

**U.S. AbilityOne Commission**

**Virtual Town Hall on Draft Compliance Policies**

**March 29, 2023, 1 p.m. – 4 p.m. ET**

**UNEDITED RAW TRANSCRIPT**

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>> CHAI FELDBLUM, VICE CHAIRPERSON, U.S. ABILITYONE COMMISSION:  
I'll ask folks that have come in, if you'd put your name and affiliation in the chat, we'll be disabling the chat function relatively soon, because it is distracting for people who are blind to hear the text from the chat, so, if people would be willing to put their names and affiliation in the chat, that'd be great. It is right at the top of the hour now. I'm going to give it about 15, 20 more seconds and I will repeat that request again and then we will disable the chat.

Okay, it's one minute after the hour, we like to start on time and end on time. My name is Chai Feldblum. I'm Vice Chair of the AbilityOne Commission and also Chair of the Policy and Regulatory Subcommittee that has been working on a number of these documents.

If I can ask everyone here, if you're willing to, if you'd put your name and affiliation into the chat box. We specifically didn't set this up as a webinar and instead as a regular Zoom meeting because we wanted people to be able to speak, raise their hand, ask questions, make comments.

That also means we don't have a registration list. So, if people could put their name and affiliation into the chat box now, that will be helpful because we are going to disable the chat in about 60 seconds or so. Because having a live chat is distracting for people who are blind, because they hear the text of the chat being read to them by their system at the same time as people are talking during the session.

So, we are going to take your questions and comments live as well as by you writing them in, if you don't feel like saying them in person, but we'll ask you to send your questions and comments to [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov). Very easy e-mail address. [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov).

We'll be monitoring that e-mail address and we will read those questions and comments out during the Q&A session.

Please remember, the Town Hall meeting is being recorded. So, if you don't want to be identified as the person asking the question, just say that in the e-mail. Here's my question, please don't say who I am. Versus, "here's my name and affiliation, here's my question, absolutely you can identify me."

And again, once we begin the Q&A session, you'll have the option to raise your hand and be called on to speak. We'll alternate between the questions that come by e-mail and those that are live. [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov)

So, I'll turn, first, to our executive officer. I call her the executive officer, Angela Phifer to go over logistics, Angela, over to you.

>> ANGELA: Thank you. Today, we have two ASL interpreters that'll be spotlighted throughout the meeting and we have a live captioner. Please use the CC icon at the bottom of your Zoom screen if you'd like to enable that.

Also, we will be disabling the chat function and as the Vice Chair said, you can send your questions to [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov).

When the discussion portion of the Town Hall begins, please use the raise hand feature in Zoom. We ask that all speakers identify themselves and to please speak clearly if you're able to. Thank you so much.

>> CHAI: Thank you so much, Angela. I've stopped share for a moment so everyone can see each other on this Zoom screen. You can scroll through and see who is here. You can also see that we have 273 people that have joined us in this meeting. As I said, this meeting is going to be recorded and we hope we'll be able to send it to folks who weren't able to join us today.

So, just a brief introduction, as I said, my name is Chai Feldblum. I'm Vice Chair of the AbilityOne Commission and chair of the Policy and Regulatory Subcommittee. I think we can all agree that our common goal is to increase employment of people who are blind or have significant disabilities.

There are three ways to do that. First, we can prohibit employment discrimination on the basis of disability. And that's what we've done in the ADA. Now, the ADA intentionally covers a huge range of physical and mental impairments.

For example, I'm covered under the ADA as a person with a disability because I have the invisible mental impairment of anxiety disorder.

I will tell you, lots of people with physical and mental impairments are covered as people with disabilities under the ADA, even if they do not think of themselves as or self-identify as people with disabilities.

But for people with visible disabilities, with more significant invisible mental disabilities an antidiscrimination law is of limited help.

These people just don't get hired often in the first place. And I can assure you, they are not told it's because of their disability.

So, as a lawyer, I can also tell you it's very hard to prove discrimination in most of these cases, and get any relief.

So, a second way to increase employment is to require affirmative action goals, like the ones that apply to federal agencies and federal contractors.

But that is limited, as well. The bottom line is, there's not much the government can really do if a federal agency or federal contractor fails to hit their target goals.

So, a third way to increase employment is to leverage government contracting to actually require the hiring of people with certain disabilities. That is the AbilityOne Program and it is the most-efficient and direct approach to ensuring employment of people who are blind or have significant disabilities.

The AbilityOne Program, therefore, has two purposes. Provide mission critical products and services to the Federal Government in a manner that meets the requirements of the government and create employment opportunities for people who are blind or have significant disabilities.

These two purposes are not in opposition of each other. They're synergistic. The better we are to providing products and services to the Federal Government, the more jobs we can create for people who are blind or have significant disabilities.

The revision of the compliance guidances we will talk about today are designed to strengthen what's an incredibly important program. That's been our north star working on these guidances.

And I hope you will see that as well. So, with that, I'm going to move to the agenda for this meeting. Here's what we're going to be doing.

First the three proposed compliance guidances, strategic objectives 2 and 3 of the Strategic Plan. We'll start with a reminder of those two objectives. We'll place the three guidances we released so far in the context of our overall 400 Compliance Guidance Series and we'll provide a brief history of the Commission's compliance program and specifically critiques of that program.

Then the bulk of the meeting, we'll move to presentations on each of the three new proposed guidances that we have released and give you a preview of two upcoming guidances that we will be releasing.

And then, we devote the rest of the meeting, hopefully a full hour, if not more, to your questions and comments.

Remember, regarding the chat function, we disabled that because it's distracting to people who are blind. Please send your questions and comments even as we're moving along to [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov).

So, first strategic objective. Strategic objective 2 of our Strategic Plan was to identify, publicize and support the increase of good jobs and optimal jobs in the AbilityOne Program.

Our proposed guidance, 51.405 is directed to increasing good jobs as those jobs are defined in our Strategic Plan.

Our strategic objective 3 was to ensure effective governance across the AbilityOne Program. Our proposed guidances, 400 and 403, both go directly to this objective.

Now, something to think about in terms of performance management. It's useful to think about the compliance guidances within the context of the General Performance Management that the Commission has to do. Performance management consists of many things, including ensuring that NPAs are complying with program requirements and ensuring that federal agencies are having an excellent customer experience.

Today, we're going to be talking about the NPA's compliance with the AbilityOne Program requirements, but both of these performance management responsibilities are very important to the Commission.

Putting the three we've published so far, in context. On this screen, we're showing red asterisks next to the three proposed guidances we've already released. We will be revising all of the guidances in this series. You'll see draft copies of those before they're finalized.

Our overall compliance framework is set forth in 51.400. We will have four guidances that address substantive obligations on the NPAs, 403, determining

eligibility of participating employees, 404, meeting the DLH ratio requirements, 405, NPA responsibilities toward participating employees, and 406, NPA compliance with employment laws.

51.401 and 51.402 will gather these and other requirements necessary to qualify for the program initially and then to maintain qualifications. 51.407 will lay out a clear process for inspections, corrective actions and disqualification.

So, the next two slides are for a very brief history of compliance at the AbilityOne Program. So, 2006, GAO Report emphasizes that compliance is inherently a government function that is the Commission's responsibility.

2013, a GAO Report calls for better oversight by the AbilityOne Commission of the NFAs and enhanced control by the Commission over the CNAs.

2016, the First Cooperative Agreements with CNAs are signed. This reflects the need to have better control over the CNAs. As part of those agreements, NIB is required to review all of its NPAs each year. SourceAmerica is required to review 70% of its NPAs each year.

From 2010 to 2015, before the compliance agreements came into effect, the Commission's staff were doing inspections on their own. So, during that five-year period, Commission staff did 487 inspections. SourceAmerica did 783 and NIB did 117.

But there was little coordination between the Commission and the CNAs, so, an NPA could get an inspection visit from a CNA and two months later, get an inspection visit from the Commission.

And other NPAs might not get an inspection visit at all. So, 2017 to 2021. We now have the NDAA section 898 panel reports. They call for increased compliance directly by the Commission and not the CNAs.

They hopefully note that the Commission, if it had 18 FTEs doing this work, could do the compliance work. Now, in fact, in terms of the resources, there are only 4 to 5 Commission compliance staff and in light of the cooperative agreements, this staff stopped their inspection visits and shifted their focus to reviewing the data submitted by the NPAs via the CNAs. PAB from 2018 to 2022, the new inspector general issues reports calling for more inspections to be done

by the Commission staff as well as enhanced scrutiny by the Commission of the CNAs compliance work.

So, 2021 to 2022, the Commission pivots again and its small number of compliance staff start doing inspections, mostly jointly with the CNAs.

So, what I'm going to do, actually, is now turn to John Konst, our Director of Compliance, to give you more data about these inspections done in response to the IG's admonitions. John, over to you.

>> JOHN: Thank you, Vice Chairperson. Good morning, good afternoon everyone. COVID-19, as everyone collectively knows, had and continues to have a dramatic impact on the AbilityOne Program. Which shouldn't be minimized, per se, is the impact it had on the practice of compliance.

So, for instance, in 2020, the CNAs and the Commission staff modified the practice of compliance inspections so that they could, some could be conducted virtually.

As you can see on the slide, in 2021 and 2022, bearing out some of that information.

So, as the Vice Chairperson said, the Commission staff of three individuals in 2021, six individuals in 2022 participated jointly in inspections of the Nonprofit Agencies with designated CNAs.

The states on the screen reflect, for instance, in 2021, Commission staff participated in 73 of SourceAmerica's 282 inspections and 24 of NIB's 57 inspections.

Of the total 339 inspections conducted in 2021, 284 were virtual and 55 were conducted on-site. That, that balance shifted a bit in 2022, as reflected on the slide. Again with six Commission staff members participating in 168 SourceAmerica's 291 inspections and 22 of NIB's 57 inspections.

The total, again, being approximately 348 inspections conducted for FY22 and the breakout was 152 virtual and 196 on-site. Back to you, Vice Chairperson.

>> CHAI: Great and by the way, we've put together how many staff, compliance staff, SourceAmerica had and NIB had during this time. If people are interested in that during the Q&A session, John has those figures.

So, I'm going to go back up a second to the previous slide. Okay? What we did is note the number of inspections, 287 inspections over the course of two years, jointly with the CNAs in response to the IG's admonitions.

However, in terms of seeing how well that pivot worked in 2022, in a report issued by our IG in January, just January 2023, an independent auditor found that there were numerous improvements that were needed in the compliance program and they identified lots of problems, including insufficient control by the Commission over the CNAs, the lack of good data coming to the Commission from the inspections and now, concerns about procedures for these new joint inspections.

So, here's where we are at. Based on this. It is time for a new approach. And our proposed 51.400 lays out that approach. I'm going to hand it over first to Kim Zeich, then to John Konst, again, to provide the highlights of the 400 policy and finally, to Wakita Wilson for insight on changes in our new compliance guidances overall. Kim, over to you.

>> KIMBERLY: As we walk through the draft compliance policies, the most-important thing to keep in mind is that this is a different approach. You'll see that from the very first policy that John will talk about momentarily.

Before we do that, I wanted to talk a little bit more about why a different approach was needed. We have independent reports and recommendations from our Office of Inspector General, we also have our staff's own observations, after conducting hundreds of reviews over the past two years. All pointing to the fact that more of the same is not the way to achieve the Commission's objectives, nor to improve our oversight.

So, we need to go about it differently and take lessons learned from approaches we used in the past.

First, we have to make the expectations for compliance clear and understandable. With sufficient detail in everyone in the Nonprofit Agency



network knows what they need to do and how. The draft policies are our way of explicating the compliance requirements.

At the same time the draft policies are not as precipitative as they could be. There's room for input and that's intentional.

As we receive and incorporate comments, we'll clarify and add details and that should help alleviate some of the uncertainty I know some of the non-profit network may be feeling today.

Second, we know that complicating or supplementing the front line reviews isn't the way to optimize the Commission's limited resources.

The Commission will exercise its authority to oversee the front line compliance inspections conducted by the CNAs. The Commission will manage, coordinate and monitor the CNAs' performance and ensure the inspections are taking place and meeting our standards.

It's important for the Commission to make clear that our approach includes appropriate delegation. And it includes robust oversight and quality control of the work the CNAs are performing.

Corrective action is a very important focus for us. The CNAs may assign corrective action and they may review corrective action plans and deliverables, but the Commission will have the final approval in terms of the corrective action being complete, timely and effective.

As we articulate what's changing and not, we recognize any time there are new or revised policies, it requires an adjustment. That's why we paused compliance inspections and taking time to get this right. We appreciate there's a volunteer compliance counsel comprised of agencies in the program along with consulting products at other federal agencies and other disability advocacy organizations.

Then we'll have training and resources identified and both of those will be in place before the new policies are implemented and our participants are expected to meet them.

It's a different approach, with a lot of thought behind it and we want to be clear that throughout the process, the Commission is leading and exercising its authority. With that, I'd like to turn it to John.

>> JOHN: Slide 12 shows the 51.400 compliance policy and signals the change in scope of compliance approach. As the Executive Director said, going forward, the Commission will assume more oversight and control of the CNA compliance programs and supporting activities.

The other key takeaway from the slide is to illustrate what remains the same and what will be enhanced in AbilityOne compliance.

Most of the change occurs at the CNA level. First up, what hasn't changed? Since 1991, the designated CNA has been tasked to monitor, evaluate and report on its affiliated Nonprofit Agency's performance responsibilities. Since 2018, this designated CNA has been tasked to provide to affiliate agencies, technical assistance, enabling each to meet the program requirements.

Now what has been enhanced. The Commission's oversight of the CNAs work in this regard. As outlined in the draft 400 policy, the Commission makes clear, the CNAs will be expected to continue to accomplish the above-mentioned responsibilities. They'll do this through a compliance program acceptable to the Commission.

In the draft 400 policy, we have proposed the definition as the following. A program that includes oversight review and evaluations to determine whether or not a Nonprofit Agency is meeting the program requirements and provision of technical assistance or support so that a Nonprofit Agency can be compliant with the program's responsibilities.

As you can see, the definition should neatly align with the regulatory requirements of the designated CNA.

The Commission expects to receive good data from the CNAs' inspections in accessible format and the Commission will direct additional reports.

How we determine whether or not a CNA's compliance program is acceptable, we'll have enhanced oversight and control system.

Through this system, we'll review the CNA's compliance program practices and outcomes to ensure that their program continues to meet the suitability based on the Commission's requirements in adequacy and effectiveness of each of the CNA's inspection work.

We'll establish a process to audit the CNA inspections of the Nonprofit Agencies and review and prescribe corrective agency and overall effectiveness of the corrective action that was prescribed. Finally, we'll solicit voluntary feedback about the specific inspection experience.

Finally, the Commission will position itself as the final arbiter of whether or not the Nonprofit Agency satisfactory performance of corrective action. We'll use resources of the CNAs to follow NPA through corrective action and we'll be the final decision maker.

Before I transition to the next slide, Vice Chairperson, do you have additional comments?

>> CHAI: Nope, I don't, that is excellent and in particular, it's really good to note the responsibilities in the regulation that has stayed the same, but you can see what we are doing is directly responsive to some of the audit recommendations we have done with regard to compliance.

So, I'm now going to move to Wakita Wilson, who will offer additional insights.

>> WAKITA: Thank you, Vice Chair. The oversight and compliance team collectively has over 35 years of experience reviewing NPA compliance for the Commission. In which I have 13 of those years and counting.

The direction of the draft policies we're discussing today is consistent with the work we've been doing and it reinforces some of the ground truths we've come to understand.

It is imperative for program integrity to ensure NPAs have the proper documentation. From my professional perspective, two of the most-important policies we will issue are included in this group of draft policies that are open for comments.

The first is documentation of eligibility. This is not changing in many ways, other than making it clear that certain other agency's documentation is acceptable.

Vocational Rehabilitation certifications may vary by state and could require additional information. We are working to make this part of the compliance review more coherent, and less burdensome.

When an employee doesn't have certification from another government agency, we are spelling out what the independent medical documents need to contain.

The second important policy puts the focus on the individual employee. In the past, the individual eligibility evaluation or commonly known as the IEE form was used to document who the individual is, what the diagnosis is, why they were unsuccessful and how we were able to make them successful in the workplace.

Which was making them fit under the JWOD act definition.

Much of the document -- excuse me -- much of the documented information will translate to the terms of policy 51.405. The job individualization and the Person-Centered Employment Plans.

However, these plans will involve the employee's directly in their career planning. Thirdly, one of the policies you'll see in the near future relates to labor and employment laws.

My colleague, Chris Stewart will speak about it in more detail. The point I'd like to make is that NPAs have always been required to comply with these applicable laws, such as employment and labor. As prescribed by the Secretary of Labor.

Again, that isn't changing, however the Commission is making it even more clear that everyone working on the AbilityOne contract is considered to be an employee.

So, I'll just say that I know there's a lot of excitement in the air about the new direction of the policies, which build on where we've been and where we are today.

I'm excited about the value we're working to bring to the compliance effort. Back to you, Vice Chairperson.

>> CHAI: Great, thank you so much and thank you to Kim, John and Wakita. As Kim said, the Commission will be leading here as many of the audit recommendations have told us. Well, we need leadership and Kim Zeich is providing that leadership at the top and then we need staff who are implementing and you have now met, many of you already know, John and Wakita, and now we're going to move to the second of the compliance guidances that we've put out for comment.

And to go through this, I'm going to move to Cassandra Assefa, our new regulations and policy counsel in our Office of General Counsel. Cassandra, over to you.

>> CASSANDRA: Thank you, Vice Chair. Good afternoon to all of you. I recently joined the Commission's Office of General Counsel in November of last year as the Regulation and Policy Council. I'll be discussing 15.403, determining eligibility.

The Commission recognizes concerns regarding current policies and processes for medical documentation. On one hand, we've had complaints the review is too focused on technicalities and on the other hand, stakeholders say the review might not be stringent enough.

In an effort to strike a balance, the Commission's new approach will recognize the third party certifications of other federal agencies to the maximum extent possible.

As Wakita mentioned, in many ways, this process hasn't changed. Except that we are now accepting documentation from other federal agencies as demonstrating the individual has a significant disability.

As we all know, NPAs must determine if an applicant is blind or has a significant disability in order to count towards the minimum 75% direct labor hour ratio.

We call this person a participating employee in the proposed policy. In our proposed guidance, we clarify what is required for an NPA to establish a person's eligibility as a participating employee.

We also reduce the documentation burdens on the NPAs and we better-ensure that NPAs hire the people the program is intended to benefit.

But the Commission must do this in a fashion that's consistent with the JWOD's definition of significant disability. JWOD statute defines a person with severe disability as an individual under a physical or mental disability which constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal, competitive employment.

This is according to criteria that is established by the Commission after consultation with appropriate entities of the Federal Government and taking into account the view of non-Federal Government entities, representing people with disabilities.

The proposed guidance provides a certification from the Social Security Administration that an individual is eligible for SSDI or SSI will suffice to establish that the person has a significant disability or is blind, if applicable.

In other words, that person will be considered a participating employee. As the regulation policy council in the Office of General Counsel, I can tell you we're comfortable with finding this is consistent with the JWOD definition of significant disability.

Additionally, a certification from a state Medicaid agency that an individual is eligible for Home and Community-Based Services will suffice to establish the person has a significant disability or is blind.

In other words, that person will also already be considered a participating employee.

Again, OGC is comfortable with finding that eligibility for home care, Home and Community-Based Services is consistent with the JWOD definition of significant disability.

These certifications don't have to identify the specific disability that the individual has. This is different from what our FAQs in April 2022 said with regard to documentation regarding SSI and SSDI eligibility.

And I know that many of you will appreciate that change. A certification from these two government agencies within seven years will be sufficient.

That certification will be done upon entry and it doesn't need to be re-evaluated each year.

This is in contrast to the documentation that the individual is eligible for vocational rehabilitation services, or eligibility for any level of disability benefits from the Veterans Affairs.

These will suffice as medical documentation that the individual has a disability. If the certification states that specific disability or disabilities.

However, an NPA must still determine that the individual requires significant job supports to perform the specific job in order for the individual to be deemed to have a significant disability under our program.

We recognize that VR agencies often do not state the individual's specific disability in their documents and, indeed, the documents vary from state-to-state.

But we don't have control over that. With VA eligibility, the disability is typically stated and you'll hear more about that from Don Rose. This documentation needs to be collected upon entry and doesn't need to be evaluated, re-evaluated, every year.

As noted above, once the medical documentation is established, either from these government certifications or from regular medical documentation, a qualified professional must, then, determine that the person also requires significant job supports to perform the job in order for the person to be eligible as a participating employee.

Back to you, Vice Chair.

>> CHAI: Thank you. Now, you all are going to hear a fair amount from Bradley Crain, our workforce development specialist. He'll walk through proposed 405 guidance. We asked him to talk about this last bullet on the screen

about evaluating an individual for eligibility as a participating employee, given his particular experience and background.

So, I'm going to stay on this slide, Bradley, but if you could come in and make a few comments about that last bullet.

>> BRADLEY: Thank you, Vice Chairperson. I'm Bradley Crain, the workforce development specialist and certified rehabilitation counselor, licensed professional counselor associate and national certified counselor, as well as a person with a disability and worked in the disability field the last ten years.

I spent my first year and a half with the Commission conducting compliance reviews and NPAs as a vocation rehabilitation specialist. As Vice Chair said, you'll hear more from me in a minute when I go through proposed guidance 405.

However, I'm coming here briefly to say a few words about the determination, as to whether an individual needs significant job supports. And therefore is eligible to consider a participating employee.

The most-important aspect of this determination is that it has to be done by a qualified professional. A regulation I'll show you shortly has a reference to individuals that are qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of persons with disabilities.

The Commission has not, to date, provided any details about that training and experience that that should include.

However, we recently established a Standards and Funding subgroup, comprised of staff and commissioners that is being cochaired by commissioners Chris Brant and Bryan Bashin. That group will have specific training on what that will consist of.

The qualified professional will determine whether an individual with the required medical documentation requires significant job supports. That professional will determine that based on the specific person, their disability and a specific job they're interested in.

And one last point. A significant job support could be something that would not be required under the ADA because it would require elimination or



modification of the essential job functions or it may be something that would be a reasonable accommodation under the ADA.

But might pose as a significant disability or expense for some employers.  
And back to you, Vice Chairperson.

>> CHAI: Great, so, I want you to hear, now, just a bit. We're going to dive in a little bit in terms of VA, so that you get a sense of the ways in which engaging with the VA Administration can be helpful to you in terms of identifying eligible participating employees and for that, I'm going to move and turn it over to Don Rose, the Commission's Director of Veteran Employment and Initiatives. Don?

>> DON: Thank you. I'm Don Rose. I'm a disabled Army Veteran with almost 35 years of service. First, I'd like to thank everyone for joining us today and this opportunity to speak to you.

I'd like to take a few minutes to talk about the documentation our Veterans receive from Veterans Affairs. When a Veteran files for VA benefits, which, can, at times, be a long and arduous process and a determination has been made by the VA, the Veteran will receive a hard copy of their decision letter in the mail.

This letter contains all the claims certification connected disabilities filed by the Veteran and a reason for decision for each claimed disability.

This letter, which can be quite detailed, will also assign a rating for each disability. The VA will take all the ratings and using "VA math" to determine the Veterans overall rating.

If the Veteran loses their documentation, a request can be made through Veterans Affairs for a copy, which isn't hard, but this option can take some time.

There's a second option for the Veterans to obtain acceptable medical documentation. All they need to do is call the 1-800-number which I included in my slide and follow the prompts to obtain the disability breakdown letter, which has been determined to acceptable medical documentation by the Commission.

This process was very easy.

In fact I followed the process to see how long it takes and within 15 minutes, I received an e-mail with my disability breakdown letter. I'll admit, it's

less detailed than the decision letter, but it does contain pertinent information needed to make a medical determination acceptable under this guidance.

However, the VA rating assigned to the Veteran doesn't align with the current disability requirements from the AbilityOne Program.

Just because a Veteran has a rating doesn't mean they're automatically qualified to work in a direct labor position as a percentage doesn't align with the current disability requirements in the AbilityOne Program.

You could have a Veteran with 100% permanent and total disability that doesn't meet the definition of a significant disability because they don't require any significant reports in order to perform their job. You could have a Veteran with, say, a 30% rating, that has a significant disability because they'll require significant job supports to perform their job.

I don't mind sharing, I have 100% total disability rating for Veterans Affairs and currently don't require any significant job supports to perform my job.

So, as mentioned previously, this is why it takes a qualified professional to review the documentation provided by the VA and make the definition that the Veteran is qualified to work in the AbilityOne Program and direct labor role. Back to you, Vice Chairperson.

>> CHAI: Everyone will be able to download this deck slide and fully accessible, but for anyone that is blind and watching it now, I just want to say that that 800 number is 1-800-827-1000. Obviously, every NPA should have that number clearly on everyone's desk who is doing any sort of intake. So they can ensure the Veteran can quickly get that documentation.

Also want to note that we know that many VR letters do not identify the specific physical and mental disability. They'll simply say the person has a disability and is eligible or not eligible for VR.

In those circumstances, you're doing what you're doing now. Which is, you're getting other information to document that the person has a disability. You'll see that we have sharpened and reduced, taken away some of the technicalities in terms of that medical documentation.

And then, the last thing I want to say in terms of 403, I hope you are seeing, as Cassandra said, that we've done what we can to reduce a documentation burden by accepting both Social Security Disability benefit determinations, HCBS for Medicaid determinations, without having to list the particular disability and also, that this can be a catalyst for looking to other sources for your recruitment to the Social Security Employment Networks, to the Veteran administrations, VRE, Veterans Readiness and Employment program. To day programs that people are working on, but not getting paid, but they have Medicaid HCBS services.

So, that's all stuff that we hope will also flow from these new streamlined documentation requirements.

So, now we're going to move to 51.405, the third policy guidance we put out for comment. For that, I'll move back to Bradley. Over to you.

>> BRADLEY: Thank you, Vice Chairperson. Good afternoon, again. I'll go through new proposed guidance for 51.405. We've heard from some that the Commission is placing a whole new set of requirements on NPAs with this guidance. In fact there, are no new requirements. You heard a bit of this from Wakita Wilson, but I'll delve into it deeper.

Since 1991, our regulations have required an annual evaluation of each participating's employee by an individual, qualified by training and experience to evaluate the work potential, interest, aptitudes and abilities of persons with disabilities.

This was previously achieved by the IEE. This regulation that the evaluation be done and signed by a person qualified has always been there.

But now we're adding more substance to this requirement. And ensuring there's more of a focus on this requirement.

The next regulation was that NPAs have an ongoing placement program operated by or for the Nonprofit Agency.

Those individuals determined capable and desirous of competitive employment shall be assisted in obtaining such employment. This was meant by having a placement program.

Beyond these regulatory requirements, many NPAs have joined the quality work environment effort. A voluntary program was developed called Quality Work Environment, QWE to share best practices.

Many best practices support career development of AbilityOne employees who are blind or have significant disabilities.

I think it's fair to say that what we have in the new 405 guidance shouldn't be foreign to our NPAs. It's hard to ask NPAs meet our expectations on what we will now place -- on which we will now place more of a focus without making those expectations clear. Here's what we believe is necessary to provide employees who are blind or have significant disabilities with a good job as determined in our strategic plan.

Job individualization, a person-centered employment plan, and opportunity to participate in a career advancement program.

Job individualization happens first when the individual is onboarded. A qualified professional needs to review and document the proposed job duties for that individual, and the significant job supports.

And in addition, any less-extensive accommodations that this specific person will do for a specific job. Often, the understanding is that what the person needs, and is interested in, will evolve over the first few months of the person working. As well as over time.

NPAs have been doing this to some extent, using the requirements to fill out the IE. We will not have the IE anymore. Instead, we'll ask for the data that is more-aligned with the approach of a job individualization.

A qualified professional will also develop a Person-Centered Employment Plan, PCEP for the employee. This will include documenting the employee's vocational history, their interests and abilities, as well as the employee's vocational goal.

Where do they want to go? What do they want to do? This allows for a holistic view of the employee. We have heard from many people that for some AbilityOne employees, the job they're doing on the contract is their vocational goal and that's okay. That information will be reflected in that person's PCEP.

Once the Person-Centered Employment Plan has been completed, this information will be used in the career advancement program. The employee's PCEP will inform how the employee will participate in that program, for purposes of upward and outward employment.

This 51.405 crosswalk gives a visual overview of regulations, existing implementation of the regulations and enhances implementation of the regulations.

This allows you to see the regulations 51.4.3 by a qualified professional as well as ongoing replacement program operated by or for the Nonprofit Agency.

The existing implementation uses the IEE. As I noted, we'll have something different to better-capture the expectations for the job individualization and PCEPs.

The existing implementation relied on a very general statement regarding placement programs. There'll be more substantive standards that'll be developed for the career advancement program.

I want to emphasize section seven of the 405 guidance that notes the process we'll use to fill in the details of standards and data that will be so important.

The Commission doesn't intend to develop these standards on its own. To the contrary, we are putting a process in place to develop these standards with significant consultation with CNAs, NPAs, fellow government agencies, disability advocates and VR specialists who are doing this work every day in the field.

Our goal is to have NPAs succeed in meeting these expectations. As mentioned by executive directors like routine inspection reviews have been suspended for the moment. This allows us time to consult with a broad range of stakeholders regarding the specific standards and gives everyone time to learn about these standards.

You'll not be caught off guard and you'll have time to absorb all the requirements. We recognize the different NPAs are at different stages in this work. The CNA will collect the data required by the Commission that will help establish the baseline of where NPAs stand with regard to these efforts.

The CNA will make this data fully available to the Commission and its staff. Because each NPA may be different, the 405 guidance also requires the CNAs to work collaboratively with their NPAs to determine the appropriate implementation timeline for an NPA to meet the expectations.

The CNA will recommend that timeline to the Commission for approval.

The 405 guidance also states that NPAs must explore all possible federal and local resources. As well as resources available to them from the CNA during this implementation timeline.

Finally, the guidance provides that if an NPA has made significant and good faith efforts during the implementation timeline to obtain all of the resources available and necessary, and yet, they're still unable to meet the expectations of the Commission, that the NPA may seek an exemption from the Commission via their CNA.

Thank you, now I'll turn it back over to you Vice Chairperson.

>> CHAI: Thank you so much, Bradley. Now I'll introduce Chris Stewart, our compliance and enforcement council, Office of General Counsel and he'll give you a preview of two upcoming draft guidances that we will, again, publish for your comments.

So, Chris, over to you.

>> CHRIS: Thank you so much, Vice Chair. My name is Chris Stewart. I'm an attorney specializing in compliance and enforcement. I joined the Commission in January and before that I was a litigator specializing in employment and Civil Rights law.

The first new policy we're developing that I'd like to expand on a little bit is 51.406. And it addresses the coverage of AbilityOne employees by employment laws.

So, there are a lot of different legal definitions for what constitutes an employee. Federal and state laws offer patchwork depending on the statute or common law jurisdiction and it can be a fact-dependent question.

But in our case, we're making it really easy. If you are an NPA and you're paying someone under an AbilityOne contract, that person is an employee. And all we're saying now is simply that all AbilityOne employees will have the same legal protections as any other employee without disabilities.

So, for instance, an NPA will not be permitted to redesignate employees as clients in order to avoid exposure to and protections of certain employment laws.

Everyone gets treated the same across the board. What are some examples of what we're talking about? Well, it can be broken down into four broad categories. The first would be antidiscrimination laws, such as Americans with Disabilities Act, title 7, Age Discrimination and Employment Act, Genetic Information Nondiscrimination Act, and executive order 11246, which of course, requires all federal contractors to have an affirmative action plan.

The second is labor laws. And the most-obvious examples there are the Fair Labor Standards Act and National Labor Relations Act.

The third, we've got health standards, most familiar to all of us, I'm sure is probably OSHA. Occupational Safety and Health Administration and their various requirements and regulations to keep employees safe.

And finally, employee benefit programs. Workers compensation, unemployment insurance and protections of the Employee Retirement Income Security Act, if you offer an ERISA plan.

Now, obviously, as employers, the NPAs are going to be familiar with a lot of these laws already. As part of running their business. And as Wakita pointed out earlier, this is really nothing new. It's important to recognize that the Commission is not going to be enforcing these laws.

Every statute has different requirements for whether employers are covered and whether employees are protected and nothing that we're saying is changing any of that.

Now, we are looking at some ways to convey perceived violations or potential violations of employment laws to the relevant authorities, but for now, all we are requiring is that NPAs attest that all of their AbilityOne programs are

being treated the same, as employees without disabilities for purposes of all employment and labor laws.

One final point about this, we expect that our CNA inspectors will be knowledgeable about these things and where they are able to offer technical assistance, we would expect them to do that.

So, the next guidance I would like to discuss is 51.407. Addressing NPA inspection as well as the Commission's oversight of the CNAs. It also puts into place a formal system of probation, suspension, and disqualification for unaddressed issues. This policy will clarify that while the Commission reserves the right to conduct inspections, the primary responsibility for doing that rests with the CNAs.

However, the CNAs will be conducting inspections pursuant to standard operating procedure developed by the CNAs and approved by the Commission. So, next, we're stepping back our on-site inspections for a lot of the reasons that you heard earlier.

It's just not that good a use of our resources, but we're stepping up our oversight responsibilities and so, to that end, as a means of ensuring accuracy, integrity and consistency across the program, we will be selecting certain CNA inspections and measuring those against the procedures developed by the CNAs and approved by the Commission.

Additionally, the NPAs are critical to the success of our mission. We know that the majority of our NPAs work hard to become and remain compliant with all program requirements.

And when they miss their targets, most of our NPAs work with the CNAs and the Commission to come back into compliance. But unaddressed or recurrent problems can begin to impact our overall mission.

So, this policy will introduce procedures that put NPAs on a path towards correcting compliance issues. Finally, part of the Commission's responsibility to the program and to the public is to ensure accountability throughout our program.



To that end, our new policy is going to create a system of probation, suspension, and disqualification. Each of these terms will be clearly defined and require particularized corrective action.

But even with our most-serious corrective action, that of disqualification, there'll be a path back into the program for all but the most-significant violations.

This policy will reflect recommendations made in the 2022 OIG report, it'll incorporate aspects of existing policy, it'll formalize current practices and it will offer a coherent set of guidelines and expectations.

In short, our new policy is intended to make it easier for NPAs to become and remain compliant, but also, to ensure that those who do not are held accountable. Thank you and now back to you, Vice Chair.

>> CHAI: As you can see, we're doing a lot of work with great staff people, but it's a lot of work and requires leadership. So, in addition to Kim Zeich as Executive Director, we have Amy Jensen as acting Deputy Director and penning up performance management.

We'll conclude with Amy providing a sense of how all of this work is fitting into the bigger picture. Amy?

>> AMY: Thank you, Vice Chairperson. Everything we talked about today results from the direction and goals voted on by the Commission in its strategic plan for fiscal year 2022 through 2026.

The only way to make the goals of a strategic plan a reality is to have a thoughtful and robust Strategic Implementation Plan, which we call the SIP. The Commission SIP has been in effect for six or seven months and I'm leading that effort on the SIP, but I couldn't do so without the fabulous people you've heard from today. We all work as a team.

You heard at the outset that, how these new compliance guidelines arise from our strategic objectives, specifically numbers two and three.

The work we've done to date on these three compliance guidances that we discussed today and the work we do on the remaining four guidances in the 400 series are directly responsive to the strategic objectives.

As I've been leading the SIP over the past six months, we follow this roadmap. First, we prioritize our many goals and performance metrics. We identify what resources we would need to achieve those goals and designated responsibilities to achieve those goals.

What you have just heard today reflects that process. It was clear that the first set of guidances we needed to review was in the compliance arena. And within that arena, we needed to, first, enhance our governance processes, streamline our eligibility documentation and make clear how to achieve the components of good jobs.

This needed to be among our first activities before anything else could be done. In addition, as we did this work, we also ensured we were getting input so we were not doing this work in a vacuum.

I want to thank many of you who provided valuable thoughts and inputs prior to today's meeting and I look forward to your additional input today.

But we are not done. There are also other steps in the SIP. We plan to establish metrics and dashboards and use them to evaluate our success. But of course, we plan to share those successes with all of you.

As mentioned, the Commission's strategic plan and SIP is a five-year plan, so we have only just begun. I'll now turn it back over to Executive Director Zeich.

>> KIMBERLY: Thank you to everyone that's joined us. We're about to open the Town Hall up to hear from all of you. I just want to reiterate that the Commission is investing a very-significant amount of time and thought and resources into these updated compliance guidelines.

And by now, I hope that's apparent to you. You have seen and heard from all of the Commission staff members who have been working on this and we mentioned that we're also working with Commission members, outside colleagues and experts. This is a very considerable process. I will say, it's unlike our past compliance policy updates, we are seeking very broad input and so, your comments and questions will help us make this guidance clearer, make this guidance easily understood and thus, make this guidance more attainable.

So, Vice Chair Feldblum, do you have other comments before we start to hear from everyone?

>> CHAI: Nope, I want to open it up. We're only five minutes past the 3:00 p.m. Eastern Time. So, that's five minutes over what we wanted to be at and we're going to open it up.

So, as I said, we have John and Bradley, have been monitoring the Policy@AbilityOne.gov e-mail address. For anyone that has just been so engaged with listening that you haven't had a chance to write an e-mail with a question or comment, please use this opportunity now, Policy@AbilityOne.gov and we will also alternate with folks who are raising hands and Wakita and Don will be monitoring that and will call on folks.

So, John and Bradley, can we start with some questions and comments that have come through e-mail?

>> JOHN: Yes, let's start with an easy icebreaker. Will this slide presentation be available online?

>> CHAI: Absolutely, yes it will be. In fact, it's on the website right now, but we will make sure it is prominently posted on our webpage. You won't have to be searching for it.

>> JOHN: All right, next question. Can you please clarify whether the Person-Centered Employment Plan, PCEP, as described in 51.405, will replace the existing IEE?

>> CHAI: Yes, with a number of these things, for purposes, just of efficiency, I'm going to answer, if I'm able to answer and I'm also going to ask if it seems that there needs to be additional information, I'll turn to the right staff person.

That's an easy question. Yes. It will replace the current IEE form.

>> JOHN: Next question received. This is, again, related to the Person-Centered Employment Plans. Many of the AbilityOne NPAs already have a Person-Centered Employment Plan in place, as required by funding sources. For employment supports, because they're already enrolled in service programs.

Will those plans suffice as meeting the AbilityOne PCEP requirement?

>> CHAI: In this one, I'm going to answer and then maybe, once we get a few of these questions, if either Chris or Brian as cochairs of the Standards and Funding subgroup want to say anything, please do so.

We're very conscious that a lot of NPAs are doing things that are like PCEPs, career advancement programs, et cetera. Because of other requirements, it is going to be a priority for us that there is no unnecessary duplication. And as you heard from Bradley, there's a Standards and Funding subgroup that will be digging into the standards and one of the things they're looking at, we just talked about this two days ago, is looking to see what other requirements are already being met by the NPAs and this is why your input, during that process, will be essential.

Chris and Brian, do you want to add anything to that? Or you can also wait until we have a few questions. Because I think we will have a few.

Actually, let's do that. I know we'll get more questions on Standards and Funding, so, I'll answer briefly to those and start making notes about them.

Okay, we're going to switch over to people who are raising their hands and either Wakita and Don, if you could call on people, please?

>> WAKITA: Yes, Vice Chairperson, hi, Jo, it's been a long time, glad you're here today. What's your question?

>> JO: It wouldn't let me unmute. Thanks, my question was similar. Many of you must be CARF Credited and they have a huge long list of standards that would go into an employment plan. Many of us also try to coordinate plans with other agencies, so it might not be called a Person-Centered Employment Plan, it could be called a Person-Centered Plan or something else.

I hope in setting those standards, they're open enough to -- during an inspection, we won't get pain that it's not called a PCEP, but it's called something so that our participants can only have one plan and not three different plans called three different things and it wouldn't be duplicative of those CARF requirements. Even more, since CARF comes and inspects it, their inspections would suffice for the CNAs inspection. That we'd be able to take the CARF accreditations. Those were my big asks on this.

>> CHAI: So, let's add, before Chris and Brian, you come in. The question about CARF, which is, the three of us just talked about a day ago. So, put that on. Don are you calling on the next person?

>> DON: The next person that had their hand raised was Jewelyn Cosgrove.

>> JEWELYN: Thank you so much, appreciate this conversation today. I know the NPA community very much enjoys being able to talk through these issues with all of you.

I have a question, if you're willing on a forthcoming policy that you mentioned on employment, in labor laws. For the past several years, we fully embraced our employees with disabilities being members of unions when they so choose. Like many of us once took the view that relationships were primarily rehabilitative, we still have a few bargaining units that excluded individuals with disabilities.

When those collective bargaining agreements have come up for renewal, we've asked to have that unit redefined to include workers with disabilities. We experienced multiple cases where the union has declined to agree. Many of our union sites are integrated and fully include individuals with disabilities. We have hundreds of employees who are members of the union who have qualifying disabilities, but we're concerned, since we cannot unilaterally change the definition of a pre-existing bargaining unit, how should we attest or proceed?

>> CHAI: I'm going to take that one and I'm going to reinforce what Chris Stewart said. We are not the enforcement agency. Right? Of NLRA or labor unions or anything else.

Obviously, we want to offer technical assistance where we can. So, we're making it very clear about what the definition is of employee for an AbilityOne Program. I see no reason why we cannot engage in conversations with the NLRB, explain the challenges and then be on that, obviously, it'll be up to the board to give some advice.

I think we can do one more raised hand. Wakita, that's back to you to call on someone, then we'll move back to e-mail questions.

>> WAKITA: The next person is Mike from the ARC, if you'd please state your question.

>> CHAI: Mike, where did you go? I just saw you?

>> WAKITA: I saw him. I think he disappeared. Please come back.

>> CHAI: Okay, you know what? Let's go back to e-mail question -- oh, Mike, are you on? There you go, Mike. Good to see you again.

>> MIKE: My question is, regarding the, I mean, regarding the upcoming policy on employee rights, I'm wondering if an agency, say NLRB or another agency says the employee is faced with an allegation from an employer violating their laws and... [frozen].

>> CHAI: Whoops, we lost you. You know what? Mike, would you also send in your question to [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov). You just froze. And I -- we want to hear the end of your question. If you would, hopefully, you can hear us. If you'd send the question in to [Policy@AbilityOne.gov](mailto:Policy@AbilityOne.gov). John and Bradley can, can capture that.

So, John, can we go back to a question from the e-mail?

>> JOHN: Yes, thanks, Vice Chairperson. How will the disability documentation changes outlined in 403 impact existing employees? And is the Commission considering any type of grandfathering exception?

>> CHAI: Okay, so, this is actually pretty straightforward from our perspective. I mean, you've had to do annual evaluations in terms of your medical documentation.

So, it's not like there wasn't going to be another annual evaluation. The Standards and Funding subgroup, even though it's pretty much just on 405, is also going to have some role in 403 in terms of eligibility and I'm sure they will take that question and make sure there's a clear answer, but again, it's not like there's grandfathering each year. Thankfully we'll be taking off that burden, in terms of medical documentation. You'll be doing annual work as part of the PCEP.

So, and that actually leads me to wanting to just open for Chris Brant and Bryan Bashin, if there's anything else you want to say. We haven't started the

process in Standards and Funding, other than standing up the group. If there's anything you want to add about the question about CARF, at least maybe the way you're thinking about it. We have no answers for people yet. Bryan?

>> BRYAN: Thank you. I'm so encouraged by the response here. In our Standards and Funding subgroup, we want precise details. We don't want NPAs to reinvent the wheel on things they're already doing. We suspect the data they'll require will have new elements too that maybe CARF hasn't gotten around to think of, because we have a specific population with specific needs.

For example, asking whether you have an ABLE account or would like one. That'll have more profound effects as the age limit is raised up to 46. This is why we have to think hard about the data elements that are important and the office services and individualization that we want to encourage as we move forward.

We're receptive. We'll get the best minds working and move forward with a data standard, that every one of the 400-odd NPAs will be able to say and look at as a dataset and not as different papers in different file cabinets that are inscrutable to Commission observation.

>> CHAI: Thank you, Chris, do you want to add anything?

>> CHRIS: I'd just concur. Well said, Bryan. We're looking for input, we had these conversations recently. We'll be reaching out to you in the future, again, for more input. I looked at some of the other requirements that we have for similar kinds of planning and we want to gather all those data points and also make sure that what we develop as standards for the PCEP are reflective of our strategic plan.

And also, don't create a burden in creating a lot of new documents or doing things in a different way. So, looking at things like checklists of what need to be in a plan rather than prescribing what the plan might need to look exactly like this. But must include these things.

So, looking for those inputs, right in the process of just barely getting started and figuring out the scope of what all of this work means to do a good job of this.

>> CHAI: To give folks a sense of the timeline and process. Imagine, I've often been talking about how the Standards and Funding subgroup is like the middle of a wheel. Internal staffing commissioners and imagine the spokes going out from that wheel which is all the consultations.

There's a group that's been set up by the two trade associations, essentially of NPAs, but other NPAs not on that Compliance Council of folks we want to hear from. SMEs, disability advocacy groups, folks who are doing this work in the field, those are all the spokes off the wheel that the group will be engaged with and again, it'll take time, but not too much time, because the inspections have been paused now. So we can establish the standards, figure out the data we're going to collect, make sure that information is out to you, no one is blind-sided and the inspections can start up.

Obviously we're going to be, we're keeping our eyes on the timeline to make sure we can do that. I know there's another hand that's been raised, but I think we have two more questions, we should be taking from the e-mail list and then we'll move to hands.

John, that's to you.

>> JOHN: Thank you, Vice Chair. Relatively easy question, how can participants or those that were not able to attend today, obtain a copy of the recording?

>> CHAI: Yes, so, often we don't have our meetings, even though they're recorded on Zoom, we haven't put on the recording because it hasn't, you know, sort of been professional-quality.

That's different from what we want to do here. We absolutely want to make this accessible to as many people as possible. We do have to confirm that the live closed captioning is going to be available, if not, I'll tell you, there's actually a pretty much word for word transcript of at least what was said during the presentation. We may try to do that to time ourselves and if need be, we'll make that transcript available.

And actually there, is always a transcript of the meeting that is made available. You'll have that from these Q&As, but thank you for the question.



That's very important for us to get this out to the greatest number of people possible.

>> JOHN: Another one?

>> CHAI: Yep. Next question.

>> JOHN: Can the Commission consider sharing an overall disabled ratio for the entire program? Many NPAs would like to see how they compare with the total program figure.

>> CHAI: I have no idea if we can do that. Why don't we just say, "we're taking that under advisement" goes to Kim and Amy on the list to decide whether that's something that we think makes sense. Is what I'd say. Kim, do you want to say anything else to that?

>> KIMBERLY: I will add that I think as part of this process, the Commission will be thinking through the data collection that we have today and rationalizing that, so, we're collecting the data, we absolutely need. So, looking at data, related to individuals who are not working in direct labor, I think that's something that's been recommended several times.

We'd like to gather more of that data and at the same time, stop collecting some data elements that are, perhaps, not as high priority. Definitely, that comment is captured and thank you.

>> CHAI: Okay, I think we're ready to go to Henry -- did Mike Nagel send his question yet by e-mail?

>> JOHN: Not yet and I can't locate him on the participant list.

>> CHAI: His internet might have just walked out on him. Wakita, next one for a hand raise.

>> WAKITA: Yes, Jo has another question.

>> JO: Back to me again, thanks Wakita. On the Outward Employment, it says it's a position outside of the NPA that is in alignment with the person's PCEP. My suggestion would be to delink those, my guess is it means we couldn't count them if it wasn't part of their goal, but oftentimes, we'll see AbilityOne participants who maybe their goal was to become a, you know, a fork truck

mechanic, that's what's in their plan, that's what we've been working on. Instead, they took this other -- got this other job closer to their home that paid more, that had the better hours or whatever.

And it, it, it shouldn't be discounted. So, my suggestion is to delink those two.

>> CHAI: Yeah, that's helpful language suggestion. We will definitely -- let's take that, to figure out that that's, obviously, that wasn't the intention, the intention was, you know, it's an outward -- it's following what had been worked on.

But obviously that's a good language suggestion. Let me also say, because what you're saying fits into another point we want to make. We got a lot of suggestions either before the March 15th, initial March 15th deadline, we -- people reached out for conversations, we reached out for conversations.

So, a few days after this, probably beginning of next week, we will put out, just basically an updated version of these three guidances, okay?

Because it's not a formal notice and comment system, where we don't have a lot of flexible as an agency, here, we're just doing this as a voluntary thing.

So, we'll be able to put out the next version of this, you will see a bunch of questions we got in terms of clarifications. Those are in there.

It's not like there are huge changes, but it's really, some nice, tightening up and clarifications based on things we heard.

So, for example, that's a great, you know, something for us to look at before we put out something early next week. Again, of the comments and questions we get during this Town Hall meeting, we want to look at before we put that out.

And then, it'll be a shorter timeframe for comment, I think we said April 14th, you know, you're basically commenting only on something that's new or et cetera.

So, thank you, Jo, for that.

And I saw that Mike was in the waiting room. So, I know was admitted. So, Mike, if you want -- okay, well, we have someone else with a hand raised. I'll let Don do that and at some point, Mike will come on in some way or another.

>> DON: Next we have Bart Devon.

>> BART: Since we're in a (?) here -- [breaking up] -- ultimately to the (?) --

>> CHAI: Ooh. You were very garbled, Bart. Just it sounded like an internet connection, can you just say it again and, say your question again. And let's see if we get it.

>> BART: Sure, thank you, I apologize for the technical difficulties.  
[Breaking up].

>> CHAI: Oh, okay, how will, given this is sub-regulatory guidance, how will technical assistance ultimately be provided?

So, again, this is the process, here's compliance guidance for more substance to what's in the regulations, then, because some of these things need additional details and standards, you've got the Standards and Funding subgroup and also funding in terms of how that'll work. Sometimes technical assistance is help in how to do something. Sometimes you can also need financial assistance.

That will all be done, then there'll be, as we all know, revised cooperative agreements to align with the strategic plan. That's one of our 28 performance metrics. So, that will be in there.

And then, there'll be an education of the NPAs about what type of technical assistance will be available and then, remember, the inspection visits, themselves, are not just inspections, they're visits, both to determine compliance and to determine what technical assistance will be provided.

So, what you're asking about is front and center for us, in terms of what we're looking at and just doing it through a thoughtful, strategic timeline. Ah. Mike Nagel, you're back. Try again.

>> MIKE: Sorry about that, internet issues. My question is around the policy on labor rights. I'm wondering if, in cases where, I mean, I totally understand the practical issues with being, enforcing of them, but I mean, I'm

wondering if, in case, where say an agency says that our laws don't apply in this case, to this non-profit, was, I mean, in those cases, was the AbilityOne Commission stepping in and saying that you have to follow these if you want to stay in a Nonprofit Agency with us?

>> CHAI: That's the point about a qualification standard. A qualification standard means you have to be complying with all employment laws. We have seen situations where a non-profit can say, "oh, but these folks are not employees, they're really clients getting rehabilitation services."

What we're saying, we said it in the strategic plan and will make it more clear, if someone is getting paid money and working on an AbilityOne contract, that person is an employee. And therefore, employment in labor laws apply to that individual.

I mean, that, we very clearly can say, that's what we're saying.

Now, if it looks like there's some violation, there's no reason why we can't let the correct enforcement agency know about that potential violation.

What we can and will require as a qualification is that the Nonprofit Agency is attesting to the fact that anyone who is getting paid money to work on an AbilityOne contract is being treated as an employee in all of those four categories that Chris Stewart went to.

And that guidance is being worked -- I mean, it's basically almost done, it'll also be posted for input, so, if there are clarifications that people think will be useful, there'll be time for public input on that.

>> MIKE: I look forward to reading it.

>> CHAI: Good. Chris Stewart was very happy writing it. It was a team effort to give Chris the credit of the fingers to the keyboard.

Okay, John? Any other, next on the e-mail list questions?

>> JOHN: Can the Commission describe its process for examining and verifying that it's proposed compliance changes are in alignment with other applicable federal and state laws?

>> CHAI: I don't understand that question. Maybe whoever wrote it, might want to write in with more detail? I don't know what that means, in alignment with other federal and state laws? We're implementing our law. We're certainly not affecting any other, that I can tell, unless whoever had that question can write in with more detail.

>> JOHN: All right. Next question, will the Commission consider accepting school certifications or IEPs as a form of government certification?

>> CHAI: We've gotten that question before, but just sort of, you know, not necessarily in any spelled out fashion. Remember, it is our Office of General Counsel that decides what it is that we can accept as sufficient documentation.

I mean, I don't know about alignment with other laws, but we have to be in alignment with our law. If you think that an IEP, a school certification, whatever, is sufficient, please write that in together with your analysis as to why it is and I assure you, our lawyers, Cassandra and others will look at that. Let's do one more question from the e-mail and then we've got one, and I think it'll be up to you, Don, to call on the person. But John, let's see. Is there another e-mail question?

>> JOHN: Sorry, some are repeating, so, forgive me. Let's see... the 51.400 draft policy doesn't provide details about the front line review process that'll be conducted by the CNAs. When will the Commission articulate the exact process?

>> CHAI: Perfect for you to ask that question, John, I'm going to say something and then you will. You know, we have this person called John Konst, the head of the compliance division and he, right now, is working on what will be the Commission's standard operating procedures, et cetera, because as I said, we'll be telling the CNAs what we expect. John, what else do you want to add to that in terms of process?

>> JOHN: Thank you, just want to quickly reference to Chris Stewart's outline and extensive coverage of the forthcoming 51.407 policy that will prescribe the expectations about the overall practice of inspections within the AbilityOne Program or System. That'll be the moment where the more-specific detail will be provided in terms of the standards for the inspections.

Then, also, the process in terms of like, okay, when can I reasonably be expected that I'll be subject to an inspection, for instance?

>> CHAI: We have some in process already on 407 and anything else in terms of other details, will be developed by the Commission and then, obviously, anything that needs to be reflected in a cooperative agreement will be reflected in that.

>> DON: Thank you, Vice Chair. For those raising your hand, if you unmute yourself before you lower your hand, you won't disagree in the crowd. Unmute yourself first, then lower your hand. Up next, Justin Young.

>> JUSTIN: I'm Government Affairs specialist at the National Federation of the Blind and we appreciate all the work being done on the work as it relates to good jobs and optimal jobs and the upward mobility proposal that's out there that you're seeking comments on.

My question is related to all five of these mentioned in today's Town Hall for the commenting period, are all five of them going to be seeking comments due by April 14th? Or just looking at the original three and will do the other two later?

>> CHAI: We'll do an updated version of these three this week or next. Those are the only three that will have the April 14th deadline.

I know we're hoping to, pretty quickly, put out these other two. And then we'll have a deadline for comment on those two. I don't think it'll be as complicated as what's been an eight-week or more comment period. Absolutely, there'll be a different deadline date for each time a new proposed guidance comes out.

Remember, we have five more we need to put out when you all look at the PowerPoint slide again, when I put that in the context of the 400 series, you'll see the five that are still coming out, right? The DLH ratio one, the employment laws, and 401 and 402, initial qualifications maintaining qualifications and then 407. Which is the one we just talked about.

All of those will be put out, with the date for public comment.

>> CHAI: John, do you have something else?

>> JOHN: Yes, next question, we're concerned about the requirement for updating medical documentation every seven years. Will there be exceptions to

this requirement, especially for those that may have a life-long qualifying disability?

>> CHAI: I hope that in the, maybe the final guidance that we put out or maybe in something else, we can address that issue. There's been lots of conversation internally about the 7-year and how to deal with it. Every year, you have to show the person is still blind, but I know that's an issue that will be discussed. I don't know if it'll be in the final guidance, so maybe not, or something else.

I appreciate the question.

>> JOHN: 14C, special minimum wage still remains the law of the land so that the NPAs can't continue to pay eligible employees under -- sorry, excuse me -- let me try to rephrase this. On non-AbilityOne contracts currently.

>> CHAI: Yep, as you remember, when the Commission put out the 14C final regulation, we noted that we had gotten a number of comments saying well, the qualification rules should be that if a non-profit is using 14C anywhere to pay its workforce, even if not on an AbilityOne contract, that should be sufficient to disqualify the NPA. We noted in our preamble, that'd be beyond what we put out for notice. Under the EPA, we wouldn't have put in that new requirement, but we certainly understood the concern and easily is something that the Commission will be looking at going forward.

>> JOHN: Ready for the next question?

>> CHAI: Mm-hmm.

>> JOHN: Okay. Forgive me, they give me a cite, but I'm not sure which. One of the draft policies indicates the Commission will provide annual review of the Nonprofit Agency's release of qualified professionals. If the EPA's approved, they'll continue to practice, but if they're disapproved, how much time would they have to phase out that practice?

>> CHAI: Can you say the first sentence -- annual review -- just say that first sentence again.

>> JOHN: Yeah, my apologies, I believe this question is asking in the context of using an affiliated qualified professional in the annual review.

>> CHAI: That's what it must have been even though it says qualified -- yeah, I mean, right now, there's just a direct prohibition about using any affiliated medical professional to attest to the person's eligibility, right?

That they have a disability and now let's say that it requires significant job supports. In our, in our -- you know how it's important for us to have the public engagement sessions about public meetings and someone brought up, this is difficult for someone NPAs that have affiliated, qualified professionals in your NA, geographic region where it's hard for people to have their own medical professionals. We took that into account and said you know, if there are specific reasons why you do need to use an affiliated medical professional, here's the process for telling us why.

But we are going to let our risk management folks know that because again, when we're audited for risks, that includes risks of conflicts of interest. That'd be a piece of it.

If we're changing to now allow it, we'll notify our risk compliance people, we'll look at it each year, again, if we're looking at it each year to see if something has changed.

We approved it in year one and nothing has changed in year two, I mean, then, I'm not sure why there would be a disallowance of it.

But again, this is about risk management that we have to do as a Commission. In terms of audits. Okay, next one, I don't see a raised hand, so, I think we can go.

>> JOHN: Next is, I'm going to try to bundle several questions. It's a general question about funding. So, asking about how will the NPAs be able to afford conducting PCEPs or career advancement and you know, where can they locate those funding streams? Is it expected that they would do it on their own?

>> CHAI: I'll say a few things about this and then, again, Chris, Brent or Bryan, if you want to add anything. The point about noting the regulations for you is to note that there were already regulations that were requiring the NPAs to have education and training to do assessment that is largely the Person-Centered Employment Plan assessment. And to have placement programs.



Again, either they're doing it, so spending their own resources or having it done on their behalf. We recognize, though, that some of that hasn't been carried out in exactly the way that we are now giving substance. To these requirements.

So, our goal is to have the NPAs succeed in meeting the Commission's expectations. I mean, to go back to how I started this, this is an incredibly important program. It is, it has power beyond an antidiscrimination law, beyond an affirmative action aspirational goal.

So, we want to make sure every NPA succeeds. And we understand that for different NPAs, the funding may not be as easily available. That's why we called our group the Standards and Funding subgroup. We'll be looking at everything that is out there, that is possible. And then, put as an obligation that the NPAs seek out all the things that we have noted as possible.

But we don't have an answer for you now. What we can say is this is of paramount importance to us. Bryan or Chris? Brent, anything you want to add to that? As folks who have headed up NPAs.

>> BRYAN: Let's see...

>> CHAI: We can hear you, Bryan.

>> BRYAN: Okay, first of all, many NPAs are doing this already and many NPAs are fortunate to have the resources to do this. But as Chai said, there are smaller NPAs and others that may not be in a position to add what might be an FTE level of effort here. We know this, and we know that some people are doing this externally already. CARF and other organizations are paying for that.

And there are opportunities in government and other places where we might be able to find directions to get additional money.

And there's also the possibility that some of the program fees might be used to subsidize NPAs who can make this case.

First, we want to get a handle on the size, how much of an effort's going to be required by 405 and beyond. And then, once we can do that, we can talk about which agencies and other third parties might be in a position to fund it.

>> CHAI: Great. Yeah, as I said, high priority for us.

>> CHRIS: I don't have anything to add. You both covered it.

>> CHAI: John, do we have anything else?

>> JOHN: We do, thank you, Vice Chair. Previously the presentation mentioned a qualified evaluator. Two-part short questions. What constitutes a qualified evaluator? And what requirements, education, otherwise, are required?

>> CHAI: Let me just go back to the timeline that I set up. So, as you know, the regulation already says a qualified professional, by training and education. It doesn't have additional substance and detail that explains what's required.

We are not in either 403 or 405, trying to put in that detail because as we said, we want to get the widest input possible about what that should be.

So, the compliance guidance says, again, qualified professional, the Standards and Funding workgroup, again, think about this group we're all in, the center of the wheel, we've got lots of spokes going out, where we will consult as 405 guidance says, we'll consult with CNAs and subject matter experts.

So, what I'm saying, subject matter experts represents a number of different stakeholders and we have started identifying those stakeholders, reaching out to them, you want to be ESPN who is reached out to on this, Policy@AbilityOne.gov should be your e-mail address.

Hey, I have something to offer on this. Once that is complete, and as I said, it'll take some time, but not too much time, that will be available to folks to see. No one is going to be caught off guard. No one is going to be blind-sided by what these qualifications will be.

>> JOHN: Ready for another question?

>> CHAI: Yes.

>> JOHN: Okay, there's been some discussion during this presentation that the IEEs may no longer be required. Are the Nonprofit Agencies required, presently, to continue completing them?

>> CHAI: Yes, we don't have something else in place. Obviously, continue with them. We have, however, paused the inspections, okay?

So, continue because as you heard from both Wakita and Bradley, a lot of that information is information that you're going to be able to use with regard to the new types of data collection.

We just want that the data that we are collecting from you, aligns with the expectations. That's, and I mean, of course that is the Standards and Funding group figure out the standards and data to be collected. Then we do cooperative agreements to make sure the data can be collected and shared easily with the Commission.

So, yeah, use the IEE forms because it's not something else there, but you will be getting what our goal is, to have much easier streamlined data requirements.

So, again, it's ten minutes until the end, so, let me just see. Let me stop for a moment, John, you can review and let us know how many more questions there are and while you're doing that, is there anyone else from the Commission who wants to add anything to any of the questions?

We all decided, again, in the interest of time, I would you know, answer, but if there's anything that anyone wants to add, Kim, I will return to you before we wrap up for closing comments as ED, but if there's anyone else from the Commission, just raise your hand, if you want to. Gabe?

>> GABE: I just wanted to reiterate to all that have joined us that at the end of the day, our mutually-shared goal is to increase employment opportunities for people with disabilities.

As we move towards that goal and objective, we want to make sure that we are building conditions for producing good jobs and optimal jobs.

So, I know that at the Commission level, commissioners are very-engaged and in this process, the Commission staff has been tremendous in supporting the vision of the commissioners and moving this process forward with the 5-400 series and I'm encouraged by the conversation that I heard today.

I found a lot of the questions to be useful and I look forward to continuing this work alongside all of you.

>> CHAI: Thank you, Gabe and this also reminds me, a pitch for the April public meeting. Everything here, 405 is all focused on good jobs. Right? Focused on good jobs.

There's nothing in 405 that is talking about integration in the workplace within an AbilityOne contracted self, because we know the constraints the JWOD Act puts on that.

The only way integrated jobs are related to 405 is by helping people, if they want to, to move to some other job that is integrated with lots of people without disabilities doing the same job. Thereby, opening up that very expensive real estate seat for another person with a disability to get in the door, get training, get something on their resume. With regard to creating more integration.

The public engagement session of our April meeting will be focusing on creative uses of subcontracting. Particularly where the NPA is the primary contractor, subcontracts with, perhaps even a larger for-profit. So, a plug for that meeting and that approach.

John, where do we stand in terms of remaining number of questions? Because we can, I think, take one or two more. And then, we'll turn it over to Kim for whatever concluding remarks.

>> JOHN: We effectively only have one additional question at this moment. And I'm bundling three different responses that have all suggested, how is the Commission envisioning the balance between the good and optimal employment and the proposed competition in the AbilityOne Program?

>> CHAI: Okay, so, I'm not sure about the use of the word balance between good and optimal jobs. Because as I said, there are good jobs, which include competitive wages and benefits, similar coverage under employment laws, job individualization, PCEPs and opportunities for advancement through career, you know, advancement programs.

All of those is what the strategic plan defines as good jobs, that's all of what 51.405 applies to. And none of that is inconsistent with competition.

You're not competing out there with the general marketplace. The competition is about that performance management responsibility we have to

make sure federal agencies are getting their contracts done in a way that meets their requirements.

If you all see, the proposed rule is more flexible than the suggestion from the 898 panel, which had some mandatory competition and this is going to be as requested by a federal agency.

So, those are not inconsistent, to be running a good employment setting and provide what are employment related activities. They aren't rehabilitation acre at this time. They're employment-related activities for the employees.

All right, I see we have two more -- Wakita, if you can call on those two and then just let's take both of your questions together and we'll see if we have time and then over to Kim.

>> WAKITA: All right, we have Jacob and then we will finish up with Jo.

>> JACOB: Hi, really quick question. You mentioned earlier that the slide deck will be put on the website or it already is. Do you know where on the website I can find that? I'm just -- I've been looking for it and haven't been able to find it.

>> CHAI: You sound like me. Bryan said it was up and I was like, "where?" I have faith in the staff, I know we don't have registration, so, it's not that we can do that. We disabled the chat, we might, maybe, Aaron, at the very end, enable the chat so Bryan can put in the link to that or maybe, Aaron, enable the chat, but no one please use the chat, other than Bryan, who will put in the link.

You know what, Jo? Can we just have Amar's question -- or Amar didn't mean to raise his hand. Jo, your question. Sorry, Wakita, sorry for jumping ahead of you. John Konst is on top of this stuff. Jo, your quick question and then we can wrap.

>> JO: I don't know how quick it is, but earlier you said these were good jobs that were in 51.405, but not optimal jobs because they're still AbilityOne jobs. When --

>> CHAI: No, no, no. We believe that AbilityOne jobs can be optimal jobs. That is, they can be performed in integrated settings. Fully integrated settings.

All we're trying to do by separating is that there are constraints that the JWOD Act puts on creating that integration inherently and we want to work with NPAs to create integrated jobs. And still be compliant with JWOD.

>> JO: So, have you determined what that percentage would be?

>> CHAI: No. There's lots of stuff about optimal jobs that you should wait in terms of other work that we will be doing. In terms of identifying them, supporting them, et cetera. Starting with the public session of the April meeting.

Okay, oh my God, 3:59, Amar, quickly get your piece in.

>> AMAR: I didn't want to interrupt Jo, thank you so much, the question is related to the balance between competition and good and optimal and all of the PCEP and all that. The concern is not so much whether good business and good employment is really in line with PCEP and all of that. But the administrative structure needed to provide services at the level of the Commission is proposing, is the concern. And that cost associated with that might seem like it's contrary -- --

[Captioner has a hard stop at 4:00 p.m. ET].

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