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**TITLE: DIRECT LABOR HOUR RATIO REQUIREMENTS**

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**1. PURPOSE**

This document prescribes the U.S. AbilityOne Commission's (Commission) policies for direct labor hour ratio to maintain nonprofit agency compliance with applicable laws and regulations.

**2. APPLICABILITY**

This policy applies to the Commission, all designated Central Nonprofit Agencies (CNAs) and all NPAs seeking or receiving qualification to participate in the AbilityOne Program.

**3. AUTHORITY**

- (a) 41 U.S.C. §§ 8501-8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 C.F.R. Chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled

**4. DEFINITIONS AND ACRONYMS**

Definitions, abbreviations, and acronyms frequently used throughout this policy system are found in Policy 51.102, Definitions. Terms unique to a specific subject matter are defined below.

Term	Definition
<b>Direct Labor</b>	<p>All work required for <i>preparation, processing, and packaging</i> of a product or work directly related to the performance of a <i>service</i>, but not supervision, administration, inspection, or shipping.</p> <ul style="list-style-type: none"> <li>(a) <i>Preparation</i> – Tasks involved in reforming raw materials into components of the product or the product itself, including operation of machinery which performs these activities.</li> <li>(b) <i>Processing</i> – Tasks involved in forming or finishing components or products, or in assembling components, or in assembling components into products.</li> <li>(c) <i>Packaging</i> – Tasks involved in preparing the finished product for shipment by placing it in one or more containers or wrappings to make it suitable for shipment.</li> <li>(d) <i>Service</i> direct labor is the performance of tasks directly required by or specified in the contract statement of work (SOW) or performance work statement (PWS).</li> </ul>



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<b>Indirect Labor</b>	Work that supports the manufacturing process or delivery of services, but does not directly produce the products or services sold to a customer. Indirect labor includes supervision, administration, inspection, material handling, and shipping. Indirect labor also includes cleaning and maintenance of space or equipment belonging to the contractor and used by the contractor during the production of products or performance of services.
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**5. RESPONSIBILITIES.**

- (a) The Commission monitors and inspects qualified NPAs’ compliance with all applicable statutes, regulations, and policies, and takes necessary actions to address instances of noncompliance.
  - i. The Commission provides guidance to NPAs on an individual or group basis to assist them in understanding the requirements as they relate to the direct labor ratio as well as other requirements to maintain qualification.
  - ii. The Commission tasks the CNAs to provide support and regulatory assistance to NPAs, in accordance with their Cooperative Agreements. The Commission reviews and uses the CNAs’ reports regarding NPA compliance to prioritize Commission compliance-related activities.
- (b) Designated CNAs support and assist their NPAs in understanding and facilitating compliance with all applicable statutes, regulations, and policies necessary for full participation in the AbilityOne Program.
  - i. CNAs conduct assistance visits with NPAs as specified in their Cooperative Agreements, and submit reports to the Commission as required therein.
  - ii. CNAs collect quarterly data from their NPAs, particularly direct labor hours, and based on their review and analysis of that data, take action as appropriate to assist NPAs that appear to be trending towards noncompliance. CNAs will assist NPAs that appear to be collecting or presenting their quarterly data in an incorrect manner.
  - iii. CNAs assist NPAs in submitting annual data, collect and analyze the annual data, and provide their results and recommendations to the Commission in accordance with the timeframes in the Commission’s regulations and the CNAs’ Cooperative Agreements.
- (c) NPAs stay informed of and comply with all statutes, regulations, and policies applicable and necessary for full participation in the AbilityOne Program.
  - i. NPAs work with their CNAs to obtain technical assistance and contact the Commission if they need clarification to maintain compliance.
  - ii. NPAs determine, keep records, and report on which employees perform direct labor in their organization, whether or not on AbilityOne contracts.

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- iii. NPAs determine which employees' records contain the required disability documentation and Individual Employment Evaluations (IEEs) such that the individuals are shown to meet the statutory definitions of blind or significantly disabled, and thus their direct labor hours are counted in the ratio as blind or significantly disabled direct labor hours.

**6. POLICY**

- (a) General. NPAs are required to meet all statutory and regulatory requirements specified in the JWOD Act and Committee regulations to maintain qualification and participate in the AbilityOne Program. (*See Authorities*, above). As required by those authorities, NPAs must employ people who are blind or who have significant disabilities for at least 75 percent (%) of their overall direct labor hours (ODLH) during the Federal fiscal year.
  - i. The NPA's cumulative direct labor hours on the last day of the fiscal year will be used to measure whether or not the 75% ODLH threshold was met.
  - ii. Direct labor hour ratio information must be reported to two decimal places. The Commission will use standard rules for rounding numbers to determine compliance. A direct labor hour ratio at or above 74.51% will meet the 75% requirement.
  - iii. When the Commission conducts an inspection or a CNA conducts a regulatory assistance visit, the NPA is required to make its cumulative direct labor hours for the current fiscal year available for all projects. The Commission requests, but does not require, the NPA to provide its most current Estimated Direct Labor Hour (EDLH) form for each project on the Procurement List.
- (b) Documentation of blindness or significant disability. The NPA must have documentation for each direct labor employee counted towards the 75% ODLH ratio requirement, showing that the employee meets the Commission's definition of either a person who is blind or a person with significant disabilities.
  - i. These requirements include medical or psychological documentation of the employee's disabilities and the extent of those disabilities, as well as an initial and annual IEE using the Commission-prescribed format. *See* Commission Policies 51.405, 51.407 and 51.408.
  - ii. All direct labor hours of employees whose documentation of blindness or significant disability and/or IEE is found to be inadequate -- by the NPA itself, by a CNA's regulatory assistance staff, or by a Commission compliance inspector – must be counted as sighted or non-disabled direct labor until there is adequate documentation for that individual. The NPA must submit corrected quarterly reports to its CNA(s) as corrective action, in these circumstances.

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- (c) Recording and reporting all direct labor hours. NPAs must record and include in their ratio calculations the hours of any employee who performs direct labor, regardless of title, hours worked, or who is paying the individual. This includes individuals hired as temporary employees or employees hired through a subcontract, regardless if the temporary employee is paid by the temporary employment agency.
- i. Record and include in the direct labor hour ratio calculation the hours a working supervisor spends performing direct labor tasks vice supervisory duties.
  - ii. Record and include in the direct labor hour ratio calculation the hours a trainee performs when that work contributes to a finished product or contributes to the performance of a Performance Work Statement (PWS) requirement.
  - iii. Record and include in the direct labor hours calculation the hours a temporary employee spends performing direct labor tasks on products and/or services.
  - iv. Record and include in the direct labor hours calculation any vacation, holiday, and paid sick leave used by direct labor employees.
- (d) Direct labor hour tracking system. The Commission does not require or endorse any specific direct labor tracking system, but the NPA must demonstrate that its system tracks employees when they move from one classification to another (e.g., direct or indirect), accurately computes the hours worked in the proper categories (e.g., disabled or nondisabled), and correlates with (or is part of) the NPA’s payroll system.
- (e) Project-level direct labor. While the JWOD Act specifies a 75% ODLH ratio requirement, the Commission may authorize lower ratios at the project level, as long as the NPA maintains compliance with the 75% ODLH statutory requirement.
- i. Phase-ins. The Commission may consider and determine the suitability of a proposed Procurement List addition in which the NPA will be able to meet the expected direct labor hour ratio after a reasonable phase-in period. *See* Commission Procedure 51.401-01.
    1. If approved by the Commission, the NPA must track and report its progress in meeting the target ratio (through the appropriate CNA) during the entire phase-in period, to ensure that the Commission's suitability determination for that project is sustainable based on actual performance.
    2. NPAs not meeting phase-in requirements or milestones may lose authorization to continue performing the project(s).
  - ii. Final ratios below 75%. The Commission may consider requests for addition to the Procurement List of projects with final direct labor ratios below 75%. Such requests are considered on a case-by-case basis, based on factors including the

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- overall suitability of the project and the NPA’s ability to continue to meet the ODLH requirement.
- iii. Project-level data tracking. Each NPA must track its direct labor hours worked on all AbilityOne projects, either as an individual product line, or, as a product family or services family group. This data must be made available to Commission or CNA staff during the NPA’s respective inspections or regulatory assistance reviews.
  - iv. Projects with non-compliant ratios. If a Commission compliance inspection or a CNA regulatory assistance visit finds that an NPA’s project-level direct labor hour ratio is more than 10 percent (%) below the level estimated at the time of Procurement List addition, corrective action will be prescribed. *See* Commission Policy 51.403 and Procedure 51.403-01.
- (f) Surge. During wartime and other emergencies, fulfilling the Government's increased requirements may require extra direct labor hours, even if sighted or non-disabled. Meeting the needs of the Government in such emergencies may temporarily take precedence over maintaining the required 75% direct labor hour ratio. However, these hours must be recorded and reported, and may affect a nonprofit's ODLH ratio. The Commission may approve an exception from the required ratio when the Federal customer's surge is the only reason for an NPA not meeting the statutory 75% ODLH requirement. *See* Commission Procedure 51.401-02.
- (g) Flexibility for NPAs employing people who are blind. NPAs that are qualified to participate in the AbilityOne Program to employ people who are blind may count the direct labor hours performed by people with significant disabilities (including severe visual impairment) who are not legally blind towards a particular AbilityOne project, provided that:
- i. These hours are not included in the NPA’s ODLH of people who are blind.
  - ii. These employees have provided the NPA with qualifying medical or psychological documentation, consistent with the Commission’s statutory definition of a person with a significant disability. It is not necessary for the NPAs in this case to document the individual’s functional limitations along with supports and accommodations.
- (h) Flexibility for NPAs employing people who have significant disabilities. NPAs that are qualified to participate in the AbilityOne Program to employ people who have significant disabilities may count the direct labor hours performed by people who are blind or visually impaired towards a particular AbilityOne project and ODLH, provided that:
- i. The employees who have a diagnosis of visually impaired are counted as significant disabled on the employee’s IEE form. The employee has provided the NPA with qualifying medical or psychological documentation, consistent with the Commission’s

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statutory definition of a person with a significant disability. The NPA has demonstrate the employee's barriers to competitive employment through the IEE form.

- ii. For the employees that meet the definition of blind, per the Commission's statutory definition of a person who is blind, NPA must follow all requirements for documentation of blindness and completion of the blind section only on the IEE form.

**7. EXCEPTION TO POLICY**

The Commission may authorize an exception(s) to the 75% ODLH ratio requirement in accordance with this policy and the Commission Procedures identified in Section 8 below.

**8. PROCEDURES**

The following procedures are incorporated herein by reference.

- (a) 51.401-01, Phase-In Procedures
- (b) 51.401-02, Surge Requirement Procedures

**9. SUPERSESSION**

This policy supersedes Commission Policy 51.401 dated March 22, 2013.

**APPROVED:** \_\_\_\_\_

**E. Ballard**  
**Executive Director**



**Date:** 8/11/2020