

**REGULATIONS TO IMPLEMENT THE COMPREHENSIVE
OLDER AMERICANS ACT AMENDMENTS OF 1978**

JOINT HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
AND THE
SUBCOMMITTEE ON AGING
OF THE
COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
FIRST SESSION

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PART 1—WASHINGTON, D.C.
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OCTOBER 18, 1979



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THURSDAY, OCTOBER 18, 1979

U.S. SENATE, SPECIAL COMMITTEE ON AGING,
AND THE SUBCOMMITTEE ON AGING OF THE
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The joint committees met, pursuant to notice, at 10 a.m., in room 1114, Dirksen Senate Office Building, Senator Thomas F. Eagleton, chairman of the Subcommittee on Aging of the Committee on Labor and Human Resources, and Senator David Pryor from the Special Committee on Aging, presiding.

Present: Senators Eagleton, Pryor, Chiles, Burdick, Domenici, and Kassebaum.

Also present: From the Special Committee on Aging: E. Bentley Lipscomb, staff director; David A. Rust, minority staff director; Nell P. Ryan, professional staff member; Tony Arroyos, and Faye Mench, minority professional members; Theresa M. Forster, assistant chief clerk; and Charlotte B. Lawrence, resource assistant. From the Subcommittee on Aging, Committee on Labor and Human Resources: Marcia McCord and Steve Roling, professional staff members.

OPENING STATEMENT BY SENATOR THOMAS F. EAGLETON, COPRESIDING

Senator EAGLETON. Good morning.

We convene a joint hearing today of the Senate Subcommittee on Aging of the Committee on Labor and Human Resources and the Special Committee on Aging represented here by Senator David Pryor of Arkansas. I have a fairly short opening statement and then I will yield to my colleague.

Enactment of the Comprehensive Older Americans Act Amendments of 1978 sought to enhance the effectiveness and efficiency of State and community programs for older Americans by consolidating three separate titles of the prior law. There is no question that program consolidation causes major changes throughout the aging network and that the transition period for such change is fraught with turbulence.

A great number of concerns have been raised by the aging community since publication of the proposed regulations implementing title III of the Older Americans Act on July 31, 1979. The purpose of this hearing is to fully air these concerns, clarify congressional intent, and work toward devising the most effective delivery of needed services for older Americans.

Although any number of important issues have been raised, I believe the key to resolution of many of these is the question of potential weakening or dismantling of the existing network of State and area agencies. I believe this concern stems from a number of provisions in the regulations—the deletion of the requirement of a single State and area agency organizational unit, the required designation of community service areas and what is being construed as a total redesignation of both planning and service areas and area agencies on aging.

Another area of great concern has been the issue of means and income tests. The 1978 amendments do require that preference be given to those elderly with the greatest economic or social need. However, the Congress in no way intended to impose income as a determinant of eligibility for the comprehensive services provided under the act. Congressional intent has been clear since 1965 that these programs not be stigmatized by the "welfare" label.

However, in view of the fact that some 7 million older Americans have incomes which fall below the poverty threshold or within the "near poor" category, Congress did intend that preference in service delivery be targeted to low-income elderly. Similarly, since older members of minority groups tend to have special social concerns sometimes irrespective of income, but more often in addition to income limitations, they, too, warrant special consideration.

I look forward to today's discussion with Commissioner Benedict and trust it will take us closer to our mutual goal of improving the lives of older people in this Nation.

I yield to Senator Pryor.

OPENING STATEMENT BY SENATOR DAVID PRYOR, COPRESIDING

Senator PRYOR. Thank you, Senator Eagleton.

Today, the Senate Special Committee on Aging and the Senate Human Resources Subcommittee on Aging meet in joint hearing to review the proposed regulations to the Older Americans Act Amendments of 1978.

The Older Americans Act of 1965 was first enacted to carry out a number of comprehensive services and programs for older persons. At its creation in 1965, it was a \$7.5 million program. The 1980 funding level for the OAA programs will be approximately \$1 billion with services extending to the elderly in all areas of the country.

As a former Congressman and Governor of Arkansas, I proudly saw the implementation and expansion of these programs for the elderly. The 1972 Amendments to the Older Americans Act brought nutrition services to persons 60 years of age or older. This was to serve those with the greatest economic need and to reduce the isolation of the elderly. Planning and service areas were formed due to the requirements of the 1973 amendments in order to better organize at the State and local level and to fund grants to local communities for priority services. The 1975 amendments to the act provided for services under State plans which included transportation services, home services, legal services, and residential repairs and renovations.

The purpose of the 1978 amendments is to continue this progress by strengthening the Older Americans Act through the coordination of community resources, by eliminating the duplication of efforts and by strengthening the area agencies on aging in order that the elderly may benefit.

Throughout the numerous comments and discussions that have taken place on the regulations, there has been concern expressed that the proposed regulations to the 1978 amendments may both complicate and harm existing programs. Many people have worked for a number of years to bring the aging programs to their current level and they should be commended and encouraged to continue in their efforts. But my main concern here today is to see that these regulations enhance and further that progress not only in my own State of Arkansas but throughout the entire country.

Frankly, Mr. Chairman, the subject of Federal regulations is not one that excites me or most of my colleagues. However, the regulations that we are discussing here today are unique. These regulations cannot, indeed must not, be seen as an end. Rather, they must be seen as the primary means to accomplish the critical task of meeting the needs of our Nation's elderly. The regulations must be seen as the "lifeblood" of the aging programs of this country and evaluated and reviewed from that perspective.

Do they enhance the progress made to date in meeting the urgent needs of our vulnerable aging population? Do they facilitate the expansion of these services to all segments of the aging population? Do they carry out the spirit as well as the letter of the Older Americans Act?

If we can answer these and other questions that my distinguished colleague from Missouri will raise today in an affirmative and positive manner, then perhaps these regulations will also be unique in another respect. Hopefully, they will be seen not as another maze of Federal gobbledygook but rather as a positive expression of the Government's attempt to meet the needs of a vulnerable and deserving population. To that end, it is my hope and my desire that this hearing today focus on these regulations in terms of how they affect the present network of aging programs and services and how well they articulate the intent of Mr. Eagleton and Mr. Chiles and others who toiled long and hard to pass the best possible Older Americans Act amendments last year.

I would like to thank Senator Eagleton for joining us here today. Senator Eagleton and the Labor and Human Resources Subcommittee on Aging were instrumental in the creation of the 1978 Amendments to the Older Americans Act. I would like to comment, too, that this is the first time since 1971 that these two committees have held a joint hearing. Thus, it is most appropriate that the oversight committee and the authorizing committee on aging meet today in review of the proposed regulations to the Older Americans Act Amendments of 1978.

We welcome Mr. Robert Benedict, Commissioner of the Administration on Aging here today. If Senator Eagleton has no further opening statements, I assume we will hear from the Commissioner now.

Senator EAGLETON. We are delighted to have Senator Kassebaum with us. Senator, do you have an opening statement?

Senator KASSEBAUM. No.

Senator EAGLETON. Before we hear from Mr. Benedict, Senator William L. Armstrong, a member of the Committee on Labor and Human Resources, has submitted a statement for the record of today's hearing, and without objection, it will be entered at this time.

[The statement of Senator Armstrong follows:]

STATEMENT OF SENATOR WILLIAM L. ARMSTRONG

Mr. Chairman, I appreciate having the opportunity to participate today in this joint hearing, conducted by the Subcommittee on Aging of the Labor and Human Resources Committee and the Special Committee on Aging, to review the regulations which have been proposed by the administration to implement the provisions of the Older Americans Act Amendments of 1978. A number of concerns have been expressed to me about the content and character of these regulations by groups in Colorado interested in seeing that senior citizens receive high quality services and assistance.

The regulations are particularly important because they cut across such a wide spectrum of such services: social services, nutrition services, multipurpose senior centers, and new programs such as the long-term care ombudsman which were authorized by the 1978 amendments. I will be interested in how faithfully the proposed regulations reflect both the substance and the intent of the 1978 amendments, and the impact the regulations will have upon State and local organizational entities related to the aging. In particular, I am concerned that we protect, to the greatest extent possible, flexibility so that these entities may meet the needs of senior citizens in the respective States in as direct and responsive manner as possible.

A number of organizations interested in these regulations have provided me with their detailed comments, and I would request that these observations be included as a part of the hearing record.¹

Senator EAGLETON. Our sole witness today is Mr. Robert Benedict. Would you identify the individual accompanying you and then proceed.

STATEMENT OF HON. ROBERT BENEDICT, COMMISSIONER, ADMINISTRATION ON AGING, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY FRED LUHMANN

Mr. BENEDICT. The gentleman is Mr. Fred Luhmann who has principal responsibility in the Administration on Aging for managing the development of the regulations.

Chairmen Eagleton and Pryor, members of the Special Committee on Aging and the Subcommittee on Aging, Committee on Labor and Human Resources, I want to thank you for giving me the opportunity to meet with you today and to discuss the regulations implementing the 1978 Amendments to the Older Americans Act. I am delighted to have the chance to discuss the draft regulations developed to implement title III. Members of your two committees played important roles in formulating and securing passage of the 1978 amendments. We are most encouraged by your continuing interest in the regulations which will guide the States and communities in their application of the new legislative mandates.

Let me say at the beginning that I consider the 1978 Amendments to the Older Americans Act to be one of the most significant pieces of legislation for enhancing the well-being and rights of older Americans which has been passed in the last few years. Inherent in its provisions is the potential for establishing at the

¹See appendix, items 12, 13, and 14, beginning on page 69.

local level a comprehensive network of services to meet the full range of needs of the elderly, including the most frail elderly.

Insuring that this potential is realized represents a challenge of great proportion but it is one which I am pleased to accept. Challenges of this magnitude, however, require responsible deliberation and extensive consultation with a broad spectrum of persons and organizations active in the field of aging. That takes time. We have made every effort to assure you that the draft regulations were carefully developed, clearly written, true to the law and, perhaps most important, workable in their day-to-day application. I have been gratified with the positive response these regulations have elicited.

I want both the Subcommittee on Aging and the Special Committee on Aging to know that the Secretary, the Assistant Secretary and I share your concern for regulations that are promptly developed and executed. The Department has given special emphasis to the development of regulations implementing the 1978 Amendments to the Older Americans Act. Assistant Secretary Martinez underscored this point in her recent testimony before the Subcommittee on Human Services, House Select Committee on Aging. The assistance and support which the Department has given us in the formulation of the draft regulations has been most helpful.

The 1978 Amendments to the Older Americans Act were signed into law on October 18, 1978. The notice of proposed rulemaking for the revised title III was published in the Federal Register on July 31, approximately 9 months after the enactment of the amendments.

The process involved in the development of these regulations has been complex and it has been lengthy—but we do not believe unnecessarily so: Given the extensiveness and complexity of the amendments; given our desire for quality regulations; given the importance of involving numerous individuals and groups from the aging network in the deliberation process; and given the fact that guidance for implementing the law was going on concurrently with the development of the proposed rules.

Let me now briefly retrace the steps which AoA took during this period to produce a set of regulations which will, with some additional refinements from the public comment period, provide clear and positive direction to assist all levels of the aging network in carrying out the intent of the Congress in the amendments.

In each step along the way I have tried to assure a continuing dialog with those most interested in, and affected by, the regulations.

To begin, more than 200 people, representing many different facets of the national network on aging and including staff members from the oversight and legislative committees of the Older Americans Act, made recommendations in a 3-day national working conference held in November, just a few weeks after the 1978 amendments became law to examine and clarify many of the issues and uncertainties.

Second, AoA completed the initial draft of the title III regulations before the end of the calendar year.

In January, we sought further comprehensive exchange and recommendations from concerned groups in a series of small meetings.

Conferences were held with legislative staff members from the Senate and the House; with oversight committee members from the Senate and the House; with representatives of Governors, counties, cities, State legislatures, State agencies and area agencies on aging; and with heads of major national aging organizations and provider organizations.

In February these meetings continued with representatives of the service delivery network and with representatives from State and area agency advisory committees and grassroots advocacy organizations.

We also held two major telephone conference calls involving all State agencies, giving each the chance to ask questions and get clarification on the proposed implementation of the amendments.

Following this scrutiny by numerous organizations outside the executive branch, the draft regulations also received extensive review from within the Department itself. This in-house review process further shaped the regulations into a clear draft ready for public comment.

Most important in my judgment to this open process was the involvement of groups of older people themselves. We have met, from time to time, with older people who serve on advisory boards of area agencies and State agencies and service provider organizations. In this way we have tried to make absolutely certain that the views of older people themselves are also a part of shaping the programs and the final regulation.

Since the publication of the proposed regulations in the Federal Register, we have distributed more than 100,000 copies of the NPRM all over the country.

In an effort to promote maximum public involvement in the review and assessment of the draft title III regulations, AoA has held 11 public hearings, 1 for each of the 10 regions and an additional hearing in the State of Hawaii. Over 407 statements were presented in the public hearings. Since the hearings we have received an additional 1,200 separate comments on the rules themselves. These comments were submitted directly to the Administration on Aging.

It is too early to give you a final detailed account of the views expressed at these hearings and the comments we received directly. However, key issues which have emerged to date include: Single organization unit; State and area resource allocation plans; State plan amendment processes; State plan review and the roles of the State advisory council and the A-95 agency; hearing procedures; the types of agencies that may be designated as area agencies; service requirements associated with multipurpose senior centers; the relationship between providers of home-delivered and congregate meals; the different options for defining "greatest economic need," "rural areas," and so forth; and the question of what the Congress intended about the establishment of a community focal point.

The official 60-day-comment period ended on October 1. However, AoA is continuing to receive and consider comments from interested parties.

The Human Services Subcommittee of the House Select Committee on Aging has requested, and we have concurred, that we make

the official record of its September 26 hearing on the title III NPRM a formal part of our hearing record.

On October 12, I held one final nationwide conference call with members of State and area agency advisory committees to receive their comments on the NPRM and to give them an opportunity again to express their particular interests and concerns on the rules themselves.

I will assure you that the comments and recommendations from today's hearing are fully incorporated into our analysis of the title III: NPRM and the public response to these draft regulations. However, you may also want to consider incorporating the record of this hearing into the official compendium of comments we have received on the NPRM.

As I have already mentioned, while we are developing the regulations themselves we were also beginning to implement the law. We have also been obliged to implement the law itself because the Congress saw fit to require that it take immediate effect.

Even before the 1978 amendments were enacted AoA alerted the Governors with regard to the pending changes in the act which would affect their 1979 plan after the legislation was passed.

After the legislation was passed, we took the following steps to initiate the implementation effort:

Meetings with the General Counsel in November to determine what sections of the act required immediate implementation and what could be waived, as stipulated by the law.

We provided detailed information to the Governors in December, including waiver options and instructions to amend 1979 State plans to be in compliance with the law.

The new allotment schedules were sent to the States in January along with further guidance for implementation under the continuing resolution.

Near the end of January, 3 months after the amendments became law, all plans had been amended and all waivers were in and approved. Thus the States, according to approved plans, were in a position to be in compliance for those sections which required immediate implementation.

AoA continued to provide the States with some technical assistance to comply with the new act.

In April, following further questions about implementation of the new act raised by the States, AoA issued additional clarification and guidance, identifying a section-by-section analysis of those areas which required immediate compliance, those which could be waived and those which were dependent upon the pending regulations themselves.

In May, guidance went out to the States for their 1980 State plans.

At this time all fiscal year 1980 State plans have been approved. We are continuing to analyze the progress of implementation. The comparison of waiver requests originally requested for fiscal year 1979 with those requested for fiscal year 1980 provides one measure of such progress. A preliminary assessment revealed the following developments which indicate that the States are making substantial progress to implementation even before the end of the 2-year transition period. For example: The number of States requesting

all optional waivers dropped from 13 in fiscal year 1979 to 1 in fiscal year 1980; the number of States requesting a waiver of the 3-year-State plan requirement dropped from 42 to 24; the number of States requesting waiver of the long-term-care-ombudsman requirement dropped from 36 to 22; the number of States requesting waiver of the legal services requirement reduced from 41 to 21.

In summary, the time we took to develop the regulations was well spent because we got the quality regulations we wanted, we involved the people at all levels we needed to involve, and we didn't delay implementation of the act because we began immediately to provide assistance to the States to begin compliance.

Following the publication of the final regulations, AoA will continue to provide in-depth assistance to the Governors and to State and area agencies on aging to achieve full consolidation by fiscal year 1981 and to identify ways in which the act, the resources it makes available, and the program authorities it represents can be used to improve services to older persons.

In my judgment, Mr. Chairman, the Older Americans Act for States, the Federal Government—

Senator EAGLETON. Mr. Benedict, how far along are you in your statement?

Mr. BENEDICT. I am just finished.

Senator EAGLETON. With all due respect, we have not heard one word about substance. You have been giving—

Mr. BENEDICT. We will be answering questions.

Senator EAGLETON. You talk about conferences, conference calls, procedures—a welter of not too interesting minutia. I will take it as given that you talked to lots of people about the formulation of these regulations. You just established in the record that you talked to senior citizens organizations, State directors, area directors. You have talked to a lot of people. That takes you up to page 10. Can we have a little substance?

Mr. BENEDICT. I will be happy to address the specific questions.

Senator EAGLETON. You have no prepared statement on the substance of the hearings? Your whole prepared statement is on all the people you talked to; is that it?

Mr. BENEDICT. Senator, when this administration took office one of the enormous dilemmas that we faced, in my judgment, was the erosion of public confidence in the public processes of Government and the extent to which the various public agencies of this Government worked with the public they were intended to serve.

Senator EAGLETON. That is all right, but I just don't think it took us 10 pages to establish that. Let's get into the questioning.

Mr. BENEDICT. I will be happy to answer the specific questions the committees may have.

Senator EAGLETON. Ten-minute rule. I will start off for 10 minutes. You watch the clock and then we will go down the line.

The major issue raised in these proposed regulations is the organization of the sole State agency on aging. Section 305(a)(1) requires the State to designate the sole State agency on aging to develop and administer the State plan to coordinate all State activities related to the purposes of the act and to serve as the effective and visible applicant for the elderly in the State. At the present time the regs allow a State to designate either a multipurpose or an

independent single purpose agency as the sole State agency but requires a multipurpose agency to designate a single organizational unit whose principal responsibilities are in the field of aging to administer the Older Americans Act program. That is the requirement of the old regs.

The new regs propose to do away with requiring multipurpose State or area agencies from singling out one agency to administer Older American Act programs.

Now given that the proposed regulations do not require a full-time aging staff person at either the State or area agency level, how do you envision that program functions will be carried out?

Mr. BENEDICT. The requirement in the old regulations did not rest on a solid statutory requirement as one found, for example, in the Rehabilitation Act. Although that requirement was in the regulations, there have been over the years a number of States which have not been in compliance. The sole authority of the Administration on Aging to bring them in compliance ultimately is the withdrawal of resources.

There were many instances in which one could conclude that those particular States which were not in compliance were carrying out the intent of the law effectively. The State of Pennsylvania, where I was Commissioner for 7 years, was not in compliance with the requirements of the regulations. Had we been so it would have been an obstacle to the willingness of the Governor to permit us to draw together multiple resources and authorities within the State to consolidate them and to allow an agency to carry out many functions beyond the explicit programs of the Older Americans Act itself.

We raised the issue in the NPRM process because we believed it is significantly fundamental to the development of the programs.

What the draft rules propose is to permit the States to delegate authorities to a designated unit. In the NPRM process, additional suggestions have been made which we believe have merit. One is to require the delegation of authority to a single designated unit in such a way that would not preclude that unit from also carrying out other responsibilities. The second is to provide some waiver authority in those instances when a State can demonstrate that it will permit more effective implementation and expansion of services.

We think those modifications have substantial merit. However, we also believe that it is important to have regulations which are solidly built on the statute itself and regulations which are enforceable. That was the reason we raised the organizational issue in the NPRM process. We believe these additional suggestions and modifications are good. We are looking at them very closely in the drafting of the final regulation.

Senator EAGLETON. Let's move on.

Throughout the hearing process on the 1978 amendments I was concerned that we were using the shotgun approach in trying to spend the very limited, almost tiny amount of aging money that exists in order to solve the many, many problems that face the elderly today. I personally thought that a better approach would be to target a few services to a specific population and to try to really accomplish something with the Older Americans Act money know-

ing full well that because of limitations we are not going to do everything we would like to do but that a focus or targeted approach was better than the nickel-and-dime shotgun approach.

Now with this in mind, the 1978 amendments provided service preference to older persons with the greatest economic and social need. The purpose for such preference is to assist localities in targeting limited resources but not to strictly define or determine individual eligibility. In defining greatest economic need the regulations offered three options and asked for comments from the public. Let me just summarize what those three options are for the record.

Option 1 was at or below the poverty level—currently \$3,637 for couples with the head of the family age 65 or older.

Option 2 was at or below the “near poverty” level—125 percent of poverty level—\$4,546 for older couples and \$3,619 for older individuals.

Option 3 was at or below the maximum income eligibility for title XX—Social Security Act—services as established by each State, presently ranging from \$8,000 in Mississippi to \$17,945 in Alaska.

Now I would guess that the majority of people who commented on this section were in favor of option 3, the last one, because approximately two-thirds of elderly families and unrelated individuals would be considered in economic need if this option were included in the final regs, the one that went from \$8,000 in Mississippi to some \$17,000 or so in Alaska.

Am I correct in my assumption that most people favor option 3 and that in the second question, given the above-mentioned description of congressional intent, do you consider option 3 as really targeting when about two-thirds of the elderly are given preferences for services under this option?

Mr. BENEDICT. First, the answer to your specific question, Senator, is “Yes, you are correct.”

Senator EAGLETON. Meaning that most of the people who wrote in and talked to you, or what have you, favor option 3?

Mr. BENEDICT. That is correct. The majority favor option 3. However, I share your concern about whether that title XX definition adequately represents the intent of the Congress with regard to greatest economic need. We included option 3 primarily to facilitate discussion within each State about the ways in which the resources under these two acts might better be joined to expand services to older people in a more coordinated way.

The department has not made a final determination with regard to which of those definitions ought to be applied. My personal view is that we need to keep in mind that this is not a means tested program. There is no intent either within the Congress or within the administration that it should ever be a means tested program. Within that context, it may well be appropriate for targeting purposes, to use one of the more stringent definitions with regard to establishing priorities. It may also serve another purpose which we believe is the intent of the Congress with regard to minority populations because minority populations do; unfortunately, tend to be concentrated in the very low-income categories.

Senator EAGLETON. Has any evaluation been made of any of these aging programs insofar as outreach is concerned which would reveal either numbers, percentages or, in some form, a measure of how much of these programs are getting to minorities vis-a-vis those who are defined not to be minorities?

Mr. BENEDICT. Yes, sir, we have that information and we will be happy to submit it to you.

[Subsequent to the hearing, Mr. Benedict supplied the following information:]

The attached table reflected the numbers and percentage of minority participation in Older Americans Act programs in fiscal years 1977 and 1978. Data for 1979 is currently being analyzed and tabulated.

MINORITY PARTICIPATION—OLDER AMERICANS ACT

Social services	1977	1978	1979 ¹
Area agency operations:			
Transportation	625,141	662,837	
Percent	25	26	
All home services	204,625	192,014	
Percent	42	25	
Legal and related counseling	23,840	74,972	
Percent	12	28	
Residential repair and renovation	29,308	26,596	
Percent	38	28	
Information and referral	388,545	728,300	
Percent	12	25	
Escort	63,408	157,940	
Percent	22	42	
Outreach	200,860	282,369	
Percent	14	18	
All other services	408,633	651,813	
Percent	13	15	
Weighted average (percent)	17	22	
Nutrition services—Title III-C: Total minority participants	635,555	624,972	
Percent	22	23	

¹ Fiscal year 1979 data are due in the Administration on Aging central office on Nov. 15.

Senator EAGLETON. In the overall does it show that the overwhelming outreach of these programs is to the white elderly?

Mr. BENEDICT. No, sir, it does not.

Senator EAGLETON. It does not?

Mr. BENEDICT. In the main I think the Congress can be pleased that minority participation has been relatively high around the country and that low-income participation has been relatively high. I would like to submit within the next 2 or 3 days the specific data that we have that indicates that.

Senator EAGLETON. I have one question then I want to yield. To follow up on this line of inquiry, the proposed regs define greater social need as noneconomic factors such as isolation, physical or mental limitations, racial or cultural obstacles, and other factors with respect to normal living. What helpful comments have you received which will help you to define the phrase that I have just read?

Mr. BENEDICT. One additional suggestion is that we expand the notion of cultural barriers to include language barriers. There are still a very large number of older people who speak primarily in their native tongue. We have an obligation to place special empha-

sis on reaching out to them and making certain that they understand the benefits available under Older American Act programs and other Federal programs at their disposal. We believe this makes a lot of sense. There has been a suggestion that we more explicitly make reference to minority populations. We are examining that also. My personal view, however, is that we will achieve greater involvement of minority elderly persons if we examine the income criterion and consider very carefully the possibility of using one of the more stringent definitions.

As I indicated, minority populations unfortunately tend to concentrate in those lower income areas. For example, while they represent about 7 or 8 percent of the total elderly population, they represent closer to 23 percent of the low-income population. Therefore, we think that it makes sense to give the economic need definition very serious consideration in the development of the final rules.

Senator EAGLETON. I note that Senator Chiles, the chairman of the Special Committee on Aging, has joined us. I will note for the record there are six Senators here present. This is the largest number of Senators ever to attend a hearing of the Subcommittee on Aging of Human Resources. I do not know whether larger numbers have attended the Special Committee on Aging but I think it is an indication of the keen senatorial interest in these regulations that this number of Senators has turned out.

I will yield to Senator Pryor.

Senator PRYOR. Before I ask questions I wonder if Chairman Chiles would like to ask any questions or make any comments.

STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. Thank you. I just wanted to remark I think today is historic for a number of reasons. One, because it is the anniversary of the enactment of the Comprehensive Older American Act Amendments of 1978, an act that was designed to enrich the lives of over 33.8 million persons aged 60 or above.

Also, this is the first time in a little over a decade that we have had a joint meeting between the Subcommittee on Aging and the Special Committee on Aging. I hope that it won't be another decade before we get together again and I would like to thank Senator Eagleton for his cosponsorship of this hearing.

Senator Eagleton's dedication to the well-being of older Americans is well known to all of you but you may be interested to know that he held some nine hearings; heard the testimony of 60-plus individuals and organizations; and read through over 100 statements, all of which resulted in some 3,000 pages of proceedings as he and his committee struggled with the reauthorization of this very critical piece of legislation, the 1978 amendments. I think we are indeed fortunate to have this opportunity for the Special Committee on Aging to meet with you and your subcommittee.

I also would like to extend my appreciation to my colleague, Senator Pryor, for his cochairing of this hearing. I am in the middle of a conference committee on the budget right now and that commitment will prohibit me from being here for the remainder of the hearing.

I am delighted to see that Senator Kassebaum and Senator Burdick are also with us.

Senator EAGLETON. Senator Pryor.

Senator PRYOR. The focal point concept that you described in your opening statement brings to mind a very, very basic question. Why do we need to establish a focal point concept inasmuch as I feel that the present designated area system is working well?

Mr. BENEDICT. Senator Pryor, the community focal point concept is—

Senator PRYOR. It seems to me like a Madison Avenue advertising firm approach to a really very basic human and a fairly simple situation.

Mr. BENEDICT. Senator, if you will forgive me, the reason we are obliged to deal with that concept is because it is explicitly included in the amendments themselves. Moreover, neither the legislation itself nor the legislative history offer much detail about the congressional intent on this issue.

What we are seeking to do in the process of deliberation on the regulation is to sort out the fundamental authority and responsibility for managing local programs which we believe must be housed with the area agency. We are also attempting to use the focal point concept as it is in the law as a basis for beginning to upgrade some of the more than 11,000 nutrition sites which have been funded under the act so that they can begin to provide a broader range of services beyond nutrition itself. Indeed, we believe we can identify a number of sites at which we can move toward the collocation of a variety of Federal programs.

Senator EAGLETON. Collocation of several of those sites in a PSA or do we hope to collocate agencies in neighborhoods?

Senator PRYOR. Are we talking about miniarea agencies on aging?

Mr. BENEDICT. Not at all. We believe that area agencies have full responsibility for planning and development of services within the area but that the nutrition sites which have been developed under this program provide an excellent opportunity to cohouse a variety of other services as well. We think it is possible, for example, that nutrition sites should be able to offer older persons assistance in taking better advantage of food stamp programs. These sites might also offer the elderly assistance in taking better advantage of the property tax rebate programs. Given that the focal point provision is in the statute, we hope to use it to encourage the upgrading of some nutrition sites into more fully functioning service centers for older people.

Senator PRYOR. Mr. Benedict, Arkansas has a very, very high percentage of elderly. We maintain a very close working relationship with our local offices on aging and the people that administer those programs and deal with this problem. To the best of my knowledge we have not had one individual, whether it be a senior citizen or a provider or a local or State official say that we need to change the system; that we need to have a focal point; or that we need to have another layer of bureaucracy. A layer of bureaucracy that is going to confuse what we consider to be an orderly concept of providing these services. We have not heard one request of this nature. I think this request is coming from inside of Government

or maybe inside your office. I don't think that request came from the field and I don't think the field needs the focal point requirement.

Mr. BENEDICT. First of all, as I indicated, it is a statutory requirement.

Senator CHILES. The statutory requirement refers to a focal point. You can have a focal point in Lake City, Fla., where you have just one focal point for the aging or where the Agency on Aging is located. That does not mean you have to set up a total and complete bureaucracy to administer focal points and that is what your regulations involve. To me it is typical of everything we do. We put one thing in the law and then at the time we read the regulations we cannot recognize the law.

Mr. BENEDICT. Senator, we agree with you that the regulations are imperfect. In the conversations with States and with local agencies we have received a number of very constructive suggestions for modifying the focal point requirements. We are looking at these suggestions very closely. We think that many of the recommendations make a lot of sense.

Senator EAGLETON. Let me interject. Speaking to congressional intent, as I played a role in writing this bill, there was never the slightest intention at no time, nowhere, nohow, that we create another level of bureaucracy. When you read that act and all the hearings on the act from A to Z you will find not one glimmer of intent that we establish another layer. If you think you have found some congressional intent in there about that, unfind it because it isn't there.

Senator PRYOR. In your statement you say, "I just want to say we believe that the act intends that a community focal point be a unique type of place within the community." I think that you are assuming, or that your office is assuming, something in the law that I don't think that the Congress believes is in the law. I hope that your staff will take note of this and very carefully research the law. I do not believe that Congress intended the interpretation you have written into the draft regulations. I was not here last year but Senator Eagleton was and, of course, Senator Chiles and the other members of the committee were and I just don't believe that the Congress intended that if a program is working—and frankly I think it is working pretty well—to require a whole new set of regulations and start redoing districts and adding what I call miniagencies on aging and destroying the good working relationship that we have. If I may say this in all respect, I think that you are overstepping your prerogative here and I think you are going beyond what the Congress intended.

Mr. Chairman, I think my 10 minutes are up.

Senator EAGLETON. We used some of your time.

Senator PRYOR. All right. I will just ask questions for a few more minutes because I want Senator Kassebaum and Senator Burdick and certainly others to have an opportunity to ask questions.

There are certain requirements in the regulations for the redesignation of planning and service areas and area agencies on aging. As written the provisions appear to require all of the States to go through the same time-consuming and very costly process of redesignation. A certain timetable is set for public hearings to be held

for each redesignation. It is my understanding that in most States, area agencies have now established a very positive community identity and have no reason for redesignation.

Certainly problem areas should be dealt with, as we have done in our own State. However, I see no rationale whatsoever for mandating that the burdensome process be undertaken nationwide. These providers have their hands full trying to get the buses to pick up the elderly citizens, to get the food on the table, and to arrange the nutritional and social activities. They are just as busy as they can be without having to come to grips with a bureaucracy that comes tumbling down on top of them saying—we want you to redesignate and do all this other gobbledygook that we in Washington are going to require of you. I just wonder if it is not true that the Governors of the States have had, and continue to have, the authority to redesignate area agencies if needed.

Mr. BENEDICT. Senator, the intent of that provision was to remind States that one of the primary functions of this act was to consolidate several programs under the act and bring these programs under the authority of area agencies. In many cases, programs such as nutrition and senior centers had not been the responsibility of the area agency in the past. We are asking only that, as State agencies go through their normal process of reviewing and approving area plans with regard to consolidation, they satisfy themselves that the area agency has adequately prepared for taking on these new and diverse sets of responsibilities. In this way, we hope to assure that the services which older people are receiving would be received without interruption and without problems while the transition process was occurring.

Some States will face another problem. In several States there are areas which have not been served by area agencies previously. In order for the States to continue to provide services after October 1, 1980, in the communities not served at present by area agencies, the States will either have to establish new area agencies or make some adjustment in the boundaries of present area agencies. We think from the public reaction that we have not been clear enough with regard to our intent. On the basis of that public reaction, we are modifying the language to make certain that the intent is clear. Certainly it was never intended that a State should start all over with the designation of planning and service areas agencies on aging. Rather we want them to be very careful in this reorganization process to insure that the designations make sense in light of the new statutory requirements.

Senator PRYOR. That is the impression the States have received I think thus far and I can understand why. I have two quick questions.

I have a problem understanding how this redesignation proposal is actually helping elderly people. Two, I want to know where the statutory requirement is for your regulation relative to redesignation.

Mr. BENEDICT. As I indicated to you, our intent was to ask the States in the development of their State plan, and in the formal process by which they approve area plans, to make a site visit with each area agency to satisfy themselves that the area agency has taken the steps with regard to assuming the new statutory respon-

sibilities. The States must make sure that the area agencies can actually assume those responsibilities in a way that won't disrupt services.

Our intent was probably not clear. However, we believe that one major purpose of an NPRM and the associated public hearings is to identify areas which require clarification. We intend to modify the requirements about redesignation. We have had a number of discussions with the National Association of State Units on Aging and of area agencies on aging about the kinds of modifications which would be helpful. We do intend to make the necessary modifications.

Senator PRYOR. How much money will it take to redesignate all the agencies?

Mr. BENEDICT. It will not take one penny. The State is under a continual obligation to approve the area plan and to help area agencies at each stage of renewal to incorporate the new requirements of the law. All that we intended was that the States should be especially thorough in its review process during the period of transition from old to new statutory requirements.

Senator PRYOR. It takes time, it takes employee hours so that is money, and that is money or hours taken away from the other normal functions and needs of these programs.

Mr. BENEDICT. Well, the States are already required to provide assistance to area agencies and to make site visits to area agencies as they approve the area plan. It is as a part of that normal ongoing operating process that we are requiring the States to satisfy themselves that the area agency is adequately prepared to take on these consolidated responsibilities. That was the single intent and purpose of that requirement. As I indicated to you, based on the comments and our discussions with State agencies and area agencies, we think the requirement needs to be modified to be more clear. We are certainly not suggesting to them that they are supposed to go through some complete reorganization process. Clearly that was not the intent.

Senator EAGLETON. Senator Kassebaum.

Senator KASSEBAUM. Thank you.

I would like to follow up on your last comment because I cannot believe it is not going to cost a penny. For one thing, a great deal of paperwork will be involved. This is of great concern to many of the agencies and I am sure all of the States as well. In addition, there are provisions for hearings on all of the named amendment changes which, as you say, would require a considerable number of staff hours. Has any estimate been made of the increased administrative cost?

Mr. BENEDICT. With regard to the amendment process, it is my judgment that the amendment requirement should be limited, for example, to those instances where a State makes a substantial adjustment in its allocation formula within a State or where the State actually proposes to change the designation of the State agency itself and its organization, or those instances in which a State proposes to make substantial changes in the boundaries and organization.

Other kinds of modifications ought to be considered part of the normal routine ongoing business of administering the State's pro-

gram. We have discussed this with representatives of States. We intend to modify State plan amendment requirements in that direction.

Senator KASSEBAUM. I don't know that I would agree that the answer responds to the question I asked. Although I was not a member of the Senate when the 1978 amendments were formulated, I have worked in my community in this area. A particular concern of mine, which I believe has already been voiced today, is that there is not sufficient flexibility for different areas to meet particular requirements under the proposed regulations. The proposal includes ambitious requirements which have been presented as minimum standards rather than goals. As a result, I fear that we are going to lose some of the centers that have been offering less than comprehensive services. This would seriously handicap our ability to meet the needs of older citizens. Do you anticipate that many of the 5,000 existing senior centers will be eliminated because they do not meet these requirements?

Mr. BENEDICT. First, we do not intend to eliminate any of the senior centers. The requirement which we found in the law on community focal points, indicates that the designation of those focal points should be a priority for multipurpose senior centers. We sought to identify some requirements that we thought would relate only to those centers within a given PSA which the area agency saw as filling this larger role. The requirements are certainly not applicable to all the nutrition sites and centers around the country.

Again, in the process of sorting out the various provisions of the act, trying to understand the difference between the nutrition site and the little centers and private centers, and trying to understand what was meant by community focal point, we sought to make some distinctions. Among centers which could fulfill these expanded requirements and those which cannot. We obviously have not been totally successful. We have had conversations with States, with area agencies, and with centers for modifications of the requirements which we think make a good bit of sense. One such suggestion is the movement of the standards from the multiservice center section over under the community focal point center section. The standards would apply therefore only to centers that meet that focal point requirement.

In addition to modifying some of the explicit requirements themselves, we are considering allowing area agencies to establish requirements tailored to their own local situations. For example, rather than requiring a 45-hour week, we could allow the area agency to try to set a schedule for when the centers would be open and reasonably accessible to older people. We think those changes make a lot of sense. We will continue to consider them very seriously as we prepare to publish final regulations.

I would point out, Senator Kassebaum, that the community focal point requirement includes a provision which allows various agencies broad latitude. The requirement makes sense where you have a capability in a particular neighborhood to move in that direction. The words "feasible provision" provides area agencies a very broad latitude with deciding where, when it is appropriate, how to go about it, and in what time frame.

Senator KASSEBAUM. I would like to ask one specific question that has been given me as one that is evidently causing some confusion. It deals with the community focal point. Where is the authority for the 24-hour-a-day, 7-day-a-week referral requirement for the community focal point?

Mr. BENEDICT. These provisions were suggested by some older people who have been serving on a panel group for us. They were enormously concerned about those instances in which agencies operate on a 9 to 5 basis and, therefore, are not available to them in real emergencies.

What we sought to do with that provision was to require the community focal points to have linkages with community contact systems, and areawide crisis intervention programs, so that they had a vehicle for linking those older people who have immediate emergencies to those services when they need them. It is something that the older people that we talked to wanted very badly, to have the assurance that if something happened to them at night the 24-hour referral system would help them make contact with the services they need.

Comments on this section have indicated that many think that the provision would be workable if it was not under the multipurpose senior center section but rather we should encourage area agencies to establish those kinds of linkages to services which assure protection to those older people who have those very serious problems. I can assure you that many elderly persons do have such problems. We get phone calls from time to time directly from a person in Missouri or Kansas or New York who is just desperate to be able to reach service providers when they need them.

Senator KASSEBAUM. I am sure that is very true. Of course, many communities that would particularly benefit from this service already have the 24-hour emergency services available through the police and hospital emergency rooms in the hospitals. More and more police departments are trying to provide family assistance and other services.

Well, I have used more than my share of time for questions. I think that certainly it is indicative of the many that we do have.

Thank you, Mr. Chairman.

Thank you.

Senator EAGLETON. One brief comment. I don't think you will find one word in the hearings of many, many pages mandating 24 hours a day, 7 days a week service. If you can find that in our record, you are a magician. I don't know of any requirement mandating 24 hours a day, 7 days a week service.

Senator Burdick.

Senator BURDICK. Thank you, Mr. Chairman.

Four specific areas have been mentioned here from time to time concerning the multipurpose senior centers. These requirements for centers, as I read the law, are not specifically authorized by statute. A lot of people fear that many centers in little towns could not fund such sophisticated services. They are run by volunteers on a shoestring, although they might well evolve into full service centers in the future. In addition, there is not a care-providing facility in every little town or county, so it would be impossible to provide these services.

Most of our multipurpose centers are in towns of 1,500 to 2,000 people and they are run by volunteers on a shoestring budget. Maybe these communities do not have a "care-providing facility" nearby. They do not have the sophistication to provide the level of service mandated in your proposed regulations.

What becomes of these centers if your regulations go into effect? Are you worried that any of them might have to close?

Mr. BENEDICT. First of all, let me say, again, that these requirements were not intended to apply to all of the thousands of senior centers around the country. They were meant to apply only to a unique set of centers, those which the area agency determined were capable of moving toward the colocated management of such services. There is misunderstanding with regard to the application of all requirements to all centers. As we have indicated a few moments ago, we intend to modify that in ways which make it clear.

Senator BURDICK. Are you telling me that the regulations are promulgated, but then somebody else would modify them in certain areas?

Mr. BENEDICT. The rules are only in draft stage. The rules seek to make a distinction between the thousands of emerging centers which we think should continue in their present role and those which are capable of assuming more expanded responsibility, such as the colocation of activities in particular centers and neighborhoods.

I want to reemphasize that the statute and the regulations say "where feasible," where it makes sense. Over a period of time it makes some sense to encourage centers to take greater responsibility where they have the capacity. One of the things that impresses me enormously about the public comment process is not only the unique provisions of the NPRM, and comments on those provisions but how far the comments suggest we have to go before we can offer the full range of services that begins to meet the needs of older persons adequately.

I have been impressed not only by the quality of the comment and recommended changes that people have made but also by the concern the comments convey about the lack of resources to provide the services older persons need. So the process itself I think evokes an enormous challenge for the Congress and the administration, and Governors to continue to move in a thoughtful way toward meeting these rather substantial needs so older people can look forward to something other than nursing homes and similar institutions as a basis for care.

That has been the single most important impression that I picked up as I have gone around the country. I do want to emphasize that these are draft rules, that they are developmental in nature. We think very much that the rulemaking process and the 1,600 comments we received are part of the rulemaking process and we are obliged as a public agency—

Senator EAGLETON. Mr. Benedict, we have a lot of Senators here today. If we are going to put time constraints on our questions, you have to put time constraints on your answers. Let's try to give direct, clear, cogent answers and be about the business.

Have you gotten any kind of an answer to your question, Senator Burdick?

Senator BURDICK. I am going to follow it up a little bit.

Senator EAGLETON. Go ahead. You are entitled to a lot more time.

Senator BURDICK. I was surprised that you recognized the problem we all are addressing here today. You said when you were a director, whatever your position was in Pennsylvania, that there were some regulations that you could not comply with. So now when you have a big responsibility, let's have regulations that will fit. Let's not have regulations that will have to be ignored. That is no way to run a railroad. I hope you do something about these regulations that apply to the rural communities because as it stands right now the regulations could not apply to them. The rural areas were not considered in these regulations, that is all there is to it.

I would like to put in a word also for my colleague that raised this question about 7-day meal delivery requirement. It is hard enough to get volunteers for 5 days. It would be impossible, too, for volunteers to provide meal service on a 7-day basis. I hope when you make the regulations final, that you approach this with a degree of practicality and examine the differences among the areas and communities in the country.

Thank you.

Senator EAGLETON. You are entitled to more time, Senator Burdick. You have been very patient with us. We have abused our time.

STATEMENT BY SENATOR PETE V. DOMENICI

Senator DOMENICI. Mr. Chairman, as the ranking Republican on the Special Committee on Aging I want to say that I think this is a very good example of what we as the Special Committee ought to be doing; that is, working with your committee which has the authorizing jurisdiction. I am pleased that Senator Pryor is presiding for our committee.

I can stay only a few minutes because the Budget Committee is meeting in a final effort to agree on a budget. I say, Mr. Chairman, I want to share some good news with you. The Senate did, in its offer this morning submit a bill for \$200 million in outlays for function 600 which is in this committee's jurisdiction to go with the \$250 million that was there so we will have the prospect of a billion.

Senator EAGLETON. That is in crisis intervention.

Senator DOMENICI. Low-income assistance and crisis energy intervention. That will make available, Mr. Chairman, if this prevails, \$1,400,000. We hope then that we can make some changes in the law and then have the funds allocated to the people this winter.

Mr. Chairman, I have a statement that basically addresses the issue of the regulations being both untimely and inconsistent with the legislative intent and I would just ask that it be made a part of the record at this point.

Senator PRYOR [presiding]. Without objection, so ordered.¹

¹See page 30.

Senator DOMENICI. I will ask some specific questions.

Now let me tell you a problem that we have and maybe ask you to define rural for me. My State is very concerned as it is a rural State and the only city is Albuquerque, a city of one-half million people. They indicate to me that the way the regulations define rural, that Albuquerque will be rural in nature. Now that seems to them to be very, very unexpected and I would say it seems to me to be highly unusual that a city of 500,000 in New Mexico would be rural when we intended the real rural areas to receive additional funds, but not the city.

Can you furnish us an answer to that for the record later, Mr. Benedict?

Mr. BENEDICT. Yes; very briefly the law does require us to define rural. We proposed three alternative definitions in the draft regulations. It is a difficult problem from two perspectives. One is trying to find the definition that makes sense, especially one which meets the intent of Congress which is increasing services in rural areas without posing—

Senator DOMENICI. Let me say this. You said there are three options. Under options 1 and 2 specifically, Albuquerque, a metropolitan area, is rural. Under option 3, it may not be but only because option 3 leaves it up to the State to decide. So it would appear to me that the regulations have not solved the definition of rural but rather you let the State decide on its own definition.

Mr. BENEDICT. Senator, what I would like to do is to provide you with some analysis of that issue because it does not sound on the face of it to me that any of the definitions would actually classify Albuquerque as "rural." However, I would like to explore the matter with your staff.

Senator DOMENICI. Would you do that, please.

[Subsequent to the hearing, Mr. Benedict supplied the following material:]

ALTERNATIVE DEFINITIONS OF RURAL—ALBUQUERQUE, N. MEX.

Option 1: Albuquerque area fails two of the three criteria for definitions as rural because (a) more than 50 percent of the total population lives in an urban area and (b) the total population density is more than 100 persons per square mile. Therefore, under this option, Albuquerque would be urban, rest of State rural.

Option 2: Bernalillo County is urban, because it fails two of the tests for rural—under this option, Albuquerque would be urban, rest of State rural.

Option 3: State definition not specified, therefore not able to assess regarding the impact on Albuquerque.

Senator DOMENICI. Let me specifically ask you these questions.

Section 605 directs the AoA to issue final regulations for title VI within 90 days of enactment which would have been mid-January 1978. Can you tell the committee why you failed to comply with that statute?

Mr. BENEDICT. When the law was enacted it became clear to us that there were enormous interface problems between the title III and title VI. There are many interactive statutes that apply for funds under either. There are similar services requirements in title VI which are dependent on definitions in title III. Under title III, Indian tribes may also apply for planning in service areas.

There is a whole series of interactive provisions. Inasmuch as the Administration on Aging was under a continuing resolution, I met with the staff of all the committees in January and discussed with

them the possibility of delaying the implementation of the title VI rules in conjunction with the title III rules so that these interactive processes—

Senator DOMENICI. Mr. Chairman, I must go to the budget meeting. I don't think I am going to get answers. I can't wait any longer. I want to give the Commissioner these 10 questions and would you ask that these be answered, please.

Senator EAGLETON. Yes.

[Subsequent to the hearing, Senators Eagleton, Pryor, Domenici, and Cohen submitted additional questions to Mr. Benedict. Those questions, with Mr. Benedict's response follow:]

QUESTIONS SUBMITTED BY SENATORS EAGLETON AND PRYOR

Question 1. Organizational units.—You state in the preamble to the regulations that the act does not specifically require a single organizational unit. Yet, the act clearly requires that both State and area agencies on aging serve as effective and visible advocates. How can this visible advocacy requirement be fulfilled absent a single organizational unit?

Mr. Benedict's response: As you note, the preamble to the proposed regulations states that the act does not specifically require a single organizational unit at either the State or area agency level. Section 305(a)(1) of the act speaks of a sole State agency. Section 305(c) lists the various types of agencies that may be designated as area agencies. Neither section of the act requires a single organizational unit in the instance where the designated State or area agency is a multipurpose agency. Additionally, our review of legislative history did not reveal an explicit expression of congressional intent that a single organizational unit should be required in a multipurpose State or area agency. We concluded, therefore, that a State or area agency which was designated in accordance with the provisions of the act could carry out its responsibilities as a visible advocate consistent with congressional intent even without a required single organizational unit.

There are safeguards in the proposed regulations which insure that the designated State or area agency carries out broad statutory functions: Section 1321.11 imposes coordination functions, a visible advocate and focal point; section 1321.15 requires the State agency to provide methods of administration necessary for proper and effective administration of the State plan; section 1321.21 requires States to demonstrate in the State plan how its functions including coordination, review and comment, advocacy and focal point will be carried out; subpart D further delineates State agency responsibilities, including advocacy responsibilities which must be addressed in the State plan; subpart G and H, and subpart E in sections 1321.61 and 1321.77, impose similar requirements on area agencies which must be delineated in the area plan and approved by the State agency.

The Congress has provided administrative resources for both State and area agencies to carry out their respective functions. State and area agencies have mandated advisory committees. State and area agency comprehensive plan development processes which consolidate former titles III, V, and VII and which require public participation and hearings provide further assurances. Eliminating the strict requirement for a single organizational unit merely permits States flexibility in organizing to carry out statutory functions.

Question 2. Special dietary needs.—The act requires that special menus be provided *where feasible and appropriate* to meet the particular dietary needs arising from health requirements, religious requirements, or ethnic backgrounds of eligible individuals.

The question of serving appropriate but more expensive meals versus a greater number of meals is a difficult one. What helpful comments have been received on the regulations' limited exemption from the special diet requirements?

Mr. Benedict's response: The question of serving appropriate but more expensive meals versus a greater number of meals is indeed a difficult one. We have received a large number of comments on this provision of the proposed regulations. A majority of commenters oppose a rule which is as encompassing as that in the proposed regulations. However, our review of comments does not reveal any generally agreed upon options to resolve the dilemma which you identify. A number of commenters suggest that the matter be left to decisions made at the local level. This approach has, in fact, been the past practice. However, we proposed the more stringent norm in the NPRM because of complaints we received that in some instances the "where feasible" language was being used as a reason for failing to

provide special menus to meet the particular dietary needs arising from health requirements, religious requirements, or ethnic backgrounds of eligible individuals. We will revise the regulations to provide criteria for determining the feasibility of special menus.

Question 3. Priority services.—The act requires that 50 percent of each area agency's social services allotment be expended on services associated with access; in-home services; and legal services. In that the priority provision attempts to assure that a few important services are provided in depth, do you intend to restrict the priority service provision to those services enumerated in the statute?

Mr. Benedict's response: Yes; as the preamble indicates, on page 45040, the proposed regulations address services associated with in-home services, transportation, and legal services in two sections. Section 1321.75 of the proposed regulations prescribes the components of a comprehensive coordinated services delivery system, including but not limited to the services listed above. Section 1321.195 prescribes the rules for the 50-percent requirement and clearly indicates that only those services listed in section 306(a)(2) of the act may satisfy the 50-percent requirement.

Question 4. Greatest economic need.—Were any other options to define greatest economic need proposed as alternatives to the three options suggested in the proposed regulations?

Mr. Benedict's response: In addition to the three options in the proposed regulations, a few commenters proposed alternative definitions of greatest economic need. Several commenters proposed that the definition of greatest economic need be the responsibility of the State alone. A few others proposed that a definition be developed by the State agency in consultation with the area agencies. Several commenters suggested that title III use the same standard as prescribed for title V, that is, 125 percent of the poverty guidelines established by the Bureau of Labor Statistics. (This, in fact, coincides with option 2 in the NPRM.) One commenter proposed the use of 80 percent of the title XX maximum eligibility.

Question 5. Contributions for services.—The 1978 amendments allow senior citizens to pay some or all of the price of meals served in a congregate site. However, the law and the legislative history very clearly state that no means test can be used and no mandatory fee scale can be implemented. If seniors want to eat at a site without paying, for whatever reason, the 1978 amendments say OK. However, the act, past or present, does not authorize the Administration on Aging to suggest that it is appropriate for seniors to pay for services other than nutrition services. Where in the act do you get your authority to suggest that participants contribute to all or part of the cost of the service, other than nutrition? Is it your intent to suggest that participants be asked to pay for some or all of the costs of legal services, in-home services, etc.?

Mr. Benedict's response: AoA will make it clear in the regulations that imposition of a means test for any service is prohibited. No mandatory fee schedule will be permitted. We assume that the reason Congress authorized contributions for the nutrition program was to allow providers to serve more people and encourage elderly people with sufficient means to feel comfortable in accepting the service even though they know the supply of the service is limited, and that other old people need it more than themselves. We believe this policy is equally applicable to other services under the act. The limited service supply provided by this program in some communities, may be the only source of the service in that community. We believe that a person with financial means and a willingness to contribute should not be put in a position of reluctance to accept the service knowing more needy people will be deprived of the service. A well-administered program of voluntary contributions brings elderly of all income ranges into the program. The positive benefits of an opportunity to participate in the cost of the service apply generally to social services, including nutrition, homemaker service, chore service, and others. Present regulations for social services at section 1321.142 provide that older persons who receive social services must be given an opportunity to contribute to all or part of the cost of the service. We have not received any adverse comments on this policy in the 6 years it has been in effect.

To respond to your specific question, the proposed regulations do not suggest that participants be "asked to pay" some or all of the cost of any service. The proposed regulations simply propose that older persons be given an "opportunity to contribute." The proposed regulations clearly state the completely voluntary and private nature of any such contributions. We believe that providing older persons with a completely voluntary opportunity to contribute to the cost of a service respects the dignity and freedom of choice of the older person.

Some commenters on the NPRM correctly observed, that the language should be modified to recognize that older persons cannot readily be given opportunities to

contribute to such services as I. & R. or outreach. We will make necessary clarification on this matter in the final regulations.

Question 6. State plan based on area plan.—Section 307(a)(1) of the act requires that the State plan contain assurances that the State plan “will be based on area plans developed by area agencies on aging within the State.” In the preamble you state that you assume it was not the intent of Congress that the State plans be a simple compilation of area plans or that the development of State plans follow in time the development of area plans. This subcommittee heard much evidence that area plans were simply not looked at or considered when State plans were drafted in many regions of the country. Certainly, the State has a leadership responsibility and therefore, the State plan should be much more than just a compilation of area plans. But, on the other hand, a State plan is not much good if it does not reflect the needs and wishes of the area agencies. Therefore, I want you to expand on how you see section 1321.29(a) of the regulations implemented to insure that area plans are considered in the formation of the State plan. How can this be done with both being drafted at the same time? What practical problems would be caused if you would require the development of States’ plans to follow in time the development of area plans? What about requiring the State to develop its plan “in conjunction or partnership” with area agencies?

Mr. Benedict’s response: Section 1321.29(a) of the proposed regulations requires that the State agency must carry out the requirement that a State plan must be based on area plans by giving all area agencies in the State an adequate opportunity to participate in the development of the State plan in order to insure that the objectives established in State and area plans are consistent.

We sought in the proposed regulation to respond to the type of concern which you indicate you heard in public hearings, namely, that area plans in some instances were simply not looked at or considered when State plans were drafted. We did this by proposing to require the involvement of area agencies in the development of the State plan. We are currently working with a State plan task force which includes representatives of State and area agencies who have been selected respectively by NASUA and N4A. This task force is assisting AoA in developing model State and area plan formats. The questions of interrelationship between the plan formats is one key aspect of the question of how to understand the meaning of the phrase “State plan based on area plans.” We are looking, together with the task force, at questions of timing in the development of the State and area plans. We are also exploring with the task force appropriate methods of defining a sense of State and area agency partnership in the plan development process.

Question 7. Definition of “rural”.—In many areas, a given area agency on aging will be comprised of both urban and rural components. If the third option for the definition of “rural area” is incorporated into final regulations, do you intend to modify it to insure consideration of AAA’s with urban and rural components?

Mr. Benedict’s response: The third option for the definition of rural in the proposed regulations is essentially a State-determined definition. As proposed the definition reads: “Rural area” means geographic areas of a State defined by the State agency as rural according to criteria established by the State agency and approved in the State plan. The key words in this definition are “according to criteria established by the State agency.” If this definition were accepted in final regulations we would not modify it to assure consideration of area agencies with urban and rural components. If we inserted modifications of this kind then the definition would no longer truly be a State-determined definition. The option does, however, require the State to submit its definition for approval as part of its State plan. Therefore, AoA would have the right to assure that the definition met the intent of the act before the State could use it. We received few comments supporting this definition.

Question 8. Organization of the area agency.—The proposed regulations state that an area agency may be a “multipurpose agency established to administer human services in the area.” Is it your intention to prohibit regional planning commissions from being designated AAA’s? If so, what do you perceive as disadvantages to the regional planning commissions?

Mr. Benedict’s response: The proposed regulations at section 1321.65 state that in the instance where a multipurpose agency is designated as an area agency, the agency must have been “established to administer human services in the area.” There has been some misunderstanding of our intent generated by the use of the words “established to administer human services.” It was not our intent to exclude through this provision regional planning commissions from designation as area agencies. Rather, we sought to emphasize that an agency designated as an area agency must have the authority and capacity to carry out the responsibilities prescribed by the act. It is particularly important that agencies affected by consoli-

ation requirement are prepared and willing to carry out new responsibilities. The amendments, as reflected in the regulations, are a step toward more comprehensive management of aging services programs. We will clarify the language on this point in the final regulations.

QUESTIONS SUBMITTED BY SENATOR DOMENICI

Question 1. In section 1321.193—options for definition of rural, the way in which option 1 and option 2 are written could make it possible for the Central New Mexico Area Agency on Aging, which includes Albuquerque, to be designated as rural, in spite of the fact that Albuquerque is the most heavily urbanized area in the State. Have any other proposals for defining rural been advanced through the public comment period?

Mr. Benedict's response: A few other proposals for defining rural were received but were rejected as unworkable, primarily because of the inordinate paperwork burdens they impose on State and area agencies to financially account for funds expended in rural areas. AoA's goal is to carry out congressional intent, but to minimize accounting and paperwork burdens.

Question 2. In section 1321.3 under the definition of "greatest economic need," were any further recommendations advanced for other definition options which would combine other factors, such as receipt of SSI benefits and incomes at or below the poverty threshold as defined by the Bureau of the Census?

Mr. Benedict's response: We received hundreds of comments on the proposed definitions of greatest economic need. Most commenters limited themselves to indicating a preference for one of the three options in the NPRM. Some commenters, however, proposed that the State agency or the State agency in consultation with area agencies decide on the definition of greatest economic need. One commenter suggested that greatest economic need be defined as 80 percent of the maximum income allowed for receipt for services under title XX. The first option in the proposed regulations is essentially the same as that which you suggest in your question, namely, income that falls at or below the poverty threshold established by the Bureau of the Census. This is the definition the Department has decided to use.

Question 3. Organizations providing home-delivered meals under contract with a nutrition project are not "service providers" according to provisions of section 1321.141 and, therefore, are without recourse to appeal if funding is denied. Did AoA intend to treat these providers differently?

Mr. Benedict's response: Section 1321.141 of the proposed regulations refers to nutrition providers which receive direct funding from the area agency. The section is not directed to a discussion of home-delivered meals organizations. Proposed requirements for home-delivered meals are contained in section 1321.147. Therefore, the absence of discussion of home-delivered meals organizations in section 1321.141 does not in any way imply that AoA intended to deny these organizations recourse to appeal if funding is denied. Section 1321.51 specifies the proposed regulations relative to State level hearing procedures. Under proposed provisions of section 1321.51(a)(3), a State agency must provide a hearing upon request to any service provider including home-delivered meals organizations whose application to provide services under an area plan is denied, or whose subgrant or contract is terminated or not renewed unless such action is for cause according to the provisions of the Department's general grants regulations at 45 CFR part 74. Home-delivered meals providers have access to these protections of State-level appeals in the same manner as other service providers identified in section 1321.51(a)(3).

Question 4. What is the rationale in section 1321.101 for precluding a State from having prior review and approval rights over subgrants or contracts between area agencies and public or private nonprofit agencies or organizations when this is required for contracts with profitmaking organizations?

Mr. Benedict's response: Section 213 of the act provides an explicit requirement that a recipient of a grant or contract may not enter into an agreement with a profitmaking organization without the approval of the State agency. We have included this specific statutory provision at section 1321.101(b) of the proposed regulations.

The basic rationale for the proposed policy is that an area agency designated by the State must provide assurance, found adequate by the State agency, that it will have the ability to develop an area plan and to carry out directly or through contractual or other arrangements a program pursuant to the plan within the planning and service area. The designated area agency at the same time accepts the obligations and duties prescribed by the act and the regulations. Among the normal duties of the area agency is the negotiation of grants and contracts. Our policy has been that it is within the authority of the area agency to carry out its normal

functions and duties as approved under the area plan without additional prior approval from the State agency.

Question 5. Given that the directory described in section 1321.25(f) would enhance information and referral activities, wouldn't the preparation of such a directory be more appropriate at the local rather than the State level?

Mr. Benedict's response: The proposed regulations at 1321.25(f) would require the State agency to keep a directory of focal points in the State. This would, of course, assume that an area agency had a list of focal points within its own planning and service area. The State list would be a compilation of information obtained from individual area agencies. The objective of maintaining a list statewide is to permit AoA and States to identify designated focal points, so that we can encourage other State and Federal agencies to use the sites to colocate non-AoA supported services for older people at the designated places.

Question 6. How does the elimination of a single State agency organizational unit as suggested in section 1321.13 or a single area agency organizational unit as suggested in section 1321.65 strengthen the aging network?

If the single State or area agency organizational unit is eliminated, how can the advocacy requirement placed at the State and area level be adequately or effectively met?

Mr. Benedict's response: The single organizational unit requirement is not a statutory requirement. It was an old regulatory requirement. Governors have strongly objected to this requirement, indicating that organization is a State matter and that it imposes an inflexible requirement which can actually impede efforts of States to improve services to older people. The Department is reexamining this issue carefully. The final regulations will be modified to insure a viable unit for planning, policy development, coordination, and advocacy while permitting States some degree of organizational flexibility.

Question 7. In developing the intrastate funding formula called for in section 1321.49, what criteria are States to use in establishing the "minimum funding base" for each area agency? What is the statutory base for this requirement?

Mr. Benedict's response: In developing the intrastate funding formula called for in section 1321.49, the State agency is free to establish its own criteria for the "minimum funding base" for all area agencies. We recognize that the total amount of funds which an area agency must have to carry out its prescribed statutory responsibilities will vary widely from one State or region to another. The minimum base, set by the State assures that agencies in small rural areas receive adequate minimal funding to function. Using other criteria, such as population, the remainder of the funds will go to agencies with greater numbers of older people to be served.

The statutory base for this proposed requirement appears at section 305(a)(2)(C) of the act which requires the State to develop an intrastate formula in accordance with guidelines issued by the Commissioner.

Question 8. How are existing area agencies on aging to be "held harmless" so that they will not experience a loss of funds which would drop them below their operating base for fiscal 1978? If there is no provision for a maintenance of effort, does that not cause a disruption of services, a situation which these new amendments sought to avoid?

Mr. Benedict's response: The act contains certain "hold harmless" provisions relative to funding levels for States. However, the act does not contain any comparable "hold harmless" provision for area agencies. Therefore, it is the responsibility of the State agency to determine whether to provide individual area agencies with a level of funding which would assure that the funding for area agencies does not drop below their operating base for fiscal year 1978. The provision in proposed section 1321.49 is one way which would assure that area agencies obtain the funds necessary to carry out their responsibilities; and avoid any disruption of services. The President's budget request of \$280 million is \$87 million over the 1978 level. This should permit States to implement formula funding without indiscriminate cuts to any particular AAA.

Question 9. Given the intent of Congress that Indians can be treated as a tribal organization whether or not they live on a reservation, why does AoA specify in section 1321.63 (b)(2) "boundaries essentially the same as those of an Indian reservation?" If the language "essentially the same" is intended to imply current law "on or in proximity to any Federal or State reservation or rancheria," it falls short of that mark and would be greatly abused in implementation at the local level.

Mr. Benedict's response: Section 1321.63 of the proposed regulations indicates the types of agencies that may be designated as area agencies. Subsection (b) emphasizes that a State agency must give preference to designating a tribal organization as the area agency in those instances where the boundaries of a planning and service area and of an Indian reservation are essentially the same. The intent of this provision is

to avoid the possibility that a non-Indian organization would be named to serve a planning and service area in which most, if not all, of the residents are Indians. The regulations also permit tribal organizations to establish AAA's which serve areas with noncontinuous boundaries.

This proposed section of the regulation in addition, does not in any way preclude a tribal organization from receiving funds from an area agency to serve older Indians in other circumstances, whether or not the older Indians live on a reservation. Additionally, the proposed section 1321.63(b) is not intended to reference the language of the act which reads "on or in proximity to any Federal or State reservation or rancharia." This latter language is from section 102(6) which defines the term "Indian tribe." The full definition of Indian tribe given in section 102(6) of the act appears at section 1321.3 of the proposed regulations. The statutory definition of the term "tribal organization" also appears at section 1321.3 of the proposed regulations.

Question 10. While section 307(a)(1) of the act requires that the State plan will be based on area plans developed by the area agencies on aging within the State, the regulations are rather vague as to how this should be done. What is meant in section 1321.29(a) by "an adequate opportunity to participate" for the area agencies on aging in terms of developing the State plan?

Mr. Benedict's response: Section 1321.29(a) of the proposed regulations requires that the State agency carry out the requirement that a State plan must be based on area plans by giving all area agencies in the State an adequate opportunity to participate in the development of the State plan in order to insure that the objectives established in State and area plans are consistent.

We sought in the proposed regulation to respond to the type of concern which you indicate you heard in public hearings, namely, that area plans in some instances were simply not looked at or considered when State plans were drafted. We did this by proposing to require involvement of area agencies in the development of the State plan. We are currently working with a State plan task force which includes representatives of State and area agencies who have been selected respectively by NASUA and N4A. This task force is assisting AoA in developing model State and area plan formats. Determining the relation between State and area plan formats is one key aspect which must be considered in determining how to understand the meaning of the phrase "State plan based on area plans." In addition, we are looking, together with the task force, at questions of timing in the development of the State and area plans. We are also exploring with the task force appropriate methods of defining a sense of State and area agency partnership in the plan development process. The final rules are being modified to reflect the comments we received, and the thoughts of the task force.

Question 11. Although AoA has suggested that it is not necessary for area plans to be completed prior to the development of the State plan, how can there be any consistency between the two unless there is some kind of a relationship established between the two planning processes?

Mr. Benedict's response: The process which we have described above in responses to question No. 10 identifies the manner in which we proposed to further articulate the relationship established between the two planning processes.

Question 12. Does the stipulation in section 1321.65 that a multipurpose agency be established to administer human services in the area before it can be considered for an area agency on aging designation preclude consideration of a COG (council of governments) if the charter of the COG does not specifically identify it as a "human services" agency?

Mr. Benedict's response: The proposed regulations at section 1321.65 state that in the instance where a multipurpose agency is designated as an area agency, the agency must have been "established to administer human services in the area." There has been some misunderstanding of our intent generated by the use of the words "established to administer human services." It was not our intent to exclude through this provision councils of government from designation as area agencies. Rather, we sought to emphasize that an agency designated as an area agency must have the authority and capacity to carry out the responsibilities prescribed by the act. It is particularly important that agencies affected by consolidation requirements are prepared and willing to carry out new responsibilities. The amendments, as reflected in the regulations, are a step toward more comprehensive management of aging services programs. We will clarify the language on this point in the final regulations.

Question 13. Where in the regs does the Commissioner act to reduce paperwork requirements as specified in section 212 of the act? What procedure or mechanism does the Commissioner intend to establish to implement this requirement?

Mr. Benedict's response: The proposed regulations do not explicitly speak to the requirements of section 212 of the act relative to the reduction of unnecessary duplicative or disruptive demands for information. However, we have sought in the regulations to limit information requests to those which, as section 212 provides, are deemed essential to carry out the purpose and provisions of the act.

Three-year planning will significantly reduce the repetitious paper submissions, and time and energy in plan preparation. For example 57 States and territories will submit one complete plan for 3 years. Similarly the 700 (estimated) AAA's in 1981 will submit one plan for 3 years. This is a total of 757 formal new-plan submissions as opposed to 2,268 full-plan submissions which would have been required under the former requirement for annual State and area agency plans. The consolidation of titles III, V, and VII into a single areawide plan will further reduce multiple plan and project submissions to States. Consolidation and 3-year planning are significant accomplishments which might well be generalized to other Federal programs as well. It gives States and communities more authority, significantly reduces paperwork and staff time in wasteful duplicative planning processes.

In several other areas we have initiated specific procedures to review and, as appropriate, revise information requirements. As indicated in response to question No. 10, we are developing model State and area plan formats in consultation with representatives of State and area agencies. Our intent in this is to assure that the information requirements in State and area plans are realistic and do not make unnecessary or duplicative demands on State and area agencies. We are also working with the National Association of State Units on Aging (NASUA) to revise our management information system (MIS). With NASUA's assistance we are seeking to develop a MIS which can serve the needs and interests of States and which at the same time provides AoA with the information necessary to carry out its statutory responsibilities at the Federal level.

Question 14. According to the proposed regulations in section 1321.65, an area agency may be either an agency whose single purpose is to administer programs in the field of aging or a multipurpose agency established to administer human services in the area. Looking to the definition of human services in section 1321.3, however, we see no mention of educational institutions or services. Under current law, such services are included and have led to the development of good working relationships between many community colleges and the aging network. The proposed regulations would destroy these working relationships and in the case of some rural states, Iowa for instance, would seriously disrupt the aging network. Why was the definition of human services restricted to leave out mention of educational services?

Mr. Benedict's response: Section 1321.3 of the proposed regulations defines "human services" to mean social, health, or welfare services. You are correct in saying that the definition as proposed does not explicitly mention educational services. This omission, however, was not in any manner intended to disrupt the effective working relationships which have been developed between many community colleges and the aging network.

Our intent in the proposed regulations was to emphasize that an agency designated as an area agency must have the authority and capacity to carry out the responsibilities prescribed by the act. It is particularly important that agencies affected by consolidation requirements are prepared and willing to carry out new responsibilities. The responsibility to designate AAA's is the sole responsibility of the State agency.

Question 15. Does not focusing on income to define social need, as the Commissioner did during the October 18 hearing, bring us dangerously close to means testing?

Mr. Benedict's response: The proposed definition of "greatest social need" very clearly speaks of *noneconomic factors* as indicators of social need. The proposed definition reads: "Greatest social need" means those *noneconomic factors* such as isolation, physical or mental limitation, racial or cultural obstacles; or other *noneconomic factors* which restrict individual ability to carry out normal activities of daily living and which threaten an individual's capacity to live an independent life.

Elsewhere the proposed regulations prohibit any means test (sections 1321.77(e)(6)(ii); 1321.109).

Question 16. Has AoA determined whether a State can start to implement some of the new programs (like home-delivered meals) under the continuing resolution.

Mr. Benedict's response: Since a separate appropriation for home-delivered meals has been included in the continuing resolution, States may implement this program; and have been so notified.

QUESTIONS ON TITLE VI

Question 17. Section 605 directs AoA to issue final regulations for title VI within 90 days of enactment—which would have been mid-January 1978. Can you tell the committee why you failed to comply with the statute?

Question 18. Why didn't you issue the regulations simultaneously with the title III regulations in July?

Mr. Benedict's response: The act requires title VI requirements for nutrition, legal, ombudsman services and multipurpose service centers to be in substantial or full compliance with the provisions of title III. Thus, title III regulations had to be developed prior to the development of rules for title VI.

Question 19. I understand you told the House Subcommittee on Human Resources about 2 months ago that the title VI regulations would be issued shortly. When can we realistically expect to receive the draft regulations implementing the Indian grant program?

Mr. Benedict's response: The notice of proposed rulemaking was published December 5, 1979, at 44 FR 70064.

Question 20. Do you have a target date for finalizing the title VI program?

Mr. Benedict's response: We propose to initiate the process of applications in March and anticipate awarding grants during the early summer.

Question 21. Have you considered issuing the title III and title VI regulations in final form concurrently? (If you issued the title VI regulations in the not too distant future, the period required to rewrite them after the close of the comment period could be compressed to coincide with the target date for finalizing the title III regulations.)

Mr. Benedict's response: We considered issuing the titles III and VI regulations simultaneously. However, in view of the great interest from all sides in having title III final regulations issued as expeditiously as possible, we have decided not to delay their issuance until the title VI final regulations are issued.

Question 22. How long will it take AoA to identify the tribes that are interested in applying for direct funds?

Mr. Benedict's response: We are working with the National Indian Council on Aging and national Indian groups to identify tribes interested in title VI.

Question 23. When will you put in place the mechanism for accepting grant applications under this title?

Mr. Benedict's response: We plan to initiate the process of the grant applications in March. These first steps are based on departmental regulations governing all discretionary grant programs and thus are independent of the title VI regulations.

Question 24. When do you realistically expect the \$6 million contained in the fiscal year 1980 Labor/HEW appropriation bill will begin reaching the tribes? (The National Indian Council on Aging believes that the earliest funds could begin to reach the recipient tribes would be July 1, 1980, if every step along the way were expedited.)

Mr. Benedict's response: We plan to award funds by early summer 1980.

Question 25. Have you, or will you, establish within AoA's central office an identifiable administrative unit to run this program? If so, when?

Mr. Benedict's response: At present the Office of Program Development within AoA is responsible for the development of title VI regulations and for the establishment of the procedures for awarding the initial grants. We are exploring the possibility of obtaining through the Intergovernmental Personnel Act (IPA) a number of Indians to work with AoA in implementing the title VI program. We will make a final determination on future responsibilities for administering the program within AoA as soon as we have the experience on which to base such a decision.

Question 26. Can some of the tribes which receive direct funding from title VI still receive specialized services, like the nursing home ombudsman services, from the State agencies, even though those services are funded under title VIII?

Mr. Benedict's response: The proposed regulations would permit a tribe to authorize a tribal organization to represent all older persons in the tribe or a distinct segment of the tribe for purposes of title VI. If the tribal organization represents only part of the tribe under title VI, the rest of the tribal members over 60 would remain eligible for service under title III.

Indians represented by the tribal organization for purposes of title VI *may not* receive service under title III for the duration of the title VI grant. However, if an older Indian, who was represented by a tribal organization under title VI, moves out of the project area that person would be eligible for services under title III.

QUESTIONS SUBMITTED BY SENATOR COHEN

Question 1. I am concerned about the process by which the regulations were released. Their release came 8 months after the law was passed. When did they clear the Commissioner's office? How much rewriting took place after the Commissioner signed off on the regulations?

Mr. Benedict's response: The proposed regulations went through an extensive drafting and review process over the course of several months. This process included modification of the proposed regulations to incorporate a number of changes suggested by other agencies and offices in the Department. The proposed regulations, which included revisions based on these prior comments, cleared the Commissioner's office on June 19 and were signed by the Secretary on July 23. For your information I am enclosing a copy of the DHEW process for developing and approving regulations.

Question 2. The director of the Maine State Office on Aging and directors of other State offices came down to Washington, at public expense, to participate in a 2-day meeting to make recommendations on the section of the law pertaining to long-term care. None of their recommendations appeared in the regulations. Why?

Mr. Benedict's response: As the preamble to the regulations indicates on page 45041, AoA did not feel at the time the proposed regulations were issued that we had sufficient experience to enable us to propose additional regulatory requirements in the NPRM. While we had received some initial suggestions concerning how to implement the nursing home ombudsman program, too many issues remained unclear to propose specific policy choices in the NPRM.

Rather, as the NPRM notes, we raised a number of issues for public comment. We received hundreds of comments on various issues related to this program and are presently analyzing these comments. In addition we held a meeting of the ombudsman task force for November 7-8 to help us sort through the policy alternatives available to us. The final regulation will clearly reflect input from the task force that the director of the Maine State office served on and other comments we have received.

Senator EAGLETON. I am going to yield at this time——

Senator DOMENICI. Mr. Chairman, Senator John Heinz cannot be with us today and he has asked that his detailed statement with attachments be made a part of the record.

Senator EAGLETON. Without objection.

Thank you, Senator Domenici.

[The prepared statement of Senator Domenici and the statement of Senator Heinz follow:]

PREPARED STATEMENT OF SENATOR PETE V. DOMENICI

Mr. Chairman, I am pleased that the committee has scheduled this hearing on the proposed regulations implementing the 1978 amendments to the Older Americans Act and I am equally pleased that Senator Eagleton and the members of the Human Resources Committee's Subcommittee on Aging are participating with us in this joint effort. I have had a keen interest in programs designed to improve the quality of life for older persons for many years. It was an area of special interest to me when I served on the city council of Albuquerque and I have continued that interest through my service on the Senate Special Committee on Aging since coming to the Senate.

On February 28, 1978, I introduced S. 2609, which was the first comprehensive bill amending the Older Americans Act introduced in the Senate during the 95th Congress. S. 2609 was cosponsored by Senator Percy and former Senator Brooke of this committee. In developing S. 2609 I was attempting to extend and expand the services provided under the Older Americans Act. I am delighted, Mr. Chairman, that a number of the initiatives I put forth were contained in the Comprehensive Older Americans Act Amendment of 1978, which were signed into law by the President 1 year ago today. The 1978 amendment constituted a significant redirection of the program which necessitated a major overhaul of the existing regulations.

I am concerned, however, that the Administration on Aging has, in some areas, far exceeded its authority by proposing regulations which go beyond the scope of either the statute or the congressional intent as expressed in the House and Senate committee reports and/or the conference report which accompanied it. In other areas I think that the Commissioner on Aging has contradicted the law or the intent of Congress and I think it is absolutely essential that both of these areas be clarified and corrected before the regulations are reissued in final form.

It is also my feeling that the regulations very subtly permit greater Federal control of aging programs and of the aging network. The regulations are written with no flexibility in the areas where the act allows leeway and with flexibility where the act mandates certain action.

If the regulations remain as they are, the State of New Mexico will not be alone in foreseeing great difficulty in maintaining and expanding its programs.

In order to get an objective viewpoint we asked the Library of Congress to evaluate the extent to which the regulations adhere to or depart from the law and current regulations. They looked at nine issues that we felt could cause either major or minor operating changes depending on their interpretation. Of the nine issues five were found contrary to congressional intent, three were nebulous and one was ambiguous. We decided that we needed some clear-cut definitions of the ambiguities, clarifications of the gray areas, and most importantly we felt that congressional intent should not be changed by bureaucratic interpretation. Even extensive public hearings, conferences, and meetings prior to issuing proposed regulations does not justify a substantial disregarding of congressional intent.

Since New Mexico is a rural State, I have a particular interest in the expansion of services in less densely populated areas. I feel that the statute clearly emphasizes a rural strategy but I do not believe the proposed regulations address the rural question adequately.

Mr. Chairman, during the course of this hearing I am hopeful that the members of our two committees can explore with the Commissioner all of our areas of concern and I would hope that the Commissioner's answers would be clear, concise, and definitive—creating a hearing record that will clear up many of the lingering concerns that all of us have about these regulations.

Mr. Chairman, I think the items in contention can best be addressed through questions and answers and I suggest that we proceed promptly to that format.

STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman: I am pleased that the committees are holding this joint hearing to examine carefully the proposed regulations developed by the Department of Health, Education, and Welfare on the Older Americans Act. It is important that we review this matter to insure that the intent of Congress is reflected accurately in this document which will guide State and area agencies around the Nation in carrying out the mandate of the law.

The Department is to be congratulated for having produced a thoroughly readable set of regulations, a feat which few Federal agencies have achieved in the past. Moreover, the use of large print to facilitate the reading by all of us, but especially by the elderly who wish to review the regulations, is a sensitive and commendable act that I personally am happy to see. Nevertheless, there are some questions raised by the regulations which appear in some instances to go far beyond the letter of the law, and indeed, beyond even the intent of the Congress. I am confident that our meeting here today with Commissioner Benedict will prove to be a fruitful and productive one which yields resolutions to the few problems which must be worked out in the development of final rules for title III of the Older Americans Act.

Mr. Chairman, I would like to enter for the record at this time a statement by the Honorable Gorham L. Black, Jr., secretary of the Department on Aging in the Commonwealth of Pennsylvania.¹ Secretary Black has enumerated and explained a number of the concerns he has about the proposed regulations, and I hope that many of those issues will be successfully resolved as a result of our work here today.

Senator EAGLETON. I yield to Senator Pryor. I think he has some followup questions on perhaps Senator Kassebaum's line of questioning.

Senator PRYOR. Yes, and also I have a question that Mrs. Kassebaum requested that I ask. I will do that now because I think it is timely at this part in the record. This is a question I am asking on behalf of Senator Kassebaum.

As I understand your remarks, Mr. Benedict, the requirements for qualifying for assistance as a multipurpose senior center are applicable only "where feasible." I have looked at section 1321.121 of the proposed regulations, and I do not see the words "where feasible" anywhere. Would you answer Mrs. Kassebaum's question.

¹See appendix, item 11, page 65.

Mr. BENEDICT. There is linkage between the language that the Congress put in the act with regard to the community focal point and the language pertaining to senior centers. The statute requires us to establish focal points "where feasible." The standards which we have developed under the multipurpose senior center section of the NPRM are evidently not clear enough with regard to focal points. We are planning on significantly revising these requirements to make them clearer and less complicated.

Senator PRYOR. Well, you state that the regulations are only in draft form, but yet I think that we are entitled to know exactly, and I underline exactly or "precisely," changes you are going to make before this program is implemented. Right now, to be honest with you, in the section as it relates to senior center requirements, I think that if your regulations were implemented today, about 80 percent of the 204 centers in our State would not be eligible for funding and I think this is probably typical across the country.

I think some of my colleagues have also mentioned this. I think we are getting ready to really jeopardize the activities and even the existence of about 80 percent of the centers in my own State.

Mr. BENEDICT. Senator, I would like to try to assure you in every way I know how that I personally take very seriously the NPRM and the public review process. We are now analyzing the comments we have received concerning the NPRM. We have identified a number of areas where we believe modifications ought to be made including modifications in the senior center and focal point requirements. We would be very, very happy to share those more specifically when they are constructed in the modified language.

Senator EAGLETON. Let me jump in there because that is important. I am going to suggest, Senator Pryor, another joint hearing of these two committees at a date as yet undetermined because it will depend on Commissioner Benedict's actions. I want another hearing wherein we will get his views as to—to use your words—"precise and specific proposals," on how the final regulations will differ from the draft regulations. After you have gone through the whole hearing record—including this hearing record, don't forget to look at this one—I want you to come back and, after considering everything, how the regs will be published in final form. We want specific answers. I don't know whether that hearing will be held in November or December, it will depend on your time. Let's establish here now we are going to have another hearing.

Senator PRYOR. I have just an observation here, Mr. Chairman. When I first read Commissioner Benedict's statement and then started looking at some of the things that we were thinking about doing in the aging programs of the country, I was somewhat curious and I had a few questions. My curiosity then, turned to concern. Since I have been here this morning listening to some of the questions, I am afraid a lot of unanswered questions, my curiosity went from curiosity to concern and now from concern to alarm.

I am actually alarmed about what we might be perpetuating upon our aging programs out in this country and I think that we have some programs that are working fairly well and really without a great deal of impediment or infringement from Washington. I think with the draft regulations we are getting into some areas where we honestly have no business. I also think that the AoA

came up with some proposals that are not in the best interests of the elderly of this country.

I don't care about the bureaucracy here, or even the bureaucracy there out in the country, but I do care ultimately about the focus and the purpose of the program and that is how much funding gets down to the programs and what services are rendered to the elderly people. That is what this is all about. We are in business to serve people. If we confuse the issue with overburdensome regulations, implied infringements on the right of those providers to deliver those services, and requirements to constantly fill out forms and comply with regulations and redesignate area agencies—our whole focus of service—I think we are really hurting the program severely.

That is all I want to say at this stage, Mr. Chairman.

Senator EAGLETON. All right. I have a question or two.

By the way, Mr. Benedict, I am going to have to leave at 12. I don't know Senator Pryor's schedule, he perhaps can stay a bit longer. Although it is a bit unusual, I am going to ask you to remain even despite the absence of one or both Senators here present so that the staff may provide a lengthy series of questions because we want to highlight to you the areas that we are concerned about so that in our second hearing on this subject matter we can hear your final or almost final and specific responses.

The nutrition program is one that is very special to me and every member of this committee. When I attend congregate nutrition sites throughout Missouri, I am deeply impressed by the other activities and services offered to seniors at these sites. It was the intent of Congress when the 1978 amendments were adopted to retain the primary emphasis on the congregate feeding program and to assure that some national attention be given to the needs of the homebound elderly. Congress clearly wanted to make it possible for seniors who attended a congregate site, but who were prevented by a serious reason such as an illness from attending the congregate site, to have access to a homebound program based upon a determination of need.

The volunteer sector has done and is doing such a fine job in delivering meals to the homebound and we wanted to enhance, but not take over control of, the volunteer effort. What problems are caused in the field because the law is somewhat confusing—almost as confused as the question.

Mr. BENEDICT. The current law has posed a serious problem which is of concern to the home-delivered meal providers. The way one section of the law reads, area agencies must enter into an agreement with the nutrition project which then will provide both home-delivered and congregate meals. Another section of the law requires the area agency to assure that the current home-delivered meal providers have the opportunity to provide some of those expanded meals.

What the home-delivered meal providers want essentially is to be able to contract directly with the area agency itself to provide those meals. However, the way the law now reads, that does not seem possible. Now what we have done in the regulations is to require the nutrition project itself, in the development and expansion of home-delivered meals activities to enter into agreement

with the existing home-delivered meal providers in the area to expand and deliver those meals. We think that meets the intent of the law but does not provide precisely what the home-delivered meals people themselves want.

Two suggestions have been offered which we think are very constructive. One would be to encourage the area agencies, as part of their overall planning process, to identify the home-delivered meal providers in the area are interested and capable of providing home-delivered meals. Under the second suggestion, the area agencies would be encouraged or required to retain some authority over the actual selection of the providers that will provide those home-delivered meals under the congregate nutrition project. We think both of those suggestions are constructive.

Senator EAGLETON. I will make this suggestion to you, Mr. Benedict. Confession is good for the soul. I think that this issue is confusing. This committee would entertain, and would be anxious to entertain, any corrective legislation to remedy this ambiguity and any other—I will call them technical changes. Now we don't want to reopen the whole deal and pass an omnibus Older Americans Act all over again but I think this area needs some attention, and there may be a couple of others.

If you want to suggest to us some corrective legislation, we would most certainly entertain such a suggestion and we would move on it most expeditiously. We will be in touch with our counterpart over on the House side. Give that some thought. This area needs some improving and maybe there are two or three other areas that ought to be clarified and tidied up as well; but I don't want to open up the whole bag.

Mr. BENEDICT. I could not agree with you more.

Senator EAGLETON. What statutory basis is there to require home-delivered meals to be delivered 7 days a week and require that meals be delivered during a weather-related emergency?

Mr. BENEDICT. Senator, the requirement in the regulations asks nutrition projects to assure the availability of meals in those circumstances. It does not require that they provide them directly. We know that many older people do in fact take meals with their families on weekends so it is not a problem for them. In many instances the nutrition project, when it makes its last delivery of a home-delivered meal on a Friday, will also bring meals that are preservable and that can be consumed on the weekend.

The provision really asks the nutrition project to pay attention to the nutritional needs of older people on the weekend and to try to assure through all means possible that all meals are available 7 days a week. This could be accomplished by delivery of additional meals on Friday or by encouraging older people and their families to see that meals are available on the weekend. The requirement in the law does not explicitly require nutrition projects to run their sites or to stay open 7 days a week.

Senator EAGLETON. This is the sort of area that Senator Burdick was pursuing. You know, I think it would be great if we had 24-hour service, 7 days a week for a lot of things. In many of these programs that rely heavily on volunteers, if you get in the area of mandating 7 days a week service you are going to run out of your volunteers pretty quickly. A number of persons will volunteer

Monday through Friday, and that is asking an awful lot for a person to do that much, but you are not going to have "standing room only" of volunteers working Saturdays and Sundays as well.

I think what you are conceiving is humanitarian, decent, compassionate, and concerned and all those nice words, but if you mandate these things you may be inadvertently and unwittingly destroying the volunteer components in some of the aging programs.

Mr. BENEDICT. I think it depends on the interpretation. Again we are not really requiring a program to be administered 7 days a week. We are asking the nutrition project to pay attention to the nutritional needs of some few older people who may be very isolated and alone. As I indicated, there are a number of ways to achieve this objective.

The intent of the regulation is to encourage nutrition providers to be especially concerned about those people who do in fact really need a nutrition assistance on the weekend to try to make the necessary arrangements. We did not intend to require them to keep their program open and operating fully during the weekends.

Senator EAGLETON. What happens to homebound people who do not live in an area with access to a congregate site? Are they automatically prohibited from participating in a homebound elderly program?

Mr. BENEDICT. No, sir, they are not. The area agency in working with the nutrition project has the authority to encourage an existing nutrition project to expand its service into those areas by entering into an agreement with the home-delivered meal providers in those areas.

Senator EAGLETON. I have one more line of inquiry and then I am going to yield to Senator Pryor, and then the staff perhaps can take up some of these other matters. We have some important areas we want to pursue.

Section 307(a)(10) says:

* * * Provide that no social services, including nutrition services, will be directly provided by the State agency or an area agency on aging, except where, in the judgment of the State agency, provision of such services by the State agency or an area agency on aging is necessary to assure an adequate supply of such services.

This is exactly the same language—with the exception of the words "including nutrition services"—that has been contained in the act since 1973. However, for some reason, this provision has not been implemented identically throughout the country. In other words, regional offices of the Administration on Aging have made it all but impossible for area agencies to provide direct services in some parts of the country, while in other parts AoA regional offices have encouraged area agencies to provide all kinds of direct services to the elderly. The conference report to accompany the 1978 amendments clearly states the intent that State and area agencies are to provide direct services only "as a last resort." The proposed regulations relax the existing restriction, allowing State and area agencies to expand provision of direct services. Clearly this is not our intent.

The statute specifically requires an area agency to serve as an advocate and to coordinate programs. Nowhere in my reading of the statute are information and referral, individual needs assess-

ment and case management the direct responsibility of the AAA. Those are requirements of the area plan.

Do you intend to modify the proposed regulations?

Mr. BENEDICT. Senator, that particular problem goes way back to the original act and the old rules. You are correct in that the States have operated under many different provisions. I do not think that it has been a function of different interpretation from regional offices but choices that States have made. There have been a series of legal questions and challenges. The law always required that the State agency apply a test. The old rules did not include any definition of what that test ought to be. Our intent in the proposed rules was to give the State agency a clear basis for providing those tests and for doing so in a way which will sort out what has been a historic problem.

The intent of having a two-tiered test is that there are circumstances under which some of the services might be better managed by the area agency. I can offer you a specific example from my experience as commissioner in Pennsylvania. The State welfare department was quite willing to delegate to area agencies the authority to handle the management of cases of people going into boarding homes and other living arrangement accommodations but they were not willing to have the authority go directly to the service provider because of the need to maintain regulatory standards.

What we attempted to do is to build a two-tiered test which would limit the authority of the agency to get into all ranges of direct services but to provide some flexibility in those instances where area agencies have been given non-Older American Act funds to administer those kinds of programs for older people. We are looking at the comments we have received on this proposal and we are quite prepared to modify the NPRM on this point. However, we are hopeful that we can all find a way through this which helps us to overcome what has been a historic problem in this act.

Senator EAGLETON. Thank you.

Senator Pryor.

Senator PRYOR. I have a question from Senator Cohen, a member of our committee, who could not be with us today. Senator Cohen has been concerned about the disaster relief reimbursement section of the Older Americans Act, section 310. Have you, or are you planning to, issue guidelines to the States regarding this section?

Mr. BENEDICT. We have issued guidelines to States on disaster relief reimbursement. This program was not addressed in title III of the notice of proposed rulemaking because it is defined in the act as a part of the title IV discretionary grants program of the Administration on Aging. We have given States guidance to implement that program. I would be happy to share that guidance with you.

Senator PRYOR. Senator Cohen wanted to raise this question. Would you agree that some type of communication is necessary, possibly in the form of a policy instruction?

Mr. BENEDICT. Yes, sir, and it has been issued and we will be happy to share it with you and with Senator Cohen.

Senator PRYOR. I am sure Senator Cohen would appreciate your informing him of that.

[Subsequent to the hearing, Mr. Benedict supplied the following material:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., October 24, 1979.

Hon. WILLIAM S. COHEN,
U.S. Senate, Washington, D.C.

DEAR SENATOR COHEN: In the context of the joint hearing before the Senate Special Committee on Aging and the Subcommittee on Human Resources, Senator Eagleton indicated that you are interested in the AoA Guidance to States on Disaster Relief Assistance.

I trust that you will find the attached Program Instruction informative. It outlines policies and procedures to be followed by States in applying for disaster relief reimbursements under section 310 of the 1978 amendments to the act. You may be interested to know that this policy and the procedures have already been implemented relative to the disasters in Puerto Rico and in Alabama.

Our interagency agreement and our close working relationship with the Federal Emergency Management Agency has proven to be invaluable in assisting States to respond to the special needs of older people in major disasters.

I appreciate your personal interest in this issue and please feel free to call on me if I can be of additional assistance.

Sincerely,

ROBERT BENEDICT,
Commissioner on Aging.

Enclosure.

OFFICE OF HUMAN DEVELOPMENT SERVICES,
ADMINISTRATION ON AGING,
Washington, D.C., September 18, 1979.

PROGRAM INSTRUCTION—AOA-PI-79-25

To: State agencies administering plans under title III of the Older Americans Act of 1965, as amended.

Info for: Area agencies on aging and nutrition service providers.

Subject: Disaster relief assistance.

Due date: None.

Content:

I. *Background.*—The 1978 amendments to the Older Americans Act, section 310, provide that the Commissioner may reimburse a State for funds that it makes available to area agencies for delivery of social services during a major disaster declared by the President in accordance with the Disaster Relief Act of 1974. This new provision requires that the Commissioner set aside 5 percent of the funds appropriated for discretionary grants under Part C, Section 421: Discretionary Projects and Programs, for the purpose of disaster relief each fiscal year. For fiscal year 1979 the amount of the set aside is \$750,000. It is emphasized that this is a reimbursement program. The law does not permit payment to a State in advance of expenditures or obligations for disaster relief assistance. Ordinarily AoA allows up to \$40,000 for each State per disaster subject to availability of funds.

The provision for disaster relief reimbursement does not change the memorandum of understanding between the Federal Emergency Management Agency (FEMA), formerly the Federal Disaster Assistance Administration, and the Administration on Aging Program. Instruction 76-44, dated September 30, 1976, conveying the memorandum of understanding remains in effect. Also Technical Assistance Memorandum 77-5, dated March 14, 1977, continues to be a useful resource on disaster planning and followup. This new Program Instruction outlines policies and procedures that should be followed by States in applying for disaster relief reimbursements under the 1978 amendments.

II. *Purpose of Disaster Relief Reimbursement.*—When the President declares a major disaster, State and area agencies on aging shall continue to work closely with the Federal Emergency Management Agency to assure that elderly disaster victims are linked to appropriate disaster assistance agencies. States should apply to the Regional Director, Administration on Aging, for disaster relief reimbursement only for disaster related services which cannot be provided through the disaster relief network or other community resources.

A State intending to seek reimbursement from the Administration on Aging, must first obtain confirmation about the unavailability of needed resources from the Federal Coordinating Officer appointed by FEMA. The following is a list of services which may be considered for disaster relief reimbursement.

A. Expansion of I & R services on a 24-hour-emergency basis, including escort when necessary.

B. Special outreach in order to encourage older victims to make application at FEMA "one-stop" disaster assistance centers (DAC's), as soon as they are opened.

C. Special transportation for elderly victims to "one-stop" DAC's, doctors, clinics, shopping, and such essential travel in the event that transportation has been disrupted and area agency vehicles are not available. Since FEMA funds may be available to fund this service, the State agency should consult with the Federal Coordinating Officer prior to expending Older Americans Act funds for this service.

D. Disaster advocates (case managers) to assist older victims in the one-stop center application process; to follow up in assuring that older victims receive approved grants and/or services; and, to protect older victims from unscrupulous repair contractors.

E. Licensed appraiser services to assist older victims in arriving at realistic estimate of losses incurred in the disaster.

F. Handyman and chore services, including cleanup, since FDAA may not be able to provide these services in sufficient volume through voluntary agencies or religious organizations.

G. Legal services, only when the regular legal service program must be expanded for insurance and disaster assistance grant settlement.

(The Federal Disaster Relief Act of 1974, Public Law 93-288, 88 Stat. 143, section 412, provides for assistance to low-income individuals who require legal services as the result of a major disaster.)

H. Assistance to move older victims from temporary housing back to their own places of residence.

I. Other direct services to older persons, when a comprehensive assessment of the disaster situation indicates that older persons have disaster related needs that are unresolved by the Federal, State, or voluntary disaster assistance programs.

III. *Procedures for Application.*—A. The State agency is responsible for making all requests for disaster relief reimbursement.

B. States shall prepare application for Federal assistance, standard form 424 (see attached) in particular, States should assure that item 7 provides complete information, including:

1. Description of each service that was provided;

2. Total cost of each service;

3. Period of time that each service was needed;

4. Efforts to obtain funds or services from other resources, including the disaster relief network; and

5. Amount of reimbursement requested for each service.

C. The State agency shall attach to the application a written confirmation from the Federal Coordinating Officer that the services could not be funded through the disaster relief network.

D. The application for reimbursement shall be submitted to the Regional Director, Administration on Aging for approval within 30 days of the date that the State's funds are expended for disaster related activities. The Regional Director shall notify the State in writing of the decision on the application.

Inquiries: State agencies should address inquiries to Directors, Office of Aging, Regional HEW Office.

Area agencies on aging should address inquiries to State Agencies on Aging.

Nutrition Service providers should address inquiries to their grantor (State or area agency on aging).

ROBERT BENEDICT,
Commissioner on Aging.

Attachment.

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER	4. NUMBER	5. DATE	6. NUMBER	7. DATE
1. TYPE OF ACTION <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION (Mark appropriate box) <input type="checkbox"/> NOTIFICATION OF INTENT (Opt.) <input type="checkbox"/> REPORT OF FEDERAL ACTION		a. NUMBER b. DATE Year month day 19	a. NUMBER b. DATE Year month day 19				
6. LEGAL APPLICANT/RECIPIENT a. Applicant Name : b. Organization Unit : c. Street/P.O. Box : d. City : e. State : f. Contact Person (Name & Telephone No.) :				5. FEDERAL EMPLOYER IDENTIFICATION NO. a. NUMBER b. TITLE 6. PROJ. GRAM (From Federal Catalog)			
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT				8. TYPE OF APPLICANT/RECIPIENT A-State B-Intermediate C-Substate District D-County E-City F-School District G-Special Purpose District H-Community Action Agency I-Higher Educational Institution J-Indian Tribe K-Other (Specify): Enter appropriate letter <input type="checkbox"/>			
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		9. TYPE OF ASSISTANCE A-Basic Grant B-Supplemental Grant C-Less D-Insurance E-Other Enter appropriate letter(s) <input type="checkbox"/>			
13. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		12. TYPE OF APPLICATION A-New B-Renewal C-Revision D-Continuation E-Augmentation Enter appropriate letter <input type="checkbox"/>			
15. TYPE OF CHANGE (For 15a or 15b) A-Increase Dollars B-Decrease Dollars C-Increase Duration D-Decrease Duration E-Cancellation Enter appropriate letter(s) <input type="checkbox"/>		16. PROJECT START DATE Year month day 19		17. PROJECT DURATION Months 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		19. EXISTING FEDERAL IDENTIFICATION NUMBER	
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)						21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT:		a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurance if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to its instructions therein, to appropriate clearinghouses and all responses are attached:					
23. CERTIFYING REPRESENTATIVE		a. TYPED NAME AND TITLE		b. SIGNATURE		c. DATE SIGNED Year month day 19	
24. AGENCY NAME				25. APPLICATION RECEIVED 19			
26. ORGANIZATIONAL UNIT		27. ADMINISTRATIVE OFFICE		28. FEDERAL APPLICATION IDENTIFICATION			
29. ADDRESS				30. FEDERAL GRANT IDENTIFICATION			
31. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. DEFERRED <input type="checkbox"/> e. WITHDRAWN		32. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		33. ACTION DATE Year month day 19		34. STARTING DATE 19	
35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		36. ENDING DATE 19		37. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No			
38. FEDERAL AGENCY A-95 ACTION				a. In taking above action, any comments received from clearinghouses were considered. If any response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)			

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with Federal Management Circular 74-7. Second, it will be used by Federal agencies to report to Clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*", and use the remarks section on the back of the form. An explanation follows for each item:

Item	Item
1. Mark appropriate box. Pre-application and application guidance is in FMC 74-7 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box.	D. Insurance. Self explanatory. E. Other. Explain on remarks page.
2a. Applicant's own control number, if desired.	10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits.
2b. Date Section I is prepared.	11. Estimated number of persons directly benefiting from project.
3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies must contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse.	12. Use appropriate code letter. Definitions are: A. New. A submittal for the first time for a new project. B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.
3b. Date applicant notified of clearinghouse identifier.	13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included, if the action is a change in dollar amount of an existing grant (a revision or augmentation), indicating only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks.
4. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.	14a. Self explanatory.
5. Employer identification number of applicant as assigned by Internal Revenue Service.	14b. The district(s) where most of actual work will be accomplished. If citywide or State-wide, covering several districts, write "city-wide" or "State-wide."
6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code.	15. Complete only for revisions (item 12c), or augmentations (item 12e).
6b. Program title from Federal Catalog. Abbreviate if necessary.	
7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description.	
8. Mostly self-explanatory. "City" includes town, township or other municipality.	
9. Check the type(s) of assistance requested. The definitions of the terms are: A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). C. Loan. Self explanatory.	

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| <p>16. Approximate date project expected to begin (usually associated with estimated date of availability of funding).</p> <p>17. Estimated number of months to complete project after Federal funds are available.</p> <p>18. Estimated date preapplication/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b.</p> | <p>em</p> <p>19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".</p> <p>20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP.</p> <p>21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.</p> |
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APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

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| <p>Item</p> <p>22a. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached.</p> <p>23a. Name and title of authorized representative of legal applicant.</p> | <p>Item</p> <p>23b. Self explanatory.</p> <p>23c. Self explanatory.</p> <p>Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies.</p> |
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FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

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| <p>Item</p> <p>24. Executive department or independent agency having program administration responsibility.</p> <p>25. Self explanatory.</p> <p>26. Primary organizational unit below department level having direct program management responsibility.</p> <p>27. Office directly monitoring the program.</p> <p>28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice.</p> <p>29. Complete address of administering office shown in item 26.</p> <p>30. Use to identify award actions where different from Federal application identifier in item 28.</p> <p>31. Self explanatory. Use remarks section to amplify where appropriate.</p> <p>32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks.</p> <p>33. Date action was taken on this request.</p> <p>34. Date funds will become available.</p> | <p>Item</p> <p>35. Name and telephone no. of agency person who can provide more information regarding this assistance.</p> <p>36. Date after which funds will no longer be available.</p> <p>37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.</p> <p>38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA".</p> |
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Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Resolution Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and award clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1032) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1032 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

Senator PRYOR. Mr. Benedict, it is my understanding that the draft regulations require hearings on all amendments to the State and area agency plans. This relates, and my question relates, to paperwork, hearings, and publication of procedures. In some cases the amendments are mechanical; that is, they are prescribed by Federal law or by regulatory change, and a hearing cannot yield practical benefit. Others may be minor or technical in nature.

I would like to give you a scenario and ask what your opinion of this matter is. The example is a true example.

The State of Arkansas recently received \$918 in additional title III-C funds as a result of the fiscal year 1979 reallocation. It is a small figure and that's the point. The East Arkansas Area Agency on Aging will receive \$178 of the \$918. To receive this money they must amend their budget and according to the regulation this amendment merits a public hearing which in all likelihood will cost more in time and money than the \$178 the agency is to receive. While we don't want to lose the importance of a public hearing on substantive issues, we feel the proposed regulations place an excessive burden in this area.

The question is: Do you intend that all amendments to a State or area agency plan require a public hearing? If so, where do you find the basis for this in the law?

Mr. BENEDICT. First of all, I want to assure the people of Arkansas they are not going to be required to make amendments to the State plan or hold major hearings on those reallocations.

Second, as stated earlier, I concur in the judgment of the States and others that the amendment process for State plans should be limited only to significant changes. In my own mind that might only include situations in which the State plans change the designation of the State agency itself or to make substantial changes in the boundaries of planning and service areas, or to create new area agencies.

Senator PRYOR. Who will decide if it is significant or substantive? Who will make that determination?

Mr. BENEDICT. What I am proposing is that we state explicitly in the final rules those circumstances under which an amendment would require a hearing rather than make it a general provision as it has always been. As I mentioned, we are considering requiring a hearing only if the proposed amendment will change the designation of the State agency or change area agency boundaries or add or delete major programs. The rest of the activities come under the category of normal program operation. We have looked at it very closely and we propose to make those kinds of changes.

Senator PRYOR. Are you stating, in effect, that the AoA will proscribe the hearing procedures in lieu of the State using its acquired hearing procedures? Isn't this basically sort of a State's right at this point?

Mr. BENEDICT. Well, the problem that we face is that the statute requires three explicit opportunities for hearings at the State level. One has to do with State agency hearing requirements for area agencies, providers, and service provider applicants; one has to do with the right of municipalities over 100,000 to request designation as a planning and service area; and one has to do with other units

of general purpose local government that request PSA designation. We want to make the requirements workable.

I personally am concerned that these relate to issues which ought to be State decisions. However the way the law is written, the affected agencies can appeal all the way to the Commissioner. I think that the AoA review ought to be limited to a determination as to whether the States have adequate hearing procedures and whether those procedures were followed. AoA and the Federal Government should not get involved in the substantive issues except in very serious instances. These are State decisions.

Senator PRYOR. Now that you brought up procedures, let me talk about procedures just a moment or ask a question. Regulations are requiring States to publish their procedures, is this correct?

Mr. BENEDICT. It requires them to publish their procedures for administering the plan, yes, that is correct.

Senator PRYOR. It is my understanding that section 212, the paperwork provision of the Older Americans Act, was added last year to relieve the network of the heavy and burdensome paperwork. Do these regulations follow the law with regard to the paperwork requirement?

Mr. BENEDICT. The requirement is essentially designed to facilitate public awareness and understanding of the policies the State agency will use to administer its plan. The older people themselves have the same stake in the manner by which a State chooses to develop and implement its program as they have in the Federal regulations.

The requirement is not a formal regulation requirement, rather it is merely a requirement that a State establish the rules under which it is going to operate its program and provide a basis for broad public discussion in the development of the State plan so that people of that State, the older people and people concerned about older people, have an opportunity to participate in the development of those rules before they take final effect within a State.

Senator PRYOR. When does AoA plan on publishing a procedural manual?

Mr. BENEDICT. I beg your pardon?

Senator PRYOR. When does the AoA plan on publishing a procedural manual?

Mr. BENEDICT. A procedural manual. I am not quite sure I understand—

Senator PRYOR. The policies and procedural manual.

Mr. BENEDICT. Policy and procedural manual.

Senator PRYOR. To implement the particular regulation in question.

Mr. BENEDICT. Well, the first step is to resolve the issues associated with the draft regulations and to make them final. Next we will reexamine all the existing instructions under which the States operate these programs. We must insure that the instructions are consistent with the new statutory and regulatory requirements. I am a little reticent to give you here today a specific target date. We would hope to get that completed within this next fiscal year.

Senator PRYOR. All right. Let me raise one or two additional points and then that will be all the questions I have. I am very concerned—and I don't in anyway intend this to be a reflection on

my colleagues who, I guess, enacted this as part of the 1978 law that we now live under, about cash contributions. In our senior centers right now, a lot of people are concerned that their nickels and dimes and quarters and dollars are about to be confiscated, you might say, by the Federal bureaucracy, and utilized for other expenditures. It is my understanding that in the past the small contributions older people brought in could be utilized, let's say, to buy a TV set or a radio or crochet material or whatever. But now the way in which these contributions are utilized is mandated by the regs. This to me sounds sort of inhuman and I wish you would comment on this because I am worried about it. I don't know if that is in fact the law today or if the process could be changed through the regulations. I wish you would comment on that.

Mr. BENEDICT. The law has specific provisions with regard to fees. AoA will continue to interpret that provision as allowing only contributions, not fees and/or other mandatory payment. The law also seems to require, as we read it, that those contributions be used in conjunction with the specific program under which they are collected. The nutrition program offers an example of this requirement.

When the Congress changed the act it clearly restricted what the donated nutrition funds could be used for. That restriction also affects the other contributions that are collected. I could not agree with you more. When older people make contributions at the local level it is enormously important for them to see their contributions being used locally. It looks to us like a statutory problem. I will be happy to go back to our General Counsel once again to see whether or not there is a way to alleviate it. Contributions are enormously important to local projects. They are part of the participation process, and provide a vehicle through which those older people have a feeling of ownership of the center and what it becomes.

I could not agree more that it requires some attention and if there is a way within the context of the law for us to make an interpretation of that to happen we will be happy to examine it.

Senator PRYOR. I have not done any research on it but I have a feeling that whatever income is derived from taking these contributions is very, very miniscule and insignificant to the overall budget of the program. I have just been informed it is around \$30, \$33 million around the whole country.

Mr. BENEDICT. For nutrition alone the contribution is about \$40 million a year which is a significant amount.

We will look at the issue closely to see if we can deal with it in the context of the current regulations process. It may be one of those technical problems noted earlier.

Senator PRYOR. This might be one very, very small way of reaching out. With a change, the older people could see their contributions used for the center's heating bills this winter. This is a real concern with me.

Mr. BENEDICT. A colleague of mine at the University of Michigan was a game technician for decisionmaking theory and he had one game which he applied to public agencies called The Helping Hand Strikes Again. I think from time to time inadvertently Congress or the administration or State agencies include provisions in their

rules that have unintended effects. We have to try to root those out.

Senator PRYOR. Mr. Benedict, we are about to spend \$1 billion in this program. You are proposing regulations, in addition to the existing regulations and law that we already have, which will be the guidelines for the expenditure of this billion dollars. Somehow I don't think that we are relating this program and these requirements and this expenditure to the every day human equation and human needs of older Americans.

You made a statement awhile ago that I thought was a good statement and I agreed with your statement when—I can't quote you word for word as you said it, but it was something to the effect that, "one of the concerns we have had was the erosion of public confidence in the processes of Government." My concern is that I just somehow or other wish we could translate all of this into the everyday problems, fears, and concerns of the elderly people. Yet, I think somehow or other these regulations are here to serve the bureaucracy. I may be wrong, and I hope I am wrong, but I don't see how they are relating to the more efficient expenditure of this money or to the human equation that somehow or another we have to put back into the system of Government. That is just an observation I make and if you want to comment on it, you are welcome to.

Mr. BENEDICT. I think the problems with this act perhaps fall into three or four categories. One is the growing expectation of older people themselves that the program itself can grow in a way which meets their needs. The second is whenever you pass a piece of legislation it significantly affects everybody—State agencies, local agencies, providers. I think there are instances in which there have been tendencies to focus only on parts of the rules which leads to misinterpretation. It is our job to see that there is broad public understanding of the proposed rules, and to make necessary modifications when appropriate. That is the process we are now going through.

The third challenge is to insure that the new regulations encourage the Governors of the States to see the potential which the act offers for bringing together diverse sets of resources to give additional strength to programs serving the elderly. This was the approach you took as Governor of Arkansas. We want to do everything possible to encourage States and local agencies to bring together diverse sets of resources, in addition to those available under the Older Americans Act.

I hope you will accept our good intentions in working through this process of developing new regulations. We genuinely see the end product as getting hard comments on specific sections of the NPRM and also as building a spirit of cooperation between State and local government and the Federal Government.

Changes that we are considering in the modification process are built around the public comments that we are receiving. We think that is the way it should be. I will be very disappointed in myself if the rules don't reflect those comments.

Finally, there is an obligation on our part to try to see through the nuisances and concerns of one provider to another, of one agency to another, of the older people themselves. We must make

sure that, as we listen to the comments, we have a special ear listening to the consumers and hearing what they have to say.

That is what we are about. We will pursue it to the very best of our ability.

Senator PRYOR. I know that you are proceeding with good intentions, and your staff are certainly well qualified. I think, Mr. Benedict, it is so necessary that we don't lose sight of what we are here for. I just would like to make a brief suggestion and I know that we are trying to cut down on the amount of Government travel that we engage in.

However, I just think it would be such a good investment if some of the people who are making some of the policy decisions in the Administration on Aging or throughout these programs would take 2 or 3 days and visit the Greenwood, Ark., senior center and spend a day there with the nutritionist and eat a meal with the elderly. Not to be introduced as some super person from Washington who has come down to spy on them, but just as someone there to learn. We, in Washington, can learn so much from those people out there in the day-to-day operations of these programs.

I think that the people that write the regulations ought to know what the problems in the field are and what the service providers concerns are and to sit and talk to the people who are receiving services and see the problems that exist rather than just attending conventions and always talking to the providers. Providers know a lot, but I think you really get a feel for the problems and maintain sensitivity and responsiveness when you talk with the people. Once we lose those feelings—which is what is wrong with this town now—we have lost our sensitivity to what is really going on out in this country and I just hope that your office doesn't.

Mr. BENEDICT. I hope we are sensitive to it. I could not agree with you more. Once we lose that sensitivity, we lose the base of public confidence that allows us to continue to build and to make progress.

Senator PRYOR. Mr. Benedict, thank you. I was asked to announce that we will be in touch with you soon relative to the setting up of a second hearing on the proposed regulations.

The Subcommittee on Aging and the Special Committee on Aging will have additional questions for you, Mr. Benedict, which we will submit in writing by tomorrow.

We will leave the hearing record open for 30 days for additional comments from our colleagues who might wish to comment.

With that I have been asked to close the hearing and to thank you for your testimony this morning and to thank those on the staff who prepared us for this hearing. We think it has been hopefully constructive and we look forward to the next hearing.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:15 p.m., the hearing adjourned.]

A P P E N D I X

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER AND ENCLOSURE FROM O'DELL LEWIS, FEDERAL LIAISON, NATIONAL ASSOCIATION OF REGIONAL COUNCILS, WASHINGTON, D.C., TO SENATOR LAWTON CHILES, DATED OCTOBER 17, 1979

DEAR SENATOR: The National Association of Regional Councils requests you and other members of the Special Aging Committee to consider carefully the enclosed comments on recent regulations for the Older Americans Act.

NARC has among its members 191 substate regional councils which serve as areawide agencies for aging programs.

Many of our members are concerned that some sections of these new regulations, as proposed July 31, will disrupt the effective delivery of services unnecessarily.

We request that you include these comments in the record in connection with joint oversight hearings scheduled for October 18. NARC would be happy to discuss these issues further with members of your staff.

Sincerely,

O'DELL LEWIS,
Federal Liaison.

Enclosure.

STATEMENT OF THE NATIONAL ASSOCIATION OF REGIONAL COUNCILS

The National Association of Regional Councils currently represents 191 councils of government that administer areawide aging programs. The involvement of regional councils in the aging programs began in 1973 when the Older Americans Act authorized the establishment of area agencies on aging.

Regional councils composed of local governments provide an established mechanism for coordinating the aging program with other social services in the region. Councils of government, as area agencies on aging, provide an additional advantage in that they can encourage greater commitment of local funds into the program through the involvement of local elected officials. There appears to be a strong possibility that all of the effort that has gone into the aging programs over the last 6 years will be thwarted unless there is clarity added to the proposed regulations issued by the Administration on Aging, July 31.

Additionally, it should be noted that the delay in promulgating the new regulations caused a serious delay in the planning process, as well as creating a problem in contracting with service providers.

In light of the above, NARC would like to particularly address sections 1361.63 and 1321.65 of the regulations dealing with the types of agencies that may be an area agency and the organization of the area agency. Section 1321.63(3) states that an area agency may be "any office or agency proposed by the chief elected officials of a combination of units of general purpose local government." This section taken directly from the act itself clearly permits the designation of a regional council for this purpose.

Section 1321.65(b) states that in the event an agency such as the regional council is designated, that an area agency may be "a multipurpose agency established to administer human services in the area."

Confusion has resulted in the interpretation of these two sections, particularly in those instances where such a multipurpose regional council was not specifically or particularly organized to "administer human services." Regional councils around the country have been advised by Administration on Aging officials that they will no longer be eligible to administer aging programs.

A meeting was held with representatives of the Commissioner of the Administration on Aging on September 20, in order to correct this problem. All of the parties

agreed that the language in these two sections was ambiguous and needed to be changed.

Most councils of government articles of agreement provide that one of their powers is to further the "orderly and maximum development of human resources" in the region. NARC assumes that such wording should be sufficient to meet the requirements of section 1321.65(b) but would suggest that further clarification of this section be made to permit any regional council, council of governments or regional planning agency composed primarily of elected officials representative of the service area to be eligible for designation as the area agency on aging in accordance with section 1321.63(3) provided that provisions with respect to composition of the Advisory Council are met.

The second paragraph of section 1321.65(b) should then be clarified to indicate that the multipurpose agency may delegate all or part of its authority under this part to a designated organizational unit in the agency. This would permit appropriate delegation of authority to the Advisory Council as determined by the local officials and the Advisory Council.

The basic philosophy of NARC is that regional councils should not be in the position of directly providing services unless there is no other appropriate organization in the region to provide such services. This philosophy seems to be in basic agreement with the regulations.

Section 1321.99 mandates coordination of area agency programs with other Federal programs, the goal being the development of a comprehensive and coordinated system. Eleven programs are listed for coordination. Regional councils presently have program responsibility under laws such as CETA, Housing Acts, Housing and Community Development Act, Urban Mass Transit Act, Clean Air, and Clean Water Acts.

NARC feels that this statement should be strengthened to say that not only should the coordination be achieved with these Federal programs but that formal linkages be required with the agencies responsible for their implementation. Also, the Administration on Aging should take it upon itself to insure that other HEW funded programs, such as local and State health systems agencies, as well as title XX social services programs under title III of the Older Americans Act, are adequately addressing the needs of the elderly. In addition, efforts should be made to include similar provisions requiring such coordination with area agencies on aging in regulations governing the administration of Department of Housing and Urban Development programs, Urban Mass Transportation Administration programs, CETA program, and other Federal activities.

Section 1321.67 states that area agencies should give preference in hiring to persons age 60 or older. This is indeed a laudable goal and one which NARC fully supports. Regional councils have been particularly successful in this regard in utilizing CETA personnel over the age of 60. This requirement must, however, be measured against other Federal employment requirements under equal opportunity and affirmative action plans. These requirements specify target groups to be not only the aged but also handicapped, females, and minorities.

The regional councils feel that we have the responsibility to set an example for the community in the employment of the elderly, not only for our aging programs but for all facets of our operation. However, these responsibilities must be discharged in light of our *total* equal opportunity requirements. Perhaps, consideration of this factor should be included in section 1321.67.

The Administration on Aging might also want to consider special training or retraining programs for persons over 60 to better qualify them for management positions in area agencies and/or regional councils in order to promote the spirit of this requirement.

NARC would again like to stress that we feel there is a key role for regional councils to play in the planning, coordination, and operation of programs for the elderly. There are many examples of successful area agency programs in regional councils throughout the country. The National Association of Regional Councils has continually expressed an interest in working with the Administration on Aging to further their relationship. NARC has formed a National Committee on Human Resources to deal with this issue and recently formed a Special Committee on Aging Programs under its Staff Director's Advisory Committee. This committee would be most happy to work with representatives of the Administration on Aging on strengthening the relationships of regional councils and area agencies on aging.

The following problems relate to regional office effectiveness that can be discussed at length.

Lack of uniformity between regional offices.

Lack of coordination between Federal agencies at the regional level.

Weakens advocacy because another level interferes.

No consistency in regional hearings on regulations, Commissioner would say something in one city, and a regional office director would say something different in another region.

Obvious lack of communication between central office and regional office.

NARC believes that all 191 regional councils that administer aging programs have successfully melded the interests of our senior citizens, local organizations, and elected officials to provide an improved living environment for the elderly.

NARC would like to make one final but important point related to the new regulations. It appears from the regulations that AoA may seek to put all the aging agencies through a wholesale redesignation process. Such a process would be time-consuming and likely to disrupt the delivery of services in many situations where it would not be warranted.

NARC believes that redesignations should be based on the evaluations of performance carried out by the Governors in conjunction with the Department of Health, Education, and Welfare. Where such evaluations show that agency performance is marginal or unsuccessful, then redesignations should take place. An across the board redesignation process would, in our opinion, be an inefficient and disruptive way to approach the problem.

ITEM 2. LETTER AND ENCLOSURE FROM BETTY KING, DIRECTOR, OFFICE ON AGING, STATE OF ARKANSAS, TO SENATOR DAVID PRYOR, DATED OCTOBER 5, 1979

DEAR DAVID: In response to your letter dated October 3, 1979, I am enclosing a copy of our comments on the proposed regulations to the Older Americans Act Amendments of 1978. Although these comments were submitted by the State Office on Aging, they represent the thinking of all organizations that work with senior citizens in the State of Arkansas. My staff and I met with the local area agency directors and other persons interested in the field of aging, and together we formulated the enclosed response.

Although these items are mentioned in the enclosed comments, I cannot resist the temptation to reiterate that there are three items of greatest concern to Arkansas, and request that you personally pay attention to them.

(1) The issue of the State office being a single organizational unit. As you know, we were buried under Social Services for a long time and were not as effective in serving the elderly as we are now. If the regulations are adopted as is, any Governor and/or legislator who is not committed to the problems of the elderly, could subsume the office under any government agency. This, I think, would be a step in the wrong direction.

(2) Maintenance of effort. This penalizes progressive States, like Arkansas, who have already committed large amounts of State dollars to aging programs; and would have an inhibiting effect on those States that have not committed funds, but might want to do so on an experimental basis.

(3) 105-percent expenditure in rural areas. This is part of the act and is therefore appropriately placed in the regulations. However all eight PSA's in Arkansas are rural, or contain rural counties. The Administration on Aging should, therefore, consider this in their allocation of money to States, so we should receive a proportionately higher increase in funds that the primarily urban States.

I hope that my comments would be of assistance to you, and that you will feel free to contact me if I can be of further assistance.

Sincerely,

BETTY KING, *Director.*

Enclosure.

ARKANSAS COMMENTS ON THE OLDER AMERICANS ACT DRAFT REGULATIONS

I. Reference section 1321.3: "Greatest Economic Need".—Arkansas has used a poverty ratio 60 and over since the 1973 amendments, funding the areas by this ratio (ratio determined by U.S. Bureau of Census figures).

The problem has been caused by the "no means test" clause. Areas are essentially having to guess that they are servicing those with the greatest economic need, however, we believe we are satisfying option 1.

Title XX regulation allows a higher level for 65 and over, and since the office is now responsible and accountable for the aging portion of title XX, we would encourage option 3 to become the criteria for determination of greatest economic need.

II. We oppose the wording of section 1321.13(b) second sentence, "Organization of

State Agency."—We have experienced placement as a *unit* within a division of a multipurpose agency. It was such a fiasco that the regional office was greatly concerned. Aging property was distributed throughout the division, funds were commingled causing audit trails to be lost, Federal funds were transferred without authority or knowledge of the unit, and because the unit was within the division, aging had little, if any visibility. Fortunately we have been elevated to a division level within a multipurpose agency, having complete authority, responsibility, and accountability for aging program and funds. Arkansas encourages the retention of the State Aging Office to be a "single organizational unit."

III. Reference 1321.15: "State Agency Administration".—Request delay in establishing State procedures until the Administration on Aging clarifies its position/procedures to the States. This would not only save much staff time in writing procedures, but would reduce the confusion caused by counterchange to procedures written prior to receipt of Administration directions or procedures which Administration on Aging may require.

IV. Reference Section 1321.17: "Staffing".—We believe in order to create (1) a focal point, (2) advocacy, and (3) direction to the aging statewide program, there should be an added statement, a *full-time* director.

V. Reference Section 1321.25(a): "Content of State Plan".—This statement negates the authority of statewide management of the aging programs which are assigned to State agency in the act. The phrase "based on" should be deleted and substituted with "in conjunction with" or in coordination with area agencies. Since the State is statutorily responsible for the management of State aging programs, "based on" infers area agency directions of aging programs without having the authority or responsibility.

Subsection (g)(5): "Resource inventory".—This would be excellent information, but experience indicates that this type listing is hard to secure within the time frame of preparing the State plan or for any time. To be valid, the list would have to be current. Unfortunately, most agencies are too busy carrying out their own programs to provide aging with the information this would require and in some instances, it is the problem of "turf protection." The best listing would not be all inclusive.

VI. Reference Section 1321.31: "90-Day Requirement".—The 90-day requirement of the State plan submittal before approval will cause difficulties for both the State and Administration on Aging. Never in the past, has the Administration on Aging been able to provide the State sufficient leadtime to develop its plan and carry out its regulatory requirements.

As best we can determine, directions and format would need to be received at the State level no later than March 15 to satisfy the requirements. Additionally States would have to plan and budget on a continuing level, necessitating revision of both plans and budgets. This will cause continual change, counterchange, and confusion at both the State and area levels.

If this is not required by the act, we suggest that Administration on Aging provide both itself and the States sufficient leadtime to accomplish this intent with minimal revisions to the State plan.

VII. Reference 1321.45(a)(9).—We require a positive definition of the term "periodic" regarding monitoring and evaluations. We do not intend to hassle region when they are monitoring us and we have not carried out our monitoring evaluations by their time schedule, if this term remains.

VIII. Reference 1321.49(b)(1): "Interstate Funding Formula".—Inasmuch as States have been in operation under amendments to the act of 1973, funding formulas have been developed, and those formulas have been defended in public hearings and approved by region and Administration on Aging, to insert "minimum funding base" could be disastrous for some area agencies.

We recommend that subsection (b)(1) be deleted.

IX. Reference Section 1321.51: "State Agency Hearing Procedures".—Hearings should start at the lowest level which can provide an impartial hearing. If a resolution cannot be reached or worked out at this level, then carry to the next highest, etc. Many so-called hearings comes about through misunderstanding.

X. Reference Section 1321.101: "Approval of Area Agency Subgrants on Contracts".—We would encourage modifying this to read "States can request for prior approval or review, etc." As stated this is inconsistent with the States' responsibility for overall management of title III both fiscally and programmatically.

XI. Reference Section 1321.111: "Contributions".—The draft regulations are in conflict with 45 CFR part 74 in regard to option C addressed in 74.42(b)(2). We do not object to "expand" for III-B. "Increase meals served" if taken literally in III-C is a problem, however this may not be the correct interpretation. Because of the uncertainty of contribution from month to month, meals served will increase or decrease. Older persons receiving those meals will not understand why they get a

meal one (day) (month) and cannot continue, if contributions decrease. The politics of this kind of a situation could be insurmountable.

Additionally, elderly contributors feel that since they are contributing, they should also have a voice in the usage of this fund.

We are requesting a more positive definition of "increase meals served." There are a number of ways of increasing meals without actually placing contributory meals on the table.

XII. Reference 1321.193: "Expenditure in Rural Areas".—In order to satisfy the 105-percent rule, Arkansas must receive additional funds. We opt to declare the entire State rural, since by census data, the State satisfies option 1, parts (1) and (2), population 51.1 percent rural and population density of 37 persons per square mile. We believe the congressional intent is to provide greater services in rural areas. Present data in Arkansas indicate expenditure for services in rural versus "urban" counties of 3 to 1.

Additional funds must be forthcoming in order to satisfy the clause "must spend in each fiscal year for services to older persons in rural areas under this part at least 105 percent of the amount spent under the act in rural areas during fiscal year 1978 * * * ." This to us indicate Federal funds. Is this correct?

One modifier to the general rule might be "or the State is spending in addition State or local funds in an amount which would satisfy the 105-percent requirement." Arkansas is spending for aging services from State dollars, an amount almost equal to its present Federal funds throughout the State, an increase in State funds of 84 percent over State expenditure in fiscal year 1978.

One comment we are hearing is that the State funds are directed to be used in services other than those specified by Administration on Aging. If this comment is true, in our opinion, it is ridiculous since States and local areas are encouraged by the Older Americans Act to provide needed services to the elderly from any source, be it State or local. We do not believe that in order to satisfy the 105 percent, funds for any source other than Administration on Aging providing services to elderly should be arbitrarily excluded, nor do we believe that this is the congressional intent, even though State funds are not being applied directly to Administration on Aging services, they are filling the gap of elderly service needs.

XIII. Reference 1321.205(b): "Obligations and Reallotment".—This could place Arkansas in a precarious position since our area agencies on aging are not on the Federal fiscal year. We do obligate fiscal year funds within the funding year, however, expenditure of those funds lag behind the fiscal year by one quarter.

We recommend that unspent obligated funds be carried over from one fiscal year to the next with the understanding that those carryover funds will be spent prior to spending of new funds. States have had this authority in the past.

ITEM 3. LETTER FROM JIM MEDLEY, EXECUTIVE DIRECTOR, AREA AGENCY ON AGING OF WESTERN ARKANSAS, INC., FORT SMITH, ARK., TO SENATOR DAVID PRYOR, DATED OCTOBER 15, 1979

DEAR DAVID: I received your letter in which you requested that I comment on the HEW Older Americans Act regulations after comparing the regulations with the Older Americans Act of 1965, as amended, July 1979. I am very grateful for the opportunity to submit my comments to you after comparing the proposed regulations with the amended act.

In reviewing my letter to you on August 21, 1979, I found the following areas were of concern to me when I first read the regulations.

In section 307(a)(13)(C)(i) the broad area of contributions at the nutrition centers is addressed. In the proposed regulations it states that "as a general rule all contributions received be used to expand the services of the provider for older persons." Further, the proposed regulations state that the contributions be used solely to increase the number of meals served. In the same section in the law it states, "such charges will be used to increase the number of meals served by the project involved." Thus, the law and the proposed regulations do seem to convey the same intent. As I pointed out in my previous letter to you, it does sound like a very good idea initially. However, after discussing this on numerous occasions with senior citizens over the years, I've heard them often express that they feel the contributions should be expended according to their desires at a local level since they have been the ones that contribute. I feel that the contributions should not be required to go back into increasing the number of meals but that the senior citizens at individual nutrition sites should be allowed to continue to govern how their money is spent. Also, I do feel that the contributions would be significantly decreased should this proposal stand.

In section 1321.121(CX)(iii) the proposed regulations require that the nutrition

centers be open a minimum number of 45 hours each week. Conversely, the law states in section 331(1) that a congregate nutrition center be open 5 days or more per week, not 45 hours per week. I am unable to locate in the law the requirement that centers be open 45 hours per week. Since I last wrote to you, my staff has had the opportunity to discuss this with many of our nutrition site directors around the region. They concur with my initial feeling on this matter and that is that the number of hours a center is open per week beyond the normal 40 hours, should be left entirely to the provider board that is in charge of that center. This will allow the participants in that local area to have direct input in assessing their needs and their desires.

In section 1321.143 the proposed regulations discuss the special dietary needs and state that the nutrition services provider must serve special meals to meet the particular health, religious, or ethnic dietary needs of individual participants, even when special diets are more expensive than other meals. Again, I am unable to find reference to this in the amended act, but I feel that while this is a fine idea to work toward in the future, we should first increase the number of meals we serve overall before we attempt to provide special dietary needs. I believe we will be able to increase the number of meals we serve if we do not attempt to provide therapeutic diets in each of the centers. We still have high numbers of people that we need to reach in the poverty pockets of rural areas in this State which can only be reached by placing more emphasis on outreach. I contend that we should approach this special dietary need only after we have identified and served the low-income, rural elderly more adequately.

Finally, one of the most important changes in the proposed regulations is the area of not allowing the area agencies to use 20 percent of title III-C money for supportive services. I am definitely opposed to this. I have discussed this with other area agency directors and we all agree that we need these funds to provide supportive services to the elderly in order to effectively perform the outreach and expansion services within the senior citizens centers, which really makes the center a multi-purpose senior center. If the 20 percent is withdrawn from title III-C, it will have to come out of III-B administration funds and at this point it does not appear that we will be able to provide the supportive services that are needed. In looking at the law it states in section 307(a)(13)(I) that each State agency may, only for fiscal years 1979 and 1980 use, not to exceed 20 percent of the amounts allotted under part C to the State for supportive services, including recreational activities, informational services, health and welfare counseling, and referral services, directly related to the delivery of congregate or home-delivered meals. Thus the proposed regulations are attempting to limit us in using the 20 percent title III-C money for support services while the law seems to allow us to use up to, but not to exceed, 20 percent of the amounts allotted under part C for supportive services in 1980. We need to use the 20 percent that is allowed by law in 1980 and we can use the next 12 months to plan how we can best continue the supportive services under part B administration funds.

Again, I would like to thank you for the opportunity to comment on these proposed regulations, and I sincerely hope they will be of benefit to you in the upcoming hearing. I have enclosed a copy of my previous letter to you for your convenience and will be happy to help you in any way I can if you will just let me know how I may do so.

Sincerely,

JIM MEDLEY, *Executive Director.*

ITEM 4. LETTER FROM JON LOONEY, EXECUTIVE DIRECTOR, WHITE RIVER AREA AGENCY ON AGING, INC., BATESVILLE, ARK., TO SENATOR DAVID PRYOR, DATED OCTOBER 10, 1979

DEAR SENATOR PRYOR: Thank you for your letter of October 3, 1979, requesting my comment on the Older Americans Act Amendments of 1978. Since I returned from vacation yesterday, my response is somewhat delayed. I hope it will be of assistance.

Attached is a transcript of comments made by David Sneed,¹ director of the Area Agency on Aging of Southwest Arkansas, at the Dallas meeting on the proposed regulations. David was the representative for the eight Arkansas Area Agencies on Aging at that meeting. So his views are fairly representative of all the AAA directors in Arkansas. My only disagreement is with section 1321.49. I feel that only

¹See following item, which includes Mr. Sneed's comments on the proposed regulations.

the total number of elderly within a region should be considered in the intrastate funding formula.

Thank you for your help.

Sincerely,

JON LOONEY, *Executive Director.*

ITEM 5. LETTER AND ENCLOSURE FROM DAVID SNEED, DIRECTOR, AREA AGENCY ON AGING OF SOUTHWEST ARKANSAS, INC., MAGNOLIA, ARK., TO SENATOR DAVID PRYOR, DATED OCTOBER 10, 1979

DEAR SENATOR PRYOR: Enclosed is a copy of the testimony concerning the proposed Federal regulations implementing the 1978 amendments to the Older Americans Act which I presented before a regional public hearing in Dallas on September 13, 1979.

This testimony presents major concerns which I have with the proposed regulations. I particularly would like to amplify my comments on section 1321.13 concerning the designation of State units on aging. I believe that the intent of Congress is made clear by section 305A(1)(D) which states that a State unit on aging should "serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly and providing technical assistance to any agency, organization, association, or individual representing the needs of the elderly." I do not believe that a multipurpose (umbrella) agency can effectively meet this mandate. I am sure that you will recall our experience with such an approach in Arkansas when the Office on Aging started out in the program development section of Social Services, and because of its ineffectiveness in that location, was elevated to a position reporting directly to the commissioner of Social Services, later reporting to the commissioner of Social Services and the director of the Department of Human Services, and finally to its present position as a line division of the Department of Human Services with the reporting responsibility directly to the Governor's office. In my opinion, at each stage of elevation in the governmental structure, the office was more able to effectively advocate for the elderly. I think it would be most unfortunate if regulations would allow the Office on Aging to become buried again in the State bureaucracy. The same principle applies to the designation of area agencies on aging as referred to in section 1321.65 of the proposed regulations. Again, you are familiar with the problem of identity and development experienced by area agencies on aging in Arkansas when they were part of multipurpose organizations.

I believe that section 1321.121 exceeds the intent of the statute. I also believe that if multipurpose centers are required to be opened for a minimum of 45 hours per week in Arkansas, the net effect will be a reduction in the number of older people who are served by such centers. You are well aware of the rural nature of our entire State, and I am sure that you know we have some center programs which provide valuable services to older people on an operating schedule of from 20 to 40 hours per week.

Senator Pryor, I appreciate very much the opportunity you have given me to comment on the proposed regulations. If this office can provide information at any time, please feel free to contact me.

Sincerely,

DAVID SNEED, *Director.*

Enclosure.

COMMENTS ON PROPOSED FEDERAL REGULATIONS

SECTION 1321.3, DEFINITIONS

Point A.—The proposed definition of community focal point is "a place or mobile unit in a community or neighborhood designated by the area agency for the collocation and coordination of services to older persons." I believe that it is important to define whether community focal point in fact does refer to a place or an organization as is indicated by section 1321.95B2 which states "the area agency may designate as a community focal point only an organization that is able and willing to make some provision for * * * etc." A distinction should be made in terminology concerning community focal point in that the intent of Public Law 95-478 is clear that the area agencies on aging be a "community focal point for the elderly by monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly." The same law makes it the responsibility of the area agencies on aging to "designate where feasible a focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of service for older individuals and give special consideration to designating multipurpose senior centers as such focal points." Therefore, it seems clear to me that the terminology in these regulations should be

community focal point for service delivery and should be defined on the basis of that terminology.

Point B.—The proposed regulation's definition of "greatest economic need" set forth three options. Since any option finally selected will affect the intrastate funding formula, I believe that all three options should remain in the proposed regulations and that authority for selection of the option that it will employ be given to each State.

SECTION 1321.13

Public Law 95-478 did not change the provision for designating State and area agencies to administer older Americans programs; however, the proposed regulations delete the previous requirement that State or area agencies on aging be either a single-purpose agency to administer programs in the field of aging or that a single organizational unit be designated within a multipurpose agency with full responsibility and authority to discharge the statutory functions outlined in the Older Americans Act. In my opinion, it is important that these requirements of previous regulations be retained for the future. For example, it took 5 years in the State of Arkansas to elevate the Office on Aging from a subcomponent of a division of a State department to its present location as a line division of the Department of Human Services with direct liaison with the Governor's office. Location of State agencies and area agencies on aging is crucial to these agencies being able to perform in the best interest of older people. This is especially true concerning advocacy and legislative issues.

SECTION 1321.29

The requirement that State plans must be based on area plans is strongly supported. While we concur with AoA in its assessment of congressional intent to the point that State plans should not be a "simple compilation of area plans," we do believe that it was the clear intent of Congress that area agencies on aging have full involvement in the development of State plans to include such things as definition of need, drafting of objectives, and allocation of funds by service. We do not believe that simply being invited to public hearings on the draft of State plans meets the intent of Congress. With respect to this requirement, we also do not believe that Congress intended that all area plans be uniform, either in service content or methodology for service delivery.

SECTION 1321.49

The proposed regulations should provide that total numbers of elderly, low-income elderly, and minority elderly all be included as factors in the intrastate funding formula.

SECTION 1321.65

We oppose the designation of multipurpose agencies as area agencies on aging and believe that this is in conflict with the intent and philosophy of the Older Americans Act. It has been demonstrated on numerous occasions that older people do not receive their fair share of services and resources for services when they are left to compete on an unequal footing in umbrella service delivery systems.

SECTION 1321.81

We oppose the requirement that area plan amendments be submitted through the public hearing process outlined in this section. It is common for amendments and adjustments to be made over time due to many factors. A case in point is the high inflation rate that we have experienced in the last several years which has necessitated budget revisions almost every year. We believe that amendments should be approved or disapproved by the State agency without going through the time consuming and possibly nonproductive public hearing process.

SECTION 1321.101

We agree with the provision that states "the State agency may not require the area agency to submit for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations." We believe that this provision will avoid unnecessary delays in activation of service grants or contracts and is within the reasonable responsibility of the area agency on aging.

SECTION 1321.103

We believe that this provision should apply to title III services only and that the State agency, in conjunction with the area agency, is the best judge of which

services should be directly provided by the area agency on aging. We do believe that information and referral, advocacy, health and welfare counseling, individual needs assessment, and case management services should be allowed to be provided directly by the AAA and that the State agency, in conjunction with the area agency, should be allowed to make the judgment concerning "adequate supply of service."

SECTION 1321.121

We oppose the requirement of this section which mandates that multipurpose centers be open for a minimum of 45 hours per week. In Arkansas, this would have the effect of cutting service because of additional staffing requirements and increased operating expenses. The effect would be that fewer older people would be served. We strongly support the clause which allows the State agency to set shorter hours of operations for rural areas.

SECTION 1321.141

We oppose the provision of this section which would allow project awards only to nutrition services providers who provide congregate nutrition services. We believe that this provision would exclude some competent providers, who provide only home delivered meals.

SECTION 1321.143

We oppose subsection (B) of this section without some qualification. AoA should realize that a special diets program will be more expensive from the preparation and supervision standpoints. A properly operated special diets program should include individual supervision by a medical doctor and a registered dietitian. If these components are included, then, the unit cost of the meals will be considerably higher.

SECTION 1321.205

We oppose subsection (B) of this section, as written. Reallotment provisions should include safeguards that will insure funds are not reallotted due to individual State laws which affect the distribution of funds after they have entered a State treasury. The Commissioner should not be allowed to reallot funds without a reasonable period of notice. Also, we recommend the congressional delegations of States be notified prior to any reallotment of funds. Funds are allotted based on criteria which identifies need. Therefore, reallotment of funds skirts the issue of why the funds are not being used. Ultimately reallotment of funds penalizes the older people in a jurisdiction where the funds should have been spent for the provision of services. Remedies should be provided that will insure the proper expenditure of funds for services in the area where they were intended to be spent, but the older people in those jurisdictions should not be penalized by losing the resources intended for them.

GENERAL COMMENTS

We believe that AoA has missed some opportunities that exist for strengthening partnerships that have developed and are developing between local communities, area agencies on aging, and State units on aging by the way the proposed regulations have been written. Particular attention should be given to the expressed intent of Congress to strengthen these relationships. We believe that the congressional intent generally is clear with respect to the responsibilities and authority that should be attendant to the operation of both the area agency on aging and State unit on aging.

ITEM 6. LETTER FROM HERB SANDERSON, DIRECTOR, EAST ARKANSAS AREA AGENCY ON AGING, INC., JONESBORO, ARK., TO SENATOR DAVID PRYOR, DATED OCTOBER 9, 1979

DEAR SENATOR PRYOR: Thank you for your letter of October 3, 1979, and the opportunity to express my views on the 1978 amendments to the Older Americans Act.

I have five major concerns:

(1) It is imperative that sections 1321.13 and 1321.65 in the proposed regulations be changed. I feel strongly that if a multipurpose agency is designated a State agency or area agency then they should be required to delegate all authority and responsibility to a designated single organizational unit within the larger organization. I do not believe Arkansas would have the programs it does today, if the responsibilities of the Office on Aging had been scattered throughout the Depart-

ment of Human Services. Nor do I believe older Americans should have to trek from office to office to find the services they need.

(2) Section 1321.75(b)(4) speaks of providing services to residents of care-providing facilities. While these people have many needs, limited funding under the Older Americans Act should not be used for this purpose. (Payments to Arkansas nursing homes from medicaid and medicare equaled \$80 million last year, while funding from the Older Americans Act totaled less than \$5 million.)

(3) Section 1321.95(b) dealing with the designation of community focal points should be removed. The procedure should be left to individual States and AAA's. The section has no statutory authority.

(4) Section 1321.29. It was the intent of Congress that the State plan be based on area plans. This section does not carry out that intent. Specific language should be written to insure a cooperative planning effort between AAA's and State units.

(5) Section 1321.81 requiring a public hearing on all amendments to the area plan is not practical. For example, Arkansas recently received \$918 in additional title III-C funds as a result of fiscal year 1979 reallocation. Our AAA will receive \$178 of the \$918. To receive this money we must amend our budget, which of course is an integral part of our plan. I do not feel such an amendment merits a public hearing.

Thank you again for the opportunity to express my concerns. If further information is needed, please do not hesitate to call.

Sincerely,

HERB SANDERSON, *Director.*

ITEM 7. LETTER FROM BETTY M. BRADSHAW, EXECUTIVE DIRECTOR, AREA AGENCY ON AGING OF SOUTHEAST ARKANSAS, INC., PINE BLUFF, ARK., TO SENATOR DAVID PRYOR, DATED OCTOBER 8, 1979

DEAR SENATOR PRYOR: We are very pleased that you are serving on the Senate Special Committee on Aging and are concerned with the Older Americans Act of 1978 and the way they were interpreted in the proposed regulations and especially the effect they would have on a rural State such as Arkansas.

1321-147(1)(c).—The area agency may only award funds for home-delivered meals to a service provider that also provides congregate meals. I feel this is a great disservice to volunteer organizations. The area agency should be able to contract with the organization that can provide a meal, meeting guidelines in the most economical and expedient manner.

1321-147(2)(d).—The provider of home-delivered meals must assure the availability of participants of at least one meal a day, 7 days a week. I feel this should not be a mandate, but left up to the area agency.

1321-121(c)(2)(iii).—For a minimum number of 45 hours of operation. In the rural State of Arkansas 45 hours a week of operation is unsatisfactory—more centers with less hours of operation (4 hours a day) would fit our needs better.

1321-113-18 307(a)(13)(1) of the act as amended prohibits the use of nutrition service funds for supporting services. In the State of Arkansas, transportation for all older persons is the No. 1 need. If transportation cannot be provided along with nutrition services, all senior citizens centers would have to be closed.

1321-140(a)(16) nutrition services.—Therefore, we are proposing that a nutrition service provider provide special diets to all nutrition service participants even when special diets are more expensive.

307(a)(13)(g).—Each project will provide special menus, where feasible and appropriate. The wording in the proposed regulations have a complete and different meaning. In our area, special diets could only be prepared under the direct supervision of a registered dietitian, prepared by specially trained personnel and prescribed by a physician, and this is not possible. Special menus could be prepared or altered to meet some health, religious, or ethnic backgrounds in a feasible manner.

If we can provide any additional information, please let us know.

Sincerely,

BETTY M. BRADSHAW,
Executive Director.

ITEM 8. MEMORANDUM FROM DIXIE MATTHEWS, EXECUTIVE DIRECTOR, CENTRAL ARKANSAS AREA AGENCY ON AGING, INC., NORTH LITTLE ROCK, ARK., TO SENATOR DAVID PRYOR, DATED SEPTEMBER 27, 1979

COMMENTS ON PROPOSED FEDERAL REGULATIONS

SECTION 1321.3, DEFINITIONS

Community focal point (CFP) needs clarification. Public Law 95-478 identifies two kinds of community focal points:

(A) The area agency as "CFP for the elderly by monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly."

(B) The area agency designated focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of service for older individuals and give special consideration to designating multipurpose service centers as such focal points.

The definition of community focal point needs to be changed. "Place or mobil unit" seems inappropriate. The term "service delivery" is needed.

Please clarify community focal point.

Greatest economic need definition needs to be a State option.

Recommended language: "Greatest economic need" may be defined by a State in one of three ways. In selecting the definition to be employed in the State, the State agency must provide to the area agencies information on how each definition will affect the intrastate funding formula and the aging network. After consultation with the area agencies, the State agency may select the definition of greatest economic need which is most advantageous within the State. (List options.)

SECTION 1321.13, ORGANIZATION OF THE STATE AGENCY ON AGING

The language in this section will take Arkansas' State agency back 5 years. Attaining the independence and identity of the State agency has been a major accomplishment of the State aging network.

Please retain "Single organizational unit" concept. This is urgent to the success of the State agency as advocate and focal point for the elderly.

SECTION 1321.29, STATE PLANS BASED ON AREA PLANS

Strongly agree that State plans must be based on area plans. We agree that State plans should not be a "simple compilation of area plans." It is the clear intent of Congress for AAA's to be actively involved in the development of State plans, especially such things as definition of need, objectives, and the allocation of funds. Simply inviting AAA's to hearings on State plans is inadequate and out of tune with the congressional intent. Neither is it meant for area plans to be carbon copies of one another in service content or methods of delivery.

The public hearing requirements seem to indicate that public hearings will be needed even for minimal State plan amendments.

Public hearings are costly. Please make a provision for amending by requiring that plan amendments which do not significantly alter a plan be published widely with at least a 15- to 30-day comment period.

SECTION 1321.49, INTRASTATE FUNDING FORMULA

b.2 Delete the requirement that 105 percent of the amount spent in rural areas in 1978 be spent on rural areas. If this provision becomes effective, Pulaski County (42,000 60+ population) will have to cut services while 5 other central Arkansas counties (20,000 60+ population) will be able to increase services. Transportation services in urban areas can be provided at lower cost because of the proximity of the older population to one another. Personnel costs in the urban areas are higher than in rural areas. These two factors help offset one another. Given, providing rural services can be more difficult than providing urban services, but if AoA plans to make this 105 percent a requirement, please provide additional funds.

(4) Reflect the availability of other State and Federal funds for service authorized under this part.

Delete: This punishes those area agencies who have developed other funding sources.

(e) Review and update the formula every 3 years.

Recommend review and update on the availability of valid information such as census data and census updates.

SECTION 1321.53, DESIGNATION OF PSA'S

Preference should be given to established area agencies where performance of the area agency under the area plan is satisfactory.

SECTION 1321.61, AREA AGENCY DESIGNATION, ORGANIZATION, FUNCTIONS

Why is redesignation necessary? Most area agencies have now established a positive community identity. Why negate this with redesignation without cause?

SECTION 1321.65, ORGANIZATION OF THE AREA AGENCY

The area agency needs to be an advocate, a leader, a focal point for aging services. AoA can in no way assure that this congressional intent will be carried out if aging services are spread out over a multipurpose human service agency also charged with child welfare services, assistance payments, food stamps, legal services, services to youth, etc.

The emphasis in each State will be on the field of service most popular with the current administration. Central Arkansas says "no" to this possibility that either the State or area agency can be diffused over a multipurpose agency.

SECTION 1321.69, AREA AGENCY PROCEDURES

We believe that area agencies have developed to the point that administrative services manuals are needed. Regs are clear: Procedures. Some functions such as coordination may not be readily ascribed standard procedures. Some procedures which need to be addressed in administrative services manual would be: Assessments, monitoring, evaluation, grants and contracts awards, technical assistance, training, civil rights reviews, affirmative action plan approval.

SECTION 1321.75

(4) Services to residents of care-providing facilities are identified in this section. This is very important as the aging network is often called on to provide services to residents of long-term care facilities that should be the facility operator's responsibility. This distinction is important and especially so in reference to the definition of a multipurpose senior center. (1321.121(c)(2)(ii)(d).)

SECTION 1321.79, AMENDMENTS TO THE AREA PLAN

What purpose is there to the requirement in 1321.79 and 1321.81 if there are instances when the area agency must amend the area plan? For emphasis on the need to change 1321.29 and 1321.81, again, the public hearing process, while effective in the development of the plan, is cumbersome in the amendment process, unless the area agency intends to significantly revise the plan so that program content and methodology are very different.

SECTION 1321.81—SEE 1321.79, REVIEW OF PLAN AMENDMENTS

Plan amendments should be published for review and comment.

Area plan amendments insignificant in nature, and routine budget revisions should not require a public hearing *nor* processing through the A-95 review process. This requirement is excessive.

SECTION 1321.101, STATE AGENCY APPROVAL AREA AGENCY SUBGRANTS OR CONTRACTS

Area agencies are strengthened by the authority to implement services without prior approval of the State agency. Please retain.

SECTION 1321.103

The restriction on area agencies from providing direct services should apply only to title III services with these exceptions: Information and referral, advocacy (including legal), health and welfare counseling, individual needs assessment, and case management. The AAA and State agency should be allowed to make the judgment regarding adequate supply.

(a)(7) Dangerous. Contributions are unpredictable, unstable revenue source, (a)(7) needs further clarification. Only meals contribution should be put back into meals. Crafts contributions into crafts. The whole project income question needs address-

ing. Older people like to see the fruits of their labors have tangible results at their center, especially when they are part of a multisite operation. Sending funds to some central location wrangles older people who feel that their project income or contributions should result in window shades, air conditioning, paint, supplies, piano, etc., for them.

SECTION 1321.93, AREA AGENCY GENERAL PLANNING AND MANAGEMENT RESPONSIBILITIES

Generally, we agree. k. *Outreach* is difficult to accomplish as many service providers have waiting lists for services such as meals and transportation. Through outreach activities we will simply build longer and longer waiting lists. How hard it is to reach out to an older person in need only to say, "We could, if * * *" Outreach takes care of itself as services become known and a program grows. j. *Community service* areas and focal points are a good concept and will in Central Arkansas result in the official designation of catchment areas and focal points that are already operational. i. *Children's day care* volunteer opportunities are available at one urban location in central Arkansas. This program is not too successful. The 36 seniors enrolled feel they have raised their children and grandchildren and want time to themselves.

The day care and senior centers are located in one building in a target area. The area agency plans to continue this effort but do not feel optimistic about encouraging such an arrangement elsewhere. The foster grandparents program is effective at a children's colony in this PSA.

SECTION 1321.107, OUTREACH

For what purpose? To get on a waiting list? Outreach is a valid service but there is a time when it is inappropriate and that time is now when the identified need outstretches available resources.

SECTION 1321.111, CONTRIBUTIONS

(a)(1) Total disclosure of cost of services may shock some older people. Judgment and common sense need to be applied.

(a)(2) Yes. Give the opportunity to contribute but add the requirement that participants be educated that services aren't "free."

SECTION 1321.121, MULTIPURPOSE SENIOR CENTERS

c(2)(iv) Costs will increase. Older people as a group prefer to be at the center at the peak hours of service.

Please remove this 45-hour-per-week requirement.

Leave operational hours to be determined by the local site councils or participants based on availability of utility and staff resources.

Hours in rural centers tend to be longer than hours in urban centers where transportation services aren't so rigidly scheduled. People can come and go at leisure in rural centers.

The requirement that services must be provided in care providing facilities may be taken out of context. Please define here in 1321.121(4)(c)(ii)(d) or refer to the definition in 1321.75(b)(4).

SECTION 1321.123(C), HUD CONSULTATION

"The State agency *must* * * *" is unacceptable. First, the area agency does the awarding for alteration and renovation with no prior approval of the State agency required on III-B. So this is incorrect. Second, "must" is far too strong.

Acceptable: The area agency may consult with HUD with respect to technical adequacy.

SECTION 1321.131

Why secure State agency approval to construct? The area agency knows when construction may be better than renting.

SECTION 1321.141, NUTRITION SERVICES

The funding channels outlined are circuitous. Why should home-delivered meals be funneled through a congregate program. I know how and why this evolved and it is poor planning. The area agency should have the flexibility to award funds that will result in efficient, effective service delivery.

SECTION 1321.143, FOOD REQUIREMENTS

Special diets are beautiful in theory. To implement now would mean cutting existing services. Do you provide 10 special diets or an additional 20 regular meals? Cost effectiveness is the question. More funds needed for implementation. How would it be for Congress to fund a special diets program?

SECTION 121.147, HOME-DELIVERED NUTRITION SERVICES

Approve language consistent with the law, 5 or more days, rather than 7. Seven good; but costly. Need more funds.

SECTION 1321.193, RURAL SPENDING

See 1321.49. Rural spending at 105 percent good in theory. Does not seem to be an act requirement. Please delete. Who says rural elderly are more important than urban elderly? A good area agency will be concerned about all elderly.

Definition of rural should be a State agency option with area agency input.

SECTION 1321.205 (b) REALLOTMENT

No. Commissioner shouldn't have defunding power without reasonable notice and opportunity for a State to utilize the funds. We recommend that a State's congressional delegation and Governor be notified before any reallocations can take place.

General: What happened to the area agencies' local coordination efforts? Federal coordination for area agencies is mentioned.

The act clearly established the area agency as a strong focal point for older people.

The regs should strengthen the service provider, area agency, State agency, AoA relationship.

Thank you for the opportunity to comment.

ITEM 9. COMMENTS OF LARRY CURLEY, NATIONAL INDIAN COUNCIL ON AGING, ON PROPOSED RULES AND REGULATIONS FOR TITLE III OF THE OLDER AMERICANS ACT OF 1978

ISSUE NO. 1—TIMING

It is unfortunate that the publication of the proposed rules and regulations for title III did not coincide with the publication of the title VI draft rules and regulations. It is obvious that there is much interplay and interdependence between the rules and regulations for both titles. However, since it is anticipated by the Administration on Aging the rules and regulations for title VI will not be published until the end of September or the first part of October, the opportunity for the Indian community to provide meaningful input on both sets of rules and regulations is negated by the fact that the review and comment for title III will be ended by the time the title VI rules are published in the Federal Register. As a result, the National Indian Council on Aging expects the final rules and regulations to be fragmented and characterized by omissions and oversights in the "flow" between the two sets of regulations.

ISSUE NO. 2—INDIAN FOCAL POINT

Although not within the context of the rules and regulations, it is of great concern that there is no mention either through the rules and regulations or from the Administration on Aging that AoA intends to establish an Indian focal point within its central office. This is especially important since the new law provides an opportunity for interstate Indian tribes to apply for designation as single planning and service areas (PSA's) and, in addition, the law also establishes a separate title for Indian tribes (title VI)—all of which requires the Administration on Aging to prepare for its new role of providing these entities with capable and timely leadership.

ISSUE NO. 3—STAFFING (SECTIONS 1321.17 AND 1321.69)

The proposed title III rules and regulations do not require State and area agencies to recruit and provide for a staffing pattern that reflects the population characteristic of the area. The National Indian Council on Aging feels that this requirement should be retained from the 1975 rules and regulations. In numerous studies funded by the Administration on Aging, it has been found that the number of minority

participants in Older Americans Act programs increased when there were minority persons on staff. If studies of this nature are to be ignored by the grantee (AoA), why fund such research efforts in the first place?

ISSUE No. 4—DEFINITIONS (SECTION 1321.3)

"Greatest economic need."—It is the feeling of the National Indian Council on Aging that option No. 1 of the proposed rules and regulations would be the most advantageous to the Indian community.

"Greatest social need."—The definition of this concept is, in NICOA's opinion, much too vague and could be interpreted in many ways by the State and area agencies. Historically, such interpretations have not been to the advantage of the Indian community.

ISSUE No. 5—AREA AGENCY DESIGNATION (SECTIONS 1321.53 AND 1321.55)

Although Indian Tribes are eligible to be designated as planning and service areas (PSA's), the proposed rules and regulations as written do not offer much substance in relation to the rationale of a denial decision by the State agency. The proposed rules and regulations indicate that the Commissioner on Aging will uphold a State's denial decision if it has followed a defined process—without any allusion to requesting the State's rationale for the decision. Currently, there are only five "Indian PSA's" in the country and the reason that there are not more is that Indian communities were not consulted initially when the PSA boundaries were being drawn up.

A related issue is: What happens when the Commissioner upholds the appeal and requires the State to designate the appellant a PSA? While the decision is pending, will the State and area agencies be able to continue spending at a rate that they (State and area agencies) agreed upon in the development of the intrastate formula (section 1321.49(b)(1))? Especially if there is a minimum funding base being required for each area plan?

ISSUE No. 6—FUNDING FORMULA (SECTION 1321.49)

The proposed rules and regulations indicate that factors to be used in the development of the intrastate formula should reflect the distribution of older persons aged 60 and over with the greatest economic need. There is no mention within this section of the need to utilize within the formula the incidence of older people "with the greatest social need." This is especially important to the Indian community since they, most often, have the characteristics outlined within the definition of "greatest social need." Throughout the proposed rules and regulations, those in "greatest economic and social need" are to be the primary beneficiaries of services to be provided.

ISSUE No. 7—MAINTENANCE OF PROGRAMS (SECTIONS 1321.141, 1321.51, 1321.103, AND 1321.104)

We believe that the proposed rules and regulations leave too much discretion to State and area agencies in determining which programs are to be continued. In fact, the criteria to be used in determining "demonstrated effectiveness" of nutrition programs are left to the States to develop. Historically, this has led to a variety of definitions and criteria that are inconsistent from State to State and usually have not been advantageous to the Indian community. This is more likely now that title VI is a reality. In addition, the proposed regulations do not identify the criteria for denying funding to a service provider, they only clarify the process to be used.

Finally, referring to studies funded by AoA, it has been learned that the numbers of minority older persons increase when the service provider is a minority organization. We find it disappointing that area agencies are no longer required to subcontract with minority organizations.

ISSUE No. 8—ADVISORY COUNCILS (SECTIONS 1321.47 AND 1321.97)

The proposed rules and regulations no longer require that minorities be members of the State and area advisory councils.

ISSUE No. 9—COMMUNITY SERVICE AREAS (SECTION 1321.95)

The National Indian Council on Aging feels that the lack of a definition of "community" detracts from the full implementation of the law. It is the purpose of area agencies to provide comprehensive and coordinated services in their areas of jurisdiction and this purpose cannot be achieved when minority "communities" are

not the primary consideration in establishing community service areas. It is also very disconcerting to note that the criteria for designating community service areas do not consider "those in greatest social need."

ISSUE No. 10—STATE LONG-TERM CARE OMBUDSMAN (SECTION 1321.43)

The proposed rules and regulations pertaining to this section do not address the questions raised under Issue No. 1. Specifically, an Indian tribe has legal jurisdiction within the boundaries of the reservation—and this includes long-term care facilities operated by the tribe. Whose jurisdiction will supersede—the tribe's or the State's? Will tribes who opt for title VI have access to this program even though it is funded under title III? Will tribes who opt for title III be required to submit to State jurisdiction on this program?

RECOMMENDATIONS

ISSUE No. 1

The Administration on Aging should publish the final title III rules and regulations only after the review and comment period for title VI is completed, and after AoA has reviewed the title VI comments. In this way, AoA will be insuring that views of the Indian community are duly considered within the context of both sets of rules and regulations. Finally, we recommend that the final rules and regulations for title III and title VI be published concurrently.

ISSUE No. 2

The Administration on Aging should include in its budget request for fiscal year 1981 an appropriation for the establishment of this focal point within the central office of the Administration on Aging—preferably under the direction of a qualified Indian person.

ISSUE No. 3

The rules and regulations relating to this issue should be retained from the 1975 act and reincorporated into the appropriate sections of the proposed rules and regulations.

ISSUE No. 4

(1) It is recommended by the National Indian Council on Aging that the option No. 1 definition of "greatest economic need" be incorporated into the final rules and regulations.

(2) A definition of "greatest social need" that would be responsive to the Indian community would be the following: "*Greatest social need* means those noneconomic factors such as isolation, physical or mental limitations, and racial or cultural obstacles."

ISSUE No. 5

(1) The rules and regulations should require the State to submit to the Commissioner of the Administration on Aging its rationale for the denial, and that rationale should meet the satisfaction of the Commissioner.

(2) In order to facilitate the decisionmaking process involved, the rules and regulations should be rewritten to stipulate that State and area agencies cannot spend above the fiscal year 1978 level until a decision has been rendered by the Commissioner. In addition, the Commissioner shall withhold from the State's allocation the amount that would be available to the appellant (based on the intrastate formula) if it were designated a PSA.

ISSUE No. 6

Appropriate sections of the proposed rules and regulations should be rewritten, especially in those instances where "greatest economic need" is used but not "greatest social need," to include the definition of "greatest social need" recommended in issue No. 4(2).

ISSUE No. 7

(1) The Administration on Aging, and not the States, should develop criteria that States shall use in "determining effectiveness" of a nutrition program. This process would, at least, provide consistency in the decisionmaking process.

(2) The rules and regulations requiring subgrants with minority service providers should be retained from the 1975 act and should be incorporated into the appropriate sections of the rules and regulations.

ISSUE No. 8

The proposed rules and regulations should be rewritten to require minority membership on State and area agency advisory councils. We recommend that the language from the 1975 rules and regulations be retained and incorporated into the appropriate sections of the rules and regulations.

ISSUE No. 9

The proposed rules and regulations in section 1321.95(b)(1) should include the phrase, "the incidence of older persons with the greatest social need," and section 1321.95(b)(1)(iv) should be rewritten to read, "The geographic boundaries of ethnic and racial communities." In addition, a definition of "community" is as follows: "A group of people residing in close proximity to one another who share common characteristics, such as ethnicity, race, language, culture, and socioeconomic lifestyles."

ISSUE No. 10

(1) The jurisdictional powers of the tribe should be reaffirmed by including a provision within the proposed rules and regulations requiring States to acknowledge the existence of this power by entering into working agreements with the governing bodies of Indian communities defined under P.L. 93-638.

(2) We believe it is within the intent of Congress that Indian tribes, whether they opt for title III or title VI, unilaterally have the right to take advantage of this State program—without relinquishing jurisdiction. We believe that AoA should reaffirm its statement on page 45033 of the July 31, 1979, Federal Register: "In effect tribal organizations funded under title VI would function as area agencies on aging with a direct grant relationship with the Federal Government." Specific functions are required of State and area agencies by law. A mandate to State agencies is to establish an ombudsman program in the State that will function within that entity. There is no mention that Indian communities within the State be excluded from this program.

ITEM 10. STATEMENT OF THE NAVAJO AGING SERVICES DEPARTMENT,
THE NAVAJO TRIBE, ON PROPOSED RULES, TITLE III, OLDER AMERICANS ACT, SUBMITTED TO REGION IX, ADMINISTRATION ON AGING,
SAN FRANCISCO, CALIF.

In the explanatory introduction to the proposed rules for title III of the Older Americans Act, as amended, the Administration on Aging lists some 19 "major issues" on which comment is especially solicited. We would like to address 15 of these issues in a detailed way. We do, however, have some general comments by way of preface.

It seems to us that coming into compliance with the proposed rules while at the same time moving toward "comprehensive and coordinated service delivery" is going to be easiest in highly populated, urban areas with already well developed human service systems. Our situation is the opposite. We feel that extremely rural, minority populated, underdeveloped regions (the best example of which is an Indian reservation) are not terribly well served by these proposed rules. Our specific comments, especially concerning multipurpose centers and community focal points, will illustrate our concern.

Our general feeling is that the requirements of the amended act to give greater emphasis to serving rural elderly are only going to be partially met by the implementation of the rules as proposed. We feel that adequate, indeed, fair provision is made in the rules to expand funding to rural areas. Our concern, however, is that insufficient flexibility exists in most remaining aspects of the rules to allow expansion of rural programs into communities not presently served.

Finally, as an Indian program we wished for more information concerning the relationship between the proposed title III rules and those forthcoming for title VI. Our comments here could have been much more to the point if we knew, for example, if many (or any) of the title VI rules will simply refer to or be substantially the same as title III rules. We can appreciate the logic and economy of such an approach. If, however, such a procedure is followed *after* title III rules have been finalized, we will feel justified in protesting most strongly. Our first comment below illustrates this concern.

(1) *Organization of the sole State agency on aging.*—Normally an area agency on aging would not comment extensively on these rules. It is our hope, however, that when the proposed title VI rules are issued tribal area agencies, such as ours, will have the same administrative status as a State agency and that most tribes, like the

Navajo Nation, would probably opt to form a single State AAA (like Nevada or South Dakota). If this is the intent of the AoA and the appropriate title III rules are used at all extensively, we must reserve the right to further comment on them. We must ask, therefore, that final rules under subparts B-D not be issued until proposed rules for title VI are issued and reviewed by the tribes, especially those dozen who are already their own AAA's. At this time we can, however, state our support for dropping the single organizational unit requirement.

(2) *State agency procedures.*—We support the idea of having States develop a manual of operating procedures. We suggest altering the language of § 1321.15(b)(2) to require the State agency to insure area agency review, rather than simply allow "adequate opportunity to comment." We also support imposing a similar requirement on AAA's, but again, would alter the language of § 1321.69 to insure the participation of advisory councils. Finally, we read this last section to mean that AAA procedures will be developed after the State agency procedures have been adopted.

(3) *Hearing requirements.*—We generally support the hearing procedures as proposed but particularly wish to urge the adoption of equally rigorous hearing requirements for the full range of conceivable circumstances, e.g., State agencies should be prepared to hold full-scale hearings on appeals/complaints directed to them by service providers regarding defunding by AAA's.

(4) *Intrastate funding formula.*—Generally, we support these provisions. In § 1321.49(b)(4), however, we feel a clarification should be made so that AAA's do not feel in any way discouraged from independently seeking additional funding. At (c) of the same section, we would prefer a more formal requirement for AAA review of the funding formula.

(5) *State plan based on area plan.*—No comment.

(6) *Comprehensive and coordinated services delivery systems.*—The explanation about the gradual or "evolutionary" nature of the development of these systems is well taken, however, we question whether this is very explicitly addressed in the actual rules as proposed. What troubles us is the quite infrequent mention of waivers. If we were in total compliance with all the rules (see below) we would already have a comprehensive and coordinated system. How long are AAA's to be given to develop such a system? Will rural/urban differences be allowed? The aims of the act are clear and laudable. It is also clear to us that States and AAA's should bear an equal burden in this process (though not necessarily the funding). We feel, however, that § 1321.75 gives us very little direction in this regard. § 1321.77 is more helpful. Again, we view the rules as stating the ideal toward which we should be moving. If this is the intent of the AoA, then perhaps it should be explicitly stated (and with the addition of timelines).

(7) *Community focal points.*—Again, we have no reservations about the intent of the act and the rules in this area. What troubles us is the fact that certain questions are not addressed. For example, should the rules show a timetable for implementation? Should explicit recognition be made of urban/rural differences? What can be waived? Will the States require AAA's to document their decisionmaking process in the formation of community service areas and the designation of focal points? These things are unclear to us and we would suggest either more specificity, if the AoA is to monitor this process, or less, if States are to establish their own procedures and timelines. Regarding § 1321.95(b)(2) we suggest adding a provision allowing the State agency to waive up to two of these requirements for rural focal points. We view it as much better to designate a focal point and *then* add services, rather than vice versa.

(8) *Continuity of services.*—No comment.

(9) *Direct services.*—We are in general agreement with these rules as proposed. We assume that § 1321.10-3 (b) and (c) are purposefully flexible so that State agencies will be able to exercise maximum attention to local conditions. What is unclear to us is whether any "test for adequate supply" is to be part of the State agency's written procedures (and therefore explicitly communicated to the AoA). It is our feeling that area plans already should contain adequate information for such a determination, but the rules remain vague at this point. Perhaps a slight expansion of the language of § 1321.77(c)(3) would suffice.

(10) *Greatest economic or social need.*—We strongly favor option 3 for the definition of economic need. The one problem we foresee, however, is that of situations in which title XX group eligibility for elderly clients exists. We have every intention of attempting to establish group eligibility for all Navajo elderly (in a joint action with the tribal title XX contractor). In practice, any of the three options given in the proposed rules will have about the same effect in the Navajo Nation. Still, we favor the title XX-based definition due to our strong desire to mesh the title XX and Older Americans Act programs more closely. We believe this to be an aim of the

State of Arizona as well. The group eligibility problem, in terms of these rules, is not a difficult one in our case (due to the extensive and pervasive nature of the poverty among Navajo elderly). We would strongly suggest, though, that some consideration be given to this issue in the final rules.

(11) *Contributions.*—We are in basic agreement with these rules. We concur with continuing the practice of using contributions to title III-C projects to increase meal counts. § 1321.111(a)(6) leaves it unclear, however whether contributions for title III-B services are to be accounted for separately (at community focal points, multipurpose centers, etc.). We suggest requiring the States to make this determination and establish appropriate procedures.

(12) *Definition of rural.*—We favor option 3.

(13) *Priority services.*—No comment.

(14) *Legal services.*—We do not feel that additions to the proposed rules are needed at this time.

(15) *Ombudsman program.*—In regard to the definition at § 1321.43(b)(4), we favor option 3. Options 1 or 2 would definitely be inadvisable unless revised. Technically, care facilities on Indian reservations do not have to be licensed under State law (except in certain cases). Thus, while the two facilities in the Navajo Nation have obtained State of Arizona licenses, the Navajo Tribe has also developed nursing home licensing regulations and the facilities are inspected by the Indian Health Service as well. We also foresee possible problems with accessing patient records, particularly if the ombudsman is to investigate cases in which the patient and/or family feels the institutional placement was unwarranted or even harmful, as we feel § 1321.43(c)(1) allows. This implies to us the necessity of other programs allowing the ombudsman access to case files/medical records for the period prior to institutionalization. In our case, this means not only those programs funded through such legislation as the Social Security Act or the Rehabilitation Act, but also the basic service components of the Bureau of Indian Affairs and the Indian Health Service (both of which reimburse extended care facilities as well). It has been our experience that it will not suffice to suggest that such access can occur informally. We suggest formal memoranda of agreement entered into by the Commissioner as a starting point.

(16) *Nutrition services.*—We would revise § 1321.147(d) to read, after "one meal a day:" "at least 5 days a week, except in the case of multipurpose senior centers which should home deliver meals 7 days a week if needed."

(17) *Multipurpose senior centers.*—We feel that § 1321.121(c)(2) is too extensive. The flexibility allowed at (iv) regarding rural centers is good, but we would suggest extending this to (ii) as well, by allowing the State agency to waive two of the four categories of service in the granting of awards under this section to rural centers.

(18) *Transportation agreements.*—No comment.

(19) *Allotments and realloiments.*—We must strongly urge more specific language at § 1321.209(b) detailing the meaning of this rule in regard to interstate planning and service areas (as under § 1321.57). We are loath to propose the direct transfer of State appropriations between States, i.e., to the lead State of an interstate PSA arrangement, and doubt, in any case, that the Commissioner could legally require this. Instead, we would suggest a formula in this rule which would show how the Commissioner could either further adjust State's title III allotment on the basis established by § 1321.57(d) for fiscal years 1981 and following, and, of course, based on the size of the appropriate State appropriation; or concur in any agreements reached privately between States involved to transfer administrative funds without the intervention of the Commissioner. Finally, § 1321.201(a)(2) implies that State agencies may reallocate surplus administrative funds to AAA's. We would suggest adding a second sentence, viz, "The State agency must notify all area agencies in the State of its intent to reallocate, accept competitive proposals from them and review and reallocate in accordance with its standard grants awarding procedure."

Thank you for accepting this rather lengthy statement. We look forward to implementing the 1978 amendments to the act and to receiving the final rules.

ITEM 11. STATEMENT OF GORHAM L. BLACK, JR., SECRETARY, STATE OF PENNSYLVANIA DEPARTMENT ON AGING, SUBMITTED BY SENATOR JOHN HEINZ

My name is Gorham L. Black, Jr. I am the Secretary of the newly created Pennsylvania Department on Aging.

The testimony will address only a few of the issues which have surfaced as a result of our staff review of the proposed rulemaking. We will submit detailed, written comments later this month. Hopefully, these written comments will repre-

sent a consensus view of the Pennsylvania Department of Aging, as well as all 49 area agencies on aging within the Commonwealth.

Our current summary opinion is that the proposed regulations skillfully and creatively address some of the problems which must be faced in administering the new provisions of the Older Americans Act. However, other aspects of the proposed regulations create rather than solve problems. Considered as a whole, we do not believe that the proposed regulations do a good job of implementing what we understood to be the basic intent of the Older Americans Act amendments. We do not believe that the proposed regulations do enough to eliminate duplicative and overlapping functions such as outreach, advocacy, needs assessment tasks, planning, staff training, and administrative tasks. Neither do we believe that the regulations increase the visibility, political strength, and significance of area agencies on aging in the community or provide for more effective coordination of community resources for the elderly.

Before I go further, I would like to make it clear that I am speaking only from the perspective of the aging system in Pennsylvania. The regulations might strengthen area agencies in some other States. However, Pennsylvania has always had exceptionally strong area agencies. For all practical purposes, we had achieved consolidation of titles III and VII as long ago as 1974. Therefore, I would like to acknowledge that the shortcomings which we perceive in the proposed regulations may be more applicable to us than to the Nation as a whole. Nevertheless, our primary interest is with how the regulations will impact on Pennsylvania, and from that perspective, we believe that there is reason for us to be concerned.

There are five issues which I would like to specifically comment on today. They are as follows:

The removal of the requirement that single organizational units be established at the State and AAA levels.

The requirement that PSA designations be reconsidered.

The community focal point and other service provider requirements which subtly lessen the authority of AAA's.

The unrealistic "minimum" service standards which have been established for certain services; and

The approach which is being considered for insuring that State plans are based on area plans.

SINGLE ORGANIZATIONAL UNIT DESIGNATION

The *first issue* which I would like to address is one which could potentially change the entire nature of the aging network as we now know it. Sections 1321.13 and 1321.65 of the proposed regulations would allow multipurpose human service agencies at the State and AAA level to administer aging programs through arrangements other than a single organizational unit on aging.

We are currently a separate cabinet level Department of Aging. However, this change occurred only very recently. Prior to July of this year we were a part of the Pennsylvania Department of Public Welfare. When the program was a part of welfare, there was an Office for the Aging. However, my opinion is that this office existed only because the Federal regulations required that there be a single organizational unit on aging. Without this protection the Department of Public Welfare would have probably spread the functions of aging program among numerous units and bureaus. This would have effectively precluded the development of a highly visible focal point for the elderly at the State level. It certainly would have stunted the energies which lead to our evolution to a separate department.

Section 1321.13 will not directly impact on Pennsylvania because we have a State law which directly mandates the establishment of a separate State Department of Aging. However, section 1321.65 does pose a threat to AAA's within Pennsylvania. Forty of our forty-nine area agencies are units of county government, and I can envision at least some of these counties opting to disband their offices of aging in favor of a diluted form of administration. As the proposed regulations currently read, these counties would not be required to have even one full-time person designated to work exclusively on aging programs. You can say what you like about holding them accountable and insuring that the AAA responsibilities are carried out, but it's a simple fact that organizational structure is important.

If the elderly are to have a visible focal point and an effective advocate, then single-purpose organizational units should be required at the State and local levels. It is my considered opinion that diffused authority will result in abdication of responsibility, counterproductive power struggles, and above all, impediments to the provision of services for senior citizens.

REDESIGNATION OF PLANNING AND SERVICE AREAS

The second issue which I feel compelled to speak out against is the requirement under section 1321.53 which forces States to redesignate existing planning and service areas. This will serve no useful purpose in Pennsylvania. Our Commonwealth has been divided into planning and service areas since 1974, and we are satisfied with the structure that is currently in place.

We believe that provisions should be made for adjusting planning and service area boundaries when a need clearly exists. However, this is quite different from requiring all such decisions to be suddenly reconsidered. Over the course of years we have made several changes of our initial designations. These changes have always taken a considerable amount of planning and community organization effort. In addition, these changes have always been accompanied by at least some element of pulling and tugging among forces at the local level. It's not possible for everyone to always be satisfied with these decisions; and quite frankly, we don't think that it is wise to attempt to simultaneously deal with these matters on 49 different fronts. There is nothing to be gained, and a possibility exists for disruption of service.

Our recommendation is that the proposed regulations be changed to make it clear that existing planning and service area designations need to be reconsidered only if there is evidence of a clear need.

LESSENING OF AAA AUTHORITY

The removal of the single organizational unit requirement and the addition of a requirement that all PSA designations be reconsidered relate well to the third point which I would like to make—and that is that the proposed regulations subtly undermine rather than strengthen AAA's in Pennsylvania.

In addition to these two provisions, there are numerous others. Section 1321.95 which requires AAA's to divide the planning and service area into community service areas and designate community focal points is a prime example of the type of provision which subtly but effectively shifts authority and responsibility from AAA's to service provider organizations.

We question what is really meant by the term "community focal point" and whether dividing the planning and service area into "community service areas" is necessary to achieve the intent of the Older Americans Act amendments. We are particularly puzzled by the background discussion preceding the proposed regulations which indicates that community focal points are to have "broader and more responsible functions than other service agencies or multipurpose senior centers." The implication seems to be that the community focal points are going to carry primary responsibility for managing, providing, and coordinating services in their community service area. If this is the intent, then we must view it as potential threat to the AAA's ability to effectively manage and coordinate services on a PSA-wide scale. As a practical matter, there can only be one primary manager and coordinator in a given area.

The act itself makes no mention of "community service areas" and makes only one, small reference to community focal points. This reference is under section 306(a)(3), and it indicates only that AAA's "should designate, where feasible, a focal point for comprehensive service delivery in each community to encourage the maximum colocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal points."

We think that all that was really intended by this provision was that service providers should be located in the same building whenever possible—and that the nature of multipurpose centers make these facilities conducive to that type of arrangement.

We do not object to the colocation concept. However, we do object to the concept that a community focal point is a type of organization which has broader and more responsible functions than other service agencies. We envision it as a place, not an organization.

We also fear that dividing PSA's into "community service areas" may tend to encourage the creation of geographical turf boundaries where provider agencies will feel responsible only for the elderly within their service area—and where the elderly of other areas will go unserved. This "turf psyche" is a very real problem, and we have fought long and hard to at least replace it with a PSA-wide type of vision. Since resources are extremely limited, we believe that all services and all service locations must be kept open to elderly persons from throughout the planning and service area.

We recognize that this presupposes that service locations may be located a fairly far distance from some senior citizens. However, we view this as a practical reality which must be coped with through the provision of transportation services, staff

who spend a great deal of time in the field, and the use of available technology such as the use of toll-free telephone lines to meet information and referral needs.

AAA's must be given maximum flexibility in deciding how and where to locate services so that limited resources may be effectively utilized to achieve the greatest good for the greatest number of target group senior citizens within the planning and service area.

Instead of dividing the PSA into community service areas, we believe that each AAA should be required to identify geographic areas which contain high concentrations of target group elderly and either locate service facilities in these areas or explain how services will be made accessible to the residents.

We would also like to suggest that what is really needed in the way of a community focal point is a place where elderly persons can gain access to all services which are available in the planning and service area. The key service element in a community focal point location would therefore be a comprehensive intake/service management unit. In order to eliminate duplication and encourage the greatest amount of consistency and coordination, we think that AAA's should be encouraged to have all such units in the PSA operated by a single service provider or perhaps directly operate these units itself.

Another example of a provision which works contrary to the consolidation of administrative structures and elimination of duplicative and overlapping functions can be found at section 1321.107. This section requires all service providers to have procedures for outreach activities, training and use of elderly volunteers and paid personnel, and coordination with other service providers. It would be better to require AAA's to establish procedures which insure that these activities are made an integral part of all services rendered under the area plan.

It is not necessarily desirable to have every service provider establishing its own procedures for outreach—this activity might well be better accomplished if the AAA were to take out a contract with a single organization to conduct outreach for all services provided in the planning and service area.

It certainly is not desirable to have each service provider initiating its own procedures for coordinating with every other service provider—this type of activity requires an areawide approach with centralized decisionmaking authority. Individual providers should participate in the development of an areawide plan for coordination, but the initiative for this needs to be taken by the AAA, and it is the AAA which must exercise the centralized decisionmaking authority.

Prescribing requirements such as these for individual service providers is likely to have a dysfunctional impact on the organizational behavior of the aging system. They usurp the authority of the AAA as the developer and administrator of an area plan for a comprehensive and coordinated system of service—or at least cast enough doubt on their authority that two things are likely to happen. First, those service providers which are desirous to “do things their own way” will interpret the regulations to their own advantage—without regard to the AAA or to an areawide systems approach. Second, those AAA's which are not good systems managers may use the regulations to avoid their responsibilities and point out that they can't be held accountable.

We wish to stress that we are not opposed to the establishment of regulations governing the quality or type of service provided. Our objection is to regulations which inhibit the flexibility of AAA's in organizing and administering programs in a way which makes the most effective use of resources on a PSA-wide basis.

An example of how this problem can be avoided is found under section 1321.147(b)(1) which requires nutrition service providers to conduct initial and periodic assessments of eligible individuals need for home-delivered meals, unless the assessment is otherwise provided for by the area agency. We applaud this latter provision. It is an example of the type of wording which needs to be added throughout regulations in order to enable AAA's to establish an effective system of services on a PSA-wide basis.

UNREALISTIC “MINIMUM” SERVICE STANDARDS

As we reviewed the proposed regulations, we also noted many instances where good ideas and concepts were set forth. In principle we agree with many of these as goals or models. However, instead of being set forth as goals they were stated as minimum service requirements.

When stated in that manner, we must object to these provisions as being unrealistic given current levels of funding and the existing state of the art.

We found numerous provisions which fell into this category, but I'll cite just a few examples.

One example is with respect to the minimum service requirements for multipurpose senior centers. Pennsylvania has always been considered one of the national

leaders in the development of senior centers. However, few, if any, of Pennsylvania's 450 senior centers meet the minimum criteria set forth under section 1321.121.

The greatest difficulty is caused by the programmatic criteria. It is extremely uncommon for even very good centers to operate a program of group activities, individual services, and community service opportunities in each of the service categories of "access service; community services; in-home services and services in care-providing facilities." Furthermore, few centers operate 45 hours per week.

As a practical matter, the criteria cannot be met without significantly increasing the operating costs of existing centers. Also, the need for such stringent criteria has yet to be demonstrated.

The effect of leaving these standards as they appear in the proposed regulations is to deny funding for alteration, renovation, acquisition, and construction of centers which do not meet the criteria. Therefore, we must strongly urge that the criteria be changed to more realistically reflect the current developmental status of existing centers.

Another example can be found under section 1321.147 which requires home-delivered meal providers to have the capacity to deliver meals during a "weather-related emergency." We believe that this requirement is both unfair and unrealistic. Aside from the National Guard, very few organizations can be expected to make deliveries during weather emergencies.

A third example can be found under section 1321.141 which indicates that AAA's may award nutrition service funds only to nutrition service providers who meet certain criteria. This would seem to prohibit AAA's from directly negotiating a contract with a food-catering firm or kitchen for meals to be served in nutrition sites throughout the planning and service area. This type of centralized contract is currently quite common and has proven to be cost effective. It should not be discouraged.

STATE PLAN BASED ON AREA PLANS

I do not want to give the impression that our review of the proposed regulations uncovered only problems or reasons to object. As I stated earlier, we do think that the proposed regulations skillfully and creatively address some of the issues which must be faced in administering the new provisions of the Older Americans Act.

One such aspect that I would like to comment on before I close is the interpretation given in the background section of the proposed regulations for the meaning of the legislated requirement that State plans be based on area plans.

This interpretation indicates that the purpose of the requirement is to assure a close relationship between provisions in State and area plans and that it is not intended that the content of the State plan be controlled by the content of area plans or that area plans must sequentially precede the development of the State plan.

We believe that this interpretation reflects a great deal of insight, and we are strongly supportive of this interpretation.

In closing, I would again like to express my appreciation for the opportunity to appear before you to make our views known.

Although my testimony covered only a few of the issues which we noted, we will send you a full set of written comments before the end of this month.

I trust that our comments and suggestions will receive fair consideration.

ITEM 12. LETTER FROM STEVE BENDER, DIRECTOR, PLANNING FOR THE ELDERLY, PIKES PEAK AREA COUNCIL ON GOVERNMENTS, COLORADO SPRINGS, COLO., TO MEMBERS OF THE SUBCOMMITTEE ON AGING, COMMITTEE ON LABOR AND HUMAN RESOURCES, AND THE SPECIAL COMMITTEE ON AGING, U.S. SENATE, SUBMITTED BY SENATOR WILLIAM L. ARMSTRONG, DATED OCTOBER 12, 1979

DEAR COMMITTEE MEMBER: I am submitting the following comments regarding the proposed Federal regulations on the 1978 amendments to the Older Americans Act for your consideration. All references to page numbers apply to the proposed regulations as presented in the Federal Register dated July 31, 1979. Additionally, sections within the proposed regulations are identified by a number followed by the specific section number.

PREFERENCE

Page 45046, No. 1321.2.—I suggest adoption of option No. 3 for the definition of "greatest economic need as providing the greatest benefit to the largest number of older Americans."

Page 45048, No. 1321.43.—I suggest adoption of option 1 as the definition for adult care homes since options 2 and 3 must be in compliance with State statutes.

Page 45049, No. 1321.45(a)(11).—I do not feel that it is the intent of Congress to have the State agency assume responsibilities for regularly assessing the performance of the programs under the AAA. This is the responsibility of the AAA and feel that this part of the section should be deleted.

Page 45050, No. 1321.51(c).—The hearing procedures appear to be cumbersome, inefficient use of staff time, expensive, and infringes on the local autonomy of the AAA's and the SUA's. It appears that this process could affect the funding of other subgrants and the role of the AAA in this procedure is not identified. I feel that the appeal procedure of a grant applicant would be best handled by the AAA which should identify the process to be followed.

Page 45051, No. 1321.53.—Regarding the annual redesignation of area agencies, it seems that with the change to a 3-year planning period it would be appropriate to redesignate on the basis of 3 years being consistent with the planning efforts.

Page 45051, No. 1321.03a.65.—Some discussion has been made regarding the apparent unintentional exclusion of COG's from 1321.05 because of the issue of human services. If No. 1321.05 were deleted and added to 1321.03 in the form of a preamble, including the term "council of governments," the confusion regarding these sections should be alleviated.

Page 45051, No. 1321.67.—I recommend that the regulations include the position of full-time area agency director. With the added responsibilities being mandated by the 1978 amendments it is inconceivable that the AAA could be run effectively without a full-time director.

Page 45052(a) No. 1321.75(c).—(1) It is not clear what authority sanctions with AAA's monitoring, evaluating, and commenting on *all* policies, programs, hearings, levies, etc. This seems to be an overwhelming job for a single agency to assume without adequate funding to hire a staff to handle these mandated functions. (2) No. 1321.75(b) (2) and (3)—These activities do not appear to be the types of functions which should be mandated, but are of the type that AAA's should have the local autonomy to decide if these activities are applicable to their particular area. (3) No. 1321.75(c)(2)—Is it the intent of AOA to have the COG (AAA) develop a resource allocation plan indicating the proposed use of all funds, i.e., criminal justice, air and water quality, transportation, housing, etc., or is it the intent that "aging" funds be identified, including title XX if appropriate? This section appears to unintentionally create a huge burden on those AAA's which are part of and in fact the same as the COG in the planning and service area.

No. 1321.79.—The proposed amendment procedure is as cumbersome for the AAA, as it is, as written for the State agency. The amendment procedures should be kept as they currently are permitting the AAA's and SUA's to make the decisions on changes with a minimum of difficulty, and with the greatest degree of efficiency and minimum of disruption to the service providers. If the hearings must be included, the AAA should be permitted to make budget changes which involve less than 15 percent of the budget without the need for public hearings.

Page 45053, No. 1321.93(b).—It is not clear what authority the AAA has to assess the effectiveness of other public and private programs revising the needs of older persons. Have title XX, CSA, and other public programs been instructed to permit AAA's to do these assessments. It does not appear that this can be done when you consider the enormous task being asked of AAA's in this and other sections. The working should be changed to reflect the need for AAA's to see arrangements and relationships with public and private programs in which maximum coordination of effort can be obtained.

Page 45053, No. 1321.95.—The concept of community focal points as it applies to region IV in Colorado can only be implemented by having as many focal points within a CSA as is needed to insure maximum contact with the older population. Older persons access the aging network through methods and access points of their choice. Within the metropolitan area of Colorado Springs we have a single community service area, but many access points to services. We need to continue to encourage the various programs in their outreach efforts and in the coordinated referral system which permits access into the network at any of many access points.

Page 45055, No. 1321.111.—This section is not applicable to all programs and services funded by title III, i.e., I. & R. advocacy, etc. It can be a barrier to providing services. Our priorities are those older persons with the greatest social and economic need, those least able to make contributions for needed services. Older Americans have experienced many fluctuations in their country's economic status and feel a deserved pride in their ability to pay their own way. Should each program recipient be informed of the cost of the service being provided and the suggested recipient contribution, many recipients may decide to decline use of available program serv-

ices. I suggest you delete (1), (2), (3), (4), and (7) of this section and state that each older person may contribute as they determine and that these contributions should be used along with other local cash and in-kind contributions to provide the needed services to older persons.

Page 45505, No. 1321.123.—Compliance with all requirements identified in (b)(1) make it extremely unlikely that any organization will be able to qualify for title III-B funding for senior center construction or renovation in region IV. Consideration must be given to the fact that title V has been consolidated with title III and the funding for senior centers will be very limited in most areas.

Page 45057, No. 1321.147(c)(1).—Restricting the AAA to awarding C-2 funds only to a service provider that provides congregate meals is in conflict with the statutes authorizing the AAA to determine which service providers will receive grant awards. Additionally it doesn't make administrative sense to require the C-2 funds go to the congregate provider and that congregate provider must in turn contract with existing home-delivered meals, i.e., meals-on-wheels, if one exists. The AAA need the autonomy to award all title III funds to those service providers which are best able to meet the needs of older persons within their service areas.

The requirement that home-delivered meals be available 7 days a week can foster dependency on the service provider. Our service provider of home-delivered meals continuously encourages recipients to attend congregate sites as soon as they are able. I suggest that "only if necessary" be added to No. 1321.147(d) regarding availability 7 days a week.

I have worked closely with interested parties in the writing of these comments on the proposed regulations. In particular, Mrs. Mikki Kraushaar of Silver Key Senior Services, a title III sub-grantee and meals-on-wheels contractor who has submitted her own comments to AoA. I have conferred with Mrs. Kraushaar regarding her comments and am in support of her comments as presented to you for consideration.

I have submitted these comments with the sole purpose of affecting the writing of the regulations, under which title III programs will be administered, in hopes that funded programs can provide services to older Americans in the most efficient and effective method possible. I hope that these comments and others AoA has received from Colorado and the rest of the country are considered and incorporated, when appropriate, in the final regulations.

Sincerely,

STEVE BENDER, *Director.*

ITEM 13. LETTER FROM BERNADETTE SOLOUNIAS, EXECUTIVE DIRECTOR, MEALS-ON-WHEELS OF BOULDER, INC., BOULDER, COLO., TO SENATOR WILLIAM L. ARMSTRONG, DATED OCTOBER 12, 1979

DEAR SIR: I am writing to you to express my concerns about the Administration on Aging's proposed regulations implementing the Older Americans Act Amendments of 1978. My concerns are:

(1) The proposed regulations in sections 1321.141-1321.147 clearly discriminate against the private, nonprofit, voluntary meals-on-wheels programs across the Nation. Section 1321.141(b)(1) requires that all nutrition services providers provide congregate meals, and section 1321.147(c)(2) requires that home-delivered meals shall be "purchased" by the service provider from an organization, where one exists, that has the capability to provide home-delivered meals. The effect of these regulations is to exclude private, nonprofit, meals-on-wheels programs from eligibility for direct Federal grants from the area agencies on aging. I believe this places an unnecessary layer of bureaucracy between the meals-on-wheels groups and the area agencies. It also will preclude any Federal home-delivered meals from being provided in an area where no congregate meals program exists. Furthermore, the word "purchase" suggests that no other auxiliary services, such as client intake, client referral, crisis intervention, volunteer recruitment and training, and nutrition education, will be performed by the meals-on-wheels programs. The provision of these services is an integral part of meals-on-wheels programs nationwide.

Therefore, I urge you to take appropriate steps to insure that these regulations will allow meals-on-wheels programs to be eligible for direct Federal grants from the area agencies, and will insure that these grants cover the administrative costs of the other auxiliary services mentioned above.

(2) Section 1321.147(b)(1) should be changed so that the assessment of the client's need for service shall be conducted by the home-delivered meals provider.

(3) Section 1321.147(c)(1) should be changed so that the area agency may only award funds for home-delivered meals to a voluntary, private, nonprofit organization, where one exists.

(4) Section 1321.147(d) should be changed so that home-delivered meals services providers must assure the availability of at least one meal, 5 days a week, instead of 7 days a week.

I request that if the final regulations do not reflect these suggested changes, then congressional oversight hearing should be held.

Thank you very much.

Sincerely,

BERNADETTE SOLOUNIAS.

ITEM 14. STATEMENT OF BILL HANNA, DIRECTOR, COLORADO CONGRESS OF SENIOR ORGANIZATIONS, SUBMITTED BY SENATOR WILLIAM L. ARMSTRONG

My name is Bill Hanna, I am testifying today as a representative of two organizations: as the director of the Colorado Congress of Senior Organizations, a statewide, private, nonprofit advocacy organization; and second, as a member of the Western Gerontological Society Legislation and Public Policy Committee.

First of all, I would like to compliment both the Congress and the Administration of Aging for some extensive work over the past 2 years in the development of what we feel is a much more effective series of amendments and regulations to the Older Americans Act. In particular, the consolidation of the major titles of the Older Americans Act, leading to a more focused role for the area agencies on aging and for increased flexibility that allows local areas to determine how to utilize AoA resources to meet priority needs in their community.

Also appreciated is the increased emphasis on the State units on aging (as well as the area agencies on aging) as focal points for the planning and administering of the aging programs, and as advocates for older persons within the State and local systems. However, there are a number of concerns in several items in the proposed regulations which I would like to address. These concerns will be discussed sequentially according to the order of parts and subparts within the proposed rules:

Section 13221.3, Definitions.—Two concerns: (1) In relation to the options given for the definition of "greatest economic need." Whichever option is selected, two factors must be kept in balance. First, the economic perimeter should not be so wide that a loophole is created which would relax the need to focus the resources for low-income people. Second, the Older Americans Act funds have had a degree of flexibility beyond those of other resources, and therefore, could be used to meet the needs of people who are not medicaid eligible, yet who are in the near-poor category. This flexibility has greatly assisted AoA's gap filling responsibility and thereby facilitated the coordination of services. Since title XX resources, State pension supplements, etc., vary from State to State, perhaps the States should have the authority to determine the most appropriate option for their State in addressing those of greatest economic need.

(2) A second concern is the definition of "greatest social need." The criteria used are broad and general—and the flexibility allowed is valuable in that regard.

But there is a concern that in their broadness, there might be too much leeway for questions about the exact definition of this term, and therefore, how resources are allocated. In particular, I feel that the specific mention of and emphasis on the minority involvement needs to be strengthened.

Subpart B, State agency designation.—While we recognize some value to the flexibility of the regulations in terms of the designation of the single State unit on aging, we are concerned that the broadness of the designation as in the proposed regulations might actually hinder the goal of the development and statewide recognition of a single unit at the State level (as well as at the area level) that has the responsibility for and is recognized as being the focal point for aging programs. Recent work on a Colorado ad hoc legislative committee has further convinced me of the need for a very clearly identified, supported, and accountable body at the State level which is recognized by all as having both the authority and the resources to be that kind of focal point. AoA's final regulations should not diminish that great need.

1321.17, Staffing.—We applaud the preference section for the hiring of older persons for full- and part-time positions. This is a great need at both the State and area levels—and more than simply "preference," affirmative action plans and programs should be required. We would also suggest that although AoA has mentioned their responsibility relative to the Civil Rights Act, that particular requirement is worthy of being rementioned and reemphasized in this section.

1321.25, Content of state plan.—We would encourage the inclusion of training and technical assistance provided to the network organizations, particularly the area agencies on aging, for the carrying out of their functions.

Subpart D, paragraph 1321.41.—Again applaud the recognition of the vital task of advocacy as a legitimate function of both the State and area agencies on aging (see also 1321.91). But we do have some question about whether or not it is realistically possible for either the State or area staffs to review and comment on all plans, budgets, policies, etc., that affect older persons. The utilization of the work "must" may cause some serious difficulties in terms of the capability of the system right at this time. We also feel that it is important to stress close, cooperative, working relationships with a variety of other public and private organizations, including organizations of older persons, in the carrying out of the advocacy responsibilities. Very careful and specific notation of such coordination responsibilities is mentioned in other parts, and should be similarly stressed in these advocacy sections.

1321.47, State advisory counsel on aging.—We have a specific concern here and which follows through a number of other places in the regulations: That is the seeming lessening of the role of older consumers in advisory and other kinds of functions in terms of advocacy, review, priority setting, etc. Over and over again, while the proposed rules state that such input may be sought, there is no requirement that that input be seriously considered and included as part of the process of planning and administering the various functions outlined in these rules. In particular, in the State Advisory Council on Aging, under item 4B, on the composition of the council, it is stated that more than 50 percent of the persons should be at least 60 years of age. There is no requirement, however, that those persons be consumers, that there be any inclusion of low-income, or near low-income persons, or minorities. There is no indication of how those people might be selected to assure that there is adequate representation of the consuming public. These issues need to be addressed.

Paragraph 1321.67, Staffing.—Again, this is a positive regulation in terms of preference for hiring person 60 and over. The comments which we made on the State office on aging, in terms of affirmative action and civil rights compliance, also are applicable here.

1321.77 (and .93).—Items 2 and 3 in .77 and L and M in .93 appear to be out of place in these regulations. It is my understanding that they are specifically included in the legislation, and therefore, need mention here—but even then, I seriously question their being listed as numbers 2 and 3.

1321.97.—Again, specific mention of older consumers should be added.

1321.99.—Two additional programs should be mentioned: The Senior Opportunities and Services of the Economic Opportunity Act (which funds are used extensively in region VIII for both advocacy and services); and several of the sections of the Farmers Home Administration, which has underutilized resources for housing rehabilitation grants.

1321.145b.—The requirement for the provision of a meal in a congregate setting 5 days a week may not be always either economically possible or programmatically feasible for some rural areas. The use of "must" rather than a term suggestion a goal or preference is again questioned. Other sections of the proposed rules which recognize and enhance the rural perspective are most needed and appreciated; however, language in paragraphs such as this one (and under "community focal points") indicated that the unique flexibility necessary for rural areas has not been followed through in other parts of these rules.

In summary, the AoA is to be congratulated on the production of comprehensive, and generally workable proposed rules. The increased emphasis on focal points at the State, area, and community levels, is a positive recognition of a need and an emerging possibility. The regulations, in their flexibility, should not diminish those roles at the State and area levels. There should not an increased emphasis on the role of older persons, particularly, low-income and their representatives, in all phases of the rules. This is especially true with the lessening mention of minorities as a target population. A stronger recognition should also be given to the private sector in all parts of the regulations—advocacy, coordination, service provision. And, finally, it is our sincere hope that the very hastily gathered public comments will indeed be taken seriously in the development of the final rules. We were disappointed that, although the AoA had almost 1 year to draft these proposed rules, the public was given such little notice and time for making a responsible response.

Thank you for this opportunity to comment.