



Funding Flexibilities for Senior Nutrition Programs

Updated July 2021

The Senior Nutrition Program urges the aging network to continue employing creative, adaptive approaches to meet the nutrition, socialization, and wellness needs of seniors. To do so, programs must understand the flexibilities allowed by both standard operating statute and emergency authorities. This document offers an overview of those flexibilities.

State Units on Aging (SUAs) develop policies, procedures, and guidance for service implementation and may utilize any of the flexibilities listed below. They may delegate some responsibility to area agencies on aging (AAA) or local providers, who may outline further policies and procedures.

OAA Flexibilities

Vital to understand and embrace inherent flexibility to best create and innovate policies to meet community needs.

- Eligibility requirements¹ (e.g., if HDM recipient must be homebound; prioritization requirements/process)
- Menu policies and interpretation of DRI/DGA (e.g., state nutrition standards, menu approval process; whether nutrient analysis is required)
- Programmatic policies and procedures (e.g., policies for closing congregate meal sites; approval of below 5 days/week meal site service; waitlists; restaurant programs; grab-and-go meals)
- NSIP policies and procedures² (e.g., frequency of reporting; how to distribute funds)
- Internal reporting policies and procedures² (e.g., monthly vs. weekly reports; software systems)
- Target populations³ (e.g., data reporting to show effective targeting; added groups to achieve equity)
- Internal financial policies and procedures⁴ (e.g., quarterly invoicing; meal reimbursements; up to 40% transfers between C1 and C2 and up to 30% transfers between Title IIIB and IIIC)
- Contracting policies and procedures⁴ (e.g., procurement process, such as notifying state of local procurement)

Additional pandemic flexibilities revolve around financial transfers/bucketing, and waiver of DRI/DGA.

Public Health Emergency (PHE)

- CARES Act provides flexibilities during the PHE as declared by the U.S. Secretary of the Department Health and Human Services and applies to regular C1 and C2 funding and emergency supplementals.⁵ Once expired, the waiver is expired. End date to be determined.
- Nutrition requirements (DGA, DRI) waived.*
- 100% transfers between OAA Title III C1 and C2.

COVID-19 Major Disaster Declaration (MDD)

- State/territory [formal disaster process](#), working through FEMA, and declared by the President of the United States.
- Each state/territory, working through their regional FEMA, decides to continue/end its MDD.
- Bucketing of OAA Titles III B, C, D, E.

*ACL strongly encourages maintaining nutritious meals.

¹ Individual served must be 60+ or the spouse of an older adult. A meal may be supplied to people who volunteer during meal hours and people with disabilities who either live with an eligible older adult or live in a senior housing facility that offers congregate services.

² [NSIP Guidance & FAQ Sheet](#)

³ OAA programs should target older adults with greatest economic need and older adults with greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, older individuals residing in rural areas, and older individuals at risk for institutional placement).

⁴ In addition to, or to interpret, those required by a) 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award; b) Grant-specific Notice of Grant Award; c) SPR/OAAPS guidance.

⁵ See also pages 7-8 of the [Fiscal FAQ](#) on the Older Americans Act and American Rescue Plan Act.

Nutrition Services Incentive Program (NSIP): ACL is holding harmless meal counts from 2019 and will apply them to FYs 2020, 2021 and 2022 NSIP grant award allocations. During FY2020-2021, SUA reporting of NSIP meals was optional.

Important: FY2022 state reporting of NSIP meals will be used to determine FY2023 grant award allocations. Waivers to nutritional requirements DO NOT apply to NSIP-reported meals; NSIP meals must meet DRIs/DGAs.

Current Situation (June 2021)

Currently, all states and territories are working under the CARES Act authorities that will expire when the national Public Health Emergency expires (or once the project period for the grant award is completed). States and territories may also have a Major Disaster Declaration in place. Therefore, all funding (with exception of NSIP) – whether regular OAA funds or pandemic-related supplements – have:

- 100% transfer authority between C-1 and C-2
- Home-bound includes individuals practicing social distancing (note: SUAs have the ability to institute this and other eligibility standards - see “Always” OAA flexibility)
- DRI and DGA requirement waived for meals

The Major Disaster Declaration (end date to be determined), allows for these additional flexibilities:

- Bucketing of OAA Titles III B, C, D, E (**does not include NSIP**)

Understanding Waiver of Dietary Reference Intake (DRI) & Dietary Guidelines for Americans (DGA)

The following applies to when the following are in place: the Secretary of U.S. Department of HHS declared PHE, Presidentially declared COVID-19 MDD, and these funding sources: Title III (does not include NSIP), Families First, CARES, Coronavirus Response & Relief Supplemental Appropriations Act, and ARP.

The DRIs and DGAs can be waived (**excepting meals reported as NSIP**). However, ACL encourages the use of DRIs and DGAs to maintain health and manage chronic disease. If meals that meet the DRIs/DGAs are not available, meals must meet a minimum of 1/3 of the recommended daily calorie intake for an older individual (at least 534 calories). See [Understanding Nutrition Requirements During COVID-19: DRIs and DGAs](#).

ACL encourages states to give AAAs authority to serve multiple meals at a time and at a frequency based on local capacity. This should be paired with regular check-in calls with recipients.

Flexibility by Authority

Detailed descriptions of legislation and emergency/disaster declarations

The Older Americans Act is the main statute that governs our senior meal programs. In addition, NSIP (Title A) is embedded within the OAA as a funding stream, with specific meal requirements. While currently some of these requirements have been waived, once PHE expires flexibilities will return to those allowed under the OAA statute. So, it is important to have a basic understanding of the inherent flexibility within the OAA, as the pandemic-related waivers will eventually end.

Older Americans Act (OAA)

Reauthorized March 25, 2020

When supplemental funding or MDD/PHE flexibilities expire (to include applicable no-cost-extension periods), funding requirements and flexibilities revert to the underlying OAA statute. In June 2021, ACL understands no state/jurisdiction is working under normal operating authorities.

[OAA Authorizing Statute](#)[ACL Nutrition Services Overview](#)

Congress passed the OAA in 1965. The OAA provides for the organization and delivery of social and nutrition services to older individuals and their caregivers. Through the OAA Nutrition Program Title III, states receive grants to help support nutrition services for older people. These services include the Congregate Nutrition Program and the Home-Delivered Nutrition Services. Through the aging network's meal providers, the programs also provide a range of services including nutrition screening, assessment, education, and counseling.

SUAs are responsible for developing policies, procedures, guidance, and technical assistance for nutrition service implementation. SUAs may delegate some of this responsibility to AAAs or local service providers, which may outline further policies and procedures. Therefore, state and local entities have always had considerable flexibility around how they meet the intent of the OAA and associated requirements of their ACL funding. See the section above for examples of OAA flexibilities.

OAA Title III Shorthand

B = Section 321, Supportive Services

C1 = Section 331, Congregate Nutrition Services

C2 = Section 336, Home-Delivered Nutrition Services

Transfer Authorities

- Up to 30% can be transferred between B-C; and with waiver from ACL up to 100% under Section 316.
- Up to 40 % can be transferred between C1-C2; and with waiver from ACL up to 50%.

DRI/DGA Requirement

The OAA requires meals funded under C1 and C2 to meet DRIS and DGAs. If meals are purchased under Title III-B, meals do not need to meet the requirements of DRIs and DGAs.

5-Day-per-week Requirement

A waiver from the SUA is needed if a provider is serving a rural area and is unable to provide meals 5+days a week.

Nutrition Services Incentive Program (NSIP)

NSIP is provided separately as an incentive for meal performance. It is not subject to the flexibilities provided by other supplemental appropriations. SUAs receive OAA allocations for nutrition services for Title III C1 (congregate), Title III C2 (home-delivered), and NSIP. Of these allocations, NSIP is usually about 16% of total OAA nutrition services funding before transfers among Titles III B and C occur.

[NSIP Guidance & FAQ Sheet](#)**Use of NSIP Funds**

Allocations may only be used to purchase domestically produced food such as milk, fruit, vegetables, and protein products that are used in a meal.

NSIP allocations may *not* be used to pay for:

- Administration or other nutrition services (e.g., indirect costs, nutrition education or counseling).
- Bags of groceries for program participants. Bags of groceries do not constitute a meal.
- Technology or any devices, even if they enhance socialization or well-being.

NSIP allocations may be used to pay for a portion of a meal, such as specific food items like milk or a protein product.

NSIP Meal Requirements

The OAA includes the following requirements which cannot be waived:

- Serving meals to an individual who is eligible to receive services under the OAA;
- Serving meals to an individual who has not been means-tested to receive services;
- Serving meals that meet the requirements of the OAA including meals that meet the DRA/DRI as indicated in OAA Section 339;
- Serving meals to individuals who have been provided the opportunity to contribute to the cost of service; and
- Are served by an eligible agency (i.e., an agency that has a grant or contract with a SUA or AAA).

State Awards and Reporting

FY2020 and FY2021 (10/1/19-9/30/20 and 10/1/20-9/30/21)

- Award amounts based on FY2019 award levels (“hold harmless”).
- NSIP allocations may not be transferred because they are not a part of Title III B or III C.
- NSIP allocations may not be bucketed.
- NSIP reporting in State Performance Report (SPR) is optional; does not link to awards.

FY2022 (10/1/21-9/30/22)

- Award amounts based on FY2019 award levels (“hold harmless”).
- NSIP allocations may not be transferred because they are not a part of Title III B or III C.
- NSIP allocations may not be bucketed.
- **NSIP meal counts must be entered into SPR/OAAPS to receive NSIP award in FY2023.**

FY2023 (10/1/22-9/30/23)

- Award amounts based on FY2022 NSIP meal counts (calculated via previous year’s percentage of total NSIP meals).
- NSIP allocations may not be transferred because they are not a part of Title III B or III C.
- NSIP meal counts must be entered into SPR/OAAPS to receive NSIP award in FY2024.

Authorities Granted During the COVID-19 Pandemic

Items with stars (★) are in effect as of June 2021 and authorize flexibilities for programs.

★ Public Health Emergency (PHE)

Signed January 31, 2020 | Multiple renewals since enactment | End date not yet determined

The Secretary of U.S. Department of Health and Human Services (HHS) may, under section 319 of the Public Health Service Act, determine that: a) a disease or disorder presents a PHE; or b) that a PHE, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists. On January 31, 2020, due to confirmed cases COVID-19, the Secretary declared a nationwide PHE.

Based on the PHE and as authorized under the CARES Act, SUAs and AAAs were granted 100% transfer authorities across Titles B and C

★ COVID-19 Major Disaster Declaration (MDD)

Each state/territory, working through their regional FEMA, decides to continue or end its MDD for COVID-19

[Detailed Fiscal FAQ: OAA Funding & MDD](#)

[FEMA’s Disaster Declarations Search Tool](#) and [How a Disaster Gets Declared](#)

Should a state or tribe request through FEMA and receive and receive an MDD signed by the President under the Stafford Act, it triggers [disaster relief authority in the OAA](#). Once an MDD request by a state is approved, Section 310(c) permits states to use any portion of the funds made available under sections of the OAA for disaster relief for older individuals. In this regard, flexibility is provided for states – without the need for a separate application, transfer request, or request for a waiver – to use existing allocations already made to them under the OAA for disaster relief.

Transfer Authorities

- All monies can be assigned into any Titles to be used for disaster relief, as needed, except for NSIP.

Once an MDD incident period ends, the flexibilities available for “bucketing” also end. However, obligations made during the MDD incident period where the flexibilities were obligated may continue until the obligation is liquidated or the obligation period ends. States must adhere to the project period end dates.

★ Coronavirus Aid Relief and Economic Security (CARES) Act – Supplemental #3

Enacted March 27, 2020 | Effective through September 30, 2021 unless a no-cost extension is granted

Passage of this granted the following waivers for all monies issues during the PHE.

COVID-19 CARES Act augments the OAA by providing \$200 million for Title III-B (Supportive Services); \$480 million for Title III-C (Nutrition Services); \$100 million for Title III-E (Caregiver); \$20 million for Title VI (Native American Tribes); \$20 million for Title VII (Ombudsman); and \$50 million for Aging and Disability Resource Centers.

Transfer Authorities

- Up to 30% can be transferred between B-C; and with waiver from ACL up to 100% under Section 316.
- 100% transfer allowed between C1-C2.

In addition:

- Service match not required;
- home-bound includes individuals practicing social distancing (note: SUAs have the ability to institute this and other eligibility standards – see “Always” OAA flexibility); and
- DRI and DGA requirement waived for meals.

Families First Coronavirus Response Act – Supplemental #2

Enacted March 18, 2020 | Effective through September 30, 2021 unless a no-cost extension is granted

COVID-19 Families First Coronavirus Response Act augments the OAA nutrition program by providing \$80 million for Title III C-1 and \$160 million for Title III C-2 to states; and \$10 million to Native American Tribes under Title VI. Service match is not required by Supplemental #2.

Transfer Authorities that were granted under this passage (CARES and COVID-19 MDD authorities supersede this)

- Up to 30% can be transferred between B-C; and with waiver from ACL up to 100% under Section 316.
- 100% transfer allowed between C1-C2 provided by CARES Act during the PHE.

Coronavirus Response & Relief Supplemental Appropriations Act of 2021 – Supplemental #5

Enacted December 27, 2020 | Effective through September 30, 2022

[Detailed Fiscal FAQ: OAA Funding & Supplemental 5](#)

The Consolidated Appropriations Act, 2021, Public Law No: 116-260 provides funding for FY2021 OAA programming and extends flexibilities provided in the Families First Coronavirus Response Act and the CARES Act.

Funds are to respond to the Coronavirus Emergency by providing OAA services related to the response. Funds must be expended on allowable OAA activities as defined by the OAA and state and local policy. Service match is not required.

Transfer Authorities under this passage (CARES and COVID-19 MDD authorities supersede this)

Under the Consolidated Appropriations Act, 2021 transfers for up to 100% between subpart 1 and subpart 2 of part C are approved within FFY2021 Title III grants. Transfers must occur within the same grant grouping (i.e., FFY2021 Title III transfers must occur within the FFY2021 Title III grants).

Funds from Supplemental 5 cannot be transferred from/to the FFY2021 Title III grants, the FFY2020 Title III grants, nor the FFY2020 FFCRA or CARES grants. Transfer requests for FFY2021 Title III funds are due to your ACL Fiscal Contact by August 16, 2021. Earlier submissions are accepted, and we encourage consolidation of the number of requests since a new Notice of Award must be issued for each request.

American Rescue Plan (ARP) Act

Enacted March 11, 2021

[Detailed Fiscal FAQ: OAA Funding & the ARP](#)

Section 2921 of the ARP Act of 2021 (P.L. 117-2) appropriated \$1.434 billion to remain available until expended to carry out the OAA. Funds awarded by ARP must be spent on allowable OAA activities, as defined by the OAA, as well as state and local policies, including flexibilities allowed by CARES, PHE, and MDD. ARP did not introduce new flexibilities. Service match is required. The project period for funds awarded by ARP is April 1, 2021, through September 30, 2024.

Additional Resources

[ACL Budget & Allocations](#): Overview of ACL's budget, including allocation tables as applicable for the ARP, Coronavirus Response & Relief Supplemental Appropriations Act, the CARES Act, and Families First.

[ACL COVID-19 Information for Aging & Disability Networks](#): Links and resources specifically intended for organizations that serve older adults and people with disabilities, particularly those who receive funding from ACL.

[National Resource Center for Nutrition and Aging COVID-19 Resources](#): Information to assist the network as they provide vital services for older adults during the COVID-19 emergency and recovery phases.