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**TITLE: NONPROFIT AGENCIES OUT OF COMPLIANCE WITH COMMISSION REGULATIONS**

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**1. PURPOSE**

This document prescribes the U.S. AbilityOne Commission (Commission) policy for oversight of nonprofit agencies (NPAs) that are found to be out of compliance with requirements of the AbilityOne® Program.

**2. APPLICABILITY**

The policy described herein applies to all NPAs participating in the AbilityOne Program, Central Nonprofit Agencies (CNAs) and the Commission.

**3. AUTHORITY**

- (a) 41 U.S.C. §§ 8501- 8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 CFR 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.

<b>Term</b>	<b>Definition</b>
<b>High Risk Agency</b>	An NPA that is out of compliance for multiple, major reasons (as described in this policy), or has a direct labor hour ratio below 60 percent.
<b>At Risk Agency</b>	An NPA that is out of compliance for a single reason, or has a direct labor hour ratio below 75 percent.

**5. RESPONSIBILITIES.**

- (a) The Commission determines whether NPAs are in compliance with the statutory and regulatory requirements to participate in the AbilityOne Program, and requires corrective action and/or may impose sanctions when NPAs are out of compliance.



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- i. The Director of Oversight and Compliance is the office of primary responsibility for implementing Commission policy for NPAs that are considered out of compliance with AbilityOne Program requirements.
- ii. The full Commission determines, via a written decision (vote), whether an NPA will be deauthorized at the project level (authority to furnish a product or service on the Procurement List removed) or from participation in the AbilityOne Program overall.

#### (b) CNAs

- i. Monitor and report the NPA's performance related to achieving the statutory and regulatory requirements to maintain qualification, particularly the direct labor hour ratio, on a quarterly basis during an NPA's Federal first year in the AbilityOne Program. Quarterly reports shall be provided to the Commission as otherwise required by the Commission.
- ii. Send warning letters to its NPAs with cumulative overall direct labor hour ratios below 75 percent after the second quarter. The warning letters to the NPA Board Officer (as listed on the latest Annual Representations and Certifications form) and Executive Director/President shall include the process that is followed if the NPA finishes the Federal fiscal year with its direct labor hour ratio below 75 percent.
- iii. Report the status of an NPA's cumulative overall direct labor hour ratio to the Commission after the end of the second quarter, for all NPAs whose direct labor hour ratio was below 75 percent for the prior Federal fiscal year.
- iv. Review and forward NPAs' annual certifications to the Commission by December 1<sup>st</sup> of each year.

#### (c) NPAs authorized to participate in the Ability One Program must comply with all requirements of the JWOD Act (41 U.S.C. §§ 8501-8506), all nine requirements listed in 51-4.3 to maintain qualification and the Commission's regulations at 41 C.F.R. 51-4. NPAs must also comply with the Commission's implementing compliance policies, such as Policy 51.409, Maintaining Qualifications. NPAs must also:

- i. Submit annual certifications to the Commission through the appropriate CNA by December 1<sup>st</sup> of each year.
- ii. Submit quarterly Cooperative Agreement report deliverables to the appropriate CNA if authorized by the Commission to produce a product or provide a service on the Procurement List (PL).
- iii. Provide a corrective action plan for non-compliance issues within the specified time period established by the Commission when necessary.

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#### **6. POLICY**

- (a) NPAs must meet all of the responsibilities and requirements herein to participate in the AbilityOne Program. When NPAs are not in compliance with the requirements, they must take action to correct the deficiencies within the approved time frame.
- (b) Non-compliance may be found for multiple reasons, as determined by the Commission. High risk program-related reasons for a non-compliance finding include, but are not limited to:
  - i. Items listed as NPA responsibilities within this policy are not fulfilled.
  - ii. Individual Employment Evaluations (IEE) and/or adequate medical documentation are missing from a significant number of files.
  - iii. Evidence that the overall direct labor hour ratio is not going to meet the 75 percent requirement by the end of the Federal fiscal year.
  - iv. AbilityOne project(s) are being performed at direct labor hour ratio(s) significantly below than submitted by the NPA during the PL addition or transfer of the project.
  - v. Inadequate evidence of an ongoing placement program.
  - vi. Repeat finding of a problem noted from previous Commission compliance inspections or CNA regulatory visits.
  - vii. NPA fails to fully cooperate with a compliance inspection or to provide the information necessary to complete the inspection.
- (c) At risk secondary programmatic and additional reasons for a non-compliance finding include, but are not limited to:
  - i. Not paying the correct wages and benefits to direct labor hour employees, as mandated by the Service Contract Act (SCA), Davis Bacon Act (DBA) and the Federal Labor Standards Act (FLSA),
  - ii. Inadequate evidence of the following Occupational Safety & Health Administration (OSHA) standards; specifically
    - a. Inadequate evidence of a safety program.
    - b. Inadequate evidence of a Bloodborne Pathogen program, and

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- c. Inadequate completion of the OSHA 300 Form
- iii. Inadequate adherence to other Federal Contract Requirements:
  - a. Affirmative Action Plan (applies to Federal contracts of > \$50,000 and 50 employees) or Affirmative Action Policy (applies to Federal contracts > \$10,000)
  - b. EEO-1Form (applies to Federal contracts > 100 employees or; 50 or more employees AND Federal contracts > \$50,000)
  - c. VETS-4212 Form (applies to Federal contracts  $\geq$  \$150,000)
  - d. Compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)
  - e. Drug- Free Workplace Policy (applies to Federal contracts  $\geq$  \$100,000)
  - f. Family & Medical Leave Policy (applies to Employers with  $\geq$  50 employees)
- (d) In all cases of non-compliance, a corrective action deadline date will be established by the Commission for the NPA to resolve the issue(s) and to report back to the Commission. The Commission's report of non-compliance and timing for corrective action will be provided to the appropriate CNA, who will contact the NPA and determine whether any assistance is necessary. As determined by the Commission, a return visit to the NPA may be scheduled within 60 days of the end of the corrective action period, to confirm whether or not the issues have been corrected.
  - i. In addition to a prescribed corrective action deadline date, NPAs found to be out of compliance for significant reasons are considered "High Risk" and may be placed on probation and therefore not eligible for new assignments of PL work until the non-compliance is corrected, reported, and deemed satisfactory by the Commission. The NPA, represented by its CNA(s), may be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.
  - ii. NPAs found to be out of compliance for secondary reasons are considered "At Risk" and will be provided a corrective action completion date by the Commission.

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- iii. NPAs found to be out of compliance for the same secondary problem(s) on consecutive visits, or have a pattern of non-compliance, will be considered “High Risk” and may be placed on probation and not allowed to be assigned or begin new PL work until the issues are corrected.
  - iv. If the next Commission visit finds the NPA is still out of compliance, the NPA will be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.
- (e) NPAs that report correcting Commission non-compliance findings but, upon subsequent inspections by the Commission or reviews by the CNAs, have failed to correct the findings will be immediately placed on probation.
- i. In such cases, the NPA will be given 60 days to correct these findings and may be inspected on-site by the Commission or reviewed by the CNA.
  - ii. If still out of compliance, the NPA will be required to appear before the Commission and explain why its eligibility to participate in the AbilityOne Program should not be removed.
- (f) Referral of certain violations.
- i. If a Commission compliance inspection reveals evidence that one or more NPA executives signed an incorrect annual certification or self-certification audit results, or information indicating that any other possible illegal activity may have taken place, the Commission will notify the AbilityOne Office of the Inspector General, in accordance with the Inspector General Act of 1978, as amended, and will make referral to the appropriate office of the United States Attorney or other interested Federal official.
  - ii. If a Commission compliance inspection finds any other indications of possible illegal activities, pertinent information shall be considered for referral to the appropriate office of the United States Attorney or other interested Federal official.
  - iii. If a Commission compliance inspection or CNA report finds potential non-compliance with Department of Labor (DOL) laws or regulations, pertinent information shall be considered for referral to DOL.

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#### **7. EXCEPTION TO POLICY**

The Commission does not find NPAs to be noncompliant if their failure to meet the annual direct labor hour ratio at the end of the fiscal year is solely due to its operating under a Commission-approved phase-in schedule or plan, with which it is in full compliance, attributable to providing a product or service under national emergency or wartime surge requirements, participation in a Commission approved pilot test or where other extenuating circumstances have been presented and approved by the Commission. See U.S. AbilityOne Commission Procedures 51.401-01 and 51.401-02.

#### **8. PROCEDURES**

If an NPA fails to meet the 75 percent overall direct labor hour ratio requirement in any Federal fiscal year, the Commission will initiate corrective action. *See* U.S. AbilityOne Commission Procedures 51.403-01.

#### **9. SUPERSESSION**

This policy supersedes U.S. AbilityOne Compliance 51.403 Nonprofit Agencies out of Compliance with Commission Regulations, dated August 15, 2020, in its entirety.

APPROVED: Kimberly M. Zeich Date: 11/12/2020  
for E. Ballard  
Executive Director