



Ohio Association of
Area Agencies on Aging

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Chair Callender, Chair Gavarone, and distinguished Members of JCARR,

The Ohio Association of Area Agencies on Aging (o4a) appreciates the revisions made by AGE to proposed rule 173-2-08 AAAs: Commercial Relationships. However, our members continue to have significant concerns regarding the implementation of the rule and the impact the current version would have on AAA's ability to form innovative partnerships with private entities to expand vital services to older Ohioans. Our concerns that have not been addressed and recommendations to the rule are attached to this letter.

We believe it's premature to finalize the rule until there's mutual clarity about how approvals will work in practice. We continue to advocate for a strategic pause to ensure the rule achieves its intent without creating unintended and expensive burdens.

To gain clarity on the corrective action plan process and deadlines regarding this rule, o4a reached out to the Administration for Community Living (ACL), through our national association, USAging. Their responses are below:

Questions for ACL on Older Americans Act (OAA) Regulation Implementation

Given the government shutdown and any possible impacts on states' ability to advance their OAA implementation efforts, as well as the fact that numerous states are currently under Corrective Action Plans (CAP) as they work to become fully compliant with the OAA regulations, USAging is seeking guidance from ACL on the following questions.

- 1) It is USAging's understanding that the CAPs are intended to allow ACL to support any states that need more federal technical assistance or time in order to become fully compliant, and that it is not intended to be punitive (i.e., withhold OAA funding or grant support) but rather to ensure that progress is being made on implementing the regulations as ACL has laid out. Can you please share ACL's view of the role of CAPs?
The corrective action plan process is intended to be highly collaborative and flexible. Under a corrective action plan, States agencies and ACL jointly identify progress milestones and a feasible timeline for the State agency to come into compliance with the provision(s) of the rule incorporated into the corrective action plan. State agencies must make a good faith effort at compliance to continue operating under a corrective action plan. ACL also may impose additional requirements and/or restrictions with respect to any noncompliance issue.
- 2) How many states are currently under a CAP?
31 SUAs have submitted corrective action plans related to OAA regulation compliance, the submitted corrective action plans are currently under review by ACL.
- 3) If a state needs more time than originally provided for under a CAP, is it possible to renegotiate the terms of the CAP with ACL? What would that process entail?

Consistent with current practice, if a State agency encounters challenges implementing specific provisions of the rule, they should engage with ACL for technical assistance and support.

- 4) The regulations make clear in numerous instances that OAA regulation implementation by states should occur in consultation with Area Agencies on Aging (AAAs). Would needing more time to engage with AAAs qualify for a CAP or an adjusted/extended cap? ACL continues to strongly encourage State agencies to have a coordinated approach with Area Agencies on Aging and aging network service providers in the implementation of the Older Americans Act regulations. If a State agency determines additional time is needed for engagement, ACL encourages the State agency to reach out to ACL for technical assistance or with any questions.

From our understanding of ACL's responses, AGE is both able and encouraged to extend their corrective action plan if needed. **This extension would prevent potential financial penalties.** In their [guidance](#), ACL explicitly warns that state processes must be "streamlined, transparent, and not overly burdensome," and advises that "too much caution may inhibit the provision of vital services and the sustainable growth of the aging network." The current rule as proposed by AGE would expand bureaucracy, delay partnerships, and discourage innovation that helps older Ohioans access critical services.

The rule as proposed also violates the following JCARR prongs. O4a can provide additional details on prong violations upon request:

- The rule has an adverse impact on business because it requires prior authorization to engage in a line of business, requires the report of information as a condition of compliance, and is likely to reduce the revenue and commercial activity of Ohio's Area Agencies on Aging.
 - By requiring the submission of contract documents between private entities for approval by AGE, the proposed rule could delay or discourage private partnerships, stifle innovation, increase costs, reduce flexibility, and ultimately limit services to older adults.
- The rule implements a federal law or rule in a manner that is more stringent and burdensome than the federal rule or law requires.
 - AGE's current form requests more information than ACL requires and could conflict with nondisclosure agreements. The rule should follow the ACL Guidance and state that AGE may request the underlying contract or agreement documents **only if** risk screening indicates necessity. Generally, review of contract documents is **not required** for approval.
 - ACL Guidance: Although State Units on Aging have the discretion to request to review contract documents if they deem it necessary to determine whether the contract or commercial relationship may be approved, **it should not generally be necessary to do so.** As we state in the final rule, we expect SUA approval processes to be flexible, reflecting the needs of the older individuals served and the abilities of AAAs to engage in contracts and commercial relationships. We remind SUAs that 45 CFR 1321.9(c)(2)(xiv)(C) requires policies and procedures that permit AAAs to "receive approval to establish contracts and commercial relationships;" **it generally does not require review of contract documents in order to provide that approval.**

We respectfully request 173-2-08 AAAs: Commercial Relationships be removed from the December 8th JCARR agenda to allow additional time to work on the rule, as well as a CSI review to help work through our concerns on the impact this rule as written will have on our private business practices.

We commit to continuing to collaborate with AGE to develop a balanced, risk-based process consistent with ACL guidance. Together, we can ensure that this rule protects OAA services while advancing the shared goal of improving the lives of older Ohioans.

Thank you again for your time and attention in working through the commercial relationships rule with o4a and our members. We sincerely appreciate your efforts and dedication to this process.

Sincerely,

Beth Kowalczyk, CEO, Ohio Association of Area Agencies on Aging

Suzanne Burke, CEO, Council on Aging

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Jacqi Lucke, CEO, Area Agency on Aging 3

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Jennifer Westfall, Aging & Health Director, Buckeye Hills Regional Council

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AGE Proposed Rule OAC 173-2-08 AAAs: Commercial Relationships O4a Recommendations on Revisions made 11/14/25 Submitted to AGE 11/18/2025

O4a is encouraged by the revisions made by AGE to the proposed rule on November 14th. Though the clarifications are appreciated, our members continue to have significant concerns regarding the implementation of the rule and the impact the current version would have on AAA's ability to form innovative partnerships with private entities to expand vital services to older Ohioans.

We believe it's premature to finalize the rule until there's mutual clarity about how approvals will work in practice. We continue to advocate for a strategic pause to ensure the rule achieves its intent without creating unintended administrative barriers.

o4a recommends the following changes to the rule which would allow AGE to fulfill its obligations while empowering AAAs to innovate and expand services efficiently:

1. Exempt or pre-approve commercial relationships required by law or governmental policies or federal or state grants. These relationships are already reviewed, approved and monitored by other regulatory bodies.
2. Pre-approve commercial relationships with entities for which an AAA has a longstanding business relationship of 3 years or more, as suggested by ACL Guidance.
3. For commercial relationships that are not pre-approved we believe the rule should require the least amount of information necessary for approval (pursuant to ACL Guidance). ACL has indicated in the Guidance that the minimum information necessary to evaluate the contract is the following:
 1. The name of OR type of the entity (or entities) with which it intends to establish agreement(s);
 2. The nature of the agreement(s), including the specific service(s) OR the types of services to be provided under the agreement(s);
 3. An estimate of the proposed costs incurred from all sources, including the estimated amount of OAA and state funds that will

be used in implementing the agreement (e.g., administrative overhead, data systems, and/or staff time);

4. The duration of the agreement;
 5. The completed risk-screening form; (*As exists on proposed current AGE Application form*) and
 6. Signed assurance (*As exists on proposed current AGE Application form*)
- Instead of impacting the effective date of the commercial relationship as stated in 173-2-08(B)(e), AAAs should be permitted to submit the prior approval form whenever necessary to receive approval prior to establishing an agreement under section 212 of the OAA.
 - Contract Submission: The rule should follow the ACL Guidance and state that AGE may request the underlying contract or agreement documents **only if** risk screening indicates necessity. Generally, review of contract documents is **not required** for approval. ACL Guidance Page 8 - “Although SUAs have the discretion to request to review contract documents if they deem it necessary to determine whether the contract or commercial relationship may be approved, **it should not generally be necessary to do so**. As we state in the final rule, we expect SUA approval processes to be flexible, reflecting the needs of the older individuals served and the abilities of AAAs to engage in contracts and commercial relationships. We remind SUAs that 45 CFR 1321.9(c)(2)(xiv)(C) requires policies and procedures that permit AAAs to “receive approval to establish contracts and commercial relationships;” **it generally does not require review of contract documents in order to provide that approval.**”
 - i. If contract documents are determined in an individual situation to be required, the rule should allow AAAs to redact any trade secret, confidential, or proprietary information of any party to the relationship, as included in the documents. In requiring submission of a contract, the document becomes a public record. Even with the opportunity to redact trade secrets, instruments that document commercial relationships are viewed as confidential between private parties. Allowing a private commercial relationship to become a public record creates a chilling effect for private entities that would discourage partnerships. This will inhibit the ability of AAAs to engage in commercial relationships to expand services to older adults. Allowing redaction only for “trade secrets” is too narrow. Trade secrets are a specific, legally protected

type of confidential information that provides a business with an economic advantage because it is not generally known. Confidential information is a broader category of private data that may not meet the legal criteria for a trade secret, such as a fluctuating pricing list or customer contact information. Proprietary information may not fall within the definition of trade secrets but may be information that the entity does not want disclosed.

- ii. Delete 173-2-08 (B)(2)(c): requirement for language in nondisclosure agreements giving AGE ability to obtain information concerning, and a copy of, the commercial relationship on request. This will deter private entities from engaging in commercial relationships with AAAs. Instead, AGE should follow the ACL Guidance which states that if a non-disclosure or other confidentiality agreement prevents the AAA from disclosing required information, the AAA should submit publicly available information and attach a copy of the confidentiality agreement (redacted if necessary) to the submission for prior approval.
4. In addition to the 15-calendar day review period, include a provision that states if an AAA has not received communications from AGE regarding their submitted application within 15 calendar days the commercial relationship is automatically approved.
5. Require AGE to provide a written explanation of how the proposed commercial relationship does not comply with 42 U.S.C. 3020c(a) and (b), and 45 C.F.R. 1321.9(c)(2)(xiv) upon denial of a proposed commercial relationship.
6. Include reference in the rule to AGE developing set of standard operating procedures that will be used to evaluate the information about commercial relationships submitted and will provide to AAAs prior to the effective date of the rule and upon any changes.
7. Delay effective date to July 1, 2026
 - Given AGE is still developing standard operating procedures to implement this rule and reauthorization of the Older Americans Act is before Congress (S.2120) which would impact the scope of the federal regulation driving this rule, o4a requests AGE delay the effective date of the rule.