Policy 51.403
Effective Date: 03/22/2013

TITLE: NONPROFIT AGENCIES OUT OF COMPLIANCE WITH COMMISSION REGULATIONS

1. PURPOSE.

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

2. APPLICABILITY.

The policy described herein applies to all NPAs participating in the AbilityOne Program, CNAs (National Industries for the Blind (NIB) and NISH), and the Commission.

3. AUTHORITY.

(a) 41 U.S.C. §§ 8501 – 8506, Javits-Wagner-O'Day (JWOD) Act

(b) 41 CFR Chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled

4. DEFINITIONS AND ACRONYMS.

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

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

5. RESPONSIBLITIES.

(a) The Executive Director implements Commission policy for participating NPAs that are considered out of compliance with AbilityOne Program requirements.

(b) NPAs authorized to participate in the Ability One Program must:

i. Submit annual certifications to the Commission through the appropriate CNA by December 1st of each year.

ii. Submit quarterly reports to the appropriate CNA if authorized by the Commission to produce a product or provide a service on the Procurement List (PL).

iii. Furnish commodities or services in strict accordance with Government requirements.

iv. 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 NPA by promotion of qualified employees who are blind or have other significant disabilities.

v. Maintain records of direct labor hours performed in the NPA by each worker.

vi. Maintain a file for each individual who is blind or has a significant disability performing direct labor, including documentation of the individual's disability.

vii. Maintain annual reviews of ability to engage in normal competitive employment in the file for each individual who is blind or with a significant disability performing direct labor.

viii. Maintain an ongoing placement program operated by, or for, the NPA.

ix. Upon receipt of payment by the Government for commodities or services furnished under the Program, pay the CNA a fee that meets the Commission's requirements.

x. Make its records available for review. Records shall be provided to representatives of the Commission or the CNA representing the NPA.

xi. Comply with directives or requests issued by the Commission in furtherance of the objectives of the JWOD Act or its implementing regulations and policy.

xii. Provide a corrective action plan for noncompliance issues within the specified time period established by the Commission when necessary.

(c) Central Nonprofit Agencies (CNAs)

i. Monitor and report the NPA's performance related to achieving the statutory and regulatory requirements to maintain qualification, particularly the direct labor ratio, on a quarterly basis during an NPA's first year in the AbilityOne Program. Quarterly reports shall be provided to the Commission as otherwise required by the Commission.

ii. Send warning letters to its NPAs with cumulative overall direct labor ratios below 75 percent after the second quarter. The warning letters to the NPA Board Officer (as listed on the latest Annual Certification (form 403 or 404)) and Executive Director/President shall include the process that is followed if the NPA finishes the year with its direct labor ratio below 75 percent.

iii. If an NPA's direct labor ratio is below 75 percent, the CNA must report the status of that NPA's cumulative overall direct labor ratio to the Commission after the end of the second quarter.

iv. Review and forward NPAs' annual certifications to the Commission by December 1st of each year.

6. POLICY.

(a) NPAs must meet all of the responsibilities and requirements herein to participate in the AbilityOne Program. When NPAs are not in compliance with the requirements, they must take action to correct the deficiencies within the approved time frame.

(b) Noncompliance may be found for multiple reasons, as determined by the Commission. Significant program-related reasons for a noncompliance finding include, but are not limited to:

i. Items listed as NPA responsibilities within this policy are not fulfilled.

ii. Competitive employment evaluations or adequate medical documentation are missing from a significant number of files.

iii. Evidence that the direct labor ratio is not going to meet the 75 percent requirement by the end of the fiscal year.

iv. AbilityOne project(s) are being performed at direct labor ratio(s) significantly below that submitted by the NPA during the PL addition or transfer of the project.

v. Repeat finding of a problem noted from previous compliance visit.

(c) Secondary programmatic and additional reasons for a noncompliance finding include, but are not limited to:

i. Inadequate evidence of a safety program.

ii. Inadequate evidence of a placement program.

iii. Inadequate affirmative action plan as required for contracts above $50,000.

iv. Inadequate documentation of immigration status (I-9) or veteran status (VETS-100) forms in employee files.

(d) In all cases of noncompliance, a corrective action date will be established by the Commission for the NPA to resolve the issue(s) and/or report back to the Commission.

i. NPAs found to be out of compliance for significant reasons may be placed on probation and not eligible for new assignments of PL work until the noncompliance is corrected, reported, and deemed satisfactory by the Commission. Expedient action to resolve all outstanding issues is imperative. The NPA may be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.

ii. NPAs found to be out of compliance for secondary reasons will be provided a corrective action completion date by the Commission. Expedient action to resolve all outstanding issues is essential. The Commission's report of noncompliance and timing for corrective action will be provided to the appropriate CNA, who will contact the NPA and determine whether any assistance is necessary. As determined by the Commission, a return visit to the NPA may be scheduled within 60 days of the end of the corrective action period, to confirm whether or not the issues have been corrected.

iii. NPAs found to be out of compliance for the same secondary problem(s) on consecutive visits, or have a pattern of non-compliance, may be placed on probation and not allowed to be assigned or begin new PL work until the issues are corrected. If the next Commission visit finds the NPA is still out of compliance, the NPA may be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.

(e) NPAs that report correcting Commission noncompliance findings but, upon subsequent review by the CNA or Commission, have failed to correct them will be immediately placed on probation.

i. In such cases, the NPA will be given 60 days to correct these findings and may be reviewed on-site by the Commission staff.

ii. If still out of compliance, the NPA may be required to appear before the Commission and explain why its eligibility to participate in the AbilityOne Program should not be removed.

(f) Referral of certain violations.

i. If a Commission compliance review reveals evidence that one or more NPA executives signed an incorrect annual certification or self-certification audit results, pertinent information shall be considered for referral to the appropriate office of the United States Attorney or other interested Federal official.

ii. If a Commission compliance review finds any other indications of possible illegal activities, pertinent information shall be considered for referral to the appropriate office of the United States Attorney or other interested Federal official.

iii. If a Commission compliance review or CNA report finds potential noncompliance with DOL laws or regulations, pertinent information shall be considered for referral to DOL.

7. EXCEPTION TO POLICY.

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

8. PROCEDURES.

(a) If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur:

i. The Commission will place the NPA on probation and its CNA will notify the NPA by letter. The letter will explain the process if the NPA wishes to remain in the AbilityOne Program.

ii. The Commission will suspend any proposed new assignments or additions for that NPA until the NPA is again above 75 percent; however, the Commission may consider projects

on a case-by-case basis if the NPA can present a compelling argument to the Commission for an addition while below 75 percent.

iii. The NPA is required to report its direct labor information to the Commission quarterly by submitting to the Commission a copy of their quarterly report to the CNAs. These reports will begin with the first quarter of the fiscal year following annual submission of the certification in which the NPA failed to meet the 75 percent ratio. The reports will continue through the four quarters of that fiscal year. These quarterly reports must reflect cumulative data for the fiscal year through the end of the reporting quarter and must reach the Commission within 30 days after the end of each quarter.

iv. Failure to submit the quarterly reports may result in withdrawal of the Commission's approval of an NPA's authorization to produce products for or provide services to entities of the Government.

v. If the Commission determines it is appropriate, an on-site compliance visit may be conducted upon determining the NPA failed to meet the 75 percent direct labor ratio requirement.

vi. If the Commission staff determines that the circumstances are extreme enough to warrant the withdrawal of the NPA's authorization after the first year of an agency failing to meet the required direct labor ratio, the facts in each case will be presented to the Commission for a formal decision. Both the NPA and its CNA will be permitted to address the Commission. Information being presented to the Commission shall be provided two weeks in advance.

(b) When an NPA fails to meet the 75 percent ratio for a second consecutive year:

i. The NPA will be given the opportunity to present the specific circumstance to the Commission prior to a formal decision on whether the NPA should be removed from the AbilityOne Program, authorized projects taken away or additional time granted to bring the ratio above 75 percent. Both the NPA and its CNA will be permitted to address the Commission.

ii. If the Commission decides to allow the NPA to remain in the AbilityOne Program, the NPA is required to continue submitting quarterly reports to the Commission along with an updated plan detailing further action(s) to correct the direct labor ratio. In addition, the NPA will be required to take other specific actions as directed by the Commission.

iii. The Commission will determine if an on-site compliance visit, including review and/or intervention in specific issues, is appropriate. Unless it is determined that there are compelling reasons why an on-site review is not needed, a review will be conducted as soon as practicable. The on-site review may include representatives from NIB or NISH to help evaluate performance and management issues.

iv. If the Commission disqualifies an NPA or removes an AbilityOne project from the NPA, it cannot receive future orders, and if another NPA cannot immediately perform the work, in accordance with 41 CFR 51-5.4(c), the Commission will issue a purchase exception to the contracting activity to permit procurement from other sources.

(c) When an NPA is considered a high risk agency for reasons other than the overall direct labor ratio, beyond issuing a probation letter and reviewing and monitoring the corrective action plan, the following will occur:

i. Commission staff will brief the Stewardship Subcommittee when an NPA fails to follow the corrective action plan or is out of compliance for the same reason within two years.

ii. The Stewardship Subcommittee may recommend that the Executive Director:

a. Direct the CNAs to provide additional training to correct the problems

b. Direct the NPA to address the subcommittee or present the specific circumstance to the full Commission. If the latter, the Commission will formally decide whether the NPA should be removed from the AbilityOne Program, have its authorized projects taken away or additional time granted to achieve compliance.

9. SUPERSESSION.

This policy supersedes U.S. AbilityOne Compliance Memorandum Number 4, Nonprofit Agency Organization-wide Direct Labor Ratio Requirements, dated October 1, 2004, in its entirety.

APPROVED: _____ **Date:** 3/22/13

E. Ballard
Executive Director