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Older Americans Act: 105th Congress Issues

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SUMMARY

Authorization of appropriations for the Older Americans Act expired at the end of FY1995. Legislation to reauthorize the Act was reported by House and Senate authorizing committees in 1996, but was not acted upon by either chamber during the 104th Congress. Action on reauthorization legislation has not yet taken place during 1997.

The 105th Congress may consider legislative proposals that build upon areas of apparent consensus achieved during the 104th Congress. Although there were some areas of bipartisan agreement on some aspects of the bills reported by authorizing committees in 1996, bipartisan agreement to report the bills did not occur in either committee. H.R. 2570 was reported by the Economic and Educational Opportunities Committee (EEO) Committee by a vote of 19 to 16. S. 1643 was reported by the Senate Labor and Human Resources Committee by a vote of 9 to 7.

The 105th Congress is likely to revisit the issues that remained in controversy at the time the House and Senate bills were reported by the respective committees. These issues include proposals to (1) restructure the senior community service employment program; (2) change the interstate formula for distribution of funds for supportive and nutrition services; (3) revise elder rights protection services; and (4) eliminate certain requirements to target supportive and nutrition services to low-income minority older persons.

Themes addressed by H.R. 2570 and S. 1643 in the 104th Congress included consolidating and restructuring certain Older Americans programs, and giving more flexibility to states in the operation of aging service programs. Although there were differences in specific approaches to restructuring the Act, both committee bills moved in the direction of significantly reducing the number of separately authorized Older Americans Act programs.

There appeared to be general bipartisan agreement in both bills around proposals that would have consolidated some programs. This included proposals in both bills to consolidate the authorization of appropriations for the congregate and home-delivered nutrition programs. Agreement also was reached on proposals to allow states to implement policies on cost-sharing by older persons for certain services they receive through Older Americans Act funding.

Funding for the Act in FY1996, FY1997, and FY1998 was continued by appropriations legislation. For further information on funding, see: CRS Report 95-914, *Older Americans Act: Programs and Funding*.

CONTENTS

Introduction	1
Setting the Stage for the 105th Congress	1
Areas of Some Consensus During the 104 th Congress	1
Areas of Disagreement	2
Restructuring the Community Service Employment Program	2
Changes in Funding Formula for Grants to States and Community Programs on Aging	5
Changes in Programs for Elder Rights Protection Services	7
Targeting of Services to Low-Income Minority Older Persons	7
Activity During the 105 th Congress	8

Older Americans Act: 105th Congress Issues

Introduction

Authorization of appropriations for the Older Americans Act expired at the end of FY1995. Its programs continued to be funded in FY1996, FY1997, and FY1998 funding is continued through appropriations legislation for the Departments of Labor, Health and Human Services, Education and Related Agencies.¹ Although the House Committee on Education and the Workforce held hearings on the Act in July 1997, no action to reauthorize the Act has taken place in the House during the 105th Congress. Similarly, no action has occurred in the Senate.

During the 104th Congress, legislation to reauthorize the Act was reported by House and Senate authorizing committees in 1996, but was not acted upon by either chamber. H.R. 2570 was reported by the House Economic and Educational Opportunities (EEO) Committee on April 25, 1996; S.1643 was reported by the Senate Labor and Human Resources Committee on July 31, 1996. Both bills would have reauthorized the Act through FY2001. For a detailed discussion of the bills, see CRS Report 95-32, *Older Americans Act: 100th Congress Legislation*.

Setting the Stage for the 105th Congress

It is expected that the 105th Congress will consider legislation to reauthorize the Act. Although there were some areas of bipartisan agreement on some aspects of the bills reported by the House and Senate Committees in 1996, bipartisan agreement to report the bills did not occur in either committee. H.R. 2570 was reported by the EEO Committee by a vote of 19 to 16. S. 1643 was reported by the Senate Labor and Human Resources Committee by a vote of 9 to 7.² The 105th Congress may build upon areas of apparent consensus that were achieved during the 104th Congress. Nevertheless, the 105th Congress is likely to revisit the issues that remained in controversy at the time the House and Senate bills were reported by the respective committees.

Areas of Some Consensus During the 104th Congress

Themes addressed by H.R. 2570 and S. 1643 included consolidation and restructuring of certain Older Americans programs, and giving more flexibility to

¹ For further information, see: CRS Report 95-917 *Older Americans Act: Programs and Funding*, by Carol O'Shaughnessy and Alice Butler.

² See: U.S. Congress. House Economic and Educational Opportunities. *Older Americans Act Amendments of 1996*. Report No. 104-539. 104th Congress, 2nd Session. April 25, 1996; and, U.S. Congress. Senate Labor and Human Resources. *Older Americans Act Amendments of 1996*. Report No. 104-344. 100th Congress, 2nd Session. July 31, 1996.

states in the operation of aging service programs. Although there were differences in specific approaches to streamlining the Act, both committee bills moved in the direction of significantly reducing the number of separately authorized Older Americans Act programs. Current law authorizes 20 separate programs under the Act. H.R. 2570 would have reduced the number of programs to seven; S. 1643 would have reduced the number to nine.

While the bills proposed major changes in the structure of the Act, both bills would have preserved core functions of the state and area agency on aging programs. These include responsibilities of these agencies to plan and coordinate services programs on behalf of older persons, and to advocate for programs and services on their behalf. Current law requirements that state and area agencies develop state and area plans on aging, taking into consideration the needs of older persons, would have remained intact. Both bills would have eliminated a number of specific plan requirements that were viewed as burdensome to state and area agencies.

There appeared to be general bipartisan agreement in both bills around proposals that would have consolidated certain programs. This included proposals in both bills to consolidate the authorization of appropriations for the congregate and home-delivered nutrition programs. Under this approach, states would receive one allotment of funds for nutrition services, but would be expected to assess the need for both types of nutrition services. Agreement also was reached on proposals to allow states to implement policies on cost-sharing by older persons for services they receive through Older Americans Act funding. Proposals to give states more flexibility regarding cost sharing had been discussed for a number of years prior to consideration by the 104th Congress, but had never been approved by authorizing committees.

Areas of Disagreement

Despite general agreement on some issues, certain proposals were the subject of controversy during the 104th Congress, and will likely continue to be debated during the 105th Congress. These include proposals to (1) restructure the senior community service program; (2) change the interstate formula for distribution of funds for supportive and nutrition services; (3) revise elder rights protection services; and (4) eliminate certain specific requirements to target supportive and nutrition services to low-income minority older persons, while retaining an overall requirement to target services to these persons.

Restructuring the Community Service Employment Program

The senior community service employment program provides part-time subsidized jobs to low-income persons aged 55 and older. The program is funded at \$463 million in FY1997, representing about one-third of Older Americans Act funds.

Both H.R. 2570 and S. 1643 would have made substantial changes in how the program operates. These changes would have transferred administration of a substantial portion of the program from national organizations to states and introduced competition for funds among prospective grantee organizations.

Restructuring of the program was proposed, in part, to respond to a 1995 General Accounting Office (GAO) report that reviewed certain administrative issues related to the program, including the Department of Labor (DoL) method of awarding funds, formula allocation of funds, and grantee use of funds.³

Proposals included in the committee-reported bills included changes in (1) the distribution of funds by the federal government, (2) formula allocations to grantees, and (3) requirements regarding use of funds by grantees for enrollee wages and fringe benefits, administration, and other enrollee costs.

- *Distribution of Funds by the Federal Government.* Currently, funds are awarded to 10 national organizations and all states, with 78% of funds allocated to national organizations⁴ and 22% to states. Despite requirements in the authorizing statute that states are to receive a larger portion of funds, appropriations law for many years has stipulated this 78%/22% split. In addition, GAO pointed out in its report that DoL does not use a competitive process in awarding funds resulting in the same national organizations receiving funds every year.

Both H.R. 2570 and S. 1643 would have stipulated that *all* funds be allocated to states. National organizations no longer would have received funds directly from the federal government. This proposal was, in part, based on a goal of reducing the number of national organizations that operate in each state. National organizations receive funds to administer the program in all but three states; in many states, multiple national organizations administer programs in addition to a designated state agency. Both bills would have required states to use a competitive process when awarding funds.

- *Formula Allocations to Grantees.* Under current law, funding is distributed to national organizations and states using a combination of factors, including a “hold harmless” for employment positions held by national organizations in each state in 1978, and a formula based on states’ relative share of persons aged 55 and over and per capita income.⁵ Because the hold harmless provision is based on a 1978 state-by-state distribution of positions held by national organizations, it does not ensure equitable distribution across all states based on relative measures of age and per capita income of states.

³ U.S. General Accounting Office. *Senior Community Service Employment Program Delivery Could Be Improved Through Legislative and Administrative Actions.* GAO/HEHS-96-4. November 1995.

⁴ The 10 national organizations are American Association of Retired Persons; Asociacion Nacional Pro Personas Mayores; Green Thumb; National Asian Pacific Center on Aging; National Center and Caucus on the Black Aged; National Council on Aging; National Council of Senior Citizens; National Indian Council on Aging; National Urban League; and the U.S. Forest Service.

⁵ In FY1996, about 63% of funds are allocated according to the hold harmless provision (\$252 million out of \$401 million in program year (PY) 1996 (July 1, 1996-June 30, 1997)), with the balance distributed according to age and per capita income.

In its report on the program, GAO recommended that if Congress wishes to ensure equitable distribution of funds, it should consider eliminating or amending the hold harmless provision. Both H.R. 2570 and S. 1643 would have altered the method for distribution of funds and the hold harmless provision. Under H.R. 2570, the formula would have been changed to require that states receive no less than they received in FY1996; any funds appropriated in excess of the FY1996 level would have been distributed on the basis of states' relative share of persons age 55 and over and per capita income. S. 1643 would have gradually eliminated the 1978 hold harmless funding provisions, and made the transition to a formula that is totally based on states' relative population of persons aged 55 and over and per capita income.

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

Both bills would have required that a higher proportion of funding be used for enrollee wages and fringe benefits than is required by current DoL regulations. H.R. 2570 would have required that at least 85% of funds be used for enrollee wages and fringe benefits. S. 1643 would have required that, in general, at least 90% of funds be used for enrollee wages and fringe benefits, and, in small states, at least 85% of funds.

In its review, GAO found that most national organizations and some state sponsors had budgeted administrative costs in excess of the statutory limit by classifying them as other enrollee costs. Both bills would have addressed this issue by reducing amounts available for administration, although they differed in approach. H.R. 2570 would have consolidated administrative expenses for its three Title III programs — community service employment, supportive services, and nutrition services — and allowed up to 7% of these funds (or \$800,000 whichever is greater) to be used for administration across these three programs.⁶ S. 1643 would have specified that a maximum of 10% would be available for administration, and in small states, 15%.

The restructuring of the senior community service employment program generated substantial controversy during the 104th Congress. Some existing national grantees expressed concern that their continued existence would be threatened if the program were to be shifted to states and if states, rather than the federal government,

⁶ Under current law, states may use up to 5% of funds, or \$500,000 whichever is greater, for administration of their supportive service, and congregate and home-delivered nutrition services programs.

were to make decisions about which organizations would be grantees. They were also concerned about the reduction in administrative cost limits proposed by the legislation. National organizations also were concerned that the restructuring would result in disruption of jobs for some existing enrollees.

The modifications to the program were debated during markup of the bills by the House EEO Committee and the Senate Labor and Human Resources Committee, with certain members of the Committees voicing objections to the proposed restructuring. Some Members were concerned about the bills' approach to completely turn over the program to the states and that such a transition could be disruptive to enrollees. There was also concern that there would be a loss of the national organizations' expertise in administering the program. An amendment to S. 1643 to maintain direct award of funding to national organizations by the federal government offered by Senator Mikulski during the Labor and Human Resources Committee markup was not approved. Senator Mikulski stated that the restructuring of the Title V program would be revisited when S. 1643 reached the Senate floor. A similar amendment was proposed by Representative Kildee during the markup of H.R. 2570, but was also rejected by the EEO Committee.

If proposals similar to those contained in H.R. 2570 and S. 1643 are included in reauthorization proposals introduced in the 105th Congress, it is likely that the issues surrounding these proposals will continue to be debated.

Changes in Funding Formula for Grants to States and Community Programs on Aging

Changes in formula distribution provisions were included in both H.R. 2570 and S. 1643. These proposals generated concern among some Members due to funding shifts that would have occurred among states, compared to the current way funds are distributed.

Current law requires the Administration on Aging (AoA) to distribute Title III funds for supportive and nutrition services to states based on their relative share of the population aged 60 and older. In addition to specifying certain minimum funding amounts,⁷ the law contains a "hold harmless" provision requiring that no state receive less than it received in FY1987.

AoA distributes funds for supportive and nutrition services in the following way: first, states are allotted funds in an amount equal to their FY1987 allocations, which were based on estimates of states' relative share of the total U.S. population in 1985;⁸ second, the balance of the appropriation is allotted to states based on their

⁷ The law requires that states receive no less than one-half of 1% of the total amount appropriated; and that territories receive no less than 1/4 of 1% (Guam and the Virgin Islands) or 1/16 of 1% (American Samoa and the Northern Mariana Islands) of the total appropriation.

⁸ Estimates of the state population of persons aged 60 and over are updated annually by the Bureau of the Census in the Current Population Survey. There is generally a 2-year lag time (continued...)

relative share of the population aged 60 and over as derived from the most recently available estimates of state population; and third, state allotments are adjusted to assure that the minimum grant requirements are met. The effect of this methodology is that the majority of funds are distributed according to population estimates in 1985 that do not reflect the most recent population trends.

The method that AoA uses to meet the 1987 “hold harmless” provision has received some scrutiny. In connection with a report on possible alternative methodologies for distribution of Title III funds,⁹ GAO reviewed AoA’s current methodology. The report concluded that Title III funds are not distributed according to the requirements of the statute.¹⁰ GAO concluded that the method employed by AoA does not distribute funds proportionately according to states’ current relative share of the older population and negatively affects states whose older population is growing faster than others. The report recommended that AoA revise its method to allot funds to states, first, on the basis of the most current population estimates, and then alter the allotments to meet the hold harmless and statutory minimum requirements.¹¹

Both H.R. 2570 and S. 1643 would have made changes in how supportive and nutrition services funds would be distributed to states. H.R. 2570 would have phased in over a 4-year period, a requirement that AoA distribute funds according to states’ relative shares of the population aged 60 and over using the most recently available population data, gradually eliminating the FY1987 hold harmless provision.

S. 1643 would have based allotments for supportive and nutrition services on two factors: a composite measure that attempts to capture the relative size of a state’s relative “elderly in-need” (EIN) percentage; and, a measure of a state’s relative total taxable resources compared to the state’s relative EIN.¹²

Each of these proposals would have shifted funds among states in a way that is different than the current distribution, and therefore generated concern from representatives from the “loser” states. On the other hand, some states that have been experiencing a gain in the older population have been concerned that the current

⁸ (...continued)
in the availability of these estimates.

⁹ U.S. General Accounting Office. *Older Americans Act. Funding Formula Could Better Reflect State Needs*. GAO/HEHS-94-41. May 1994.

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

¹¹ At the time of the 1992 amendments, Congress created a separate authorization of appropriations for Title VII vulnerable elder rights protection activities. In creating this title, Congress approved a provision that required AoA to first allot Title VII funds according to the most recent population estimates, and then allot the balance of funds to meet a specified hold harmless requirement.

¹² For a detailed discussion of the formula contained in S. 1643, see: CRS Report 95-32 *Older Americans Act: 104th Congress Proposals*, by Carol O’Shaughnessy.

distribution does not take into account the population shifts that have occurred over the last decade.

Other ideas that were discussed, but were not ultimately incorporated into the 104th Congress bills, included the consideration of other formula factors such as relative low-income of the elderly population across the states.

Changes in Programs for Elder Rights Protection Services

Current law includes a number of programs to protect the rights of older persons. These are a separate Title VII for vulnerable elder rights protection activities, including programs for long-term care ombudsman services¹³ and elder abuse prevention services, and a requirement that area agencies on aging spend some of their Title III supportive services funds on legal assistance services.

Although the bills took different approaches, both would have modified these provisions. Both bills would have eliminated Title VII as a separate title for vulnerable elder rights protection activities; however, S. 1643, but not H.R. 2570, would have continued to authorize a separate stream of funds for the ombudsman program. H.R. 2570 would have continued to require that states carry out ombudsman services. In addition, H.R. 2570 would have eliminated the requirement for funding of legal assistance services.

When the bills were considered by the respective committees, various amendments were offered to assure that states continue to spend a specific amounts of funds various elder rights services. Congress may revisit discussions regarding elder rights programs if proposals to eliminate or lessen the Older Americans Act role are made.

Targeting of Services to Low-Income Minority Older Persons

Targeting of services to low-income minority older persons continued to be a subject of review during the 104th Congress, as it has during past reauthorizations of the Act. Current law contains numerous requirements that state and area agencies on aging target services to persons in greatest social and economic need, with particular attention on low-income minority older persons. It also requires that the agencies set specific objectives for serving low-income minority older persons and that program development, advocacy, and outreach efforts be focused on these groups. Service providers are required to meet specific objectives set by area agencies for providing services to low-income minority older persons, and area agencies are required to describe in their area plans how they have met these objectives.

Both H.R. 2570 and S. 1643, as approved by the respective committees, would have required that in providing services, preference be given to older persons in

¹³ Most Older Americans Act funding for the long-term care ombudsman program is through Title III of the Act. For further information, see: CRS Report 96-399, *Older Americans Act: Long-Term Care Ombudsman Program*, by Carol O'Shaughnessy.

greatest social and economic need, with particular attention to low-income minority older persons, and that in conducting outreach to persons eligible for services, particular emphasis be given to low-income minority older persons. In the mark-up of H.R. 2570, an amendment that would have restored to the bill some other references to serving low-income minority older persons that are in current law was rejected. The 105th Congress may again review the current law targeting provisions to assess what provisions might be included in reauthorization proposals.

Activity During the 105th Congress

The House Education and the Workforce Committee, Subcommittee on Early Childhood, Youth and Families held reauthorization hearings on the Act on July 9 and 16, 1997. The Subcommittee received testimony from Administration officials and representatives of state and area agencies on aging, services providers, and Indian tribal organizations.

In addition, various bills to amend the Act have been introduced. These include S. 390, Older Americans Act Amendments of 1997 (Mikulski), and H.R. 1671, Older Americans Act Amendments of 1997 (Martinez). These bills are similar to the reauthorization proposals suggested by the Administration during the 104th Congress. They differ from bills reported by the House and Senate Committees during the 104th Congress in a number of ways. For example, they would not consolidate authorizations of appropriations for the Act's programs, nor would these bills reallocate funds for the community service employment program from national organizations to states.

Other 105th Congress bills include S. 948 (Grassley)/H.R. 2167 (Schumer), the Pension Assistance and Counseling Act of 1997. These bills would amend the research, training, and demonstration program authorized under title IV of the Act to create a toll-free telephone number for individuals who are seeking information and assistance regarding pension and other retirement benefits, among other things.

