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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1329

RIN: 0985-AA10

Independent Living Services and Centers for Independent Living

AGENCY: Administration for Community Living, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Workforce Innovation and Opportunity Act enacted on July 22, 2014 and reflects the transfer of Independent Living Services and Centers for Independent Living programs from the Department of Education to the Department of Health and Human Services. The previous regulations were issued by the Department of Education. This proposed rule will consolidate the Independent Living (IL) regulations into a single part, align the regulations with the current statute and HHS policies, and will provide guidance to IL grantees.

DATES: Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments in one of following ways (no duplicates, please):

Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- Federal eRulemaking Portal: You may (and we encourage you to) submit electronic comments on this regulation at <http://www.regulations.gov>. Follow the instructions under the “submit a comment” tab. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.

• Regular, Express, or Overnight Mail: You may mail written comments to the following address ONLY: Administration for Community Living, Attention: IL NPRM, U.S. Department of Health and Human Services, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

• Individuals with a Disability: We will provide an appropriate accommodation, including alternative formats, upon request. To make such a request, please contact Marlina Moses-Gaither, (202) 357-3552 (Voice) or at marlina.moses-gaither@acl.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Molly Burgdorf, Administration for Community Living, telephone (202) 357-3411 (Voice). This is not a toll-free number.

SUPPLEMENTARY INFORMATION

I. Workforce Innovation and Opportunity Act of 2014

The Workforce Innovation and Opportunity Act (“WIOA,” Pub. L. 113-128), signed into law on July 22, 2014, included significant changes to title VII of the Rehabilitation Act of 1973. WIOA transfers 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) from the Rehabilitation Services Administration (RSA), U.S. Department of Education (ED), to the Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS). WIOA also transferred the National Institute on Disability, Independent Living, and Rehabilitation Research, and the Assistive Technology Act programs to ACL.

Background

ACL was established as an Operating Division within HHS in 2012. ACL focuses on the shared interests of both older adults and people with disabilities, while acknowledging and

continuing to address the unique needs and differences across the populations served. As an agency, we strive to ensure that all Americans, regardless of age or disability, can make their own choices and live, learn and work in their communities with the services and supports they need to be fully participating and contributing members of society. The transferred Independent Living (IL) programs make important contributions to the work of ACL in unique ways, and they also align with the mission of ACL to maximize the independence, well-being and health of individuals with disabilities across the lifespan, and their families and caregivers.

As part of the transfer, the Administrator of ACL (Administrator) is issuing new regulations for the programs that 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). This notice of proposed rulemaking applies to the Independent Living programs. It proposes new regulations that implement the transition of the Independent Living programs, including the Independent Living Services and the Centers for Independent Living, to ACL. While the proposed regulations retain many of the provisions in the Department of Education regulations, they also include new provisions to implement changes made to the programs by WIOA and to replace references to Department of Education procedures and regulations with references to procedures and regulations applicable to Department of Health and Human Services programs. Existing Department of Education Independent Living program regulations found at 34 CFR parts 364, 365, and 366 remain in effect until such time as the proposed HHS regulations become final.

Programs Amended by WIOA

Overview of the Independent Living Program

Independent Living (IL) empowers individuals with disabilities to live independently in their communities assisted by two federal programs: Independent Living Services (ILS) and Centers for Independent Living (referred to as CILs or Centers).

Independent Living Services

Authorized under Title VII, chapter 1, part B of the Rehabilitation Act, as amended by WIOA, the Independent Living Services (ILS) Program provides formula grants, based primarily on population, to States for the purpose of funding, directly and/or through grant or contractual arrangements a number of activities. These activities include:

1. Supporting the operation of Statewide Independent Living Councils (SILCs);
2. Providing IL services to individuals with significant disabilities, particularly those in unserved areas of the State;
3. Demonstrating ways to expand and improve IL services;
4. Supporting the operation of CILs that comply with the standards and assurances of section 725;
5. Increasing the capacity of public or nonprofit organizations and other entities to develop comprehensive approaches or systems for providing IL services;
6. Conducting studies and analyses, developing model policies and procedures, and presenting information, approaches, strategies, findings, conclusions, and recommendations to federal, State and local policymakers to enhance IL services;
7. Training service providers and individuals with disabilities on the IL philosophy; and
8. Providing outreach to populations that are unserved or underserved by IL programs, including minority groups and urban and rural populations.

To be eligible for financial assistance, States are required to establish and maintain a SILC and to submit an approvable State Plan for Independent Living (SPIL) jointly developed by the chairperson of the SILC and the directors of the Centers for Independent Living, with input from individuals with disabilities and other stakeholders throughout the State. The SPIL must be signed by the SILC chairperson acting on behalf of and at the direction of the SILC, the director of the designated State entity (DSE), and not less than 51 percent of the directors of CILs in the State.

Centers for Independent Living

Authorized under title VII, chapter 1, part C of the Rehabilitation Act, as amended by WIOA, the Centers for Independent Living Program provides grants to consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies for the provision of an array of IL services to individuals with significant disabilities. At a minimum, Centers funded by the program are required to provide the following five IL core services:

1. Information and referral;
2. IL skills training;
3. Peer counseling;
4. Individual and systems advocacy; and
5. Services that facilitate transition from nursing homes and other institutions to home and community based residences with the necessary supports and services, provide assistance to those at risk of entering institutions, and facilitate transition of youth to postsecondary life.

Centers also may provide, among others: services related to securing housing or shelter; personal assistance services; transportation, including referral and assistance, mobility training,

rehabilitation technology; and other services consistent with 29 U.S.C 705(18), including those necessary to improve the ability of individuals with significant disabilities to function independently in the family or community and/or to continue in employment. The Rehabilitation Act establishes a set of activities along with standards and assurances that must be met by the Centers. To continue receiving CIL program funding, eligible Centers must demonstrate minimum compliance with the following evaluation standards: promotion of the IL philosophy; provision of IL services on a cross-disability basis; support for the development and achievement of IL goals chosen by the consumer; efforts to increase the availability of quality community options for IL; provision of IL core services; resource development activities to secure other funding sources; and community capacity-building activities. Centers' levels of compliance with the standards are assessed based on compliance indicators.

A population-based formula determines the total funding available for discretionary grants to Centers in each State. Subject to the availability of appropriations as required by statute, ACL provides continuation funding to existing Centers at the same level of funding they received the prior fiscal year, including a cost-of-living increase, as long as they meet the standards and assurances, or are taking appropriate action to address identified deficiencies through a corrective action plan. Funding for new Centers in a State is awarded on a competitive basis, based on the State's priority designation of unserved or underserved areas in the SPIL and the availability of sufficient additional funds within the State. There are currently 354 Centers for Independent Living that receive direct grants from the federal government.¹

Statewide Independent Living Councils

¹ In many States there are additional CILs that receive State funding or federal IL funding administered by the State agencies.

As discussed above, a State must establish and maintain a Statewide Independent Living Council (referred to as a SILC or Council) in order to be eligible for IL and CIL funding.

Although SILCs are not funded directly by the federal government, they are an important partner in implementing the ILS and CIL programs in a State. The SILCs are composed of a majority of people with disabilities and include other independent living stakeholders. SILC members are generally appointed by the Governor of the State, except in the case of a State that, under State law, vests authority for the administration of the activities carried out under the IL programs in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity would appoint SILC members. The chairperson of the SILC, and the directors of the Centers for Independent Living in the State jointly develop the State Plan for Independent Living (referred to as SPIL or State plan) after receiving public input from individuals with disabilities and other stakeholders throughout the State. The SILC monitors, reviews and evaluates the implementation of the SPIL.

A SPIL has already been approved in each State through fiscal year 2016. The law remains unchanged that the SPIL continues to govern the provision of IL services in the State. Each State is expected to continue its support, including specified obligations, under the approved SPIL. 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 and signed in accordance with section 704(a)(2) of the Rehabilitation Act, as amended. SPIL amendments must be submitted by the State to ACL for approval.

Indicators of Minimum Compliance

WIOA requires ACL to publish minimum compliance indicators for CILs and SILCs before July 22, 2015. (See section 706(b) of the Rehabilitation Act, 29 U.S.C. 796d-1(b), as amended.) Section 706(c) of the Rehabilitation Act continues to require compliance reviews of CILs funded under section 722 and reviews of State entities funded under section 723 of the Rehabilitation Act. Until the new minimum compliance indicators are published, the IL staff at ACL will continue to conduct compliance reviews and make final decisions on any proposed corrective actions and/or technical assistance related to compliance reviews, in accordance with current compliance indicators. Grantees must also continue to submit annual performance reports (referred to as the 704 Report). ACL is in the process of reviewing related instruments and instructions in light of changes under WIOA. Proposed changes and new indicators will be published in the Federal Register in accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Overview of Key Statutory Changes Made by WIOA

As previously discussed, WIOA transferred the Independent Living Programs to ACL and created a new Independent Living Administration within the agency, adding section 701A of the Rehabilitation Act, 29 U.S.C. 796-1. WIOA also made a number of other changes. WIOA amended section 702 of the Act, 29 U.S.C. 796a, to insert the definition of Administrator as the Administrator of the Administration for Community Living in the U.S. Department of Health and Human Services. The responsibilities of the Administrator are set forth in amended section 706, 29 U.S.C. 796d-1.

New section 702 of the Act also amended the definition of a CIL and requires that CILs provide, at a minimum, independent living core services for individuals with significant disabilities, regardless of age or income.

WIOA amended section 7(17) of the Act, to add a new fifth core service to the definition of independent living core services. Other relevant amendments to the definition section include the addition of a new section 7(42), definition of youth with a disability.

WIOA also amends section 704 of the Act, 42 U.S.C. 796c, which describes requirements for the State Plan. The law now requires that the SPIL be developed jointly by the chairperson of the Statewide Independent Living Council (SILC) and the directors of the Centers for Independent Living, after receiving public input from individuals with disabilities and other stakeholders throughout the State. The SPIL is to be signed by the SILC chairperson acting for and at the direction of the SILC, the director of the designated State entity (DSE), and not less than 51 percent of the CILs in the state. The law also requires that the SPIL address working relationships and collaboration between CILs and other entities performing similar work. Finally, the SPIL is required to describe strategies for providing independent living services on a statewide basis, to the greatest extent possible.

As part of the amendments to section 704 of the Act, the DSE is responsible to receive, account for and distribute funds based on the SPIL, provide administrative support for programs under Title VII B, maintain records, and provide information or assurances to the Administrator. Section 704(c)(5) adds a cap of 5 percent of the funds received by the State for any fiscal year under Independent Living Services that the DSE may retain to perform these services.

WIOA made several amendments to section 705 of the Act, 29 U.S.C. 796d, regarding the Statewide Independent Living Council. Amended section 705 (b)(2) requires that voting members of the SILC include, in a state in which one or more CILs are run by, or in conjunction with, the governing bodies of American Indian tribes located on Federal or State reservations, at least one representative of the director of such Centers. It also removes the term limit for a CIL

director appointed to the SILC if there is only one CIL within the State. Amended section 705(c)(2) permits the SILC to engage in new activities in addition to the original duties outlined in section 705(c)(1). However, the amended section 705(c) also provides that the SILC may not provide independent living services directly to individuals with significant disabilities or manage such services. The SILC may work with CILs to coordinate services with public and private entities in order to improve services provided to individuals with disabilities, and may now also conduct resource development activities. SILCs must prepare a resource plan in conjunction with the designated State entity.

WIOA requires that between 1.8 percent and 2 percent of funds be set aside for technical assistance and training for SILCs. The law also amends section 713 of the Act, 29 U.S.C. 796e-2, to provide that States may not use more than 30 percent of the funds received under chapter 1, part B, of the Rehabilitation Act for the SILC resource plan unless the State plan specifies a greater percentage is needed.

Finally, WIOA modifies section 706(c) of the Act, 29 U.S.C. 796d-1(c) to eliminate the requirement that compliance reviews of CILs be conducted randomly.

Overview of Regulatory Changes

U.S. Department of Education (ED) regulations governing the Independent Living Program are found at 34 CFR parts 364, 365, and 366. Part 364 sets forth regulations addressing State Independent Living Services and Centers for Independent Living: General Provisions; part 365 sets forth regulations addressing State Independent Living Services; and part 366 sets forth regulations addressing Centers for Independent Living. ACL proposes to consolidate the IL regulations into one new part, 45 CFR part 1329. We further propose to eliminate regulations applicable specifically to ED processes, as well as to eliminate duplicative language or language

no longer applicable in the existing ED regulations. We propose to eliminate regulatory language that does not add further interpretation to the statutory language. Unless otherwise noted, the proposed changes in in this notice of proposed rulemaking represent changes to implement WIOA, including the transfer of the programs from ED to HHS.

45 CFR Part 1329

Subpart A

We propose to create a Subpart A of the new 45 CFR Part 1329 that will address General Provisions for the IL programs.

Proposed § 1329.1 sets out the programs covered by the new Part. Proposed § 1329.2 sets out their purpose as defined in Section 701 of the Act, 29 U.S.C. 796.

In considering the purpose of the Act and the changes made under WIOA, we wish to highlight ACL's interpretation that the IL programs promote a philosophy of person-centeredness in keeping with the mission of ACL and with the policy of the Department of Health and Human Services. On June 6, 2014, HHS issued guidance on implementing Section 2402(a) of the Affordable Care Act. Section 2402(a) of the Affordable Care Act requires the Secretary to ensure all States receiving federal funds develop service systems that are responsive to the needs and choices of beneficiaries receiving home and community-based long-term services (HCBS), maximize independence and self-direction, provide support coordination to assist with a community-supported life, and achieve a more consistent and coordinated approach to the administration of policies and procedures across public programs providing HCBS. Because so much of the work done by IL programs involves these same principles, we believe it

is important to clarify that the June 2014 guidance, including person-centered planning requirements,² applies to IL programs.

Proposed § 1329.3 replaces the ED regulations specified in 34 CFR 364.3 with references to other HHS regulations that govern the activities of the Independent Living programs.

Proposed § 1329.4 is the Definitions section.

§. 1329.4 Definitions

Proposed § 1329.4 defines terms used in the regulations. We propose to include statutory definitions when we believe the terms to be significant enough to warrant repetition in the regulations. We propose to incorporate some definitions from the existing ED regulations at 34 CFR 364.4. We propose modifications to other definitions to reflect WIOA changes or to modernize the terms.

a. Definition of independent living core services

ACL proposes to amend the existing regulatory definition of independent living core services by adding the new fifth core service to the previous definition. The four original core services are information and referral services; independent living skills training; peer counseling, including cross-disability peer counseling; individual and systems advocacy.

The new fifth core service has three components, each of which must be met to fulfill the fifth core service. It requires CILs to (1) facilitate the transition of individuals with significant

² Person-centered planning is a process directed by the person with long-term services and supports needs. The person-centered planning approach identifies the person's strengths, goals, preferences, needs (e.g. medical and home and community-based services), and desired outcomes. The role of agency workers (e.g., options counselors, support brokers, social workers and others) in the process is to enable and assist people in identifying and accessing a unique mix of paid and unpaid services to meet their needs, and provide support during planning. Person-centered planning is consistent with the independent living philosophy, including consumer control and self-determination, in order to maximize independence.

disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services; (2) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals remain in the community; and (3) facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs (IEPs) under Section 614(d) of the Individuals with Disabilities Education Act, and who have completed their secondary education or otherwise left school to postsecondary life.

We recognize that the fifth core service of promoting full access to community living and postsecondary life is an important addition to the core services. We acknowledge that through various Medicaid and State-specific programs, including partnerships with other programs administered by ACL, many CILs have experience and existing services consistent with one or more of the three components. To achieve the right balance between clarity and flexibility in implementing the new core service, ACL is considering the appropriate level of detail. We invite comment on whether the proposed language is sufficiently specific, or if more information is needed to successfully implement this new requirement. Under our proposed approach, we have chosen not to define the terms “institution,” “home and community-based residences,” and “at risk of institutionalization” at this time. We propose, however, to define “youth with a significant disability” and related terms around youth transition to postsecondary education.

In considering whether to define the term "institution," we looked at a variety of existing Medicare and Medicaid definitions, including the definitions at Sections 1819(a) and 1862(e)(1) of the Social Security Act, and 42 CFR 416.201, 441.301(c)(5), and 441.710(a)(2). These definitions include hospitals, skilled nursing facilities, Medicaid nursing facilities, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services.

They also include a definition consistent with settings that are not “community based” for Section 1915(c) home and community based waivers and for Section 1915(i) State plan home and community based services. We are concerned, however, that defining “institution” based on the Medicare and Medicaid model may not be broad enough to encompass all institutions with which CILs may work, including juvenile detention centers, jails and prisons. We seek public comment on whether to include a definition and, if so, the suitability of applying Medicare and Medicaid definitions to the fifth core service.

We also considered definitions of “home and community-based residences” and “at risk” of institutionalization. We determined not to define these terms at this time, but request comment on whether and how “home and community-based residences” and “at risk” of institutionalization should be defined for purposes of the fifth core service. We are specifically interested in learning how CILs that are already transitioning individuals with disabilities to the community and/or doing work to avoid the institutionalization of people with significant disabilities currently define “transition” from institutions to the community, and people who are “at risk of entering institutions.” To maintain the consumer-directed purpose of the programs, ACL also invites comments on the effectiveness and limitations of including the issue of being “at risk” as a part of CIL consumers self-disclosing their needs in the intake process.

CILs that provide youth transition services to a broader group of youth with significant disabilities beyond the populations covered under the youth transition prong of the new fifth core service (in Section (17)(E)(iii) of the Act) have the option of continuing to do so, but such services would be included as IL services, rather than as “core services” for purposes of the 704 report, and provision of those services would not satisfy the core services requirement. ACL proposes to define a youth with a significant disability as an individual with a significant

disability who (i) is not younger than 14 years of age; and (ii) is not older than 24 years of age. This definition is based on the definition of “individual with a 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).

We further propose to define the term “completed their secondary education” to mean 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; has reached age 18, even if he or she is still receiving services in accordance with an individualized education program developed under the IDEA; or has exceeded the age of eligibility for IDEA services.³ Similarly, we propose a broad interpretation of “otherwise left school.” For example, “otherwise left school” could mean that the youth has dropped out of school; taken a leave of absence from secondary school for health or disciplinary reasons; or did not graduate but is no longer attending classes at a secondary school. We request comments on this interpretation.

b. Definition of other terms in proposed § 1329.4

We propose a definition of “*Administrative support services*” provided by the designated State entity under Part B, to Part C CILs administered by the State under Section 723 of the Act, with some examples. We request comments on this definition.

We proposed to incorporate the definition of “*Administrator*” at Section 702(1) of the Act, 29 U.S.C. 796a(1).

We propose to define “*Advocacy*” consistent with the definition in the existing regulations, 34 CFR 364.4. Individual and system advocacy remain integral elements of

³ The fifth core independent living service to facilitate the transition of youth who are individuals with significant disabilities requires that they “...were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)...” under Section 7 of the Act, 29 U.S.C. 705(17)(E)(iii).

promoting independent living according to the purpose of the law. The term includes providing assistance and/or representation in obtaining access to benefits, rights, services, and programs to which a consumer or group of consumers may be entitled. We invite comment on the definition. Grantees should continue to present information in a balanced and non-partisan manner that is consistent with the principles of the Rehabilitation Act and in accordance with relevant federal and State laws and the restrictions and exceptions in the Uniform Guidance, including 2 CFR 200.450, and other applicable requirements.

We propose to incorporate the existing definition of “*Attendant care services*” in 34 CFR 364.4.

We propose to add to the existing definition of “*Center for independent living*” in 34 CFR 364.4 that the array of independent living services provided includes, at a minimum, the independent living core services defined in Section 7(17) of the Act. A “Center” that receives assistance under the Act must meet all of the requirements of Section 725 (b) and (c) of the Act, 29 U.S.C. 796f-4(b) and (c), the standards and assurances for Centers for Independent Living.

We propose to add to the statutory definition of “*Consumer control*” at Section 702 of the Act, 29 U.S.C. 796a(3), that control is vested in individuals with disabilities, including those who are or who have been recipients of IL services.

We propose to add to the existing definition of “*Cross-disability*” at 34 CFR 364.4 that the CIL provide services to individuals representing a range of significant disabilities, including individuals who are members of unserved or underserved populations.

We propose to define “*Designated State entity (DSE)*” based on Section 704 of the Act, 29 U.S.C. 796c(c).

We propose to incorporate the statutory definition of “*Eligible agency*,” Section 726 of the Act, 29 U.S.C. 796f-5.

We propose to incorporate the statutory definition of “*Independent living services*,” from Section 7(18) of the Act, 29 U.S.C. 705(18).

We propose to define “*Individual with a disability*” using the language of 42 U.S.C. 12102 as specified in Section 7(20)(B) of the Act, 29 U.S.C. 705(20)(B).

We propose to incorporate the statutory definition of “*Individual with a significant disability*” in Section 7(21)(B) of the Act, 29 U.S.C. 705(21)(B).

We propose to add a definition of “*Majority*” to clarify that a majority means more than 50 percent. This definition applies to the SILC member and voting member qualifications, 29 U.S.C. 796d(4)(A)(iv) and (B), and the required assurances relating to the CIL Board & CIL staff, 29 U.S.C. 796f-4(C)(2) and (6), among other provisions. This addition is intended to help clarify statutory requirements, particularly those related to establishing consumer control.

We propose to define “*Minority group*” to mean 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, based on the Office of Management and Budget Standards for the Classification of Federal Data on Race and Ethnicity (62 FR 58782 (Oct. 30, 1997)), considered in conjunction with the definition for minority in National Science Foundation regulations, 34 CFR part 637 and with the Centers for Disease Control and Prevention’s Office of Minority Health’s definitions.

We propose to incorporate the existing definition of “*Nonresidential*” at 34 CFR 364.4.

We propose to incorporate the existing definition of “*Peer relationships*” at 34 CFR 364.4.

We propose to incorporate the existing definition of “*Peer role models*” at 34 CFR 364.4.

We propose to add to the statutory definition of “*Personal assistance services*” in Section 7(28) of the Act, 29 U.S.C. 705(28), examples of what might constitute personal assistance services. We also propose to add that such services may be paid or unpaid.

We propose a definition of “*Service provider*” based on the existing definition in 34 CFR 364.4. We further propose to modify the definition to reflect the WIOA changes by removing references to a designated State unit and adding a designated State entity (DSE).

We propose to incorporate the statutory definition of “*State*” Section 7(34) of the Act, 29 U.S.C. 705(34).

We propose to define “*State plan*” by reference to Section 704 of the Act, 29 U.S.C. 796c.

We propose to define “*Unserved and underserved*” groups or populations to include populations such as individuals with significant disabilities who are from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban). This definition is based on the statutory requirement in Section 704(l) of the Act, 29 U.S.C. 796c(l), to provide outreach to “populations that are unserved or underserved by programs....including minority groups and urban and rural populations.” We further base the definition on the Congressional findings on traditionally underserved populations set forth in Section 21 of the Act, 29 U.S.C. 718. 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.

We propose to define “*Youth with a significant disability*” consistent with the definition of “individual with a significant disability” in Section 7(21)(B), 29 U.S.C. 705(21)(B) and “youth with a disability” in Section 7(42)(A), 29 U.S.C. 705(42)(A), and with the definition of “*individual with a disability*” in §1329.4.

§ 1329.5 Indicators of Minimum Compliance

Section 706 of the Act, 29 U.S.C. 796d-1, discusses the responsibilities of the Administrator with regard to oversight of the IL programs. Specifically, WIOA requires the development and publication of indicators of minimum compliance for CILs, consistent with the standards set forth in Section 725 of the Act, 29 U.S.C. 796f-4, and indicators of minimum compliance for SILCs. WIOA did not amend Section 706(c), which requires annual compliance reviews of 15 percent of CILs and, to the extent necessary to determine compliance with the requirements of Section 723(f) and (g) of the Act, 29 U.S.C. 796f-2, one-third of designated State entities.

WIOA deleted the requirement that the CILs and State entities reviewed be chosen on a random basis and we propose to amend the regulations accordingly. We invite comment on the criteria and selection process for compliance reviews going forward, given this change.

ACL proposes to require Centers to demonstrate minimum compliance consistent with Section 725, for the following: promotion of the IL philosophy; provision of IL services on a cross-disability basis; support for the development and achievement of IL goals chosen by the consumer; efforts to increase the availability of quality community options for IL; provision of IL core services; resource development activities to secure other funding sources; and community capacity-building activities. ACL will continue to monitor programs based on the

standards and indicators set forth in the statute as we re-evaluate and develop protocols that meet the requirements of the Act.

§ 1329.6 Reporting

In addition to compliance reviews, each CIL and State is required to file an annual performance report, known as the 704 Report, which describes its work and how the CIL or State is meeting the goals and requirements of the Act. This requirement is set forth in proposed § 1329.6. ACL is currently in the process of reviewing the 704 reports. However, for this year, CILs and States are expected to complete the 704 instrument that they have used in the past. We will issue guidance as to how the reports are to be filed. We are considering changes to the 704 Report for future years. The 704 Reports are subject to the Paperwork Reduction Act of 1995 (PRA), and interested stakeholders will have an opportunity to comment on any future revisions to the report through the PRA clearance process.

§ 1329.7 Enforcement and Appeals Process

The existing IL regulations at 34 CFR 366.39 through 366.46, include an enforcement and appeals process for the CILs funded under Part C of Chapter 1 of Title VII of the Rehabilitation Act. There is no corresponding process in the existing ED independent living regulations for the designated State entities administering Part B funds in accordance with the State Plan, as authorized by Part B of Chapter 1 of Title VII. In determining the appropriate approach for enforcement and appeals, ACL reviewed the existing Department of Education regulations and the regulations applicable to ACL programs funded under the Older Americans Act (OAA), 45 CFR part 1321, and the Developmental Disabilities and Bill of Rights Act (DD Act) regulations, 45 CFR part 1385. The NPRM proposes to utilize a version of the process from the existing IL regulations modified to account for the new administrative structure of the

programs. This approach, intended to create a uniform, clear and relatively simple process, best meets the needs of the CILs, has the advantage of offering a procedure that is familiar to the programs, and is not as intricate, formal or lengthy as those in current ACL rules.

Under the proposed rule, if the Director of the Independent Living Administration (ILA) determines that a Center is not in compliance with the standards and assurances of a grant received from ACL, the Director notifies the Center that the Center is out of compliance and may be subject to enforcement action, including termination of funds. ACL will continue to make reasonable efforts to work with the Center to provide technical assistance in accordance with the procedures in the Notice of Award terms and conditions and any applicable subsequent guidance, to correct any deficiencies and to resolve compliance concerns before taking enforcement action. ACL also proposes a two-step preliminary appeals process where there is the imminent threat of termination or withholding of funds: first to the Director of the Independent Living Administration and then to the Administrator of ACL.

The proposed rule requires a Center found out of compliance to develop a corrective action plan. ACL could provide technical assistance in developing and implementing the corrective action plan and would monitor its implementation. If the Center fails to submit an approvable plan or ACL determines that the Center is otherwise out of compliance, even with the plan, the Administrator may take steps to enforce the corrective action plan or to terminate funding. If the determination by the Administrator is a type of determination described in 45 CFR Part 16, Appendix A, Paragraph C, subparagraphs (a)(1)-(4), it would be subject to review by the Departmental Appeals Board (DAB).⁴ These determinations are: (1) a disallowance or

⁴ 45 CFR part 16 refers to Procedures of the Departmental Grant Appeals Board, which is currently known within the U.S. Dep't of Health and Human Services as the Departmental Appeals Board (DAB).

other determination denying payment of an amount claimed under an award, or requiring return or set-off of funds already received; (2) a termination for failure to comply with the terms of an award; (3) a denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award; and (4) a voiding (a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained). Under 45 CFR 16.3, the Center would have 30 days from receipt of notice of that determination in which to file a notice of appeal with the DAB.

We include the enforcement and appeals process in the General Provisions part of these proposed regulations because we propose a parallel process for the Part B grants. We also propose a two-step preliminary appeals process for the Part B grants where there is the imminent threat of termination or withholding of funds, first to the Director of the ILA and then to the Administrator of ACL. We believe such a process is necessary because there may be situations in which a State is out of compliance with the requirements of its grant or of these regulations. For example, Section 704 of the Rehabilitation Act requires that, “[t]o be eligible to receive financial assistance..., a State shall submit to the Administrator, and obtain approval of, a State plan developed and signed in accordance with [Section 704]....” WIOA added the requirement that the State plan (SPIL) must be signed by not less than 51 percent of the CILs in the State. If a State submits a SPIL that does not comply with the 51 percent signature requirement, ACL wants to ensure that a process exists whereby ACL can provide technical assistance to the State to help bring it into compliance.

As indicated above, ACL may not provide any funds to a State that does not have an approved plan. ACL will work with States to resolve issues that may result in the disallowance or denial of funding. However, should these efforts be unsuccessful, we believe the State should

have an appeals process through which it may appeal a decision to disallow or deny funds that would otherwise be provided to a State in accordance with an approved plan.

Because we intend to create a uniform process for Part B and Part C grants, we also propose in these regulations to allow a State to file an appeal with the DAB concerning the four types of determinations set forth in 45 CFR part 16, appendix A, paragraph C, subparagraphs (a)(1) through (4). We further propose that the procedures in 45 CFR part 16 apply to appeals by a State.

We solicit comments about our proposed process and whether additional details need to be included in regulation. As indicated, we intend to utilize technical assistance to help resolve issues before they reach the appeals stage, and are interested in the role that other informal types of dispute resolution and mediation might play in compliance and enforcement, and how such dispute resolution and mediations might be conducted. We note that mediation is already included as an option for determinations that are appealed to the DAB, 45 CFR 16.18.

Because the processes we propose are new, particularly with regard to Part B funds, we are considering the issuance of sub-regulatory guidance to provide additional detail. Such an approach provides ACL and stakeholders with the opportunity to determine the processes that allow Centers and States to come into compliance quickly, while giving ACL the authority to take enforcement actions if the need arises.

Subpart B Independent Living Services

Proposed Subpart B of proposed 45 CFR part 1329 sets forth requirements for the designated State entity (DSE), the Statewide Independent Living Council (SILC), and the State Plan for Independent Living (SPIL). It incorporates some of the regulatory language from 34 CFR part 364 and Part 365. ACL proposes to simplify language and processes, to eliminate

duplication of language specified in the Act, and to implement and clarify changes made by WIOA.

Proposed § 1329.10 discusses the authorized use of funds for independent living (IL) services as set forth in the Act. WIOA amended Section 713(b)(1) of the Act to add that a State may use funds to provide independent living services to individuals with significant disabilities, “particularly those in unserved areas of the State.” This section includes the new statutory requirement that that States may not use more than 30 percent of the funds received under Chapter 1, Part B, of the Rehabilitation Act for the SILC resource plan unless the approved State plan specifies a greater percentage is needed. This new requirement is also reflected in § 1329.15(c)(3). We propose to add the phrase “particularly to those in unserved areas of the State” to the previous regulatory language at 34 CFR part 365.

In proposed § 1329.11 we describe the designated State entity (DSE) as the entity identified by the State and named in the State plan. We propose that the DSE must submit to the Administrator and receive approval of a State plan in order to receive funding under the Act.

Proposed § 1329.12 defines the role of the DSE as those services identified in Sections 704(c)(1) through (5) of the Act. These services were unchanged by WIOA. However, WIOA added Section 704(c)(5), stipulating that the DSE may not retain “more than five (5) percent of the funds received by the State for any fiscal year under Subpart 2 for the performance of the services outlined in paragraphs (1) through (4).” We propose in § 1329.12 that the 5 percent administrative cap apply only to the Part B funds allocated to the State and to the State’s required 10 percent Part B match. We further propose that the five (5) percent cap not apply to 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.

In implementing the new requirement, the proposed language in the rule adopts an interpretation that the “funds received by the State” include the Part B and State matching funds only, rather than applying the 5 percent cap on administrative funds allocated to the DSE to all federal funds, and other program income, supporting the Independent Living Services program. The cap limits the funds a DSE can retain for administrative purposes in order to ensure that the Part B (State Independent Living) funds are primarily used to support the State’s independent living programs and give the SILC sufficient resources to carry out required duties. We think it is consistent with the administrative cap requirement that the required State match be treated on an equal basis with the Part B funds received under this section. This creates consistency in accounting for funds that are inextricably linked to the funds provided under the Part B program, and should be treated the same way as the federal award of Part B funds. However, because program income funds are “received by the State” through means other than an appropriation under Part B, we believe those funds should be treated differently and should not be included in the administrative cap.

Proposed § 1329.13 references the allotment of funds for IL services in accordance with statutory provisions. It also proposes that if a State plan designates more than one entity to administer the State plan, including a State agency or unit of a State agency to administer IL services to individuals who are blind, then it is up to the State to determine and specify how the State’s allotment will be distributed between the multiple entities, consistent with the State plan. We ask for comments on the likelihood of a State continuing to or deciding to designate more than one entity to share in the allotment.

Proposed § 1329.13(d) implements new Section 711A of the Act, which was added by WIOA. WIOA requires the Administrator to reserve between 1.8 percent and 2 percent of Part B appropriated funds to provide for training and technical assistance to SILCs. The proposed regulation authorizes the technical assistance to be provided directly or through grants, contracts, or cooperative agreements in accordance with Section 711A. ACL intends to provide further information about SILC technical assistance and training in any funding vehicle which makes funds available under Section 711A.

Proposed § 1329.14 describes the requirements for the establishment and maintenance of a Statewide Independent Living Council (SILC). We propose that a State must establish a SILC that meets the requirements of Section 705 of the Act, including composition and appointment of members, in order to receive funding.

WIOA made a number of amendments to the composition of the SILC. WIOA removes the requirement for a director of a project carried out under Section 121 (the American Indian Vocational Rehabilitation Services Program) to be a required SILC member. WIOA added the requirement that, in States with one or more CILs run by or in conjunction with the governing bodies of American Indian tribes located on Federal or State reservations, at least one representative of the directors of such Centers serve as a voting member of the SILC. We ask for comments whether additional directions are needed to implement this provision consistent with the definition of a Center in Section 702 of the Act. For example, we seek information about what types of CIL-Tribal relationships currently exist that would meet this definition, and to what extent might the current CIL-Tribal relationships meet the requirement of CILs "run by" or "run in conjunction with" the governing bodies of American Indian tribes located on Federal or State reservations.

In proposed § 1329.14(b), ACL proposes to further strengthen the independence of the SILC by requiring that the SILC be independent of and autonomous from the DSE and all other State agencies.

Proposed § 1329.15 describes the duties of the SILC with reference to Section 705 of the Act and incorporates several changes made by WIOA. We propose to clarify in § 1329.15(b) that the SILC may provide contact information for the nearest appropriate CIL, and that sharing of such information does not constitute the direct provision of independent living services.

WIOA amended Section 713 of the Act to add new language that limits the share of Part B funds that may be provided to the SILC resource plan. We propose in § 1329.15(c) to incorporate and clarify this change.

The resource plan, as required under Section 705(e) of the Act, is a document that is separate from the SPIL and that describes how resources necessary and sufficient to carry out the functions of the SILC, will be made available. The WIOA amendment to Section 713 provides that not more than 30 percent of the funds allocated to the State may be used for the resource plan, unless the SPIL specifies that a greater percentage is needed.

Because Section 713 refers to funds received under Part B, we propose to include the State's required 10 percent Part B match in calculating the 30 percent cap to provide the resources in its resource plan.⁵ The cap on Part B funds being used for the resource plan ensures

⁵ The proposed regulation concerns the Part B funds, to which the "30 percent" specifically applies. Many SILCs receive Part B funds and/or Vocational Rehabilitation program Innovation and Expansion (I&E) funds, Social Security reimbursement funds, other federal funds, State matching funds or other public or private funds. Conversely, in several States SILCs receive no Part B funds at all, but are funded instead through I&E funds, primarily, and possibly other non-Part B federal and non-federal funds as well. Of the 32 states/territories that reported using I&E

that there are sufficient financial resources remaining so that the State may achieve the goals and objectives for Part B funding identified in the SPIL. The State match of the Part B funds is included in the calculation of the 30 percent amount, because the Part B funds are not available in the absence of the State match. Treating the State match as part of the 30 percent also creates efficiency and consistency of accounting within the programs regarding treatment of the Part B State match. In addition, it aligns with current practice in other ACL-administered grants, such as the Alzheimer’s Disease Supportive Services Program, which include the State match in calculating the caps for administrative costs and the set asides for services required under the Public Health Services Act.

The proposed regulation states that the percentage allocated to the resource plan in each State is based on the amount of Part B funds actually needed (i.e., “necessary and sufficient”) by each SILC to fulfill its statutory duties and authorities, rather than an expectation that 30 percent is automatically the baseline. Under WIOA, 30 percent is the ceiling, unless the SPIL explicitly authorizes additional funding, and SILCs are not guaranteed the 30 percent. The language authorizing up to 30 percent of Part B funds to be used for the SILC resource plan will not automatically result in a greater share to be allocated to the SILCs, though it may present an opportunity for an increase. The actual percentage received will result from negotiations among the SILC and DSEs as mandated under the law, and, as indicated, may exceed 30 percent if the State specifies that a greater percentage is needed in the approved SPIL. These changes in the

funds towards their SILC Resource Plan in the FY14-16 SPILs, 13 of these funded their SILC Resource Plan entirely with I&E.

law should allow States the flexibility to choose an approach that works best for the IL network in the State.

We have not defined what is meant by funds necessary and sufficient to carry out the functions of the SILC. We seek comments on whether a definition is necessary, including the process for making that determination.

Proposed § 1329.15(d) requires the SILC, as appropriate, to coordinate activities with other entities in the State that provide services similar to or complementary to independent living services. ACL recognizes that many SILCs, as well as many CILs, already coordinate activities with other entities, including Area Agencies on Aging, Protection and Advocacy programs, Long-Term Care Ombudsman Programs, Aging and Disability Resource Centers, and other organizations funded by ACL, other federal agencies, and States. Some SILCs may choose to coordinate with private entities providing similar services. We have chosen not to include a list of all such entities so as to provide SILCs with the maximum flexibility to work with entities in their state to serve individuals with significant disabilities.

Proposed § 1329.16 describes the authorities of the SILC to conduct discretionary activities as described in the State Plan. The proposed rule requires coordination with the CILs. Again, we have chosen not to define how a SILC should engage in coordination, recognizing that such efforts depend on the needs and requirements in each State.

Proposed § 1329.17 sets forth the requirements for the State Plan for Independent Living (SPIL). The SPIL is a plan that identifies activities to achieve the State's specified independent living objectives and reflects the State's commitment to comply with applicable statutory and regulatory requirements. Each State must have a SPIL approved by the Administrator in order to receive both CIL and ILS program funds under the Act, and each SPIL must be reviewed "not

less than once every three years,” Under Sec. 704(a)(3) of the Act.⁶ WIOA did not change the requirement that each SPIL be reviewed not less than once every three years. We propose that the State must submit the SPIL in the form, manner and time frame determined by the Administrator in accordance with Section 704.

WIOA changed the requirements for joint development of the State Plan, and we propose to implement the new requirements in the proposed regulations. Section 704(a)(2) of the Act, 29 U.S.C. 796c(a)(2), was amended to require that the State plan be developed jointly by the chairperson of the SILC and the directors of the Centers for Independent Living in the State, after receiving public input from individuals with disabilities and other stakeholders throughout the State. While WIOA eliminated the required role of the designated State entity (formerly the designated State unit) in development of the State plan, it does not preclude DSE input in the development of the SPIL in collaboration with the SILC and CILs, and ACL would encourage such input. Proposed § 1329.17(d) makes this change.

WIOA also amended Section 704(a)(2) to require that the SPIL be signed by the chairperson of the SILC acting on behalf of and at the direction of the Council; the director of the DSE; and by not less than 51 percent of the directors of the Centers for Independent Living in that State. We propose in § 1329.17(d)(2)(iii), and (iv) to define a CIL for purposes of signing the SPIL as any consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency for individuals with significant disabilities, regardless of funding source, that is designed and operated within a local community by individuals with disabilities; and provides an array of IL services, including, at a minimum, independent living core services and complies with the standards set out in Section 725(b) and provides and complies with the assurances in

⁶ 29 U.S.C. 796c (a)(3).

Section 725(c) of the Act and § 1329.5 of these regulations. We seek comments on this approach.

On a related issue regarding what type of entity constitutes a CIL for SPIL signature purposes, proposed § 1329.17(d)(2)(iii) counts the “legal entity” that may receive more than one grant as the entity included in determining the 51 percent, rather than looking at individual grants. For example, an agency that receives multiple Part C grant awards serving different geographical locations and operated by one governing board and that has one director would constitute a single CIL for SPIL signature purposes, rather than labeling each Part C grant awarded to that agency a stand-alone Center for Independent Living. ACL’s intent is that the proposed change will add clarity and simplify the signature process. We seek comments on this proposal as well, including whether this change should be implemented and the problems, if any, this interpretation would create. If the proposed language should be implemented in this instance, should it also be applied more broadly across the IL programs? What are the possible implications for the 704 Reporting process?

Additional proposed regulatory language related to the SPIL in proposed § 1329.17 primarily mirrors Section 704 of the Act and existing regulatory language in 34 CFR part 364, with technical changes, and requirements for effective communication and access for individuals with disabilities, as required under existing law, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act as amended.

Subpart C - Centers for Independent Living

Subpart C of part 1329 of the regulations concerns the Centers for Independent Living. The proposed regulations are derived from and consolidate existing regulations in 34 CFR part

366. ACL proposes to simplify language and processes and to eliminate duplication of language. We invite comment on the need for additional clarity in these regulatory sections.

Proposed § 1329.20 refers to the definition of a CIL and eligible agency in § 1329.4 of the regulations, and includes Rehabilitation Act citations regarding the Part C allotment to States and the funding formula to CILs.

Proposed § 1329.21 outlines the conditions CILs which currently receive Part C funds have to meet in order to receive continuation funding. It also addresses continuation funding requirements for States that receive Part C funds under Section 723 (currently, Minnesota and Massachusetts) and Section 724 (currently American Samoa) of the Act.

Proposed § 1329.22 discusses competitive awards to new Centers for Independent Living in accordance with the requirements of Sections 722(d) of the Act, 29 U.S.C. 796f-1, 796f-2. It stipulates that such awards are provided to the most qualified applicant based on the selection criteria established by the Administrator consistent with Section 722(d) of the Act; 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 statewide network of Centers.

Proposed § 1329.23 addresses the periodic reviews of CILs to verify compliance with the standards and assurances in Section 725(b) and (c) of the Act and the grant terms and conditions, in accordance with Sections 706(c), 722(g) and 723(g) of the Act and guidance set forth by the Administrator.

Proposed § 1329.24 sets forth the requirement that the Administrator 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 CILs. The proposed regulation states that the training and technical assistance shall be in accordance with Section 721(b) of the

Act. ACL intends to provide further guidance in any funding opportunity announcement related to training and technical assistance for CILs.

II. Regulatory 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. Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. The rule implements the Workforce Innovation and Opportunity Act enacted on July 22, 2014. In developing the final rule, we will consider input 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 proposed regulations would 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 and signed by the chairperson of the SILC, 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 are soliciting comments from affected States on this issue.

The CILs 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 a fifth core service. 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, but rather assumed that CILs would reallocate existing grant money to ensure the appropriate provision of all services required under Title VII of the Rehabilitation Act. 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, though we are applying the closest applicable data to the estimates in this analysis. We hope to conduct a more throughout analysis when we are able to collect updated data and specifically request comments on the impact of the change.

Analysis of Fiscal Year (FY) 2014 data available in the required annual performance reports (704 Report) indicates that CILs are providing services that are same or similar to the new fifth core service to one or more consumers. For purposes of this 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 service.⁷ We believe that the “Relocation from a Nursing Home or Institution” category matches the first component of the new fifth core service: 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 report nursing home transition goals established for at least one consumer, 343 CILS report community-based living goals established for at least one consumer, and 224 CILs report 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	Percentage of	Number of
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⁷ The current 704 Report was not designed to incorporate the fifth core service, so current data roughly corresponds with the categories.

	Report Category	CILs*	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
Facilitate Transition of Youth to Postsecondary Life	Youth/Transition Services	66%	224

* 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 service. 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 provisions of services as required by the Rehabilitation Act. We estimate 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 estimate 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 propose 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 estimate 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 service. 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 proposed rule.⁸ We would

⁸ 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

welcome comments from CILs as to their cost estimates of providing the statutorily-required fifth core service, so as to better inform our budgeting assumptions going forward.

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 ACL is proposing to establish a new appeals process for States where there is the imminent threat of termination or withholding of funds, 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. 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 therefore request comment on this aspect of the analysis.

The 5 percent administrative cap on the DSE and 30 percent ceiling on the SILC resource plan (absent a different amount with justification in the SPIL) are also new statutory requirements. The NPRM adopts a 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

worthwhile activity to a lesser extent, and the value of that alternative activity represents the opportunity cost of the new requirements.

Services. Additional funding sources include Social Security reimbursements, Vocational Rehabilitation program Innovation and Expansion (I&E) funds, and other public or private funds. The NPRM 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. We request comment on the impacts of this and other potential approaches.

C. Alternative Approaches

Although we believe that the approach of the proposed 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 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 Innovation and Expansion 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.

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 this proposed rule however, it does revise process requirements. As discussed earlier, WIOA changed the requirements regarding SPIL development and who must sign the SPIL.

This NPRM makes no revisions to the 704 reporting instruments, the Section 704 Annual Performance Report (Parts I and II). ACL is currently convening workgroups to recommend and implement changes to the 704 reporting instruments. 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 by the State to achieve its specified independent living objectives and reflects the State's 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 in the State. Each State is expected to continue its support, including specified obligations, for an approved SPIL. 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 by the State to ACL for approval.

WIOA changed the content of the SPIL to the extent that the SPIL must describe how the State will provide independent living services that 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 solicit comments on any information we should consider regarding the potential impact of these changes.

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 solicit comments on any information we should consider regarding the potential impact of these changes.

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, as amended by WIOA, related to the use of Part B and Part C funds. Sections 704(m)(4)(D), 706(d), 704(c)(3) and (4), and 725(c) of the Rehabilitation Act, as amended, and these proposed regulations require CILs and DSEs to submit an annual performance report (704 report) to ACL to receive funding. This proposed 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. 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 to the 704 reporting instruments, 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 704 revision efforts and invite feedback on specific issues. It is ACL's goal to publish the revised reporting instruments for comment in federal register in April 2016. According to this projected timeline, in October 2017, programs will begin collecting information for the FY 18 reporting period using the new 704 reporting instruments. In December 2018, the FY18 704 reports reflecting the new reporting requirements will be due.

Updating the 704 reporting instruments (Parts I and II) will require changes to include the new fifth core service under WIOA. We propose definitions for some of the terms in the fifth core service in this NPRM, and request comments on other areas that need more detail, as well as the burdens on programs of implementing this required core service. Assuming revised 704 reports include reporting on the new fifth core service, we estimate that providing the information will take approximately 1 hour per 704 Report. We estimate the total number of 704 Reports filed annually to be 412.⁹ Assuming the same hourly cost of \$57.66 discussed in the regulatory impact analysis above, we estimate the cost of the changes to be \$23,755.92. In

⁹ 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.

summary, future proposed changes to the Section 704 Annual Performance Report (Parts I and II) will be published in the Federal Register in accordance with the requirements of the PRA. However, we seek comments now on these estimates.

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), 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. It is ACL's goal to share a draft for informal stakeholder review by January 2016. The CIL indicators of minimum compliance (consistent with the standards set forth in Section 725) are awaiting the addition of the fifth core service, which requires input in response to this proposed rule.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) 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 2015 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 proposed rule is not a major rule as defined in 5 U.S.C. 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 proposed 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.

List of Subjects in 45 CFR 1329

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

Dated: June 24, 2015.

Kathy Greenlee,

Administrator,

Administration for Community Living.

Approved: July 17, 2015.

Sylvia M. Burwell,

Secretary,

Department of Health and Human Services.

Regulatory Language

For the reasons discussed in the preamble, the Administration for Community Living, Department of Health and Human Services, proposes to add part 1329 to title 45, chapter XIII, subchapter C, of the Code of Federal Regulations 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;
- (5) State programs of supported employment services receiving assistance under Title VI of the Act;
- (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 Award.
- (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 Procedures – Practice and Procedure for Hearings under Part 80 of this title.
- (f) 45 CFR part 84 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.
- (g) 45 CFR part 86 – Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from 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 7963-3). *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 section 7(17); 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 of these regulations.

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; has reached age 18, even if he or she is still receiving services in accordance with an individualized education program developed under the IDEA; 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.

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;
 - (ii) Provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community; 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.

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 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.

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; a designated State entity (DSE) that directly provides IL services to individuals with significant disabilities; 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.

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 established by the Administrator in accordance with section 706 of the Act, and the requirements contained in the terms and conditions of the grant award.

§ 1329.6 Reporting.

- (a) The 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 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 comply 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 an imminent threat of termination or withholding of funds, 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, which would result in termination or withholding of funds, 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 an imminent threat of termination or withholding of funds, 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, section C, paragraphs (a)(1) through (4). A State that receives such notice that would result in termination or withholding of funds 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, after reserving funds under section 13(d) for SILC training and technical assistance:

- (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 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 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, arranging for the delivery of IL services under Part B of the Act, and for the necessary and sufficient resources needed by the SILC to fulfill its statutory duties and authorities, as authorized in 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 parts 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) If the State plan designates a State agency or unit of a State agency to administer the part of the plan under which State IL services are provided for individuals who are blind and a separate or different State agency or unit of a State agency to administer the rest of the plan, the division of the State's allotment between these two units is a matter for State determination, consistent with the State plan.

(d) 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 of 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) Such resources may consist of Part B funds, State matching funds, Innovation and Expansion (I & E) funds authorized by 29 U.S.C. 721(a)(18), and other public 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.
- (d) As appropriate, the SILC shall 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, 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 obligation 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 part.
 - (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; 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.

(e) In States where DSE duties are shared with a separate State agency authorized to administer vocational rehabilitation (VR) services for individuals who are blind, the State plan must be signed by the:

(1) Director of the DSE;

(2) Director of the separate State agency authorized to provide VR services for individuals who are blind;

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

(4) Not less than 51 percent of the directors of the CILs in the State.

(f) Periodic review and revision. 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.

(g) *Public input.* (1) 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.

(2) The requirement in paragraph (g)(1) of this section may be met by holding public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings, as appropriate.

(3) To meet the public input standard of paragraph (g) 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 websites, newspapers and public service announcements, and through specific contacts with appropriate constituency groups.

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

(h) 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.

(i) The State plan must address how the specific requirements in the Act and in paragraph (g) 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 geographical location, consistent with the requirements in the FOA.

(c) An eligible agency located in a bordering 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 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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