally, projects have been successful at meeting or exceeding this goal.

that the purpose includes not only placement of participants in community service activities, but also the placement of participants in the private sector. It would also add as a program purpose, authority for the Secretary to establish projects to place participants into unsubsidized employment. H.R. 782 does not amend the purpose statement of the Act.

Both bills would encourage the use of funds for placement of enrollees in private sector jobs although they differ in approach. H.R. 782 would allow state agencies and national organizations to use funds allotted to them to develop projects to place enrollees in businesses while S. 1536 would increase the set-aside of funds by the Secretary of Labor. H.R. 782 would allow states and national organizations to use 5% of their grant awards for developing agreements with businesses. Under these agreements, Title V grantees may pay for up to 50% of the cost of enrollees' employment.

S. 1536 would increase the amount of funds to be spent by the Secretary on projects to place participants in unsubsidized employment to 1.5% of *total* funds (rather than 1% to 3% of the amount above the 1978 hold harmless amount required by current law). This would mean, for example, that the Secretary would have to reserve $6.6 million of FY1999 funds for Section 502(e) projects, rather than the $2.4 million that was set aside in FY1999.

Interstate Funding Formula for Supportive and Nutrition Services

The way in which the Administration on Aging (AoA) distributes nutrition and supportive funds to states continues to be of concern in the 106th Congress, as in the 104th and 105th Congresses. Current law requires AoA to distribute Title III funds for supportive and nutrition services to states based on their relative share of the population aged 60 and older. In addition to specifying certain minimum funding amounts, the law contains a "hold harmless" provision requiring that no state receive less than it received in FY1987.

AoA distributes funds for supportive and nutrition services in the following way. First, states are allotted funds in an amount equal to their FY1987 allocations, which were based on estimates of each state's relative share of the total population age 60 and older in 1985.[9] Second, the balance of the appropriation is allotted to states based on their relative share of the population aged 60 and over as derived from the most recently available estimates of state population. And third, state allotments are adjusted to assure that the minimum grant requirements are met. The effect of this methodology is that the majority of funds are distributed according to population estimates that do not reflect the most recent population trends. For example, for FY1999, 85% of total Title III funds has been distributed according to the FY1987 "hold harmless." The remainder of funds appropriated was distributed according to 1997 population data.

[9] There is usually a 2-year time lag in availability of estimates of state population from the U.S. Census Bureau.

The method that AoA uses to meet the 1987 "hold harmless" provision has been criticized. In a 1994 report, GAO concluded that Title III funds are not distributed according to the requirements of the statute.[10] GAO concluded that the method employed by AoA does not distribute funds proportionately according to states' relative share of the older population, based on the most recent population data and, therefore, negatively affects states whose older population is growing faster than others. GAO recommended that AoA revise its method to allot funds to states, first, on the basis of the most current population estimates, and then, adjust the allotments to meet the hold harmless and statutory minimum requirements.

S. 1536 follows the GAO recommendation by requiring that funds be distributed according to the most recent data on states' relative share of persons 60 years and older. The bill then stipulates that no state would receive less than it received in FY1999, thereby creating a 1999 "hold harmless" requirement. The intent of this approach is to have funding distributed according to the most recent population data (as compared to the current methodology which distributes 85% according to state population data more than 10 years old), but at the same time assuring that individual state allotments would not go below their FY1999 levels. If appropriations for Title III services increase over the FY1999 level, the effect of the proposal would be that states which are gaining a larger share of the total U.S. population over 60 years compared to other states would receive a proportionately larger share of *the increased appropriation.* However, the 1987 hold harmless would still affect the distribution of funds since the 1999 hold harmless amount is effectively based on the 1987 amount.

H.R. 782 does not change current law regarding the Title III funding formula.

Targeting of Services to Low-Income Minority Older Persons

Targeting of services to low-income minority older persons has continued to be a subject of review during the 106th Congress, as it has during past reauthorizations of the Act. Current law contains numerous requirements that state and area agencies on aging target services to persons in greatest social and economic need, with particular attention on low-income minority older persons. It requires that states in developing their intrastate funding formulas, take into account the distribution within the state of persons with the greatest economic and social need, with particular attention to low-income minority older persons.

It also requires that the agencies set specific objectives for serving low-income minority older persons and that program development, advocacy, and outreach efforts be focused on these groups. Service providers are required to meet specific objectives set by area agencies for providing services to low-income minority older persons, and area agencies are required to describe in their area plans how they have met these objectives.

[10] U.S. General Accounting Office. *Older Americans Act: Title III Funds Not Distributed According to Statute.* GAO/HEHS-94-37. January 1994.

Bills in the 104th and 105th Congresses would have deleted either some or most of current law provisions regarding targeting services to minority older individuals. The deletion of these provisions became quite controversial, especially in the markup of the reauthorization bill by the House Committee on Economic and Educational Opportunities. Some Members wanted deletion of the targeting provisions to create a level playing field for services among all elderly, but still wanted to keep references to those in greatest social and economic need. Others held that since minority elderly are most disadvantaged with respect to certain need characteristics, such as income, the special targeting provisions should have been maintained.

S. 1536 would not delete current law provisions regarding targeting to low income minority individuals. H.R. 782 retains a number of current law provisions regarding targeting.

Cost-Sharing for Services by Older Persons

One of the most frequent issues to arise in past reauthorization legislation has been whether the Act should allow mandatory cost sharing for certain social services. Under current law and regulations, mandatory fees are prohibited, but nutrition and supportive services providers are allowed to solicit *voluntary* contributions from older persons toward the costs of services. Older persons may not be denied a service because they will not or cannot make a contribution. Funds collected through voluntary contributions are to be used to expand services. Prior to the 104th and 105th Congresses, Members resisted proposals to allow Older Americans Act programs to charge fees for services.

State and area agencies on aging have been in favor of a policy that would allow them to impose cost-sharing for certain services, arguing, in part, that such a policy would eliminate barriers to coordination with other state-funded services programs that do require cost-sharing, and would improve targeting of services to those most in need. Some representatives of aging services programs, such as those representing minority/ethnic elderly, have been opposed to cost-sharing, arguing, in part, that a mandatory cost-sharing policy would discourage participation by low-income and minority older persons. They have also argued that cost-sharing would create a welfare stigma for Older Americans Act programs which has not existed due to the absence of "means testing" or cost-sharing policies.

H.R. 782 would retain the voluntary nature of contributions by older persons toward services they receive. It would prohibit means testing for services and bar providers from refusing to provide services because an older person will not or cannot make a contribution. In addition, the bill would require that providers protect the privacy of older persons' contributions, establish procedures to safeguard and account for contributions; and use contributions to increase the supply of supportive and nutrition services.

Under the bill, providers would be allowed to develop voluntary contributions based on income of recipients, and to furnish written information to recipients about the cost of services they receive.

There is one exception to these provisions in H.R. 782. The bill would allow cost-sharing for certain services authorized under the family caregiving support program (see below).

S. 1536 would make a distinction between *mandatory cost-sharing for certain services* and *voluntary contributions* by older persons.

> *Mandatory Cost-Sharing.* The bill would allow states to require or permit cost-sharing for all direct services in the Act. There are exceptions, however. Cost-sharing would not be permitted for the following services: information and assistance; outreach; benefits counseling; case management; ombudsman, legal assistance and other protective and advocacy services; and congregate and home-delivered nutrition services.
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> Under the bill, states may not apply cost-sharing for services to persons who have income below a low-income threshold set by the state. Cost-sharing must be applied on a sliding scale, based on income, and income is to be established by individuals on a self-declaration basis.
>
> *Voluntary Contributions*. The bill would require that each recipient of services have an opportunity to voluntarily contribute toward the cost of all direct services. The bill stipulates that voluntary contributions may be accepted, but not solicited, for the following services: information and assistance; outreach; benefits counseling; case management; ombudsman, legal assistance and other protection and advocacy services; and for services for recipients who declare their income to be below the state-established low-income threshold. The bill further stipulates that the state agency may not require means testing for any services, or deny services to individuals who do not contribute toward the costs of services.
>
> Both the mandatory cost-sharing and the voluntary contributions policies must protect the privacy of each recipient of services; establish appropriate procedures to safeguard and account for cost share payments; and use funds collected through cost sharing to expand services for which payment was made.
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> *Evaluation of Cost-Sharing Practices.* S. 1536 would require the Secretary to conduct an evaluation of mandatory cost-sharing practices that are conducted by states in order to determine the impact of these practices on participation under the Act. The evaluation is to be conducted at least 1 year after the enactment of the bill and periodically thereafter.

National Family Caregiver Support Program

The proposed Older Americans Act National Family Caregiver Support program is one part of a four-part Administration FY2000 initiative on long-term care services for persons of all ages. Other parts of the Administration's initiative would include a tax credit to functionally and/or cognitively impaired persons of all ages; authorize the Office of Personnel Management (OPM) to offer group long-term care insurance for federal employees, retirees, and their families; and launch a national education campaign to inform Medicare beneficiaries about that program's limited coverage of long-term care services, and about long-term care options, among other things.[11]

The Administration's proposal would authorize $125 million each year from FY2001 to FY2004 for a range of services to assist family caregivers of functionally and/or cognitively impaired older persons.

Need for Long-Term Care Services and Impact of Family Caregiving.[12] About 4.4 million persons age 65 and over living in the community are estimated to need long-term care assistance due to a functional disability. The need for long-term care is measured by need for assistance with activities of daily living (ADL), and/or instrumental activities of daily living (IADLs). Functional disability is defined as the inability to perform, without human and/or mechanical assistance, the following activities of daily living (ADLs): dressing, eating, bathing, moving around indoors, transferring from a bed to a chair, and toileting. It is also measured by the inability to perform certain instrumental activities of daily living (IADLs), including light housekeeping, meal preparation, shopping, taking medications, and managing money, among others. Of the 4.4 million older persons with any functional disability, about half that number need assistance with one or more ADLs, and about half need assistance with IADLs only. Almost one million older persons are cognitively impaired because of Alzheimer's disease or other forms of dementia.

Research on disability and long-term care has documented the enormous responsibilities that families face in caring for relatives who are living in the community and who have significant impairments. Data from the 1994 National Long-Term Care Survey sponsored by the Department of Health and Human Services (DHHS) indicate that over 7 million persons provide 120 million hours of informal, that is, unpaid, care to about 4.2 million functionally disabled older persons each week. These data conclude that if the work of these caregivers were to be replaced by paid home care, costs would range from $45 billion to $94 billion annually. Moreover, research has shown that the informal, or unpaid, care provided by family members can prevent or delay entry into long-term care facilities.

Data from the 1994 and previous surveys indicate that most persons who need long-term care receive no formal, or paid, assistance. Most assistance they receive is provided by family members. About two-thirds of impaired elderly rely exclusively on informal care provided by family members. Typically, elderly persons rely on their spouses and adult children for assistance.

Older Americans Act National Family Caregiver Support Program. The Administration's proposal, H.R. 782, and S. 1536, would establish a new National

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[11] For further information on the Administration's proposal, see CRS Report RL30254, *Long-Term Care: The President's FY2000 Initiative and Related Legislation*, by Carol O'Shaughnessy, Bob Lyke and Carolyn Merck.

[12] Data for this section is from *Informal Caregiving, Compassion in Action*, by Pam Doty. U.S. Department of Health and Human Services. Office of Assistant Secretary for Planning and Evaluation, 1998. Data are from the 1994 National Long-Term Care Survey, a nationally representative sample of functionally impaired Medicare beneficiaries living in the community.

Family Caregiver Support Program in Title III of the Act. The new program would provide grants to states for the following services:

1. information to caregivers about available services;
2. assistance to caregivers in gaining access to services;
3. individual counseling, organization of support groups, and caregiver training to assist families make decisions and solve programs related to their caregiving roles;
4. respite services to provide families temporary relief from caregiving responsibilities; and
5. supplemental services, such as home care and adult day care, on a limited basis, that would complement care provided by family and other informal caregivers.

Eligibility for Older Americans Act Caregiver Support Services. Under S. 1536 and the Administration's proposal, older persons, whose caregivers would be eligible for all of the services listed above, must be those who:

- are unable to perform at least two ADLs without substantial human assistance, including verbal reminding, physical cueing, or supervision, or
- due to a cognitive or other mental impairment, require substantial supervision because of behavior that poses a serious health or safety hazard to the individual or other individuals.

H.R. 782 has less restrictive eligibility requirements than the other proposals. All caregivers would be eligible for information, assistance, and counseling services (listed as 1-3 above). However, services that tend to more individualized, such as in-home respite, home care, adult day care, would be directed to persons who have limitations in two or more ADLs.

Under the Administration's proposal, priority for caregiver services must be given to older persons and their families who have the greatest social and greatest economic need, with particular attention to low-income minority individuals.[13] S. 1536 modifies and expands the Administration's proposals regarding caregivers who are eligible to receive services. It:

- defines family caregivers as adult family members, or other individuals, who are informal providers of in-home and community care to older individuals;
- expands caregivers who may receive services and support under the program to include grandparents or older individuals (aged 60 years or older) who are "relative caregivers." These are grandparents or stepgrandparents who live with a child and are primary caregivers of the child because the biological or

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[13] Under current law, greatest social need is defined as need caused by noneconomic factors, which include physical or mental disabilities, language barriers, and cultural, social or geographic isolation including isolation caused by racial or ethnic status that restricts a person's ability to perform daily tasks or threatens the capacity of the individual to live independently. Greatest economic need refers to income that is below the federal poverty level.

adoptive parents are unable or unwilling to serve as the primary caregiver, and have a legal relationship to the child or are raising the child informally; and
- requires priority to older individuals who provide care and support to persons with mental retardation and related developmental disabilities.

The Administration has indicated that its proposal would provide one or more of the caregiver support services to about 250,000 families each year. The number of persons served would be affected by several factors, including actual appropriations, the number of persons who meet the specified eligibility requirements and actually apply for services, capabilities and readiness of service providers, and relative spending by states on specific services.

Cost-Sharing for Caregiver Respite and Supplemental Services. The Administration's proposal would allow states to require cost-sharing for respite and other direct supplemental services, two of the services listed in the proposal. It would also allow states to require or permit area agencies on aging to require cost-sharing by recipients; but states must exempt from any cost-sharing requirements persons with income below the federal poverty level. For persons whose incomes are above the federal poverty level, states would be required to establish a sliding fee scale based on income (if they opt for cost-sharing).

H.R. 782 would allow states to establish cost-sharing requirements, similar to the Administration's proposal. It would prohibit providers from denying services to those who are unable to cost-share. S. 1536 would allow a state to apply cost-sharing policies for caregiver services to the extent they meet the requirements as set out in the bill, discussed above.

Allotment of Funds, Federal Matching Share, and Limitation. Under both the Administration's proposal and S. 1536, funds for the National Family Caregiver Support program would be allotted to states on a formula based on a state's proportional share of the total population of persons aged 60 and older. H.R. 782 differs from these proposals and would allot funds to states based on a state's share of the total population aged 70 and over. However, persons under age 70 would be eligible for caregiver services.

Under the Administration's proposal, H.R. 782, and S. 1536, the federal matching share for the specified caregiver services would be 75%, with the remainder to be paid by states. This would be a lower federal matching rate than is applied to other Title III services (such as congregate and home-delivered nutrition services, and other supportive services). The federal matching rate for these services under current law is 85%.

S. 1536 would specify a limit on funds to be used for support services to grandparents and older relative caregivers of children. Under the bill, a state could use not more than 10% of total federal and nonfederal funds for these services.

Authorization of Appropriations. H.R. 782, as in the Administration's proposal, authorizes $125 million in FY2000 for the caregiver program. S. 1536 authorizes such sums as may be necessary for the program.

Other Provisions. The Administration's proposal would allow up to 12% of funds appropriated for the caregiving initiative to be used by the Administration on Aging (AoA) for (1) competitive grants to develop and test new approaches to assist families and other informal caregivers, and to evaluate caregiving programs (up to 10% of appropriated funds for each fiscal year); and (2) activities of national significance, including program evaluation, training, and technical assistance and research (up to 2% of appropriated funds for each fiscal year). In addition, states would be required to assure quality of services provided under the new Title III caregiver program.

Neither H.R. 782 nor S. 1536 contain these provisions