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Older Americans Act: 2000 Reauthorization Legislation

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Summary

After unsuccessful attempts by the 104th and 105th Congresses to reauthorize the Older Americans Act, the 106th Congress approved the Older Americans Act Amendments of 2000 (H.R. 782, **P.L. 106-501**, signed November 13, 2000). Authorization of appropriations for the Act had expired in FY1995, but appropriations laws for FY1996 through FY2000 continued funding for the programs.

The Act's most visible program, the elderly nutrition program (authorized under Title III), provides 240 million congregate and home-delivered meals to over 3 million older persons annually. The Act also funds a wide array of supportive services, including home care, ombudsman services for residents of long-term care facilities, and a subsidized employment program.

P.L. 106-501 authorizes a new National Family Caregiver Support Program funded at $125 million in FY2001. The program provides assistance and services to families who care for the frail elderly. Services authorized include: information and assistance to caregivers, counseling, support groups, and respite and other home- and community-based services to provide families temporary caregiver relief. Funds are allotted to states based on their respective share of the total population aged 70 years and over.

A controversial issue during the 104th, 105th and 106th Congresses was a proposal to change the way funds are allocated to national and state grantees under the senior community service employment program (Title V). The law retains the current funding allocation that distributes 78% of funds to national organizations and 22% to state agency grantees. However, as funding increases above the FY2000 level, proportionately more funding would shift to state agencies. The law also requires the Secretary of the Department of Labor (DoL) to establish performance measures for the program and includes provisions to encourage transition of enrollees into private sector employment. A new requirement calling for a State Senior Employment Services Plan is designed to give states more control over the program and to promote coordination of employment services for enrollees within the state.

The law retains current policy allowing states to solicit voluntary contributions from participants for supportive and nutrition services they receive. But it also allows states to implement cost-sharing for selected supportive services, as long as states do not use means tests or deny services to older persons who fail to make cost-sharing payments, among other requirements.

The law clarifies the intent that the Title III formula used for allocation of supportive and nutrition services funds to states is to be based on the most recent U.S. Census Bureau data on the number of persons age 60 and over. But it also stipulates that no state receive less than it received in FY2000. In addition, the law requires the President to call a White House Conference on Aging by the end of 2005.

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Introduction

After 6 years of congressional debate on reauthorization of the Older Americans Act, on November 13, 2000, President Clinton signed H.R. 782, the Older Americans Act Amendments of 2000, which became **P.L. 106-501.** The law extends the Act's programs through FY2005.

In summary, **P.L. 106-501** contains the following major provisions:

- authorizes $125 million for a new National Family Caregiver Support Program under Title III (Congress appropriated $125 million for the program for FY2001);
- reduces the number of separate authorizations of appropriations by eliminating authority for several programs that were not funded;
- retains separate authorization of appropriations for the congregate and home-delivered nutrition programs, and expands a state's authority to transfer funds between these programs;
- requires the Secretary of the Department of Labor (DoL) to establish performance measures for the senior community service employment program, and retains the prior law division of funds for national organizations (78%) and states (22%) for FY2001. If funds increase above the FY2001 level ($440 million), state agencies are to receive proportionately more funding;
- retains authority for voluntary contributions by older persons toward the costs of services, and allows states to impose cost-sharing for certain Title III services older persons receive;
- clarifies 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 FY2000;
- requires the President to convene a White House Conference on Aging by December 2005.

Brief Legislative Background

Prior to passage of **P.L. 106-501**, authorizations of appropriations for programs under the Older Americans Act expired at the end of FY1995. For the expired period, FY1996-FY2000, programs continued to be funded through appropriations legislation

for the Departments of Labor, Health and Human Services, and Agriculture, each of which administer portions of the Act.[1]

In the past, the Act had received wide bipartisan congressional support. However, beginning with the 104th Congress, and continuing through the 106th Congress, Members of Congress differed about certain proposals that were under discussion as part of the reauthorization. These included proposals to change the formula for allocation of supportive services and congregate and home-delivered nutrition services to states; consolidate a number of separately authorized programs; change the way community service employment funds are allocated to national organizations and states; and change minority targeting requirements, among other things. As a result of controversy around these issues, the 104th and 105th Congresses took no final action.

In the 104th Congress, legislation to reauthorize the Act was reported by both the House Economic and Educational Opportunities (EEO)[2] Committee and the Senate Labor and Human Resources Committee, but not with bipartisan agreement.[3] However, the bills were not acted upon by either chamber.

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), 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

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[1]For information on FY1998 through FY2001 funding, see CRS Report 95-917, *Older Americans Act: Programs and Funding*, by Carol O'Shaughnessy and Paul Graney.

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

[3]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. The Senate Committee's name was changed to the Senate Committee on Health, Education, Labor and Pensions in the 106th Congress.

H.R. 4344 had 188 co-sponsors. However, no further action was taken on these bills.[4]

106th Congress Activities

Final congressional action was taken on the reauthorization in late October 2000. On October 25, the House passed H.R. 782, the Older Americans Act Amendments of 2000, by a vote of 405 to 2. The next day, the bill passed the Senate by a vote of 94-0. The President signed it on November 13, 2000 as **P.L. 106-501**.

Activities relating to the reauthorization spanned both sessions of the 106th Congress. On September 15, 1999, H.R. 782, the Older Americans Act of 1999, was approved by the House Committee on Education and the Workforce. 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 ordered reported by the Senate Committee on Health, Education, Labor and Pensions (HELP), on July 21, 2000.[5] Both bills addressed the issues that had been in controversy during the 104th and 105th Congresses, in addition to some other topics that surfaced in the 106th Congress.

Issues in Reauthorization

The following discusses proposals that were considered as part of the reauthorization and their resolution as part of **P.L. 106-501**.

National Family Caregiver Support Program

The Clinton Administration's Older Americans Act reauthorization proposal and the FY2000 and FY2001 budget proposals included a proposal for creation of the National Family Caregiver Support program that was to be part of Title III of the Act. The proposal was one part of a multipart Clinton Administration initiative on long-term care services for persons of all ages. Other parts of the Administration's

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

[5]For a detailed description of S. 1536, see CRS Congressional Distribution Memorandum, *Older Americans Act of 2000 (S. 1536): Section-by-Section Analysis of S. 1536, as Approved by the Committee on Health, Education, Labor and Pensions*, by Carol O'Shaughnessy, August 3, 2000.

initiative included a tax credit for functionally and/or cognitively impaired persons of all ages, and authority for the Office of Personnel Management (OPM) to offer group long-term care insurance for federal employees, retirees, and their families.[6]

About 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 million older persons with any functional disability, over half need assistance with one or more ADLs, and almost 40% need assistance with IADLs only.

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.[7]

Data from the 1994 survey 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. Almost 60% of impaired elderly rely exclusively on informal care provided by family members. Typically, elderly persons rely on their spouses and adult children for assistance.

The National Family Caregiver support program, authorized by **P.L. 106-501**, is intended to meet some of the needs of family caregivers. It authorizes $125 million in grants to state agencies on aging to establish the family caregiver support program. For FY2001, Congress appropriated $125 million for the program.

The legislation authorizes the following services: information to caregivers about available services; assistance to caregivers in gaining access to services;

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[6]For further information on the Clinton 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.

[7]Doty, Pam. *Informal Caregiving, Compassion in Action.* 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.

individual counseling, organization of support groups, and caregiver training; respite services to provide families temporary relief from caregiving responsibilities; and supplemental services (such as respite, adult day care or home care services, for example), on a limited basis, that would complement care provided by family and other informal caregivers.

All caregivers eligible to receive services could receive information and assistance, and individual counseling, access to support groups, and caregiver training. Services that tend to be more individualized, such as respite, home care, and adult day care, would be directed to persons who have specific care needs. These are defined in the law as persons who are unable to perform at least two activities of daily living (ADL) without substantial human assistance, including verbal reminding, 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. ADLs include bathing, dressing, toileting, transferring from a bed or a chair, eating, and getting around inside the home.

Priority is to be given to older persons and their families who have the greatest social and economic need, with particular attention to low income individuals, and to older persons who provide care and support to persons with mental retardation and developmental disabilities. In addition, under certain circumstances, grandparents and certain other caregivers of children may receive services.

The law allows states to establish cost-sharing policies for individuals who would receive respite and supplemental services provided under the program, that is, persons could be required to contribute toward the cost of services received.

Funds are to be allotted 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. The federal matching share for the specified caregiver services is 75%, with the remainder to be paid by states. This is 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) where the federal matching rate is 85%.

In its proposal, the Clinton Administration projected that the $125 million level would provide one or more of the caregiver support services to about 250,000 families each year. The number of persons served will be affected by several factors, including 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.

Consolidation of Older Americans Act Programs

The law that existed prior to **P.L. 106-501** authorized 20 programs (although some had never been funded). A major issue in the 106th Congress, but especially in the two prior Congresses was a congressional initiative to streamline the Act, in part, by consolidating separately authorized programs. Some Members of Congress wanted to simplify certain requirements of law, and consolidate smaller programs. The House bill as originally approved by the House Committee on Education and Labor in 1999 would have reduced the number of authorized programs to 11; among

other things, it would have eliminated a separate title (but not authorization) for training, research and demonstration activities in the field of aging. S. 1536 as approved by the Senate Committee on Health, Education, Labor and Pensions in 2000 would have reduced the number of programs to 15.[8] Both bills would have eliminated authority for a number of programs that had never been funded.

P.L. 106-501 did not consolidate major programs, but eliminated authority for programs that had not received funding in FY2000 and prior years as well as authority for a number of demonstration projects. For example, the law eliminated authority for the Federal Council on Aging, and assistance for special needs, and separate authority for school-based meals and intergenerational activities. Also eliminated was authority for supportive activities for caregivers and in-home services for the frail elderly, which may be funded under the Title III supportive services program and the family caregiver support program.

Table 1 presents authorization of appropriations for each program as contained in the law.

[8] For example, H.R. 782 would have eliminated a separate title authorizing appropriations for research, training, and demonstration activities that are the responsibility of the Assistant Secretary for Aging. Instead, H.R. 782 would have authorized these activities under Title I. S. 1536 would have retained the separate title. H.R. 782 would have consolidated authorizations of appropriations for the long-term care ombudsman and elder abuse prevention programs. On the other hand, S. 1536 would have retained separate authorization of appropriations for ombudsman, elder abuse prevention programs.

Table 1. Authorizations of Appropriations for Older Americans Act Programs in P.L. 106-501

Older Americans Act Programs	Authorization of Appropriations
Title II, Administration on Aging	
Administration on Aging	FY2001-FY2005, such sums as may be necessary.
Eldercare Locator	FY2001-FY2005, such sums as may be necessary.
Pension counseling and information program	FY2001-FY2005, such sums as may be necessary.
Title III, State and Community Programs on Aging	
Supportive services and centers	FY2001-FY2005, such sums as may be necessary.
Congregate nutrition services	FY2001-FY2005, such sums as may be necessary.
Home-delivered nutrition services	FY2001-FY2005, such sums as may be necessary.
Disease prevention and health promotion	FY2001-FY2005, such sums as may be necessary.
Family caregiver support	FY2001, $125 million if the aggregate amount for supportive services and centers, congregate and home-delivered nutrition services, and disease prevention and health promotion is not less than the amount appropriated for FY2000. For FY2002-FY2005, such sums as may be necessary.
Nutrition services incentive program (formerly named the USDA commodity program)	FY2001-FY2005, such sums as may be necessary
Title IV, Training, Research, and Discretionary Programs	
FY2001-FY2005, such sums as may be necessary	
Title V, Community Service Employment Program	
FY2001, $475 million and for FY2002-2005, such sums as may be necessary, and such additional sums for each fiscal year to support 70,000 part-time employment positions.	
Title VI, Grants for Native Americans	
Indian and Native Hawaiian programs	FY2001-FY2005, such sums as may be necessary.
Native American caregiver support program	FY2001, $5 million, and for FY2002-FY2005 such sums as may be necessary.
Title VII, Vulnerable Elder Rights Protection Activities	
Long-term care ombudsman program	FY2001-FY2005, such sums as may be necessary.
Elder abuse, neglect, and exploitation prevention program	FY2001-FY2005, such sums as may be necessary.
Legal assistance development program	FY2001-FY2005, such sums as may be necessary.
Native American elder rights program	FY2001-FY2005, such sums as may be necessary.

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 $440.2 million in FY2001, representing 26% Older Americans Act funds. It is administered by DoL, which awards funds directly to national sponsoring organizations and to states. The grantees and their FY2000 funding levels are shown in **Table 2**.

Table 2. FY2000 Funding to National Organizations and State Sponsors

Sponsor	FY2000 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	106.5	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	64.3	14.7
National Urban League	15.3	3.5
National Indian Council on Aging	6.1	1.4
National Asian Pacific Center on Aging	6.0	1.4
U.S. Forest Service	28.5	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 were concerned about how the program was administered. Some Members wanted more funds to be distributed to states, rather than having the majority of funds distributed to the same national organizations every year, as had been required by Appropriation Committee directives for many years. Other issues included concerns that funding to the 10 national organizations was

awarded by DoL on a noncompetitive basis and about how much funding was used by the organizations for administration. 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. It 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.[9]

Like the 104th and 105th Congress reauthorization proposals, H.R. 782 and S. 1536 would have restructured the program, in part, to respond to the GAO findings although they differed in approach. Both proposals gave states more control of the administration of the program and introduced competition for funds among prospective grantee organizations. The bills made 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, and their resolution in **P.L. 106-501**, are discussed below.

Distribution of Community Service Employment Funds by the Federal Government. For many years, Appropriations Committee directives stipulated that national organizations were to receive 78% of the total Title V funds, and states, 22%.[10] The Committee directives differed from the authorizing statute that was in force. The statute stipulated 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 was to be distributed to state agencies, and 45% to national organizations. However, for most years since 1978, the Appropriations Committee directives stipulated the 78%/22% split of funds.

In its 1995 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 had long-standing concerns about the duplication of national organizations' activities that is caused by the distribution of funds to multiple organizations within a state. In addition, states maintained that because they administer only 22% of total funds in a state, their ability to coordinate operations of the program is very limited. In many states, multiple national organizations administer programs in addition to a designated state agency (usually the state agency on aging). For example, in six states, each with Title V FY2000 funding of $15 million or more, eight or nine national sponsors administer the program in addition to the state agency (California, Florida, 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.

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[9]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.

[10]This has been a long-standing issue. For example, 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.

These concerns lead to various proposals during the 104th, 105th, and 106th Congress to restructure the program, primarily by giving states more authority over the program, and by increasing their share of total funding and decreasing the national organizations' share. Proponents of shifting funds to states indicated that costs of program administration and duplication of effort would decrease since there would be fewer organizations to administer the program within a state. Proponents also said 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 continued during the 106th Congress. Some national organization grantees expressed concern that their continued existence would be threatened if more program funding were to be shifted to states. They were also concerned that restructuring could result in disruption of jobs for some existing enrollees. A number of organizations and some Members of Congress indicated that the program operated well under the national organizations' administration, and that because of their long-standing association, they had the needed expertise to continue administering the majority of funds.

Both H.R. 782 and S. 1536 would have changed the 78%/22% split of funds between national organizations and states, and transferred more funds to states; however, they took different approaches. H.R. 782 would have gradually transferred funds to states so that by FY2004, national organizations would have received 55% of *total* funds and state agencies would have received 45%. S.1536 would have applied a different division of funds to national organizations and state agencies *only when total funding exceeded the FY2000 appropriations level*.

P.L. 106-501 ultimately retains the 78%/22% split by requiring that state agencies and national organizations be *"held harmless"* at their FY2000 level of activities – that is, they are to receive no less than the amount they received in FY2000 to maintain the FY2000 level of activity.[11] But when appropriations exceed the FY2000 level, proportionately more funds are to be distributed to state grantees. Specifically, any excess in appropriations over the FY2000 level – up to the first $35 million – is to be allocated so that 75% will be provided to states, and 25% to national organizations. Funds appropriated above the first $35 million in excess of the FY2000 level are to be divided equally between state agencies and national organizations.

When appropriations are in excess of the amount needed to maintain the FY2000 hold harmless level, the excess is to be allotted among the states according to a state's

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[11]For purposes of allocation of funds and determining the FY2000 hold harmless amount, *"level of activities"* is defined as "the number of authorized positions multiplied by the cost per authorized position."*"Cost per authorized position*" is defined as the sum of: 1) the hourly minimum wage specified in the Fair Labor Standards Act of 1938, multiplied by 1,092 hours (21 hours times 52 weeks); 2) an amount equal to 11% of the above amount to cover federal payments for fringe benefits; and 3) an amount determined by the Secretary to cover federal payments for all other remaining program and administrative costs.

relative population aged 55 and over and its relative per capita income. (The relative population and per capita income factors were contained in prior law.) But, each state is to receive a percentage increase over its FY2000 allotment, that is, at least 30% of the percentage increase in the total appropriation over the FY2000 amount.

Use of Funds for Enrollee Wages/Fringe Benefits, Administration, and Other Enrollee Costs. Title V funds are used for (1) enrollee wages and fringe benefits; (2) administration; and (3) other enrollee costs. For many years, DoL regulations required that at least 75% of funds be used for enrollee wages and fringe benefits, but this was never specified by law. By law, 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," including, for example, recruitment and orientation of enrollees and supportive services for enrollees, among other things.

In its review of the program, 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. During consideration of the reauthorization, some Members of Congress noted that there should 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.

In response to this concern and to clarify the various cost categories, **P.L. 106-501** defines administrative costs, and programmatic costs as follows:

Definition of administrative costs. Costs of administration are personnel and non-personnel, and direct and indirect costs, associated with the following:

- accounting, budgeting, financial, and cash management;
- procurement and purchasing;
- property management;
- personnel management;
- payroll;
- coordinating the resolution of audits, reviews, investigations, and incident reports;
- audits;
- general legal services;
- development of systems and procedures, including information systems, required for administration; and
- oversight and monitoring.

Administration also includes goods and services used for administration; travel; and information systems related to administration.

P.L. 106-501 retains the prior law limit on administrative costs, that is, a grantee may use up to 13.5% of its funds (with a waiver up to 15%) for administration. The law also requires that, to the maximum extent practicable, Title V grantees provide for payment of administrative expenses from nonfederal sources.

"Programmatic activities." Funds not used for administration are to be used for programmatic activities. This includes primarily enrollee wages and fringe benefits (including physical exams) – the law stipulates that no less than 75% of grant funds be used to pay wages and fringe benefits. The remainder of funds may be used for:

- enrollee training;
- job placement assistance, including job development and search assistance;
- enrollee supportive services, including transportation, health and medical services, special job-related or personal counseling, incidentals (work shoes, badges, uniforms, eyeglasses and tools); child and adult care, temporary shelter, and follow-up services; and
- outreach, recruitment and selection, intake, orientation, and assessments.

Performance Standards. One of the areas that was under discussion during the 104th and 105th Congresses was the need to establish performance standards for Title V grantees. This discussion continued during the 106th Congress, and ultimately **P.L. 106-501** added new provisions requiring the Secretary of Labor to establish standards and performance indicators, addressing the following areas:

- number of persons served, with particular consideration to individuals with greatest economic or social need, poor employment history or prospects, and those over the age of 60;
- community services provided;
- placement and retention into unsubsidized public or private employment;
- satisfaction of enrollees, employers, and their host agencies with the experiences and services provided; and
- any additional indicators determined appropriation by the Secretary.

The law set up procedures for corrective action if a grantee or a subgrantee of the state does not achieve specified levels of performance. This may include transferring funds from the grantee/subgrantee, under competition requirements, in certain circumstances.

Negligent or Fraudulent Activities of Project Grantees. In the past, GAO performed audits of national organizations and found that Title V funds allotted to certain national organizations were used inappropriately. During the 106th Congress, there was 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 FY2000, it received $64.3 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.

Partially in response to these audit findings, **P.L. 106-501** adds provisions designed to assure that Title V applicants are capable of administering federal funds. The law adds a set of responsibility tests that applicants must meet in order to receive funds. Failure to meet the following two tests would establish that the applicant is not responsible to administer federal funds: unsuccessful efforts by the organization to

recover debts established by DoL and failure to comply with requirements for debt repayment; and established fraud or criminal activity. Other responsibility tests include the presence of serious administrative deficiencies, willful obstruction of the audit process, and failure to correct deficiencies, among other things.

Coordination of State and National Organization Grantee Operations. A recurring issue during the review of the program has been concern by some observers about the lack of coordination among project grantees within states, including the distribution of employment positions within states. As mentioned earlier, in some states, seven or eight grantees administer the program along with state agencies.

P.L. 106-501 contains provisions designed to address coordination among the various grantees. It adds new requirements for a State Senior Employment Services Plan. Each Governor is required to submit to the Secretary of DoL an annual plan that will identify the number of persons eligible for the program, and their characteristics and distribution within the state. The plan must also include a description of the planning process used to ensure the participation of relevant agencies and organizations with an interest in employment of older persons, including state and area agencies on aging, national organizations administering the Title V program, and state and local workforce investment boards, among others. The Secretary of DoL is required to monitor state implementation of these requirements to assure that the statewide planning and coordination of Title V activities are taking place.

Placement of Participants in the Private Sector and in Other Unsubsidized Employment. The purpose of Title V 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. For example, 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). In addition, DoL regulations have required 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.

P.L. 106-501 further emphasizes the role of the program regarding unsubsidized private placement of enrollees in a number of ways. First, it states that the purpose of Title V includes not only placement of participants in community service activities, but also placement of participants in the private sector. Second, it increases 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 prior law). This would mean, for example, that the Secretary would have to reserve $6.6 million of FY2000 funds ($440.2 million) for Section 502(e) projects, rather than the $2.4 million that was set aside in FY2000.

Third, the law codifies the regulation regarding placement of enrollees into unsubsidized employment. The Secretary is required to establish, as part of the performance measures, a requirement that grantees place at least 20% of enrollees into unsubsidized employment. The law defines "placement into public or private unsubsidized employment" as full- or part-time employment in the public or private sector by an enrollee for 30 days within a 90-day period without using a federal or state subsidy program.

Coordination with the Workforce Investment System. The Workforce Investment Act (WIA) was enacted in 1998 with the aim of consolidating and coordinating employment and training programs across the Nation. **P.L. 106-501** establishes a number of requirements aimed at coordinating the Title V program with the workforce investment system established by WIA. Among other things, it requires that Title V projects to participate in one-stop delivery systems in the local workforce investment area established under WIA. It also allows 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, and deems Title V participants to be eligible under Title I of WIA.

Interstate Funding Formula for Supportive and Nutrition Services

The way in which the Administration on Aging (AoA) distributes nutrition and supportive funds to states continued to be of concern in the 106th Congress, as it was in the 104th and 105th Congresses. In general, prior law required 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 contained a "hold harmless" provision requiring that no state receive less than it received in FY1987. **P.L. 106-501** changed the requirements regarding the formula distribution.

By way of background, prior to the recent law change, AoA distributed funds for supportive and nutrition services in the following way. First, states were 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.[12] Second, the balance of the appropriation was 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 were adjusted to assure that the minimum grant requirements are met. The effect of this methodology was that the majority of funds were distributed according to population estimates that do not reflect the most recent population trends. For example, for FY1999, 85% of total Title III funds was distributed according to the FY1987 "hold harmless." The remainder of funds appropriated was distributed according to 1997 population data.

The method that AoA used to meet the 1987 "hold harmless" provision has been criticized. In a 1994 report, GAO concluded that Title III funds were not distributed

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

according to the requirements of the statute.[13] GAO concluded that the method employed by AoA did not distribute funds proportionately according to states' relative share of the older population, based on the most recent population data and, therefore, negatively affected 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.

P.L. 106-501 followed 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 law then stipulates that no state would receive less than it received in FY2000, thereby creating a FY2000 "hold harmless" requirement. The intent of this approach is to have funding distributed, first, according to the *most recent* population data (as compared to the prior methodology which distributed the majority of funds to states based on state population data that was 13 years old), but at the same time assuring that individual state allotments would not go below their FY2000 levels.

If appropriations for Title III services increase over the FY2000 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 up to the current hold harmless threshold since the FY2000 hold harmless amount is effectively based on the 1987 amount.

Congress also wanted to assure that if there were an increase in appropriations over the FY2000 level, each state would receive a share of the increase. Therefore, the law requires that each state will receive at least 20% of the percentage increase *in the total allotment* over the FY2000 amount.

Targeting of Services to Low-Income Minority Older Persons

Low Income Minority Older Persons. Targeting of services to low-income minority older persons continued to be a subject of review during the 106th Congress, as it has during past reauthorizations of the Act. 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 with some Members of Congress as well as with national aging organizations. 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.

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

P.L. 106-501 retained all prior law provisions regarding targeting to low income minority individuals. These include 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.

Older Persons Residing in Rural Areas. Many advocates maintain that service needs of older persons in rural area are often overlooked. Delivery of social services in rural areas may be particularly difficult due to the lack of service personnel and high transportation costs, among other things. During the 106th Congress some Members of Congress were concerned that the Act did not place enough focus on the needs of older persons living in rural and sparsely populated areas.

In order to respond to this concern, **P.L. 106-501** contains a number of new provisions that are designed to recognize the special problems of older persons in rural areas. Among other things, the law requires that in providing services and in developing planning objectives, state and area agencies take into consideration the needs of persons in rural areas. In addition, state agencies are required to consider the needs of rural older persons when developing advocacy and systems development activities.

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 long-standing federal policy, mandatory fees for Older Americans Act services have been prohibited, but nutrition and supportive services providers have always been encouraged to solicit *voluntary* contributions from older persons toward the costs of services. Congress has intended that older persons 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 conduct cost-sharing for services.

Since the late 1980s, 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, such as home care and adult day care services. They also have argued that cost-sharing would improve targeting of services if cost-sharing policies were to be applied to persons who have higher incomes while exempting low income persons.

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 because of the absence of "means testing" or cost-sharing policies.

The Clinton Administration's proposed that state agencies be allowed to conduct cost-sharing for certain services, with limitations. It specified that certain services be exempted from cost-sharing policies. The Senate and House proposals differed on cost-sharing. H.R. 782 would have retained the voluntary nature of contributions, but S. 1536 contained elements of the Administration's proposal and added other requirements.

P.L. 106-501 ultimately made a distinction between *cost-sharing for certain services* and *voluntary contributions* by older persons. The law contains the following provisions:

Cost-Sharing. The law allows states to implement cost sharing by recipients for certain services. There are exceptions, however. Cost-sharing would not be permitted for the following services: information and assistance, outreach, benefits counseling, case management, ombudsman, elder abuse prevention, legal assistance, consumer protection services, congregate and home-delivered nutrition services, and services delivered through tribal organizations.

States may not apply cost-sharing for services to persons who have low income (defined as income at or below the federal poverty level) and from considering assets, savings, or other property owned by individuals when creating a sliding scale for cost sharing, or when seeking contributions. In addition, states may exclude from their cost-sharing policies other low income persons who have income above the poverty level.

Cost-sharing must be applied on a sliding scale, based on income, and the cost of services. Income is to be established by individuals on a confidential self-declaration basis, with no requirement for verification. Service providers and area agencies on aging would be prohibited from denying services to older individuals due to their income or failure to make cost-sharing payments.

The law requires the Secretary to conduct an evaluation of 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 enactment, and annually thereafter.

Voluntary Contributions. The law provides that each recipient of services have an opportunity to voluntarily contribute toward the cost of all services. It stipulates that voluntary contributions must be allowed, and may be solicited, for all services provided under the Act, as long as the method of solicitation is non-coercive. Among other things, older persons may not be denied services if they do not contribute toward the costs of services.

The law requires that both the cost-sharing and the voluntary contributions policies protect the privacy of each recipient of services. State and area agencies must 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.