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TECHNICAL ASSISTANCE CIRCULAR

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ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES  
STATEWIDE INDEPENDENT LIVING COUNCILS  
CENTERS FOR INDEPENDENT LIVING  
CLIENT ASSISTANCE PROGRAMS

SUBJECT: Federal Requirements Governing the Roles and Responsibilities of  
Statewide Independent Living Councils

PURPOSE: *The Rehabilitation Act of 1973*, as amended (the *Rehabilitation Act*) and its implementing regulations set forth the manner in which the designated state unit (DSU), statewide independent living council (SILC), and the network of centers for independent living (CIL) are responsible for the implementation of Title VII of the *Rehabilitation Act* and the State Plan for Independent Living (SPIL), as well as the use of federal funds to fulfill the purpose of the independent living (IL) program.

The *Rehabilitation Act* and the implementing regulations specify the separate and distinct roles and responsibilities of each entity through which it engages in the activities described in the SPIL. Neither the DSU, the SILC nor the CILs are 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 when each entity conforms to the statutory and regulatory roles and responsibilities, as outlined in the *Rehabilitation Act*. The DSU, SILC, and CILs all work to fulfill the purpose of the IL program, but must do so using federal funds through the activities authorized for each entity under the *Rehabilitation Act*. Therefore, the SILC may engage in a given activity with federal funds solely to the extent that it directly relates to one or more of the SILC duties and authorized activities outlined in Section 705 of the *Rehabilitation Act*.

Although the *Rehabilitation Act* defines a limited number of duties for which the SILC is responsible, the SILC may carry out these

duties in a variety of ways. To ensure that each SILC is better able to perform these responsibilities, fulfill its critical role in the success of the IL program and that each SILC's involvement in the SPIL is active and substantial, the Rehabilitation Services Administration (RSA) provides, through this technical assistance circular (TAC), guidance to DSUs, SILCs, and CILs regarding the federal requirements governing the roles and responsibilities of the SILCs.

TECHNICAL  
ASSISTANCE:

The information contained in this TAC is presented below in answer to a series of questions frequently asked by DSUs, SILCs, and CILs.

**1. Which entity is authorized to receive, account for, or disburse funds allotted under Title VII, Part B? Does a SILC's responsibility to manage the funds it receives under its resource plan encompass the ability to receive, account for and disburse Title VII, Part B funds?**

Pursuant to Section 704(c)(1) of the *Rehabilitation Act*, the DSU is responsible for receiving, accounting for, and disbursing funds allotted to the state under Title VII, Part B (see also 34 CFR 364.22(a)(1)). The IL program regulations at 34 CFR 364.57 identify the duties of the DSU that are delegable by the DSU to providers of IL services with which it subgrants or contracts; the responsibility to receive, account for and disburse Part B funds is not among those identified in 34 CFR 364.57. Therefore, the DSU remains the entity responsible for, and cannot delegate, this function.

Although the SILC is authorized by Section 705(e)(1) to manage the funds it receives through the resource plan it develops with the DSU, which may include Part B funds, these funds can only be used by the SILC to carry out its functions under Section 705. This regulation does not authorize the SILC to "receive, account for, or disburse" Part B or any other federal funding, except for the purpose of fulfilling its own duties.

**2. What are the DSU's authorized uses of Part B funds?**

In accordance with Section 713 of the *Rehabilitation Act*, a DSU is authorized to use the funding it receives under Title VII, Part B, to "...provide the resources described in Section 705(e), relating to the Statewide Independent Living Council." Section 713 further

provides that the DSU may use these funds for seven other specific activities, including:

- (1) the provision of IL services to individuals with significant disabilities;
- (2) the demonstration of ways to expand and improve IL services;
- (3) the support of operations of CILs that are in compliance with the standards and assurances set forth in subsections (b) and (c) of Section 725 of the *Rehabilitation Act*;
- (4) the support of activities to increase the capacities of public or nonprofit agencies and organizations and other entities to develop comprehensive approaches or systems for providing IL services;
- (5) the conduct of studies and analyses; the gathering of information; the development of model policies and procedures; and the presentation of information, approaches, strategies, findings, conclusions, and recommendations to federal, state, and local policymakers in order to enhance IL services for individuals with disabilities;
- (6) the training of individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the IL philosophy; and
- (7) the provision of outreach to populations that are unserved or underserved by IL programs under the *Rehabilitation Act*, including minority groups and urban and rural populations.

**3. What are the duties of the SILC specified in the Rehabilitation Act? Is the SILC limited to performing only these duties?**

As specified in Section 705(c) of the *Rehabilitation Act*, the SILC is authorized to:

- (1) jointly develop and sign, in conjunction with the DSU, the SPIL required by Section 704;
- (2) monitor, review, and evaluate the implementation of the SPIL;
- (3) coordinate activities with the State Rehabilitation Council (SRC) established under Section 105 of the *Rehabilitation Act*, 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 its regularly scheduled meetings are open to the public and sufficient advance notice is provided; and
- (5) submit to the Commissioner of RSA 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.

In addition, the SILC may conduct the hearings and forums it deems necessary to carry out its duties and functions (Section 705(d)); develop, with the DSU, its resource plan and manage the resources, including funding and staff, it receives to support the plan (Section 705(e)(1)); supervise and evaluate, in a manner consistent with state law, the staff and other personnel necessary to perform the duties of the SILC (Section 705(e)(2)); and reimburse SILC members for reasonable and necessary expenses related to their attendance at Council meetings or the performance of SILC duties, including those for child care and personal assistants, and compensate SILC members for their performance of SILC duties, if they are not employed or have lost wages due to their participation in these duties (Section 705(f)).

The SILC may use its Part B and other federal funding, including innovation and expansion funds received pursuant to Section 101(a)(18)(A)(ii)(II) of the *Rehabilitation Act*, as well as state matching funds under Part B, received from the DSU through its resource plan to carry out only those functions specified in Section 705. The language of Section 705(c) states that “[t]he SILC shall...,” but does not contain any language indicating the duties specified are not an exhaustive list, such as “including...” or “including, but not limited to...;” nor does this statutory provision provide the SILC with the authority to engage in any other activity, using federal or state matching funds, that furthers the purpose of Title VII, even if the SILC deems it appropriate.

However, the SILC is not prohibited from receiving funding from other public or private sources and may use this funding to carry out activities beyond those specified in Section 705, so long as doing so does not impair or interfere with the SILC’s ability to perform its statutory duties. In this case, the SILC must establish procedures and processes to ensure that expenditures related to these activities are not allocated to its federal or state matching funds, but only to its other resources as appropriate.

Additionally, in carrying out its authorized duties, the SILC may engage in some of the activities listed in Section 713, specifying the authorized uses of Part B funds by the DSU, to the extent that its involvement in those activities is consistent with, and does not exceed, the SILC’s statutory duties as defined in Section 705. For example, the SILC may fulfill an important role in demonstrating ways to expand and improve IL services through ongoing

coordination with “councils that address the needs of specific disability populations and issues” pursuant to Section 705(c)(3), or it may conduct studies and gather information as described in Section 705(c)(2) as a means to “monitor, review, and evaluate the implementation of the [SPIL].” The appropriateness of the SILC’s role in any of the activities identified in Section 713 must be evaluated on a case-by-case basis, depending on the nature and scope of the SILC involvement in a particular activity, to ensure the SILC is acting in accordance with duties described in Section 705 of the *Rehabilitation Act*.

**4. How can SILCs secure funds from other public or private sources, if SILCs are not allowed to conduct resource development activities?**

Section 705(e)(1) provides that, in carrying out 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. However, SILCs may not use federal funding to conduct resource development activities. The federal cost principles at 2 CFR Part 225, Appendix B, Part 17 (applicable to SILCs who are part of state government) and 2 CFR Part 230, Appendix B, Part 17 (applicable to nonprofits) prohibit charging federal grants for the cost of fundraising. Although Section 725(b)(7) of the *Rehabilitation Act* provides the CILs with the explicit authority to engage in resource development activities that would otherwise be prohibited by the federal cost principles, the *Rehabilitation Act* does not give SILCs similar explicit resource development authority.

Nonetheless, a SILC still has opportunities to obtain other public and private sources of funding without using federal funds to do so. 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 state government funds not used to match federal 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.

**5. Do regulations regarding program income apply to SILCs?**

As defined by regulations at 34 CFR 364.5(a), “program income” for the purpose of the IL programs established under Title VII of the *Rehabilitation Act* is “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.” Therefore, it is income generated from the provision of IL services by DSUs and CILs. Because SILCs do not provide IL services when engaging in authorized activities under Section 705, they do not earn program income through the use of federal funds and the regulations at 34 CFR 364.5 and 364.6 defining program income, and governing its uses, under Title VII do not apply. In addition, since SILCs cannot use federal funds to generate other financial resources (see Question 4 above), any resources obtained through other means is not considered program income earned by the SILC.

**6. Is the DSU required to allocate Title I innovation and expansion (I&E) funds to the SILC?**

Section 101(a)(18) of the *Rehabilitation Act* requires that the Vocational Rehabilitation (VR) State Plan assure that the State VR agency reserve a portion of Title I funds to support I&E activities, including supporting the funding of the SILC. However, Section 101(a)(18)(A)(ii)(II) states 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 so that it does not need any or all of the funds that the VR agency could set aside for it under Section 101(a)(18). In such a case, the SILC's resource plan prepared under 705(e) would fund the SILC without using I&E funds.

Since 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 purposes other than supporting the SILC, the SILC and the DSU must reach an agreement as to how best to fund the SILC using the available resources.

**7. Are DSUs or SILCs required to monitor CILs?**

The monitoring of CILs is not among the authorized duties and activities of the DSU and SILC specified in Section 713 and 705(c) of the *Rehabilitation Act*, respectively. Rather, RSA is charged with this responsibility in accordance with Section 706(c) of the *Rehabilitation Act*. Therefore, the SILC cannot use its federal or state matching funds to conduct monitoring of the CILs. However,

Section 704(c)(1) requires that the DSU account for funds received under Title VII, Part B. In addition, the Education Department General Administrative Regulations (EDGAR) applicable to all federal grants at 34 CFR 76.770 provide that the DSU is responsible "...for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations." Furthermore, EDGAR provisions at 34 CFR 80.40(a) specifically require state grantees of federal funds to monitor the manner in which sub-grantees or contracted providers use federal funds by stating:

"[G]rantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity."

Finally, the DSU is also required to implement fiscal controls to ensure that Part B funds are expended and accounted for accurately and that expenditures are traceable to a level sufficient to determine that such expenditures were made in accordance with applicable federal requirements (34 CFR 80.20(a)).

Pursuant to these regulatory provisions, as the recipient of federal funds, the DSU is required to monitor and manage the operations of all grant-supported activities, including the monitoring of its sub-grants and contracts with CILs, both to evaluate the performance of the CILs and to determine that federal funds are expended properly.

#### **8. How does a SILC engage in advocacy work?**

According to Section 705(c) of the *Rehabilitation 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. However, the *Rehabilitation Act* and its implementing 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.

For example, in accordance with Section 705(c)(1) and (4), the SILC listens to and advocates for individuals with significant disabilities during the process of developing the SPIL in conjunction with the DSU. Through this process, the SILC

identifies the individual and systematic 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 Section 705(c)(2), the SILC also monitors the SPIL and ensures that the SPIL strategies being implemented are effectively addressing the individual and systematic 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.

In addition, the SILC may support the CILs' systems advocacy activities through exercising its statutory duties. For instance, the SILC may coordinate efforts with a public transportation agency to address the CIL-identified transportation needs of individuals with significant disabilities.

Furthermore, the SILC advocates for independent living through its interaction with a variety of disability-related councils, commissions and organizations at the state, local and federal levels, in accordance with Section 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.

However, it is important to note 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, the federal government identifies certain interactions as lobbying. While lobbying may be a form of advocacy, all grantees and subgrantees are prohibited by 2 CFR Part 230, Appendix B, Item 25 from using federal funds to engage in lobbying.

Finally, as demonstrated by the above examples, 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.

#### **9. Are SILCs required to hold public hearings with the DSU?**

Title VII of the *Rehabilitation Act* and its implementing regulations address two different types of public hearings. First, 34 CFR 364.20(g) requires that both the DSU and the SILC



conduct public hearings on the contents of the SPIL prior to its submission and on any amendments to the approved SPIL. Second, Section 705(d) of the *Rehabilitation Act* and 34 CFR 364.21(h) mandate that 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.” It is not required, although it is permitted, that the SILC hearings authorized under Section 705(d) be held jointly with the DSU.

SUMMARY:

Through the implementation of Title VII of the *Rehabilitation Act*, its implementing regulations, and the SPIL, DSUs, SILCs, and CILs collaborate in fulfilling the purpose of the IL program. The guidance contained in this TAC is 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 *Rehabilitation Act* identifies a limited number of duties that SILCs are authorized to carry out, Councils can engage in a variety of creative, meaningful and allowable activities to fulfill each of its responsibilities. In adherence with the federal requirements discussed in this TAC, SILCs can actively contribute to the IL program in meaningful ways that have a substantial and comprehensive effect on the lives of individuals with disabilities throughout their states.

CITATIONS:

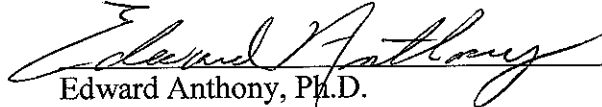
Sections 101, 704, 705, 706 and 713 of the *Rehabilitation Act of 1973*, as amended

IL program regulations at 34 CFR 364.2; 34 CFR 364.20; 34 CFR 364.21; 34 CFR 361.22; 34 CFR 364.4; 34 CFR 364.5; 34 CFR 364.57; and 34 CFR 364.6

Federal cost principles at 2 CFR Part 225, Appendix B, Item 17; and 2 CFR Part 230, Appendix B, Item 17 and Item 25.

Education Department General Administrative Regulations at 34 CFR 76.770; and 34 CFR 80.20 and 40(a)

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