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BY THE COMPTROLLER GENERAL  
**Report To The Chairman  
Special Committee On Aging  
United States Senate  
OF THE UNITED STATES**

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**An Evaluation Of The Organizational  
Relationship Of The Office Of Human  
Development Services And  
The Administration On Aging**



GAO believes that certain functions of the Department of Health and Human Services' Office of Human Development Services violate the Older Americans Act. The Department disagrees with this position.

GAO recommends that the Secretary of Health and Human Services make organizational changes to comply with the Older Americans Act. If the Secretary finds that complying with the act adversely affects the Department's effectiveness and efficiency, he should initiate legislation to amend the act.



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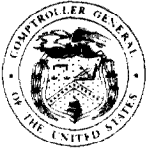
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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

B-199491

The Honorable H. John Heinz III  
Chairman, Special Committee on Aging  
United States Senate

Dear Mr. Chairman:

In a letter dated April 24, 1980, the former Chairman, Senate Special Committee on Aging, requested that we review the Department of Health and Human Services' Office of Human Development Services (OHDS). OHDS supervises program agencies, such as the Administration on Aging. In subsequent discussions with his office, we were asked to determine if

--OHDS staff units have infringed on and usurped the responsibilities of the Commissioner on Aging, who heads the Administration on Aging;

--staff units' placement over the Administration has resulted in duplicate functions and excessive administrative burdens; and

--OHDS has attempted to systematically find out its workload requirements and staff needs as well as those of the Administration on Aging.

6a The Secretary of Health and Human Services (formerly the Department of Health, Education, and Welfare) had the full legal authority to create OHDS, place it under an Assistant Secretary, and make it responsible for program agencies, such as the Administration on Aging. However, OHDS' present organizational structure (see app. II) violates provisions of 42 U.S.C. 3011(a) (section 201(a) of the Older Americans Act, as amended) which state:

"The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner."

Specifically, the structure violates the provisions because

- grants and contract officers located in OHDS' Office of Management Services are not directly responsible to the Commissioner on Aging even though they perform many grant and contract administration functions regarding the Administration on Aging and
- financial management responsibility for the Administration on Aging's discretionary and formula grants is vested in regional office personnel who are not directly responsible to the Commissioner on Aging.

We have not identified any adverse effects associated with these violations. We found no evidence of duplicate functions or excessive administrative burdens. However, because the Congress intended for the above functions to be carried out by persons directly responsible to the Commissioner on Aging, we are recommending actions to deal with these matters.)

OHDS officials generally believe that their staff units and program units, including the Administration on Aging, are insufficiently staffed. The Office lacks a work force planning system for determining staff needs, which is not unique in this regard. A Federal policy and standards for work force planning are needed throughout the Government. We have recommended in a prior report that the Office of Management and Budget and the Office of Personnel Management take action on this issue.

The Department of Health and Human Services disagrees that its organizational structure violates the provisions, but we believe the basis for its opinion is invalid. Appendix I contains specific questions and answers on our interpretation of the violations as well as other matters related to OHDS and the Administration on Aging.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

We interviewed officials in OHDS staff units and present and former officials in the Administration on Aging to get their views on whether staff units are (1) usurping and infringing on the Administration on Aging's responsibilities, (2) duplicating functions of this Administration, or (3) have imposed excessive administrative burdens. We also asked these officials about their efforts to systematically determine their staff needs. We interviewed officials in the other program units to inquire about some of the same issues as they relate to their programs. We also interviewed

Department of Health and Human Services officials about their evaluation of OHDS and the Department's efforts to help OHDS determine its staff needs.

We reviewed documentation related to the 1973 creation of the Office of Human Development (now OHDS) and OHDS' 1977 and 1980 reorganizations. We reviewed OHDS' delegations of authorities and functional statements dated September 29, 1980, to determine the staff units' and some of the Administration on Aging's responsibilities.

To determine if OHDS' staff units were imposing excessive administrative burdens on the Administration on Aging, we reviewed (1) documentation on OHDS' review processes for its fiscal year 1981 budget and the program units' plans for discretionary funds, (2) OHDS' grant and contract procedure manuals, (3) fiscal year 1979 and 1980 reading files, and (4) 1979 contract files and documentation on the processing of calendar year 1979 contracts and fiscal year 1980 grants.

Our review of duplicate functions and excessive administrative burdens was limited because OHDS was still undergoing phases of its 1980 reorganization, and our review covered the period June to December 1980. OHDS' first functional statements covering this reorganization to show the responsibilities of its units were not finalized until September 29, 1980, and the remaining statements were not finalized until January 27, 1981. Also, staff were meeting to clarify their roles, and certain procedures and guidelines were to be revised or established. Thus, it was too early to fully assess these areas.

We reviewed the Older Americans Act of 1965, as amended (Public Law 89-73, July 14, 1965, 42 U.S.C. 3001 to 3057), to determine the legality of certain authorities and responsibilities of the Secretary of Health and Human Services; the Assistant Secretary for Human Development Services and his staff units; and the Commissioner, Administration on Aging. (See app. I.)

#### BACKGROUND

In 1973 the Secretary of Health, Education, and Welfare created the Office of Human Development. In 1977, the Office was reorganized and renamed OHDS. It administers a wide range of human services and development functions designed to assist in alleviating the problems of the elderly, the handicapped, children, and Native Americans.

OHDS, which was again reorganized in May 1980, is headed by an Assistant Secretary and consists of three headquarters staff units and four program units.

Headquarters staff units

Program units

Office of Management Services

Administration on Aging

Office of Policy Development

Administration for Children,  
Youth and Families

Office of Program Coordi-  
nation and Review

Administration on Develop-  
mental Disabilities

Administration for Native  
Americans

A current organizational chart and descriptions of OHDS functions are in appendix II.

The Administration on Aging, headed by the Commissioner on Aging, is the only program unit created by legislation. The other program units were created administratively by the Secretary, generally by consolidating several programs that served the same target population. For example, the Administration for Children, Youth and Families is a consolidation of several programs, such as the Head Start and Child Abuse and Neglect Programs. (See app. II.)

The Older Americans Act of 1965 (Public Law 89-73, July 14, 1965) created the Administration on Aging and placed it within the Department of Health, Education, and Welfare. Further, to insure some independence for the Administration on Aging, the Older Americans Act in 1974 was amended to prohibit the Commissioner on Aging's functions from being delegated to individuals not directly responsible to the Commissioner. This prohibition does not apply to routine administrative functions for the Administration on Aging, such as budgeting and personnel administration, which are not specified in the act as functions of the Commissioner. However, it does apply to the policymaking and nonpolicymaking responsibilities related to functions clearly given to the Commissioner on Aging by the Older Americans Act, such as the administration of grants and contracts and financial management for grants.

CERTAIN GRANT AND CONTRACT OFFICERS'  
ADMINISTRATIVE FUNCTIONS VIOLATE  
THE OLDER AMERICANS ACT

Section 2(a) of the 1974 amendments to the Older Americans Act (Public Law 93-351, July 12, 1974, 88 Stat. 357) amended

section 201 of the act to prohibit the Commissioner on Aging's functions from being delegated to individuals not directly responsible to the Commissioner. However, since 1977, OHDS' discretionary grants and contracts administration functions, including those for the Administration on Aging, have been centralized in one of its staff units--the Office of Administration and Management (now the Office of Management Services). Although this staff unit performs many grant and contract administration functions regarding the Administration on Aging, it is directly responsible to the Assistant Secretary of Human Development Services, not to the Commissioner on Aging.

The Department of Health and Human Services believes that OHDS grant officers may carry out their functions as long as the functions which relate to policy matters are advisory and not decisionmaking. It believes that such grant officers may make decisions on routine administrative matters and may participate in a supportive, advisory role, short of decision-making on matters involving policy.

However, OHDS grant officers share many responsibilities with the Administration on Aging. They and the Administration on Aging are jointly responsible for administering the grantee's project performance and for monitoring project operations to assure that the Government's interest is protected. The grant officer also serves as the contact for all official written communications with the grantee which commit or may result in committing OHDS to a change in the amount of the grant, the grant budget, or any terms and conditions of the grant.

In a similar situation, OHDS' contract officer, who is not responsible to the Commissioner on Aging, is the authorized official to sign the Administration on Aging contracts on behalf of the Federal Government and has final authority to approve or disapprove program units' contracts, including those for the Administration on Aging. We believe this also violates the same statutory restriction.

The Administration on Aging's use of OHDS grant and contract administrative support services is not necessarily precluded by 42 U.S.C. 3011(a) as long as the Administration controls such support services. However, OHDS duties in these areas reflect the Administration on Aging's apparent lack of control over its programs. The grant and contract officers carry out their responsibilities for all OHDS program units, not just for the Administration on Aging. Accordingly, they are directly responsible to the Assistant Secretary and not to the Commissioner on Aging. Thus, these procedures violate the nondelegation provisions of the Older Americans Act.

OHDS FINANCIAL MANAGEMENT FOR  
GRANTS VIOLATES THE ACT

As part of OHDS' 1980 reorganization, financial management responsibilities for the Administration on Aging's discretionary 1/ and formula 2/ grants were centralized with that of other OHDS units in the newly created regional offices of fiscal operations. While financial management for discretionary grants was centralized in the regional offices before 1980, financial management for formula grants was not. The regional offices of fiscal operations report to the regional administrator who is directly responsible to the Assistant Secretary and not the Commissioner on Aging. These offices plan and direct the fiscal monitoring of the Administration on Aging grantees. Thus, OHDS is violating the Older Americans Act because financial management responsibility for the Administration on Aging is vested in regional office personnel not directly responsible to the Commissioner on Aging.

The Department of Health and Human Services has a contrary opinion and has construed the restriction in 42 U.S.C. 3011(a) as prohibiting only the delegation of policymaking functions. Under the Department's interpretation, the Secretary has authority to approve the delegation of any nonpolicymaking function of the Commissioner to officers who are not responsible to the Commissioner.

It is possible that a system could be devised that would permit the Administration on Aging to use OHDS regional offices' fiscal monitoring capabilities without relinquishing the control required by 42 U.S.C. 3011(a). However, a nebulous policy or nonpolicy distinction, such as that made by the Department, with no apparent control by the Administration on Aging over "nonpolicy" matters, does not in our view comply with the clear mandate of 3011(a).

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1/Discretionary grants refer to Federal financial assistance in support of a project which legally permits the appropriate program office head to approve the project, the project period, the grantee, and the amount of the award.

2/Formula grants are awarded under Title III of the Older Americans Act, as amended, "Grants For State and Community Programs on Aging." These grants are awarded according to a statutory formula based on the States' population aged 60 and over.



NO ADVERSE EFFECTS HAVE BEEN IDENTIFIED WITH THESE VIOLATIONS

We have not identified any adverse effects associated with the violations discussed in this report. We found no evidence of duplicate functions or excessive administrative burdens being imposed on the Administration on Aging. Generally, officials in the Administration on Aging and in the staff units expressed no problem with established processes. However, some Administration on Aging officials expressed concern that the Commissioner on Aging has to go through the Assistant Secretary for Human Development Services, rather than straight to the Secretary of Health and Human Services. We believe the direct reporting line from the Commissioner on Aging to the Assistant Secretary does not violate the law.

We noted that documents related to OHDS' creation and reorganizations indicate that these changes were designed to further enhance the efficiency and effectiveness of OHDS human development functions. However, we did not find any evidence of this nor of similar benefits that could or could not be accomplished within the law.

OHDS HAS NOT SYSTEMATICALLY DETERMINED ITS STAFF NEEDS

The Administration on Aging and other OHDS officials generally question the adequacy of staffing levels in both staff and program units. Before 1977, between 93 and 103 positions were transferred from the Administration on Aging to OHDS to provide supportive services (e.g., personnel, budget, and planning) to the Administration on Aging and other program units. As a part of the 1980 reorganization, OHDS transferred 40 positions from its former Administration of Public Services to the Administration on Aging. However, even with this increase, Administration on Aging officials still believe they are insufficiently staffed.

The OHDS' Chief of the Budget Analysis Branch stated that the Department of Health and Human Services has been reluctant to allocate additional positions to program units because the Department was not getting adequate justifications from the program units.

Because they lack a systematic, formal process for determining their staff needs, we could not determine if the Administration on Aging or other OHDS units were sufficiently or insufficiently staffed. This would have required a lengthy detailed review which we did not perform. Such a review would not have been appropriate since the reorganization was still in progress.

Work force planning could be an effective, internal management tool in making decisions about the maximum use of available human resources in the most cost-efficient manner. In addition, work force planning can provide more sound and reliable data for personnel justifications in budget submissions. Rising costs and increasing competition for limited funds make it essential that work force requirements and personnel management decisions be based on appropriate and credible work force planning systems and procedures. We recommended in our report "Federal Work Force Planning: Time For Renewed Emphasis" (FPCD-81-4, Dec. 30, 1980) that the Office of Management and Budget and the Office of Personnel Management

- establish a Federal policy and standards for work force planning and
- encourage Federal agencies to make work force planning an integral part of their overall management planning system.

#### CONCLUSIONS

Because OHDS is violating the Older Americans Act in the administration of certain grant and contract administration functions and financial management functions, it must make changes to correct these matters. Contrary to the Department of Health and Human Services' opinion, we believe the functions (policymaking and nonpolicymaking) of administering grants and contracts and financial management for grants have been vested by statute in the Commissioner. Thus, delegation of these functions to offices not directly responsible to the Commissioner violates the statutory restriction.

We do not know if the changes that are necessary for OHDS to comply with the Older Americans Act will be more or less beneficial. However, if the Secretary finds that his complying with the Older Americans Act adversely affects his efforts to achieve effectiveness and efficiency, he should document any adverse impact and, if necessary, initiate legislation to amend the act.

#### RECOMMENDATION

We recommend the the Secretary of Health and Human Services revise OHDS' organization to discontinue the delegation of the Commissioner on Aging's functions, which allows

- OHDS grant and contract officers to perform administrative functions regarding the Administration on Aging's discretionary grants and contracts and

--OHDS regional offices of fiscal operations to handle financial management functions for the Administration on Aging's discretionary and formula grants. ]

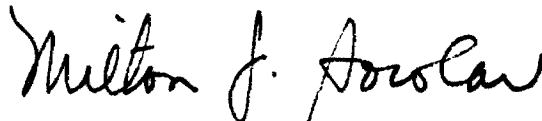
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As you requested, we did not take the additional time to obtain agency comments on the matters discussed in this report. However, we provided copies of our legal opinions to the Department of Health and Human Services.

As arranged with your office, we are sending copies of this report to the Secretary of Health and Human Services; the Assistant Secretary for Human Development Services; the Commissioner, Administration on Aging; the Director, Office of Management and Budget; the Director, Office of Personnel Management; and the Chairmen, House Committee on Government Operations and Senate Committee on Governmental Affairs. Also, as arranged, copies will be sent to the Chairmen, Subcommittee on Child and Human Development, Senate Committee on Labor and Human Relations; House Select Committee on Aging; Subcommittee on Labor, Health, Education, and Welfare, House Committee on Appropriations; and the House Committee on Education and Labor.

Section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations. This written statement must be submitted to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report. A written statement must also be submitted to the House and Senate Committees on Appropriations with an agency's first request for appropriations made more than 60 days after the date of the report. Also, we are asking the Secretary to submit to your Committee a copy of his written statement on actions taken on our recommendation.

Sincerely yours,



Acting Comptroller General  
of the United States



QUESTIONS AND ANSWERS ON THE  
ORGANIZATIONAL STRUCTURE OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES' (HHS')  
OFFICE OF HUMAN DEVELOPMENT SERVICES (OHDS)  
AND THE ADMINISTRATION ON AGING (AoA)

Question #1: What is the legal basis for OHDS and did the Congress ever envision a structure such as OHDS?

Answer: President Eisenhower created the Department of Health, Education and Welfare (HEW), the predecessor of HHS, through the transmission to Congress of Reorganization Plan No. 1 of 1953 which became effective April 11, 1953, 18 F.R. 2053, 67 Stat. 631, 42 U.S.C. 202 note. Section 6 of Reorganization Plan No. 1 reads as follows:

"The Secretary may from time to time make such provisions as the Secretary deems appropriate authorizing the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department."

Under this section the Secretary of HHS has authority to assign the performance of functions vested in him by law to subordinate officers or organizations within his Department provided such assignment is not inconsistent with law. This allows the Secretary to reorganize his Department and redistribute the performance of functions vested in him by law. Additional authority for intra-departmental reorganizations is contained in 5 U.S.C. S. 301 which provides as follows:

"The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property \* \* \*." (Emphasis supplied.)

Accordingly, the Secretary of HHS has authority to reorganize his department through the redistribution of functions for which he is responsible among his subordinate officers and administrative organizational elements. Under this authority the Secretary of HEW was empowered to create OHDS, place it under an Assistant Secretary, and make it responsible for the immediate control and supervision of program agencies such as the Administration on Aging (AoA). While we cannot say that the Congress envisioned OHDS, it clearly envisioned that the Department's structure might be changed for administrative reasons.

Question #2: The Commissioner of the Administration on Aging reports directly to the Assistant Secretary, OHDS. Does this meet the statutory requirement in section 201(a) of the Older Americans Act, as amended (42 U.S.C. 3011(a)), that "\* \* \* the Commissioner shall be directly responsible to the Office of the Secretary"?

Answer: Pursuant to the terms of the statute, the Commissioner must be directly responsible to the Office of the Secretary. Thus, there should be no organizational element interposed between the Commissioner and the Office of the Secretary. This direct organizational linkage condition appears to be satisfied by the current organization inasmuch as the Statement of Mission, Organization, Function, and Delegation of Authority for OHDS (section DA.10, 43 F.R. 33327, July 31, 1978) states that OHDS is located within the Office of the Secretary. Hence, in reporting to the Assistant Secretary, OHDS, the Commissioner is "directly responsible to the Office of the Secretary."

Originally, in section 201 of the Older Americans Act of 1965, (Public Law 89-73, July 14, 1965), the Administration on Aging was merely established within the Department and no specific provisions were made regarding to whom the Commissioner, a Presidential appointee, was to be responsible.

The House Report on the Older Americans Act of 1965 indicated that the intent of the House of Representatives was that the AoA would enjoy equal status within the organizational structure of HEW as other high level program agencies with the Department such as the Social Security Administration. The House Report contained the following explanation:

"The Administration on Aging, headed by a Commissioner appointed by the President, subject to confirmation by the Senate, would have coequal status with the Social Security and Welfare Administrations. Thus; the older population would be meaningfully represented in the upper echelons of the Federal Government.

"The proposed Administration on Aging would establish a specific high-level agency with power and responsibility to take action. It would have full-time responsibility, backed by professional knowledge and ability, and the strong desire to represent effectively in the Federal Government our 18 million older Americans." H.R. Rep. No. 145, 89th Cong., 1st Sess. 7 (1965).

The above quoted legislative history manifests congressional intent that the Commissioner be accorded sufficient status within the HHS organizational structure so as to have the requisite authority and responsibility to implement the important mission of the AoA.

The requirement in section 201(a) of the Act as amended that the Commissioner be directly responsible to "the Office of the Secretary" was added by the Comprehensive Older Americans Services Amendments of 1973. The House version of the 1973 amendments (H.R. 71, 93rd Congress) provided that the Commissioner was to be "directly responsible to the Secretary and not to or through any other officer." The House Committee on Education and Labor explained this provision as follows:

"Legislative history clearly demonstrates that the intent of Congress when it first passed the Older Americans Act in 1965 was to create an entity highly visible in the Department of Health, Education, and Welfare to serve as a focal point for dealing with the problems of the aged. In line with this objective, the office was to be headed by a Presidentially appointed Commissioner. Yet, in 1967, AoA was placed within the Social and Rehabilitation Service with the Commissioner on Aging reporting to the Administrator of the Social and Rehabilitation Service, who is not a Presidential appointee."  
H.R. Rep. No. 93-43, 7-8 (1973).

The House provision regarding the Commissioner's organizational position within the Department was modified by a House-Senate compromise amendment to S. 50, the Senate version of the 1973 legislation:

"The compromise amendment provides that the Commissioner shall report to the Office of the Secretary, rather than to the Secretary himself."  
119 Cong. Rec. 13158 (1973).

The compromise amendment was adopted.

Thus, the legislative history clearly shows it was not the intent of the Congress that the Commissioner be directly responsible to the Secretary personally, inasmuch as that proposal was specifically rejected. Rather, the Congress expressed its intent in the plain language of the amended section 201 that the Commissioner is to be directly responsible to the Office of the Secretary as is now the case. Insofar as the Congress' intent was that the Commissioner report to a Presidential appointee (see H.R. Rep. No. 93-43,

quoted above), the present organization achieves that goal also since the Commissioner reports to the Assistant Secretary, OHDS.

Question #3: Legally, to whom should the regional staff on aging be reporting (i.e., the Regional Administrator for OHDS or directly to the Commissioner)?

Answer: Because AoA is a statutory agency and the Commissioner is by law the agency head, AoA regional staff are directly responsible to the Commissioner. The work of the AoA regional staff is assigned and supervised by officials subordinate to the Commissioner. On the other hand, the OHDS Regional Administrator is responsible for coordinating OHDS programs for a specific area. Therefore AoA regional staff may be required to coordinate their activities with the OHDS Regional Administrator.

Question #4: Senate Special Committee on Aging staff that initiated this investigation believe that functions assigned to the Commissioner in the Older Americans Act of 1965, as amended, 42 U.S.C. Chapter 35, have been delegated to other officers in OHDS who are not directly responsible to the Commissioner. If such delegations have been made, do they violate the provision of 42 U.S.C. 3011(a) that: "The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner"?

Answer: A delegation of functions of the Commissioner to OHDS officials not directly responsible to the Commissioner would violate the restriction in 42 U.S.C. 3011(a).

Functions may be delegated in a formal or informal manner. Formal delegations may be made, for example, through a Statement of Mission, Organization, Function and Delegation of Authority which is published in the Federal Register. On the other hand informal delegations may be made by verbal orders, by office memoranda, or by custom and usage. In order to determine whether a function has been informally delegated, a determination must be made on a case by case basis.

Question #5: In a memorandum dated July 28, 1980, from the Commissioner on Aging to the Assistant Secretary, OHDS on discretionary grant and contract authorities, the Commissioner disagrees with a position by the Assistant Secretary concerning grants policy. No formal reply was made to the Commissioner's memorandum and it appears that the memorandum was withdrawn



based on an informal agreement that a reply was not necessary. What is your opinion on the assertions made in the Commissioner's memorandum?

Answer: The Assistant Secretary had indicated that "OHDS is the granting agency." The Commissioner disputes this and points out that under the Older Americans Act, 42 U.S.C. Chapter 35, the authority to make grants and contracts incident to that program is vested in him and delegation of such authority to officers outside his control is prohibited. He recognizes that actually the grant and contract officers who authenticate his grants and contracts are not under his control. However, he seems to be pointing out that their acts are ministerial in nature and that the actual administration of program grants and contracts is within his authority. He concludes with a warning that any OHDS usurpation of his authority in this area could lead to undesired consequences:

"I think that disregard of these legal facts will lead to a legal determination that the grants officer and the contracts officer on AOA contracts must be a direct subordinate of the Commissioner if their signature is to be binding."

The issue is whether grant and contract officers who sign AOA grants and contracts should be directly responsible to the Commissioner so that all aspects of AOA grants and contract administration will be within his control. Based on our review of applicable law and regulations, we believe that such officials are required to be directly responsible to the Commissioner.

Under the provisions of 42 U.S.C. 3012, the AOA has been charged with the duty and function to "administer the grants provided by this chapter." Numerous statutory provisions of 42 U.S.C. Chapter 35 explicitly empower the Commissioner to make grants or contracts for various purposes. By the same token, the Secretary, HHS, appears to have been empowered to make only one type of grant in the chapter, under 42 U.S.C. 3035f, for utility and home heating cost demonstration projects. Accordingly, the Congress appears to have clearly distinguished between functions granted to the Commissioner and functions granted to the Secretary under the Act, with the intention that functions vested in the Commissioner would in fact be performed by him or by officials under his direct supervision.

As explained in the preceding answers, the provisions of 42 U.S.C. 3011(a) preclude the delegation of the Commissioner's functions to officials not directly responsible to him. Inasmuch as the Congress in various statutory provisions has specifically tasked the Commissioner with making

grants and contracts in the furtherance of the Older Americans Act program objectives, the Secretary is prohibited from delegating the functions of authenticating and administering grants and contracts to officials within OHDS who are not directly responsible to the Commissioner.

Notwithstanding the statutory restrictions detailed above, certain grant and contract administration functions are being performed by officials not responsible to the Commissioner. A review of the OHDS Grants Administration Staff Manual, promulgated in 1978, indicates that the procedure set forth therein is applicable to all program offices within OHDS, presumably including AoA. The manual defines Grants Officer as follows:

"As used in this manual, this term means either the OHD[S] Grants Officer or the regional office staff member who has been appointed Grants Officer by the Assistant Regional Director for Human Development."

The above quoted definition certainly indicates that AoA as a program office within OHDS must rely on a Grants Officer within OHDS to perform Grants Officer functions for Older Americans Act programs. The manual states on page 4-1 that: "The Grants Officer is designated as the 'Receiving official' for all OHD[S] discretionary grant programs." On pages 11-1, 11-2, 11-6, it further states that:

"The Grants Officer and the cognizant OHD[S] program office(s) have the joint responsibility of administering the grantee's project performance to assure that adequate progress is being made toward achieving the goals of the project.

\* \* \* \* \*

"The Grants Officer shall serve as the mandatory control and receipt point for all official written communications with the grantee which commit or may result in committing OHD[S] to a change in the amount of the grant, the grant budget, or any terms and conditions of the grant.

\* \* \* \* \*

"Grants Officer shall sign with the concurrence of the program Office head, all correspondence relating to the business aspects of the grants. (The program office head may relinquish to the Grants Officer his prerogative of concurrence (sic) on such correspondence if so desired).

\* \* \* \* \*

"Both the Grants Officer and cognizant program office are jointly responsible for the continuing monitoring and surveillance of project operations to assure that the Government's interest is protected and that the grantee is adhering to the terms and conditions of the grant award."

From the above quoted material, it is clear that the OHDS Grants Officer performs many grant administration functions regarding AoA grants. However, the function of administering such grants has been vested by statute in the Commissioner. Inasmuch as the Secretary is prohibited by 42 U.S.C. 3011(a) from delegating these functions to officials outside the Commissioner's control, we are of the opinion that the de facto delegation of these functions to the OHDS Grants Officer violates that statutory restriction. Apparently a similar situation exists regarding AoA program contracts wherein there has been a de facto delegation of AoA contract administration functions to the OHDS Contract Officer, which violates the same statutory restriction.

As suggested in our answer to Question #7, the use of OHDS administrative support services by AoA is not necessarily precluded by 3011(a) so long as AoA control is maintained over such support services. As presently drafted, however, the manual provisions discussed above reflect the apparent lack of AoA control in the administration of AoA programs.

Question #6: Does the consolidation of AoA's financial responsibility for its formula grants with all other HDS financial responsibility violate the non-delegation provisions of 42 U.S.C. 3011(a) (section 201(a) of the Older Americans Act)?

Answer: Yes. The consolidation of financial management responsibilities was described in an April 25, 1980, memorandum from the Assistant Secretary for Human Development Services to the Secretary of the Department as follows:

"All financial management responsibilities in each region would be consolidated in a new Office of Fiscal Operations (OFO) under the Regional Administrator (RA). Program administrations would retain policy control and allocation authority over their formula grant activities, but the OFO would plan and direct fiscal monitoring of the grantees. This is the way discretionary grants and contracts are handled now. Current financial management staffs of the [Administration of Public Services]

(APS) and AoA would be transferred with their functions to the OFO, and no new financial management positions would be approved for any of the categorical program units in the field."

The restriction on the delegation of the Commissioner's functions is contained in 42 U.S.C. 3011(a) as follows:

"The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner."

We believe delegation of functions of the Commissioner to OHDS officials not directly responsible to the Commissioner would violate this restriction.

The HHS legal staff has a contrary opinion and has construed the restriction in 42 U.S.C. 3011(a) as prohibiting only the delegation of policymaking functions. Under the HHS interpretation the Secretary has authority to approve the delegation of any nonpolicymaking function of the Commissioner to officers who are not responsible to the Commissioner.

The legal staff bases its interpretation on the legislative history of a comparable prohibition in 29 U.S.C. 702(a) against the delegation of functions from the Commissioner of Rehabilitation Services. The Rehabilitation Act Amendments of 1974 (Public Law No. 93-516, Dec. 7, 1974, 88 Stat. 1617) contained the restriction, which stated: "\* \* \* The functions of the Commissioner [of Rehabilitation Services] shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner." The legislative history of this provision (in S. Rep. No. 93-1297, 93rd Cong., 2d Sess. 32) indicates that the prohibition is not intended to prevent "\* \* \* the centralized administration of certain routine administrative services by the Department \* \* \* in support of (Rehabilitation Services Act) RSA functions and programs in the categories of budget formulation, grant administration, financial administration and personnel administration."

The Department has applied this legislative history to support its interpretation of the restriction against delegation of the functions of the Commissioner on Aging contained in 42 U.S.C. 3011(a), a statute that is unrelated to that legislative history. The best evidence of congressional intent regarding 42 U.S.C. 3011(a) can be found in the language of that statute and its legislative history and not in the legislative history of unrelated statutes.

The starting point in every case involving construction of a statute is the language of the statute itself. Greyhound Corp. v. Mt. Hood Stages, Inc., 437 U.S. 322 (1978). Where a statute plainly expresses the will of the Congress in language that does not permit or require a strained interpretation, the words thereof may not be extended or distorted beyond their plain popular meaning. Adams v. Morton, 581 F. 2d 1314 (1978). Section 3011(a) clearly states that the restriction is against any delegation of the functions of the Commissioner on Aging. This is significant inasmuch as the restriction in 29 U.S.C. 702(a) states instead that "The functions of the Commissioner of Rehabilitation Services shall not be delegated \* \* \* both with respect to program operation and administration \* \* \*." Unlike section 3011(a), which explicitly prohibits any delegation of functions, the legislative history behind section 702(a) indicates that not all delegations of functions are prohibited. Accordingly, the word "any" in section 3011(a) should be read as prohibiting all delegations of functions.

Moreover, the legislative history of section 3011(a) confirms that Congress intended that none of the functions of the Commissioner on Aging should be delegated to officers outside his control regardless of whether such functions involved policymaking responsibilities. This view is supported by Senate Report No. 932, 93rd Cong., 2d Sess. 8, which accompanied H.R. 11105, a bill which was the derivative source of Public Law 93-351 (July 12, 1974, 88 Stat. 357) which amended the Older Americans Act of 1965.

Prior to this amendment, section 3011(a) had authorized the Secretary of the Department to permit the delegation of the Commissioner's functions to officials not directly responsible to the Commissioner so long as the Secretary submitted a plan to Congress for such delegation and consulted with the appropriate committees. Section 2 of Public Law 93-351 amended 42 U.S.C. 3011(a) by deleting this procedure for the delegation of the Commissioner's functions.

The Senate Report noted that the Secretary had been attempting to implement a plan for delegating certain of the Commissioner's functions to the Department's Regional Directors in 10 regions throughout the country. In order to preclude such delegation, the Senate Committee on Labor and Public Welfare proposed this amendment of section 3011(a). The Report stated that if the Secretary's planned delegation to Regional Directors "\* \* \*" should be in effect when this bill is enacted, the committee amendment would require the Commissioner to modify the delegation so that none of his functions are delegated except to officers directly responsible to him." (Emphasis supplied.)

In this connection the Report reads as follows:

"By affirming the status of the Commissioner as the official responsible for carrying out programs authorized by the Act, and by seeking to enhance the status of the Administration on Aging with HEW, the Congress intended to remedy the fragmentation and lack of centralized purpose that was the case prior to 1973. It was expected that out of this would emerge a national policy for coordinating the delivery of services to the elderly, with responsibility for implementation of this policy to be clearly lodged in an official answerable to the Congress.

"The proposed delegation to HEW Regional Directors runs directly contrary to these goals of the 1976 legislation. It would again fragment responsibility."

This statement clearly shows that Congress intended to establish an absolute ban on the delegation of the Commissioner's functions to officials outside his control.

The floor debate on this provision is also instructive. Senator Beall, who was opposed to the amendment, argued as follows:

"\* \* \* we are not talking about delegating authority for making policy. The policymaking decisions and authority for establishing regulations will always remain with the Commissioner here in Washington. What we are talking about is the flexibility that the Commissioner should have in delegating the administrative responsibility to people at the regional level who are constantly in contact with the Governors of the various States and the mayors of the various cities where these programs are placed." 120 Cong. Rec. 20003 (1974).

Senator Beall thus indicates that if the then existing delegation authority were to be repealed, the delegation of nonpolicymaking functions of the Commissioner to officials outside of his control would be prohibited. This is additional evidence that, by the subsequent repeal of that authority by Public Law 93-351, Congress intended to prohibit the delegation of nonpolicymaking functions as well as policymaking functions.

Question #7: Do you agree with the HHS opinion that AoA's routine administrative functions can be centralized in OHDS without violating 42 U.S.C. 3011(a)?

Answer: As indicated in our answer to question #6, 42 U.S.C. 3011(a) must be construed as prohibiting the Secretary from approving any delegation of the Commissioner's functions to officials outside his control regardless of whether such functions are policymaking or nonpolicymaking. It is possible that a system could be devised that would permit the AoA to use the fiscal monitoring capabilities of the Office of Fiscal Operations without relinquishing the control required by 42 U.S.C. 3011(a). However, a nebulous policy or non-policy distinction such as that discussed in the HHS legal memorandum, with no apparent control by AoA over "non-policy" matters, does not in our view comply with the clear mandate of 3011(a).

Question #8: A memorandum from HHS' General Counsel to the Assistant Secretary, OHDS, dated August 26, 1980, deals with delegations of authority to resolve audit findings. What is your viewpoint as to the legal interpretation presented in this document?

Answer: We agree with the HHS General Counsel's analysis and conclusions that the Secretary of HHS, by her May 2, 1980 memorandum on resolution of audit findings, did not violate the restriction in 42 U.S.C. 3011(a) concerning the delegation of the AoA Commissioner's functions.

The Secretary's memorandum directed that certain improvements be made in HHS procedures for resolving audit findings. Under the new directive, proposed resolutions of audit exceptions that exceeded \$100,000 and were less than 85 percent of the auditor's recommended disallowance were required to be approved by the Heads of Principal Operating Components, such as the Assistant Secretary, OHDS, or their first line Deputies for operations. Authority to approve proposed resolutions of audit exceptions of lesser amounts (or of amounts over \$100,000 which are 85 percent or more of the recommended disallowance) could be delegated to program managers.

The Commissioner, AoA, questioned whether the Secretary's directive violated the provisions of the Older Americans Act, 42 U.S.C. 3011 et seq., that authorize the Commissioner, AoA, to administer the program and restrict the delegation of his authority.

The General Counsel, HHS, responded that the Secretary's memorandum neither impinged on the statutory authority of the Commissioner nor relieved him of any of his administrative or program responsibilities. The General Counsel justified these conclusions as follows:

"We have concluded that the Secretary's instructions do not require a delegation of any authority of the Commissioner and, therefore, are not affected by section 201(a) of the Older Americans Act. Those instructions merely require approval by, in this case, the Assistant Secretary for Human Development Services of a proposed action by the Commissioner. This arrangement is consistent with the instruction in section 201(a) that '[I]n the performance of his function, the Commissioner shall be directly responsible to the Office of the Secretary. "The Assistant Secretary for Human Development Services is in the Office of the Secretary and is the Office through which the Commissioner on Aging report to the Secretary. [Footnote deleted.]

"There is nothing in section 201(a) of the Older Americans Act that prohibits actions of the Commissioner from being made subject to approval within the Office of the Secretary. The

Congressional concern in enacting section 201(a) was the contrary, namely, that the functions of the Commissioner on Aging were being inappropriately delegated to lower level offices in the Department.

\* \* \* \* \*

"\* \* \* The Secretary's May 2 memorandum does not require the delegation of functions of the Commissioner to an officer not responsible to him. It simply requires decisions of the Commissioner with respect to certain audit matters to be approved at a higher level within the Office of the Secretary. This arrangement is completely consistent with the restrictions in section 201(a).

"The fact that program responsibility for the Aging program is lodged by statute in the Commissioner, and that delegations to officials not responsible to him are prohibited, does not lead to the conclusion that the Commissioner is an independent agency responsible to no higher authority. Under section 201(a), the Administrating (Sic) on Aging and its Commissioner are organizationally placed within the Office of the Secretary in the Department Of Health and Human Services. As such, like other components of the Department, they are subject to the overall supervision and direction of the Secretary, as provided in Section 1 of Reorganization Plan No. 1 of 1953."



We find that the HHS General Counsel's explanation is correct and the Secretary's directive did not violate the provisions of the Older Americans Act as contained in 42 U.S.C. 3001 et. seq. The Secretary has independent authority to perform audits of programs within his Department. It is he and not the Commissioner who delegates this authority to the auditors. Also, under 42 U.S.C. 3017, the Secretary and not the Commissioner has been charged with the responsibility of evaluating the effectiveness of Older Americans Act programs.

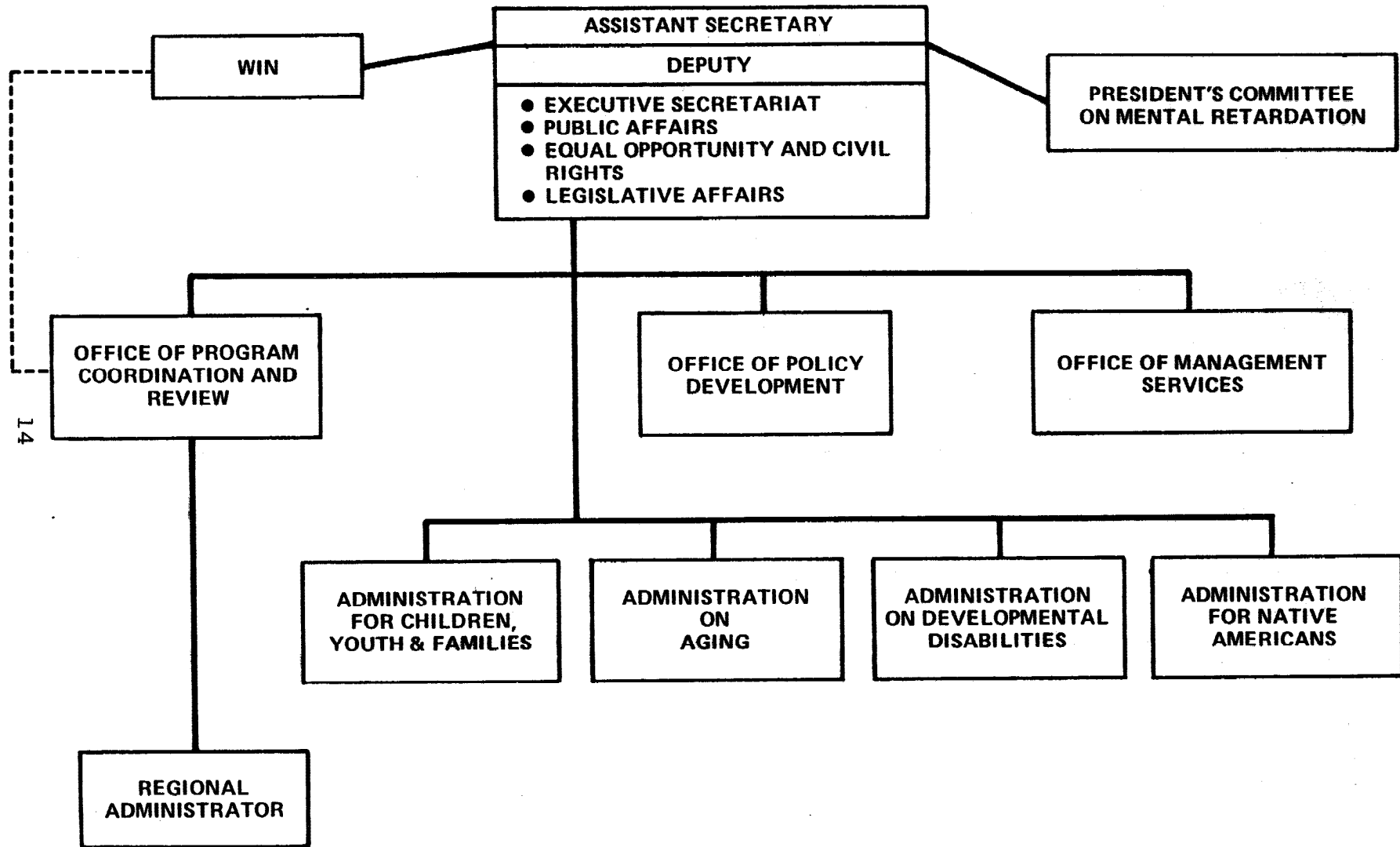
Question #9: What is the appropriate Federal role in the administration of Federally-funded but State-run Older Americans Act programs?

Answer: Under 42 U.S.C. 3025, a designated State agency develops an annual State Older Americans plan in order to be eligible for Federal grants. State plans must conform to criteria set forth in regulations promulgated by the Commissioner. The plan is submitted to the Commissioner for approval and such approval is granted for State plans that satisfy statutory and regulatory requirements. The Commissioner then makes grants from the State's allotment for programs submitted by the State for Federal funding. Therefore, the State agency is the exclusive administrator of the State plan and programs.

Under 42 U.S.C. 3017, the Secretary, HHS is required to measure and evaluate the effectiveness of all programs under the Older Americans Act. Until he has developed evaluation standards for proposed programs, he may not make grants to fund the programs.

From the foregoing it is clear that the States are charged with the responsibility of developing and administering plans and programs. The Federal role is to insure that States comply with the statute and the terms of their grants and to evaluate the effectiveness of all programs it funds.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF HUMAN DEVELOPMENT SERVICES <sup>1)</sup>**



<sup>1)</sup> Organizational structure after reorganization in May 1980.

SUMMARY OF OHDS STAFF  
AND PROGRAM UNITS RESPONSIBILITIES

STAFF UNITS

The three major headquarters staff units are each headed by a director who reports directly to the Assistant Secretary for OHDS. The staff units perform a variety of staff and administrative functions:

- The Office of Policy Development is responsible for formulating the OHDS policy which provides direction in establishing agency goals and objectives. It serves as the focal point for policy planning and for managing of the policy development process. In addition, it manages the planning system and provides technical assistance to program administrators in initiating and overseeing the implementation of an OHDS policy.
- The Office of Program Coordination and Review is responsible for assuring coordination in the management of all service programs administered by OHDS. It provides leadership, management oversight, direction, coordination, and performance evaluation for regional administrators. Additionally, it administers OHDS funds to the States under title XX of the Social Security Act (Social Security Amendments of 1974, Public Law 93-647, January 4, 1975).
- The Office of Management Services provides leadership and direction to administrative and management activities throughout OHDS, including: budget, finance, personnel, grants and contracts, procurement, material and facilities management, management systems, management reporting analysis, data processing, program data systems, and similar administrative supporting services.

PROGRAM UNITS

Each principal program unit is directed by a commissioner who reports directly to the Assistant Secretary for OHDS. The program units have the following responsibilities:

- The Administration on Aging is the principal agency charged with implementing the Older Americans Act. Its program efforts are aimed primarily at the Nation's low-income and minority elderly people. Both the nutrition program and the development of community services systems are geared toward keeping

these people--as well as the physically and mentally impaired elderly people--out of institutions. The nutrition program is designed to provide elderly Americans with low-cost, nutritious meals, served primarily in congregate settings.

- The Administration for Children, Youth, and Families serves all American families and their children from infancy through adolescence. It administers the Head Start sections of the Head-Start Follow Through Act, the Child Abuse Prevention and Treatment Act, and the Runaway Youth Act. It also administers the child welfare services research and demonstration program under title IV-B of the Social Security Act. It awards grants and contracts for innovative programs and supports research relating to early childhood and day care, youth development, child abuse and neglect, foster care, adoption, and other child welfare and family services.
- The Administration on Developmental Disabilities assists States in increasing the provision of quality services to persons with developmental disabilities through the development and implementation of a comprehensive State plan.
- The Administration for Native Americans assists Native Americans to achieve the goal of economic and social self-sufficiency by providing direct and flexible funding (as authorized under the Native American Programs Act of 1974) to Native American tribes, Alaskan villages, organizations serving Native Hawaiians, urban Indian organizations, and historical Indian communities.



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