

**WIOA Rules / Regulations Input: SILC Workgroup**

**May 27, 2015**

<b>Law</b>	<b>Issue</b>	<b>Recommended Language</b>	
		<b>Regulations</b>	<b>Guidance</b>
§ 7 (8) Definitions	There is a definition of “designated state agency” and “designated state unit” but not “designated state entity”. So do we need a definition of DSE? Duties are defined in S.704 # (c) pg. 178.	The DSE is a state agency that is eligible to receive federal funding and is in good standing with any federal agency distributing such funds, is designated in the SPIL, and agrees to accept the responsibilities under §704 (c).	The DSE is designated by the SILC and the Centers in the SPIL. The SILC and the CILs should enter into discussions with potential DSEs. The chosen DSE shall confirm their agreement to fulfill the duties and responsibilities by written agreement and signature on the state plan.
§ 704 The State Plan	In general, there has been enormous inconsistency among RSA staff in the SPIL approval process. Some SPILs were rapidly approved in spite of glaring omissions while others were sent back for repeated re-writes. Moreover, with each re-write, new problems would be found that needed further work. It was difficult to determine if and when the SPIL would ever be satisfactory. There is little doubt that some RSA staff inserted personal opinion regarding issues such as the meaning of “working relationships and coordination” among stakeholders, for example. In the future, the ILA Director should assure that the approval process is clear and consistent among all state liaisons should that model of working with the states continue as a practice in ACL. In addition, a new SPIL pre-		

	print and guidance document should be developed.		
§704 (c) Designation of State Entity	<p>What should the process be for designating the DSE?</p> <p>Who has the authority to agree for a state entity to serve as the DSE?</p> <p>Does the DSE have to be a State Agency? Or can it be some other type of state entity?</p> <p>What do we do if the current DSU tries to force the SILC and CILs to designate it as the DSE?</p> <p>Will there be any guidance on requirements or qualifications for a DSE? What happens if a willing DSE cannot be secured?</p>		
§ 704 (a)(2)(A) SPIL Development	The Chairperson of the SILC does not develop the SPIL without the rest of the Council.	SPIL is developed by the chairperson of the SILC in conjunction with the full SILC and the directors of the CILs.	An essential activity in SPIL development is securing input from the public, including people with disabilities, all CILs in the state and other stakeholders. Methods of securing input include but are not limited to public hearings, public forums, needs assessments, surveys, focus groups, etc.
§ 704 (a)(2)(B)(ii) SPIL sign off by DSE	In the past, DSU's have exerted excessive influence on plan contents and have refused to submit plans they disagree with regardless of the opinions of the SILC and CILs or the public input and comments received. The SPIL pre-print needs to include the responsibilities, limitations, and role of the DSE in the signature section so it is clear what they are	The DSE's signature on the state plan is not intended to be an approval of or agreement with the SPIL but solely their agreement to serve as and fulfill the defined duties of the DSE.	By signing the SPIL, the DSE agrees to receive and administer the Part B funds allocated to the state and to disburse those funds in accordance with the SPIL. The signature of the DSE does not constitute agreement with the goals and objectives, the plan for the network of CILs, or any other substantive content of the SPIL

	agreeing to do and what their role is limited to.		and does not give them a role in the oversight of the implementation of the SPIL.
§ 704 (a)(2)(B)(iii) SPIL sign off by CILs	51% of federally funded CILs, state funded CILs or all CILs? RSA has refused to recognize CILs funded by funding other than Part C as being part of the network of CILs.	Centers included in the statewide network of CILs shall be defined in the SPIL, regardless of funding source, shall meet the standards and assurances under §725, and shall be considered in meeting the 51% of CILs required to sign the SPIL.	The SPIL shall include the method and responsibility for determining which non-Part C funded CILs are in compliance with the Standards and Assurances in §725.
§ 704 (a)(3)(C)(II) & (III) Working Relationships and Collaborations	Should the SPIL address how collaboration will take place for each of the organizations listed? In the past, approval of SPILs was held up because we addressed some but not all of the entities in the current SPIL pre-print.	The SPIL shall prioritize the entities and organizations with which collaboration and working relationships are most needed for successful implementation of goals and objectives of the SPIL.	The public input should inform the SPIL as to the issues and entities that most require goals and objectives for the SPIL. It doesn't seem realistic for a SPIL to tackle everything.
§ 704 (a)(4) Withholding funds during SPIL approval process	The ILA Director "may" withhold funds if a SPIL is not submitted. In the past, funds have been withheld after a SPIL was submitted while the SILC and DSU were in negotiations with RSA to resolve issues and secure SPIL approval.	The ILA Director shall not withhold IL funds during the time that the SILC chair, the CIL representative (and the DSE if applicable) are in negotiations with the ILA Director for SPIL approval.	
§ 704 (a)(4) SPIL Submission	A state ("the state") shall submit a SPIL. The law does not specify who is the actual entity is that should submit the SPIL since there is no definition of "a state" or "the state".	The SILC shall coordinate the development of the SPIL and submit the SPIL 90 days or earlier before the completion date of the current plan.	
§ 704 (a)(5) Statewideness	Issue: Some CILs have the capacity to expand their service areas beyond those identified in the original grant. RSA has always refused this request and has not allowed CILs to serve any areas outside those identified in their	The SPIL will identify strategies for expanding IL services. Such strategies may include but are not limited to re-defining or expanding the CIL service areas beyond those identified in their original grant	

	original, approved grant.	applications and starting new CILs or satellite CILs in unserved areas.	
§ 704 (a)(6)(n) SPIL Evaluation	How will the SPIL be evaluated? This is a duty many SILCs struggle with and RSA has not provided adequate guidance to SILCs on SPIL monitoring & evaluation. Regulation and guidance must be clear that it is not the SILC's role to evaluate the CILs but rather the effectiveness of the SPIL.	The Council shall establish a method of evaluation and regularly report progress, effectiveness, and outcomes, to all CILs, and to partners identified in the SPIL.	It is recommended that reports are provided at least semi-annually and those documents are posted on relevant web sites (SILC, CILs, and partners identified in the SPIL.)
§ 704 (b) SILC Funding	"Funding the administrative costs of the Council."	The plan for funding the administrative costs of the Council shall comply with the regulation and guidance for §705 (e) (1).	
§ 704 (e) Independent Living Services	Historically, in describing how IL Services will be provided, the SPIL has been required to include a checklist of the services from § 7 (18) (B) (i-xxi). This list of IL services has never been fully understood by CILs or SILCs and even less so by external stakeholders. Moreover, to continue to use this list is to continue to focus on inputs and outputs rather than outcomes. Because the list is in the law, is it required that we include this list in SPIL development and in the annual CIL reports? Would it be possible to shift to planning for and reporting on outcomes?	The SPIL shall describe how the 5 core services, and any additional services, will be provided. The CILs shall report annually on the number of CIL participants receiving the five core services. If an individual receives more than one of the core services, the reporting process shall allow for same. The annual report shall include outcomes for CIL program participants. Progress on the SPIL shall be reported in the annual report from the SILC, and the CILs. The SILC shall coordinate the submission of the annual report on the SPIL.	Some CILs have developed their own Outcome reporting process and requirements especially those with substantial state investments because the state IL program administration(s) have required it. In instances where this is the case, that Outcome reporting process is acceptable. In states where there is no such mechanism, the process developed and tested by NCIL will be offered to the states as a model.
§704 (c)(5) Part B funds to be retained by the DSE	While the 5 percent limit in the law is helpful, there needs to be a process to determine how the percentage the DSE will retain is determined. This should be addressed in the SPIL, as 5	The percentage of Part B funds to be retained by the DSE shall be designated in the SPIL and shall not exceed 5 percent of the total Part B funds received.	In the SPIL development process, the SILC and CILs will consider the funding needs for the activities outlined in the SPIL and will negotiate the percentage to be

	percent of Part-B funds could be as much as \$102,228 and as little as \$15,267 (\$1,500 for the territories) given the wide margin of the Part B appropriations.		retained by the DSE for administrative costs.
§704 (f) Scope and Arrangement of Services	In the past, and in some instances currently, the DSU has operated an IL field program / service and has provided services directly using Part B funds. The DSUs have also contracted with some providers that do not operated under the IL philosophy. Because the role of the DSE is very different than the old DSU, it should be clarified who may provide IL services.	Independent Living Services to be provided under the SPIL must be provided by entities operating under the Independent Living Philosophy and which meet the Standards and Assurances set forth in §725.	
§704 (g) Network of CILs	There is no limitation by funding source in the law for CILs to be included in the statewide network of CILs, yet RSA has excluded state funded centers. It should be clarified in regulation and guidance that the Network is established in the SPIL and includes CILs as indicated in the SPIL and that meet the Standards and Assurances set forth in §725.	CILs, under §725 (b)(7), and SILCs, under §705 (c)(2)(B), are to conduct resource development activities that may support the Network of CILs. The SPIL should reflect all the CILs (existing and planned) in the Network, whether funded by Part C, Part B, state funds, or funds developed from other public and private sources.	The SPIL will state <u>how</u> compliance with the Standards and Indicators set forth in Sec. 725 will be determined for CILs not funded by Part C.
§704 (k) Coordination Between Federal and State Sources	See above	The SPIL shall describe efforts and plans to coordinate Federal and State funding for CILs to support the statewide network of CILs. CILs funded by Federal or State funding, or a combination of both, shall be included in the statewide network of CILs as determined by the SPIL.	
§ 704 (o)(1) Promoting full	The work that the NCIL task force has done on Outcomes measurement fits	IL Services provided under the SPIL shall result in outcomes that promote	

<p>access to community life</p>	<p>this requirement extremely well. For example, one of the outcomes is “CIL consumers participate in their communities to the extent that they wish.” Another example is “CIL participants served by the CIL within the reporting year who moved out of an institution and into a self-directed, community-based setting.”</p>	<p>and increase full access to community life for individuals serviced shall be cross – disability and shall not promote segregation. (Note: The HCBS setting rules recently promulgated provide an excellent model for what “promoting full access” means.)</p>	
<p>§705 (a) Establishment</p>	<p>The complexity of this issue is that some states house the SILC and employ the director / coordinator / administrative assistant although the majority of the Councils are free standing, non-profit agencies. One of the reasons that Standards and Indicators are needed is to address the issue of autonomy of the SILC. Historically, some DSUs exerted excessive control over SPIL development, budgetary decisions, personnel decisions and so forth. In reality, there were some advantages to being a state employee in that people with disabilities have access to employment benefits such as health insurance and retirement. However, with the elimination of pre-existing conditions as a result of ACA, this approach is not as essential as it once was. However, state agency SILCs are often limited in their autonomy by state purchasing policies, travel policies and so forth. As an example, some non-profit SILCs have travel policies that reimburse wheelchair lift equipped van users at a higher</p>	<p>The SILC shall not be established as an entity within a State agency, including the DSA or the DSE. The SILC shall be independent of the DSE and all other State Agencies. (This is a current – but not enforced part of law &amp; regulation.)</p>	<p>While free-standing non-profits are the preferred business model, a state may provide administrative supports of a very limited nature. For example, some Councils are “attached agencies” wherein the employees are state employees but the Council exercises governance over money management, policy development, personnel selection and supervision and all other significant business functions.</p>

	<p>mileage rate than car users because the actual cost is higher. Additionally, when travel for state workers is limited by Executive Order, SILC staff that are state employees are also prohibited from travel.</p>		
<p>§705 (b) (2) &amp; (4) Appointment Process</p>	<p>Many SILCs have struggled not only with getting appointments made but also with getting members appointed who meet the composition and qualifications requirements. DSUs have “vetoed” individuals recommended by the SILC, governors have refused to appoint the CIL Director selected by the CIL directors in the state [as required by §705 (b)(2)(A)], and governors have randomly appointed people they know personally without regard for the composition and qualification requirements. Guidance should be provided to help SILCs ensure the composition and qualifications requirements are considered and met as governors make appointments to the SILC.</p> <p>Additionally, some governors decline or neglect to make appointments in a timely manner, which can result in the SILC not being fully constituted and / or in compliance. When the SILC has made a good faith effort to secure appointments, to no avail, is the withholding of Title VII funds the only option? What can the SILC do to avoid the withholding of funds? How can ACL / ILA assist? Are DD Councils treated similarly under the</p>		<p>The SILC should conduct a process to identify potential members and develop recommendations or nominations for appointment to the SILC to ensure the composition and qualifications requirements in §705 (b)(2) &amp; (4) are met. Information provided to the governor with the nominations should verify that such requirements will be met by appointing those individuals nominated.</p> <p>If a governor, or other appointing authority, refuses to make appointments to the SILC or significantly delays making such appointments resulting in the SILC not being fully constituted and in compliance, the ILA Director will contact that governor to explain the consequences of not making the appointments in a timely manner, including the potential withholding of all Title VII funding.</p>

	law? Are their funds withheld?		
§ 705 (b)(2) – (7) Composition, qualification, voting, terms of service and vacancies of SILC members.	The law is clear on all of these matters. Years ago, ILRU developed a grid of these requirements in order to assist SILCs with this process. With minor edits and updates, this grid can be issued as a guidance document.		
§705 (c)(2) Authorities of the SILC	This section is quite clear and provides authority for the SILC to conduct leadership development activities, provide training opportunities, conduct systems advocacy, and other activities with §701. Regulation and guidance should in no way restrict or appear to restrict the SILC from engaging in such activities. However, regulation and guidance should be very clear that it is not the SILC’s role to monitor and evaluate the CILs.		
§705 (c)(3) Limitation on the SILC	Some SILCs may be conducting some activities as non-profit corporations, under grants or contracts apart from SILC duties and the SILC resource plan, which may be interpreted to be in conflict with this section. Guidance should be written to provide clarification on this limitation.		
§ 705 (e)(1) SILC Resource Plan	A resource plan including resources “necessary and sufficient” for SILCs to fulfill their duties has been interpreted very differently from state to state with DSUs controlling amounts and details and some SILCs being woefully underfunded.	The types and amounts of resources in the SILC resource plan shall ensure adequate staff, operating costs and support of SILC members to ensure SILC capacity to fulfill duties and conduct authorized including the development of the	Once the amount of funding in the SILC resource plan has been negotiated, the SILC will control the budgeting of the resources, including staff salaries. Additionally, the SILC will be responsible for compliance with

		network of CILs. The SILC Resource Plan shall be controlled by the SILC including SILC staff, to ensure the autonomy of the SILC.	applicable laws and reporting requirements.
§ 705 (e)(1) SILC Resource Plan	<p>Some states fully fund their SILC with I&amp;E funds and some use Part B funds or state funds. Since WIOA's passage, some states are already removing or threatening to remove I&amp;E funds from the current SILC resource plan.</p> <p>A joint "maintenance of effort" letter from ACL and RSA would be very helpful. The goal of this letter would be to maintain the SILC resource plan and current IL programs and services while the decision about the potential DSE is being considered.</p>	§101 (A) (18) (ii) requires the use of I&E funds for the operation of the SILC and allows for funding from Part B and other public and private sources.	<p>Due to the requirement in §101 (A) (18) (ii) that I&amp;E funds be used to support the funding of the SILC, such funding should continue to support the SILC regardless of whether the agency responsible for Title I programs is the DSE described in § 704 (c).</p> <p>Additionally, if the DSE is an agency other than that responsible for Title I programs, the DSE should also provide resources to support the SILC resource plan, under §705 (e)(1).</p> <p>Resources may also be included from other public sources such as state funds, funds from state agencies other than Title I program agency and the DSE, and from private sources including but not limited to donations, funds generated by resource development and grant opportunities for which the SILC structure makes it eligible to apply.</p>
§705 (e)(2) SILC Staffing	Some SILCs currently have staff provided by the DSU, some of which have duties other than providing staff support to the SILC. In such instances, SILCs have no control over selecting staff and little role in the supervision and evaluation of such staff. Also currently, some DSUs are		Staff providing staff support to the SILC shall be selected, supervised, and evaluated by the SILC to ensure SILC autonomy and control.

	insisting they be included in hiring decisions, evaluation, and setting salaries of staff for SILCs organized as non-profit corporations.		
§ 706 (a)(1) Approval of SPIL	<p>Waiting until the 11<sup>th</sup> hour to determine if the SPIL is approvable or not should not be permitted. Nor should withholding of funds be permitted when there is a simple difference of opinion between the federal agency and the state.</p> <p>It is important for the ACL to keep in mind that the SPIL is the STATE plan. In the past two planning cycles, it has become increasingly difficult to secure timely approval. Moreover, IL funds were withheld while efforts to resolve differences were underway.</p> <p>There needs to be some sort of due process in the event that the SPIL is disapproved or likely to be disapproved.</p>	The ILA Director shall, within 30 days of the submission of the SPIL, provide written approval or disapproval to the SILC Chair, the CIL representative and the DSE. The letter of disapproval must site the specific unmet requirement(s) and must site the relevant regulation(s) and must describe the process to appeal the disapproval and/or achieve approval.	
§713 (a) Authorized Uses of Funds	In § 713, what is meant by “the state”? This should say “the state plan” rather than “the state” since a DSE may think <u>it is</u> “the state”. As earlier stated, DSUs have exercised too much control over where and how Part B funds were spent.	The SPIL shall designate how and by whom the funds received under Part B will be spent/used. Funds may not be used for any other purpose without the approval of an amendment to the SPIL.	
§713 (a) Authorized Uses of Funds	§ 713 (a) says “The State may use funds received under this part (Part B) for the resource plan for the SILC but may not use more than 30% of these funds ...unless the state specifies that a greater percentage is needed...”		

	<p>The concern is that this section of the law will be interpreted to mean that the SILC resource plan will be composed only of the 30% from Part B – an inadequate amount in many states. Moreover, if “a greater percentage is needed” – as the new law allows – some states would have very little left to carry out any of the other authorized uses.</p> <p>The 30% limitation will provide widely differing amounts of funding available for the SILC Resource Plan due to the amounts of Part B funding received by states under the current funding formula. For states receiving the highest amounts of Part B dollars (i.e. \$2,044,576 for California in FY 2014), 30% amounts to significantly more than the total Part B appropriation for the 28 states and the District of Columbia which receive the minimum amount (\$305,350 in FY 2014) of Part B funding. Additionally, the Part B appropriation for the 5 territories is less than \$30,000 – 30% of which would be less than \$9,000.</p> <p>All 56 SILCs have the same duties, authorities, and responsibilities. 30% of Part B funds is a widely inequitable amount to support those duties, authorities, and responsibilities.</p> <p>Significant guidance must be provided on how states “specify that a greater percentage of the funds is needed”.</p>		
§713 (a)	As previously discussed, there is an	Only states with SILCs that meet the	

<p>Authorized Uses of Funds</p>	<p>enormous range in Part B – from a high of over \$ 2 million for California to a low of \$305,000 for 28 states &amp; DC and less than \$30,000 for the territories.</p> <p>Since the duties and responsibilities are the same for all SILCs regardless of the population of the state, it would make sense to have a minimum recommended amount for the SILC resource plan.</p> <p>Is it possible through the appropriations process to secure new funding for a budget line for SILCs? If 56 SILCs were to be funded at a minimum of \$250,000, an appropriation of \$14 million would equitably fund all SILCs.</p>	<p>requirements in the law and the Standards and Indicators for SILCs will be eligible to receive the minimum funding for SILCs.</p>	
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