

Committee for Purchase From People Who
Are Blind or Severely Disabled

Committee Staff Nonprofit Agency Review Manual

June 29, 2007

PREFACE

July 19, 2007

The Committee staff has had a manual for conducting compliance reviews of nonprofit agency since at least 1992. As a Committee staff document, the manual was not widely available to nonprofit agencies participating in the AbilityOne Program. There are multiple definitions of disability in use by the Government today, and understandings about the concept of competitive employment have evolved over time. Development of this revised manual began in 2005 with the recognition that nonprofit agencies needed access to a more detailed reference showing how the Committee reviews and assesses the completeness and appropriateness of records documenting disability and competitive employment determinations. Consequently, the Committee is now providing to the AbilityOne community a more detailed description of documentation standards required to ensure compliance with the statutory requirements of the Javits-Wagner-O'Day Act and the Committee's implementing regulations. It is anticipated that wider distribution of this staff manual will help to ensure that participating nonprofit agencies better understand the Program's requirements and how the staff will conduct compliance reviews.

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Introduction

This manual is published to provide Committee staff, NIB, NISH, nonprofit agencies and the interested public with a reference work on the practices and procedures used by Committee staff compliance personnel relative to conducting compliance reviews at nonprofit agencies participating in the Javits-Wagner-O'Day Program. It contains instructions to Committee staff on the requirements for medical documentation, competitive employment assessments, direct labor ratio determinations and reviewing Department of Labor requirements, as well as other material in the nature of information, interpretation and examples of the processes involved and outlines the current procedures which the staff is required or authorized to follow in the normal review of a nonprofit agency. The manual does not have the force of law or the force of the rules in Title 41 of the Code of Federal Regulations.

Among the requirements for a nonprofit agency to participate in the AbilityOne Program, 75 percent of its total direct labor hours must be performed by people who are blind or severely disabled. To fulfill this and other compliance requirements successfully, nonprofit agency personnel must fully understand the Committee's definitions of blind and severely disabled and the Committee's requirements for documentation of those individuals who are being counted towards the direct labor ratio.

In light of the differences in definitions and Program requirements, the chapter on medical documentation and competitive employability is divided into separate sections for people who are blind and for people who are severely disabled. The law allows nonprofits associated with National Industries for the Blind (NIB) to count only the direct labor hours of people who are blind towards the 75 percent direct labor ratio, while nonprofits that are affiliated with NISH may count people who are blind as well as people with severe disabilities. NISH-affiliated nonprofits that employ people who are blind should also be familiar with the section on people who are blind, as it contains the Committee's requirements that must be met for the nonprofit's blind employees.

Subsequent changes in practice and other revisions will be incorporated in the form of substitute or additional pages for the manual.

Suggestions for improving the form and content of the manual are always welcome. They should be addressed to:

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Or they may be sent via email to: info@jwod.gov.

CHAPTER 1 – Pre-review Preparation and Initial Onsite Review Briefing

1.1. Scheduling the Review

Committee staff reviewers have a limited amount of time while at the nonprofit agency to collect a specific amount of information. This manual helps structure a compliance review in the most time-efficient manner. However, the reviewer and the agency contact person may agree to structure the review differently in order to accommodate staff schedules, availability of a board member, etc.

1.2 - Preparing Nonprofit Agency for Review

1.2.1 Initial contact with a nonprofit agency to schedule a review should be made a month to six weeks in advance.

1.2.2 The reviewer should make contact 3-4 weeks before the scheduled visit to re-confirm the date, discuss preliminary questions the contact person may have, and get detailed directions to the agency. Keep the agency phone number at hand during the travel portion of the trip.

1.2.3 During the initial discussion, let the contact person and/or other staff know that a key function of the review will be the review of individual records for medical documentation of a disability, and for the annual evaluation of an individual's readiness for competitive employment.

1.2.4 State laws or agency policy may require the AbilityOne staff member to sign a release form before they are permitted to review individual files and records. Make sure that the agency is made aware that its personnel need to obtain these documents before your visit.

1.2.5 Discuss the process of reviewing the severely disabled direct labor hour ratio recording system. Remind them that the purpose of the check is to ensure that at least 75% of the total agency work hours are performed by employees who are blind or have other severe disabilities, and that at least 75 percent of the direct labor hours performed on the aggregate of AbilityOne work should be done by people who are blind or severely disabled. However, the ratio on individual AbilityOne projects must be no lower than 60% (Unless operating under a phase-in).

1.2.6 Inform the agency staff that a review of all pertinent Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), Office of Federal Contract Compliance Programs (OFCCP), and DOL sub-minimum wage certification requirements will also be reviewed.

1.2.7 If AbilityOne work is being performed at separate locations, these locations should be visited if they are within a reasonable distance of the agency. If the agency has many off-site locations spread over a wide geographic area, a sample of sites should be visited. Some agencies operate contracts that are several hours drive from their main facility, or in other states. In these cases, a AbilityOne site visit may not be possible. In the case of work done at night, such as commissary shelf stocking, it may be necessary to obtain a night schedule or clearance from the on-site supervisor so that a visit can be arranged.

1.2.8 A member of the agency's Board of Directors will be invited to attend the Executive Director's exit brief at the conclusion of the review. The contact person should make contact with the Board to determine who will be attending the exit brief.

1.2.9 The Compliance reviewer should send the agency a copy of the Review Form and its companion "Instructions" (an annotated version which explains how to complete the form). The agency is not required to fill out the form prior to the compliance visit. However, it can greatly facilitate the visit if they do a dry run with it and pull together applicable information prior to the arrival of the Compliance reviewer.

1.3 - Collecting Previous and Current Information

1.3.1 There are several pieces of information the reviewer needs to have before visiting the agency. The following information is found in the nonprofit agency file and JPID.

1.3.2 Previous compliance visit information – Check JPID for the date of the last compliance visit, both, by the Committee and by the CNA, and who conducted it.

1.3.3 Previous incidence of compliance problems – Check the last compliance review form (or review summary), other documentation in the file and in JPID for previous compliance problems. Also, make a note of any compliance problems from previous visits so they can be discussed with agency management.

1.3.4 Last Annual Report data – If the direct labor hours for blind/severely disabled workers reported on the Annual Report are below 75% overall or below 75% on AbilityOne work, confirm the most recently reported quarterly ratio with NIB or NISH. The agency may also be operating under an approved phase-in schedule which is temporarily affecting the direct labor ratio.

1.3.5 Current AbilityOne project information – All notices of changes to the procurement list affecting an agency are filed in the nonprofit agency's compliance file and in JPID. The reviewer should check that both agree and take a list of the currently authorized projects to confirm with the nonprofit agency that they are doing the work.

1.3.6 Legal Documentation Review – Review the agency's legal documentation, both By-laws and Articles of Incorporation, and note the date of the most current copy in the agency file.

1.3.7 Projected/start-up direct labor ratios for each item – For items added to the Procurement List since 1988, the agency will have submitted an ADD-5 form (for products) or an ADD-6 form (for services). The form gives the projected ratio of blind/severely disabled direct labor hours for the item.

1.3.8 Phase-in plan or schedule, if applicable – The ADD-5/ADD-6 form also indicates the percent of blind/severely disabled direct labor hours projected at the time of start-up. Determine whether the item is still subject to a phase-in schedule or plan. Contact NIB or NISH to determine the nonprofit agencies current status on its phase-in. Make a copy of the phase-in plan to take on the compliance visit.

1.3.9 Discuss issues with NIB/NISH – Contact the Compliance department of the appropriate CNA to discuss any issues or questions about the agency's operations that have arisen during the preliminary data gathering, or any other issues concerning the agency about which the reviewer should know. The following are examples of issues to discuss with NIB/NISH Compliance staff:

- a) Direct labor ratio on most recent Quarterly Report, in cases where the ratio reported on the Annual Report is below 75% (and if there is no phase-in)
- b) The current status on any phase-in plans still in effect
- c) Whether the agency has had any problems with performance or quality (if known).
- d) Any issues related to the agency's Federal contracts
- e) Compliance with and/or audits by other Federal agencies

1.4 - Initial Onsite Briefing

1.4.1 A compliance review usually starts with a discussion with the agency's Executive Director and/or other staff who have been designated to help with the review. This initial discussion allows the reviewer to explain the individual components of the review, and to determine how the review

will proceed. The compliance review form can be used to outline the general areas that will be examined during the review.

1.4.2 For many agencies, a review by a Federal agency representative concerning what might be a significant portion of the agency's income can be a stressful experience. However, such reviews should be an opportunity for the agency to ask questions or voice concerns about the AbilityOne Program. The important thing to remember throughout the review is that the Committee was created to help provide employment for individuals with disabilities. The Committee's compliance function serves to ensure that this goal is being met within the parameters of Committee's regulations.

1.4.3 The initial discussion can also be used to explore the agency's general organization, location of work sites, and the full range of products and services provided by them, both AbilityOne and commercial.

1.4.4 Arrange with the staff to interview several employees of the agency performing AbilityOne work, especially any who have files that suggest there may not be a "severe disability." Such interviews should only last 5 to 10 minutes.

1.4.5 Remember, as a Committee representative, you may be the only contact the agency has had with a representative of the Federal government, and of the AbilityOne Program, for an extended period of time. Part of the purpose of the on-site review is to provide information and assistance with compliance issues. However, the fundamental responsibility of the compliance staff is to ensure that the agency adheres to Committee regulations. Non-compliance can result in an agency losing the right to provide a commodity or service under the AbilityOne Program.

1.4.6 Any negative comments expressed by the compliance traveler will be taken very seriously by the agency staff. It is therefore recommended that you limit your remarks to regulatory requirements within the Committee's purview. Refrain from stating personal opinions regarding operational or management issues outside of AbilityOne matters.

Chapter 2- Blind and Severely Disabled Direct Labor Hour Ratios

2.1.1 The primary requirement for a nonprofit agency to participate in the AbilityOne Program is that 75 percent of all of the direct labor done at a nonprofit agency be performed by people who are blind or severely disabled.

2.1.2 For nonprofit agencies that work with the blind the JWOD Act's (41 U.S.C. section 48b) definition of a qualified nonprofit agency states:

a. which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under this Act) during the fiscal year employs blind individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

2.1.3 For nonprofit agencies that work with people with severe disabilities the JWOD Act's definition of a qualified nonprofit agency states:

a. which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under this Act) during the fiscal year employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

2.1.4 Thus, nonprofit agencies associated with NIB can only count the direct labor of people who are blind; while NISH affiliated agencies can count the direct labor of both people who are blind and those with severe disabilities. The above definitions also make it clear that the ratio is based on all direct labor done by the nonprofit agency, and not just the direct labor on AbilityOne projects. This fact is frequently misunderstood and causes problems not only for new nonprofit agencies, but for some that have been in the Program for years.

2.1.5 These requirements mean that the nonprofit agencies need to be able to do two things that they may not otherwise do. The first is to be able to determine who does direct labor and the second is to determine which workers meet the Committee's definition of blind or severely disabled (discussed in Chapter 3).

2.2 - Definition of Direct Labor

2.2.1 The Act and the regulations (41CFR51-1.3) define direct labor as:

(a) All work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.

2.2.2 This definition fits well with the definition used by industrial engineers for direct labor in manufacturing, which is that direct labor is work that adds value to a product.

2.2.3 Preparation – Tasks involved in reforming raw materials into components of the product or the product itself, including operation of machinery which performs these activities.

2.2.4 Processing – Tasks involved in forming or finishing components or products, or in assembling components, or in assembling components into products.

2.2.5 Packaging – 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.

2.2.6 Service direct labor is the performance of those tasks directly required (or specified) in the contract statement of work (SOW), such as janitors and groundskeepers. For services the concept of adding value is also helpful in understanding what direct labor is. If a contract is for janitorial services, then the janitors are direct labor when they perform the requirements of that contract. However, if these workers also did janitorial work at the nonprofit agency itself, they are indirect labor when cleaning the nonprofit. All positions specified in service contracts are not necessarily direct labor positions. Besides the obvious supervisory positions, there are other positions that must be considered indirect labor. Work necessary to maintain equipment, even if covered in the contract, is indirect labor. For example, some grounds maintenance contracts include an individual to maintain the equipment. This individual is doing indirect labor. While the work performed is necessary, it is not the reason why the contract exists. It is identical to the way mechanics who maintain production equipment are considered indirect labor.

2.2.7 Training hours also needs some explanation. Depending on how the nonprofit agency trains individuals the hours spent in training may or may not be direct labor. The deciding factor is whether or not the individual is involved in making a product or providing a service that is purchased from the nonprofit agency. An individual learning to sew may be started by learning to sew together scraps of fabric that are then discarded. This would be indirect labor. However, if the trainee sews some small part of what eventually becomes used in a finished product sold by the nonprofit, then that work is direct labor, no matter how low that person's productivity.

2.3 - Classification of Personnel

2.3.1 As noted earlier the nonprofit agency really needs to be able to classify people into one of four categories – severely disabled direct labor, severely disabled indirect labor, nondisabled direct labor, and nondisabled indirect labor. While technically the nonprofit agency does not have to separate those working in indirect labor into severely disabled and nondisabled some workers may frequently move back and forth between direct and indirect and it makes it much easier for the nonprofit not to have to worry about the disability category every time an individual switches.

2.3.2 Some nonprofit agencies rely on severely disabled people to move material from work station to work station. While production efficiency or plant layout may dictate the need for these material handlers, they are not performing direct labor.

2.3.3 Further complicating the concept of direct labor are people that actually do both direct and indirect labor as a normal part of their job and job titles that depend on what work the nonprofit agency actually has the individual doing. Contracts that require working supervisors are the best example of the former. The contract is such that the government will not pay for a full time supervisor and the supervisor has to split his time between supervising others, indirect labor, and actually doing some of the direct labor. Team leader is perhaps the best example of a job title that has multiple meanings. A team leader may be a supervisor that does no direct labor, a worker that only does direct labor or an individual that does both direct and indirect labor. On small projects, an accurate tallying of proper classifications can be critical to an acceptable ratio.

2.3.4 It is important to explore with the nonprofit agency how it determines who is doing direct and who is doing indirect labor. If the nonprofit agency is manufacturing a product, the reviewer should plan on conducting a tour around the production facility. This affords the reviewer an opportunity to see what is being done and to ask questions grounded in what is observed.

2.4 - Tracking Direct Labor

2.4.1 The method for tracking direct labor hours will vary from agency to agency. Normally, the search begins with the daily time cards and ends with the payroll system that generates an employee paycheck. Most agencies have some degree of automation for their payroll system, and many will have printed out the required information in advance of the compliance review. The reviewer will spot-check the source data (time cards, weekly and biweekly hourly totals, etc.) to insure that the information is being properly reported in the automated reports.

2.4.2 While the Committee does not require that direct labor be tracked in this fashion the preferred method would have all workers coded in the payroll system for:

2.4.3 Disabled or not disabled

2.4.4 Direct or indirect labor

2.4.5 On what project the worker generates hours

2.4.6 It has been shown to be very useful for agencies to code employees in such categories in their payroll system, because it serves at least three critical functions:

2.4.7 To keep track of workers when they do move from one classification to another

2.4.8 To allow for accurate computation of hours worked, in their proper categories

2.4.9 To afford the agency the opportunity to track ratios on a payroll basis

2.4.10 Affords the agency to use the payroll to determine the direct labor ratio rather than having to create another record keeping process.

2.4.11 Some nonprofit agencies maintain separate payroll reports for their “clients” versus “staff.” While there may be advantages for the nonprofit agency doing this, it must be noted that all individuals on the client payroll are not necessarily doing direct labor. In addition, for those staff employees performing direct labor, their hours may prove elusive when recorded on the staff payroll. Another common pitfall to be understood with this methodology occurs when individuals who qualify as blind or severely disabled, are not considered clients by the nonprofit agency. This means that information from two separate payrolls must be consolidated before determining the direct labor ratio. This can introduce computational errors.

2.4.12 For those nonprofits that have people that do both direct and indirect labor, by way of working supervisors, there are essentially two ways to track the true number of direct labor hours. The first is to have the worker clock in and out when he is performing direct labor. However, this is frequently impractical because the worker may have to change back and forth many times in a day. The second method is for the nonprofit to conduct a study or maintain a work log on the worker for a reasonable period of time, to cover all the fluctuations of the various work involved, and then determine what is the average percentage of hours spent doing direct labor. The percentage can then be used to determine how many of the individual’s hours to add to the direct labor categories.

2.4.13 Reviewers must compare the workers counted as severely disabled on the agency’s direct labor tracking report, with those whose documentation verify that they are severely disabled. One way is to use the payroll’s direct labor information to generate a list of who they are counting

as severely disabled, which can then be checked during the review of the medical files. The reverse can also be done where the files reviewed can generate a list of the severely disabled, which then can be checked against the payroll documents. Both systems can be employed and the most efficient method will depend on how the nonprofit agency tracks their direct labor.

2.5 - Overall Direct Labor Ratio

2.5.1 It is always important to emphasize the imperative of meeting the 75% direct labor ratio, and that it applies to the total work being done by the nonprofit agency. It is also important to stress the value of agency management reviewing their ratios on a payroll basis.

2.5.2 Preferably, an agency should be able to provide the current cumulative direct labor hours from the beginning of the fiscal year. It is acceptable however, to report data for the last pay period by itself. But if so, a check of the agency's last quarterly report should also be made. It is important to stress to those that can't provide an up to date cumulative ratio that they run the risk of not realizing that they are below ratio until they do their quarterly report and that being under ratio for a quarter of the year significantly increases the possibility of finishing the year below the required 75 percent.

2.6 - AbilityOne Project Direct Labor Ratios

2.6.1 Committee policy directs that at least 75 percent of the direct labor hours performed on the aggregate of AbilityOne work should be done by people who are blind or severely disabled. However, the ratio on individual AbilityOne projects must be no lower than 60%. The Committee expects that the nonprofits will be in compliance with this requirement by fiscal year 2007. This policy is not as inflexible as the 75% overall direct labor ratio requirement. The Committee understands that there are many different factors that can adversely affect direct labor ratios and will take at least the following into consideration when reviewing a nonprofit agency's failing to meet the requirement:

- a) Approved phase-in in effect,
- b) Projects with fewer than five blind or severely disabled workers,
- c) Projects under national emergency or wartime surge requirements,
- d) Individual projects approved by the Committee at lower ratios,

e) The effect of promoting people who are blind or severely disabled into supervision or management positions or into competitive placements.

2.6.2 It is important to stress to nonprofits with multiple projects, all of which were added at 75% or higher, that they should have an AbilityOne ratio of at least 75%.

2.6.3 In 2003 the Committee required that every nonprofit begin tracking AbilityOne projects; if not on an individual project basis, then at least on a product or service family basis. Therefore, there should be no reason why a nonprofit agency can not provide the direct labor ratio on at least a product or service family basis and in most cases on an individual project basis. The reason for the families was for those circumstances where the same individuals were working on more than one product or service.

2.6.4 The nonprofit agencies need to understand that the Committee is working towards the nonprofit agencies reporting to the Committee project level data on annual basis and that it will probably happen before 2010.

2.7 - Examples of Direct and Indirect Labor Positions

2.7.1 The following table provides some examples of jobs with a brief list of tasks performed and whether the job is a direct labor or indirect labor position. It should be noted that it is frequently not the job or tasks that makes a position direct labor, but who the work is being performed for.

Job Title	Tasks	Location	Direct Labor	Indirect Labor	Reason
Cashier	Operates cash register Reconciles money	Mess Hall on Air Force Base	X		Required in SOW
Sales Clerk	Assists Customers Sells merchandise Straightens merchandise	Nonprofit thrift shop		X	While need to sell the product, no value is added to the product being sold.
Supplier	Distributes pages to workers Picks up completed booklets Transports booklets to packaging area	Nonprofit production area		X	No value added to actual production. This is a material handling function.
Janitor	Cleans dock and warehouse Sweeps aisle of production area Cleans bathrooms and empties office trash	Nonprofit production and office areas		X	While required to keep building clean no value is added to any product or service sold by the nonprofit agency.
Janitor	Mops bathroom floors Vacuums carpeted areas in offices Empties wastebaskets Dusts	State Office Building	X		Since this work is done as part of a contract requirement it is direct labor
Mess Attendant	Serves meals Maintains Walkways	Nonprofit cafeteria		X	Internal operation not associated

	and entrances Cleans tables				with any product or service contract
Mess Attendant	Serves meals Maintains Walkways and entrances Cleans tables	Mess Hall on Marine Corps Base	X		Since this work is done as part of a contract requirement it is direct labor
Groundskeeper	Operates mowing and trimming equipment Picks up litter	Grounds Maintenance Contract on Army Base	X		Work is done as part of a contract requirement it is direct labor
Mail Clerk	Prepares letters and packages for mailing Sorts and distributes incoming mail	Mail Room contract in a Federal Building	X		Work is directly related to the performance of the mail service
Van Driver	Drives equipment and crew between contract locations	Nonprofit mobile crew		X	Duty is not required on any of the individual contracts. Even on a single contract like a base wide janitorial contract it is not direct labor
Van driver	Delivers mail from central location to remote locations	Mail Room contract with Government Agency	X		This work is a requirement of the SOW
Sorter	Sorts incoming goods for transportation to repair department Sorts trash	Nonprofit thrift shop	X		Adds value to the sale of merchandise.

	into barrels Selects quality items for resale				
Trimmer	Jogs sheets to square Trims edges to square Places tray on conveyor	Nonprofit production floor	X		Processing of an item for product completion.
Packer	Places 12 finished items in carton Places four cartons in box Places 96 boxes on pallet Wraps pallet for shipment	Nonprofit production floor	X		These are all packing tasks and are direct labor. However, moving the pallet to storage or onto a truck would be indirect labor.
Forklift Operator	Loads and unloads trucks Signs shipping tickets and bills Maintains forklift Reports operational problems to manager	Nonprofit Loading Dock		X	Material handling, administration, maintenance. All are indirect labor tasks.
Forklift Operator	Loads and unloads trucks Moves material around in warehouse	Warehouse contract with the Defense Logistics Agency	X		The contract for running the warehouse requires that these tasks be performed.

Chapter 3 - Medical Documentation and Competitive Employability Assessments

3.1 - Review Methodology

3.1.1 The Committee staff person will examine a random sampling of files for individuals working on AbilityOne and a random sampling of the files of non-AbilityOne employees. It is important that files from all work programs at the nonprofit be represented, e.g. extended employment, enclaves, mobile crews, state use contracts, etc. The percentage of files reviewed will depend on the reason for the review, but at least 10 to 20 % of the total files for both AbilityOne and non- AbilityOne employees will be reviewed. Some reviews may require a review of all of the files. When there are less than 50 employees, half should be reviewed and if less than 20, all the files should be reviewed.

3.1.2 To accomplish this, it is helpful to obtain from the agency staff a list of employees by name that shows their status as direct/indirect labor, disabled/non-disabled and AbilityOne /non- AbilityOne. This information will be helpful in the file review, direct labor hour tracking, and AbilityOne employee interviews. Depending on the agency, it may also be helpful to get an idea for how the files are maintained, and by how many different managers. Very often the reviewer will find that individual case managers or supervisors will maintain their clients' records differently, so it may be necessary to review files variously maintained or at different work sites.

3.1.3 While there are no requirements for the nonprofits to do so, questions should be asked about whether or not the nonprofit makes quality audits of their documentation. If the answer is no, then it should be suggested that the nonprofit do so. These files are working documents for the nonprofit and over time pages can get misplaced or discarded by accident and as a result files that they believed are acceptable no longer contain adequate documentation.

3.2 - AbilityOne Requirements for People Who are Blind

Definition of Blind

3.2.1 The Committee's regulations (41CFR51-1.3) define blind as:

Blind means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

3.2.2 The Committee's definition is the same definition as used by other laws, Federal and State agencies. Individuals that meet this requirement are referred to as legally blind by the World Health Organization (WHO), Social Security Administration (SSA), and State Blind Commissions and other vocational rehabilitation agencies. Therefore, an individual must be legally blind to count towards the direct labor ratio.

3.3 - Documentation Requirements

3.3.1 Section 4 of the Committee's regulations specifies the requirements that a nonprofit agency must meet to enter and maintain its qualifications in the AbilityOne Program. In section 4.3(b) on maintaining qualifications it states:

- a) Maintain a file for each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a certification of blindness by a State or local governmental entity.
- b) (Maintain in each file, for blind workers performing direct labor, an annual evaluation of their ability/non-ability to engage in normal competitive employment. These evaluations must be signed by a person qualified by training and/or experience to make such determinations.

3.4 - Normal Competitive Employment

3.4.1 The Committee has historically considered normal competitive employment as the ability of an individual to find, obtain and maintain a non-AbilityOne job, without outside supports. The JWOD Act does **not** require that blind people be not competitively employable, for their direct labor hours to be counted towards the 75 percent requirement. However, competitive employability is a critical requirement for people with severe disabilities, and it is discussed in much greater detail in the section, "**AbilityOne Requirements for People Who are Severely Disabled,**" **specifically the subsection** "competitive employment evaluations."

3.5 - Medical Documentation

3.5.1 The medical documentation for counting blind workers towards the 75 percent direct labor ratio is straight forward. It must contain documentation indicating that the individual's visual acuity and/or field of vision meets the Committee's definition and it must be signed by a person qualified to make such a determination. In cases where the individual's vision makes it impossible to read an eye chart, examiners sometimes use abbreviations such as:

- a) NLP – no light perception
- b) HM – hand motion, indicating that the individual can see the motion of the examiner's hand. This is often synonymous with FC - Finger Counting,

which indicates that the individual can count fingers at the range of approximately one foot.

c) LP – light perception, indicating that the individual can only recognize some degree of light

3.5.2 Other terms and abbreviations such as no vision (NV) and Light sensitive (LS) may also occasionally be used.

3.5.3 The above measures are consistent with at least legal blindness, provided it applies to the corrected best eye.

3.5.4 Documentation may also consist of a test indicating the individual's field of vision. This is important when an individual's central vision is reasonably good, because if the field is less than 20 percent, then that individual is legally blind.

3.5.5 Some States issue certificates of blindness. While these certificates do not state the specific vision measurements, they do certify that the individual is legally blind. And since they are issued by the state, they constitute adequate documentation.

3.5.6 Absent the above, and if the documentation does not clearly state an individual's visual acuity or field of vision, additional documentation will be necessary to clarify whether the individual is in fact legally blind.

3.5.7 For further information on blind diagnoses, consult the Dictionary of Eye Terminology by Barbara Cassin and Sheila Solomon, available at the Committee staff offices. If there is any uncertainty about an unfamiliar diagnosis on the eye Medical report, wherein the acuity of vision is not clear, the compliance reviewer should advise the agency that a determination of blindness is not derived from diagnoses per se, but rather from the actual degree of visual acuity and therefore without it, an acknowledgement of legal blindness cannot be made.

3.6 - Not Competitively Employable Assessments

3.6.1 The Committee does require that nonprofit agencies complete an annual assessment for the competitive employability of each blind employee. Individuals who are found to be competitively employable may still have their direct labor hours counted towards the 75 percent requirement. Any blind worker who desires competitive employment will receive placement services from their nonprofit employer in order to obtain such a position.

3.6.2 The simplest statement of competitive employability would be two questions; the first indicating whether or not the individual is currently capable of competitive employment and the second whether the individual is interested in a competitive job outside of the nonprofit. The questions would include a yes or no selection and a space for explanations of why the individual is not considered

competitively employable (accommodations and supports and employee desires) and employee wishes. Statements that are undated, unsigned, or provide no reasons supporting the determination are not valid non-competitive employability documentation. If a preprinted form is used, it can not include a presumptive statement indicating that the individual is not competitively employable.

3.6.3 Many nonprofit agencies have other State and community requirements that they must meet, or conduct annual employee evaluations. The Committee has long held that AbilityOne requirements can and should be made part of these assessments. There are no requirements for specific AbilityOne forms or documentation, just that the Committee's requirements be met.

3.7 - AbilityOne Requirements for People Who are Severely Disabled

Definition of Severely Disabled

3.7.1 The Committee's regulations (41 CFR 51-1.3) define severely disabled as:

- a)** *Other severely handicapped and severely handicapped individuals* (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.
- b)** Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.
- c)** A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other severely handicapped" within the meaning of the definition.

3.7.2 Therefore, to be considered eligible to count toward the direct labor ratio, there are three components that must be met: first, an individual must be disabled, second, it must affect one of his/her functional capabilities, and third the individual is not capable of engaging in competitive employment.

3.7.3 The Committee's definition of severe disability is only one of many definitions used by the Federal Government. In July 2003, the Interagency Committee on Disability Research compiled a list of Federal statutory definitions of disability. There were a total of 67 laws listed that dealt with various issues such as civil rights, education, employment and housing. The Committee's definition is unique, but shares common themes with a number of other Federal definitions.

For those interested, the following link provides a complete list of the definitions:
<http://www.icdr.us/documents/definitions.htm#civil>

3.8 - Documentation Requirements

3.8.1 Section 4 of the Committee's regulations specifies the requirements that a nonprofit agency must meet to enter and maintain its qualifications in the AbilityOne Program. Section 4.3(c) on maintaining qualifications states:

a) Each nonprofit agency employing persons with severe disabilities participating in the AbilityOne Program shall, in addition to the requirements of paragraphs (a) and (b) of this section, maintain in each individual with a severe disability's file:

I) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

II) Reports which state whether that individual is capable of engaging in normal competitive employment. These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually. The file on individuals who have been in the nonprofit agency for less than two years shall contain the preadmission report and, where appropriate, the next annual reevaluation. The file on individuals who have been in the nonprofit agency for two or more years shall contain, as a minimum, the reports of the two most recent annual reevaluations.

3.8.2 As a result, to be eligible to count toward the direct labor ratio for people with severe disabilities, an individual must have documentation in his or her file that not only describes the nature and extent of that individual's severe disabilities, but explains the extent to which the disabilities affect his or her life functions. In addition, the file must contain an evaluation of the individual's ability to be employed competitively.

3.8.3 It must also be stressed that since the JWOD Act specifies that the direct labor ratio is for all direct labor done at the nonprofit, the documentation requirement applies to everyone doing direct labor at the nonprofit and not just those working on AbilityOne projects.

3.9 - Normal Competitive Employment

3.9.1 The JWOD Act and Committee's regulations say that the individual must not be capable of normal competitive employment, but does not define this term. The

Committee has historically considered normal competitive employment as the ability of an individual to find, obtain and maintain a non- AbilityOne job, without supports from a nonprofit agency or government service provider. Commensurate wages are not a part of normal employment. When we say obtain a job on his or her own it does not mean that the nonprofit can't help. The nonprofit can do all of the things a job recruiter in the commercial world can do: find jobs, help in writing résumés and assist with interview skills. However, the nonprofit can not develop a job and select the individual that will do the job. The employer must select the individual based on his or her application and interview.

3.9.2 The Committee considers an individual to be capable of normal competitive employment if the individual can do all of the following with or without reasonable accommodations:

- a) Is capable of working a full work week (40 hours),
- b) Can complete an application and participate in an interview independently,
- c) Receives the same pay and benefits as any other worker performing comparable work,
- d) Only requires accommodations considered reasonable under The American with Disabilities Act (ADA),
- e) Can maintain a job for an extended period of time (months, if not years),
- f) Can maintain a job without intervention or supports from outside sources.

3.9.3 When the JWOD Act was passed in 1971, this concept may have been well understood, but today, some states consider competitive employment to encompass any job that takes place in the community in an integrated setting, even if there are job coaches or commensurate wages are paid. The Committee does not view such jobs as being competitive, because they include accommodations that most employers will not provide or involve a third party in making the job placement successful.

3.10 - Medical Documentation

3.10.1 An individual's file must contain a clear written statement as to what condition or combination of conditions has resulted in the determination that he or she is severely disabled. The diagnosis must be documented by a licensed medical or mental health professional capable of making that evaluation. For example:

Diagnosis	Licensed Professional	Report in File
Mental Retardation	Psychologist	Psychological Evaluation
	School Counselor	Intellectual Report
Mental Illness	Psychiatrist or Clinical Psychologist	Psychiatric Evaluation
	Licensed MH Counselor Psychiatric Mental Health Nurse Practitioner (PMHNP)	Diagnostic Summary
Physical Impairment	Medical Physician (MD) Nurse Practitioner (NP) Physician Assistant (PA)	Medical Report

3.10.2 For some severe disabilities such as mental retardation and significant mental illness, severity, or extent of the disability, is an inherent part of that diagnosis. However, for conditions where severity may exist on a continuum, from mild to severe, the documentation must provide some determination as to where the individual is on that continuum, in order to ascertain the measure of severity. Prescribed medications and work restrictions are two common ways where a rough understanding of indicating the extent of a condition can be gained. The particular prescription and dosages can be a valuable clue and specific measurable lifting or movement restriction may also provide information on the extent of the condition. On occasion, a diagnosis may note that the condition is severe, and this will be sufficient, given that particular disorder. For example: “arthritis is a disease that occurs on a wide continuum. A diagnosis stating that the individual has severe arthritis would meet the documentation requirement. However, it would also be expected that the individual would exhibit workplace limitations consistent with that diagnosis. For some, an actual degree of impairment may still not be known. This is where the actual performance limitations on the job, will need to be ascertained.

3.10.3 The AbilityOne definition states that the individual must not only have severe disabilities, but they must affect his or her life functions. The information on how the life functions are being affected will be contained in the medical documentation for some disabilities, but it is not always included in the medical documentation. This information can come from the nonprofit and other sources such as the state Vocational Rehabilitation agency (VR). Information on the life functions being affected and the supports and accommodations being provided increase the understanding of how severe the disability is.

3.10.4 Depending on the disability, the age of the documentation may invalidate it, as some disabling conditions can improve over time. Likewise, rehabilitative gains may result in an individual becoming competitively employable. This is why

the Committee's regulations require that the competitive employability evaluations be done initially and on a minimum of an annual basis thereafter.

3.10.5 For those who do not come from a referral agency like VR, such as self-referred individuals, it is sometimes difficult to obtain adequate medical documentation. Requests to those individuals to provide the documentation themselves are frequently ineffective, as they often don't have it, or cannot explain to their doctor what the nonprofit agency requires. The nonprofit agency should identify the individual's source of primary medical care and send the doctor or counselor a request containing a signed release from that individual. The request should be as specific as possible, particularly given the necessity for knowing the extent of disabling aspects to the medical diagnoses at hand. An explanation as to the purpose of the information can be invaluable; many physicians routinely downplay the disabling aspects of medical conditions, to avoid negatively impacting the employment potential of their patients. Thus, it is important for the medical professional to understand that the AbilityOne Program *requires* a person to have a bona fide severe disability in order to qualify for positions reserved for those individuals, and that the extent of the disability must also be documented.

3.10.6 The Committee's regulations also allows for certification of a disability by a state or local government entity. This could be a state VR office, commission for the Blind, public school system or mental health agency. The certificate must indicate who the issuing entity is, be signed and at least list the disabilities that the individual has. A VR letter that just states that the individual is eligible for services is not adequate nor is a letter that simply states the individual is severely disabled. As this certification is taking the place of the medical documentation it must provide the nonprofit with enough information for the nonprofit to begin the assessment process.

3.11 - Veterans Affairs (VA) Disability Ratings (all conditions)

3.11.1 VA ratings of disability are specified in percentages, with 100 percent implying too many people that an individual is totally disabled. However, these percentages expressed as "disability ratings" are actually VA adjudicated levels of a "compensable medical condition." Such conditions may or may not have a functional disability component, regardless of percentage.

3.11.2 A rating of "100% disabled" would not automatically result in a person being *severely disabled* for AbilityOne purposes. In most cases, such individuals would likely be considered severely disabled; however, they are often very far from the total incapacitation implied by the 100% rating. A frequent misperception that follows from this occurs, for example, when a worker with a 40% VA disability rating is seen to have only 60% of the functional ability of a non-disabled worker. With misinterpretations of this kind, determinations of *severely disabled* and *not competitively employable* can be made in error. However, the worker's

demonstrated productivity and minimal need for accommodation would indicate the correct assessment.

3.11.3 VA rating certificates that serve to document a worker's claim to a severe disability do not always provide a diagnosis. Sometimes, only an anatomical location is mentioned, such as "Left knee 20%." Neither the actual disability nor the extent of disablement is stated so the rating percentage often becomes a substitute for the actual functional limitation. However, as stated above, ratings percentages are not a reliable measure of functional disability. Although clinical descriptions and measures of impairment typically do exist in the individual's VA medical records, through their adjudication process, these quantifications become converted into the ratings noted. Regardless of the rating percentage assigned, the actual degrees of impairment, extent of functional limitation and amount of workplace accommodations needed, are critical measurements in determining the severity of any disability and the competitive employability of any worker.

3.11.4 In summary, VA percentages by themselves do not constitute adequate documentation of a severe disability for the AbilityOne Program.

3.12 - Severely Disabled and Not Competitively Employable Assessments

Minimum Acceptable Standards

3.12.1 Every year, each nonprofit agency must certify to the Committee that there is a file containing adequate evidence of a severe disability and an annual review of competitive employability for each direct labor employee who is blind or has other severe disabilities, including both AbilityOne and non- AbilityOne workers, verifying that the individual meets the Committee's criteria per 41 CFR 51-4.3. These assessments must be done correctly, as they are the basis of the annual certification and are certifying each individual as severely disabled and not competitively employable. It is also important to emphasize that they must be done on all workers categorized as severely disabled – not just those working on an AbilityOne contract.

3.12.2 Many nonprofit agencies have other state and community requirements that they must meet, such as annual Individual Service Plans. The Committee has long held that the Committee's requirements can and should be made part of these assessments. If done correctly, there is no requirement for individual forms or documentation just to meet the Committee's requirements. The document need only contain the information on functional limitations and competitive employability mentioned below.

3.12.3 If an individual service plan or similar document is not done then the minimum acceptable documentation is a signed and dated written narrative that synthesizes the individual's disability or disabilities, indicates which functional limitations are being affected and documents why the individual is not competitively

employable by indicating the accommodations and supports being provided to the individual. This evaluation does not need to be extensive; in most cases, it need not exceed one page. This assessment does not replace the need for signed medical documentation to be present in the file.

3.12.4 If a form is to be developed specifically to meet the AbilityOne requirements, it should contain the following:

- a) Synopsis of severe disabilities – This section simply lists the individual’s impairment(s) that the nonprofit believes are a severe disability. It does not replace the signed medical documentation. Rather it acts as a place to list multiple impairments; which may come from different documents, from various sources. This will assist both the nonprofit and the reviewers in understanding what the individual’s disabilities are.
- b) Synopsis of functional impairments – This section serves as an area to explain how the individual’s severe disabilities affect their life functions (self-care, self-direction, work skills, work tolerance, communication or mobility). This information may come from the medical documentation or other sources.
- c) Competitive employability – This is a simple yes or no to the question: “Is the individual currently capable of competitive employment?”
- d) Rationale for noncompetitive employability – This is the nonprofit’s reasoning for why it considers the individual to be **not** competitively employable at this time. This section must provide details of the disability-related accommodations and supports that are being employed. Things that should be considered include: job accommodations, supports, and employment history. It may also contain information on the goals that have been set for the individual for the next year. Nonprofits may also utilize a check sheet to insure that many of the common issues are considered when assessing an individual.
- e) Evaluator information – The evaluation must be dated, and the name, title, and signature of the evaluator must also be present to be considered valid.

3.12.5 If a preprinted form is used, it cannot include a presumptive statement indicating that the individual is not competitively employable. The simplest statement of competitive employability is a question as to whether or not the individual is currently capable of competitive employment with a yes or no selection and a space for the reasons (accommodations and supports) why the individual is not considered competitively employable. Statements that are undated, unsigned, or provide no reasons supporting the determination are not valid non-competitive employability determinations.

3.13 - Competitive Employment Evaluation

3.13.1 The concept of normal competitive employment or competitive employability in the AbilityOne Program is as fundamental as it is unique. The documented evidence of a severe disability, the significant functional limitations resulting from it, and the requirement for substantive workplace accommodations, in concert, forms the basis by which a person's *non-competitive employability is established and justified*.

3.13.2 However, a subparagraph of the Committee's regulations [41 CFR 51-4.3(c)(2)] goes a bit further:

- a)** These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually.

3.13.3 The key point is that the nonprofit agency must have an ongoing evaluation program. Furthermore, the initial and annual competitive employment determination need to be completed by a person with education, training, or work experience that is commensurate with making such a determination.

3.13.4 Although the regulation is not more specific as to what would constitute sufficient training and experience, it is to the advantage of nonprofits that they have flexibility here. In this context however, education would broadly refer to college work centered in the behavioral sciences. Experience generally involves on-the-job responsibilities focused on evaluating individuals with severe disabilities. This would include duties commensurate with pre-admission and other evaluative decisions regarding placements and the provision of substantial accommodations for workers who have the full range of those disabilities served by their agency. The tasking of site or project supervisors with determining competitiveness is not what is intended here, as they typically do not have either the education or specific experience noted above. Direct supervisors usually do have a good understanding of how their disabled workers are performing on the job. However, these supervisors seldom have the background knowledge of severe disabilities, their symptoms and disabling manifestations. Nonetheless, the input of supervisors is indispensable to the evaluation process, particularly where it pertains to the implementation of accommodations and the individual work performance. However, the competitive employment evaluation should usually be completed by another individual: rehabilitation director, rehab counselor, or other managerial staff designated to make non-competitive determinations. Even if the supervisor is seen to have the background and knowledge of severe disabilities, his or her position has an inherent conflict of interest resulting from a desire to retain good workers, who might not actually qualify under AbilityOne rules.

3.13.5 The Committee's definition does allow the evaluation process to be done by an entity other than the nonprofit. However, when this is done, the individual doing the evaluation must meet the evaluator criteria noted above, be familiar with the AbilityOne Program's definitions, and have all pertinent job performance information at their disposal. This would include having the specifics of the accommodations and supports that the nonprofit agency is providing to the worker. For example, a psychologist conducting a clinical exam may believe that an individual is not capable of competitive employment. But for this evaluation to be used for the purpose of meeting AbilityOne requirements, it must be based on more than just that exam. It must also take into account the individual's actual work performance at the nonprofit agency, as well as the accommodations and supports being provided. If the worker has high performance and there are no accommodations, the psychologist's opinion will not carry. From this, a means for communicating all relevant job information to an outside evaluator must be created for such evaluations to be in any way effective. It goes without saying that similar avenues of communication are essential *inside* nonprofit agencies.

3.13.6 In assessing a person's capacity to hold a competitive job, a *best judgment* ultimately has to be made. Unfortunately, the medical issues and mental limitations presented do not come with numeric values to simply add up. In making the competitive employability determination, the reviewer should consider whether a reasonable observer, albeit one knowledgeable of AbilityOne Program's criteria, see this person as being severely disabled, to the point that he or she would be unable to find and maintain a normal competitive job without supports.

3.13.7 Instances where the judgment has not met the reasonable-person test tend to occur when the disabling condition at issue hasn't been evaluated in the manner described in this guidance. Justifications that rely on the following factors are likely to be insufficient and unacceptable:

- a. State VR referral document without a clear diagnosis
- b. Social disadvantages used as disability intensifiers.
- c. A simple listing of multiple medical conditions.

3.13.8 In addition to functional limitations directly related to an individual's severe disability, some relevant indirect factors may affect competitive employability such as absenteeism, age, educational level, vocational skills and work history. For example, a consistent failure to show up for work could be either a conduct issue, or a symptom of a behavioral/emotional problem. It is essential that the difference be known, as both causes will negatively affect employability. The former is disability-related, while the latter is, and can be diagnosed and documented. Absenteeism that is directly related to documented medical and psychological conditions should always be considered when evaluating an individual's competitiveness.

3.13.9 It would be unrealistic to assess someone's competitive employability status on the basis that they could do any job. The assessment must be based on the individual's ability to function within his/her current vocational scope and inherent capabilities. For instance, it could be determined that someone with a back condition is not competitively employable because he or she is 60 years old, only has a sixth grade education and can no longer work as a general construction laborer, which is the extent of the individual's vocational scope. Conversely, someone with higher intellectual skills and experience in a sedentary job, with the same back condition, may not be severely disabled because they are able to continue engaging in competitive employment. The difference is that the latter can continue to do the essential functions of a job within the individual's general past capabilities (with or without reasonable accommodations), while the former cannot.

3.13.10 Productivity may or may not support an individual being considered not competitively employable. If productivity is below 60%, it would clearly support an individual being considered not competitively employable, given that the lower productivity is disability-related and not just a function of poor motivation. Productivity levels above 75-80% are within the general range of competitively employed people. On the other hand, just because a worker's productivity is at or above 100%, does not necessarily mean that he or she is competitively employable. The work may have been partitioned to allow the individual to work at a high functioning rate, or the individual may have other disability-related problems, for which significant accommodations are still necessary.

3.13.11 Occasionally, when a nonprofit agency assumes performance of a commercial contract, it finds that some of the existing workers have disabilities and thus classifies them as severely disabled and not competitively employable. However, when someone with a disability of any degree is working in a competitive employment setting, and receiving no more than a reasonable accommodation, as defined by ADA standards, that person cannot be considered severely disabled in accordance with the AbilityOne definition. However, in the case where an employee was being supported or accommodated by the commercial contractor to such an extent that he or she really was not competitively employed, as a result of functional limitations from a disability, the nonprofit agency may consider this individual to be severely disabled and not competitively employable. However, the nonprofit agency needs to carefully document the significant accommodations that were previously provided (and required still).

3.13.12 People referred to nonprofit agencies by State Vocational Rehabilitation Services should not be assumed automatically to meet the requirements of the AbilityOne Program. VR's definitions and requirements differ from those of the AbilityOne Program and all of the people eligible for VR services will not meet the Committee's definition of severely disabled. As a result, while the majority of individuals who are referred by VR may qualify for the AbilityOne Program, some simply will not meet the definition. A referral from VR must therefore go through the same assessment process as any other referral. Similarly, a VR determination

that an individual is not competitively employable should not automatically be taken as meeting the Committee's definition. Some nonprofit agencies utilize a VR counselor to do the initial assessment. While a VR counselor clearly meets the Committee's requirement for the evaluator, the nonprofit agency must be very careful to insure that the counselor is utilizing the AbilityOne Program's requirements in making the assessment.

3.13.13 In some ways, the parameters of assessment in a competitive employment evaluation are counterintuitive to common rehabilitative practice. To maximize rehab effectiveness, it is routine that a severely disabled worker's positives be emphasized, for his success will depend on the skills he has. "What are his capabilities?" might be the first question asked. However, in determining a severely disabled worker's non-competitive employability, it is the impairments resulting from his disability that must be assessed. In other words, "What functional limitations does he have that are due to his disability?" Such impairments and their extent must be fully known, if appropriate accommodations are to be provided.

3.13.14 Essentially, one must focus on the ultimate purpose of these two seemingly contradictory evaluations of the same individual. One looks at what he **can** do, while the other assesses what he **can't**. However, while the competitive employability assessment focuses on what the individual can't do it must be emphasized that it is not necessarily a negative assessment and that when done correctly the assessment can be a positive tool to help the individual understand those areas that need improvement in order to work competitively in the community.

3.13.15 Taking into account the two previous paragraphs, nonprofit agencies should, to every possible extent, seek input from workers on their disabilities. In addition, they should provide workers with information about the AbilityOne program. Specifically, and in terms of disability related issues, the worker should be given an opportunity to give their view of the accommodations and job supports being provided or contemplated. Given worker's capacity for understanding, agencies also need to explain the purposes of AbilityOne, and how it operates with regard to those individuals who are given jobs affected by it. The first and most practical forum for accomplishing this is during the initial evaluation for competitive employability. As for the annual evaluation, many agencies are required by their states to conduct an "Individual Service Plan" (ISP), on an annual basis. When this is the case, the AbilityOne annual evaluation for competitive employment should be folded into this process, due to the significant overlap of related issues. The employee's presence in this forum is highly appropriate. And for agencies that do not need to have ISPs, they can simply do the AbilityOne annual competitive employment evaluation on a schedule of their own, and engage the employee in that forum.

3.13.16 Finally, nonprofits on occasion use a determination of non-competitive employability to justify classifying an individual as severely disabled, e.g. “the disability **must** be severe, or he would have been deemed competitively employable.” This logic should be reversed. The disability must be established first, then its severity by ascertaining the extent of impairment, followed by a determination of how this would or would not cause the person to be capable of normal competitive employment.

3.13.17 Given the complexity of individual cases, where the disabilities, medical history and job performance comprise the factors to be considered, the nonprofit agency remains the appropriate entity to determine competitiveness. Still, the Committee’s regulations call for an ongoing evaluation program. It is not sufficient for nonprofits simply to assure that the annual evaluation statements are checked off, signed, and put in the files. There needs to be evidence that a process exists, one containing solid deductive logic. Evidence of training on the unique aspects of AbilityOne requirements must be provided to all individuals who will be making such assessments.

3.14 - Initial Assessments

3.14.1 An initial evaluation must be conducted on all employees who are, or will be engaging in direct labor. The initial evaluation determines whether an individual meets the Committee’s definition of severely disabled and not competitively employable. Although termed a preadmission evaluation, the Committee allows the nonprofit agency 30 days after the individual has begun work to complete the evaluation. This allows the nonprofit agency to make an appropriate job assignment, observe on-the-job performance, and assess disability-related accommodation needs. Only with this background will the nonprofit agency be able to make and document an informed determination of a worker’s non-competitive employability. It is even possible in a few cases that more than 30 days will be required to do a complete assessment. However, in these cases it is recommended that an assessment be made at the 30 day point and that another assessment be made when all the information is available.

3.14.2 When making an initial determination that an individual can be counted as ***severely disabled and not competitively employable***, the nonprofits need to answer three questions, all in the affirmative:

- a) Does the individual have a physical or mental impairment, or a residual limiting condition that is the result of an injury, disease, or birth defect?
 - l) If yes, confirm the presence of a diagnosis with supporting medical documentation. This information should include measurability: the nature, extent. The signature of a licensed

healthcare professional or certification of the disability by a governmental agency must also be present.

II) A nonprofit may have a questionnaire that asks all new direct labor employees questions such as do you feel you have a disability?, Are you under the care of a medical or mental health provider? Are you taking any medications? If yes, please list. If an employee indicates that he or she is not disabled, but also indicates that he or she takes anti-psychotic medication, an assumption can be made that further investigation is warranted.

III) Example: A job applicant indicates that he or she has a bad back and as proof provides workman's compensation paperwork. By itself the paperwork does not automatically make the individual severely disabled. The documentation must provide information on the nature and extent of the back condition and whether or not this is a permanent injury.

a) *Does the individual have any functional* limitations in self-care, self-direction, work skills, work tolerance, communication or mobility, as a direct result of the aforementioned impairment(s)?

I) If no, the nonprofit has just determined that the individual is not severely disabled and can not count towards the 75% direct labor ratio.

II) If yes, review the medical and personnel records relevant to the above factors and work history. If the individual has been working during an evaluative period, interview the supervisor(s) to gather information on functioning, accommodations and supports that are needed, due to the individual's impairments. Interview the individual, with regard to any functional limitations he or she may have relating to a medical or psychological condition. It may also be pertinent to ask about daily living activities and if they impaired?

III) Example: An individual has a bulging disc in the lumbar spine; this is causing pain and some numbness and tingling down the leg (radiculopathy) and the individual is limited in work tolerance and mobility. This does not mean that the individual is severely disabled, but that he or she is functionally limited by a medical condition. The nonprofit must determine the severity of the individual's functional limitations before proceeding to the next step.

a) Are the functional limitations significant enough to cause the individual to be currently unable to engage in normal competitive employment, over an extended period of time?

I) To justify determinations of non-competitive employability, one should look back to the above questions. Workers **must** have disabilities that produce limitations that are significant enough to cause them to be not capable of finding and maintaining work on their own. The determination must describe this causal relationship in an evidenced based manner.

II) Example: The most recent medical records are three months old and indicate that the individual complains of moderate to severe back pain from a L5-S1 disc bulge, but that he had full range of motion when examined. The individual was referred to physical therapy, was prescribed pain pills and given restrictions not to stand, walk or sit for more than two consecutive hours, or lift more than 30 pounds. From the application and interview, the individual has no problem driving and has worked at his present job for two years, despite the accident that occurred three years ago. In addition, it is learned that the individual likes to hike and has continued this activity. As a result of all of these factors, it can be determined that the individual does not qualify under AbilityOne as severely disabled and not competitively employable.

3.15 - Annual Assessments

3.15.1 Assessments must be done on a yearly basis at a minimum, preferably in the context of reviewing an individual's "Individual Service Plan," or a worker's annual performance evaluation. It should not be assumed that the individual continues to be severely disabled and not competitively employable. The same basic process that was used for the initial evaluation needs to be repeated. In addition to all of the basic factors that have been thought through, two more need to be considered:

- a) Has the disabling condition moderated, so that the functional limitations no longer predominate?
- b) Have the worker's skills improved to the point where the disability is no longer relevant as a result?

3.15.2 The Committee's definition of severe disabilities [41 CFR 51-1.3(2)] states: *A person with a severe mental or physical impairment, who is able to engage in normal competitive employment, because the impairment has been overcome or the condition has been substantially corrected is not "severely disabled" within the meaning of the definition.*

3.15.3 Many disabilities can improve with time or medical intervention, and to review the current state of the individual's severe disability is a critical first step in the annual assessment. It is also possible that with the training and job skills learned that the individual has received during the past year, he or she may now be capable of competitive employment. It is therefore important that the annual

assessment indicates what has and has not changed from the previous assessment.

3.15.4 Individuals can move back and forth between being competitively employable and not competitively employable. There is nothing in the Committee's regulations that binds individuals to being competitively employable once they have been classified as such. For instance, an individual may move into a competitive employment position, experience an exacerbation of his or her medical or mental health symptoms that begin limiting them functionally, to the point, they are no longer able to maintain competitive employment. The key is to indicate what has changed through an evidenced based assessment process.

3.15.5 Finally, the regulations indicate that the competitive employability assessment needs to be performed at least once a year. In the past, some nonprofit agencies have done them semiannually or even quarterly. Nonprofit agencies should consider their other requirements and processes, and integrate the Committee's competitive employment requirement into them where possible. Nonprofits may also want to consider reevaluating certain workers on a more frequent basis. However, if specifying that a certain evaluation is for less than a year, the nonprofit must have a process in place to insure that the evaluation takes place on time.

3.16 - Examples of eligibility determinations

3.16.1 Nonprofits within the AbilityOne Program differ greatly, and each nonprofit must develop an evaluation process in order to maintain its qualifying status. What works well for one nonprofit may not work for another. The following examples demonstrate some of the variations and wide range of issues that must be considered when conducting initial or annual assessments. The first example demonstrates the general process of determining what accommodations might need to be made for an individual and could really be applied to almost any disability. The other examples are ones that the Committee has actually observed while reviewing nonprofits.

a) Example 1: Fibromyalgia Syndrome (FMS):

I) FMS is a condition with an elusive cause that, like other debilitating conditions, manifests on a broad spectrum with highly individualized symptoms. In its mildest form, it is not severely disabling, and does not compromise a person's employment. But, when symptoms are profound, the limitations caused can be quite significant, and the required accommodation needs might be beyond what would be provided in normal work settings. This distinction is critical for the AbilityOne Program, and thus FMS can be a good example for the considerations that have to be made for many severe disabilities. As stated before, an understanding of the extent of the disability (any disability) is fundamental

to being able to assess the functional limitations that are manifest by the disorder. Effective accommodations cannot be made unless the degree of impairment is known, and with a disorder as variable as FMS, it illustrates just how important this is.

II) Generally, FMS is a complex, chronic condition which causes widespread pain and fatigue in tendons, ligaments, muscles, and other soft tissue, as well as a variety of other symptoms. Pain can vary according to the time of day, weather, sleep patterns, and stress level. Individuals with FMS may also have a sleep disorder, irritable bladder, irritable bowel syndrome, chronic headaches, skin and temperature sensitivity, cognitive impairment, depression and anxiety.

III) How would a worker with FMS be accommodated? First, individuals with FMS may develop some of the limitations discussed below, in lesser or greater degree, although seldom develop all of them. Nonetheless, the degree of limitation will vary widely, and this will directly effect accommodation requirements. The following is only a sample of some of the possibilities, as numerous other accommodation solutions may exist. Some listed here are minor and might well be provided in normal employment settings, while others are not. Many depend on the extent of the modifications entailed. Also keep in mind that this is less about FMS than it is about making accommodations for the functional limitations of a disability, whatever it might be. Distinctions and quantifications are crucial to this process.

b) Essential questions to consider first:

I) What limitations is the employee with this disorder experiencing?

II) Are these limitations related to the disorder, or to some other disorder?

III) How and to what extent do these limitations affect or interfere with the employee's job performance?

IV) What specific job tasks are problematic as a result of these limitations?

V) What accommodations are available to reduce or eliminate these problems?

VI) Has the full range of resources been used to determine possible accommodations?

VII) Has the employee been consulted regarding possible accommodations?

VIII) Once in place, has the effectiveness of these accommodations been evaluated?

IX) Are additional accommodations needed?

X) Is training needed for supervisors and other employees, with regard to this specific disability and implemented accommodations?

- c) Accommodation Ideas regarding FMS:
 - I) Symptom: Concentration Issues:
 - I) Provide written job instructions whenever possible or feasible
 - II) Prioritize job assignments and provide more structure
 - III) Allow for flexible work hours and a self-pace workload
 - IV) Allow periodic rest periods to reorient
 - V) Provide memory aids, such as schedulers or organizers
 - VI) Minimize or remove distractions
 - VII) Identify and reduce job stressors

- d) Symptom: Depression and Anxiety:
 - I) Identify and reduce anxiety producers in the work environment
 - II) Provide concise to-do lists and explicit written instructions
 - III) Remind employee of important deadlines and performance requirements
 - IV) Allow time off for counseling
 - V) Provide clear expectations of responsibilities and consequences
 - VI) Provide sensitivity training to co-workers
 - VII) Allow additional breaks for stress management techniques
 - VIII) Allow telephone calls during work hours to doctors and others for support
 - IX) Identify antecedents and implement strategies for defusing untoward situations
 - X) Provide information on counseling and employee assistance programs

- e) Symptom: Fatigue/Weakness:
 - I) Reduce or eliminate the need for physical exertion in some measurable amount
 - II) Provide special light-weight equipment
 - III) Schedule regular periodic rest breaks away from the workstation
 - IV) Allow a flexible work schedule and use of leave time
 - V) Implement ergonomic workstation design

- f) Symptom: Fine Motor Impairment:
 - I) Implement tailored ergonomic workstation design
 - II) Provide alternative access to worksite equipment
 - III) Provide arm supports
 - IV) Provide grip aids and other related assists

- g) Symptom: Gross Motor Impairment:
 - I) Modify the work-site or its conditions to make it accessible
 - II) Provide parking close to the work-site
 - III) Provide transportation to the work site
 - IV) Provide an accessible entrance
 - V) Install automatic door openers

- VI)** Provide an accessible restroom and break room
 - VII)** Provide an accessible route of travel to other work areas
 - VIII)** Revamp the workstation for maximum accessible
 - IX)** Modify station height if wheelchair or scooter is used
 - X)** Insure that essential materials and equipment are within reach
 - XI)** Move workstation close to other work areas, equipment, and break rooms
- h) Symptom: Migraine Headaches:**
- I)** Provide tailored task lighting
 - II)** Eliminate fluorescent lighting
 - III)** Provide alternate work area to reduce visual and auditory distractions
 - IV)** Implement a "fragrance-free" workplace policy
 - V)** Provide air purification devices
 - VI)** Eliminate pulsing lights or sounds
 - VII)** Allow flexible work hours
 - VIII)** Allow periodic rest breaks
 - IX)** Reduce noise with sound absorbent baffles/partitions, environmental sound machines, and headsets
- i) Symptom: Skin Sensitivity:**
- I)** Avoid irritating agents and chemicals
 - II)** Provide protective clothing
- j) Symptom: Sleep Disorder:**
- I)** Allow flexible work hours
 - II)** Allow frequent breaks
- k) Symptom: Temperature Sensitivity:**
- III)** Modify work-site temperature: fan/air-conditioner or heater
 - IV)** Redirect vents and maintain ventilation system
 - V)** Allow flexible scheduling during extremely hot or cold weather
 - VI)** Modify dress code
 - VII)** Provide a work area with separate temperature control
- l) Symptom: Photosensitivity:**
- I)** Minimize outdoor activities between the peak hours of 10:00 am and 4:00 pm
 - II)** Avoid reflective surfaces such as sand, snow, and concrete
 - III)** Provide clothing to block UV rays
 - IV)** Provide "waterproof" sun-protective agents such as sun blocks or sunscreens
 - V)** Install low wattage overhead lights
 - VI)** Provide task lighting
 - VII)** Replace fluorescent lighting with full spectrum or natural lighting

- VIII) Eliminate blinking and flickering lights
- IX) Install adjustable window blinds and light filters

3.16.2 NOTE: When evaluating a worker's capability for normal competitive employment, it is essentially the extent of the accommodations that they require that will cause them to be not competitive. The quantification of these accommodations will go a long way in establishing just such an extent, i.e. that they are beyond that which is considered "reasonable accommodation." As an example of developing measurability, consider the first section of FMS above where it mentions symptoms pertaining to concentration:

- a) "Allow for flexible work hours and a self-pace workload." What actual hours are typically worked under this accommodation and in what manner are they flexible? Under a self-paced regimen, what costs are there to performance?
- b) "Allow periodic rest periods to reorient." How many is frequent, and how long are these breaks?
- c) "Minimize or remove distractions and or job stressors." What are they and how big of an undertaking was it to make such changes?

3.16.3 All of these examples of quantifying the accommodations serve the purpose of illustrating exactly how these accommodations are beyond that which would routinely be found in normal competitive employment. That they are required, underscores the judgment that the disability-related impairments that are being accommodated, are severe. Such documentation must be a fundamental part of the competitive employability evaluation program.

3.16.4 Lastly, when considering and quantifying accommodations, one typically thinks of procedures or things that are *actively* implemented: Providing specialized equipment, removing or minimizing problem items or areas, re-prioritizing workload and scheduling regular rest breaks etc. However, it is entirely within an agency's discretion, to make *passive* accommodations for a worker. In most cases it is to tolerate certain issues that are not usually tolerated in normal competitive employment: repeated emotional outbursts associated with a mental health condition, chronic difficult behaviors or expressed ideation, or marked absenteeism are but a few. Many nonprofit agencies choose to or find a way to "live with" such issues in the workplace. In doing so, they are essentially providing support for an environment that may be indispensable to a worker's success, and thus constitute an accommodation. Remember that passive accommodations are just as measurable as active ones. It goes without saying that absenteeism can be easily measured, but untoward behaviors can as well, particularly if frequency, duration and intensity are used to quantify such incidents.

a) Example 2: Learning Disability

I) A nonprofit agency employed an individual for several years whose disability was recorded as dyslexia at the time of hiring. During a proper annual evaluation, it was discovered that the employee was actually diagnosed in 1984 with Developmental Disorder, NOS (with significant discrepancy between below-average verbal capacities and average visual-spatial problem solving ability; as well as severe deficiencies in reading, written expression, and mathematics). He also had a historical diagnosis of Alcohol Dependency, in sustained full remission. Further review found that since 1984 he had spent three years on active duty in the Navy followed by extensive service in the Air National Guard and Reserves, and that he had been deployed overseas the year prior to this review.

II) Discussions with his lead supervisor revealed that he had no significant impairments in occupational functioning, and that he is an excellent worker who requires minimal supervision and instruction. In the supervisor's opinion, the employee did not demonstrate any behaviors, characteristics, or actions that would indicate he is severely disabled; nor did the supervisor provide any extraordinary accommodations.

III) Based on the supervisor's comments and the fact that he had served on active duty the previous year, the nonprofit concluded that he was competitively employable. Therefore, he no longer met the definition of severely disabled and not competitively employable.

b) Example 3: Amputee

I) Here are two cases of individuals with very similar amputations, but very different employability determinations.

II) In the first case, the individual was a 19-year-old who recently lost her right leg above the knee in a car accident. She had no prosthetic, and moved around using a wheelchair. Loss of a limb is a severe disability, but by itself that does not mean that individual is not competitively employable.

III) During the hiring process, the nonprofit agency found the woman to have extremely low self-esteem and some psychological issues, as result of the amputation. In addition, she had no previous work experience and did not present well in the job interview. Based on the interview and the psychological issues, the agency considered her not competitively employable and placed her as a mail room clerk on a small AbilityOne project.

IV) This was a reasonable initial assessment. However, this case also shows the need for annual reassessments. At the time of her first

annual assessment, the nonprofit agency was so pleased with her performance that they no longer considered her to be not competitively employable, and promoted her to become the supervisor of the project. Accordingly, this is a good example of the individual overcoming her impairment.

V) In the second case, a nonprofit agency received a referral from a State VR agency for an individual whose leg had been amputated above the knee a number of years ago. The VR referral also stated that the individual was not competitively employable because he was a convicted felon and no one else would hire him. The individual had previously worked at the nonprofit agency until he was jailed for violating probation, and during that time, did not require any special accommodations or supports.

VI) While the VR counselor may consider the individual to be not competitively employable, this individual does not meet the Committee's definition of severely disabled and not competitively employable. While there can be considerations other than the disability involved with making the determination that the individual is not competitively employable, the core reasoning for the decision must be based on the individual's disability. In this case, the individual's disability is not a factor, as the nonprofit agency did not have to provide any supports to sustain his employment. The sole reason for considering the individual not competitively employable is that he is a convicted felon, just getting out of jail.

c) Example 4: Highly Productive Worker

I) As noted earlier, an individual that is highly productive on a job is not necessarily competitively employable. Here are two examples of cases where the nonprofit agency found individuals whose productivity were more than 100 percent to be unable to engage in normal competitive employment.

II) In the first case the individual's disability is mental retardation, and his job involves cutting fabric. From a performance standpoint, he can run the cutting table faster than anyone at the nonprofit agency, whether severely disabled or not. However, he has a history of behavioral outbursts, and is unpredictable as to whether or not he will show up for work. These behaviors are not indicative of someone who can engage in normal competitive employment, and are in part secondary to his intellectual, social, emotional, and cognitive deficits sustained from his mental retardation.

III) The second individual is also mentally retarded, and works as a groundskeeper mowing and trimming grass. His productivity on the job is at about 120%. He likes his job, and unlike the first case has no behavioral or attendance issues.

IV) Unfortunately, he requires close supervision since he has no concept of pacing himself or how to remain hydrated in hot weather. In addition, he will work until no more work is visible and will stop and wait for directions, or will simply continue working in areas that were already finished, or where the agency is not responsible. Just these behaviors alone demonstrate deficits in self-care and self-direction. He may also have deficits in communication, written or verbal that can also be evidenced to support a determination of severe disability in accordance with Committee standards.

d) Example 5: Return to “Not Competitively Employable” Status

I) An individual can move back and forth between being competitively employable and not competitively employable. If a nonprofit agency considers an individual to be competitively employable, it does not mean that he or she cannot be reconsidered at a future date, if changes occur to the individual’s disability status.

II) In this case an individual has mild mental retardation and worked as a mess attendant on an AbilityOne food service contract. After working successfully for some time, the agency determined that he was competitively employable. They placed him with a local hotel busing tables and washing dishes. Initially very pleased with his performance, the hotel gave him a raise, increased his hours and began providing benefits. At this point, he became over-resourced and lost his SSI benefits. His mother objected to this loss and harassed him to the point that the stress affected his performance, and the hotel eventually fired him. As a result, the nonprofit agency rehired the individual, and determined him to be not competitively employable until he is once again working at an acceptable level because there was a direct correlation between his impairment (mental retardation) creating functional limitation that were to the point he was unable to maintain normal competitive employment.

e) Example 6: Substance Abuse

I) Five individuals were referred to a nonprofit agency for employment as part of a court-ordered substance abuse rehabilitation program. This program included a requirement that they live in a half-way house. As all five had experience with seasonal grounds keeping, the nonprofit agency placed them on one of its grounds maintenance

projects, and categorized them as severely disabled and competitively employable.

II) The Committee subsequently received a complaint from a commercial company that the nonprofit agency was hiring individuals who did not have a severe disability. This complaint was based on the owner's observation that the five working for the nonprofit agency were not disabled, all having worked for him in the past. Moreover, one of the individuals was trying to work for both the commercial contractor and the nonprofit agency at the time. Further discussions with the contractor revealed that all five could have had their old jobs back, simply by applying for them, given that the commercial contractor had been happy with their performance and was looking for workers.

III) The Committee decided that four of the five individuals could continue to be counted as severely disabled and not competitively employable, but only while they remained enrolled in the drug rehabilitation program and lived in the half-way house. This decision was based on additional documentation that the court had provided and that was in their files; primarily the court's requirement for close supervision while working. The individual that was trying to work for both the commercial company and the nonprofit was released by the nonprofit agency because of his continued use of illegal drugs.

f) Example 7: Worked for Previous Commercial Contractor

I) The following are two examples of people with severe disabilities who worked on the previous commercial contract. One is competitively employable and the other is not.

II) In the first case, when the nonprofit agency reviewed the current workforce, they found that a number of people had a severe disability. The nonprofit agency proceeded to declare the individuals not competitively employable without any consideration as to the extent of the disabilities or why they were determining the individuals to be not competitively employable. As an example, one of the individuals suffered from depression, was under a doctor's care and was taking several medications. However, even though the individual was diagnosed with major depression, her performance was excellent, and she had a good attendance record. Given this, the nonprofit agency did not need to provide any accommodation or supports to the individual. Therefore, this individual should be considered competitively employable.

III) In the other case, an individual whose disabilities resulted in her being homebound worked for a commercial contractor as a medical

transcriptionist. The commercial contractor hired and trained the individual, but even after an extensive period of time, she continued to fall short of the company's minimum performance standards for transcription rates and work hours. As a result, the commercial firm was considering termination. In this case, the nonprofit agency was able to document her disabilities and provide her with another position. The nonprofit agency also documented that although she had been previously competitively employed, her low work tolerance made her unable to sustain competitive employment.

IV) It is important to note that when an employee of a previous commercial contractor is determined to be not competitively employable, the nonprofit agency must be extremely careful to document the reasoning for the determination adequately. In such cases, the previous contractor must have been providing accommodations or supports that would be considered beyond *reasonable*. Such accommodations would not typically be found in normal competitive job situations.

3.17 - Discussion of Disabilities Prevalent Among AbilityOne Employees

Although mental retardation and significant mental illness predominate as the majority of severe disabilities in the AbilityOne Program, demographics reveal a number of Program participants with other disabilities. Although psychological, physical and medical conditions are dissimilar, they require the same kind of assessment in terms of understanding the degree of impairment, and exercise of informed judgment in determining non-competitive employability. In this section, several disabilities are offered as examples. In each, common problems are noted as a method of analyzing whether the condition is a severe disability or not. All of the disabilities discussed can be considered as a severe disability in terms of the AbilityOne definition and in no case should it be construed that any one should be favored over another or that it is less legitimate.

3.18 - Learning Disability - General

3.18.1 Learning disabilities come in a variety of forms, most occurring in three major categories: reading, mathematics, and written expression, usually seen as barriers to academic learning. Others may be characterized as a broad or pervasive intellectual deficit, but above that of mental retardation.

3.18.2 *Broadly speaking*, the majority of learning disabled individuals in our society are competitively employed. This is because so many of those who have been deemed LD, are still within the normal range of intellectual functioning. If an individual's IQ score is in the mid to low seventies however, there exists a set of

circumstances that must be understood, i.e. how it affects their overall life functioning.

3.18.3 On the whole, individuals diagnosed as LD, would certainly have narrowed options with regard to work opportunities. But this would vary in extent depending on the breadth and extent of the particular learning disablement. In terms of satisfying AbilityOne requirements, LD is problematic when there is no documentation as to its extent and nature, or its impact on critical life functions. Or, the person is able to work, and has worked in the past, with only minimal accommodations.

3.18.4 For persons with LD, documentation should be comprised of signed psychologist reports, psychiatrist reports or school diagnostician's reports which indicate the extent of the learning disability. This could include IQ scores, assessment test results showing cognitive ranges, examination of information processing ability and processing speed, and/or narrative reports from licensed professionals. There should be some demonstration of the evaluator's having ruled out alternative explanations for learning problems

3.18.5 For a person with a LD, the severity must be such that the disability creates functional limitations in the areas noted above. Diagnoses such as math and/or reading disorders and dyslexia are not so functionally disabling that they will exclude most individuals from the workforce. However, IQ scores in the low to mid seventies present a much more serious barrier and may create functional limitations.

3.18.6 Appropriate ways to document such functional limitations include a narrative description with examples of the limitations caused.

a) Example: "John Doe's learning disability has resulted in functional limitations in work skills, communication skills and self-direction. This is demonstrated by John's difficulty in reading written work materials, difficulty in organizing and integrating thoughts, difficulty learning new tasks and discrepancies in listening and speaking."

b) Example: "John Doe's learning disability has created barriers to employment that require ongoing support. John requires oral translations of all written materials, frequent reminders to stay on task, constant prompting when assigned tasks of 4 steps or more, and jobs which require limited use of independent judgment. John would be most successful in a structured setting with support in order to gain self-confidence and work skills"

3.18.7 It is also not uncommon to see persons diagnosed as LD, being accommodated for things quite unrelated to a learning disability, usually mental health issues. Such individuals could well be considered *severe*, *if* additional documentation verifying the other disabling conditions is present, and the overall

impairments when taken together, would reasonably cause an individual to be not competitively employable.

3.19 - Mental Illness

3.19.1 There is wide variability in the impact of mental illness on individuals, particularly in a job setting. Some disorders in their milder forms are hardly noticeable, while persons with severe and persistent mental illness can experience functional marked limitations in self-care, self-direction, work skills, work tolerance, and communication. Hygiene issues, impulse control, low tolerance for stress, difficulty with perception, thinking and the expression of thoughts all may cause diminished capacity and functional limitations. Whatever the specific disorder, an agency must consider what symptoms and behavior typical of this disorder are being manifest in the workplace, and how they are being accommodated in order for the person to be successful.

3.19.2 Mental Illness disorders fall on two axes of the DSM-IV. Most are on axis I, but personality disorders are on axis II.

a) DSM-IV Axis I (clinical syndromes)

I) Diagnoses that produce psychotic symptoms, such as: schizophrenia, bipolar disorders, Schizoaffective and Schizophreniform Disorders are significant mental illness disorders, and tend to be seen as “severe” disabilities. Even when responsive to treatment, they invariably remain pervasively disabling. As a class, such individuals are consistent with 41 CFR 51-1.3, with the extent understood within the diagnosis. However, the operative point for the AbilityOne program, is the direct need for substantial job supports in order to determine an individual to be not capable of normal competitive employment. In such disorders, these might include accommodations like, frequent rest breaks, quiet work areas, flexible schedules, assistance with medication, reminders for proper hygiene, additional training for staff, and a supportive work environment.

II) When considering Affective or Mood Disorders: major depressive disorder, Bipolar I and II, Cyclothymic and Dysthymic disorders, which in their common manifestations are broadly disabling, they are quite often determined to be severe disabilities. This is not due to anything inherent or presumptive. Rather it is as a result of their symptoms being severe enough to bring about a loss of competitiveness in employment. And as in all other *severe disabilities*, such symptoms must be significantly accommodated by the agency for these workers to be successful.

III) Diagnoses of simple Depression or Anxiety (Generalized, Panic, Social, Phobias, Obsessive-Compulsive and Post Traumatic Stress Disorder (PTSD)) are much less straightforward, because they fall on a broad continuum. At the most severe end, their manifestations might be characterized by a cataleptic state and hospitalization. However in their mildest forms, most who experience such disorders, are able to maintain competitive employment, given *reasonable* if any accommodations.

IV) All such disorders produce symptoms (behavioral manifestations) that vary widely in their intensity, which bear directly on their need for, and the ways and manner of their accommodations. Determining, establishing and documenting this information in the initial competitive employment evaluation can go a long way in determining the *extent* of these disorders, as well as justifying a determination of non-competitive employability. See the previous accommodations section, active and passive accommodations.

V) The effectiveness of medications on mental health disorders is highly relevant. On occasion, the only measure of a worker's depression, anxiety or other mental health disorder, is a notation of prescribed medication. However, to be considered severely disabled, there must be documentation of symptoms (measurable mental illness-related behaviors), beyond that which the medication has controlled. Absenteeism is quite germane to people who have such disorders, but it must be recorded and be at a level well beyond that which is commonly allowed in normal competitive employment.

VI) In documenting a competitive employment evaluation, one should always endeavor to see diagnoses in terms of disablement, i.e. observable measurable impairments. As such, affective or mood disorders will typically include:

- **Clinical symptoms** such as depressed mood and feelings of worthlessness or guilt, apprehension fear, or even terror.
- **Behavioral symptoms** might include social withdrawal or agitation.
- **Cognitive symptoms**, or problems in thinking; includes difficulty with concentration or making decisions.
- **Somatic or physical symptoms** can include insomnia, hypersomnia, migraines, loss or gain of weight, and gastroenterological problems.

b) In order to determine the extent to which the condition is disabling, one should consider:

- I)** • What impairments result from this condition?

II) • To what extent does the condition limit the individual? (Any description in the psychological evaluation that describes **frequency**, **duration** and **intensity** of episodes can be critical indicators.)

III) • What aspect of this worker's disability is limiting his or her productivity, and to what degree?

IV) • What accommodations or supports are required as a result?

V) • What difficult behaviors are being tolerated, and to what extent?

VI) An understanding of these issues is essential in both verifying the severity of the worker's disability, and its capacity to bring about a loss of competitive employability. But they are equally important to the nonprofit agency, in order to better support and maximize the worker's productivity.

VII) Many other axis I mental disorders exist, with some being inherently severe, while others may or may not be, depending on the specific situation. Cognitive Disorders, Somatoform Disorders, Dissociative Disorders and Impulse-Control Disorders are often severe enough to bring about a loss of competitive employability. However, there are no substitutes for definitive medical documentation that is consistent with a solid competitive employment evaluation. As an adjunct to this, the individual's work history should in most cases be consulted. Although not singularly determinative, it is a relevant factor in ascertaining the past impact the individual's disorder has had on their overall employability.

3.19.3 DSM-IV Axis II (Personality Disorders)

b) Paranoid, Schizoid, Schizo-typal, Anti-social, Borderline, Histrionic, Narcissistic, Avoidant, Dependant, Obsessive-Compulsive and Personality Disorder NOS comprise the 11 types of personality disorders. They fall on Axis II as they are considered developmental, but many of the symptoms and behaviors they exhibit, overlap Axis I disorders. Personality disorders typically produce significant levels of mental illness: transient or occasional psychosis, dissociative or bizarre ideation, general thought disorder and untoward social interactions. As a result, such diagnoses are often determined to be *severe disabilities*. However they are not presumptively so, but rather are so determined, because of their marked adverse effect on normal competitive employment.

c) Although there is more variability in the severity of personality disorders than Schizophrenia for example, they do not adhere to the mild-severe continuum previously mentioned. There is severity variation between the different personality disorders, some being perceptual, some situationally based, while some could be a function of differences between diagnosing clinicians. Nonetheless, properly diagnosed, a person either has

a personality disorder, or does not. Milder or less marked related symptoms will typically be described as such by the clinician.

d) It's important to remember that it is common for individuals with personality disorders to have found competitive work in the past. But given the serious nature and pervasiveness of such disorders, their work histories will usually show that they have been conspicuously unsuccessful in maintaining such work over time.

3.20 - Physical Disabilities

Below are several prevalent physical conditions, presented here because they are common in the AbilityOne program and require assessments of ***extent and degree of impairment***, in order to understand the functional limitations. If *severity* is to be ascertained, a measure of how it impacts a person's ability to find and maintain work must be established.

3.20.1 Amputation

a) An amputation is most often the result of an injury or a disease. There might also be adverse synergy between the amputation and other physical or psychological conditions. If present, these additional disabling conditions must be separately diagnosed and documented.

b) Loss of a hand would most likely be considered a severe disability and result in functional limitations in work skills, work tolerance and mobility, particularly if a dominant hand has been lost and the person is only capable of manual work. However, the loss of a finger or fingers might not cause functional limitations depending on the person's career goals or past work history.

c) The relevance of the amputation must also be considered; from loss of an arm above the elbow, or below; to loss of a hand, loss of fingers, partial loss of fingers or the loss of a single finger. The inherent adaptability or lack of it in each individual is very relevant in an evaluation, and past work history can be helpful.

d) Whether the loss of a limb, or part of one, is considered severe depends on the extent of functional impairment. As with other disabling conditions, there can be a range of severity and impairment. A well-functioning prosthetic can reduce the limiting impairment to a nearly unnoticeable level. As a result, a slight residual limp would not be considered a severe disability, but an inability to stand and walk around for most of a shift that requires such activities (such as a janitorial job), may result in a person losing his or her competitive employability. An overall loss of productivity may occur as a result of the individual working around his or

her limitation, e.g., inefficiencies in stooping, bending and kneeling; lessened ability to push and pull equipment and/or a general reduction in speed. All such limits need to be understood in terms of the person's ability to work competitively with or without reasonable accommodations.

e) Nonprofit agencies need to consider the whole person in such a determination, and how related factors, in the aggregate, affect competitive employability. Fundamental to the competitive evaluation are considerations such as:

- I) What residual disabling effects are direct results of the amputation?
- II) Was the individual referred to the nonprofit agency at the end of his or her post amputation rehabilitation?
- III) Has the individual worked competitively subsequent to the amputation?
- IV) What accommodations must be provided in relation to the worker's amputation?

3.20.2 Arthritis

a. Arthritis is frequently presented in the medical documentation with only vague descriptions of its disabling effects, or sometimes none at all. At one end of a continuum, arthritis can generate occasional, mild pain in one or more joints. However, at the extreme other end, severe arthritis, and certainly rheumatoid arthritis, can lead to near total incapacity.

b. As always the answers begin with a definitive diagnosis, such as osteoarthritis, osteoporosis, etc. –and the part or parts of the body affected. Generally arthritis presents as a physical impairment which is the results of a disease or injury. In order to gauge severity, it is necessary to understand where the individual falls in terms of creating functional limitations. Severe arthritis can cause limitations in work tolerance, mobility and work skills.

c. Persons with severe arthritis may have difficulty walking, bending, reaching, sitting for long periods of time or even using fine finger dexterity skills when the arthritis is in their hands. Pain control may also be an issue and interfere with competitive employability. Given such wide variability in this disease, it is essential that the fullest extent of its disabling effects and its impact on employability be documented.

d. The following questions may be helpful in determining how the individual is affected :

- I) To what extent is walking affected?
- II) What are the specific restrictions to walking, standing or stooping?

- III)** If there is arthritis in the spine or shoulders, how does this affect the person's ability to stand for long periods of time or to reach frequently?
- IV)** Is quantified pain constant or episodic; if the latter, how long do typical episodes last?
- V)** How intense is the pain associated with the arthritis, is it so intense that it results in loss of work time?
- VI)** Which medications are being taken and how effective are they in ameliorating the symptoms?

3.20.3 Deafness

Although the measurement or threshold for blindness has long been codified in law (legal blindness), there is no such legal definition for deafness. The medical documentation of many individuals specifies only "hearing impairment" or "hearing impaired," both of which indicates that there is a loss of hearing of some unknown degree. Vague references in the documentation such as "hearing loss" would not be sufficient to document a disability. As a guide, consider the portion of the Helen Keller National Center Act definition of deaf-blind that deals with deafness:

"...who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition?"

- a)** Deafness is a physical impairment or a residual limiting condition that can be the result of an injury, disease or birth defect. An audiogram is the appropriate diagnostic tool. Audiograms can be difficult to interpret without specialized knowledge, but familiarization with them can aid in justifying a determination of disability, as well as helping determine the most appropriate accommodation.
- b)** Generally speaking, any individual who is deaf enough that he or she cannot hear the spoken word with best correction should be considered severely disabled. If the hearing loss is to the degree that it has caused significant speech impairment, this would be a relevant and additive (or possibly determinative) indicator of severity. However, if a person can hear, with or without the use of hearing aids, and can communicate adequately, the functional impairment caused by the deficit would be diminished or non-existent. Persons with severe hearing loss may have functional limitations in communication.
- c)** Persons with severe hearing loss or complete deafness may also have difficulty communicating with co-workers, performing tasks that require listening skills and may need to be accommodated through written instructions, visual or physical cues, sign language interpreters and job carving.

3.20.4 Diabetes

- a)** This is first a medical condition, not necessarily a de facto severe disability. However, in severe cases, it can produce a number of highly debilitating symptoms, including blindness, impairments to cardiac functioning, vascular degeneration, and neuropathy in the extremities (particularly legs and feet). Organ problems such as those of the Kidneys are also commonly associated with advanced Diabetes. However, all such debilitating issues and their degree of impairment need to be specified.
- b)** If not documented, disabling factors cannot be presumed to exist. In any given case of diabetes, they may or may not exist, or if they do may be manifest in wide-ranging levels of impairment.
- c)** Severe diabetes could cause functional limitations in work tolerance and possibly mobility and self-care. Persons with severe Diabetes may need flexible work schedules, assistance with medication, frequent rest breaks, job carving and monitoring of the work environment.

3.20.5 Epilepsy and Seizure Disorders

- a)** Epilepsy is not a distinct disease, but rather a group of disorders for which recurrent unprovoked seizures are the main symptom. Such seizures are brought about by abnormal electrical discharges from brain cells, often in the cerebral cortex, either secondary to a particular brain abnormality, or of unknown etiology.
- b)** There are several types of seizures, and for the purposes of the AbilityOne Program, it is their effect on an individual's employability that is critical. It is necessary to characterize such seizures by their effects and whether significant job accommodations are required for issues related to the seizure disorder. Unless otherwise indicated, tonic-clonic seizures (sometimes referred to as grand mal seizures) are the type which reliably causes a loss of competitive employability. Other types of seizures with less severe manifestations and less frequent occurrences have the potential for causing non-competitive employability, but they cannot routinely be presumed to do so.
- c)** A number of anticonvulsant medications are effective in controlling seizures, from complete elimination to reduced frequency. If seizures are fully controlled by medication and the individual is functioning within the normal cognitive range, then the individual should be considered competitively employable. However, if a worker has a seizure disorder and has been seizure free for an extended period of time, but is still felt to be not competitively employable due to the effects of the medication that is being used, it must be documented.

d) A marked and measurable decline in cognitive function is known to correlate with many cases of epilepsy (although the extent to which this is attributable to the epilepsy has not been definitively determined, nor the drugs used to treat it). However, if a cognitive deficit is present, it should not necessarily be seen as an inherent symptom of epilepsy, and should be a separate Axis II diagnosis.

3.20.6 Hypertension

a) High blood pressure may or may not have inherent physically disabling factors. It may exist independently in varying measurable degrees of severity, or it may be a symptom of a more serious cardiovascular condition, with still other parallel symptoms being present. All symptoms present should be documented, with an indication of the degree of any resulting physical limitation and/or impairment.

b) Many individuals who have mild to moderate high blood pressure that is responding to medication will incur few if any debilitating effects. Accordingly, the disability documentation should specify how the person is responding to treatment, or what physical restrictions continue to exist in spite of such treatment.

c) The nonprofit should also address what major job accommodations are being provided for impairments directly related to the hypertension. Flexible work schedules, reduced work loads, light duty work or job carving are all accommodations that might be appropriate.

3.20.7 Obesity

a) In assessing whether or not obesity is a severe disability, the term “morbid obesity” should be used as a benchmark. At this level, physical restrictions become so significant as to compromise employability in an overwhelming majority of cases, where obesity alone would not. Morbid obesity refers to individuals who have a body mass index (BMI) value of 40 or more. Alternative measurements that begin much lower, such as 50% above or 100 lbs. above “ideal body weight,” may be medically relevant, but generally do not cause enough impairment of functioning to presume a severe disability.

b) It is important to note that a number of medical conditions are highly correlated with morbid obesity: diabetes, hypertension, heart disease, stroke, depression, osteoarthritis, hypoxemia and certain psychological disorders. Each of these conditions should be documented when present, with the extent of debilitating effects noted.

c) Persons with morbid obesity may have functional limitations in self-care, work skills, work tolerance and mobility. The non-profit agency will need to evidence the significance of the disabling condition in terms of employability. A person with morbid obesity may need job carving, more frequent rest breaks, assistance with self-care, assistance with mobility, reduced work schedules or accommodated work stations.

3.20.8 Alcohol, Drug Addiction, and Other Substance Abuse

a) Prior to 1992, the Committee did not accept alcohol or drug addiction as a severe disability under the AbilityOne Program. In September 1992, the Committee reviewed this decision, and found that "...the legislative history is silent on this subject... The Committee has no legal basis for excluding from eligibility for AbilityOne benefits recovering alcoholics and drug abusers who meet the employment criterion." Accordingly, the Committee decided to permit recovering alcoholics and drug abusers (with appropriate documentation of their disorders) to be counted as severely disabled, if they meet the noncompetitive employability criterion.

b) However, the Committee noted that "based on the same legislative history, operating history, and Congressional and Executive Branch hearings and correspondence, it seems eminently reasonable to conclude that individuals with these disabilities were not intended to be the primary--or even a substantial portion of the--target population of the AbilityOne Program. As a result, the Committee also has a responsibility to guard against a significant shift toward using the AbilityOne Program to serve recovering alcoholics and drug abusers ... who meet the employment criterion."

c) Any discussion of this disability must begin with some important distinctions. They are detailed and described in DSM-IV.

d) Substance abuse refers to the overindulgence in a psychoactive, leading to effects that are detrimental to the individual's physical or mental health, or the welfare of others. Such a disorder is characterized by a pattern of continued pathological use of a medication, non-medically indicated drug or toxin, that results in repeated adverse social consequences related to its use, such as failure to meet work, family, or school obligations, interpersonal conflicts, or legal problems.

e) Most current practice distinguishes substance abuse from substance dependency. Substance abuse is defined in terms of the social consequences resulting from the willful conduct of abusing such substances, while substance dependency is seen in terms of physiological and behavioral symptoms.

f) Prolonged or frequent substance abuse often leads to substance dependency or addiction. Medically, physiologic dependence requires the development of tolerance leading to withdrawal symptoms. Both abuse and dependence are distinct from addiction which involves a compulsion to continue using the substance despite the negative consequences, and may or may not involve chemical dependency. Dependence involves physiological processes while substance abuse reflects a complex interaction between the individual, the abused substance and society. Dependence almost always implies abuse, but abuse frequently occurs without dependence, particularly when an individual first begins to abuse a substance.

g) Substance abuse is sometimes used as a synonym for drug abuse, drug addiction, and chemical dependency, but as noted above it actually refers to the use of substances in a manner outside socio-cultural conventions. All use of illicit drugs and all use of licit drugs in a manner not dictated by convention (e.g. according to physician's orders or societal norms) constitutes abuse. However, as abuse can vary according to frequency, amount and length of episodes, there is no universally accepted definition of substance abuse.

h) As a result, one can ascertain a general gradation of severity from substance abuse, to dependence, to addiction, to chemical dependency. For AbilityOne purposes, diagnoses should be specific as to the seriousness or depth of the problem, just as is necessary for other disabilities that are distributed along a continuum, from mild to severe.

i) Additional complicating factors may persist in any given individual's case, but they should not be considered self-evident or inherent features of addiction or dependency, common as they may be. Chemically-induced mental disorders may also be present, causing a variety of symptoms that are characteristic of other mental disorders. When existing, these disorders will have an adverse effect on employability, but as they are neither inherent nor self-evident, they require a differential diagnosis. All issues of a psychiatric or psychological nature must be documented in order to support a determination of continued non-competitive employability.

j) If substance abuse is characterized in terms of its social consequences, i.e. primarily negative effects outside the physical body of the person involved, its consideration as a severe disability must be seriously questioned since its debilitating effects must be something more than willful conduct.

k) References in the medical records to unquantified "usage" in some vague past timeframe is inadequate, because it may have little or no bearing on the person's present employability. Terms, such as "former substance abuser," are problematic because they provide no context as to when drugs were used, what types of drugs were used, for how long a period and to the extent of their dependence. In the absence of these specific facts, it is

difficult to justify the counting of an able-bodied individual, who is not otherwise cognitively impaired, as a severely disabled worker. The mere notation of a person having a substance abuse history is not a self-evident cause for considering the individual to be severely disabled and thus not competitively employable.

l) On the other hand, The Committee has stated that individuals recovering from properly diagnosed drug addiction and alcoholism are eligible to participate in the AbilityOne Program. The Committee however, does not accept the idea that an individual is recovering forever, and will always be considered not competitively employable. The Committee presumes that after a period of time and rehabilitative effort, these individuals will become competitively employable, unless documented with clinical interventions that would indicate otherwise.

m) The AbilityOne Program mandates that an annual evaluation for competitive employment must be conducted. For persons recovering from chemical dependency relating to alcohol and drugs, it must be determined when the person is relatively recidivism resistant, mentally competent and physically able to engage in normal competitive employment. If not, and the period is to be extended, it must be justified on the worker's addiction-related problems that have been resistive to rehabilitative efforts and continue to require significant supports and accommodations.

n) The commonly applied adjective "recovering" is not an operative justification, given the standard implication that recovery is perpetual. Recovery is not actually perpetual, but rather the continuing and persistent need for abstinence and sobriety which is. By extension, this also does not mean that lifelong rehabilitation is needed, whereby competitive employment has been indefinitely compromised. The area of alcohol and drug rehabilitation differs from the rest of the rehabilitation world in one important sense. Individuals with other permanent physical and mental disorders may develop skills which allow them to overcome their functional limitations. However, the actual limitations usually remain unchanged. In the case of substance addiction, many individuals have the potential for their functional limitations to be eliminated and not just overcome. Since any given individual's capacity to achieve a positive rehabilitation outcome has many variables their assessment for AbilityOne purposes depends entirely on the adequacy of the annual competitive employment evaluation and in many cases of the adequacy of the medical documentation of other mental and physical disabilities beyond the substance addiction.

3.20.9 Multiple - Disabilities of a Less Than Severe Nature

a) Quite often, individuals have two or more diagnosed conditions, which taken individually would not constitute severe disabilities. However, if the

total impairment to the individual is sufficient to reasonably cause a loss of functional capabilities, then a determination of severely disabled may well be appropriate. As with all the disabilities mentioned, a sound determination is always a function of how well the degree of impairment can be ascertained and documented. The more adequate the medical documentation and the workplace evaluations, the easier it is to make the justification.

b) Many medical records are the result of treatment interventions, and the, diagnoses and prescribed treatments are typically the only indications specified. The existence of disabling effects may be missing from the records. To meet AbilityOne Program requirements, most medical conditions need to be seen in both qualitative and quantitative terms, in order to measure the severity of the disability. If the severity cannot be completely determined from the medical documentation present, the competitive employment evaluation must show the extraordinary accommodations that are being provided in order to make the person successful. Lacking this, the individual cannot be counted toward the agency's severely disabled ratio.

c) For example, if a person's record indicates that he or she has some arthritis in the knees, and diabetes requiring insulin injections, it is not possible to establish the degree to which these conditions are present and disabling. However, a detailed work assessment can contribute substantially to the determination, as the individual's ability or inability to stand and walk about through the workday is pertinent. Examining the individual's ancillary medical issues related to diabetes can also offer some insights into the incremental adverse impact on competitive employability. Heart insufficiency, obesity, renal issues, etc., can all impact a person's ability to hold a competitive job, by causing the person to have frequent absences. The actual limitations caused by these conditions must be documented, as does each of the various accommodating remedies provided, in order to support the severely disabled determination.

d) The framers of the AbilityOne Program undoubtedly considered absenteeism, stamina and work tolerance directly related to the full range of disabilities when creating a metric of direct labor hours versus simply jobs. Nonprofit agencies participating in the AbilityOne Program routinely accommodate significantly higher levels of "lost work" than the competitive workplace.

e) **Attention Deficit Disorder and Dyslexia** are examples of conditions that when taken by themselves, are not severe enough to be considered a severe disability. However, when existing in conjunction with other less than severe conditions, the synergy may be enough. The extent of the collective impairments and accommodations needed, will determine this.

f) When considering attention deficit disorder, the degree of impact on the individual is critical. If hyperactivity is present (ADHD), a measure of how much of it there is must be evident in order to understand its level of disability. As many individuals with ADD or ADHD diagnoses have quite high intelligence scores, documentation must show the extraordinary disability-related accommodations that are required. In the case of ADDH in adulthood, chronic inattention and Disruptive Behavior characterized by intractable hyperactivity and impulsivity are that which must be accommodated.

g) Dyslexia is a brain-based type of learning disability that specifically impairs a person's ability to read. Those who experience it can read, albeit with varying degrees of difficulty. It is termed a disability because it has a disabling effect on learning due to its symptoms of visual or cognitive misperception and processing of written material. However, it is minor in the context of global life functioning. And like ADD, many persons of high intelligence and achievement have this disorder. So even with marked cases of dyslexia, it remains an impediment to reading, which by itself is insufficient to result in someone being considered severely disabled and incapable of finding and maintaining normal competitive employment. Nonetheless, its debilitating effects may be additive to other disabilities that in aggregate, might cause the person to be not competitively employable.

3.20.10 Low Vision

Legal blindness is well defined. However, there are many people with varying degrees of low vision or visual impairments that while not blind, do incur some degree of disability. Such individuals must be evaluated in the same way as any other individual with a disability, focusing on the extent of functional limitation brought about by the loss of vision on hand. The extent of how much they approximate legal blindness is highly relevant. It is also important to remember that the definition considers the vision of the individual in his or her best eye, when corrected. An individual with no vision in one eye and adequate vision in the other eye (that being the only impairment) is not normally considered to have functional limitations, to the extent that he or she is not competitively employable. Such a person may still be evaluated as non-competitive, but this would require them to have other disabling conditions, where in the aggregate, their overall level of functioning is sufficiently impaired to justify that determination.

Chapter 4- Placement and Promotions

4.1 - Placements

4.1.1 Committee regulations (41 CFR 51-4.3(b)(8)) states that nonprofit agencies participating in the AbilityOne Program must:

Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.

- a)** If the agency has an agreement with another agency for placement services, this agreement must be supported in writing as evidence of a placement program.
- b)** Placements usually refer to individuals who through agency rehabilitative and job placement efforts the agency has placed the person into a position in the community, normally an establishment engaged in commercial enterprise. The Committee has traditionally been concerned with those individuals who through agency rehabilitative efforts, can no longer be considered to be not competitively employable and the agency has through job development and assistance, placed the person in a competitive unsupported position in the community.
- c)** However, the Committee is also aware that some nonprofit agencies only utilize the supported placement model in placing individuals from the nonprofit agency and will say that they have not placed anyone into competitive jobs. As a result, it may be necessary to discuss supported placements as well as competitive placements to gather a complete picture of the nonprofit agency's placement program.
- d)** In addition, some agencies have broader placement missions. As such, some provide training and direct placement services to individuals who have not participated in the AbilityOne program. These individuals may or may not have disabilities, but agency staff should be able to make these important distinctions so placements are tracked in the correct categories.
- e)** During the compliance visit, reviewers should inquire as to how the agency deals with placement issues, and what placements have been made during the past year. The reviewer should also insure that agency staff understands that multiple definitions exist in the

rehabilitation field, with regard to competitive placements and supported employment, and that for AbilityOne purposes, the Committee's definitions of competitive and supported placements is the operative one.

4.1.2 Promotions

Committee regulations (41 CFR 51-4.3(b)(2)) states that nonprofit agencies participating in the AbilityOne Program must:

Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor, including procedures to encourage filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

- a)** The Committee is concerned that nonprofit agencies can not only demonstrate that affirmative action laws are followed, but that people who are blind or severely disabled are included. As a result, the Committee wants to collect information involving individuals who are blind or severely disabled promoted within the nonprofit agency to a higher paying job or to supervisory or management positions.

- b)** The Committee is interested in distinguishing between workers Promoted into new jobs requiring supervisory, management or technical skills that include increased wages and/or benefits and jobs other than supervisory or management positions, which still include increased wages and/or benefits. Job changes that involve only cost of living raises or productivity increases are not considered promotions.

Chapter 5 – Department of Labor Requirements

To be published

Chapter 6 – Data Collection

This section of the review is to gather data on other portions of the nonprofit. The information should be obtained from the CEO or CFO, as queries of other personnel may not produce the most accurate of answers.

6.1.1 Articles of Incorporation and By-laws

- a)** The Committee requires that it have the current version of all nonprofit articles of incorporation and by-laws to insure that the nonprofits still meet the Committee's requirements for their participation in the Program. The annual certification (403 or 404) completed by each nonprofit also asks for this information and the Committee receives updates each year from many agencies.
- b)** Prior to going on an agency visit, reviewers should check the agency file to insure not only that they are present, but to record their effective dates. If there have been changes, copies of the changes should be obtained and brought back to the Committee for legal counsel review.
- c)** Confirming the most recent dates of these documents will help insure that the Committee has the most recent copies. The difference between fiscal year and calendar year can cause some people to ignore changes that occurred in the first quarter of the fiscal year since they occurred in the last calendar year.
- d)** This topic may in some cases also be an opportune time to discuss the Committee's requirement that the net income of the nonprofit does not inure in whole or in part to the benefit of any shareholder or other individual and the need for the by-laws to be clear on this issue.

6.1.2 Nonprofit Scope of Business

- a)** Most nonprofits that participate in the AbilityOne Program do more than just work on AbilityOne projects. This is an opportunity to learn more about what the nonprofit does and not just commercial products and services. It also gives the Committee an opportunity to find out about the services that the nonprofit provides to its community. Some of the more common areas that nonprofits are involved with include: transportation services, preschool, residential services, daily living skills, job clubs, low vision labs, mobility training, computer skills.

- b) This topic also serves as a place to learn about the corporate structure of the nonprofit and if any related corporations to the nonprofit being reviewed exist.
- c) When a non-profit agency is a related corporation, it is important to gain an understanding of the nature of that relationship. If related corporations exist it may be necessary to discuss the Committee's requirements as discussed in section four of compliance memo number 1.

6.1.3 Budget Data

The usefulness of this information pertains to the Committee's interest in knowing the extent of a non-profit agency's enterprise, beyond their AbilityOne contracts and non-AbilityOne direct labor work. If an agency engages in a spectrum of other rehabilitative endeavors, or provides such supports as residential services, its operating budget might be substantially larger than would be shown in its sales figures. In a general sense this tends to give such agencies greater capacities both financial and professional.

6.1.4 Sales Data

This information is also collected on the Annual Certifications and its collection is not critical to the review. However, it can serve as an introduction to finding out changes and occasionally problems that have occurred in the last fiscal year.

- a) Sales:
 - Sales of Procurement List Items
 - Sales from AbilityOne Products
 - Sales from AbilityOne Services
 - Total AbilityOne Sales
- b) Base Supply Centers (usually NIB agencies)
- c) Other Federal Sales
- d) Other Sales and Subcontracting (Includes State Use Sales)
- e) Total Agency Sales

Chapter 7 – Interviews and executive director/board exit briefing

During a compliance visit to a nonprofit agency, a reviewer will have occasion to conduct certain information-sharing interviews with various individuals. Some may be optional, such as with workers whose documentation may be contradictory in some way, or mandatory, such as the exit brief with the executive director. In either case, such discussions serve very different purposes and the following offers some issues for reviewers to keep in mind.

7.1.1 Interviews with workers

a) In the course of conducting a tour of a facility, a reviewer should have an opportunity to meet direct labor workers who are among those counted as blind or severely disabled. Such meetings can range from an exchange of pleasantries on the shop floor (remembering that many may be producing piece-rate items wherein time is money), to private interviews, wherein a request is made to agency staff for a short five to ten minute interview. This may be necessary to confirm or clarify some anomalous information in their medical documentation.

b) In the former, there will be time for only a couple of satisfaction-related questions: How long have you worked here? Have you been on this same job that whole time? What do you like most about this job? What do you know about the AbilityOne program?

c) A private interview with an AbilityOne employee may likely have a single motive, one related to disability and accommodation issues; however the format should be flexible and done in a way that does not greatly interrupt agency operations or make agency employees uncomfortable. A slight expansion of the above questions may be useful in this. However whatever its specific purpose, such an interview should always begin with an explanation of who the reviewer is, why he or she is visiting the agency, and why this worker is being interviewed. As part of this, information should be gathered on program satisfaction, as it affects a person directly benefiting from an AbilityOne contract. The Committee's appreciation for their work should be communicated.

7.1.2 Exit Brief with the executive director

a) A final meeting with the executive director serves several purposes. As the purpose and areas to be reviewed would have been discussed in the in-brief (and with information sent prior to the visit), the findings should be the initial area for discussion. Such findings normally concern shortcomings that were noted during the review, and

will be noted in their respective areas on the Compliance Review Form.

b) Exit briefs should avoid taking on an adversarial tone. Problem areas uncovered during the review must be presented in as objective and non-contentious a manner as possible. A reviewer must remember that the goal is to aid in whatever way possible, the agency getting back into compliance. In doing so, not only will the legal and regulatory rules be satisfied, but in most cases it will increase the number of severely disabled who will be employed, the ultimate mission of the AbilityOne program.

7.1.3 Corrective measures and due dates

a) Although some minor compliance problems can be corrected during the review, most will require a certain period of time for correction to be implemented. In the majority of cases, no more than 60 days should be needed. However, more time can be allowed. For example, it may take an agency more time to develop and implement an adequate affirmative action plan. Or, a ratio, may for reasons outside of the agency's control have dropped to a very low level, and thus requires a phased approach to bringing it back into compliance.

b) It is important that the reviewer establish, together with agency staff and management, a reasonable deadline for the agency to correct their compliance problems. The compliance review form and the follow up letter should clearly indicate all such dates. This will form the basis for any long-term follow up activity by the Compliance reviewer and the Committee.

c) The executive director should be informed during the exit briefing, and in the follow-up letter, that a written response detailing what actions were taken. This is required.

d) If the executive director comments on an issue or concern which is out of the reviewer's expertise, it is recommended that the reviewer contact others on the Committee staff, or NIB/NISH staff, in order to provide an accurate response.

e) Beyond regulatory issues, the interview with the executive director should provide the Committee with important information regarding the agency's current overall operations, immediate and future plans, satisfaction with their AbilityOne contracts, and their view of the AbilityOne Program overall, or to comment on any other areas of concern.

7.1.4 Board of Director Interviews or meetings

a) The Committee has taken the position that board activity is an integral part of agency success and proper governance. Consequently, the presence of at least one member of the agency board should be sought. The reviewer should have made note of this request in the pre-visit letter.

b) Usually, the board member will sit in on the exit briefing with the executive director. In any case, during the meeting, the reviewer should endeavor to determine the extent or level of the board's involvement with the agency and their knowledge of the AbilityOne program.

c) Although most of the meeting will focus on the compliance issues at hand, it should not be limited to this. The board member should be encouraged to pose whatever questions or concerns they may have.

I) Questions that may be asked by the reviewer are:

II) How is the board structured?

III) How many members does it have?

IV) What areas of the community do they represent?

V) What are its subcommittees?

VI) What areas of the community do they represent?

VII) How frequently does the board meet?

- *The Committee is interested in nonprofit boards having as broad a representation of its community as possible. The Committee has determined that small, insular boards are potential weaknesses for the AbilityOne Program. For example, an agency board which is comprised of the executive director, their spouse and an in-law, although technically legal, may present an image problem for the AbilityOne Program. Agencies with small, insular boards should be encouraged to seek additional members or to change their structure.*

- *Some AbilityOne nonprofit agency boards have historically been comprised of just parents and relatives of individuals with disabilities. The Committee believes that in these cases, the strength of the agency and in turn the AbilityOne Program would be enhanced by having a more diverse board. It is the Committee's view that those with business experience can be particularly valuable to agency boards.*

VIII) Are any board members blind or severely disabled?

- Although some AbilityOne agency boards include people who have disabilities, most do not. This question serves as a reminder of the Committee's policy that individuals, who are served by the agencies, should have a voice at the board level, similar to that of the representation of people with disabilities on the Committee itself. The Committee believes that parents and relatives are inadequate substitutes for genuine disabled worker involvement.

XIII) What does the board know about the objectives and procedures of the AbilityOne Program?

- The reviewer need not engage in a quiz of the board member, but in the case that some issues may be arcane to the member, it may spur them to further discussion during their board meetings.

XIV) How do board members assist in promoting job opportunities for agency clients?

- This question is intended to alert the board member that they can play a role in helping to place agency clients into competitive jobs in the community. Some agency board members have been successful in hiring agency clients in their own businesses, or referring them to their colleagues in the community. The advancement of community support for the agency can go a long way in fostering a general positive regard for employing individuals with disabilities.

XV) Is the board considering actions to expand non-AbilityOne work? (For agencies with more than 50% AbilityOne sales).

- In such agencies, they can be reminded that there is risk in relying too heavily on AbilityOne sales, as a percentage of an agency's total sales. Considering the relative volatility of Federal contracts, the Committee encourages agencies, particularly those which are overly dependent on their Federal contracts, to expand their work to include more commercial and state contracts.

7.1.5 The Compliance Review Form in the Exit Brief Process

With notations of the review findings, and necessary corrective action, the review form (filled out during the review) serves as an acknowledgment of the Committee's compliance visit. It is intended to provide the nonprofit agency management with a record of the areas needing redress. It provides a summary of all the issues discussed in the exit brief, and can be compared to the findings of any previous visit. It allows the agency to begin correcting any compliance deficiencies immediately. This form should be signed by the executive director at the conclusion of the exit brief, as a record of his or her acknowledgement.

The agency should retain a copy of the form, with the original returning with the reviewer to the Committee's office. After key information is entered into JPID, the form should be placed in the agency file.

Chapter 8 – Completing the Review and Corrective Action Requirements

Immediate actions/follow-up

On returning from a compliance trip, the reviewer's immediate tasks will include, at a minimum, the following:

- The original of the compliance review form will be given to the compliance specialist for inputting designated compliance information into JPID.
- Updating JPID with any new or corrected information discovered during the visit, such as address or phone changes, a new executive director or specific contacts etc.
- Clarifying any questions not fully resolved during the visit. It is best to do this immediately upon return, before technical details become forgotten.
- Any issues requiring involvement by NISH or NIB, at either regional or national level, should also be communicated immediately upon return from travel.
- Any changes to an agency's legal documentation should be forwarded to the Committee staff Counsel for review.
- When this has been completed, the form will be placed in the agency's file.

The Follow-up letter

Within 30 days following the on-site compliance visit, the reviewer will send a follow-up letter to the agency's executive director. In this letter, the reviewer will summarize the visit, by addressing all of the compliance problems identified and mentioned in the exit brief. Although a recap, it should clearly enumerate all the shortcomings and corrective actions needed. It should also specify the established response date for the agency to confirm their resolution of the problems. A copy of this letter will be filed in the agency's compliance file.

The follow up letter can also be an opportunity for the reviewer to comment on or commend any aspects of the agency's operation, either in its furtherance of AbilityOne goals, or their general enhancement of workplace conditions for persons with severe disabilities. For example, an agency that has a high rate of placements of workers to competitive employment may be commended.

The Freedom of Information Act (FOIA) requires that the Committee make certain documents available to individuals who solicit information. As this letter

serves as a formal post-review report it is subject to release under FOIA. Therefore, the reviewer must assure that all relevant information is included and that it is precise and accurate. This also underscores the importance of gathering the necessary details *during* the compliance visit. Moreover, the reviewer should write the report as if for an audience unfamiliar with the AbilityOne Program. This may occasionally require additional elaboration, but it will reduce the occurrence of complex issues being misconstrued. The tone of a dunning letter should always be avoided.

A compliance review can substantially affect an agency's status with the AbilityOne Program. It can even lead to a Committee determination that they are no longer "qualified" to participate. The report therefore must detail all of the measures the agency must take to achieve compliance, and reiterate to agency management and staff, the critical nature of their complying with AbilityOne regulatory requirements.

It is important for the reviewer to ensure that the agency corrects system-related problems, and not just the specific samples that were reviewed during the visit. For example, if an agency has 200 files, and in reviewing 20, it was found that 4 were out of compliance, the reviewer should, in the letter:

- Specify in each case the exact reasons those files were unacceptable.
- Restate that as it was a random sample, and if representative of the whole, it is likely that approximately 20 percent of the agency's 200 files were similarly faulty.
- Emphasize the importance of reviewing all files to insure that all files are in compliance.

In some agencies multiple staff are involved in maintaining different aspects of the files, and their awareness of AbilityOne requirements may vary greatly. In such situations, the reviewer should request that all of the agency staff responsible for file maintenance, be informed of these requirements. In cases of systemic problems, whether it is files or compliance with DOL requirements, the agency should be encouraged to adopt a best-practices approach. Often, staff turnover or poor communication lead to problems of this kind. The reviewer should highlight this, wherein management can implement changes that can survive staff turnover.

Long-term follow up on corrective measures and due dates

The establishment of the response due date is critical to follow-up activities by the reviewer. It also helps indicate how effective agencies are in correcting compliance deficiencies.

When agencies submit acceptable responses for corrective action, the compliance specialist will enter the receipt date into JPID. This allows the Committee staff to track individual responses.

For some compliance issues, a verbal response or email is sufficient. In these cases, the reviewer should either write a memo for the agency file, detailing the corrective action taken, or print the email for the same purpose.

At the beginning of each quarter, the compliance specialist will generate a report from JPID of the response records of nonprofit agencies, which will be used for long-term follow up. Agencies that have not responded before the deadline established during the visit, will be contacted by the reviewer and asked to explain why no response was submitted and what corrective actions, if any, were taken. They will be asked again to submit a written detail of the corrective measures taken, and reminded that **a failure to respond jeopardizes their continued participation in the AbilityOne Program.**

FREQUENTLY ASKED QUESTIONS

1. WHAT QUALIFIES A NONPROFIT AGENCY TO PARTICIPATE IN THE AbilityOne PROGRAM?

In order to participate in the AbilityOne Program a nonprofit agency must have its nonprofit status verified by the Committee and it must be authorized to provide a product or service on the Procurement List. In order to remain in the AbilityOne Program a nonprofit agency must meet all of the requirements specified in the Committee's regulations on maintaining qualifications (41CFR51-4.3), the first three requirements being that 75 percent of the nonprofit agency's direct labor must be done by people who are blind (in the case of a nonprofit associated with National Industries for the Blind) or severely disabled; that the nonprofit submit an annual certification covering the fiscal year; and that the nonprofit must supply the products or services in accordance with the Government contracts.

2. HOW DOES AbilityOne DEFINE A SEVERE DISABILITY?

The Committee's regulations (41 CFR 51-1.3) define severely disabled as:

Other severely handicapped and severely handicapped individuals (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.

(1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.

(2) A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other severely handicapped" within the meaning of the definition.

3. WHAT KINDS OF DOCUMENTS ARE REQUIRED FOR A NONPROFIT AGENCY TO CERTIFY SOMEONE AS "SEVERELY DISABLED"?

A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that

cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

A key point frequently missed when reviewing this statement is that the documentation must provide information on the extent of the disability.

4. WHAT DOES "NORMAL COMPETITIVE EMPLOYMENT" MEAN WITHIN THE AbilityOne PROGRAM?

The Committee has historically defined normal competitive employment as the ability of an individual to find, obtain and maintain a non- AbilityOne job, with no supports from a nonprofit. Commensurate wages would not be involved, because they are not a part of normal employment. The Committee considers an individual to be capable of normal competitive employment if the individual can do all of the following:

- Is capable of working a full work week (40 hours),
- Can complete an application and participate in an interview independently,
- Receives the same pay and benefits as any other worker performing comparable work,
- Only requires accommodations considered reasonable under American Disabilities Act (ADA),
- Can maintain a job for an extended period of time (months, if not years),
- Can maintain a job without intervention or supports from outside sources.

5. WHAT KIND OF DOCUMENTATION IS REQUIRED IN ORDER TO HELP DETERMINE WHETHER A PERSON IS NOT COMPETITIVELY EMPLOYABLE?

The concept of normal competitive employment or competitive employability in the AbilityOne program is as fundamental as it is unique. The documented evidence of a severe disability, the significant functional limitations resulting from it, and the requirement for substantive workplace accommodations, form the basis by which a person's *non-competitive employability is established and justified*. In addition to impairments directly related to a severe disability, some pertinent indirect factors may affect competitiveness.

The nonprofit agency needs to document that it is providing the individual with accommodations and supports that would not be considered reasonable by most employers. Information on the individual's productivity, level of supervision required, work tolerance and disruptive behavioral issues are common examples.

6. WHY DOES THE AbilityOne PROGRAM REQUIRE A "COMPETITIVE

EMPLOYMENT" EVALUATION?

The competitive employment evaluation is done to ensure that the AbilityOne Program is serving the people it was intended to serve. The language of the JWOD Act specifies that to be counted towards the 75% disabled direct labor ratio, an individual must be severely disabled and not competitively employable. Just because an individual has a severe disability does not mean that he or she is competitively unemployable. As people are frequently able to overcome their disabilities or the employment-related barriers associated with their disabilities, the assessment that an individual is not competitively employable must be reviewed annually to ensure that it is still correct.

7. HOW IS THE COMPETITIVE EMPLOYMENT EVALUATION CONDUCTED?

The nonprofit agency must have an evaluation program, with the individual making the decisions being one who is knowledgeable of people with severe disabilities. While the employee's direct supervisor has the best understanding of how the individual is performing on the job, the supervisor seldom has the background knowledge of severe disabilities required by the regulations. While the supervisor's opinion should be a critical part of the evaluation, particularly where it pertains to the implementation of accommodations and the individual work performance, the evaluation should usually be completed by another individual. An individual such as the rehabilitation director or a counselor who has the education, training, or work experience that is commensurate to making such a determination

8. WHAT IS AN "INITIAL ASSESSMENT"?

The initial assessment is the nonprofit agency's first evaluation of an individual and whether he or she is severely disabled and not competitively employable, which determines whether the individual should be counted towards the 75% disabled direct labor ratio. This assessment should be completed after the individual has been at the nonprofit long enough to determine adequately what accommodations and supports are required, but after no more than 30 days.

9. WHAT IS AN "ANNUAL ASSESSMENT"?

The annual assessment is the yearly evaluation by the nonprofit agency to determine whether an individual being counted towards the 75% direct labor ratio is still severely disabled and not competitively employable. The annual assessment is also an opportunity to discuss competitive employment options with the individual if he or she is determined to be competitively employable.

10. WHAT TYPES OF DISABILITIES ARE MOST PREVALENT IN THE AbilityOne PROGRAM?

Demographic surveys conducted by NIB and NISH in 2005 reveal that an estimated 33 percent of employees who are blind working at NIB associated agencies had secondary disabilities in addition to blindness. Approximately 67 percent of employees working at NISH affiliated agencies are estimated to have cognitive disabilities such as mental retardation, mental illness and developmental disabilities. The estimates of the primary disabilities of all AbilityOne employees in 2005 include:

Mental retardation	33%
Mental Illness	19%
Physical Disabilities	12%
Blind	10%
Developmental disabilities	8%
Deafness/Hearing impairment	4%
Substance Abuse/Alcoholism	4%
Neurological/Epilepsy	3%
Other	8%

11. What are the Committee’s reviewers’ qualifications that they can question a medical diagnosis by saying that an individual is not severely disabled?

The reviewer is not actually questioning the medical diagnosis, but rather evaluating the file’s ability to meet the three requirements for an individual to qualify as severely disabled under the AbilityOne definition. First, there must be medical documentation stating a diagnosis with the nature and when applicable the extent of the disability; second, there must be functional limitations brought about by the disability; and third, those limitations must be severe enough to cause the individual to be not competitively employable.

The most common problems found by reviewers are:

- The medical documentation does not provide any information on the extent of the disability and that the
- The functional limitations are not explained either in the medical documentation or by the evidence,
- Accommodations for supposed limitations have not been noted.

When problematic, these issues are typically, either unexplained in the medical documentation, or not spelled out in the nonprofit’s competitive employment evaluation.

12. WHERE CAN I FIND SOME EXAMPLES OF ACCEPTABLE MEDICAL, ASSESSMENT, AND EVALUATIVE DOCUMENTATION?

See the Examples of Acceptable Evaluations section in appendix 3.

Glossary

Accommodation – In normal employment settings, employers are obligated to provide “reasonable” accommodations to all workers under the Americans with Disabilities Act (ADA), though whether some particular accommodation is reasonable or unreasonable, has often been the subject of litigation. Still, when there is a consensus that it is not reasonable, or an unfair burden on an employer, such an accommodation will hardly ever be found in normal competitive employment. On the other hand, extensive job supports are routinely found in nonprofits participating in the AbilityOne Program.

Commensurate wages – Also frequently referred to as subminimum wages. Commensurate wages are wages that are commensurate with, and tied to, a worker’s productivity. The authority to pay commensurate wages is contained in the Fair Labor Standards Act in Section 14c and is administered by the Department of Labor (DOL). In order to pay commensurate wages a nonprofit must have a certificate from DOL. No matter the type of work, the output is usually some measured fraction of a properly established standard. Based on this productivity and the prevailing wage for the type of work being done, the wages calculated may or may not be below the Federal or State minimum wage.

DSM– (DSM-IV or DSM-4) –Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (1994) – The principal reference book for psychiatrists, psychologists, mental health counselors, and therapists. It includes: classifications and diagnostic codes, diagnostic criteria, symptoms, treatment options, prognoses, and research findings for all mental disorders.

Five Axis Assessments – A multi-axial summation from DSM-IV, each of which refers to a different domain of information:

Axis I: Clinical Disorders and other conditions that may be a focus of clinical attention. This axis is for reporting all the various disorders of conditions in the classification except for the personality disorders and mental retardation. Examples include: disorders usually first diagnosed in infancy, childhood or adolescence, substance related disorders, schizophrenia, mood disorders, anxiety disorders and sleep disorders.

Axis II: Personality Disorders and Mental Retardation. This axis is for reporting personality disorders, mental retardation and noting prominent maladaptive personality features and defense mechanisms. Examples include: Paranoid personality, schizoid personality, obsessive-compulsive disorder, and mental retardation

Axis III: General Medical Conditions: This axis is for reporting current general medical conditions that are potentially relevant to the understanding or management of the individual’s mental disorder. Examples include: brain injury, infectious diseases, diseases of the

nervous, circulatory, respiratory or digestive system, and congenital anomalies.

Axis IV: Psychosocial and Environmental problems. This axis is for reporting psychosocial and environmental problems that may affect the diagnosis, treatment, and prognosis of mental disorders. Examples include: problems with primary support group, educational problems, economic problems and problems related to interaction with the legal system/crime.

Axis V: Global Assessment of Functioning: This axis is for reporting the clinician's judgment of the individual's overall level of functioning using the Global Assessment of Functioning (GAF) scale. Which is a rating of the person's current level of functioning, with respect only to psychological, social, and occupational functioning; it does not include impairment in functioning due to physical or environmental limitations.

100 91	Superior functioning in a wide range of activities, life's problems never seem to get out of hand, is sought out by others because of his or her many positive qualities. No symptoms.
90 81	Absent or minimal symptoms (e.g., mild anxiety before an exam), good functioning in all areas, interested and involved in a wide range of activities, socially effective, generally satisfied with life, no more than everyday problems or concerns (e.g., an occasional argument with family members).
80 71	If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family arguments); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork).
70 61	Some mild symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational or school functioning (e.g., occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.
60 51	Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational or school functioning (e.g., few friends, conflicts with peers or co-workers).
50 41	Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational or school functioning (e.g., no friends, unable to keep a job).
40 31	Some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work: child frequently beats up younger children, is defiant at home, and is failing at school).

30 21	Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communications or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day; no job, home or friends).
20 11	Some danger of hurting self or others (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement) OR occasionally fails to maintain minimal personal hygiene (e.g., smears feces) OR gross impairment in communications (e.g., largely incoherent or mute).
10 1	Persistent danger of severely hurting self or others (e.g., recurrent violence) OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.
0	Inadequate information

Medical documentation – Medical or mental health records signed by a licensed provider [Ref. 41CFR51-4.3(c)(1)]. Documents that contain a clear diagnosis of what condition or combination of conditions has resulted in an individual being considered to be severely disabled [Ref. 41CFR51-1.3]. All verifying medical documentation must be signed by a person who is qualified to make such an evaluation [Ref. 41CFR51 - 4.3]. Depending on the disability, the age of the documentation is relevant in that some disabling conditions can improve over time [Ref. 41CFR51 - 1.3(2)].

Normal competitive employment – commonly refers to general workplace jobs, for which all individuals compete. Any given individual may obtain such a job by any means, but must be able to maintain it with reasonable accommodations and without external supports from a CRP or nonprofit agency. It is full time employment, with the same wages and benefits as non-disabled co-workers assigned to the same activities.

Pre-admission evaluation – an initial evaluation (and usually referred to as such) for an employee’s capability for normal competitive employment that is done within the individual’s first 30 days at the nonprofit. In this formalized process, staff assess the employee’s capacity for certain tasks, limitations engendered by their severe disability, and how the latter might be accommodated. An individual’s non-competitive employability is determined here.

Examples of Acceptable Documentation

The first two examples are based on the minimum acceptable standards described on page 10 and 11. The remaining examples are from various AbilityOne nonprofits. They represent several different approaches to documenting competitive employability and whether an individual meets or doesn't meet the Committee's requirements. It must be stressed that these are not the only ways of meeting the Committee's requirements, but are offered as examples to demonstrate possible ways of meeting the requirements.

COMPETITIVE EMPLOYMENT EVALUATION

Type of review: **Initial**

_____ (individual's Name)

Synopsis of severe disabilities (This individual has the following disabilities)

Synopsis of extent of severe disabilities (This individual has the following limitations in self-care, self-direction, work skills, work tolerance, communication and or mobility as a direct result of the documented impairment)

Competitively employability

Is this individual currently capable of competitive employment (obtaining and maintaining a job without supports from the nonprofit agency)?

YES _____ NO _____

Synopsis of rationale for noncompetitive employability

If the answer above is no, what accommodations or supports not normally provided in typical community employment are being provided:

Name

Date

Title

Signature

COMPETITIVE EMPLOYMENT EVALUATION

Type of review: **Annual**

_____ (individual's Name)

Synopsis of severe disabilities (This individual has the following disabilities. Note any changes from the last evaluation)

Synopsis of extent of severe disabilities (This individual has the following limitations in self-care, self-direction, work skills, work tolerance, communication and or mobility as a direct result of the documented impairment. Note any changes from the last evaluation.)

Competitively employability

Is this individual currently capable of competitive employment (obtaining and maintaining a job without supports from the nonprofit agency)?

YES _____ NO _____

Synopsis of rationale for noncompetitive employability

If the answer above is no, what accommodations or supports not normally provided in typical community employment are being provided:

Name

Date

Title

Signature

Competitive Employment evaluation

Date: January 17, 2006

Name: Doe, Jane

SSN: XXX-XX-XXXX

DOB: 07/12/66 (40)

AbilityOne **Type:** Annual

Position: Janitor

History

Ms. Doe has been employed with AIS since 02/04/03. Initial AbilityOne review found Ms. Doe to be eligible based on mild Mental Retardation. Ms. Doe has been married for 12 years and has two children ages 7 and 10.

Regarding her work history, she reported that she has worked as an exotic dancer, off and on since she was 20 years old. She worked doing cleaning for a company in the late 1980s, but stopped working there around 1988. She has also worked at a fast food restaurant for one year and tried working as a waitress for a restaurant/bar but was not kept beyond her trial period. She also had her own kiosk in a local mall briefly but her employer told her that she was too slow and she was let go. In the past, she has occasionally sold Avon.

Medical Review

A Psychological Evaluation was performed by Jan Smith, Ph. D. on 01/11/06. Dr. Smith diagnosed Mild Mental Retardation and dysthymic Disorder. A WAIS – III was administered and the results were a Verbal IQ of 61, Performance IQ of 69, and Full Scale IQ of 69 which is in the Extremely Low Range of intellectual ability. The Trail Making Test identified mild-moderate organic brain impairment. The WRAT3 showed skills and spelling to be at the 4th grade level and math skills to be at the 3rd grade level. The RAVLT found that Ms. Doe requires longer-than-average learning time for new material.

The MMPI-2 was administered in an audio-taped version because of Ms. Doe's low reading abilities.

Dr. Smith reported that Ms. Doe has a limited level of executive abilities which leaves her with deficits in the ability to plan, organize, self-monitor, and accommodate for mistakes or variability in performance. Her personality structure is such that she tends to appear aloof and may have poor interpersonal skills which would leave her prone to social isolation from an avoidance of others. She may suffer from mild, chronic depression.

Ms. Doe will most likely need ongoing help with planning, organizing, prioritizing, and making modifications in her work performance. She is capable of learning verbally but her learning time is most likely much longer than for others. This is complicated by her tendency to avoid relaying information regarding deficits, to include non comprehension. It would be advisable for hr and supervisors to have her repeat instructions, to verify that she has understood them.

Personnel File Review

No findings of disciplinary action, incident reports, or any indication of behavioral issues on the job.

Supervisor Review

On 12/02/05, a phone interview was conducted with Ms. Doe's supervisor, Don Jackson. Mr. Jackson reported that Ms. Doe completes a full eight hours worth of tasks within 8.5 hours. The reason for the extra 30 minutes is that Ms. Doe works at 2 separate sites during her eight hour shift. After she finishes her tasks at one, she has to walk to the other, in the dark. This makes her nervous and the anxiety causes a performance deficit.

Mr. Jackson stated that Ms. Doe is able to adapt to changes in her routine, as long as she has additional time to adjust, have all of her questions answered, receive close supervision, and be comfortable that extra support is available if she needs it. Given this, she can adjust to occasional change. However, day to day changes would markedly reduce her productivity, as it would begin to overwhelm her. She can adapt to a new site, as long as her duties are relatively the same.

Mr. Jackson also reported that Ms. Doe's mental processing is slow, especially when questions are asked. Either the questions are not well understood, or an extended period for deliberation is needed. He stated that she has difficulty making decisions and using good judgment while performing her various tasks. He provided an example:

Ms. Doe has a tendency to carry a bucket from one end of the school to the other, in order to clean a room. On completion, she will store the bucket in the closet closest to the room. The next time she cleans that room, she will carry a different bucket from one end of the school to the other. After not too long a period, all of the buckets in the school will be in one closet at the far end of the school. He stated that she persists with this, regardless of the number of times he has explains this problem to her. She is able to learn new tasks with verbal instructions, but that time must include slow simple explanations, modeling, supervising and providing reminders.

Mr. Jackson reported that Ms. Doe left her husband recently and she has requested a shift and site change. For the most part, she is very uncomfortable talking to people, especially if she does not know them.

Ms. Doe needs to be placed at a work site where she is only expected to perform one task at a time. He stated that she requires 4-6 hours of direct supervision in order to insure that her tasks get completed, And Sometimes he has to assign part of her work to janitors on the next shifts. He stated that she is not able to multi-task, prioritize her tasks, or time manage her shift. He stated that he often finds Ms. Doe in the middle of a task, confused as to which step comes next. He stated that he had not been able to be present at Ms. Doe's work site until recently, and did not realize how much she was struggling with her job duties.

Employee Review

On 12/20/05, a phone interview was conducted with Ms. Doe. She reported that she graduated from high school, but is "not a real exceptionist in math." She was in Special Education and is able to read and write.

She stated that she "took training on computers" in the past, but has not used those skills for work. She said that she has worked with the Office of Vocational Rehabilitation Services, and that agency may have been the one who referred her to AIS.

When asked whether she received SSI or SSDI, she said that she used to a long time ago but that she does not anymore. When questioned as to why it was stopped, she answered, "1988." The question 'why' was repeated and she then answered "I guess because I was working.

Ms. Doe stated that she became anxious at times and has trouble breathing when she did. At such times, she must relax and breathe. She stated that this has been a problem all her life.

She has not seen a doctor for quite some time and takes no medications. However, she said she needs to see one soon, because she has "an infection." When questioned about this, she stated that she did not want to share the information, because she is self-conscious.

She has two children, but when asked their ages, she responded, "I also have property taxes and the county one," quickly adding, "My husband is injured." Ms. Doe then began talking about how she had avoided another job, but that Child Protective Services (CPS) was called because of something in the driveway and she was charged \$1,000. She began to talk about this situation at length but it was difficult to follow the events because she presented them in a scattered and fragmented manner.

In response to whether or not she experienced any difficulties in performing her job duties, Ms. Doe stated, "I assist the night custodian and learned lots here. Most important to get things done and do the fire alarms. The question was reworded, "Do you have any problems at work?" In response to this, Ms. Doe stated, "I get confused about what to do, you know, um." After a long silence,

she stated, "There are a few other things like fire alarms. Well, it's a practice thing."

During the conversation, Ms. Doe appeared hesitant and guarded when answering direct questions. Most questions resulted in pauses that lasted for at least ten seconds before she responded. Her answers were delivered with very slow, halting speech. However, when she related her CPS story, she spoke without hesitations and more quickly than when responding to direct questions, where her answers often related to completely different subjects.

Recommendations

Ms. Doe has Mild Mental Retardation and a Dysthymic Disorder. She processes information slowly and has difficulty learning and executing new tasks. Her Dysthymic Disorder produces occasional depression. During such periods, she has a low energy level and has difficulty concentrating on her work.

Ms. Doe will benefit from a structured environment and a set single-task routine, with minimal distractions, interruptions, or changes. She needs to be supervised closely and given reminders to help her complete her tasks correctly and in a timely manner. New tasks should be demonstrated to her with both verbal and manual instructions and, with additional time to learn them. Interaction with others should be limited, since it makes her very uncomfortable. She will benefit from encouragement and support on a daily basis.

Assessment/Plan

Based on this review, I believe that Ms. Doe does have a severe disability that is consistent with Committee regulations. She demonstrates an inability to overcome the functional limitations of self-care, self-direction, work skills, work tolerance, and communication associated with Mild Mental Retardation and Dysthymic Disorder. These functional limitations preclude her from obtaining and maintaining competitive employment.

I hereby find Ms. Doe to have a severe disability which so limits her functional capabilities that she is unable to engage in normal competitive employment over an extended period of time in accordance with AbilityOne standards Title 41 Part 51-1.3.

AbilityOne **Eligible:** Yes

Primary: Mild Mental Retardation

Secondary: Dysthymic Disorder

XX

Disability/Eligibility Specialist

INITIAL CHECKLIST

	Adequate for Competitive Employment	Interferes with Competitive Employment ¹	¹ Explain
WORK HABITS			
Attendance			
Punctuality			
Proper Notification when absent/late			
Takes breaks at designated time			
Leaves premises at designated times			
WORK TOLERANCE			
Attention to work details			
Frustration tolerance			
Follows written directions			
Follows oral directions			
Ability to maintain expected work pace			
Productivity rate			
Reaction to new assignments			
Need for work assignment accommodation			
INTERPERSONAL BEHAVIOR			
Interaction with supervisor			
Interaction with co-workers			
Demonstrates effort to work			
Management of conflict			
Ability to work without direct supervision			
OTHER (what supports are being provided to the employee)			

WORK SKILLS RATING SCALE

Competitive Employability Determination

DATE ___/___/___ INITIAL ___ Or ANNUAL ___
 Employee with Severe Disability _____ WORKSITE _____
 EVALUATOR _____ JOB TITLE _____

Please rank this employee's level of ability and performance, compared to that of a competitively employed individual, who does not have a severe disability, and who is performing similar tasks. Rate each level of functioning by placing an "X" in the area which **most closely** describes the disabled employee's **current** performance.

WORK SKILLS	RATINGS: Functional Limitations				Support provided
A. ATTENDANCE (Mark one)	Present 95% or more	or	Present 51% -94%	Present 50% or less	
B. Degree of INDEPENDENCE	95% or more	76% to 94%	51% to 75%	50% or less	
C. WORK HABITS % of time consumer is:	95% or more	80% or 94%	60% or 79%	59% or less	
1. PUNCTUAL					
2. COOPERATES with co-workers					
3. COOPERATES with supervisors					
4. Shows INITIATIVE by seeking work					
5. ATTENTIVE to assigned tasks					
6. Displays good APPEARANCE and/or HYGIENE					
7. Accepts REDIRECTION					
8. DEPENDABLE in completing tasks					
9 Observes SAFETY rules & regulations					
10. Follows DIRECTIONS					
11. COMMUNICATES Effectively					
12. Accepts CHANGE appropriately					
13. Works well under PRESSURE					
14. Identifies quality control issues					

D. Work Tolerance	RATINGS: Function Limitations				Supports provided
1. Demonstrates STAMINA for	6-8hr. work day	4-6 hr. task	2-4 hr. task	Less than 2 hrs.	
SKILLS: % of time employee is able to:	95% or more	80% to 94%	60% to 79%	59% or less	
2. Uses required TOOLS and EQUIPMENT appropriately					
3. LEARNS NEW TASK quickly with minimal instruction					
4. COMPLETES TASKS without errors					
5. Makes fine DISCRIMINATIONS					
6. Correctly MANIPULATES small objects/items					
Percentage of total job description performed	90% or more	70% to 89 %	50% to 69%	Less than 50%	

April XX, 2007

Dear Ms.:

This letter is to confirm my upcoming visit to your agency on _____, wherein I will review your agency's compliance with Federal and Committee regulations pertaining to its participation in the AbilityOne, formerly Javits-Wagner-O'Day Program.

During this review I will go over a number of areas that are outlined on the form: compliance review of NISH nonprofit agency, which I have enclosed. We will fill it out during my visit, and it indicates the specific information I will need. It is often helpful to bring it to the attention of other staff whose areas may be involved: business office, HR, placement or vocational supervisors, etc. Using a copy of the form as a worksheet prior to my visit can often expedite the process.

As a critical part of a compliance visit involves the verification of medical records for direct-labor workers being counted as severely disabled, Federal Regulations require that this review cover all such employees, not just those working on JWOD contracts. If your agency policy or State law requires a release for us to review the files, please use the appropriate procedures to obtain such releases that will allow me to do so.

Another important part of the visit process is the Executive Director's outbrief. Such meetings normally last no more than thirty minutes, and would be best scheduled for some time in the late afternoon. If at all possible, it is requested that at least one member of your Board of Directors be present for this meeting.

Please call me at (703) 603-_____ or e-mail _____ if you have any other questions regarding the review.

Sincerely,

December XX, 200X

Dear Mr.:

I am writing, first to express my appreciation for the fine welcome and hospitality your agency accorded me during my recent visit, with special thanks to and for their assistance and well-organized presentation of the various documents relevant to a Committee review.

Secondly, and as I discussed with you during my visit, the Committee For Purchase is most interested in insuring that agencies participating in the AbilityOne Program meet the legal requirements of maintaining or exceeding the 75 percent direct labor ratio. Your agency is currently meeting this critical standard and the Committee appreciates the efforts you have made during the past year that brought this about.

In addition to ratios, the JWOD Program requires a qualitative determination as to those individuals who perform direct labor and are deemed to be severely disabled. Such workers must be disabled to the point wherein their disability or disabilities cause them to be not presently capable of normal competitive employment

In a random sample review of employee files (severely disabled/direct-labor), and with the aforementioned criteria in mind, I determined that all files contained documentation that would validate a condition, which as a logical consequence would result in the person being considered "not competitively employable".

All the other areas I reviewed, issues involving Department of Labor, OFCCP, and OSHA requirements appeared to be in satisfactory order.

Once again, I was very pleased to have the opportunity to visit ARC Brevard and your JWOD operation at Patrick AFB. Please feel free to contact me at any time if there is something for which you think I may be a resource.

Sincerely,

|

TRIP REPORT FOR NISH NONPROFIT AGENCY

Date of Visit: _____

Visitor: _____

Agency:	Executive Director:
Street Address:	E-Mail Address:
City, State:	Phone Number:

Previous Visit Date: _____

Previous Visitor: _____

- NISH**
- Committee**

Previous Problems:

1. Articles of Incorporation & Bylaws

Have there been any changes to articles of incorporation or bylaws since _____? Yes No

If yes, when _____ (attach copy of amendments)

2. File Review of Medical Documentation & Competitive Employability

Total # of files for all severely disabled direct labor employees

AbilityOne _____ (+) Non-JWOD _____ (=) Total _____

Total number of files reviewed

AbilityOne _____ (+) Non-JWOD _____ (=) Total _____

A. Number of files which contained documentation of a severe physical or mental impairment:

AbilityOne _____ (+) Non-JWOD _____ (=) Total _____

B. Number of Files which contain sufficient information developed by an ongoing evaluation program that includes a preadmission evaluation and reevaluation at least annually, of each individual's capability for normal competitive employment.

AbilityOne _____ (+) Non-JWOD _____ (=) Total _____

Comments _____

3. Placement Program

Does the agency have a placement program? Yes No

If no, does the agency have a letter of agreement with another agency to provide placement services? Yes No

Comments: _____

4. Direct Labor Ratios

FY _____ cumulative hours through _____

Are employee hours being classified correctly as direct or indirect labor? Yes No

A. Total Agency Direct Labor

Disabled Hours _____ (+) Non-Disabled hours _____ (=) Total _____

Disabled Hours _____ (/) Total Hours _____ (=) Ratio _____

B. AbilityOne Direct Labor

Disabled Hours _____ (+) Non-Disabled hours _____ (=) Total _____

Disabled Hours _____ (/) Total Hours _____ (=) Ratio _____

Comments _____

5. AbilityOne Project Ratios

FY _____ cumulative hours through _____

If spreadsheet is attached, it should contain project number or description, number of disabled and non-disabled hours, and ratios.

Project # _____ **Ratio on Add 5/6** _____

Is the project on-schedule? Yes No N/A

Disabled Hours _____ (+) Non-Disabled hours _____ (=) Total _____

Disabled Hours _____ (/) Total Hours _____ (=) Ratio _____

Project # _____ **Ratio on Add 5/6** _____

Is the project on-schedule? Yes No N/A

Disabled Hours _____ (+) Non-Disabled hours _____ (=) Total _____

Disabled Hours _____ (/) Total Hours _____ (=) Ratio _____

Project # _____ **Ratio on Add 5/6** _____

Is the project on-schedule? Yes No N/A

Disabled Hours _____ (+) Non-Disabled hours _____ (=) Total _____

Disabled Hours _____ (/) Total Hours _____ (=) Ratio _____

Comments _____

6. Department of Labor Requirements

A. Commensurate Wages

Does the agency have a certificate authorizing special minimum wage? Yes No
Expiration Date _____

Do recipients of commensurate wages have impaired productivity or earning capacity from age, physical disability, mental disability, or injury for the work performed? Yes No N/A

Have calculations been verified to match payroll records? Yes No N/A

B. Prevailing Wage

Has the prevailing wage survey been completed annually? Yes No N/A

Does the prevailing wage survey have all the following: Yes No N/A

Contact date, company name, address, phone number, contact persons name with title. Brief description of work involved, wage rate, and basis for concluding the wage data provided was not for an entry level position.

Has the employees wages been adjusted no later than the First complete pay period following the prevailing wage Review? Yes No N/A

Have all monetary calculations been rounded up? Yes No N/A

C. Hourly Production Standards

Is there a job description and task analysis for work being performed? Yes No N/A

Has a standard been set using employees who are not disabled for the work? Yes No N/A

Have employees productivity been measured within the first month of employment? Yes No N/A

Is employees' performance being reviewed every 6months or when the workers change jobs?	Yes	No	N/A
Are production standards reviewed periodically?	Yes	No	N/A
Have all monetary calculations been rounded up?	Yes	No	N/A

D. Piece Rates

Is there a job description and task analysis for the work being performed including set-up activities, packaging, counting, boxing, clean-up, and other irregular operations?	Yes	No	N/A
Have standards been set using employees who are not disabled for the work and incorporated Personal Fatigue, and Delay (PFD) factor that is not less than 17.65%?	Yes	No	N/A
Are piece rates calculated correctly? <i>(Prevailing wage divided by non-disabled standard = piece rate)</i>	Yes	No	N/A
Have all monetary calculations been rounded up?	Yes	No	N/A

Comments _____

7. Service Contract Act (SCA)

Is the current wage determination rate being used?	Yes	No	N/A
Which health & welfare benefits are being paid?	Cash	Benefit plan	Both
Explain benefit plan, in component parts and percentages of H&W:			

Has payment to the benefit provider been verified?	Yes	No	N/A
Holidays paid	Yes	No	N/A
Vacation benefits paid	Yes	No	N/A
Payroll records match	Yes	No	N/A

8. Occupational Safety & Health Administration (OSHA)

Safety Committee	Yes	No	N/A
MSDS	Yes	No	N/A
Bloodborne Pathogens Program	Yes	No	N/A
OSHA Form 300	Yes	No	N/A

Comments _____

9. Additional Federal Contractor Requirements:

Affirmative Action Policy (A Federal Contract of \geq \$10,000)	Yes	No	N/A
Affirmative Action Plan (A Federal Contract of \geq \$50,000 and 50 employees)	Yes	No	N/A
EEO-1 Form	Yes	No	N/A
Vets-100 Form (A Federal contract of \geq \$25,000)	Yes	No	N/A
Drug- Free Workplace Policy (A Federal Contract of \geq \$100,000)	Yes	No	N/A
Family & Medical Leave Policy (Employers with \geq 50 employees)	Yes	No	N/A
I-9 Forms Number Reviewed _____	Number with at least one or more deficiencies _____		

Comments _____

10. VISIT SUMMARY or additional overall comments:

Agency Acknowledgement:

Printed Name:

Title:

Signature: _____

Date: _____

Article I. COMPLIANCE REVIEW OF NISH NONPROFIT AGENCY
Article II.

This document is an explanatory addendum to the form: **Compliance Review for NISH Nonprofit Agency**, and is intended to assist in its completion.

Article III. Instructions

Section 3.01

1. Articles of Incorporation & Bylaws

Have there been any changes to the agency's Articles of Incorporation or Bylaws since _____ . This date corresponds with the most recent copies on file at the Committee For Purchase, and should be filled in by the reviewer prior to a visit. If there have been any changes since that date, a copy of the most current version of these documents should be given to the reviewer.

2. File review for medical documentation and competitive employability

The "total" number of files is equal to all the files of severely disabled direct labor employees, who worked for the agency at any time during the past year, both AbilityOne and non- AbilityOne. In this item, the total is divided into two groups: all the severely disabled direct labor employees who are working on AbilityOne projects, and all those who are working on non- AbilityOne projects.

A random sample of these files from both AbilityOne and non- AbilityOne, to be determined by the reviewer, will be physically examined to determine the adequacy of documentation verifying the employees' severe disability and non-competitive employability evaluation.

The number of files reviewed will depend on the size of the direct labor work force:

No less than 20 files or 10%, whichever is greater, will be examined. For agencies with fewer than 20 direct-labor, severely disabled workers, all files will be reviewed.

Federal Regulations governing the AbilityOne program mandate that participating agencies maintain proper documentation for verifying that all employees determined to be (and counted as) severely disabled, are just that. Evidence of an evaluation assessing their competitive employability is also required. This applies to all who perform direct labor, whether on a AbilityOne contract or not.

Medical documentation must include a clear diagnosis as to what condition or combination of conditions has resulted in an individual being considered severely disabled. [Ref. 41CFR51-1.3] Such a disability should be consistent with a level of impairment that would reasonably cause a person to be deemed *not competitively employable*. The extent and degree of impairment should be described in the competitive employment evaluation.

For many medical conditions, severity can exist on a continuum, from mild to profound. This is why a delineation of the degree of impairment is so critical. In other words, a measure of the functional limitation must be known in order to determine the degree of severity.

Verifying medical documentation, i.e. a diagnosis, must be signed by a person who is qualified to make such an evaluation. [Ref. 41CFR51 - 4.3)] Depending on the disability, the age of the documentation may invalidate it, as some disabling conditions can improve over time. As well, rehabilitative gains may result in an individual becoming competitive.

Committee regulations state that the evaluation of competitive employability must be done initially and on an annual basis thereafter. An individual who has been at the agency for over one year should have a file that contains both an initial and an annual evaluation

If the files contain compliance problems, a corrective action plan will be put in place.

3. Placement Program

Federal Regulations (41 CFR 51-4.3) require all participating nonprofit agencies to have an ongoing placement program, either at the agency or through a formal arrangement with an outside employment service.

4. Direct Labor Ratios

The first question refers to cumulative hours from the beginning of the federal fiscal year, which is October 1. It should be cumulative through the end of the last pay period prior to the date of the review.

Classifying employees correctly refers to whether proper distinctions have been made between direct and indirect labor employees. On occasion, some employees work both direct and in-direct labor and their hours in both categories should be appropriately counted.

Item A. accounts for all direct labor hours produced in the entire agency. The form breaks down the arithmetic for deriving the overall agency ratio.

Item B. does the same for the hours produced by all the JWOD contracts .and tallies an overall JWOD ratio.

5. AbilityOne Project Ratios

Again, cumulative hours should be year-to-date (end of last payroll) going back to Oct 1, unless a particular project began sometime in mid year.

The total hours of all the AbilityOne projects, should equal what was recorded in item 4-B.

The ADD-6 requires an agency to estimate a project ratio, a comparison of that number to where the project currently is needs to be assessed. Phase-in plans and schedules are developed for new projects that will begin with a direct labor ratio that is below that which the agency believes it can eventually achieve, or for contracts that have begun at levels lower than was anticipated. In cases where there is a phase-in schedule or plan, its current ratio needs to be checked against the phase-in schedule that was submitted. If they are not within 5% of their target, the reasons should be indicated and corrective action required.

In addition, it may be necessary for the reviewer to look at current ratios, by way of gathering the direct labor hours worked during the last pay period. This will give a snapshot of how the agency is performing at the present time.

If the agency's overall ratio is below 75% and/or any AbilityOne project ratio is below 60%, they should specify the corrective actions that are being taken, as well as the anticipated dates that these mandatory ratios are to be achieved. Current cumulative ratios should also be checked against that which was submitted on the Add-5/6; if a large discrepancy exists it may need to be addressed.

6. Department of Labor Requirements

All agencies that are paying commensurate wages (which includes paying wages below a Wage Determination Rate on a Service Contract) must have a current Department of Labor certificate. If the agency has one, its effective date should be noted.

This item asks a number of questions relevant to Department of Labor regulations pertinent to the payment of commensurate wages. Relevant documents should be examined in order to gain a reckoning that the agency appears to understand these various rules, and has implemented them.

The method of payment that the agency utilizes must ensure that the proper calculations are reflected in their payroll system. The production standards, prevailing wage documentation and payroll methods should allow one to trace

the pay records of individuals who work in different direct labor positions. These pay records should be consistent with the production standards and measured productivity.

7. Service Contract Act (SCA)

This section applies only to agencies with Federal Service Contracts. The Service Contract Act wage determination rates should be current and correct. Available documentation should include the current SCA Wage Determination rate and Fringe Benefit procedure for paying "health & welfare": cash, or benefits plan (in part or whole), vacation and holidays (paid or taken), etc.

8. Occupational Safety & Health Administration (OSHA)

Committee regulations state that any agency participating in the program must be in compliance with all applicable occupational health and safety standards prescribed by the Secretary of Labor. This can be accomplished by requesting a "consultation review" through the State Division of the Occupational Safety and Health Administration (OSHA).

However at a minimum, the agency should have:

- A. Formal Safety Committee (to oversee the agency's written communications regarding safety and injury reporting);
- B. MSDS sheets for all hazardous materials used;
- C. Blood-Borne Pathogens program.

Some participating agencies may not need to maintain an OSHA Form 300. OSHA regulations involving this requirement can be consulted to determine the appropriateness of the particular agency's need to do so. The OSHA central office can provide a written OSHA 300 exemption.

9. Additional Federal Contractor Requirements:

For compliance with the Office of Federal Contract Compliance (OFCCP) and the AbilityOne Program, any agency with more than \$10,000 in Federal contracts must have a written policy that ensures the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

Agencies with 50 or more employees and \$50,000 or more in a Federal contract must have a written affirmative action plan for each designated group: people with disabilities, women, minorities, and veterans. An EEO-1 report must be submitted by September 30th of each year. The plan should ensure development of positive programs to recruit, hire, train, pay and promote minorities, women, people with disabilities, Vietnam era and special disabled veterans. The 50-employee requirement applies to the agency's total number of employees,

including staff. An affirmative action or equal opportunity policy is not enough to meet the written affirmative action plan requirement.

Agencies with Federal contracts totaling \$100,000 or more must complete the Veterans Form 100 and submit it by September 30th of each year.

The Drug Free Workplace Act of 1988 requires all federal contractors and recipients of federal grants of \$25,000 or more develop and communicate policies on drug awareness to employees on an ongoing basis. The Federal Acquisition Streamlining Act of 1994(FASA) raised the threshold of contracts covered by the Drug-Free Workplace Act of 1988 from \$25,000 to those exceeding \$100,000. For Federal contractors, the policy must contain a clause requiring the contracting agency to notify the contracting officer in the event of a drug related conviction on the agency's premises, within 10 days.

The Family and Medical Leave Act covered in 29 CFR § 825.104 requires that an employer who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year comply with FMLA. FMLA gives eligible employees of a covered employer the right to take unpaid leave, or paid leave if it has been earned, for a period of up to 12 workweeks in any 12 months for birth of a child, adoption/foster care child placement, and/or care for a serious health condition of self, child spouse or parent.

The Immigration Reform and Control Act of 1986 requires that all employers hire only United States citizens and aliens who are authorized to work in this country. Form I-9 must be completed for every employee hired after November 6, 1986. Both sides of the I-9 must be copied if a reproduction of the document is made. The photocopying of identification and employment eligibility documents is not required and does not negate the necessity to complete the form. If photocopied documents are attached to I-9 they should be done for all employees to avoid any claims of discrimination.

10. REVIEW SUMMARY or additional overall comments

This area should note any issues not specifically mentioned in the previous items.

11. Agency Executive Director Comments (outbrief)

This portion should be completed just prior to, or as part of the out briefing, where a member of the agency's Board of Directors should be present.

Although the questions here are straightforward, the Committee wishes to understand the full scope of the agency's business enterprise.

Most nonprofits that participate in the AbilityOne Program, do more than just work on U.S. government projects. The Committee desires to learn more about what other services are being provided to its community. This topic also serves as a place to learn about the corporate structure of the nonprofit and if any related corporations to the nonprofit being reviewed exist. When a non-profit agency is a related corporation, it is important to gain an understanding of the nature of that relationship.

The Committee also has an interest in knowing the extent of a non-profit agency's financial enterprise, beyond their AbilityOne contracts and non-AbilityOne direct labor work. If an agency engages in a spectrum of other rehabilitative endeavors, or provides such supports as residential services, their operating budget might be substantially larger than would be shown in their sales figures. In a general sense this tends to give such agencies greater capacities both financial and professional.

Information regarding sales is collected on the Annual Certifications, and its collection during this review is not critical. However, it can serve as a means to finding out changes that occasionally lead to ongoing problems.

The final questions should be seen as a short customer satisfaction survey. The responses to these questions can help the Committee and NISH improve the AbilityOne Program and become more responsive to its consumers.

Corrective action and written confirmation will be taken by the date specified.