

January 1994

OLDER AMERICANS
ACT

Title III Funds Not
Distributed According
to Statute





United States
General Accounting Office
Washington, D.C. 20548

Health, Education, and
Human Services Division

B-253593

January 18, 1994

The Honorable Tom Harkin
Chairman
The Honorable Arlen Specter
Ranking Minority Member
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Barbara A. Mikulski
Chairwoman
The Honorable Judd Gregg
Ranking Minority Member
Subcommittee on Aging
Committee on Labor and Human Resources
United States Senate

The Honorable William Natcher
Chairman
The Honorable John Edward Porter
Ranking Minority Member
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Matthew G. Martinez
Chairman
The Honorable Susan Molinari
Ranking Minority Member
Subcommittee on Human Resources
Committee on Education and Labor
House of Representatives

During our ongoing review of the funding formula used to allot Older Americans Act title III grants for state and community aging programs, we discovered that the formula used by the Administration on Aging (AoA) distributes grant funds among the states in a manner contrary to the statutory scheme. This report contains our findings and recommendations concerning AoA's distribution of title III grant funds.

Results in Brief

AoA's method of allotting funds under title III of the Older Americans Act is inconsistent with the act's basic requirement that the distribution of funds among the states be proportional to their elderly populations to the maximum extent possible. In this regard, the act requires that title III funds be allotted proportionally among the states except that no state is to get less than the minimum established in the law.

AoA's current method of computing allotments assures that the minimums are met but in a manner that fails to achieve proportionality among states not subject to the minimum grant requirements. Among the distorting effects of AoA's method are that the amounts allotted per elderly person are not equal in similarly populated states, and states with more rapidly growing elderly populations are underfunded. The required method avoids or minimizes both effects.

Background

Title III of the Older Americans Act authorizes grants to the states.¹ The statute establishes as a basic requirement that each state's allotment, which is made from each annual appropriation, is to be proportional to its share of the nation's population of people aged 60 and older. We refer to this as the proportionality requirement. If, for example, all the \$772 million in title III funds for fiscal year 1993 were allotted in proportion to elderly populations, per capita allotments (a state's total allotment divided by the number of elderly persons in that state) would be equal in all states. The extent to which per capita allotments are unequal is therefore a measure of the extent to which they are not proportional to the elderly population.

The law contains two provisions that are exceptions to the proportionality requirement.² First, each state must receive no less than one-half percent of the amount appropriated in any year. Second, in what is known as a "hold harmless" provision, each state is to receive no less than it received in a specified prior year.³ We refer to these two provisions collectively as the statutory minimums.

The extent to which funds can be allotted in proportion to elderly populations in the states is limited by the necessity to satisfy the statutory minimums. In that sense, the proportionality requirement and the statutory

¹To simplify this discussion, we refer only to states although the term here includes Puerto Rico, and insular areas, such as the Virgin Islands, which also receive allotments under the act.

²The act has other minimum funding provisions, but only the two we discuss here are relevant.

³Hold harmless allotments were based on fiscal year 1984 until a recent change in the law (P.L. 102-375 (1992)) although AoA's method of computing allotments has remained the same since 1985.

minimums conflict. The allotment provision in title III of the act (see app. D) recognizes this; it requires that the allotments be made "subject to" the hold harmless provision and goes on to say that they must be proportional to the elderly population except that each state must get at least 0.5 percent of the appropriation.

AoA's Method for Distributing Funds Among the States

Since 1985, AoA has been calculating state allotments in the following sequence:

- (1) Each state's hold harmless amount—at present the amount the state received in 1987—is determined.
- (2) The total of the hold harmless amounts for all states is then deducted from the total appropriation for title III, and the remainder is distributed in proportion to the state's elderly population.
- (3) Each state is allotted the total of (1) and (2) above, as long as that total is at least 0.5 percent of the appropriation.
- (4) States that are below the 0.5 percent minimum are brought up to that level.
- (5) Allotments for states not affected by the above step are reduced in proportion to their elderly populations.

AoA's Method Does Not Reflect the Requirements of the Act

AoA's current grant distribution method fails to achieve the statute's purpose—maximum proportionality in the distribution of funds among the states. Departures from proportionality should be made only to the extent necessary to satisfy the statutory minimums. However, AoA's method unnecessarily reduces the proportion of funds that could be allotted in proportion to states' share of the elderly population. Under AoA's method approximately 90 percent of the appropriation is needed to meet the hold harmless amounts for each state. Thus, only 10 percent of title III funds are available for distribution based on current elderly populations.

AoA officials told us that its method of allotment is consistent with the law and congressional intent. We disagree. The language in the current law, compared with prior versions, and the legislative histories clearly show that allotments should first be calculated in proportion to the states' share

of the elderly population, and that only after that initial calculation should adjustments be made, if necessary, to satisfy the statutory minimums.

An earlier (pre-1973) version of the act had no hold harmless requirement but did have a minimum percentage for each state, at that time 1 percent. That version explicitly required use of AoA's current method of computation with respect to the 1 percent statutory minimum: amounts to meet the minimum requirement were to be set aside first, and the remainder was to be allotted based on population.⁴

In 1973, the title III allotment formula law was amended to change the method of computation to one that would calculate the distribution of title III funds based on elderly population first and then make adjustments to accommodate the statutory minimums.⁵ The law today reads much as it did after it was amended in 1973.⁶

AoA's interpretation in effect ignores the legislative history. The Senate Labor and Public Welfare Committee, where the change originated, said that the old formula, by first setting aside for each state a minimum percentage not dependent on population, "favored small states by guaranteeing that a substantial portion of sums appropriated would be divided without regard to population." The current AoA formula does the same thing. The Committee rejected that approach and adopted essentially the formula in the current law because the latter "is geared more closely to elderly population," while still ensuring (by using the statutory minimums) a fair allotment to small states. The House Education and Labor Committee concurred.⁷

Thus, the 1973 amendment, in light of its history, should be read as requiring that the basic distribution of funds be based on each state's share of the nation's population of people aged 60 and older and that adjustments needed to satisfy the statutory minimums should only be made after the calculation of the proportional share.

⁴The law said that each state was to be allotted 1 percent of the appropriation and then, from the remainder, an additional amount based on the state's elderly population. See 42 U.S.C. 3023(b)(1) (1970).

⁵Older Americans Comprehensive Services Amendment of 1973, P.L. No. 93-29; 42 U.S.C. 3023(b) (1976). The 1973 amendment also added the hold harmless clause to begin in fiscal year 1974.

⁶The law was amended in 1984 to move the hold harmless requirement to a different paragraph and to differentiate the wording applicable to that requirement from the wording applicable to the 0.5 percent requirement. However, this was as a technical amendment that was not intended to change the allotment formula. (See GAO's response to agency comments for further discussion).

⁷H.R. Rep. 43, 93rd Cong., 1st Sess. 14, reprinted in 1973 U.S. Code Cong. and Admin. News 1327, 1339.

Alternative Method Results in Greater Proportionality

We believe that to comply with the statute the distribution method for state grant funds under the Older Americans Act must allot the funds based on the states' proportions of the elderly to the maximum extent possible. Such a method involves the following sequence of steps:

- (1) Compute allotments to all states based on the proportion of elderly people in each.
- (2) Raise any state allotments that do not meet the hold harmless and/or the 0.5 percent minimums.
- (3) If additional funds to any states are necessary as a result of the above step, lower the allotments of all the rest proportionately.

Using this method, 100 percent of the funds would initially be allotted on the basis of the current elderly population data, and those allotments would be adjusted only to the extent necessary to satisfy either of the statutory minimums.

AoA's Current Method Negatively Affects Proportional Funding and Fast-Growing States

Significant funding inequities occur because of AoA's allotment method. In large part, funding inequities occur among states because approximately 90 percent of the annual appropriation is used to meet the present hold harmless requirement. Consequently, AoA's method leaves only 10 percent to allot to states on the basis of current elderly population statistics.⁸ Calculating per capita allotments for each state for fiscal year 1993, using AoA's method and the proper method, demonstrates the distortions introduced by AoA's method (see table 1).

Negative Impact on Title III Proportionality

Under AoA's procedure, no two states receive the same amount per capita. Even among states not affected by either statutory minimum, AoA's per capita allotments differ. For example, neither West Virginia nor Florida is subject to either the 0.5 percent minimum or the hold harmless provision, yet West Virginia's per capita allotment is \$18.79, while Florida's is \$15.48. This cannot be considered a proportional funding result. Using the required method, the per capita allotment of Florida and West Virginia is \$17.38, as is that of all the other states not affected by either of the statutory minimums.

⁸This is because the current appropriation is approximately 10 percent greater than the 1987 appropriation, which is the basis for the hold harmless amount. Giving the states their hold harmless amounts first leaves only about 10 percent of the appropriation to be allotted on the basis of population.

Table 1: Title III Allocations per Elderly Person Using AoA's and GAO's Formulas for Fiscal Year 1993

State	Allocations	
	AoA	GAO
Alabama	\$17.54	\$17.38
Alaska	103.20 ^a	103.20 ^a
Arizona	14.76	17.38
Arkansas	18.58	17.38
California	16.73	17.38
Colorado	16.32	17.38
Connecticut	18.05	17.38
Delaware	34.05 ^a	34.05 ^a
Dist. of Columbia	38.12 ^a	38.12 ^a
Florida	15.48	17.38
Georgia	16.73	17.38
Hawaii	22.03	21.62 ^a
Idaho	23.90	23.62 ^a
Illinois	18.36	17.38
Indiana	17.54	17.38
Iowa	18.77	17.38
Kansas	18.65	17.38
Kentucky	18.09	17.38
Louisiana	18.00	17.38
Maine	18.63	17.56 ^a
Maryland	16.69	17.38
Massachusetts	18.61	17.38
Michigan	17.38	17.38
Minnesota	18.06	17.38
Mississippi	18.58	17.38
Missouri	18.26	17.38
Montana	27.03 ^a	27.03 ^a
Nebraska	19.18	17.38
Nevada	20.41	19.93 ^a
New Hampshire	23.03	22.62 ^a
New Jersey	17.89	17.38
New Mexico	17.76	17.38
New York	18.76	17.38
North Carolina	16.20	17.38
North Dakota	32.66 ^a	32.66 ^a
Ohio	17.52	17.38
Oklahoma	18.40	17.38

(continued)

State	Allocations	
	AoA	GAO
Oregon	16.94	17.38
Pennsylvania	17.88	17.38
Rhode Island	20.30	19.57 ^a
South Carolina	16.21	17.38
South Dakota	28.80 ^a	28.80 ^a
Tennessee	17.37	17.38
Texas	16.77	17.38
Utah	19.30	18.57 ^a
Vermont	43.13 ^a	43.13 ^a
Virginia	16.45	17.38
Washington	16.42	17.38
West Virginia	18.79	17.38
Wisconsin	17.90	17.38
Wyoming	58.66 ^a	58.66 ^a

Note: U.S. average = \$18.03.

^a Denotes a minimum funding state under allocation method.

Moreover, AoA's method results in another counterintuitive outcome. States unaffected by either statutory minimum would be expected to receive per capita grants below the national average because their allotments would be reduced to make funds available for states that benefit from the statutory minimums. Yet, using AoA's method, per capita allotments for some states unaffected by either statutory minimum are above the national per capita average of \$18.03. Examples are Arkansas (\$18.58), Illinois (\$18.36), Iowa (\$18.77), and West Virginia (\$18.79).

Under the required procedure, as described above, the 36 states not subject to either statutory minimum receive the identical per capita allotment, \$17.38. The only per capita allotments that differ from that amount go to the 15 states affected by one or both of the statutory minimums. In addition, all states affected by the statutory minimums receive more than the national per capita average and, conversely, all states not affected by the statutory minimums receive less than that average. Neither is true under AoA's method.

States With Fast-Growing Elderly Populations Penalized

AoA's funding distribution method makes states' allotments less sensitive to recent changes in the elderly population. As a result, states in which that population is growing faster are continually underfunded.

This result can be seen in table 2, which shows the 1993 allotments under AoA's and the required methods. States are first grouped according to whether they are affected by either of the statutory minimum provisions. Those unaffected by the minimums are then arrayed by the percent changes in their elderly populations between 1981 and 1989. In general, states with faster-growing elderly populations (listed at the top of the table) receive less under AoA's method compared to what they would receive using the required method.

Table 2: AoA and GAO Allocations and Differences in Allocations, Sorted by the Change in Elderly Population Between 1981 and 1989

State	Population change 1981-1989	Allocations		Difference	
		AoA	GAO	Amount	Percent
Not affected by 0.5 percent minimum					
Arizona	35.2%	\$9,617,154	\$11,325,904	-\$1,708,750	-17.8%
New Mexico	26.3	4,064,724	3,977,325	87,399	2.2
Florida	26.2	48,285,368	54,222,146	-5,936,778	-12.3
South Carolina	22.6	8,939,853	9,585,920	-646,067	-7.2
Colorado	21.4	7,579,540	8,074,383	-494,843	-6.5
North Carolina	21.2	18,116,462	19,432,997	-1,316,535	-7.3
Virginia	19.3	15,285,026	16,151,478	-866,452	-5.7
California	18.3	71,593,899	74,365,461	-2,771,562	-3.9
Washington	18.0	12,808,320	13,556,901	-748,581	-5.8
Maryland	18.0	12,105,916	12,609,479	-503,563	-4.2
Texas	17.4	40,017,295	41,471,903	-1,454,608	-3.6
Georgia	16.6	15,229,845	15,826,135	-596,290	-3.9
Oregon	15.7	8,822,016	9,049,892	-227,875	-2.6
Tennessee	12.3	14,662,584	14,674,859	-12,274	-0.1
Michigan	12.1	26,554,303	26,550,677	3,626	0.0
Alabama	11.7	12,443,808	12,330,420	113,389	0.9
Ohio	11.4	33,733,071	33,462,331	270,740	0.8
Indiana	11.2	16,667,921	16,518,308	149,612	0.9
Connecticut	10.2	10,788,799	10,390,614	398,186	3.7
Louisiana	10.1	11,573,982	11,176,415	397,567	3.4
New Jersey	10.1	25,059,178	24,349,575	709,603	2.8

(continued)

State	Population change 1981-1989	Allocations		Difference	
		AoA	GAO	Amount	Percent
Pennsylvania	9.6	43,851,246	42,633,173	1,218,074	2.8
Wisconsin	8.7	15,585,323	15,135,734	449,589	2.9
Kentucky	8.5	11,424,796	10,974,681	450,115	3.9
Minnesota	7.9	13,128,289	12,636,697	491,592	3.7
Oklahoma	7.4	10,407,873	9,830,392	577,481	5.5
Mississippi	6.8	7,973,881	7,457,936	515,945	6.5
West Virginia	6.6	6,787,523	6,277,548	509,975	7.5
Missouri	6.5	17,394,341	16,558,839	835,502	4.8
Kansas	6.5	8,398,805	7,825,114	573,691	6.8
Arkansas	6.3	8,535,259	7,985,709	549,550	6.4
Illinois	6.3	35,516,551	33,624,125	1,892,426	5.3
Massachusetts	5.6	20,090,885	18,764,947	1,325,937	6.6
Nebraska	4.6	5,619,061	5,090,816	528,245	9.4
Iowa	4.5	10,441,164	9,667,660	773,505	7.4
New York	4.3	59,528,710	55,154,533	4,374,177	7.3
Affected by 0.5 percent minimum					
Alaska	58.8	3,860,888	3,860,888	0	0.0
Nevada	55.1	3,952,673	3,860,888	91,785	2.3
Hawaii	39.6	3,934,808	3,860,888	73,919	1.9
Utah	22.4	4,012,455	3,860,888	151,567	3.8
Delaware	22.3	3,860,888	3,860,888	0	0.0
Wyoming	16.0	3,860,888	3,860,888	0	0.0
Idaho	14.8	3,906,539	3,860,888	45,650	1.2
New Hampshire	14.2	3,930,385	3,860,888	69,496	1.8
Montana	13.3	3,860,888	3,860,888	0	0.0
Maine	10.7	4,095,877	3,860,888	234,988	5.7
Vermont	9.3	3,860,888	3,860,888	0	0.0
Rhode Island	9.3	4,004,384	3,860,888	143,495	3.6
North Dakota	6.8	3,860,888	3,860,888	0	0.0
South Dakota	6.7	3,860,888	3,860,888	0	0.0
District of Columbia	0.1	3,860,888	3,860,888	0	0.0

Note: Negative values indicate under funding relative to GAO's method of implementing the hold harmless provision.

As part of our review, we asked AoA officials to respond to our preliminary analysis. Our tentative conclusion was that their method of allotting funds

does not satisfy the requirements of the statute and results in allotments that do not achieve proportionality among states not subject to the statutory minimums.

AoA officials said that their method does not conflict with either "the law as written or with Congressional intent." They said that, based on their reading of the statute, "informal discussions" with the Congress, and guidance from within the Department of Health and Human Services (HHS), that they determined that "the primary focus and emphasis from Congress ... appeared to be directed at the hold harmless component." AoA points out that they have been using their method since 1985 without complaint from the Congress or the states.

After discussions with GAO staff, AoA ran its own simulations to determine the proportionality of the two methods. Based on its simulations, AoA acknowledged that, as the difference between the hold harmless level and the appropriation increases and as the elderly population increases faster in some states than in others, GAO's methodology "achieves greater uniformity in per capita shares across states." Despite this conclusion, AoA concludes that "additional reviews, simulations, and discussions are warranted, as they may demonstrate a method for achieving greater equity with future appropriations."

We believe that the method we describe is required to achieve the purpose of the statute and should be immediately implemented by AoA. Additionally, HHS's Office of Management and Budget recently reviewed AoA's grants management and also concluded, as we have, that AoA's method is not consistent with the act.⁹ Their report also noted, as we have, that states with small increases in elderly populations between the mid-1980s and 1992 appeared to have received more funding than did states with large elderly population increases.

Recommendation to the Agency

We recommend that AoA revise its current method of calculating state grant funds under title III of the Older Americans Act to allot more funds in proportion to current elderly populations, as required by law, while still satisfying the statutory minimum requirements. Such a revised method should compute title III allotments first on current shares of states' elderly populations, then raise only those state allotments that do not meet the

⁹Office of Grants Management, Assistant Secretary for Management and Budget. Grants Management Systems Review of The Administration on Aging (AoA). U.S. Department of Health and Human Services. Washington, D.C.: 1993, pp. 3, 25-26.

hold harmless and/or 0.5 percent minimum funding levels, and, finally, lower allotments of nonminimum states proportionally.

Agency Comments

HHS acknowledges that our method of computation results in "a more consistent per capita distribution of funds among States..." compared to the method it uses. HHS officials argue that their interpretation should be given deference. However, we find HHS's interpretation to be unconvincing and without support in the legislative history. The wording change in law on which HHS relies was a "technical amendment," not intended to change the statute's reliance on elderly population as the primary basis for distributing funds.

As HHS acknowledges, and as confirmed by the legislative history, the 1973 amendment to the Older Americans Act changed earlier law expressly to give priority to the elderly population in the computation of state allotments. Based on that amendment, and until 1984, HHS used an allotment formula like the one we now recommend: it allotted funds among the states based on their elderly populations and only then made adjustments necessary to meet the minimum percentage requirement and the hold harmless requirement that was added later.

In 1984, HHS abandoned the allotment formula it had used since 1973 in favor of the present one. The present formula subordinates the importance of the states' proportions of the elderly to the hold harmless amounts, and has led to the inequities described in our report. HHS says it did this based solely on a provision in the 1984 amendment to the act that moved the hold harmless requirement from one paragraph to another. However, this change is designated in the law as a "technical amendment," and the legislative history does not identify the change as intended to change significantly the method of computing the allotment. We believe that its only purpose was to make the allotment provision in section 3024 consistent with a change to another section dealing with administrative expenses.

Moreover, the absence of any discussion of a change to the allotment formula in the history of the 1984 amendment suggests that the amendment was not intended to have the effect that HHS gives it. If the amendment had been intended to reverse the practice in use since 1973 and to de-emphasize the role of elderly population in allotting funds among the states, that would have been an important change from the states' viewpoint, one that normally would have been the subject of debate

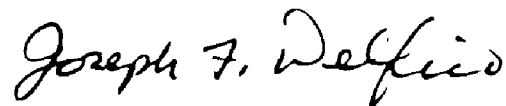
and discussion and would have been supported in the record. However, in contrast to the 1973 amendment, the 1984 change was made without any debate or discussion. No states complained of the current allotments or of how the change would affect them. The law identifies the change as a "technical amendment," hardly an accurate description if the amendment had been intended to do what HHS believes it did.

HHS relies also on the fact that since 1985 no one has complained about its computation method. We do not find that significant because HHS apparently publicized neither the fact that it was changing the method nor the effect of the change on state funding amounts. As far as we are aware, this report represents the first disclosure of the effect of HHS's method on the states.

We carried out our work between January and July of 1993 in accordance with generally accepted government auditing standards.

Copies of this report will be sent to appropriate congressional committees and subcommittees, the Secretary of Health and Human Services, and the Commissioner of the Administration on Aging. If you or your office have any questions about this report, please contact me on (202) 512-7215 or Jerry Fastrup on (202) 512-7225. Other major contributors are listed in appendix III.

Sincerely yours,



Joseph F. Delfico
Director, Income Security Issues

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Abbreviations

AoA	Administration on Aging
HHS	Department of Health and Human Services

Language of Title III State Allocation Provisions

PUBLIC HEALTH AND WELFARE

42 § 3024

§ 3024. Allotment to States

(a) Formula for computation of amount

(1) Subject to paragraphs (2), and (3) from the sums appropriated under section 3023 of this title for each fiscal year, each State shall be allotted an amount which bears the same ratio to such sums as the population of older individuals in such State bears to the population of older individuals in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (B) Guam, the United States Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and (C) American Samoa and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated for the fiscal year for which the determination is made. For the purposes of paragraph (3) and the exception contained in subparagraph (A) only, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(2) No State shall be allotted less than the total amount allotted to the State under paragraph (1) of this subsection and section 3023 of this title for fiscal year 1987.

(3) No State shall be allotted, from the amount appropriated under section 3023(g) of this title, less than \$50,000 for any fiscal year.

(4) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent data available from the Bureau of the Census, and other reliable demographic data satisfactory to the Commissioner.

Comments From Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

DEC 9 1983

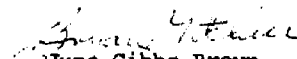
Mr. Joseph F. Delfico
Director, Income Security
Issues
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Delfico:

Enclosed are the Department's comments on your draft report, "Older Americans Act: AoA Compliance With The Interstate Funding Formula (Title III)." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,


June Gibbs Brown
Inspector General

Enclosure

Appendix II
Comments From Department of Health and
Human Services

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ON THE U.S. GENERAL ACCOUNTING OFFICE'S DRAFT REPORT
"OLDER AMERICANS ACT: AOA COMPLIANCE WITH THE
INTERSTATE FUNDING FORMULA (TITLE III)"

Overview

The General Accounting Office (GAO) was asked to review the current allocation under the Older Americans Act (OAA) to determine if any other options existed to address variances among States due to social and economic differences. In the course of conducting this review GAO determined the subject matter of the current draft report. GAO concludes that the method used by the Administration on Aging (AoA) to calculate Title III grants to States does not fully comply with the intent of the Older Americans Act, and recommends that AoA adopt an alternative computation method. The Department believes the method currently in use by AoA is not inconsistent with the law.

Computations of State grants under the Older Americans Act are made by considering 3 factors, including: a "hold harmless" provision that assures that each State receives no less than it received in Fiscal Year 1987; a "proportionality" provision that requires funds to be allotted in proportion to each State's population of older individuals; and a "minimum percentage" requirement that each State receive no less than 0.5 percent of the total appropriation.

The hold harmless provision was first made a part of the allocation formula under the OAA amendments of 1973 (Pub. L. 93-29). GAO cites congressional report language from 1973 to show that the Department is not following the legislative history. However, from 1973 until 1984, State allocations were computed according to the method described in the 1973 congressional reports: the Department first applied the proportionality requirement, then made adjustments to assure the hold harmless requirement had been met, and finally assured that each State received the minimum percentage.

In 1984 Congress amended the OAA (Pub. L. 98-459) to say that "subject to" the hold harmless requirement, each State should receive proportional funding, except that each State must receive at least 0.5 percent of the total allocation. Based on this statutory change, the Department began computing State allocations by first determining the hold harmless amounts, then applying the proportionality requirement to the remainder of the appropriation, and then determining whether the minimum percentage requirement was met and making adjustments as necessary. This is the method still in use today. The GAO recommends, instead, that the proportionality requirement be applied first, and that adjustments be made if other statutory requirements are not met.

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GAO Recommendation

The Administration on Aging should revise its current method of calculating State grant funds under Title III of the Older Americans Act to allot more funds in proportion to current elderly populations, as required by law, while still satisfying the statutory minimum requirements. Such a revised method should compute Title III allocations first on current shares of States' elderly populations, then raise only those State allotments that do not meet the hold harmless and/or 0.5 percent minimum funding levels, and finally lower allotments of non-minimum States proportionally.

Department Comment

The Department recognizes that the computation method which applies the proportionality provision first tends to produce a more consistent per capita distribution of funds among States. However, absent clear congressional guidance, it is difficult to be certain that Congress intended per capita proportionality to take precedence over other statutory provisions, such as the hold harmless provision. The Department believes its interpretation of the statute is as valid as that advocated by the GAO and that in the absence of statutory language or, at least, clear guidance to the contrary in the legislative history, its interpretation and application of the allocation provision should be given deference.

Executive Branch agencies are generally given wide administrative discretion in implementing the laws they administer. Moreover, where there are two equally reasonable interpretations of a statute available, deference must be given to the interpretive choice of the agency entrusted to administer the law. Accordingly, we believe the agency's interpretation of the OAA interstate funding formula, which is consistent with the current statutory scheme and which has been consistently applied since 1984, should continue in effect until such time as Congress clearly indicates its intent that the statute be interpreted in a different manner.

The GAO cites congressional committee report language related to the 1973 amendments to the Older Americans Act. However, the report language does not specifically identify the provisions being described. Several important changes were made in the allocation formula for States in that year. The age on which demographic data is used to determine proportionality was changed from 65 to 60. A hold-harmless provision was made part of the formula for the first time. Finally, the statutory minimum requirement was changed from 1 percent for each State to 0.5

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percent. We believe that Congress may have been referring to this shift -- from 1 percent for each State to 0.5 percent -- in describing how the new formula placed greater emphasis on proportionality. We note, however, that following the 1973 amendments, the Department began to use the computation methods described in the 1973 congressional committee reports. Beginning in 1974, the statute directed the Department to allocate funds to States proportionally based on population "except that" States were required to receive no less than the amount received for fiscal year 1973 (the hold harmless amount) and no less than 0.5 percent of the entire fiscal year appropriation (the statutory minimum percentage).

This was the order in which the computations were figured until 1985: proportionality first, hold harmless second and minimum percentage third. In 1984 the statutory language was changed to say that "subject to" the hold harmless provision, funds should be distributed proportionally, except that each State must receive a 0.5 percent minimum allocation. Based on this legislative change, the Department adopted the computation method used today: hold harmless first, proportionality second, and minimum percentage third.

The Department has been consistent in its computation methods since 1985, and in all that time no complaint or comment has been received from any State or Area Agency on Aging, congressional Committee, or any other source. In fact, GAO reviewed the Department's State allocations under the Older Americans Act in 1986 when funding limitations made it impossible to meet the hold harmless requirement. Although the GAO was looking at different questions regarding reductions in State allocations rather than computation methods, at that time GAO determined that correct procedures had been used for making those reductions, and received detailed information about the procedures the Department uses in computing State allocations.

We will continue to implement the present computation method absent a definitive determination of congressional intent. However, the Department will consider whether the Administration should propose legislation to amend the Older Americans Act. As part of this consideration, we will seek consultations with appropriate members of Congress, States, and other interested parties.

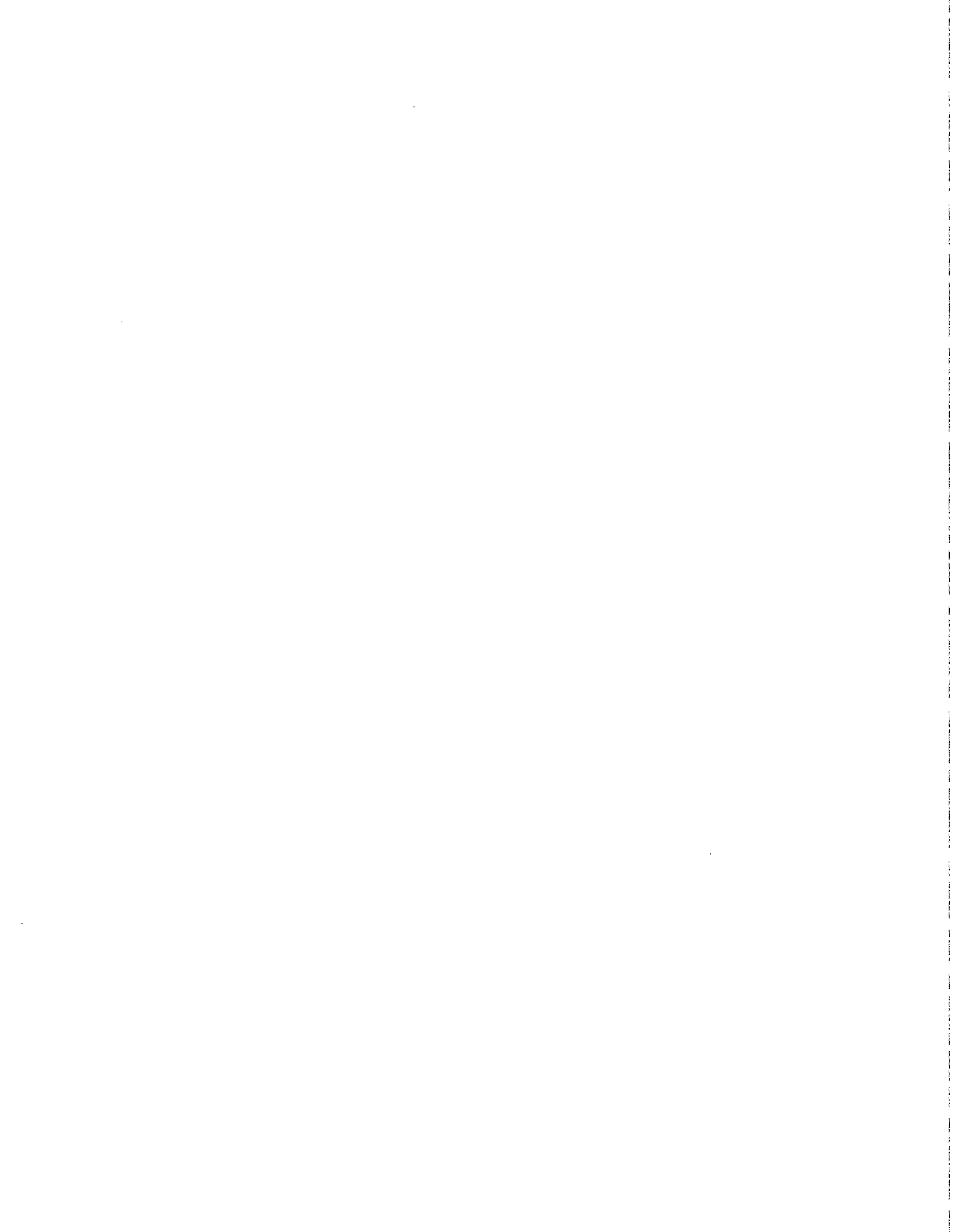
Major Contributors to This Report

**Health, Education,
and Human Services
Division,
Washington, D.C.**

Jerry Fastrup, Assistant Director, (202) 512-7225
Greg Dybalski, Senior Economist
John Vocino, Evaluator-in-Charge

**Office of General
Counsel**

Barry R. Bedrick, Associate General Counsel
Daniel Schwimer, Attorney



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