

December 9, 2004

VIA E-MAIL AND CERTIFIED MAIL

President's Committee for Purchase From People
Who Are Blind or Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259
Attn: Mr. John Heyer

Dear Mr. Heyer,

**RE: Comments to the Proposed Rules Regarding the Javits-Wagner-O'Day
Program, (Docket No. 2004-01-01)**

Goodwill Industries International, Inc. ("GII") is a network of 166 community-based, autonomous nonprofit organizations serving approximately 616,000 people with workplace disadvantages and disabilities by providing job training and employment services at locations in the United States. Of the total number served, some 6,408 people were employed as a result of JWOD programs. Approximately 77 of our members are participating vendors under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48 C) ("JWOD Act"), and will be negatively impacted in their ability to serve people with disabilities should the proposed regulations become final. We appreciate the opportunity to provide our comments to the President's Committee for Purchase From People Who Are Blind or Severely Disabled ("Committee").

Citing recent public concerns regarding isolated instances of excessive compensation for non-profit executives, a perceived lack of financial public disclosure, and the lack of formal guidelines for Board independence for JWOD-affiliated agencies, the Committee has proposed new rules that would restrict participation in the JWOD vendor program to organizations that agree to abide by restrictions on their internal governance practices in these areas.

GII shares the Committee's concern about any organization that abuses its nonprofit status or engages in mismanagement to the detriment of the people it serves or the public. However, we disagree that the proposed rules, which will impact the entire community of participating non-profit agencies, are the proper mechanism to effect such change, especially in light of the Committee's own comment that the overwhelming majority of JWOD-affiliates central nonprofit agencies and nonprofit agencies operate in an ethical and accountable manner.

More importantly, a review of the JWOD statute, regulations implementing JWOD, the legislative history of the JWOD Act and federal case law cause us to conclude that the Committee does not have the authority to impose regulations regarding corporate governance and executive compensation under the JWOD Act in its present form, nor can it amend the Act to promulgate such rules.

Other Regulatory Systems Adequately Protect Citizens With Blindness and Disabilities And The Public Interest

We have difficulty understanding why the Committee would attempt to assume regulatory authority over the governance standards for nonprofit, 501(c)(3) organizations when numerous other governmental agencies already regulate them. Congress, through the Senate Finance Committee, is scrutinizing the issue of governance standards of nonprofits. Primary oversight over a wide range of financial and governance affairs, including executive compensation, resides with the Internal Revenue Service ("IRS"). IRS is empowered to impose intermediate sanctions on nonprofits not in compliance. Each 501(c)(3) organization must annually file a Form 990, which discloses to the public its finances, including administrative expenses and executive compensation. The IRS restricts "private benefit" and related concerns. Nonprofit vendors under the JWOD program will be subject to the same standards developed for other nonprofits. Additionally, nonprofits are organized under state law. The Attorneys General and consumer protection agencies of most states enforce abuses of charitable trusts and activities. Such additional oversight by the Committee is duplicative and serves no added purpose, in our view, other than to impose arbitrary and counterproductive restrictions on the ability of many nonprofit organizations to sell their products and services to the federal government.

Limitations on Committee Authority to Regulate Nonprofit Internal Management

Section 2 of the JWOD Act (41 U.S.C. § 47) sets forth the express powers and duties Congress vested in the Committee, summarized as follows:

- Establishment of procurement list for publication in the Federal Register of commodities and services produced by a qualified nonprofit agency for the blind or severely handicapped;
- Determine fair market price of commodities and services contained on procurement list with the power to revise the price from time to time;
- Designate central non-profit agency or agencies to facilitate distribution of orders of the Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind and severely handicapped;