

**Rehabilitation Services Administration (RSA) Responses to
National Council on Independent Living (NCIL)'s Questions
Regarding SILC Roles and Responsibilities.**

January 23, 2008

Introduction

Title VII of the Act and its implementing regulations describe how the three major entities responsible for the implementation of title VII and the SPIL -- the designated state unit (DSU), statewide independent living council (SILC) and the network of centers for independent living (CILs) – are to use the Federal funds provided in order to fulfill the purpose of the independent living program.¹ Each entity has important and distinct statutory roles and responsibilities in fulfilling the purpose and engaging in the activities described in the SPIL. Each entity is not authorized to use Federal funds to engage in every activity envisioned in the law. Rather, the DSU, SILC or CILs engage in these activities with Federal funds only if, and only to the extent that, they conform with each of their roles and responsibilities as outlined in the Act. The DSU, SILC and CILs all work to fulfill the purpose of the independent living program, but they must do so using their Federal funds through the activities authorized for each of them under the Act. Therefore, the SILC may engage in a given activity with Federal funds only if, and only to the extent that, it directly relates to one or more of the SILC duties and authorized activities outlined in sections 705(c), (d) and (e) of the Act.

This not intended to minimize the role of the SILC. On the contrary, RSA believes that the SILC is critical to the success of the independent living program and each State's SPIL. The SILC's duties encompass many important activities that have a broad impact on individuals with disabilities throughout the state. Although the Act lists a limited number of SILC duties, there is a variety of creative, meaningful and allowable ways in which the SILC may fulfill each of the duties. A SILC's involvement in the SPIL can be active, substantial and comprehensive within the guidelines established by federal law and regulations.

¹ Section 701 of the Act provides:

The purpose of this chapter is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self help, self determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society, by

- (1) providing financial assistance to States for providing, expanding, and improving the provision of independent living services;
- (2) providing financial assistance to develop and support statewide networks of centers for independent living; and
- (3) providing financial assistance to States for improving working relationships among State independent living rehabilitation service programs, centers for independent living, Statewide Independent Living Councils established under section 705, State vocational rehabilitation programs receiving assistance under title I, State programs of supported employment services receiving assistance under part B of title VI, client assistance programs receiving assistance under section 112, programs funded under other titles of this Act, programs funded under other Federal law, and programs funded through non Federal sources.

Responses to Specific Questions

With respect to the individual questions posed by NCIL, here are RSA's responses:

1) Authorized Use of Funds

NCIL Comment/Question:

The uses for Part B funds are apparently not something SILCs are supposed to do even when Part B is how they are funded?"

RSA Response:

The DSU receives Part B funds on behalf of the State. The authorized uses for Part B funds are set forth in section 713 of the Act.² At the outset, section 713 provides, "The State may use funds received under this part to provide the resources described in section 705(e), relating to the Statewide Independent Living Council." Section 713 goes on to provide that the State may use funds received under this part for seven other activities related to providing or improving IL services, gathering data on IL services, providing outreach to unserved and underserved populations, training, and supporting CILs.

Section 713 requires that the Part B funds received by the SILC be used to provide the resources described in section 705(e). The resources described in section 705(e) are "such resources, including such staff and personnel, as may be necessary and sufficient to carry out the functions of the Council under this section. . . ." The functions of the SILC are described in sections 705(c),³ (d),⁴ (e),⁵ and (f).⁶ Therefore, the SILC may use its Part B funding only to carry out its

² Section 713 of the Act provides:

The State may use funds received under this part to provide the resources described in section 705(e), relating to the Statewide Independent Living Council, and may use funds received under this part

- (1) to provide independent living services to individuals with significant disabilities;
- (2) to demonstrate ways to expand and improve independent living services;
- (3) to support the operation of centers for independent living that are in compliance with the standards and assurances set forth in subsections (b) and (c) of section 725;
- (4) to support activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing independent living services;
- (5) to conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to Federal, State, and local policymakers in order to enhance independent living services for individuals with disabilities;
- (6) to train individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the independent living philosophy; and
- (7) to provide outreach to populations that are unserved or underserved by programs under this title, including minority groups and urban and rural populations."

³ Section 705(c) of the Act provides:

The Council shall:

section 705 functions. There is no such prohibition, however, on funding the SILC may receive from sources other than Part B or State match funding. The SILC may use other such funding to engage in activities beyond those listed in section 705 as long as it does not impair or interfere with the SILC's ability to perform its statutory duties.

In carrying out its section 705 functions, the SILC may engage in some of the activities listed in section 713 to the extent that its involvement in those activities is consistent with and does not exceed the SILC's section 705 statutory duties. For example, the SILC may fulfill an important role in demonstrating ways to expand and improve IL services through section 705(c)(3)'s ongoing coordination with "councils that address the needs of specific disability populations and issues" or it may conduct studies and gather information through section 705(c)(2)'s responsibility to "monitor, review, and evaluate the implementation of the State plan." The appropriateness of the SILC's role in any of the activities listed in section 713 must be evaluated on a case-by-case basis, depending on the nature and scope of the SILC involvement in the particular activity, to ensure the SILC is acting within its section 705 duties.

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- (1) jointly develop and sign (in conjunction with the designated State unit) the State plan required in section 704;
 - (2) monitor, review, and evaluate the implementation of the State plan;
 - (3) coordinate activities with the State Rehabilitation Council established under section 105, if the State has such a Council, or the commission described in section 101(a)(21)(A), if the State has such a commission, and councils that address the needs of specific disability populations and issues under other Federal law;
 - (4) ensure that all regularly scheduled meetings of the Statewide Independent Living Council are open to the public and sufficient advance notice is provided; and
 - (5) submit to the Commissioner such periodic reports as the Commissioner may reasonably request, and keep such records, and afford such access to such records, as the Commissioner finds necessary to verify such reports.

⁴ Section 705(d) of the Act provides: "The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

⁵ Section 705(e) of the Act provides:

- (1) The council shall prepare, in conjunction with the designated State unit, a plan for the use of such resources, including such staff and personnel, as may be necessary and sufficient to carry out the functions of the Council under this section with funds made available under this chapter, and under section 110 (consistent with section 101(a)(18)), and from other public and private sources. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.
- (2) Each Council shall consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out the functions of the Council under this section.
- (3) While assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State agency or any other agency or office of the State, that would create a conflict of interest.

⁶ Section 705(f) of the Act provides: "The Council may use such resources to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

2) SILC Duties and Responsibilities

NCIL Comment/Question:

“Several SILCs have been told that they may only conduct the duties identified in Sec. 705 (c). SILCs have been under the impression that their responsibilities go beyond preparing a SPIL and monitoring its implementation.”

“Likewise, the law requires that the SPIL includes provisions “for public hearings regarding the contents of the plan during both the formulation and review of the plan. Again there are expectations that the SILC will not only identify the duties, but perform them throughout the year.”

“Section 705(c) was intended to be a floor (minimum standard), not a ceiling (maximum). . . . Where does the Act or the Regulations limit the SILCs duties to those identified in section 705(c)?”

RSA Response:

Federal funding is given directly to States and CILs to support them in achieving the purposes of the Act. The States are required to establish and fund SILCs as a condition of receiving the federal funding, and all three entities – the DSU, on behalf of the State, the SILC, and the CILs – are required to maximize the cooperation, coordination, and working relationships among themselves and other organizations that address the needs of individuals with disabilities.⁷ As noted above, the SILC has a particular statutory role to play in meeting the purpose of the Act in cooperation with the DSU and the CILs, and that role definitely goes beyond developing and signing the SPIL. The SILC is responsible for fulfilling its statutory duties in section 705 on an ongoing, year-round basis.

The SILC’s duties are, however, limited to those identified in section 705. Just as the DSU is authorized to use its Part B funding only for the purposes listed in section 713, the SILC may use its title VII funding only for fulfilling the authorized functions of the Council under Section 705. Section 705(c) sets forth five specific duties of the SILC, and other authorized activities, including conducting hearings and forums as necessary, are found in sections 705 (d), (e), and (f). No language such as “including, but not limited to . . .” is associated with the list of SILC duties, nor is there any general authority to engage in any activity that furthers the purpose of title VII if the SILC deems it appropriate.

Because Congress provided funds under the Act to enable SILCs to carry out the requirements in section 705, these funds may be used only for reimbursement of expenses related to the duties and functions authorized by the Act. Therefore, if a SILC chooses to engage in other activities, these other activities must be funded through other public or private sources and must not impair or interfere with its Federally mandated functions.

⁷ Section 704(i) of the Act requires the State plan to set forth the steps that will be taken “to maximize the cooperation, coordination, and working relationships among the independent living rehabilitation service program, the Statewide Independent Living Council, and centers for independent living. . . .”

3) SILC Resource Development

NCIL Comments/Questions:

How do SILCs obtain funds from other public and private sources if they aren't allowed to do resource development? How can SILCs secure these funds if they are not able to conduct resource development activities?

CFR 364.5 and 364.6 specifically provides guidance on handling program income. If resource development is not permitted, why is there guidance on how program income should be handled?

RSA Response:

In preparing its resource plan, the SILC may use Part B funds, Innovation and Expansion Funds, and other public and private sources, to the extent allowable by those other sources.⁸ However, SILCs may not use federal funding to conduct resource development activities. The cost principles at OMB Circular A-87, Attachment B, Item 17 (applicable to SILCs who are part of State government) and OMB Circular A-122, Attachment B, Item 17 (applicable to nonprofits) prohibit charging federal grants for the cost of fundraising.⁹ Centers for independent living are permitted to charge their federal grants for resource development activities because section 725(b)(7) of the Act provides explicit authority to engage in an activity – conducting resource development activities -- that would otherwise be prohibited by the OMB cost principles. The Act does not give SILCs similar explicit resource development authority.

⁸ Section 705 (e)(1) provides:

The Council shall prepare, in conjunction with the designated State unit, a plan for the provision of such resources, including such staff and personnel, as may be necessary and sufficient to carry out the functions of the Council under this section, with funds made available under this chapter, and under section 110 (consistent with section 101(a)(18)), and from other public and private sources. The resource plan shall, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

⁹ OMB Circular A-87, Attachment B, Item 17 and OMB Circular A-122, Attachment B, Item 17 provide:

- a. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.
- b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.
- c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Attachment A.

The SILC still has opportunities, other than using Federal funds, to obtain other public and private sources of funding. For example, SILC members or staff may pursue resource development opportunities on their own time, or the SILC may use another source of funding such as private funds or non-match state government funds that do not prohibit the recovery of resource development costs, to pursue additional funding. Other non-Federal resources may also become available as a direct result of the SILC's fulfillment of its section 705(c) statutory duties. For instance, a council or commission with which the SILC is coordinating activities in accordance with section 705(c)(3) may offer funding for a collaborative initiative in support of a SPIL objective.

Regarding the issue of IL program income, it is clear from the language in 34 CFR 364.5 and 364.6¹⁰ that the regulations apply to income generated from the provision of IL services by the designated state unit and or the CILs. These sections do not apply to the SILC.

¹⁰ 34 CFR 364.5 provides:

- (a) Program income means gross income received **by a grantee** under title VII of the Act that is directly generated by an activity supported under 34 CFR part 365, 366, or 367;
- (b) Sources of program income include, but are not limited to, payments received from workers' compensation funds or fees for services to defray part or all of the costs of services provided to particular consumers;
- (c) (1) Program income, whenever earned, must be used for the provision of IL services or the administration of the State plan, as appropriate.
(2) A service provider is authorized to treat program income as
 - (i) A deduction from total allowable costs charged to a Federal grant, in accordance with 34 CFR 80.25(g)(1); or
 - (ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2).
(3) Program income may not be used to meet the non-Federal share requirement under 34 CFR 365.12(b). (emphasis added)

34 CFR 364.6 provides:

- (a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under 34 CFR part 365, 366, or 367 that are not obligated or expended **by the DSU or center** prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended **by the DSU or center** prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure **by the DSU or center** during that succeeding fiscal year.
- (b) Federal funds appropriated for a fiscal year under part B of chapter 1 and under chapter 2 of title VII of the Act remain available for obligation in the succeeding fiscal year only to the extent that the DSU complied with any matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated. (emphasis added).

4) SILC Advocacy

NCIL Comments/Questions:

A. *Many SILCs have reported that there is a prohibition of SILC advocacy activities within the SPIL. Section 701 sets out the purpose of chapter 1 of Title VII by stating, “The purpose of this chapter is to promote a philosophy of independent living, including . . . individual and system advocacy.” How do SILCs address the purpose of Title VII if they cannot advocate?*

RSA Response:

According to section 705(c) of the Act and 34 CFR 364.4, the SILC is not among the service providers authorized to provide the four IL core services, including individual and systems advocacy.¹¹ However, Federal law and regulations do not preclude the SILC from using its Federal funds to engage in some forms of advocacy that flow directly from the SILC’s fulfillment of its statutory duties.

There are many ways in which the SILC may engage in advocacy in the normal course of fulfilling its statutory duties. In accordance with 705(c)(1) and (4), for example, the SILC listens to and advocates for individuals with significant disabilities in the process of developing the SPIL in conjunction with the DSU. Through this process, the SILC identifies the individual and systems needs of individuals with significant disabilities and ensures that those needs are adequately addressed in the goals and objectives of the approved SPIL.

In accordance with 705(c)(2), the SILC monitors the SPIL and ensures that the SPIL strategies being implemented are effectively addressing the individual and systems needs of individuals with significant disabilities. Based on its evaluation of the SPIL, the SILC may recommend or advocate for new approaches in the next SPIL or SPIL amendments to better serve the needs of individuals with significant disabilities.

¹¹ 34 CFR 364.4 provides:

Service provider means (1) A designated State unit (DSU) that directly provides IL services to individuals with significant disabilities; (2) A center that receives financial assistance under part B or C of chapter 1 of title VII of the Act; or (3) Any other entity or individual that meets the requirements of Sec. 364.43(e) and provides IL services under a grant or contract from the DSU pursuant to Sec. 364.43(b).

Advocacy is defined in 34 CFR 364.4: as “pleading an individual’s cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may

- (1) Involve representing an individual
 - (i) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or
 - (ii) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and
- (2) Be on behalf of
 - (i) A single individual, in which case it is individual advocacy;
 - (ii) A group or class of individuals, in which case it is systems (or systemic) advocacy; or (iii) Oneself, in which case it is self advocacy.

The SILC may also be able to support the CILs' systems advocacy activities through exercising its statutory duties. For example, the SILC may be able to work with a public transportation agency to address the CIL-identified transportation needs of individuals with significant disabilities.

The SILC also advocates for independent living on a year-round basis through its interaction with a variety of disability-related councils, commissions and organizations at the state, local and federal levels, in accordance with 705(c)(3). Such interaction enables the SILC to promote a better understanding of the independent living philosophy; encourage new collaborative initiatives in support of the SPIL goals and objectives; and influence the state's disability policies and practices in this way. It is important to note, however, that although the SILC may interact with the State and Federal legislatures by, for example, being invited by a state legislative committee to provide testimony on an IL-related issue or proposal, the Federal government identifies certain interactions as lobbying, and while lobbying may be a form of advocacy, all grantees and subgrantees are prohibited from using federal funds to engage in lobbying.¹²

¹² OMB Circular A-122, Attachment B, Item 25 provides the following on Lobbying. OMB Circular A-87 has almost identical language at Attachment B, Item 24.

25. Lobbying.

Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;
- (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
- (3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;
- (4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or
- (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

The following activities are excepted from the coverage of subparagraph a:

- (1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly

Whether a particular SILC advocacy activity results from the fulfillment of its duties in section 705 depends on the scope and nature of the SILC's involvement in the activity in question.

scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph a(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

(1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Attachment A.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 25 complies with the requirements of this Circular.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: (1) the employee engages in lobbying (as defined in subparagraphs (a) and (b)) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 25. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

d. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally sponsored agreement or regulatory matter on any basis other than the merits of the matter.

NCIL Comment/Question:

B. A SILC must have the ability to advocate if it is to establish an effective network of CILs as well as expand the network into unserved/underserved areas of the state as required by CFR 364.25, which states that: (a) The State plan must include a design for the establishment of a statewide network of centers that comply with the standards and assurances in section 725 (b) and (c) of the Act and subparts F and G of 34 CFR part 366. (b) The design required by paragraph (a) of this section must identify unserved and underserved areas and must provide an order of priority for serving these areas.

RSA Response:

The DSU, SILC and the CILs have distinct roles in fulfilling the purposes of title VII and the SPIL, including expansion of the statewide network of centers. The distinct roles of the SILC are delineated in the Act. Though section 705(c) includes a limited number of duties, each of those duties encompasses a multitude of avenues and approaches in which the SILC may engage in those duties to assist in the establishment and expansion of the network of centers.

5) Administration of funding

NCIL Comment/Question:

Sec. 704 (c)(1) obliges the DSUs to “receive, account for, and disburse funds” based on the plan. The DSU has clear fiduciary responsibilities in accounting for Title VII funds; however, States have the ability to subcontract with organizations to provide a myriad of services as reflected in CFR 34 364.57. Why can’t the DSU disburse the funds to the SILC? Where in the law or regulations are the DSUs prohibited from subcontracting with the State’s SILC?

CFR 34 364.21 (i) (4) states that “The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan,” which seems to imply that the administration of funding is permissible as long as its accounted for in the resource plan. States have reported that only statutory requirements go in the resource plan, and that the authorized use of funds activities must be paid directly by the DSU.

Where in the Act or Regulations does it specifically state that only the SILC’s statutory requirements are included in the SILC’s resource plan?

RSA Response:

Under Section 704(c)(1),¹³ the DSU is responsible for receiving, accounting for, and disbursing funds. The regulations at 34 CFR 364.57 list the duties of the DSU that are delegable and receiving, accounting for, and disbursing funds are not a delegable duty of the DSU.¹⁴ Therefore the DSU remains the entity responsible for this function. In addition, the SILC is authorized by section 705(e) to manage its own resource plan, but section 705(e) specifically provides that the SILC resource plan only includes the funding that is necessary for the SILC to carry out its functions under section 705. The SILC is not authorized to use its federal funds to receive, account for, or disburse Part B funding or any funding other than the funding it receives to fulfill its own duties.

6) Allocation of Title I, section 110 (Innovation and Expansion – I&E) funds

NCIL Comment/Question:

The law states that “The State plan shall . . . include an assurance that the State will reserve and use a portion of the funds allotted to the State under section 110 . . . to support the funding of . . . the Statewide Independent Living Council, consistent with the plan prepared under section 705(e)(1). The law does not contain an exception for those states, which fail, for whatever reason, to include I&E in the plan. It just says that you spend the money according to what is in the SPIL. Why are some states not required to allocate funds to the SILCs?”

¹³ Section 704(c)(1) provides: “The plan shall designate the designated State unit of such State as the agency that, on behalf of the State, shall (1) receive, account for, and disburse funds received by the State under this chapter based on the plan.”

¹⁴ A DSU may carry out the functions and responsibilities described in §§ 364.50, 364.51 (subject to 364.43(d)), 364.52, 364.53, and 364.56 or, except as otherwise provided, may delegate these functions and responsibilities to the appropriate service provider with which the DSU subgrants or contracts to provide IL services.

RSA Response:

Section 101(a)(18) of the Rehab Act requires that the VR State plan assure that the State VR agencies will reserve a portion of Title I funds to support I&E activities, including supporting the funding of the SILC.¹⁵ However, section 101(a)(18)(A)(ii)(II) says that the funding support should be consistent with the SILC's resource plan prepared under section 705(e). Because section 705(e) lists several available resources the SILC can use to fund its duties under title VII, a SILC may have sufficient funding from other sources and not need any or all of the funds that the VR agency can set aside for it. In such a case, the SILC's resource plan prepared under 705(e) would fund the SILC without using I&E funds. The SILC's use of I&E funds (no use) would be consistent with its resource plan and thus, with section 101(a)(18).

Because I&E funds, Part B IL funds, State IL funds, and the other public and private sources available to fund the SILC are limited and can all be used for other purposes as well as funding the SILC, the SILC and the DSU (the agency that manages both VR and IL funds) must reach agreement on how best to fund the SILC using the available resources.

7) Public Hearings

NCIL Comments/Questions

Several states have reported that they are being told that public hearings must be held by the DSU and the SILC. CFR 34 364.21 (h) says that "the SILC is authorized to hold any hearings and forums that the SILC determines to be necessary to carry out its duties." Why are SILCs being told otherwise?

¹⁵ Section 101(a)(18) of the Act provides:

The State plan shall

- (A) include an assurance that the State will reserve and use a portion of the funds allotted to the State under section 110
 - (i) for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under this title, particularly individuals with the most significant disabilities, consistent with the findings of the statewide assessment and goals and priorities of the State as described in paragraph (15); and
 - (ii) to support the funding of
 - (I) the State Rehabilitation Council, of the State has such a Council, consistent with the plan prepared under section 105(d)(1); and
 - (II) the Statewide Independent Living Council, consistent with the plan prepared under section 705(e)(1);
- (B) include a description of how the reserved funds will be utilized; and
- (C) provide that the State shall submit to the Commissioner an annual report containing a description of how the reserved funds were utilized during the preceding year.

RSA's response

There are two different types of public hearings contemplated by title VII. Both the DSU and the SILC must conduct public hearings on the contents of the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. See 34 CFR 364.20(g).¹⁶ The SILC is also “authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.” See section 705(d) and its implementing regulation at 34 CFR 364.21(h). It is not required, although it is permitted, that the SILC hearings authorized under section 705(d) be held jointly with the DSU.

8) Monitoring

NCIL Comment/Question

Many states have commented that Section 6 of the SPIL is setting up SILCs (or even DSUs) to monitor CIL's compliance with Sect. 725 of the Act - when that is clearly RSA's responsibility. Neither SILCs nor DSU's have the responsibility of monitoring CILs.

RSA Response:

The questions in the SPIL in section 6 requiring a description of how certain service provider requirements will be met is based directly on the requirement of 34 CFR 364.20(i): “The State plan also must address how the specific requirements in §§ 364.21 through 364.43 and in §§ 364.56 and 364.59 will be met.” This provision refers to the state plan, and does not require the DSU or the SILC to monitor CILs to ensure the requirements are met. The DSU and the SILC must determine, however, how to ensure that service providers meet these specific requirements.

The SILC does not have the authority to monitor CILs and therefore would not have that responsibility. Because the DSUs must account for funds received under Part B under section 704(c)(1), DSUs must have procedures in place to ensure that service providers spend their Part B funds in compliance with federal requirements. See 34 CFR 76.770.¹⁷

¹⁶ 34 CFR 364.20(g)(1) provides: “The State plan must assure that the DSU and the SILC conduct public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan.

¹⁷ 34 CFR 76.770 provides: “Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical assistance, for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.”