U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D.C. 20202

TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-14-01
DATE: March 18, 2014

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATEWIDE INDEPENDENT LIVING COUNCILS
CENTERS FOR INDEPENDENT LIVING
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES PROJECTS

SUBJECT: Federal Requirements Governing the Statewide Independent Living Councils -- Composition, Membership, Appointments, Term Limits, Duties, and Resource Plan

PURPOSE: The Rehabilitation Act of 1973, as amended (the *Rehabilitation Act*) in section 705(a) requires the State to establish a Statewide Independent Living Council (SILC) in order to be eligible to receive financial assistance. The State Plan for Independent Living (SPIL) must provide for the establishment of the SILC in accordance with the requirements of section 705.

To ensure that each SILC is properly constituted so that it is able to carry out its mandated functions, the Rehabilitation Services Administration (RSA) provides, through this technical assistance circular (TAC), guidance to vocational rehabilitation (VR) agencies and SILCs regarding the federal requirements concerning the SILC, including its composition, membership, appointments, term limits, duties, and resource plan.

TECHNICAL ASSISTANCE: The information contained in this TAC is presented below in answers to a series of questions frequently asked by VR agencies and SILCs.

1. How is the SILC established?

States establish the SILC by means of an executive order issued by the governor, state legislation, or other means permitted by state law. While section 705(a) of the *Rehabilitation Act* provides the

State with the authority to create the SILC, the state itself must take the official action necessary to create the SILC in a manner consistent with statutory requirements. Section 705(a) and its implementing regulation stipulate that the SILC may not be established within a state agency, including the designated state agency (DSA) or designated state unit (DSU), and that the SILC must remain independent of the DSU and all other state agencies (34 CFR 364.21(a)(2)).

RSA recommends that states review and revise, as necessary, their executive orders and state legislation to ensure that they are consistent with federal law and regulations governing SILC appointments, composition, term limits, and other requirements as summarized in this TAC.

2. Who has authority to appoint members to the SILC?

Except in a very limited number of states, the governor must select and appoint the members of the SILC (Section 705(b)(1) of the *Rehabilitation Act*; 34 CFR 364.21(b)). However, in those few states where the state's constitution or statutes vest authority to carry out activities under the *Rehabilitation Act* in another entity, including one or more houses of the legislature or an independent board, the chief officer of that entity has the authority to make the appointments to the SILC. For example, a state's constitution may establish an elected board of education that is structurally independent from the state's executive branch and from the control of the governor. In such circumstances, state statute may identify the elected board as the entity charged with the responsibility to carry out the activities under the *Rehabilitation Act*. In that case, the board's president, as its chief officer, has the authority to select and appoint the members of the SILC.

The SILC may nominate or submit recommendations to the governor or other appointing authority. However, the governor, or other appointing entity, is responsible for making the appointments to the SILC.

While the governor has the authority to appoint SILC members, states must still adhere to the federal statutes and regulations related to the composition and membership requirements of the SILC. The *Rehabilitation Act* typically grants some flexibility to states in the implementation of federal requirements governing the administration and operation of the Independent Living program. Nonetheless, Section 705 of the *Rehabilitation Act* is prescriptive with respect to certain SILC membership criteria, as well as the

length and number of terms a member is permitted to serve. The specificity of these particular requirements is intended to ensure that the SILC is well qualified to carry out its responsibilities and functions in a meaningful manner. Consequently, the Supremacy Clause of the U.S. Constitution dictates that the very clear and specific language contained in the provisions of the *Rehabilitation Act* and implementing regulations pertaining to SILC membership supersede any contrary state statutes and regulations. Therefore, the governor or other appointing authority may not appoint members to the SILC whose membership would conflict with these federal requirements even if those appointments are in accordance with State law.

As a result, RSA recommends that the DSU and SILC maintain a detailed history of past appointments and a schedule of upcoming vacancies so they are prepared to recommend to the governor or other appointing authority potential appointees who would fulfill the composition and membership requirements of the SILC.

3. What are the composition and membership requirements of the SILC?

Section 705(b)(2) of the *Rehabilitation Act* and federal regulations at 34 CFR 364.21(b)(2) outline how the SILC is to be composed. Federal statute and regulations do not quantify or cap the size of the SILC unlike the State Rehabilitation Council (SRC), which must be composed of at least 15 members (34 CFR 361.17(b)(1)).

The SILC **must** include at least one director of a center for independent living (CIL) chosen by the directors of the CILs in the state.

The SILC **must** also include, as ex-officio, non-voting members: a DSU representative and representatives from other state agencies that provide services to individuals with disabilities. Unlike the SRC, where the DSU representative must be the DSU director (34 CFR 361.17(b)(1)(xii)), the DSU representative on the SILC does not have to be the DSU director (34 CFR 364.21(b)(2)(B)).

In a state in which one or more projects are carried out under Section 121 of the *Rehabilitation Act*, the SILC **must** include at least one representative of the directors of these projects to be a voting member (Section 705(b)(2) of the *Rehabilitation Act*). The 121 program representative on the SILC does not have to be the 121 program project director (Section 705(b)(2)(C) of the *Rehabilitation Act*). Finally, the 121 representative on the SILC is

subject to term limits, unlike the 121 representative on the SRC, who is explicitly exempt from term limits by the terms of the statute (34 CFR 361.17(e)(1)).

The SILC **may** include: other representatives from CILs; parents and legal guardians of individuals with disabilities; advocates of and for individuals with disabilities; private business representatives; representatives from organizations that provide services to individuals with disabilities; and other appropriate individuals (section 705(b)(3) of the *Rehabilitation Act* and 34 CFR 364.21(b)(2)(ii)).

A majority of all SILC members--voting and ex-officio members combined--must be individuals with disabilities and not employed by any state agency or CIL (34 CFR 364.21(b)(2)(iii)). In addition, a majority of the voting members of the SILC must be individuals with disabilities not employed by any state agency or CIL (34 CFR 364.21(d)).

4. What are the term limit requirements for SILC members?

Section 705(b)(6) of the *Rehabilitation Act* and federal regulations at 34 CFR 364.21(f) provide that each SILC member shall serve a three-year term and no SILC member shall serve more than two full consecutive terms (six years). The three-year term limit and two consecutive terms maximum applies to both voting members and non-voting, ex-officio members. The *Rehabilitation Act* and federal regulations do not allow for the extension of terms.

A member who completes two full consecutive terms may be reappointed to the SILC after a meaningful break in service when a new vacancy for which that member is eligible becomes available, but only after the governor or other appointing authority makes the necessary appointments to replace the former member and fills all the other vacancies for which that member may be eligible. In the case of a member appointed as an individual with disabilities not employed by a CIL or state agency, for example, the governor must first appoint another individual with disabilities not employed by a CIL or state agency and fill all other appointments for which the former SILC member is eligible. The former member may then be reappointed to the SILC once a vacancy for which he or she is eligible subsequently becomes available.

RSA recommends that SILCs develop a recruitment process to ensure timely succession for people with disabilities to serve on the SILC. Such a process could include individuals with disabilities

who understand and promote the IL philosophy, including consumers of the IL, IL for Older Individuals Who Are Blind, or 121 programs. For example, given that term limits apply to the 121 program representatives, SILCs may develop a recruitment process by which consumers of the 121 program serve as the representative to the SILC. Term limits do not prohibit former SILC members from continuing to participate in the SILC public meetings.

If a member is appointed to the SILC to fill a mid-term vacancy, then this member **must** be appointed to serve the full remainder of the predecessor's term (34 CFR 364.21(f)(1)) and subsequently **may** be appointed to serve two additional three-year terms.

Except in the case of vacancies, SILC members may not be appointed for less than the full three-year term stipulated in 34 CFR 364.21(f). Though 34 CFR 364.21(f)(2) provides for terms of fewer than three years, this provision applied only when the SILC was first established to allow the initial terms to expire on a staggered basis and thus ensure the continuity of the SILC as new members were subsequently appointed.

Individuals whose terms have expired and who have not been reappointed to the SILC **cannot** continue to serve on the SILC. They are no longer considered SILC members at the expiration of their term and they cannot vote or be reimbursed for expenditures. They may, however, provide public comments at SILC public meetings.

In an effort to minimize the effect SILC vacancies may have on the Council's ability to continue its work, the *Rehabilitation Act* created two safeguards. First, Section 705(b)(7)(A) of the *Rehabilitation Act* makes it clear that a vacancy shall not affect the ability of the remaining SILC members to perform their duties. Second, Section 705(b)(7)(B) permits the appointing authority to delegate the authority to the remaining SILC members to fill a vacancy after making the original appointment.

5. What makes a member qualified to serve on the SILC?

Pursuant to section 705(b)(4) of the *Rehabilitation Act* and 34 CFR 364.21(c), the SILC must be composed of members:

- who provide statewide representation;
- who represent a broad range of individuals with disabilities from diverse backgrounds; and

- who are knowledgeable about CILs and IL services.

6. Can SILC members be reimbursed or receive compensation for their service on the Council?

Members are not compensated for their service, which is voluntary, but may be compensated for "reasonable and necessary" expenses of attending SILC meetings and performing SILC duties, including compensation for lost income as a result of attending to SILC business. This may include attending SILC meetings, hearings and forums sponsored by the Council, or for receiving training which is deemed necessary by the SILC for the purpose of facilitating the members' ability to carry out their assigned duties as Council members (Section 705(c) of the *Rehabilitation Act* and regulations at 34 CFR 364.21(k)).

Examples of expenses that may be reimbursed include child care expenses, costs associated with personal assistance services, reasonable accommodations for individuals with disabilities and other necessary expenses for individual members to participate in the work of the SILC. Compensation may be made for lost wages that occur as a direct result of participating in SILC activities.

RSA encourages the SILC to plan meetings and other activities of the Council and its established committees to minimize the need for individuals to take time from work, and thus reduce the need for compensation for lost wages in order to maximize the resources of the SILC for other Council activities. There is no federal requirement that compensation be equivalent to the wages earned by the individual, and, therefore, the level may be set by the SILC in accordance with its bylaws. RSA encourages SILCs to consider carefully the balance between maximizing the Council's resources, and minimizing the inconvenience and expenses incurred by members in the course of participating on the SILC so that individuals are not unduly deterred from serving.

7. How does SILC staff remain autonomous of state agencies?

Some DSAs and DSUs make staff and other personnel available to assist the SILC in carrying out its duties. However, this is not a federal requirement. These staff should be supervised and evaluated by the SILC, in accordance with state law (34 CFR 364.21(j)(1)). Furthermore, the DSU, DSA, or any other state agency should not assign the staff working with the SILC any agency duties that would create a conflict of interest in their work with the SILC (34 CFR 364.21(j)(2)). Staff's work with the SILC

is often times their sole role or they may be assigned non-interfering collateral duties.

8. What are the duties and authorized functions of the SILC?

The duties of the SILC are described in Sections 705(c), (d), (e) and (f).

As specified in section 705(c), the SILC shall:

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

Section 705(d) provides:

The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

Section 705(e) provides:

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

(2) Each Council shall consistent with State law, supervise and evaluate such staff and other personnel as may be necessary to carry out the functions of the Council under this section.

Section 705(f) provides:

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

9. How is the SILC resource plan funded?

The DSU is responsible for making available to the SILC funds that are necessary and sufficient to carry out the functions of the Council under section 705. In collaboration with the DSU, the SILC is tasked with preparing a resource plan, including staff and personnel, to provide for the use of those funds made available under chapter 1 of title VII, section 110 (consistent with section 101(a)(18)) [Innovation and Expansion funds] and from other public and private sources.

Because the SILC resource plan is dedicated to providing funds to carry out the functions of the Council under section 705, any funding allocated by the DSU, including State General Revenue, must only be used for the statutory duties of the SILC outlined in section 705(c)(d)(e) and (f) of the *Rehabilitation Act*, as outlined above. If the SILC is tasked with engaging in other activities under the SPIL that are not SILC duties or functions set forth in the *Rehabilitation Act*, any funding used by the SILC for those activities must be separate from the resource plan, and procured by the SILC, in accordance with state law.

The SILC is responsible for the administration of its funds as well as the accounting of its funds in collaboration with the DSU and in accordance with the SILC's approved budget. The DSU is responsible for the monitoring and oversight of the federal funds it provides to the SILC.

10. What issues should be addressed in the bylaws of the SILC?

In addition to encompassing specific state regulations, RSA recommends that the following issues be addressed in a SILC's bylaws and that these bylaws be frequently reviewed and updated, as necessary:

- Conflict of interest
- Quorum requirements
- Recruitment and nomination process
- Public meeting notices and accessibility of meetings
- Off-site participation in meetings (telephone, video, etc.)

In addition to these bylaws, RSA recommends that SILCs develop financial management policies and procedures governing the SILC resource plan.

SUMMARY: RSA believes that the SILC should represent as great a diversity of voices from the disability community as possible, including ethnic, cultural, linguistic, gender diversity, as well as a wide range of physical, intellectual and mental health disabilities. All of the requirements discussed above are intended to support the goals of ensuring that the voices of individuals with disabilities served by IL programs are heard, along with the voices of the community of stakeholders who work together to assist individuals with disabilities to achieve their independent living goals.

CITATIONS: Sections 105, 121, and 705 of the *Rehabilitation Act of 1973,* as amended

IL program regulations found at 34 CFR 364.21

VR program regulations found at 34 CFR 361.17

INQUIRIES: Timothy Beatty
Chief, Independent Living Unit
(202) 245-6156
timothy.beatty@ed.gov

Janet L. LaBreck
Commissioner

cc: Council of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind

Consortia of Administrators of Native American Rehabilitation
National Council on Independent Living
National Disability Rights Network
Independent Living Research Utilization