



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Part 1329

RIN 0985-AA10

Independent Living Services and Centers for Independent Living

AGENCY: Independent Living Administration, Administration for Community Living, HHS.

ACTION: Final rule.

SUMMARY: This rule implements the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act, which established an Independent Living Administration within the Administration for Community Living (ACL) of the Department of Health and Human Services (HHS). The rule helps implement changes to the administration of Independent Living Services and the Centers for Independent Living made under the current law in alignment with ACL and HHS policies and practices.

DATES: These final regulations are effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Molly Burgdorf, Administration for Community Living, telephone (202) 795-7317 (Voice). This is not a toll-free number. This document will be made available in alternative formats upon request. Written correspondence can be sent to the Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule

The federal Independent Living (IL) program seeks to empower and enable individuals with disabilities, particularly individuals with significant disabilities, to exercise full choice and control over their lives and to live independently in their communities. For over 40 years, these aims have been advanced through two federal programs: Independent Living Services (ILS) and Centers for Independent Living (referred to as CILs or Centers). The Workforce Innovation and Opportunity Act (WIOA) transferred these Independent Living programs to the Administration for Community Living (ACL) and created a new Independent Living Administration within the agency, adding section 701A of the Rehabilitation Act, 29 U.S.C. 796-1. As part of the transfer, the Administrator of ACL (Administrator) drafted a Notice of Proposed Rule Making (NPRM) that was published on November 16, 2015, to implement changes made by WIOA in accordance with Section 12 of the Rehabilitation Act, as amended, 29 U.S.C. 709(e), and section 491(f) of WIOA, 42 U.S.C. 3515e(f).

ACL received over 100 comments to the NPRM, most of them expressing their support for the provisions in the proposed rule. ACL has read and considered each of the comments received. We respond here to the most-commonly-received comments and to those that we believe require further discussion. We have indicated changes made between the NPRM and final rule.

Several comments raised issues that are specific to the commenter. Responding to such comments is beyond the scope of the final regulation. Nevertheless, we encourage commenters with individualized questions to contact the technical and training support center or the ILA specialist for their State for assistance with their questions. We also made a number of technical changes in the preamble, for example, to reflect that the term “704 Reporting Instruments” will no longer be

used for data collection going forward, and to clarify potentially confusing references to the “State.”

Subpart A—General Provisions

ACL received numerous comments expressing concern about the person-centered planning language in the NPRM preamble, including the statement that person centered planning and consumer control “are not interchangeable terms.”

ACL affirms that consumer control is a guiding principle in IL. To clarify, the NPRM did not intend to conflate person-centeredness and consumer control or other key terms in the IL purpose. The proposed regulatory language did not include person-centeredness; the language was included in the preamble to the NPRM to both highlight this requirement in the home and community-based services and supports (HCBS) settings context, and offer an opportunity to IL programs and stakeholders to help shape person-centered planning and self-direction principles in HHS-funded programs and practices that serve people with significant disabilities, as they increasingly are embedded in the work we do at ACL and across HHS. This language applies in the HCBS settings context and does not limit consumer control or anything centers do with Title VII funding.

One commenter suggested that Centers should not be penalized for hiring individuals who do not have significant disabilities when candidates who have significant disabilities do not apply, or if those who do apply are not qualified, and the CIL therefore fails to meet the requirement that the majority of staff are individuals with disabilities. The majority hiring requirement is beyond the scope of this rule; however, the ongoing requirement that a Center ensure that the majority of the

staff, and individuals in decision-making positions are individuals with disabilities is consistent with the consumer directed, self-help, and self-advocacy principles in the IL Philosophy.

Definitions (§ 1329.4)

New IL Core Services Definitions

WIOA added a new fifth requirement to the Independent Living Core Services, which includes services that—

- Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;
- Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community; and
- Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.

(Sec. 7(17)(E) of the Act, 29 U.S.C. 705(17)(E)).

ACL received many comments expressing concern about being able to effectively provide the new IL core services without the allocation of additional funding. We cannot address concerns about funding levels for IL programs in the final regulation. We also wish to clarify that funds for transition services allocated to other agencies are based under separate statutory authorities and appropriations.

ACL will support programs in accomplishing and reporting IL services. To add value and help enhance the work CILs are already doing in this area, ACL offers technical assistance for state and community-based aging and disability organizations (CBOs) through national partners as well as through learning collaboratives of networks of community-based aging and disability organizations, including Centers for Independent Living. ACL looks forward to engaging more of the IL community in these efforts to support and improve business acumen, which has enabled CBOs to garner funding through public-private partnerships, contracts with health-care providers and payers, and grants from private foundations. ACL's business acumen efforts are one way that CILs may enhance their resource development activities. We will also work to identify opportunities to collaborate and leverage resources for the core IL services, including the new fifth core services, across ACL, HHS, and other federal agencies.

The NPRM sought public comment on whether to include a definition of "institution" and the suitability of applying Medicare and Medicaid definitions of that term in defining the new core independent living services.

We received comments indicating that the Medicare/Medicaid definitions are not sufficiently broad to encompass the range of entities included in the term "institution." We received numerous comments recommending various terms and entities that should be included in a definition of "institution," as well as comments stating that including a regulatory definition was not necessary or could be unnecessarily limiting and could impede effective provision of services. As some commenters recommended, a broad, non-prescriptive approach allows CILs the most flexibility to determine the types of transition services they can offer with the best chance of success for individuals receiving the services based on available local resources.

Some commenters recommended a very broad definition of institution, including “any congregate living arrangement of any size in which residents with disabilities are not in control of their own lives,” a parental/guardian controlled home, or “any situation in which a person with a disability is not free to control all aspects of his or her life.” ACL did not incorporate this approach, as we concluded that the suggested categories were vague and overbroad. For instance, these examples are not limited to adults, and minors are not given authority to control all aspects of their lives, including moving from a home where the person lives with a parent or guardian. Other commenters suggested narrowing the definition and excluding certain settings such as correctional facilities.

ACL has not included a specific definition of the term institution here, so that the categories will be sufficiently broad and allow flexibility to CILs. Without specifically defining the term, we identify the following examples of entities that fall within the category of “institution,” which includes but is not limited to: hospitals, nursing facilities and skilled nursing facilities, Intermediate Care Facilities for Individuals with Intellectual Disabilities, and criminal justice facilities, juvenile detention facilities, etc.

In the NPRM, we also requested comment on the need for and proposed content of definitions for “home and community-based residences” and individuals who are “at risk” of institutionalization in the new independent living core services. We received several comments requesting that we define “home and community-based residences” for the purposes of the fifth core services. Some commenters suggested we refer to Medicaid definitions, including the definitions used in the “Money Follows the Person” demonstration program and the rule related to Medicaid-funded

home and community-based services published on January 16, 2014. Many commenters suggested a definition that would include any residence “with fewer than 4 people non-related in which a person with a disability is free to control all aspects of his or her life.” Other commenters recommended against including size or configuration of living arrangements in the definition, explaining, “When maximum number of people in a setting or their familial relationship to each other is prescribed, it does not permit those groups of totally self-directing individuals who choose to share an apartment or house and share attendant services, for example, to be included in the service count. The regulations should not preclude serving those individuals who, of their own volition, have chosen forms of co-housing, cooperatives, or Naturally Occurring Retirement Communities (NORCs).”

As some commenters recommended, ACL considered language in Medicaid regulations that define home and community-based settings for certain Medicaid programs. ACL encourages IL programs to consult the language in the rule defining HCBS settings for Medicaid waivers under section 1915(c) of the Social Security Act at 42 CFR 441.301(c)(4), for state plan HCBS at 42 CFR 441.710(a)(1) and (2) or for Community First Choice services at 42 CFR 441.530(a)(1) and (2). These CMS regulations provide details on the qualities of home and community-based settings, as compared with those that have the qualities of an institutional setting. However, we did not import the definition from the CMS HCBS rules into this rule. ACL seeks to encourage CILs to assist the broadest range of individuals as they transition from an institutional to a community-based setting. The Medicaid rules apply to Medicaid beneficiaries receiving home and community-based services under specific statutory provisions, and while the language is instructive to determine qualities integral to a home and community-based setting, IL serves a broader range of people and addresses a wider range of situations than those covered under the

Medicaid rules. For example, the needs of the individual in 42 CFR 441.301(c)(4) are determined “as indicated in their person-centered service plan.”

As some commenters recommended, to preserve wide latitude and to support consumer control, we have chosen not to include a definition for “home and community-based residences” in the final rule.

We received comments recommending that the individual should determine whether or not he or she is at-risk through self-disclosure. We received comments that emphasized the importance of the intake and goal setting processes for facilitating informed consumer choice related to self-identification. If a consumer feels he or she is at risk of institutionalization, and self-identifies as being at risk as part of the intake or goal-setting process, then he or she should be treated as being at risk. CILs in these situations conduct discussions around the person’s circumstances, possibilities and risks but the designation ultimately must be informed by consumer choice. We have incorporated that recommendation in the regulatory text as part of the definition of the independent living core services.

Some commenters recommended adding a definition of “transition process.” Since the term “transition” is not included in the second prong of the fifth core IL services, and the term “transition” has a different meaning in the third prong, we incorporated the recommended definition into the first prong regarding the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences.

WIOA defines youth with a disability to mean “an individual with a disability who is not younger

than 14 years of age; and is not older than 24 years of age.” In the NPRM, ACL defined the category of “youth with a significant disability” by combining the definition of “individual with significant disability” in section 7(21), 29 U.S.C. 705(21) and “youth with a disability” in section 7(42) of the Act, 29 U.S.C. 705(42).

A commenter expressed concern that the rule uses the term “youth with a *significant* disability,” (emphasis added) as “[t]his is different than the Independent Living philosophy which is cross disability.” The language is based on WIOA language in the definition of independent living core services, 29 U.S.C. 705(17)(E), which covers services to “facilitate the transition of youth who are individuals with significant disabilities...” As a cross-disability agency, ACL is sensitive to this concern, but does not have the authority to change statutory language through the rulemaking process.

A commenter recommended removing the “completed their secondary education” provision from this regulation. Other commenters suggested the definition was overbroad and should be pared back. We received comments that individuals who have reached the age of 18 but are still receiving services in accordance with an individual’s education program developed under the Individuals with Disabilities Education Act (IDEA) should not be considered to have “completed their secondary education.” Because Sec. 7(17)(E)(iii) of the Act, 29 U.S.C. 705(17)(E)(iii), uses the term “completed their secondary education,” ACL does not have the authority to remove this phrase from the definition of IL core services regarding youth transition. However, we are removing from regulatory language: “has reached age 18, even if he or she is still receiving services in accordance with an individualized education program developed under the IDEA.” In agreement with comments received, we have added to the definition of independent living core

services that individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

Some commenters also questioned the link to eligibility under IDEA/eligibility for an IEP, or recommended a definition of “students with disabilities” be defined broadly, such as those receiving services under of Section 504 of the Rehabilitation Act (under 504 plans). Commenters also requested that the youth transition prong be extended to the youngest possible age, for example before vocational rehabilitation (VR) begins to provide services in the State. In WIOA, Congress established the prong of the new IL service to “(iii) facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.” 29 U.S.C. 705(17)(E)(iii). This requirement, defined in the statute, focuses on providing independent living services to youth who are transitioning to postsecondary life after they have left school. ACL does not have the authority to redefine this category through the rulemaking process.

We acknowledge the importance of transition services for youth prior to post-secondary life in order to prepare youth for a successful transition to post-secondary life. However, we also want to emphasize that some youth transition activities not covered under the fifth core services may be included within the other four core services, Sec. 7 (17)(A-D) of the Act, 29 U.S.C. 705(17)(A-D), as well as within the Independent Living Services in Sec. 7(18), 29 U.S.C. 705(18) , and CILs should continue to report their work in these areas accordingly.

A commenter raised concerns that broad definitions around the youth transition component of the fifth core service could prompt school districts to shift responsibility for youth transition to the CILs. While we appreciate the concern, how school districts fulfill their responsibilities to students with disabilities is beyond the scope of this rule. We acknowledge, however, that Centers often participate as one of several entities, including schools, with an important role in supporting and facilitating youth transitions. As a promising practice, ACL recommends continuing successful collaboration, coordination, and leveraging of resources.

Commenters noted that they are already pursuing transition work with youth that falls outside of the proposed parameters of the fifth core services. Programs may and are encouraged to continue to engage in such activities, which can be captured and credited under the other core IL services or general independent living services under Sec. 7(18), 29 U.S.C. 705(18).

Finally, in response to the NPRM, ACL received questions as to whether there are minimum levels which must be achieved in order to have met the requirements of each component of the new fifth core IL services. Each CIL must demonstrate activity under all three prongs of the definition, but the minimum levels are not further defined here. See the Regulatory Impact Analysis for further discussion. The revised data collection system will contain more information when published.

Definitions of Other Terms in § 1329.4

Administrative support services

ACL received comments recommending additional changes to this definition, including a request for additional clarity on the “services and supports” provided by the DSE. Others expressed

support for a broad definition, with flexibility for the DSE. In order to preserve flexibility, we made no changes to the definition in the proposed rule.

Advocacy

ACL received a number of comments on the proposed definition. Some commenters expressed a concern about a perceived lack of inclusion of “systems change” in the definition, and requested that the language in the rule “revert back to the original language for advocacy that includes both self and systems change.” We note that the proposed definition of “advocacy,” identical to the prior definition from the Department of Education regulation 34 CFR 364.4, includes “systems advocacy.” Many commenters recommend that the activities described in §1329.10(b)(5) be included in the definition, as they are part of systems advocacy. The final rule retains the proposed definition for “advocacy.” The activities described in §1329.10(b)(5) are already required as authorized uses of funds for independent living services and including them in the definition of advocacy would be redundant. ACL will consider providing further guidance and will continue to offer training and technical assistance to provide additional clarity on this issue.

Center for independent living

Many commenters expressed support for the proposed definition from the NPRM, though several commenters raised questions about accountability for CILs that are not recipients of Part C or Part B funding. A few commenters recommended the definition be limited to CILs that receive Part B or Part C funding. The final rule retains the proposed definition of CILs. With respect to compliance and oversight issues, the SILCs, pursuant to their duty under Section 705(c)(1)(B) to monitor, review, and evaluate implementation of the SPIL, will make the determination that entities counted as CILs eligible to sign the SPIL comply with the standards in Sections 725 (b)

and the assurances in Section 725(c). The SPIL must identify 1) the eligible CILs and 2) how they were determined to meet the required standards and assurances. We will consider including corresponding assurances with some standards of evidence of documentation in the indicators of minimum compliance for the SILCs.

We received requests for clarification regarding the phrase “regardless of age or income.” This phrase is based directly on the statutory definition, Sec. 702(2) of the Act, 29 U.S.C. 796a(2). The phrase means that an agency, in addition to meeting all of the other requirements, may not categorically exclude individuals with significant disabilities on the basis of age or income. This does not preclude prioritizing services by urgency of need, nor does it preclude practical distinctions such as age-based legal restrictions.

We also received questions regarding the use of fee-for-service models for the delivery of services. The final rule does not address the use of fee-for-service models, though we encourage CILs to consider how to ensure that any application of such a model is accomplished in a way that is consistent with IL values.

Consumer control

In the NPRM we proposed to add the statutory definition of consumer control at Section 702(3) of the Act, 29 U.S.C. 796a(3). Commenters requested that the definition also include individual consumer control. ACL acknowledges the importance of an individual being able to make his or her own choices and set his or her own goals, including deciding with whom and how to achieve them, and allowing for the dignity of risk, which is a critical component of growth and true independence. The definition of “consumer control” is amended in the final rule to include:

“Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.”

Some commenters also suggested that the definition include the requirement that a majority of staff, management and Board positions are filled by persons with disabilities. ACL did not make that change, as the composition requirements (for the SILC) and assurances (for the CILs) at issue are established separately in the statute.

Personal assistance services

The NPRM proposed that personal assistance services mean “a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job and include but are not limited to: Getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands.” Commenters indicated that the purpose of personal assistance services is not merely to enable a person with a disability to get a job, but to perform a myriad of social functions. Commenters also raised the point that the concept of personal assistance services should be updated to reflect “the possibilities available today.” Commenters requested additional examples of personal assistance services, to help illustrate that such services may support a variety of interdependent social functions, such as parenting, engaging in civic activities, practicing the individual’s preferred religion, engaging in a relationship with partner(s)

of the individual's choice, and more. The final rule incorporates the recommended language. Thus, personal assistance services means "a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities including but not limited to: getting up and ready for work or going out into the community (including bathing and dressing), cooking, cleaning or running errands, and engaging in social relationships including parenting."

Service provider

ACL received comments indicating that the DSE should not be included in the definition of "service provider." The commenters explained that DSEs should not provide direct services because the DSE "is not consumer controlled and does not provide peer support, systems advocacy, etc.," among other justifications. After consideration of the comments on this provision, ACL agrees with the concerns expressed, and added the clarification that a DSE is eligible to receive funds to provide independent living services only where so specified in the SPIL. We have added a corresponding clarification to the preamble language in § 1329.17.

Unserved and underserved

ACL received numerous comments about the definition of unserved and underserved populations. A commenter expressed concerns about the elimination of "sensory impairments" from the definition. Others recommended that the definition should include older people with disabilities, or populations with certain types of disabilities, including individuals who are low vision, blind, deafblind or deaf, and people with traumatic brain injuries (TBI), and post-traumatic stress

disorder (PTSD). Another commenter asked about other groups, including people with limited English proficiency. One commenter expressed a concern about a lack of services for black veterans. Others requested a definition for “disadvantaged individuals.”

ACL notes that the proposed definition includes “populations such as...” and lists a number of possible categories. As stated in the NPRM, “We recognize that unserved and underserved groups or populations will vary by service area. For example, in some service areas unserved and underserved groups may include people with disabilities from the gay, lesbian, bisexual and transgender communities.” The categories included in the definition are examples, and not an all-inclusive list. We are not including a definition of disadvantaged individuals, as that definition may vary by individuals and by community.

Commenters expressed support for the proposed definition of “youth with a significant disability.”

ACL made technical changes to the definitions of “*Center for independent living*” and “*Independent living core services*” to improve clarity.

Indicators of minimum compliance (§ 1329.5)

Commenters requested that the final rule include SILC standards and indicators. The statute requires that ACL develop and publish in the Federal Register SILC indicators of minimum compliance. As was stated in the NPRM, the SILC indicators of minimum compliance are currently under development, a process which includes consideration of informal stakeholder input. ACL presented the current draft SILC standards of minimum compliance at the SILC Congress in January of 2016, and the final version will be published in the Federal Register with

an opportunity for public comment. ACL will continue to collect information on CIL compliance indicators based on the statutory standards and assurances through the data collection process. We made technical changes to the regulatory text of §1329.5 to clarify the current requirements.

ACL also clarifies that the indicators of minimum compliance and data collection instruments are living documents. ACL will periodically engage stakeholders to make refinements and improvements.

Regarding comments expressing concern about the lack of a sufficient notice and opportunity for “substantive public comment,” ACL is committed to continued engagement with stakeholders as we develop and publish the required indicators. We also note that the Federal Register is the recognized means for notifying the public and offering an opportunity to submit comments. Multiple commenters requested diverse compliance measures be developed to address specific needs for indicators. ACL appreciates this input and will consider these suggestions through the established processes.

Commenters also recommended establishing a rotation for CIL reviews. As indicated in the NPRM, the statute eliminated the requirement that compliance reviews be conducted on a random basis. ACL is actively reviewing options for review criteria, including how CILs will be selected for review.

Commenters expressed concerns about “targeting” CILs and requesting a neutral process. We decline to incorporate the comment that some CILs should not be reviewed more frequently than others. On-site compliance reviews are no longer required to be conducted on a random basis and

there may be legitimate reasons why a CIL may require more frequent evaluation. ACL agrees that clear, unbiased, and legitimate criteria must be established and consistently followed.

Some commenters expressed concern about the lack of capacity at the state and federal levels to conduct the required reviews of CILs. Section 711(c), 29 U.S.C. 796d-1(c) includes a requirement that the Administrator (rather than the DSE) shall annually conduct onsite compliance reviews of at least 15 percent of the centers for independent living that receive funds under Section 722 of the Act, 29 U.S.C 796f-1 and at least one-third of the designated state units that receive funding under Section 723 of the Act. ACL is actively evaluating the review processes, to optimize our capacity to conduct the required oversight.

Reporting (§ 1329.6)

A commenter objected to proposed §1329.6(b), stating that the requirement that the DSE in each state “submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act,” exceeds statutory authority since the referenced statute, Section 704(c)(4), only requires the designated state entity to “submit such additional information or provide such assurances as the Administrator may require.” This commenter noted that CILs are explicitly required by statute to “submit such reports with respect to such records as the Administrator determines to be appropriate.” We appreciate the comment, but find that requiring a report is fully consistent with and authorized by the statutory requirement that the DSE submit such additional information or provide assurances that the Administrator may require.

We received a comment concerning readability and accessibility of forms, materials, and links. We appreciate the comment and agree that the instructions, and any forms, links, and needed materials must be user-friendly and easily accessible. We continue to strive to meet this standard.

Enforcement and appeals procedures (§ 1329.7)

Regarding the proposed enforcement and appeals procedures in the rule, commenters asked questions about onsite compliance reviews and expressed concern about the lack of peer review. To clarify, the enforcement and appeals procedures proposed in §1329.7 are separate from a request for technical assistance and separate and in addition to the compliance review set forth in Section 706(c)(1). Section 706(c)(2)(C), 29 U.S.C. 796d-1(c)(2)(C), requires that, for the compliance review, the Administrator must "...ensure that at least one of member of a team conducting such a review shall be an individual who (i) is not a government employee; and (2) has experience in the operation of centers for independent living." The proposed regulatory text in §1329.7 does not address or propose changes to the onsite compliance review process, including the qualifications of employees and others conducting reviews. Instead, §1329.7 establishes the enforcement and appeals process that arises when a grantee receives notice of an action that would trigger the additional review process available through 45 CFR part 16. These determinations, set forth in appendix A, C.a.(1)-(4) are: disallowance, termination for failure to comply with the terms of an award, denial of a noncompeting continuation award for failure to comply with the terms of a previous award, and voiding (a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained).

For example, if after an onsite compliance review, the Director determines it necessary to terminate funds because of the grantee's failure to comply with the terms of the award , §1329.7 provides the affected CIL or State with the opportunity to seek additional review of that decision, consistent with HHS policies and practices. We added clarifying language regarding the onsite compliance review process as some commenters recommended. We also made technical changes

to more accurately reflect established HHS processes and incorporate correct citations.

Several commenters interpreted §1329.7 to mean that ACL would immediately terminate funding under certain circumstances, and pointed out that WIOA stipulates 90 day notice before Title VII Part C funding can be terminated. The NPRM did not propose to move more quickly than the 90 day time frame. The process that was outlined for enforcement and appeals is designed precisely to afford due process for those CILs for which expiration of the 90 day time frame and possible loss of funding is imminent. Since nothing in the regulation changes the statutory deadlines, no changes to the regulatory text are required.

With regard to §1329.7(b), one commenter questioned whether the Administrator has the authority to terminate Title VII B funding. We refer the commenter to 45 CFR part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, which is included in §1329.3, applicability of other regulations. For more information regarding remedies for non-compliance and termination, please see 45 CFR 75.371 and 75.372, which, address these issues. We also remind stakeholders that Section 704(a)(1) requires the submission of a SPIL which is approved by the Administrator in order to be eligible for funding. Thus, the Administrator has the authority to withhold or terminate funding if a SPIL is not submitted in accordance with the requirements of Section 704, or if the Administrator does not approve a SPIL that is submitted.

ACL thanks commenters for embracing the opportunity to work with ACL on developing sub-regulatory guidance to provide additional detail in this area.

Commenters state that the time frame for notice should be clear and specific. The regulation describes that written notice shall be provided “within a timely manner.” In the absence of a recommendation for a specific length of time, we retain the language of the proposed rule, with the clarification that the standard is a reasonable determination of a “timely manner.” We will consider whether to designate a specific time period in any sub-regulatory guidance that we develop.

Subpart B–Independent Living Services

Authorized use of funds for Independent Living Services (§ 1329.10)

Commenters requested a change to § 1329.10(a) to more accurately reflect the language and intention of the statute. Commenters were correct in stating that the Administrator reserves the funds under Section 711A for SILC training and technical assistance, before the State receives funding under this part. ACL incorporated the requested change, and revised § 1329.10 to include the correction.

DSE eligibility and application (§ 1329.11)

Regarding §1329.11, commenters recommended including language that “[a]ny designated State entity (DSE) identified in the SPIL and agreed to by the State is eligible to apply for assistance under this part in accordance with Section 704 of the Act, 29 U.S.C. 796c.”

We decline to make these changes, because, as explained in the FAQs that accompanied the DSE Guidance document,¹ the DSE is a governmental State entity that carries out the functions described in the statute in Section 704(c) of the Act, 29 U.S.C. 796c(c). “If the DSE does not carry out those functions, the State is legally responsible.”

However, in response to these comments, and with the understanding that the State plan shall “designate” the "designated State entity" as the agency that, on behalf of the State, shall accomplish the listed responsibilities in the law and comply with the specified funding limits (and acknowledging that the chairperson of the Statewide Independent Living Council and the directors of the CILs in the State, after receiving public input from individuals with disabilities and other stakeholders throughout the State, develop the State plan) ACL modified the proposed definition to clarify the reference to a DSE “identified by the State and included in the signed SPIL...”

Commenters also requested that ACL identify the body that is responsible to submit the SPIL. Section 1329.17(b)(4) indicates that the SPIL “must be submitted... in the time frame and manner prescribed by the Administrator.” For developing the FY 2017-2019 State Plan for Independent Living (SPIL), ACL refers stakeholders to the State Plan for Independent Living (SPIL) instructions, issued on February 19, 2016, which specify that the Statewide Independent Living Council shall submit the State Plan for Independent Living (SPIL).

Role of the designated State entity (§ 1329.12)

¹ Guidance: ILA PI-15-01 Selection of the Designated State Entity (DSE), rev. Oct. 28, 2015; available at <http://www.acl.gov/Programs/AoD/ILA/Index.aspx#dse>.

Commenters requested additional language to clarify the role of the DSE and the allocation of funds in accordance with the approved SPIL. ACL incorporated suggested language to make clear in § 1329.12(a)(2) the DSE’s role to provide administrative support services for a program under Part B, as directed by the approved SPIL, and for relevant CILs under Part C. We also revised the language in § 1329.12(b) to state that the DSE must also carry out its other responsibilities under the Act, including, but not limited to--

- Allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and
- Allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 705(c), consistent with the approved State Plan.

While the regulatory text in the new §1329.12(b)(i) focuses on the delivery of IL services, Sec. 713(b) of the Act identifies six (6) additional activities that remain authorized uses of funding under this Section, and are encompassed in the “including, but not limited to” language in §1329.12(b).

Some commenters were concerned that the 5% was not sufficient given the scope of the administrative responsibilities of the DSE, and that some entities may choose not to serve as a DSE. The 5% is a statutory cap and therefore not subject to change in this regulation.

For the sake of consistency we made formatting changes to §1329.12(b).

Allotment of Federal Funds for State Independent Living (IL) Services (§ 1329.13)

Many commenters requested that the proposed regulatory language of §1329.13(c) be deleted or amended to permit only a single DSE. A few commenters expressed support for a second DSE and stressed the importance of certain programs that have been funded by State agencies for the blind. Upon consideration of the comments in the context of the language in WIOA, we agree that it is consistent with the statute to permit only one DSE. Accordingly, in addition to revising the regulatory text in §1329.13(c) to permit only a single DSE, §1329.17(e) is deleted.

Nineteen (19) States have been operating with more than one body taking on these responsibilities. One body in those States provides services to the general disability population and the other provides services to individuals who are blind. Under the language we are finalizing, the SPIL must identify one DSE in the State, and that DSE will sign the SPIL as discussed above. Specific funding to address the needs of consumers in the State who are blind may be allocated through the SPIL process.

Regarding proposed §1329.13(d), commenters also requested that ACL not reserve funds to directly provide training and technical assistance to SILCs, and others recommended an increase in funding to the current technical assistance provider. ACL retained the language from the proposed rule, which is required by section 711A of the Act (29 U.S.C. 796e-0).

Commenters also recommended that the SILCs be involved in the process for determining the type of training and technical assistance that is offered and how the funding is utilized. We did not add additional regulatory language, as the Act requires in Sec. 711A (b) that the Administrator conduct surveys of SILCs regarding training and technical assistance needs in order to determine funding priorities for such training and technical assistance.

Establishment of a SILC (§ 1329.14)

Commenters expressed support for the proposed language in the NPRM. Some commenters also requested “direction or guidance on what constitutes ‘autonomous.’” ACL did not make changes to the language of the proposed rule. To better understand what autonomous means, we refer commenters to pertinent statutory provisions at Sec. 705 of the Act, 29 U.S.C. 796d, including Sec. 705(a) and (b) on the establishment, composition and appointments to the SILC. These include the requirement at Sec. 705(a) providing that “The Council shall not be established as an entity within a State agency,” and the conflict of interest policy at Sec. 705 (e)(3), precluding staff and other personnel of the SILC from being assigned duties by the DSE or other agencies of the state that would create a conflict. We also note that the Council and voting members of the Council are to be comprised of members meeting the qualifications under Sec. 705 (b)(4), including state-wide representation, a broad range of individuals with disabilities from diverse backgrounds, knowledge about centers for independent living and independent living services, and a majority of whom are individuals with disabilities per 29 U.S.C. 705(20)(B) and not employed by any State agency or center for independent living. We will continue to consult with stakeholders on the need for additional guidance, including providing more detail about the SILC standards and indicators that are under development.

Many commenters indicated they could not identify any relevant CIL-Tribal relationships that met the definition under Section 705 of the Act. However, other commenters indicated that there are currently 83 American Indian Vocational Rehabilitation Services (AIVRS) programs located on Federal and State Reservations providing IL-complementary services to American Indians/Alaska Natives (AI/ANs) with disabilities. Some commenters also expressed support for the effort to

ensure that American Indians are part of SILC leadership. As a promising practice, we recommend that in each State where there are Federal and State-recognized Tribal Governments, the SILC include a Tribal Representative on the SILC, and conduct outreach to the AIVRS program(s) in the State, as available, or other relevant organizations to foster Tribal participation on the SILC.

Duties of the SILC (§ 1329.15)

Commenters clarified that the SILC resource plan is an integral part of the three-year SPIL. We acknowledge that this is the correct interpretation. Since the language incorrectly describing the resource plan as “separate from the SPIL” was preamble language attempting to clarify the new requirement regarding the allocation of funds for this plan as distinct from the SPIL, no changes to the regulatory text are needed.

Regarding § 1329.15(c)(2) on Innovations and Expansion (I&E) funds, commenters recommended revised language consistent with Section 101(a)(18) of the Act to make clear that resources for SILCs include I&E funds consistent with the statute. ACL made the requested change to the regulatory text. ACL will work with the Department of Education and stakeholders to develop appropriate guidance on this matter.

Commenters expressed support for the proposed language in § 1329.15(c)(4) and we have included it without change.

Commenters requested additional detail on what constitutes “necessary and sufficient” funds to carry out the functions of the SILC for the purpose of the SILC resource plan. Other commenters indicated that additional information was not needed. In the interest of clarity, ACL adopted the

recommended additions to §1329.15(c)(6), with a final category for other appropriate costs. A description of the SILC's resource plan must be included in the State plan.

The plan should include:

- Staff/personnel
- Operating expenses
- Council compensation and expenses
- Meeting expenses, including public hearing expenses, such as meeting space, alternate formats, interpreters, and other accommodations
- Resources to attend and/or secure training for staff and Council members
- Other costs as appropriate.

A commenter asked “how will it be determined that the funding within the 30% cap for resource planning to carry out SILC functions has been well spent.” As discussed, the resource plan is agreed to as part of the SPIL. As noted above, ACL has added some additional required elements to the regulatory language. It will be up to the entities in the State to determine how the funds are spent, as reflected in the resource plan and the SPIL.

To minimize potential confusion, we removed duplicative requirements from § 1329.15(d).

Authorities of the SILC (§ 1329.16)

Commenters requested some additional terms be defined in the final rule, such as “in conjunction with.” ACL chose not to include several of these requested definitions, with the understanding that these words and phrases are given their plain meaning.

A commenter raised concerns about whether the prohibition against providing services directly or “managing” services would preclude SILCs from securing funding to allow CILs to accomplish specific goals. We clarify here our interpretation that securing funding is distinct from “managing” services. Rather, a practice such as applying for and receiving grant funding in these circumstances is a legitimate exercise of SILCs’ newly statutorily authorized resource development authority.

We received several comments regarding SILCs that were pertinent to a particular state. Individual state concerns are beyond the scope of the regulations. However, we suggest that SILCs that raised such concerns consult with the SILC technical assistance and training center and their respective ILA specialist.

Regarding § 1329.16(b)(3), commenters stated that the proposed regulation “fails to provide a reference to the statute or regulation that prohibits lobbying...” along with other listed perceived omissions. For information on the relevant prohibition, please consult 45 CFR part 93—New Restrictions on Lobbying, which was included in §1329.3(i), along with the other provisions on applicability of other regulations, that was included in the proposed rule and retained in the final rule.

General requirements for a State plan (§ 1329.17)

Commenters expressed support for the SPIL development and approval process in the NPRM, as required under the changes implemented by WIOA. Some commenters discussed the ways successful collaboration is already underway, that the new SPIL development process will result

in a better State Plan; and ultimately have a positive impact for people with disabilities. We appreciate this information.

As discussed in §1329.4 regarding the definition of “service provider,” ACL has added a clarification that the DSE may provide IL services directly only when so specified in the SPIL. The DSE’s role as a service provider, where applicable, must be explicitly identified as part of the description of how and to whom funds will be dispersed under § 1329.17(a).

In discussing the new requirements of the SPIL in the summary in the preamble, with respect to a phrase describing collaboration between CILs and other entities performing similar work, ACL received a comment requesting that we define “similar work.” That term refers to the requirement in the statute in Sec. 704(a)(3)(c) that the SPIL address working relationships and collaboration between centers for independent living and:

- entities carrying out programs that provide independent living services, including those serving older individuals;
- other community-based organizations that provide or coordinate the provision of housing, transportation, employment, information and referral assistance, services, and supports for individuals with significant disabilities; and
- entities carrying out other programs providing services for individuals with disabilities.

The term “similar work” is not in the regulatory text, and we did not add a definition because the statutory language provides sufficient clarity.

Some commenters requested clarification that § 1329.17(d)(2)(ii) specify that the signature by the director of the DSE signifies agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act. ACL incorporated this clarification in the final rule.

Regarding §1329.17(d)(2), a commenter made the point that Centers with service areas (and grants) within multiple states should have sign off authority for each SPIL that affects them, where they meet the other applicable requirements. ACL agrees, and we have added language to so clarify in §1329.17(d)(2)(iii). ACL also received many comments supporting our analysis that the number of CILs be based on the number of “legal entities,” not the number of grants, and we retain that provision from the proposed rule.

As a technical correction, we renumbered new §1329.17(e) - (h). Regarding proposed §1329.17(g)(2), commenters indicated that the proposed language is not consistent with section 704(a)(2)(A) of the Act, which requires that public input be received prior to development of the State plan. The proposed provision included an option to provide a preliminary draft State plan for comment at the public meetings as an option for meeting the requirement for public input. ACL agrees that this language, adapted from the previous regulations in 34 CFR 364.20(g), does not reflect the requirement of the statute that the State plan be developed “after receiving public input from individuals with disabilities and other stakeholders throughout the State,” and we have modified the regulatory text of §1329.17(f)(1) (formerly proposed §1329.17(g)(2)) accordingly. This means that the public input requirement may be satisfied by a public meeting to get input prior to development of the SPIL, and then an opportunity for public comment before the SPIL is submitted, for instance through another public meeting where a preliminary draft is provided in advance, or by offering some other meaningful and accessible opportunity for the public to comment prior to SPIL submission. ACL also made technical changes to renumber the section.

Continuation awards to entities eligible for assistance under the CIL program (§ 1329.21)

Regarding §1329.21(g), commenters suggested that the SILCs and the CILs, rather than the DSE and SILC, must jointly agree on the order of priorities. ACL agrees that SILCs and CILs, rather than the DSE, must agree to priorities as set forth in the SPIL as it is jointly developed, after receiving public input from individuals with significant disabilities and other stakeholders.

Section 1329.21, however, addresses priority for funding centers in States that receive funding under Section 723 of the Act, 29 U.S.C 796f-2. Currently, only two States, Massachusetts and Minnesota, qualify as Section 723 States. Under Section 723(e), priorities for funding centers are set by the designated State unit² and the SILC. ACL therefore has determined to keep the language as proposed in accordance with the statutory language in Section 723(e).

Competitive awards to new Centers for Independent Living (§ 1329.22)

This section establishes the process for competitive awards to new Centers for Independent Living in unserved or underserved regions. We received comments requesting the authority to modify existing Part C Center service areas if the majority of the Center Directors, the SILC Chair, and the Center/s in question agree. While ACL is sensitive to the issue raised, we are not addressing that issue in this final regulation. We will take under advisement the need to address service area adjustments in the future. We made a technical correction to § 1329.22(b), to read “location” rather than “allocation,” and technical change in § 1329.22(c) to clarify that “bordering” means “contiguous.”

Compliance reviews (§ 1329.23)

² We note that WIOA did not change the term “designated State unit” in Section 723 to designated State entity, as in other sections throughout this Subpart of the Rehabilitation Act. ACL has determined to refer to the body as the designated State entity in the rule for consistency purposes.

ACL received the comment that, regarding “guidance or guidelines as determined by the Administrator,” “[i]t is unclear if the guidance will include additional requirements and if the public will have an opportunity to comment on this guidance and guidelines.” ACL may issue guidance consistent with statutory requirements, and the content and process may vary depending on the information conveyed.

A commenter proposed that ACL consider alternative entities to conduct federal reviews of the CILs and suggested longer time periods between reviews of a single CIL. WIOA establishes the requirement that the Administrator must conduct annual compliance reviews of CILs and DSEs in 29 U.S.C. 796d–1(c)(1), so ACL does not have the authority to alter the requirements established in the statute in this regulation. However, as noted above, ACL is actively evaluating the review processes, to optimize our capacity to conduct the required oversight, incorporating alternative approaches where permitted and appropriate.

Training and technical assistance to Centers for Independent Living (§ 1329.24)

Commenters pointed out that WIOA does not authorize ACL to retain funds for the direct provision of training and technical assistance to CILs. We agree that this is the correct interpretation. Since the inconsistent language was included only in the preamble text, no changes have been made to the regulatory text.

II. Impact Analysis

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in Executive Order 12866. The Department has determined that this rule is consistent with these priorities and principles. The rule implements the Workforce Innovation and Opportunity Act of 2014. Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. In developing the final rule, we considered input we received from the public, including stakeholders.

B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are States and Centers receiving Federal funds under these programs. However, the regulations would not have a significant economic impact on States or Centers affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The final regulations implement statutory changes that impose new requirements to ensure the proper expenditure of program funds.

The ILS Program provides formula grants to States for the purpose of funding a number of activities, directly and/or through grant or contractual arrangements. To be eligible for financial assistance, States are required to establish a designated State entity, State Independent Living Council and to submit an approvable three-year State Plan for Independent Living (SPIL) jointly developed by the chairperson of the SILC and the directors of the CILs in the State, after

receiving public input, and signed by the chairperson of the SILC acting on behalf of and at the direction of the Council; not less than 51 percent of the directors of the CILs in the State, and the director of the designated State entity (DSE). The signature requirement of not less than 51 percent of CIL directors is a new requirement under WIOA. While this requirement does increase the amount of time a State may need to prepare an approvable SPIL, the statute provides no flexibility in implementing the new requirement. We are not able to estimate the amount of additional time the 51 percent signatory requirement will add to the SPIL development and approval process at the State level given that this is a new requirement. We solicited comments from affected States on this issue, but beyond a few comments touching on general difficulty, did not receive any comments that clarify the amount of additional time required to meet the 51 percent signatory requirement.

The CIL program provides grants to consumer-controlled, community-based, cross disability, nonresidential, private nonprofit agencies for the provision of IL services to individuals with significant disabilities. WIOA expanded the previous definition of core IL services, specified in Section 7(17) of the Act, to include an additional, fifth category of core services. Specifically, Centers funded by the program must now provide services that facilitate transition from nursing homes and other institutions to the community, provide assistance to those at risk of entering institutions, and facilitate transition of youth to postsecondary life. Currently there are 354 CILs that receive federal funding under this program.

WIOA did not include any additional funding for the provision of this new fifth core service, necessitating that CILs would reallocate existing grant money to ensure the appropriate provision of all services required under Title VII of the Rehabilitation Act. Many commenters requested

additional funding to carry out program responsibilities under the law. A number of commenters recommended that “ACL should seek to obtain additional funding for the 5th Core Transition Service.” Commenters also stated that “HHS should make CILs the mandatory receiver of all funding for transition services.”

Funding issues are beyond the scope of this rule. However, it might be useful to note that some resources currently funded by HHS related to transition services reside in other agencies within the Department and ACL lacks the authority to direct how these transition funds are disbursed.

With those facts in mind, we recommend that interested CILs note that ACL offers technical assistance for state and community-based aging and disability organizations through national partners as well as through learning collaboratives of networks of community-based aging and disability organizations, including Centers for Independent Living. These networks assist many CILs with leveraging their Federal funds and conducting resource development, and with building their business capacity for generating sustainable revenue streams for programs and services. ACL looks forward to engaging more of the IL community in these efforts.

ACL will actively endeavor to identify further funding opportunities for CILs fifth core services transition work and will strive to raise awareness about CILs unique statutory mandate and successes with our sister agencies across HHS and the broader federal community.

ACL stated in the NPRM that, since successful transition is a process that requires sustained efforts and supports over a long-term period, and the CILs were aware of the changes under the law before officially tracking these efforts as core services, we do not currently have a clear picture of the impact of the changes under WIOA on the programs. In developing the NPRM we

therefore applied the closest applicable data to the estimates in the analysis. For purposes of the analysis, we looked at three specific categories of data currently captured in the 704 Annual Performance Report that we believe most accurately match the three components of the fifth core services.³ We believe that the “Relocation from a Nursing Home or Institution” category most closely matches the first component of the new fifth core services: facilitate transitions from nursing homes and other institutions to the community. We believe that the “Community-Based Living” category matches the second component of the new fifth core service: provide assistance to those at risk of entering institutions. We believe the “Youth/Transition Services” category captures some relevant information for the third component of the new fifth core service: facilitate transition of youth to postsecondary life. For FY 2014, 281 CILs reported nursing home transition goals established for at least one consumer, 343 CILS reported community-based living goals established for at least one consumer, and 224 CILs reported youth transition services provided to at least one consumer under the “Youth/Transition Services” category of the 704 Annual Performance Report.

5th Core Service	704 Annual Performance Report Category	Percentage of CILs*	Number of CILS
Facilitate Transitions from Nursing Homes and Other Institutions to the Community	Relocation from a Nursing Home or Institution	83%	281
Provide Assistance to Those at Risk of Entering Institutions	Community-Based Living	99%	343

³ The current 704 Report was not designed to incorporate the fifth core services, so current data roughly corresponds with the categories.

Facilitate Transition of Youth to Postsecondary Life	Youth/Transition Services	66%	224
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* Percentage of CILs reporting a goal set for at least one consumer. The Youth/Transition Services sub-category represents the percentage of CILs reporting service provision to at least one consumer.

Based on this analysis, we believe that many CILs currently have staff capable of providing the new fifth core services. However, due to the lack of additional funding, compliance with this statutory change may require CILs to re-examine their individual budgets, staffing plans, and consumer needs in order to reallocate funding to ensure the appropriate provision of services as required by the Rehabilitation Act. We estimated that this analysis will require approximately 10-15 hours of time for each CIL director. We proposed to use the upper end of the time estimate (15 hours) for purposes of estimating the total impact of this statutory requirement. Therefore, we estimated the amount of compliance analysis time for CIL directors to total 5,310 hours.

To estimate the average hourly wage for a CIL director, we examined data compiled by the IL Net (a collaborative project of Independent Living Research Utilization (ILRU), the National Council on Independent Living (NCIL), and the Association of Programs for Rural Independent Living (APRIL)) and Bureau of Labor Statistics (BLS) data. According to a 2003 National Survey of Salaries and Work Experience of Center for Independent Living Directors, compiled by IL Net, the most common annual salary range for CIL directors in 2002 was between \$41,000 and \$45,000. This equates to an average hourly salary range of \$19.71 to \$21.63. The Bureau of Labor Statistics (BLS) provided more recent salary information.

According to 2012 BLS data, the average hourly wage for a social and community manager (a

BLS occupational classification for managers who coordinate and supervise social service programs) was \$28.83. We proposed using the more recent BLS data to calculate the total estimated impact of this statutory requirement. In order to estimate the benefits and overhead associated with this hourly wage, we assume that these costs equal 100 percent of pre-tax wages, for a total hourly cost of \$57.66. Therefore, we estimated the total dollar impact of this additional CIL director time to be \$306,174.60.

As noted previously, we have interpreted recent 704 Reports as indicating that many CILs currently have staff capable of providing the new fifth core services. We received comments that some CILs which currently provide fifth core services do so using other sources of funding, including Medicaid dollars and contracts with managed care organizations. However, as shown in the table above, a substantial number of CILs do not yet provide the newly required services and therefore would potentially incur costs in order to comply with this rule.⁴ We received several comments confirming that some CILs do not yet provide the new fifth core services, and doing so may impose a burden upon such CILs, particularly a diminution of services provided in other areas. These commenters were not able to give us a more detailed estimate of calculating the burden other than to ask for a substantial increase in funding for CILs. As noted above, increasing funding for CILs is beyond the scope of this regulation.

We also received questions as to whether there are minimum levels which must be achieved in order to have met the requirements of each component of the new fifth core IL services; the

⁴ Costs of new actions are included in a regulatory impact analysis even when budgets or grant amounts do not change. If CILs are reallocating grant funds to these newly required services, then they are doing some other worthwhile activity to a lesser extent, and the value of that alternative activity represents the opportunity cost of the new requirements.

responses to these questions relate to and may impact the burden analysis. Each CIL must demonstrate activity under all three prongs of the definition, but the minimum levels are not further defined in this regulation. The revised data collection system will contain more information when it is published. We note that we do not establish a minimum number of services, beyond that there must be some service (at least one activity) accomplished and reported in each category and sub-category, for any of the core services, and we do not intend to establish a minimum number for the new fifth core services. The amount of services provided will depend on the needs of the individuals seeking services, the social dynamics of the community served by each CIL, and the approach each CIL takes to address the needs of individuals under the fifth core service. In addressing the comments related to burden, we also note that CILs can fulfill their obligation to provide fifth core services in a number of ways that may reduce the burden associated with the service. For example, services that CILs already provide may count towards this category rather than other core services.

Nevertheless, we recognize that the addition of the fifth core services may place more of a burden on CIL directors to re-examine their individual budgets, staffing and strategic plans, and consumer needs in order to reallocate funding to ensure the appropriate provision of services as required by the Rehabilitation Act. We therefore are increasing our initial estimate of 15 hours of time for each CIL director to 30 hours of time to account for the additional burden. In the final rule we estimate the amount of compliance analysis time for CIL directors to total 10,620 hours.

We received several comments with different estimates. However, the comments did not provide sufficient detail or explain how the estimates were calculated. They did not include a breakdown of the costs of wages, benefits and overhead; nor did they include an estimate of the hours used in the calculation. Thus, we continue to assume that the costs of wages, benefits and overhead to be a

total hourly cost of \$57.66, and use that figure in determining the dollar impact based on an increased number of hours, as discussed above. We increase our estimate in the final rule of the total dollar impact of this additional CIL director time to be \$612,349.20.

WIOA continues to require annual onsite compliance reviews of at least 15 percent of CILs that receive funding under section 722 of the Act and at least one-third of designated state units that receive funds under section 723 of the Act. The only change made by WIOA was to eliminate the requirement that CILs subject to compliance reviews be selected randomly. ACL is not proposing any changes to the compliance review process in this regulation. We do not anticipate any additional burden on grantees as a result of the compliance and review process, including the development of additional corrective action plans in response to such reviews.

While the final rule establishes a new appeals process for States, we anticipate that the process will be utilized infrequently based on past experience of the Independent Living Services programs. The process is designed to provide additional protection against the termination of funding. We received no specific comments on the burden analysis. Therefore, we do not expect that funds will be terminated more or less frequently.

The allocation of 1.8 to 2 percent of Part B funds to training and technical assistance for SILCs is a new requirement under WIOA. We have limited available data regarding the impact on programs of this provision and requested comment on this aspect of the analysis. We received no comments related to burden analysis for this provision.

The 5 percent administrative cap on the DSE is a new statutory requirement under WIOA, as is the

30 percent ceiling on the SILC resource plan (unless the SPIL specifies that a greater percentage of funds is needed for to carry out the functions of the SILC). The rule makes final the NPRM's narrow interpretation of the 5 percent administrative cap, limiting its application to "Part B" funds only, rather than applying the 5 percent cap on administrative funds allocated to the DSE to all federal funds supporting the Independent Living Services. Additional funding sources include Social Security reimbursements, Vocational Rehabilitation program funds, and other public or private funds.

The rule avoids a broader application of the cap in an attempt to avoid creating too great a disincentive to State agencies to serve as DSEs, given the more limited role of the DSEs in decision-making (as they no longer have a statutory role in the development of the SPIL). Our intent is to effectuate the limitation as required under the law, while helping ensure retention of DSEs for the Part B programs. Some commenters indicated that the 5 percent administrative cap on the DSE may result in reduced funding for independent living services; they did not discuss the specific burden associated with implementation of this statutory requirement.

C. Alternative Approaches

Although we believe that the approach of the rule best serves the purposes of the law, we considered a regulatory scheme requiring an alternative treatment of the Part B State matching funds. In the final rule, as in the proposed rule, funds used to meet the required 10 percent State match are treated the same as funds "received by the State" under Part B.

To better understand the implications of this decision, consider the five percent administrative cap on the DSE's use of Part B funds for administrative purposes in § 1329.12(a)(5). For example, the

proposed regulatory language mandates that WIOA's 5 percent cap on funds for DSE administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL purposes. Treating the issue in this way makes more Part B funds available for IL services and SPIL activities, while retaining sufficient funds to permit the DSE to accomplish its responsibilities and oversight requirements for ILS program funds under the law. One key advantage of this approach is minimizing disruptions to the ILS program from potential DSE decisions to relinquish the program due to insufficient resources to fulfill the WIOA-related fiscal oversight/administrative support responsibilities. For context, on average, 10 – 15 percent of DSE funding was spent on administrative costs prior to WIOA, though this must be considered along with the more limited role the DSE now plays under the law as amended.

A narrower interpretation of this provision would be to apply it to Part B funds only, without the State match. Not only would this approach severely limit the funds available for fulfillment of DSE responsibilities under the law, it would also create some potential accounting burdens for programs, as State funds provided as a result of the ILS program's State matching requirement have traditionally been treated similarly to Federal Part B funds. It would also be inconsistent with prior accounting practices regarding the 10% State match for Part B funding, which existed prior to WIOA.

The broadest interpretation would include all federal funds supporting the ILS program, including

Social Security reimbursements and funds from the Title I (Vocational Rehabilitation) program in the cap, which would broaden the pot of monies allocated for administrative costs of the DSE, which on its face seems counter to the change in the law capping the available percentage for these purposes at a relatively low amount. Commenters supported this approach.

We also considered alternative approaches regarding implementation of the new fifth core services based on comments regarding lack of funding to provide the new services. We have chosen not to establish minimum number of services to be provided for any of the core services, including the fifth core service, and to allow CILs flexibility in determining how to meet the requirements of the act. We believe that this approach, discussed above, satisfies the requirements of WIOA that CILs provide services in all five core service areas. It also gives CILs the greatest amount of flexibility to determine how to use their limited federal funds to meet the needs of individuals in their service area.

D. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., requires certain actions before an agency can adopt or revise a collection of information. Under the PRA, we are required to provide notice in the Federal Register and solicit public comment before an information collection request is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, Section 3506(c)(2)(A) of the PRA requires that we solicit comments on new or revised information collections, which in the case of this rule, includes the new SPIL development

requirements. The law is also intended to ensure that stakeholders can fully analyze the impact of the rule, which includes the associated reporting burden. We are not introducing any new information collections in the final rule however, it does revise process requirements. As discussed earlier, WIOA changed the requirements regarding SPIL development and who must sign the SPIL.

This final rule makes no revisions to existing 704 reporting requirements, the Section 704 Annual Performance Report (Parts I and II). ACL is currently convening workgroups to recommend and implement changes regarding data collection. These changes will be subject to the public comment process under the PRA before they are finalized.

1. State Plans for Independent Living (SPIL)

The SPIL encompasses the activities planned to achieve the specified independent living objectives and reflects the commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan. A SPIL has already been approved in each State through fiscal year 2016. (State Plan for Independent Living and Center for Independent Living Programs, OMB Control Number 1820-0527.) The law remains unchanged that the SPIL continues to govern the provision of IL services.

Any amendments to the SPIL, reflecting either a change based on the WIOA amendments or any material change in State law, organization, policy, or agency operations that affect the administration of the SPIL, must be developed in accordance with Section 704(a)(2) of the Rehabilitation Act, as amended. SPIL amendments must be submitted to ACL for approval.

WIOA changed the content of the SPIL to the extent that the SPIL must describe how the independent living services will promote full access to community life for individuals with significant disabilities and describe strategies for providing independent living services on a statewide basis, to the greatest extent possible. The SPIL must also include a justification for any funding allocation of Part B funds above 30% for the SILC's resource plan.

We anticipate that such changes may, on average, increase the amount of time to develop the SPIL by five (5) hours. There are 57 SPILs, one for each State, the District of Columbia, and the six territories. Assuming the same hourly cost of \$57.66 discussed in the Regulatory Impact Analysis above, we therefore estimate the cost of the changes to be \$16,433.1 (57 SPILs x \$57.66/hour x 5 hours). We did not receive any comments on these calculations.

2. 704 Reporting Requirements

The Section 704 Annual Performance Report (Parts I and II) are the Reporting Instruments used to collect information required by the Act,⁵ as amended by WIOA, related to the use of Part B and Part C funds. This regulation simply transfers the statutorily required annual reporting from the Department of Education Regulations to the Department of Health and Human Services (HHS) regulations. No additional reporting requirements are being added to the current OMB approved 704 report at this time. (Section 704 Annual Performance Report (Parts I and II), OMB Control Number 1820-0606).

Prior to WIOA, an effort was underway to make formal changes to the 704 Reporting Instruments.

⁵ See Sections 704(c)(3) and (4), 704(m)(4)(D), 706(d), and 725(c) of the Act.

The passage of WIOA in July 2014 put those efforts on hold until late 2014. ACL is currently convening workgroups to recommend and implement changes in data collection, and these changes will be subject to the public comment process under the PRA before they are finalized. Key steps in ACL's current and projected timeline on the process include an external workgroup webinar, held April 1, 2015, to share the status of data collection efforts and invite feedback on specific issues. It is anticipated that additional external stakeholder engagement will occur during summer of 2016. The SILC indicators of minimum compliance will also be published in the Federal Register as part of this process. It is ACL's goal to publish the revised data collection proposals for comment in federal register in September 2016. According to this projected timeline, in October 2017, programs will begin collecting information for the FY 18 reporting period using the new data collection system. In December 2018, the FY18 704 data collection system reflecting the new reporting requirements will be due.

Updating data collection will require changes to include the new fifth core services under WIOA. We make final definitions for some of the terms in the fifth core services in this rule, and have made changes based on comments received. Assuming revised data collection requirements will include reporting on the new fifth core services, we estimate that providing the information will take approximately 1 hour per data report. Based on the total number of 704 Reports filed annually in past years,⁶ we estimate that the total number of additional hours to be 412.⁷

Assuming the same hourly cost of \$57.66 discussed in the regulatory impact analysis above, we

⁶ See, 79 FR 23960 (April 29, 2014); information collection approved June 4, 2014 through June 30, 2017. http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201404-1820-001.

estimate the cost of the changes to be \$23,755.92. We received no comments on these estimates. In summary, future proposed changes to the Section 704 Annual Performance Report (Parts I and II) will be published in the Federal Register with opportunity for public comment.

Section 706 of the Rehabilitation Act continues to require reviews of CILs funded under Section 722 and reviews of State entities funded under Section 723 of the Rehabilitation Act. Therefore, ACL will continue to conduct compliance reviews and make final decisions on any proposed corrective actions and/or technical assistance related to compliance reviews of a CIL's grants.

In Section 706(b), 29 U.S.C. 796d-1(b), the Act, as amended by WIOA, requires the Administrator to develop and publish in the Federal Register new indicators of minimum compliance for Statewide Independent Living Councils. The SILC Standards and Indicators of minimum compliance are currently under development. ACL shared a draft for informal stakeholder review in January 2016 and continues to take stakeholder feedback. The CIL indicators of minimum compliance (consistent with the standards set forth in Section 725) are awaiting the addition of the fifth core services, which requires input in response to this proposed rule.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million, adjusted for inflation, or more in any one year.

If a covered agency must prepare a budgetary impact statement, Section 205 further requires that it select the most cost-effective and least burdensome alternatives that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, Section 203 requires a plan for informing and advising any small government entities that may be significantly or uniquely impacted by a rule.

ACL has determined that this rulemaking does not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector of more than \$100 million in any one year. The total FY 2016 budget for the Independent Living Services and Centers for Independent Living programs authorized under Chapter 1, Title VII of the Rehabilitation Act of 1973 (Rehabilitation Act or Act), as amended by WIOA (Pub. L. 113-128) is \$101,183,000. We do not anticipate that the rule will impact the majority of the budget for these programs.

F. Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Section 804(2).

G. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations do not have an impact on family well-being as defined in the legislation.

H. Executive Order 13132

Executive Order 13132 on “federalism” was signed August 4, 1999. The purposes of the Order are to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act.

The Department certifies that this rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. ACL is not aware of any specific State laws that would be preempted by the adoption of the regulation in subchapter C of 45 CFR part 1329.

List of Subjects in 45 CFR Part 1329

Centers for independent living, Compliance, Enforcement and appeals, Independent living services, Persons with disabilities, Reporting.

Dated: October 18, 2016.

Edwin Walker,

Acting Administrator,

Administration for Community Living.

Approved: October 19, 2016.

Sylvia M. Burwell,

Secretary.

Department of Health and Human Services.

BILLING CODE 4150-04-P

For the reasons stated in the preamble, the, Administration for Community Living, U.S. Department of Health and Human Services, amends 45 CFR subchapter C by adding part 1329 to read as follows:

PART 1329—STATE INDEPENDENT LIVING SERVICES AND CENTERS FOR INDEPENDENT LIVING

Subpart A—General Provisions

Sec.

1329.1 Programs covered.

1329.2 Purpose.

1329.3 Applicability of other regulations.

1329.4 Definitions.

1329.5 Indicators of minimum compliance.

1329.6 Reporting.

1329.7 Enforcement and appeals procedures.

Subpart B—Independent Living Services

1329.10 Authorized use of funds for Independent Living Services.

1329.11 DSE eligibility and application.

1329.12 Role of the designated State entity.

1329.13 Allotment of Federal funds for State independent living (IL) services.

1329.14 Establishment of SILC.

1329.15 Duties of the SILC.

1329.16 Authorities of the SILC.

1329.17 General requirements for a State plan.

Subpart C—Centers for Independent Living Program

1329.20 Centers for Independent Living (CIL) program.

1329.21 Continuation awards to entities eligible for assistance under the CIL program.

1329.22 Competitive awards to new Centers for Independent Living.

1329.23 Compliance reviews.

1329.24 Training and technical assistance to Centers for Independent Living.

Authority: 29 U.S.C. 709; 42 U.S.C. 3515e.

Subpart A—General Provisions

§ 1329.1 Programs covered.

This part includes general requirements applicable to the conduct of the following programs authorized under title VII, chapter 1 of the Rehabilitation Act of 1973, as amended:

(a) Independent Living Services (ILS), title VII, chapter 1, part B (29 U.S.C. 796e to 796e-3).

(b) The Centers for Independent Living (CIL), title VII, chapter 1, part C (29 U.S.C. 796f to 796f-6).

§ 1329.2 Purpose.

The purpose of title VII of the Act is to promote a philosophy of independent living (IL), 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 to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society by:

(a) Providing financial assistance to States for providing, expanding, and improving the provision of IL services;

(b) Providing financial assistance to develop and support statewide networks of Centers for Independent Living (Centers or CILs);

(c) Providing financial assistance to States, with the goal of improving the independence of individuals with disabilities, for improving working relationships among—

(1) State Independent Living Services;

(2) Centers for Independent Living;

(3) Statewide Independent Living Councils (SILCs or Councils) established under section 705 of the Act (29 U.S.C. 796d);

(4) State vocational rehabilitation (VR) programs receiving assistance under Title 1 of the Act (29 U.S.C. 720 *et seq.*);

(5) State programs of supported employment services receiving assistance under Title VI of the Act (29 U.S.C. 795g *et seq.*);

(6) Client assistance programs (CAPs) receiving assistance under section 112 of the Act (29 U.S.C. 732);

(7) Programs funded under other titles of the Act;

(8) Programs funded under other Federal laws; and

(9) Programs funded through non-Federal sources with the goal of improving the independence of individuals with disabilities.

§ 1329.3 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR part 46—Protection of Human Subjects.

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(e) 45 CFR part 81—Practice and Procedure for Hearings under Part 80 of this Title.

(f) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs Activities Receiving Federal Financial Assistance.

(g) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(h) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(i) 45 CFR part 93—New Restrictions on Lobbying.

(j) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(k) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

§ 1329.4 Definitions.

For the purposes of this part, the following definitions apply:

Act means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended. *Part B* refers to part B of chapter 1 of title VII of the Act (29 U.S.C. 796e to 796e-3). *Part C* refers to part C of chapter 1 of title VII, of the Act (29 U.S.C. 796f to 796f-6).

Administrative support services means services and supports provided by the designated State entity under Part B, and to Part C CILs administered by the State under section 723 of the Act in support of the goals, objectives and related activities under an approved State Plan for Independent Living (SPIL). Such support includes any costs associated with contracts and subgrants including fiscal and programmatic oversight, among other services.

Administrator means the Administrator of the Administration for Community Living (ACL) of the Department of Health and Human Services.

Advocacy means 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 advocacy*; or

(iii) Oneself, in which case it is *self advocacy*.

Attendant care means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

Center for independent living (“*Center*”) means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency for individuals with significant disabilities (regardless of age or income) that—

(1) Is designed and operated within a local community by individuals with disabilities;

(2) Provides an array of IL services as defined in section 7(18) of the Act, including, at a minimum, independent living core services as defined in this section; and

(3) Complies with the standards set out in Section 725(b) and provides and complies with the assurances in section 725(c) of the Act and § 1329.5.

Completed their secondary education means, with respect to the Independent Living Core Services that facilitate the transition of youth who are individuals with significant disabilities in section 7(17)(e)(iii) of the Act, that an eligible youth has received a diploma; has received a certificate of completion for high school or other equivalent document marking the completion of participation in high school; or has exceeded the age of eligibility for services under IDEA.

Consumer control means, with respect to a Center or eligible agency, that the Center or eligible agency vests power and authority in individuals with disabilities, including individuals who are or have been recipients of IL services, in terms of the management, staffing, decision making, operation, and provision of services. Consumer control, with respect to an individual, means that the individual with a disability asserts control over his or her personal life choices, and in addition, has control over his or her independent living plan (ILP), making informed choices about content, goals and implementation.

Cross-disability means, with respect to services provided by a Center, that a Center provides services to individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of unserved or underserved populations by programs under Title VII. Eligibility for services shall be determined by the Center, and shall not be based on the presence of any one or more specific significant disabilities.

Designated State entity (DSE) is the State agency designated in the State Plan for Independent Living (SPIL) that acts on behalf of the State to provide the functions described in title VII, chapter 1 of the Act.

Eligible agency means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency.

Independent living core services mean, for purposes of services that are supported under the ILS or CIL programs—

(1) Information and referral services;

(2) Independent Living skills training;

(3) Peer counseling, including cross-disability peer counseling;

(4) Individual and systems advocacy;

(5) Services that:

(i) Facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services. This process may include providing services and supports that a consumer identifies are needed to move that person from an institutional setting to community based setting, including systems advocacy required for the individual to move to a home of his or her choosing;

(ii) Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community. A determination of who is at risk of entering an institution should include self-identification by the individual as part of the intake or goal-setting process; and

(iii) Facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life. Individuals who have reached the age of 18 and are still receiving services in accordance with an Individualized Education Program (IEP) under IDEA have not “completed their secondary education.”

Independent living service includes the independent living core services and such other services as described in section 7(18) of the Act.

Individual with a disability means an individual who—

(1) Has a physical or mental impairment that substantially limits one or more major life activities of such individual;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment, as described in section 3(3) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(3)).

Individual with a significant disability means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

Majority means more than 50 percent.

Minority group means American Indian, Alaskan Native, Asian American, Black or African American (not of Hispanic origin), Hispanic or Latino (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), and Native Hawaiian or other Pacific Islander.

Nonresidential means, with respect to a Center, that the Center does not operate or manage housing or shelter for individuals as an IL service on either a temporary or long-term basis unless the housing or shelter is—

- (1) Incidental to the overall operation of the Center;
- (2) Necessary so that the individual may receive an IL service; and
- (3) Limited to a period not to exceed eight weeks during any six-month period.

Peer relationships mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

Peer role models mean individuals with significant disabilities whose achievements can serve as a positive example for other individuals with significant disabilities.

Personal assistance services mean a range of services, paid or unpaid, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities and include but are not limited to: getting up and ready for work or going out into the community

(including bathing and dressing), cooking, cleaning or running errands, engaging in social relationships including parenting.

Service provider means a Center for Independent Living that receives financial assistance under Part B or C of chapter 1 of title VII of the Act, or any other entity or individual that provides IL services under a grant or contract from the DSE pursuant to Section 704(f) of the Act. A designated State entity (DSE) may directly provide IL services to individuals with significant disabilities only as specifically authorized in the SPIL.

State includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State plan means the State Plan for Independent Living (SPIL) required under Section 704 of the Act.

Unserved and underserved groups or populations include populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

Youth with a significant disability means an individual with a significant disability who--

(1) Is not younger than 14 years of age; and

(2) Is not older than 24 years of age.

§ 1329.5 Indicators of minimum compliance.

To be eligible to receive funds under this part, a Center must comply with the standards in section 725(b) and assurances in section 725(c) of the Act, with the indicators of minimum compliance, and the requirements contained in the terms and conditions of the grant award.

§ 1329.6 Reporting.

(a) A Center must submit a performance report in a manner and at a time described by the Administrator, consistent with section 704(m)(4)(D) of the Act, 29 U.S.C. 796c(m)(4)(D).

(b) The DSE must submit a report in a manner and at a time described by the Administrator, consistent with section 704(c)(4) of the Act, 29 U.S.C. 796c(c)(4).

(c) The Administrator may require such other reports as deemed necessary to carry out the responsibilities set forth in section 706 of the Act, 29 U.S.C. 796d-1.

§ 1329.7 Enforcement and appeals procedures.

(a) *Process for Centers for Independent Living.* (1) If the Director of the Independent Living Administration (Director) determines that, as the result of the Onsite Compliance Review process defined in section 706(c)(2), or other review activities, any Center receiving funds under this part, other than a Center that is provided Part C funding by the State under section 723 of the Act, is not in compliance with the standards and assurances in section 725 (b) and (c) of the Act and of this part, the Director must provide notice to the Center pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the Center to develop a corrective action plan or to take such other steps as are necessary to come into compliance with the standards and assurances.

(3) The Center may request a preliminary appeal to the Director in a form and manner determined by the Administrator. The Director shall review the appeal request and provide written notice of the determination within a timely manner.

(4) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)-(4), the Center may appeal an unfavorable decision by the Director to the Administrator within a time and manner established by the Administrator. The Administrator shall review the appeal request and provide written notice of the determination within a timely manner.

(5) The Administrator may take steps to enforce a corrective action plan or to terminate funding if the Administrator determines that the Center remains out of compliance.

(6) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16. A Center that receives such notice of a determination that falls within 45 CFR part 16, appendix A, C.a.(1)-(4), may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

(7) A Center that is administered by the State under Section 723 of the Act must first exhaust any State process before going through the process described in paragraphs (a)(1) through (6) of this section.

(b) *Process for States.* (1) If the Director of the Independent Living Administration determines that a State is out of compliance with sections 704, 705, 713 or other pertinent sections of the Act, the Director must provide notice to the State pursuant to guidance determined by the Administrator.

(2) The Director may offer technical assistance to the State to develop a corrective action plan or to take such other steps as are necessary to ensure that the State comes in to compliance.

(3) Where there is a determination that falls within 45 CFR part 16, appendix A, C.a.(1)-(4), the State may seek an appeal consistent with the steps set forth in paragraphs (a)(3) and (4) of this section.

(4) The Administrator may take steps to enforce statutory or regulatory requirements or to terminate funding if the Administrator determines that the State remains out of compliance.

(5) Written notice of the determination by the Administrator shall constitute a final determination for purposes of 45 CFR part 16 with regard to the types of determinations set forth in 45 CFR part 16, appendix A, C.a.(1)-(4). A State that receives such notice may appeal to the Departmental Appeals Board pursuant to the provisions of 45 CFR part 16.

Subpart B—Independent Living Services

§ 1329.10 Authorized use of funds for Independent Living Services.

(a) The State:

(1) May use funds received under this part to support the SILC resource plan described in section 705(e) of the Act but may not use more than 30 percent of the funds unless an approved SPIL so specifies pursuant to § 1329.15(c);

(2) May retain funds under section 704(c)(5) of the Act; and

(3) Shall distribute the remainder of the funds received under this part in a manner consistent with the approved State plan for the activities described in paragraph (b) of this section.

(b) The State may use the remainder of the funds described in paragraph (a)(3) of this section to—

(1) Provide to individuals with significant disabilities the independent living (IL) services required by section 704(e) of the Act, particularly those in unserved areas of the State;

(2) Demonstrate ways to expand and improve IL services;

(3) Support the operation of Centers for Independent Living (Centers) that are in compliance with the standards and assurances in section 725 (b) and (c) of the Act;

(4) Support 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) 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 policy makers in order to enhance IL services for individuals with significant disabilities;

(6) Train individuals with disabilities and individuals providing services to individuals with disabilities, and other persons regarding the IL philosophy; and

(7) Provide outreach to populations that are unserved or underserved by programs under title VII of the Act, including minority groups and urban and rural populations.

§ 1329.11 DSE eligibility and application.

(a) Any designated State entity (DSE) identified by the State and included in the signed SPIL pursuant to section 704(c) is eligible to apply for assistance under this part in accordance with section 704 of the Act, 29 U.S.C. 796c.

(b) To receive financial assistance under Parts B and C of chapter 1 of title VII, a State shall submit to the Administrator and obtain approval of a State plan that meets the requirements of section 704 of the Act, 29 U.S.C. 796c.

(c) Allotments to states are determined in accordance with section 711 of the Act, 29 U.S.C. 796e.

§ 1329.12 Role of the designated State entity.

(a) A DSE that applies for and receives assistance must:

(1) Receive, account for, and disburse funds received by the State under Part B and Part C in a State under section 723 of the Act based on the State plan;

(2) Provide administrative support services for a program under Part B, as directed by the approved State plan, and for CILs under Part C when administered by the State under section 723 of the Act, 29 U.S.C. 796f-2;

(3) Keep such records and afford such access to such records as the Administrator finds to be necessary with respect to the programs;

(4) Submit such additional information or provide such assurances as the Administrator may require with respect to the programs; and

(5) Retain not more than 5 percent of the funds received by the State for any fiscal year under Part B, for the performance of the services outlined in paragraphs (a)(1) through (4) of this section. For purposes of these regulations, the 5 percent cap on funds for administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program income funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL purposes.

(b) The DSE must also carry out its other responsibilities under the Act, including, but not limited to:

(1) Allocating funds for the delivery of IL services under Part B of the Act as directed by the SPIL; and

(2) Allocating the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities under section 705(c), consistent with the approved State Plan.

(c) Fiscal and accounting requirements: The DSE must adopt fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for federal funds provided to CILs, SILCs, and/or other services providers under the ILS program. The DSE must comply with all applicable federal and State laws and regulations, including those in 45 CFR part 75.

§ 1329.13 Allotment of Federal funds for State independent living (IL) services.

(a) The allotment of Federal funds for State IL services for each State is computed in accordance with the requirements of section 711(a)(1) of the Act.

(b) Notwithstanding paragraph (a) of this section, the allotment of Federal funds for Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands is computed in accordance with section 711(a)(2) of the Act.

(c) The Administrator shall reserve between 1.8 percent and 2 percent of appropriated funds to provide, either directly or through grants, contracts, or cooperative agreements, training and technical assistance to SILCs. Training and technical assistance funds shall be administered in accordance with section 711A of the Act.

§ 1329.14 Establishment of a SILC.

(a) To be eligible to receive assistance under this part, each State shall establish and maintain a SILC that meets the requirements of section 705 of the Act, including composition and appointment of members.

(b) The SILC shall not be established as an entity within a State agency, including the DSE. The SILC shall be independent of and autonomous from the DSE and all other State agencies.

§ 1329.15 Duties of the SILC.

(a) The duties of the SILC are those set forth in section 705(c), (d), and (e) of the Act.

- (1) The SILC shall develop the SPIL in accordance with guidelines developed by the Administrator;
 - (2) The SILC shall monitor, review and evaluate the implementation of the SPIL on a regular basis as determined by the SILC and set forth in the SPIL;
 - (3) The SILC shall meet regularly, and ensure that such meetings are open to the public and sufficient advance notice of such meetings is provided;
 - (4) The SILC shall submit to the Administrator such periodic reports as the Administrator may reasonably request, and keep such records, and afford such access to such records, as the Administrator finds necessary to verify the information in such reports; and
 - (5) The SILC shall, as appropriate, coordinate activities with other entities in the State that provide services similar to or complementary to independent living services, such as entities that facilitate the provision of or provide long-term community-based services and supports.
- (b) In carrying out the duties under this section, the SILC may provide contact information for the nearest appropriate CIL. Sharing of such information shall not constitute the direct provision of independent living services as defined in section 705(c)(3) of the Act.
- (c) The SILC, in conjunction with the DSE, shall prepare a plan for the provision of resources, including staff and personnel that are necessary and sufficient to carry out the functions of the SILC.

(1) The resource plan amount shall be commensurate, to the extent possible, with the estimated costs related to SILC fulfilment of its duties and authorities consistent with the approved State Plan.

(2) Available resources include: Innovation and Expansion (I&E) funds authorized by 29 U.S.C. 721(a)(18); Independent Living Part B funds; State matching funds; other public funds (such as Social Security reimbursement funds); and private sources.

(3) In accordance with § 1329.10(a)(1), no more than 30 percent of the State's allocation of Part B and Part B State matching funds may be used to fund the resource plan, unless the approved SPIL provides that more than 30 percent is needed and justifies the greater percentage.

(4) No conditions or requirements may be included in the SILC's resource plan that may compromise the independence of the SILC.

(5) The SILC is responsible for the proper expenditure of funds and use of resources that it receives under the resource plan.

(6) A description of the SILC's resource plan must be included in the State plan. The plan should include:

(i) Staff/personnel;

(ii) Operating expenses;

(iii) Council compensation and expenses;

(iv) Meeting expenses, including public hearing expenses, such as meeting space, alternate formats, interpreters, and other accommodations;

(v) Resources to attend and/or secure training for staff and Council members; and

(vi) Other costs as appropriate.

(d) The SILC shall carry out the activities in paragraph (a), to better serve individuals with significant disabilities and help achieve the purpose of section 701 of the Act.

(e) The SILC shall, consistent with State law, supervise and evaluate its staff and other personnel as may be necessary to carry out its functions under this section.

§ 1329.16 Authorities of the SILC.

(a) The SILC may conduct the following discretionary activities, as authorized and described in the approved State Plan:

(1) Work with Centers for Independent Living to coordinate services with public and private entities to improve services provided to individuals with disabilities;

(2) Conduct resource development activities to support the activities described in the approved SPIL and/or to support the provision of independent living services by Centers for Independent Living; and

(3) Perform such other functions, consistent with the purpose of this part and comparable to other functions described in section 705(c) of the Act, as the Council determines to be appropriate and authorized in the approved SPIL.

(b) In undertaking the foregoing duties and authorities, the SILC shall:

(1) Coordinate with the CILs in order to avoid conflicting or overlapping activities within the CILs' established service areas;

(2) Not engage in activities that constitute the direct provision of IL services to individuals, including the IL core services; and

(3) Comply with Federal prohibitions against lobbying.

§ 1329.17 General requirements for a State plan.

(a) The State may use funds received under Part B to support the Independent Living Services program and to meet its obligations under the Act, including the section 704(e) requirements that apply to the provision of independent living services. The State plan must stipulate that the State will provide IL services, directly and/or through grants and contracts, with Federal, State or other funds, and must describe how and to whom those funds will be disbursed for this purpose.

(b) In order to receive financial assistance under this part, a State shall submit to the Administrator a State plan for independent living.

(1) The State plan must contain, in the form prescribed by the Administrator, the information set forth in section 704 of the Act, including designation of an Agency to serve as the designated State entity, and such other information requested by the Administrator.

(2) The State plan must contain the assurances set forth in section 704(m) of the Act.

(3) The State plan must be signed in accordance with the provisions of this section.

(4) The State plan must be submitted 90 days before the completion date of the proceeding plan, and otherwise in the time frame and manner prescribed by the Administrator.

(5) The State plan must be approved by the Administrator.

(c) The State plan must cover a period of not more than three years and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(d) The State plan must be jointly—

(1) Developed by the chairperson of the SILC, and the directors of the CILs, after receiving public input from individuals with disabilities and other stakeholders throughout the State; and

(2) Signed by the—

(i) Chairperson of the SILC, acting on behalf of and at the direction of the SILC;

(ii) The director of the DSE, signifying agreement to execute the responsibilities of the DSE identified in section 704(c) of the Act; and

(iii) Not less than 51 percent of the directors of the CILs in the State. For purposes of this provision, if a legal entity that constitutes the “CIL” has multiple Part C grants considered as separate Centers for all other purposes, for SPIL signature purposes, it is only considered as one Center. CILs with service areas in more than one State that meet the other applicable requirements are eligible to participate in SPIL development and sign the SPIL in each of the relevant States.

(e) The State plan must provide for the review and revision of the plan, not less than once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to meet the requirements of section 704(a) of the Act.

(f) The public, including people with disabilities and other stakeholders throughout the State, must have an opportunity to comment on the State plan prior to its submission to the Administrator and on any revisions to the approved State plan. Meeting this standard for public input from individuals with disabilities requires providing reasonable modifications in policies, practices, or procedures; effective communication and appropriate auxiliary aids and services for individuals with disabilities, which may include the provision of qualified interpreters and information in alternate formats, free of charge.

(1) The requirement for public input in this section may be met by holding public meetings before a preliminary draft State plan is prepared and by providing a preliminary draft State plan for comment prior to submission.

(2) To meet the public input standard of this section, a public meeting requires:

(i) Accessible, appropriate and sufficient notice provided at least 30 days prior to the public meeting through various media available to the general public, such as Web sites, newspapers and public service announcements, and through specific contacts with appropriate constituency groups.

(ii) All notices, including notices published on a Web site, and other written materials provided at or prior to public meetings must be available upon request in accessible formats.

(g) The State plan must identify those provisions that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or

policy relating to the DSE's administration or operation of IL programs under Title VII of the Act, including any rule or policy implementing any Federal law, regulation, or guideline that is beyond what would be required to comply with the regulations in this part.

(h) The State plan must address how the specific requirements in the Act and in paragraph (f) of this section will be met.

Subpart C—Centers for Independent Living Program

§ 1329.20 Centers for Independent Living (CIL) program.

State allotments of Part C, funds shall be based on section 721(c) of the Act, and distributed to Centers within the State in accordance with the order of priorities in sections 722(e) and 723(e) of the Act.

§ 1329.21 Continuation awards to entities eligible for assistance under the CIL program.

(a) In any State in which the Administrator has approved the State plan required by section 704 of the Act, an eligible agency funded under Part C in fiscal year 2015 may receive a continuation award in FY 2016 or a succeeding fiscal year if the Center has—

(1) Complied during the previous project year with the standards and assurances in section 725 of the Act and the terms and conditions of its grant; and

(2) Submitted an approvable annual performance report demonstrating that the Center meets the indicators of minimum compliance referenced in in § 1329.5.

(b) If an eligible agency administers more than one Part C grant, each of the Center grants must meet the requirements of paragraph (a) of this section to receive a continuation award.

(c) A designated State entity (DSE) that operated a Center in accordance with section 724(a) of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under this part in FY 2016 or a succeeding fiscal year if, for the fiscal year for which assistance is sought—

(1) No nonprofit private agency submits and obtains approval of an acceptable application under section 722 or 723 of the Act to operate a Center for that fiscal year before a date specified by the Administrator; or

(2) After funding all applications so submitted and approved, the Administrator determines that funds remain available to provide that assistance.

(d) A Center operated by the DSE under section 724(a) of the Act must comply with paragraphs (a), (b), and (c) of this section to receive continuation funding, except for the requirement that the Center be a private nonprofit agency.

(e) A designated State entity that administered Part C funds and awarded grants directly to Centers within the State under section 723 of the Act in fiscal year (FY) 2015 is eligible to continue receiving assistance under section 723 in FY 2016 or a succeeding fiscal year if the Administrator determines that the amount of State funding earmarked by the State to support the general operation of Centers during the preceding fiscal year equaled or exceeded the amount of federal funds allotted to the State under section 721(c) of the Act for that fiscal year.

(f) A DSE may apply to administer Part C funds under section 723 in the time and in the manner that the Administrator may require, consistent with section 723(a)(1)(A) of the Act.

(g) Grants awarded by the DSE under section 723 of the Act are subject to the requirements of paragraphs (a) and (b) of this section and the order of priorities in section 723(e) of the Act, unless the DSE and the SILC jointly agree on another order of priorities.

§ 1329.22 Competitive awards to new Centers for Independent Living.

(a) Subject to the availability of funds and in accordance with the order of priorities in section 722(e) of the Act and the State Plan's design for the statewide network of Centers, an eligible agency may receive Part C funding as a new Center for Independent Living in a State, if the eligible agency:

(1) Submits to the Administrator an application at the time and manner required in the funding opportunity announcement (FOA) issued by the Administrator which contains the information and meets the selection criteria established by the Administrator in accordance with section 722(d) of the Act;

(2) Proposes to serve a geographic area that has been designated as a priority unserved or underserved in the State Plan for Independent Living and that is not served by an existing Part C-funded Center; and

(3) Is determined by the Administrator to be the most qualified applicant to serve the designated priority area consistent with the State plan setting forth the design of the State for establishing a statewide network of Centers for independent living.

(b) An existing Part C-funded Center may apply to serve the designated unserved or underserved areas if it proposes the establishment of a separate and complete Center (except that the governing

board of the existing center may serve as the governing board of the new Center) at a different geographic location, consistent with the requirements in the FOA.

(c) An eligible agency located in a bordering, contiguous State may be eligible for a new CIL award if the Administrator determines, based on the submitted application, that the agency:

(1) Is the most qualified applicant meeting the requirements in paragraphs (a) and (b) of this section; and

(2) Has the expertise and resources necessary to serve individuals with significant disabilities who reside in the bordering, contiguous State, in accordance with the requirements of the Act and these regulations.

(d) If there are insufficient funds under the State's allotment to fund a new Center, the Administrator may—

(1) Use the excess funds in the State to assist existing Centers consistent with the State plan; or

(2) Reallot these funds in accordance with section 721(d) of the Act.

§ 1329.23 Compliance reviews.

(a) Centers receiving Part C funding shall be subject to periodic reviews, including on-site reviews, in accordance with sections 706(c), 722(g), and 723(g) of the Act and guidance set forth by the Administrator, to verify compliance with the standards and assurances in section 725(b) and (c) of the Act and the grant terms and conditions. The Administrator shall annually conduct reviews of at least 15 percent of the Centers.

(b) A copy of each review under this section shall be provided, in the case of section 723(g), by the director of the DSE to the Administrator and to the SILC, and in the case of section 722(g), by the Administrator to the SILC and the DSE.

§ 1329.24 Training and technical assistance to Centers for Independent Living.

The Administrator shall reserve between 1.8% and 2% of appropriated funds to provide training and technical assistance to Centers through grants, contracts or cooperative agreements, consistent with section 721(b) of the Act. The training and technical assistance funds shall be administered in accordance with section 721(b) of the Act.

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