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

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May 14, 1974

The Honorable John Brademas  
Chairman, Select Subcommittee  
on Education  
Committee on Education and Labor  
House of Representatives

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Dear Mr. Chairman:

In your letter of February 20, 1974, you requested that we prepare a report from previously gathered data concerning State and other plans approved under the Older Americans Act of 1965, as amended. Specifically you asked which officials approved plans between April and August 22, 1973, whether the approval pattern changed during August 22 to November 1973, and whether the officials who approved plans were legally empowered to do so.

You also asked which officials are now approving plans in view of a February 4, 1974, letter to you from the Commissioner, Administration on Aging (AoA), indicating that he will make such decisions.

SCOPE OF REVIEW

We reviewed approval documents for

- State plans for grants for State and community programs on aging, authorized under Title III of the act;
- State plans for nutrition programs for the elderly, authorized under Title VII of the act; and
- area-wide model project actions.

We also reviewed memoranda concerning the delegations of authority to regional officials and the plans submitted by the Secretary of Health, Education, and Welfare (HEW) to the Congress relating to the delegations of authority, including the most recent plan submitted on March 26, 1974.

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Further, we compared the information we compiled with that provided by the Commissioner, AoA, in his February 4 letter to you. Although the two sets of information sometimes differ, the differences occur primarily because we have

--included more current data than that provided in the Commissioner's letter,

--indicated when more than one regional official's name appears on the approval document, and

--considered whether approvals complied with Section 201(a) of the act rather than with the delegations of authority in effect when the approvals were made.

APPROVALS FROM APRIL 1  
TO AUGUST 21, 1973

Under a 1967 reorganization, AoA was made a component of the Social and Rehabilitation Service (SRS) of HEW. Then on April 1, 1973, it was made a part of the Office of Human Development (OHD) within the Office of the Secretary, but the Regional Commissioners, SRS, retained their authority to approve State plans and area-wide model project actions until August 22, 1973.

From April 1 to August 21, 33 Title VII plans and 64 actions on area-wide model projects were approved. Of these, six Title VII plans and five area-wide actions were approved by officials other than the Regional Commissioners or Acting Regional Commissioners of SRS. During that period no Title III State plans were approved. Approvals for the period follow.

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<u>Approving official(s)</u>	<u>Title VII plans</u>	<u>Area-wide actions</u>
Regional Commissioner or Acting Regional Commissioner, SRS	27 <sup>a</sup>	59
Regional Director or Deputy Regional Director, HEW	1	2
Assistant Regional Director, OHD	<u>5<sup>b</sup></u>	<u>3</u>
Total	<u>33</u>	<u>64</u>

<sup>a</sup> In 2 regions, the signatures of 1 or more other regional officials, such as the Regional Director, HEW; the Assistant Regional Director, OHD; and the Regional Program Director on Aging also appear on 11 of these approval documents.

<sup>b</sup> The Regional Director, HEW, and the Regional Program Director on Aging in one region also signed the approval document for four State plans.

APPROVALS FROM AUGUST 22  
TO NOVEMBER 4, 1973

In an August 22 memorandum, the Commissioner, AoA, delegated to the Regional Program Directors on Aging the authority to approve State plans and amendments for programs under Titles III and VII of the act. They could exercise this authority only after they consulted with the Assistant Regional Director, OHD, and received the approval of the HEW Regional Director. On November 5, 1973, the Secretary, HEW, submitted a plan to the Congress for delegating approval authority to the HEW Regional Directors.

From August 22 to November 4, 1973, one Title III State plan, eight Title VII plans and four actions on area-wide model projects were approved. Only five of these approvals were solely by Regional Program Directors on Aging.

Approvals for the period follow.

<u>Approval official</u>	<u>Title III plans</u>	<u>Title VII plans</u>	<u>Area-wide actions</u>
Regional Program Director on Aging, AoA	1	3	1
Regional Director, HEW	-	4 <sup>a</sup>	1
Assistant Regional Director, OHD	-	1	-
Regional Commissioner, SRS	-	-	2
Total	<u>1</u>	<u>8</u>	<u>4</u>

<sup>a</sup> The approval document for one plan was also signed by the Regional Program Director.

APPROVALS FROM NOVEMBER 5, 1973  
TO FEBRUARY 3, 1974

On November 5, the Secretary, HEW, as required by Section 201(a) of the Older Americans Act of 1965, as amended, submitted a plan to the Congress to delegate certain functions of the Commissioner, AoA, to the HEW Regional Directors. The Regional Directors were to be given authority to act on matters related to the administration of programs under Titles III and VII of the act. They, in turn, could redelegate their authority to the Assistant Regional Directors, OHD, or to the Regional Program Directors on Aging.

Section 201(a) of the act specifies that the plan for delegation of authority does not become effective until the end of 60 days of continuous session of Congress. Since the Congress adjourned on December 23--substantially before the 60 days of continuous session had transpired--the Secretary's plan was not put into effect.

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On December 21, 1973, the Commissioner, AoA, issued a memorandum to the Regional Program Directors on Aging which amended and superseded the August 22 memorandum. The authority delegated to the Regional Program Directors was essentially the same as that provided for in the August 22 memorandum. The new memorandum also provided that the Commissioner would consult with the Assistant Secretary, OHD, and then make the final decision on matters on which the Regional Program Director, the Assistant Regional Director, OHD, and the HEW Regional Director disagreed. The Commissioner revoked this delegation on February 4, 1974.

From November 5, 1973 to February 3, 1974, 32 Title III State plans, 2 Title VII plans, and 32 actions involving area-wide model projects were approved, as follows.

<u>Approving official</u>	<u>Title III plans</u>	<u>Title VII plans</u>	<u>Area-wide actions</u>
Regional Program Director on Aging, AoA	32 <sup>a</sup>	2	-
Regional Director, HEW	-	-	2
Assistant Regional Director, OHD	-	-	3
Commissioner, AoA	<u>-</u>	<u>-</u>	<u>27</u>
Total	<u>32</u>	<u>2</u>	<u>32</u>

<sup>a</sup> In 3 regions, the signatures of the Assistant Regional Director, OHD, and the Regional Director, HEW, also appeared on the approval document for 10 of these plans.

APPROVALS FROM FEBRUARY 4  
TO MARCH 31, 1974

In a February 4 memorandum to the Regional Program Directors on Aging, the Commissioner, AoA, withdrew--effective immediately--the delegations set forth in his December 21, 1973, memorandum. On February 6 the Assistant Secretary, OHD, issued a memorandum to the HEW Regional directors advising them that the authority had been withdrawn and that the Commissioner would take final actions on all matters relating to State plans under Titles III and VII. The Regional Program Directors on Aging were to initiate recommendations on these matters which were to be transmitted through the Assistant Regional Directors, OHD; the HEW Regional Directors; and the Office of Human Development to the Commissioner, AoA.

On March 26, 1974, the Secretary, HEW, submitted another plan to the Congress which would delegate to the HEW Regional Directors those functions previously delegated to the Regional Program Directors on Aging. The plan would authorize the Regional Directors to act on matters concerning the administration of programs under Titles III and VII and would allow them to redelegate this authority to the Assistant Regional Directors, OHD, or to the Regional Program Directors on Aging. The procedures outlined in the February 6 memorandum of the Assistant Secretary, OHD, however, were to remain in effect until the Congress completed consideration of the March 26 proposal.

After February 4, 1974, the Commissioner, AoA, approved 17 Title III State plans and 2 actions on area-wide model projects and the Regional Program Director in Region VIII approved 5 grants for Title III projects. AoA officials advised us that these were the only approvals made from February 4 through March 31, 1974.

PROPRIETY OF DELEGATION OF AUTHORITY

Section 201(a) of Title II of the Older Americans Act of 1965, as amended, provides in relevant part:

"\* \* \* In the performance of his functions, the Commissioner [on Aging] shall be directly responsible to the Office of the Secretary. The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner unless the Secretary shall first submit a plan for such delegation to the Congress. Such delegation is effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan for such delegation is transmitted to it."

The August 22, 1973, memorandum delegating authority to the Regional Program Directors on Aging clearly required the approval of the HEW Regional Director--a person not directly responsible to the Commissioner--before the Regional Program Director could exercise this authority. The December 21 delegation, while it allowed disagreements to reach the Commissioner, still had the effect of delegating authority to a person not directly responsible to the Commissioner.

HEW must have recognized that a delegation of authority to the Regional Directors without the prior approval of the Congress would be improper since the Secretary of HEW submitted a plan for such approval to the Congress on November 5, 1973. The plan, however, was not sub-

mitted to the Congress until about 75 days after the Commissioner had delegated his authority, effective on August 22, 1973.

Section 201(a) specifically provides that the Secretary shall submit a plan to the Congress before the Commissioner delegates any duties to one who is not directly responsible to him. HEW did not submit the plan until after the Commissioner had delegated his duties and, therefore, the delegation was in contravention of the intent of the statute.

We conclude that the delegations of authority made by the Commissioner, AoA, on August 22 and December 21, 1973, were delegations to one not directly responsible to the Commissioner and therefore were subject to the notification provisions of Section 201(a) of the Older Americans Act. HEW's notification did not comply with Section 201(a) of the act, and the delegations therefore were improper.

On March 26, 1974, the Secretary of HEW submitted the latest plan to the Congress for the redelegation of authority. This plan is essentially the same as the plan it submitted on November 5, 1973. If the Congress has no objection to the plan and it is not put into effect before the termination of the 60-day notification period specified under Section 201(a), we believe that the delegation provided for under this plan is proper.

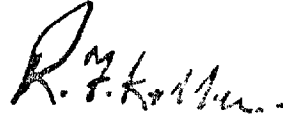
We did not obtain written comments from AoA concerning the delegation of authority or approval actions taken by regional officials. However, we did discuss our findings and conclusions with AoA officials. They disagreed with our conclusion that the August 22 and December 21, 1973 delegations of authority were improper.

Their position was that under both memoranda only the Regional Program Director on Aging and the Commissioner, AoA, could approve State plans. Although the Regional Director, HEW, was to be consulted on State plans, he did not have the authority to approve them. When the Regional Program Director and the Regional Director disagreed on a State plan, they were to submit the plan to the Commissioner who would make a final decision. Since the August 22, 1973, memorandum did not specify that these actions would be taken, they were included in the December 21, 1973, memorandum. HEW's Counsel to AoA concurred that he advised AoA that in his view, both memoranda complied with Section 201(a) of the act.

We trust that this information is responsive to your inquiry.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. F. Kellum". The signature is written in a cursive style with a large initial "R".

Comptroller General  
of the United States

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