



U.S. ABILITYONE COMMISSION
Office of the Chairperson

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3/6/2023

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The Honorable Henry J. Kerner
Special Counsel
Office of the Special Counsel
1730 M. Street, N.W., Suite 300
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RE: Office of Special Counsel Referral File DI-22-0590

Dear Mr. Kerner:

On July 21, 2022, I received a letter from you alleging that officials at the U.S. AbilityOne Commission ("Commission") may have engaged in conduct that constitutes a violation of a law, rule, or regulation; gross mismanagement; and possibly a gross waste of funds. The specific allegations were as follows:

1. A significant number of nonprofit agencies (NPAs) receiving Federal contracts through AbilityOne are currently failing to meet basic JWOD Contract requirements, like proving that blind or severely disabled workers perform 75 percent of their direct labor, as required by law.
2. The Commission lacks appropriate policies or standard operating procedures to prevent or address violations of JWOD Contract requirements.
3. Two of the Commission's Committee members, who are responsible for overseeing AbilityOne and acting when an NPA fails to comply with legal requirements, are Chief Executive Officers [*sic* in original] (CEOs) at NPAs that currently receive contracts through AbilityOne creating an apparent conflict of interest. Further, one of those NPAs, Lighthouse for the Blind and Visually Impaired of San Francisco ("Lighthouse"), according to Committee records, has been failing to comply with AbilityOne requirements since 2019 but has received over \$7 million through JWOD contracts since then.
4. The Commission's FY2021 Performance and Accountability Report to Congress was inaccurate in its statement that 86 percent of NPAs in the AbilityOne Program are in compliance with the JWOD 75-percent direct-labor-ratio requirement.

In response to your letter, I referred the matter to the AbilityOne Office of Inspector General (OIG), asking the OIG to undertake a thorough investigation. The OIG agreed and carried out this investigation. In reviewing their report, I find that while they did not substantiate that a violation of law, rule, or regulation had occurred, they identified several weaknesses and made recommendations to improve internal controls. Over the last two years, we have also identified opportunities for improvement within the Compliance Directorate and have taken several steps to address areas of weakness. The most critical steps were as follows:

1. The Commission appointed [REDACTED] as the permanent director of compliance on August 6, 2021. He immediately set to work, broadened the compliance mission, filled key vacancies, and required Commission staff to conduct joint inspections alongside the Central nonprofit agencies. The work of the Commission in the field over the past few years has highlighted better ways to leverage our resources through stricter oversight of the inspection visits done by the Central nonprofit agencies. This is reflected in a new proposed compliance document described below.
2. As required by the Government Performance and Results Act (GPRA) the Commission developed a new five-year strategic plan in 2022. The Strategic Plan provides a broad outline of the steps the Commission will be taking over the next five years to modernize the AbilityOne Program. At Strategic Objective III: Ensure Effective Governance and Results Across the AbilityOne Program, the Commission affirms its commitment to “modernize the Program” to more effectively “fulfill its oversight responsibilities.” The plan further explains the following:

To carry out this commitment, the Commission will update its regulations, policies, and procedures to facilitate greater transparency and Program modernization. Modernization includes leveraging competition within the Program to improve innovation and transparency for entities within and outside the Program. It also includes improving how the Commission collects and analyzes information from the field so it can better understand and enhance what works and eliminate what doesn't. Lastly, modernization requires effective oversight of CNAs and NPAs to ensure they are carrying out their responsibilities.

For a full copy of the plan visit [AbilityOne Strategic Plan FY 2022-2026](#).

3. As outlined in the strategic plan, the Commission began updating its compliance policies in the Fall of 2022. It issued a draft for stakeholder comment on January 27, 2023. One of the new policies, 51.400, focuses specifically on modernizing the Commission's compliance work. Under the new approach, the Commission will be less involved in day-to-day surveillance, but more focused on the oversight of the Central nonprofit agencies' inspection process, assignment of corrective action, and how effectively it provides technical assistance to participating nonprofit agencies.
4. Lastly, the AbilityOne OIG initiated an audit of the AbilityOne Compliance Program in the Summer of 2022 and completed on December 26, 2022. The audit found that,

“[o]verall, the Commission’s policies and procedures governing the management and administration of the Compliance Program comply with applicable laws and regulations.” The OIG further recognized that “the Commission has taken steps to improve the transparency of its policies and procedures,” but there were still areas that needed improvement. The agency largely concurred with the OIG’s recommendations and has already begun the process needed to improve transparency. For a full copy of the audit visit [OIG Audit](#).

I am highlighting these steps as a way of recognizing the seriousness of the allegations that gave rise to the investigation, but to also demonstrate the agency recognized weaknesses in this area and has been diligently working to drive improvements. Although the OIG investigation did not substantiate the allegations raised by the whistleblower, I would like to share with you the 11 OIG recommendations from the investigation and the agency’s responses to those recommendations.

RECOMMENDATION 1: AbilityOne OIG recommends that the Commission identify and clarify the policy, and issue new policy as needed, regarding whether Commission staff has the authority or ability to lower an NPA's PL project-level ratio after the Commission Members have voted on and approved a PL project-level ratio, and, if so, establish reasons and guidelines for Commission staff to grant a modification and the threshold which will warrant notification to and reconsideration by the Commission Members.

Agency Response: *Project level ratios are not required by statute or regulation. The only requirement to maintain a specific project level ratio is specified in Commission Policy 51-401 and 51-401.1. Commission Policy 51-401 is being replaced with Commission Policy 51.404, and the requirements related to maintaining a project level ratio will be amended. Maintaining a 75 percent EDLH will be “encouraged” but not “required.” Instead, project level ratio will only be assessed as a noncompliance issue if it causes an NPAs overall DLH (ODLH) ratio to drop below the statutory requirement.*

RECOMMENDATION 2: AbilityOne OIG recommends that the Commission identify the instances where Commission staff approved, authorized, or otherwise allowed a lower PL project-level ratio without Commission Members’ approval or knowledge, and determine whether staff had the authority or acted within their delegated authority in doing so and that the Commission determine the course of actions it deems appropriate, accordingly.

Agency Response: *The Commission acknowledges the recommendation, but the proposed policy changes to how project level ratio will be treated obviates the need to retroactively look at prior projects. The Commission recognizes that project level ratio is difficult to track after it is approved and placed on the PL, especially for performance-based service contracts. However, ODLH is tracked on a quarterly basis and certified annually. Focusing on and monitoring strict compliance with ODLHs is more effective and a more efficient use of Commission resources.*

RECOMMENDATION 3: AbilityOne OIG recommends that the Commission review Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program which cite

Pandemic-Related Waivers as authority to retroactively excuse NPAs which failed to meet ratio in FY18 or FY19 from the corrective or disciplinary required under Policy 51.403.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to ensure that whenever an exception is made to ODLH for any reason it is properly documented and only granted on a prospective basis. The Commission does not intend to go back to previous fiscal years and require corrective action or issue disciplinary measures to an NPA that failed to achieve the required ODLH, especially if the deficiency was tied to the pandemic. Going forward, the Commission does not presently plan to grant any future pandemic related waivers, unless present conditions substantially worsen. Furthermore, if any NPA previously granted a waiver is presently out of compliance, the appropriate corrective action will be administered IAW new Commission Policy 51-406 (currently Policy 51-403).*

RECOMMENDATION 4: AbilityOne OIG recommends that the Commission develop a system to track NPAs which have failed to maintain the applicable ODLH in the prior fiscal year(s) and track issuance of Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program, and the progress on and completion of corrective action. OIG recommends that the Commission store the records in PLIMS to ensure transparency and that all appropriate users have ready access to it.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to ensure that the ODLH ratio is more efficiently tracked from year-to-year. The Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective action. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

RECOMMENDATION 5: AbilityOne OIG recommends that the Commission issue clear, transparent, policy to be applied equitably to all NPAs delineating what corrective or disciplinary action the Commission will take if an NPA fails to maintain the applicable ODLR, including specifically what will result in inability to receive new contracts, in loss of existing contracts, probation, removal from the Program, or other clearly defined consequences.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to fully articulate how it will administer corrective actions and implement appropriate administrative actions to remedy noncompliance. As stated previously, the Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective actions. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete a corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

RECOMMENDATION 6: AbilityOne OIG recommends that the Commission conduct an in-depth review of the NPAs indicated in Exhibit D of this report which have failed Compliance Reviews over a range of ten years to determine whether the noncompliance demonstrates a pattern of conduct that brings into question whether the NPA should be issued a corrective action, placed on probation, or removed from the Program.

Agency Response: *The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic plan. This means that there is likely little utility in looking back at previously failed Compliance reviews, especially since the agency would be obligated to apply the old standards. However, the NPAs indicated in Exhibit D will be subject to heightened scrutiny to better ensure that prior behavior is identified and promptly addressed. As stated previously, the Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective actions. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete a corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

RECOMMENDATION 7: AbilityOne OIG recommends that the Commission's guidance relating to compliance will be in written format and look into the gap about the "instructions" the Director of Compliance claims he provided and Staff claiming to not have knowledge of it as currently applicable.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic Plan.*

RECOMMENDATION 8: The Commission should enhance the collection and storage of documentation in PLIMS demonstrating the current nonprofit status of an NPA, if an NPA has been removed from the Program, if an NPA has voluntarily left the Program, or that an NPA has signaled intent or taken earnest steps to leave the Program. The Commission should also include documentation demonstrating that an NPA no longer participating in the Program has had its projects removed from the PL or transferred to another NPA.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic plan. This will include training compliance members on the Commission staff and at each CNA. The Commission is also in the process of updating PLIMS and hiring a Program Manager to manage the new system to ensure that it is fully responsive to the needs of the agency.*

RECOMMENDATION 9: AbilityOne OIG recommends that the Commission adopt a process to independently verify, on an annual basis, that the NPA's nonprofit status is in good standing with either the NPA's home state or the IRS, if applicable.

While the Commission has a process to verify nonprofit status at the time of initial AbilityOne Program Qualification, the Commission's process for annual nonprofit status verification appears to rely solely on the NPA's self-certification under penalty of 18 U.S.C. 1001 on its Annual Reps&Certs. The Commission's reliance on self-certification creates risk that an NPA may conceal it has lost its good standing as a nonprofit with its home state or the IRS by falsely certifying that it has maintained status. As shown above, the current process of self-certification was unable to detect an AbilityOne NPA which had lost its nonprofit designation.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with the self-certification process and to better align it with the new Strategic plan. This includes tying nonprofit status more closely with filing an IRS form 990, which can be independently verified. In the absence of a 990, NPAs will be required to provide explicit evidence from a state certifying official to properly verify an NPA's nonprofit status.*

RECOMMENDATION 10: In order to comply with Policy 51.410 Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program, AbilityOne OIG recommends that the Commission develop formal training for all its Compliance Office staff and contractors on Policy 51.410, and other policies, as applicable, to be taken annually as a refresher and for new Compliance Office staff and contractors to be taken at onboarding.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with processing employee complaints and to better align it with the new Strategic plan. This includes creating a new Commission Policy (renumbered to Policy 51-407) that requires Commission staff involvement in the receipt of complaints, ensuring each complaint is forwarded to the appropriate investigative entity, and closing out the complaint once the matter has been resolved and/or properly forwarded.*

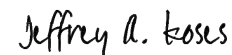
RECOMMENDATION 11: AbilityOne OIG recommends that the Commission conduct an in-depth review of whether the Office of Compliance's practices adhere to the procedural requirements of Policy 51.410 Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program. OIG recommends that the Commission ensure all open complaints have been given proper resolution in accordance with the procedural requirements of Policy 51.410. OIG recommends that the Commission correct outdated links, intake forms, and contact information to ensure complainants may reach the appropriate entity.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with processing employee complaints and to better align it with the new Strategic Plan. This includes creating a new Commission Policy (renumbered to Policy 51-407) that requires Commission staff involvement in the receipt of complaints, ensuring each complaint is forwarded to the appropriate investigative entity, and closing out the complaint once the matter has been resolved and/or properly forwarded.*

Enclosed is a copy of the report of investigation. I understand that you will provide a copy of the report to the President, congressional oversight committees, and the complainant for their review. The included report is also suitable for release to members of the public. Again, thank you for bringing this matter to my attention. If you require additional information, the point of contact for this matter is [REDACTED], General Counsel, who can be reached at [REDACTED].

Sincerely,

DocuSigned by:



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Jeffrey A. Koses

Chairperson, U.S. AbilityOne Commission

3/6/2023

Date



**Committee for Purchase From People
Who Are Blind or Severely Disabled
(U.S. AbilityOne Commission)
Office of Inspector General**

Stefania Pozzi Porter 
Inspector General
Office of Inspector General
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The Honorable Henry J. Kerner
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January 17, 2023

RE: OSC File DI-22-0590

SYNOPSIS

Pursuant to the requirements of 5 U.S.C. Section 1213(d), this investigative report is provided in response to Office of Special Counsel (OSC) referral, OSC File DI-22-0590 (OIG Case # C22INV00021). On June 30th, 2022, OSC referred to the to the U.S. AbilityOne Commission for investigation a whistleblower disclosure alleging that officials at the U.S. AbilityOne Commission (formerly called the Committee for Purchase From People Who are Blind or Severely Disabled) may have engaged in conduct that constitutes a violation of a law, rule, or regulation; gross mismanagement; and possibly a gross waste of funds.

The U.S. AbilityOne Commission requested assistance from the Office of Inspector General and the OIG agreed to conduct the investigation. Given the vast scope of conduct covered by the referral, the U.S. AbilityOne Commission Office of the Inspector General (AbilityOne OIG) separated the whistleblower's specific allegations into four overarching issues: inadequate or ineffective compliance policies and procedures, significant noncompliance by AbilityOne nonprofit agencies (NPAs), inaccurate statements to Congress, and conflict of interests. In these four issues, the whistleblower specifically alleged the following:

1. Inadequate or Ineffective Compliance Office Policies & Procedures:

- A. Allegation: The Commission lacks appropriate policies or standard operating procedures to prevent or address violations of JWOD Contract requirements.

2. NPA Noncompliance:

- A. Allegation: A significant number of NPAs receiving federal contracts through AbilityOne are currently failing to meet basic JWOD Contract requirements, like proving that blind or severely disabled workers perform 75 percent of their direct labor, as required by law.
- B. Allegation: 54 of 120 NPAs inspected by the whistleblower that fall alphabetically between the states of Alabama to Idaho were not compliant with the JWOD Act.
- C. Allegation: 7 NPAs have failed annual compliance reviews for more than a decade.
- D. Allegation: 7 NPAs did not qualify as nonprofit entities 501(c)(3) according to Internal Revenue Services (IRS) and tax filings, and that the CNAs and the Commission fail to monitor the NPAs' nonprofit statuses at annual inspections.
- E. Allegation: The Commission failed to take appropriate corrective action, according to the whistleblower, after employees at NPA1, complained that the NPA1 was falsely reporting that 100 percent of its direct labor hours were completed by the two blind employees and that the SourceAmerica inspection visit in 2016 was "staged" to hide the fact that non-disabled workers were instead performing the work. The blind workers also asked for more adaptive equipment to increase safety, accessibility and productivity, but said they were told that funds were not available even while money was spent on another family business, cars for family members, and ski trips.
- F. Allegation: Lighthouse of San Francisco has been failing to comply with AbilityOne requirements since 2019 but has received over \$7 million through JWOD contracts since then.

3. FY2021 Performance and Accountability Report (PAR) to Congress:

- A. Allegation: The Commission's FY2021 Performance and Accountability Report to Congress was inaccurate in its statement that "86 percent of NPAs in the AbilityOne Program are in compliance with the JWOD Act's 75-percent direct-labor-ratio requirement."

4. Conflict of Interests:

- A. Allegation: Two of the Commission's Committee members are CEOs at NPAs that currently receive contracts through AbilityOne, creating an apparent conflict of interest. [REDACTED], the Chief Executive Officer of Lighthouse in San Francisco, California, and [REDACTED], the Chief Executive Officer of AtWork! in Bellevue, Washington, joined the Committee in October 2021 but remain the CEOs of their respective NPAs. According to the whistleblower, there is no policy that prohibits this.

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BACKGROUND

The U.S. AbilityOne Commission is responsible for administering the AbilityOne Program pursuant to the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 8501– 8506). The AbilityOne Program is the largest source of employment in the United States for people who are blind or have significant disabilities. Through the AbilityOne Program, approximately 40,000 Americans who are blind or have significant disabilities are employed in the service, manufacturing, and delivery of over \$3.9 billion in products and services to the Federal Government. The AbilityOne Commission designates Central Nonprofit Agencies (CNAs) to facilitate the employment of people who are blind or have significant disabilities through nonprofit agency (NPA) employers. The Commission administers the AbilityOne Program with the assistance of two CNAs, National Industries for the Blind (NIB) and SourceAmerica.³

AbilityOne's Office of Oversight and Compliance

The AbilityOne Commission's Office of Oversight and Compliance (hereafter "Compliance Office") consists of a Director, a Compliance Manager, two Compliance Specialists, and two Vocational Rehabilitation Specialists.¹ The Compliance Office has had significant turnover including that "in 2020 three of the five OCD² staff, including the Director, left the Commission. A new Director, OCD was subsequently selected effective December 1, 2020 (initially as acting director). Since that date, the OCD was operating with only three staff until three new employees were hired between June and August 2021."³

The Compliance Office is responsible for implementing compliance policies, monitoring and inspecting qualified NPAs' compliance with all applicable statutes, regulations, and policies, taking necessary actions to address instances of noncompliance, facilitating corrective action for non-compliance, conducting on-site or virtual compliance reviews of NPAs, and providing guidance, education, and training on compliance requirements to CNAs and NPAs.⁴

The Commission and the CNAs use the Procurement List Information Management System (PLIMS) database to collect and process NPA compliance records, supporting documentation, transaction data, and other Program documents relating to Procurement List (PL) projects.

¹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 12, 2022).

² Office of Compliance Directorate

³ U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 14 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023)

⁴ AbilityOne Compliance Policy 51.400, *Nonprofit Agency Overall Compliance Policy* (2020); AbilityOne Compliance Policy 51.404, *Maintaining Qualification of Nonprofit Agencies* (2013).

PLIMS is an antiquated system that provides limited data analytics.⁵ While users have the option to generate certain standard reports, several of the report options are nonoperative. Additionally, the operative reports still required manual programming to obtain key Programmatic information, such as calculating direct labor ratio (DLR).⁶

In January 2023, AbilityOne OIG completed an audit of the AbilityOne Compliance Program. Finding 4 of the Audit notes that PLIMS does not adequately support the Compliance Program.⁷ The Audit also notes that:

“PLIMS, a legacy application that is 14 years old, has not kept pace with the changing needs of the Commission OCD staff to provide relevant data and reports needed to inform their decision-making. Therefore, the use of manual reports and processes implemented creates inefficiencies, increases complexity, the risk of errors, and the risk that required compliance actions are not taken timely. This is contrary to [Principals 11 and 13] in the *Green Book* on identifying information requirements, updating them in an iterative and ongoing process, obtaining data from reliable sources, and processing this data into quality information that supports the internal control system. The Commission told us that resource and budget constraints have impacted their ability to modify PLIMS to set up additional data fields and develop the necessary standard reports.”⁸

We note that in October 2022, the Commission was selected to receive a Technology Modernization Fund award to modernize the PLIMS system, including to improve its oversight and compliance capabilities.⁹

⁵ See U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 1 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023) (“Further, PLIMS has not kept pace with the changing needs of the Commission staff to provide relevant data and reports needed to inform their decision-making. The Commission has not reviewed or identified whether updates are needed to PLIMS data fields or standard reports or established timelines for implementation.”).

⁶ See U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 23 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023) (“Most of the seven standard PLIMS Compliance Reports are outdated as Commission OCD personnel do not regularly use them. Further, several reports do not appear to contain useful information and/or contain information that is inconsistent with the other reports. Commission OCD staff told us they use two reports, the FY Compliance Visits report discussed previously, and the NPA Extracts report, which includes pertinent details for all producing NPAs as of the prior September 30 fiscal year-end.”); see, *infra* at p. 35, (discussing OIG methodology used in Verifying Rate of Compliance with the Overall Direct Labor Ratio).

⁷ See U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 21 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023)

⁸ See U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 1 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023)

⁹ U.S. General Services Administration, *Technology Modernization Fund Announces Investment in Supporting Jobs for People with Disabilities*, (October 31, 2022), available at:

Both the Compliance Office and CNAs conduct on-site or virtual compliance reviews (also referred to as “regulatory reviews” or “audits”) of the NPAs.¹⁰ The Cooperative Agreements between the AbilityOne Commission and each CNA require that SourceAmerica and NIB execute a certain number of NPA audits each year.¹¹ NIB must review every affiliated NPA which is currently 57.¹² SourceAmerica must review 180 each year.¹³ Although SourceAmerica does not review every affiliated NPA each year, the top 25 NPAs are reviewed annually.¹⁴

A copy of NIB’s Compliance Worksheet is attached at Exhibit G. A copy of SourceAmerica’s Compliance Worksheet is attached at Exhibit H. The Commission reported that 386 NPAs in FY20 and 398 in FY21 were reviewed by either the Compliance Office or the respective CNA.¹⁵ Currently, due to resource limitations, the Director of Compliance stated that members of the Office of Compliance attend 30% of the NPA compliance reviews with the CNAs.¹⁶ When deciding which NPAs to visit, the Director of Compliance stated that the current Commission’s protocol is to analyze previous Compliance Reviews or past performance to assess the risk associated with any anticipated repeat behavior.¹⁷ After issuing its new strategic plan in June 2022, the Commission delegated aspects of the compliance function to the CNAs.

Program Requirements

1. Qualified Nonprofit Agencies (NPAs)

To participate in the AbilityOne Program, an entity must be a qualified nonprofit agency (NPA). The JWOD Act defines a “qualified nonprofit agency” as an agency that is organized under the laws of the United States or a State, is operated in the interest of either blind or severely disabled individuals, has no income which inures to the benefit of a shareholder or other individual,

<https://www.gsa.gov/about-us/newsroom/news-releases/technology-modernization-fund-announces-investment-in-supporting-jobs-for-people-with-disabilities-10312022> (“‘AbilityOne is pleased to partner with the TMF to modernize our PLIMS system,’ said Jeffrey A. Koses, GSA Senior Procurement Executive Office of Government-wide Policy and U.S. AbilityOne Commission Chairperson ‘The investment will increase the Commission’s ability to execute its statutory oversight of the program and will benefit the federal customers who depend on AbilityOne products and services, as well as the program’s 450 nonprofits, which employ 40,000 people on AbilityOne contracts.’”).

¹⁰ For consistency and clarify throughout this report, AbilityOne OIG will use the term “compliance review” in accordance with the terminology used in AbilityOne Compliance Policy 51.404.

¹¹ See, Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and SourceAmerica (May 14, 2019),

https://www.abilityone.gov/laws,_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%2006.14.19.pdf; see also, Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. AbilityOne Commission Fiscal Year 2021 Performance and Accountability Report, at p. 16 (available at: <https://www.abilityone.gov/commission/documents/U.S.%20AbilityOne%20Commission%20FY2021%20PAR%2015Nov2021%20-%20Final.pdf>).

¹⁶ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022).

¹⁷ *Id.*

complies with OSHA standards, and employees people who are blind or severely disabled in at least 75% of direct labor hours required for the production or provision of goods or services on the AbilityOne PL.¹⁸

The term “nonprofit” is a state law designation that, while commonly conflated, is not synonymous with the federal Internal Revenue Service’s (IRS) Section 501(c)(3) tax-exempt status awarded to nonprofit organizations.¹⁹ An entity dedicated to serving the public may register with a State’s Secretary of State or other designated State entity as a nonprofit operating within that state. However, to become exempt from certain federal taxes, the state-based nonprofit must then register with the IRS as a tax-exempt entity under Section 501(c)(3) or other applicable statutory exceptions.²⁰ If a nonprofit does not seek federal tax-exemptions, the nonprofit may still operate as a nonprofit under state law, while subject to the tax laws of the home state, and must pay federal taxes. In sum, all 501(c)(3) organizations are nonprofits but not all nonprofits are 501(c)(3) tax-exempt nonprofits. The JWOD Act does not require NPAs to adhere to the heightened requirements of the IRS 501(c)(3) status.²¹ Instead, the JWOD Act specifically recognizes nonprofits “organized under the laws of the United States or a State.”²²

To verify nonprofit status, AbilityOne regulations require NPAs seeking admission to the AbilityOne Program submit the articles of incorporation showing the date of filing and the signature of an appropriate State official and a copy of the bylaws certified by an officer of the corporation, and one acceptable form of written acknowledgement that no income will inure to a private individual.²³ If the NPA is state-run, operated, or established as part of a state entity, the NPA must submit a certified true copy of the State statute establishing the nonprofit agency(ies)

¹⁸ 41 U.S.C. § 8501(6) (“The term “qualified nonprofit agency for other severely disabled” means an agency—(A)(i) organized under the laws of the United States or a State, (ii) operated in the interest of severely disabled individuals who are not blind; and (iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual; (B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”); 41 U.S.C. § 8501(7) (“The term “qualified nonprofit agency for the blind” means an agency—A)(i) organized under the laws of the United States or a State; (ii) operated in the interest of blind individuals; and (iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual; (B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”).

¹⁹ Legal Information Institute, *Nonprofit Organizations Overview* (available at: https://www.law.cornell.edu/wex/nonprofit_organizations).

²⁰ 26 C.F.R. § 1.501(a)-1(a)(2), *Exemption from Taxation*, (“An organization, other than an employees’ trust described in section 401(a), is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form”).

²¹ 41 U.S.C. § 8501(6); 41 U.S.C. § 8501 (7).

²² *Id.*

²³ 41 C.F.R. § 51-4.2(1).

for persons who are blind or have other severe disabilities or “in the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.”²⁴

To maintain qualification, AbilityOne regulations provide that an NPA must continue to comply with the requirements of a nonprofit agency for people who are blind or have other severe disabilities as defined in the initial qualifications.²⁵ NPAs certify annually, under penalty of 18 U.S.C. § 1001 for any false or misleading statement, that the NPA is compliant with the requirements of a nonprofit for the blind or severely disabled.²⁶

2. Direct Labor Ratio (DLR)

Note: The terms “overall direct labor ratio” or “ODLR” and “direct labor ratio” or “DLR” are often used interchangeably in the AbilityOne Program.

To be eligible for an AbilityOne contract, a nonprofit must satisfy the JWOD Act overall direct labor ratio (ODLR) definition for a “qualified nonprofit agency for the severely disabled,” or a “qualified nonprofit agency for the blind” which “means an agency . . . that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”²⁷ Notably, the JWOD includes direct labor hours worked on all goods and services not just goods or services furnished under the PL.²⁸ Maintaining a 75% ODLR is a key requirements in the AbilityOne Program.

²⁴ *Id.* at. § 51-4.2(a)(2)(ii).

²⁵ *Id.* at § 51-4.3(a).

²⁶ 18 U.S.C. § 1001 (“Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years”); Annual Reps&Certs 6(a) (requiring NPAs to certify under 18 U.S.C. § 1001 that “in accordance with 41 CFR 51-4.3(a), the NPA complies ‘with the requirements of a ‘nonprofit agency for other significantly disabled’ or a ‘nonprofit agency for the blind’ as defined by 51-1.3”).

²⁷ 41 U.S.C. § 8501(6)(C) (“The term ‘qualified nonprofit agency for other severely disabled’ means an agency . . . that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”); 41 U.S.C. § 8501(7)(C) “The term “qualified nonprofit agency for the blind” means an agency . . . that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”).

²⁸ 41 U.S.C. § 8501(6)(C) & (7)(C) (“in the production of products and services and in the provision of services (whether or not the products or services are procured under this chapter)”).

In addition to the 75% ODLR requirement, which refer to the average of all direct labor hours worked during the fiscal year, AbilityOne contracts or “projects” also have ratio requirements, often referred to as a “project-level DLR.” Under the JWOD Act, the statutory language is unclear as to whether the 75% ratio requirements apply at the individual contract level or across all contracts.²⁹ AbilityOne policy, however, sets the ratio at the NPA level, requiring NPAs to employ people who are blind or who have significant disabilities for at least 75% of their “overall direct labor hours” (ODLH) during the federal fiscal year.³⁰ The AbilityOne Compliance Manual, decommissioned in August 2020, provides that each individual project ratio must be no lower than 60%.³¹ The Compliance Manual states that “this policy is not as inflexible as the overall 75% direct labor ratio requirement. The Committee understands that there are many different factors that can adversely affect direct labor ratios” and the Committee/the Commission may take several factors into consideration such as contracts approved at lower ratios or “the effect of promoting people who are blind or severely disabled into supervision or management positions or into competitive placements.”³² The Compliance Manual was decommissioned in August 2020 and not replaced, rendering the Commission’s project-level ratio requirements currently unclear.

3. Calculating DLR

Direct labor “includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but . . . does not include supervision, inspection, or shipping.”³³ Direct labor also excludes hours spent on administrative work, material handling, cleaning and maintenance of NPA equipment and property, and “work that supports the manufacturing process or delivery of services, but does not directly produce the products or

²⁹ *Id.* (stating only that a qualified nonprofit (for other severely disabled or blind respectively) “means an agency . . . that in the production of products and services and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employees blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products and services.”). The Commission’s regulations at 41 C.F.R. § 51—1.3 use similar language that is silent as to whether it applies at the contract or NPA level.”)

³⁰ AbilityOne Compliance Policy 51.401(6)(e), *Direct Labor Ratio Requirements*, (August 15, 2020) (“Project-level direct labor: While the JWOD Act specifies a 75% ODLH ratio requirement, the Commission may authorize lower ratios at the project-level, as long as the NPA maintains compliance with the 75% ODLH statutory requirement.”).

³¹ AbilityOne Compliance Manual, § 2.2.1. “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.”

³² *Id.*

³³ 41 U.S.C. § 8501(3).

services sold to a customer.”³⁴ While some federal contracts may cover the costs of indirect labor, only work hours constituting AbilityOne’s definition of direct labor are used for calculating the DLR under the JWOD Act.³⁵

In sum, AbilityOne contracts entail four categories of labor: blind/severely disabled (B/SD) direct labor, non-B/SD direct labor, B/SD indirect labor, and non-B/SD indirect labor.³⁶ Of these four labor categories, DLR is calculated based on only B/SD direct labor and non-B/SD direct labor. Indirect labor does not factor into DLR.

4. Exceptions to the 75% ODLR: Phase-Ins, Surge Protections, & Pandemic-Waivers

a. Phase-Ins

NPAs may request a “Phase-In” to allow time to increase a contract’s ratio.³⁷ Phase-Ins are only available when a new addition is added to the PL or when a product/service is transferred from one NPA to another.³⁸ Phase-In requests must include the reason the Phase-In is needed, the ratio the project will start at, whether the project will cause the NPA’s ODLR to drop below 75%, how long the Phase-In is needed for, and a plan to replace nondisabled workers with disabled workers.³⁹ For more significant Phase-In requests, the Phase-In request must also include a Phase-In plan and receive appropriate approval.⁴⁰ Of note, Phase-In plans are required if the project will start at below 60% DLR or would cause the NPA to drop below 75% ODLR. Some significant Phase-In plans can last multiple years with approval. Phase-Ins entail enhanced compliance obligations, including monthly reporting on progress made to reaching the projected DLR.⁴¹

b. Surge Requirement Protections

The AbilityOne Commission may grant a limited exemption from the 75% DLR known as a “surge protection” when an NPA receives a request from federal customers to provide quantities of a good

³⁴ AbilityOne Compliance Policy 51.401, *Direct Labor Hour Ratio Requirements* (2020).

³⁵ AbilityOne Compliance Manual, § 2.2.6. (“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.”).

³⁶ AbilityOne Compliance Manual, § 2.3.1. (“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.”).

³⁷ See generally, AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013).

³⁸ *Id.* at 2.

³⁹ *Id.* at 7(b).

⁴⁰ *Id.* at 7(c-g).

⁴¹ *Id.* at 5(a)(ii).

in excess of the contracted amount.⁴² Federal contracts often include planned surge requirements clauses up to 125% to 150% of the contracted amount, and the NPA is expected to factor this planned surge requirement into their production planning.⁴³ However, if demand exceeds the planned surge requirement, NPAs may need to increase its direct labor hours to meet the new surge which can adversely impact the DLR. If the increased workload is expected to cause the NPA to drop below 75% ODLR, the NPA must notify the Commission of the project impacted, size and duration of the surge, an estimate of the direct labor hours required to handle the surge, and how many of those hours will and will not be performed by people who are blind or severely disabled, an estimate of the impact of the surge on the NPA's ODLR, and an estimate of when the NPA's ODLR will again be 75 percent or above.⁴⁴ The surge protection exemption is applicable when the only reason the NPA will not meet the requisite ODLR is due to the surge requirement.⁴⁵

c. Pandemic-Related Waivers

During the COVID-19 pandemic, government agencies, the AbilityOne customers, ceased certain operations or increased or decreased demand for AbilityOne PL goods or services. At the same time, some NPAs shut down or experienced demand surges for items like masks or hand sanitizer, etc. In response to the situation caused by the pandemic, the AbilityOne Commission expanded its Phase-In Procedures⁴⁶ and Surge Requirement Procedures⁴⁷ to create a limited waiver which allowed an NPA to operate at an ODLR lower than 75% during FY20, FY21, and FY22.⁴⁸ Specifically, the AbilityOne Commission allowed the following ratios:

- FY20: 35% or above
- FY21: 51% or above
- FY22: 51% or above

The Commission would also consider granting a lower ODLR for an NPA on a case-by-case basis.⁴⁹

⁴² See generally, AbilityOne Compliance Policy 51.401-02, *Surge Requirements* (2012).

⁴³ *Id.* at 7(a).

⁴⁴ *Id.* at 7(b).

⁴⁵ *Id.* at 7(e).

⁴⁶ See generally, AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013).

⁴⁷ See generally, AbilityOne Compliance Policy 51.401-02, *Surge Requirements* (2012).

⁴⁸ See, AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (April 1, 2020) (available at:

https://www.abilityone.gov/media_room/documents/AbilityOne%20Cmsn%20Statutory%20DLH%20Ratio%20Exception%20FY2020%20FINAL%201APR20%20signed.pdf); AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (October 1, 2020) (available at:

https://www.abilityone.gov/media_room/documents/AbilityOne%20Compliance%20Ratio%20Flexibilities_FY2021.pdf); see AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (April 6, 2022) (available at:

<https://www.abilityone.gov/commission/documents/FY22%20ODLH%20Exception%20Memo%20Signed%206Apr2022.pdf>).

⁴⁹ *Id.*

NPAs were required by the AbilityOne Commission to request a waiver through their CNA, which would then recommend that the Commission grant or deny the waiver request.⁵⁰ The Commission then notified the NPA in writing of its decision to grant or deny the waiver request.⁵¹ Even if a waiver was granted, NPAs were still required to track DLR and adhere to the quarterly and annual reporting requirements.⁵²

The Commission, currently, does not anticipate issuing Pandemic-Related Waivers for FY23, unless a significant change in COVID-19 conditions occurs.

5. Medical Records & IEEs for People Who Are Blind

NPAs may only count an employee's hours towards the 75% DLR if the employee satisfies the JWOD Act's definition of someone who is either blind or someone who has a severe physical or mental disability (*discussed in the section below*). The JWOD Act defines an individual as "blind" if their "central visual acuity does not exceed 20/200 in the better eye with correcting lenses or [if their] 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 of no greater than 20 degrees."⁵³

A. Programmatic Documentation: People Who Are Blind

AbilityOne regulations and corresponding Compliance Policy 51.407 requires that the NPA maintain a file for each blind employee containing documentation of the employee's vision, an initial IEE, and, at a minimum, the two most recent annual IEEs.⁵⁴ NPAs are required to review this documentation semiannually and take corrective action for any deficient or inadequate records.⁵⁵

B. Individual Eligibility Evaluations (IEEs)

NPAs must maintain an ongoing Individual Eligibility Evaluation (IEE) program to determine an individual's initial program eligibility and must conduct a reevaluation annually.⁵⁶ The IEE shall be prepared and signed by a person "qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons who are blind" and must state "whether that

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ 41 U.S.C. § 8501(1).

⁵⁴ 41 C.F.R. § 51-4.3(b)(6)-(7), (c); AbilityOne Compliance Policy 51.407(6)(a-c) *Disability Documentation Requirements – Persons who are Blind* (2020).

⁵⁵ 41 C.F.R. § 51-4.3(a); AbilityOne Compliance Policy 51.407(5)(c)(iii-iv) *Disability Documentation Requirements – Persons who are Blind* (2020).

⁵⁶ 41 C.F.R. § 51-1.3(1); *OIG Note: Policy 51.405 Individual Eligibility Evaluations (IEE) Documentation is "coming soon."* IEEs are currently addressed in AbilityOne Compliance Policy 51.407 (Disability Documentation Requirements – People who are Blind) (2020) and AbilityOne Compliance Policy 51.408 (Disability Documentation Requirements – People With Significant Disabilities) (2020).

individual has engaged or is engaging in competitive employment, and the employee's interest in placement services."⁵⁷ While NPAs are only required to maintain the two most recent IEEs, the Commission "encourages" NPAs to maintain the IEEs "for up to six years to show the employee's progression."⁵⁸

C. Documentation of Vision

Acceptable documentation of vision must include "[a] written report, on letterhead or otherwise identifying the professional and the practice, signed and dated, 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 legal blindness by a State or local governmental entity, on letterhead or an official form, signed and dated."⁵⁹

6. Medical Records & IEEs: People With Severe Disabilities

To count an employee's hours as direct labor, the employee must have a severe physical or mental disability.⁶⁰ The JWOD Act defines a severe disability as one which "constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment."⁶¹ AbilityOne regulations interpret a severe disability as being two-fold.⁶² First the person must have a physical or mental impairment which limits the person's functional capabilities in the following categories: mobility, communication, self-care, self-direction, work tolerance or work skills.⁶³ Secondly, this impairment must render the person "unable to engage in normal competitive employment over a long period of time."⁶⁴

⁵⁷ 41 C.F.R. § 51-4.3(a); AbilityOne Compliance Policy 51.407(6)(c)(i-ii) *Disability Documentation Requirements – Persons who are Blind* (2020); see also, OMB Form 3037-0013, *Representations and Certifications* (Committee Form 403 or 404) available at: <https://omb.report/icr/201505-3037-001/doc/57855801>

⁵⁸ 41 C.F.R. § 51-4.3(b)(3); AbilityOne Compliance Policy 51.407(6)(c)(iv) *Disability Documentation Requirements – Persons who are Blind* (2020).

⁵⁹ 41 C.F.R. § 51-4.3(b)(6); AbilityOne Compliance Policy 51.407(6)(b)(i-ii) *Disability Documentation Requirements – Persons who are Blind* (2020).

⁶⁰ 41 U.S.C. § 8501(1) ("The term "blind" refers to 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 of no greater than 20 degrees."); 41 U.S.C. § 8501(5) ("The term "other severely disabled" means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.").

⁶¹ 41 U.S.C. § 8501(5).

⁶² 51 C.F.R. § 51-1.3 (defining severe physical or mental impairment as "(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.").

⁶³ *Id.*

⁶⁴ *Id.*

A. Programmatic Documentation: People with Severe Disabilities

AbilityOne Compliance Policy 51.408 requires that the NPA maintain a file for each direct labor employee containing medical records, an initial IEE, and, at a minimum, the two most recent IEE.⁶⁵ NPAs are required to audit this documentation semiannually and take corrective action for any deficient or inadequate records.⁶⁶

B. Individual Eligibility Evaluations (IEEs)

NPAs must maintain an ongoing Individual Eligibility Evaluation (IEE) program to determine an individual's initial program eligibility and conduct a reevaluation at least annually.⁶⁷ The IEE shall be prepared and signed by a person "qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities" and must state "whether that individual has engaged or is engaging in competitive employment and shall document the individual's functional limitation(s) that result in barriers to competitive employment, along with the supports and accommodations provided to the individual by the NPA."⁶⁸ While NPAs are only required to maintain the two most recent IEEs, the Commission "encourages" NPAs to maintain the IEEs "for up to six years to show the employee's progression."⁶⁹

C. Medical Documentation

Acceptable medical documentation may be either a letter that reflects the nature and extent of the disabling condition written by an appropriate, non-affiliated medical professional qualified to diagnose the disabling condition or an official certification of the disability from a federal, state, or local agency.⁷⁰

7. Normal Competitive Employment

The JWOD Act, AbilityOne regulations, and the Compliance policies use the term "normal competitive employment" but do not define the term. AbilityOne's Compliance Manual (now

⁶⁵ AbilityOne Compliance Policy 51.408(6)(a-c) *Disability Documentation Requirements – People With Significant Disabilities* (2020).

⁶⁶ *Id.* at (5)(C)(iii-iv).

⁶⁷ 51 C.F.R. § 51-1.3(1); *OIG Note*: Policy 51.405 (Individual Eligibility Evaluations (IEE) Documentation) is "coming soon." IEEs are currently addressed in AbilityOne Compliance Policy 51.407 (Disability Documentation Requirements – People who are Blind) (2020) and AbilityOne Compliance Policy 51.408 (Disability Documentation Requirements – People With Significant Disabilities) (2020).

⁶⁸ AbilityOne Compliance Policy 51.408(6)(c)(i-ii) *(Disability Documentation Requirements – People With Significant Disabilities)* (2020).

⁶⁹ 41 C.F.R. § 51-4.3(b)(3); AbilityOne Compliance Policy 51.407(6)(c)(iv) *Disability Documentation Requirements – People with significant Disabilities* (2020).

⁷⁰ *Id.* at (6)(b) (requiring a "written report, on letterhead or otherwise identifying the professional and the practice, signed and dated by a licensed physician, psychiatrist, psychologist, or other appropriate medical professional not affiliated with the NPA, who is qualified to make a diagnosis of the individual's disabling condition(s), which reflects the nature and extent of the disabling condition(s).").

decommissioned, in August 2020) states that the AbilityOne Commission “has historically considered normal competitive employment as the ability of an individual to find, obtain and maintain a non-AbilityOne job, without outside supports.”⁷¹ Even if someone has a severe physical or mental impairment, they are not necessarily considered “severely disabled” within the AbilityOne Program’s meaning if the individual is able to engage in normal employment because the impairment has been “overcome” or “substantially corrected.”⁷² The normal competitive employment evaluation Programmatic requirement applies only to people with severe disabilities, not people who are blind.⁷³

8. Noncompliance

The U.S. AbilityOne Commission addresses when NPAs do not meet Program requirements in Policy 51.403 *Nonprofit Agencies Out of Compliance with Commission Regulations* (November 12, 2020). The Commission’s policy defines an NPA as an “at risk agency” if it is out of compliance for a single reason or drops below 75% ratio.⁷⁴ At-risk agencies are given corrective action deadlines as a chance to correct noncompliance.⁷⁵ An NPA is a “high-risk agency” if the NPA has a direct labor ratio below 60% or is out of compliance for multiple, major reasons such as deficient Individual Employment Evaluations (IEEs) or repeat compliance deficiencies noted in previous Compliance Reviews.⁷⁶ High-risk agencies “may be placed on probation and therefore not eligible for new assignments of PL work until the non-compliance is corrected, reported, and deemed satisfactory by the Commission.”⁷⁷

Policy 51.403 lists the following seven high-risk reasons for non-compliance as:

1. Items listed as NPA responsibilities within this policy are not fulfilled.
2. Individual Employment Evaluations (IEE) and/or adequate medical documentation are missing from a significant number of files.
3. Evidence that the overall direct labor hour ratio is not going to meet the 75 percent requirement by the end of the Federal fiscal year.
4. AbilityOne project(s) are being performed at direct labor hour ratio(s) significantly below than submitted by the NPA during the PL addition or transfer of the project.
5. Inadequate evidence of an ongoing placement program.
6. Repeat finding of a problem noted from previous Commission compliance inspections or CNA regulatory visits.

⁷¹ AbilityOne Compliance Manual 3.1.1 (2013-2020).

⁷² 51 C.F.R. § 51-1.3(2).

⁷³ AbilityOne Compliance Manual 3.1.1 (2013-2020).

⁷⁴ AbilityOne Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

7. NPA fails to fully cooperate with a compliance inspection or to provide the information necessary to complete the inspection.

The Commission “does not find NPAs to be noncompliant if their failure to meet the annual direct labor hour ratio at the end of the fiscal year is solely due to its operating under a Commission approved Phase-In schedule or plan, with which it is in full compliance. . . .”⁷⁸

INVESTIGATION

ISSUE 1: Inadequate or Ineffective Compliance Policies & Procedures

Allegation: The Commission lacks appropriate policies or standard operating procedures to prevent or address violations of JWOD Contract requirements.

AbilityOne OIG’s Audit of the U.S. AbilityOne Compliance Program

AbilityOne OIG believes the question of adequacy and efficacy will be fully addressed in OIG’s forthcoming audit of the AbilityOne Compliance Program.⁷⁹ On December 16, 2020, OIG announced it was initiating an audit of AbilityOne Compliance Program with an overall objective to determine whether the Compliance Program has been implemented effectively to provide reasonable assurance of NPA and CNA compliance with applicable laws, regulations, and policies. To answer the audit objective, the audit will 1) review laws, regulations, policies, and procedures applicable to the Compliance Program, 2) conduct interviews with key personnel, and 3) analyze data, reports, and other supporting documentation related to Compliance Reviews. The audit is being conducted pursuant to AbilityOne OIG’s risk-based Biennial Audit Plan for Fiscal Years 2020-2021⁸⁰ and will be performed in accordance with generally accepted government auditing standards, established by the U.S. Government Accountability Office, Government Auditing Standards (2018 Revision).

The report of the Compliance Program Audit is currently out only in draft and is potentially subject to change. AbilityOne OIG will adjust its findings in its OSC report as appropriate in light of the audit findings. The audit is expected to be published between January and February of 2023 and will be published under “Reports” on Oversight.gov.⁸¹

From the draft report, the auditors determined:

⁷⁸ AbilityOne Compliance Policy 51.403(7), *Nonprofit Agencies Out of Compliance With Commission Regulations* (2020).

⁷⁹ U.S. AbilityOne Commission Office of the Inspector General, *Audit of the AbilityOne Compliance Program Announcement* (2020) (available at: https://www.oversight.gov/sites/default/files/oig-reports/Audit%20of%20AbilityOne%20Compliance%20Program_Announcement_Signed.pdf).

⁸⁰ U.S. AbilityOne Commission Office of the Inspector General, *Biennial Audit Plan for Fiscal Years 2020-2021* (2020) (available at: <https://www.oversight.gov/sites/default/files/oig-reports/FY20-FY21%20Audit%20Plan.pdf>).

⁸¹ See U.S. AbilityOne Commission Office of the Inspector General, Reports, available at: <https://abilityone.oversight.gov/reports>

FINDING 1: POLICIES AND PROCEDURES COMPLY WITH LAWS AND REGULATIONS BUT ARE NOT FULLY TRANSPARENT BECAUSE SOME ARE DATED, INCOMPLETE, UNCLEAR, OR INSUFFICIENT

“The Commission’s policies and procedures governing the management and administration of the Compliance Program comply with applicable laws and regulations. We reviewed the JWOD Act and AbilityOne Program regulations,⁸² identified provisions relevant to the Compliance Program, and summarized them by major category (i.e., approving NPA for initial qualification and maintaining NPA qualification). We then reviewed and analyzed the Commission’s twelve compliance policies and procedures in the 51.400 series against these statutory and regulatory requirements. Our analysis showed that all significant provisions were addressed and in compliance. We also reviewed the Commission’s Cooperative Agreements with the CNAs for sections related to the Compliance Program including roles and responsibilities and noted no inconsistencies with the Commission’s policies and procedures. Further, we reviewed the Commission’s three general policies in the 51.100 series to gain an understanding of the overall policy system and structure as well as definitions of common terms used throughout the policy system. See Appendix B for a list of the policies and procedures we reviewed.

The Commission has taken steps to improve the transparency of its policies and procedures. In FY 2020, the Commission’s OCD updated five existing compliance policies, issued three new policies, and posted these documents on its website with an effective date of August 15, 2020. Two of these policies were further updated in November 2020. The Commission also developed compliance FAQs, which were posted on the Commission website in August 2020. The FAQs were further updated in August 2021 and May 2022 and according to the Commission, will continue to be updated as needed. The Commission stated that these new and updated policies and FAQs replaced the Commission’s Compliance Manual. In the summer of 2020, the Commission rescinded the Compliance Manual, which had been published on the Commission’s website. The Commission process is to make its policies, procedures, and certain other guidance available to the public to ensure that the CNAs, affiliated NPAs, and the public have access to them.

While these actions are consistent with *Standards for Internal Controls in the Federal Government*⁸³ (the Green Book) for implementing control activities

⁸² See 41 C.F.R. 51-1.3, 51-2.2, 51-3.2, 51-4.2 and 51-4.3.

⁸³ See principles 12 and 15 in the Green Book.

through policies and procedures and for using quality information to communicate with external parties so that they can help the entity achieve its objectives and address related risks, we found that additional steps could be taken to improve the Commission's policies and procedures as discussed in detail throughout the forthcoming Compliance Program Audit."

Investigation

The whistleblower's allegation that "the Commission lacks appropriate policies or standard operating procedures to prevent or address violations of JWOD Contract requirements" did not identify specific Compliance Policies or practices within the Office of Compliance that are potentially ineffective or inappropriate, . Conducting the investigation of the allegation. the OIG Office of Investigation selected a sample of key Compliance metrics identified in AbilityOne Commission's selected a sample of key Compliance metrics identified in AbilityOne Commission's Compliance Policy 51.403 as the seven high-risk Program-related reasons for non-compliance. OIG sought to verify whether the Commission had an applicable statute, regulation, policy, or procedure in place to address each of the seven listed high-risk areas. Additionally, OIG sought to verify whether the Commission had applicable policies in place governing how compliance visits should be conducted, the issuance of corrective actions, and oversight of the completion of corrective actions to address compliance violations.

AbilityOne Policy Structure

Beside the JWOD Act and the implementing regulations, the Commission relies heavily on policies to govern day-to-day Program administration, PL operations, PL Pricing and NPA and CNA compliance.⁸⁴ Under Policy 51.101 AbilityOne Program Policy System, "Commission staff directors and/or functional managers shall develop, revise, and ensure currency of policy and procedures within their functional areas" while coordinating with the Deputy Executive Director, General Counsel, and the Director of Policy and Programs.⁸⁵ The Commission Chairperson will approve the final policy except in areas in which authority has been delegated to the Executive Director to approve final issuance.⁸⁶

Policy 51.101 requires that "[a]ll agency issuances shall be reviewed and/or updated every five years or as otherwise required by changes in statute, regulation, or policy."⁸⁷ Many policies across

⁸⁴ See generally, *AbilityOne Commission Policy*, U.S. ABILITYONE COMM'N (2022), https://www.abilityone.gov/laws_regulations_and_policy/commission_policy.html.

⁸⁵ AbilityOne General Commission Policy 51.101(5)(a-c), *AbilityOne Program Policy System*, (2012) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%20-%2051-101%20-%20Signed%20a.pdf).

⁸⁶ See *id.* at (5)(d-e).

⁸⁷ *Id.* at (6)(b).

all series are quite dated, with several policies issued nearly a decade ago.⁸⁸ The Compliance Audit issued a finding that “[T]he Commission’s policy 51.101, *AbilityOne Program Policy System*, requires that all policies be reviewed and/or updated every five years (or as otherwise required by changes in statute, regulation, or policy) and the Commission has not regularly updated some of its policies and procedures..”⁸⁹

Seven High-Risk Areas of Noncompliance per Policy 51.403 – Nonprofit Agencies Out of Compliance with Commission Regulations

Under 41 C.F.R. § 51-4.5 and Compliance Policies 51.400 and 51.403, the AbilityOne Commission has discretion to determine how to address noncompliance.⁹⁰ The Policies roughly outline varying levels of sanctions based on the violation type, whether the NPA made a

⁸⁸ See e.g., AbilityOne General Commission Policy 51.101, *AbilityOne Program Policy System* (2012) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%20-%2051-101%20-%20Signed%20a.pdf); AbilityOne Commission Administrative Policy 51.200-210, U.S. ABILITYONE COMM’N (2022), https://www.abilityone.gov/laws_regulations_and_policy/commission_policy_51_200.html (showing that every Policy in the series was issued in 2012); AbilityOne Central Nonprofit Agency Policy 51.301, *Selection of Nonprofit Agencies (NPA) for Assignment of Projects to be Developed and/or the Allocation of Orders* (2012) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/51-301%20Selection%20of%20NPAs%20for%20Project%20Assignment%20and%20Order%20Allocation%20a.pdf); AbilityOne Compliance Policy 51.401-02, *Surge Protection Requirements* (2012) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/Procedure%2051-401-02%20a%20.pdf); AbilityOne Procurement List Operations Policy 51.530, *Exceptions to Procurement List Purchases* (2012) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%2051-530%20-%20Signed%20a.pdf).

⁸⁹ U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 10 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023) (“While eight compliance policies have been updated or issued in the last five years, the remaining seven policies were older, including four compliance policies which are more than nine years old. The age of the policies can create inconsistencies that can be confusing. Moreover, one updated policy is incomplete, and certain key provisions have not been implemented. . . . In accordance with Policy 51.101, review and update all compliance policies, including determining whether updates are needed to improve clarity, remove inconsistencies, and ensure harmonization with the Cooperative Agreements. (Finding 1A).

⁹⁰ 41 C.F.R. 51-4.5 (“Any alleged violations of these regulations by a nonprofit agency shall be investigated by the Committee which shall notify the nonprofit agency concerned and afford it an opportunity to submit a statement of facts and evidence. Pending a decision by the Committee, the central nonprofit agency concerned may be directed by the Committee to temporarily suspend allocations to the nonprofit agency. If a nonprofit agency fails to correct its violations of these regulations, the Committee, after affording the nonprofit agency an opportunity to address the Committee on the matter, may terminate the nonprofit agency’s eligibility to participate in the JWOD Program.”); AbilityOne Compliance Policy 51.400(6)(e), *Nonprofit Agency Overall Compliance Policy* (2020) (available at:

https://www.abilityone.gov/laws_regulations_and_policy/documents/Commission%20Policy%2051.400%20Effective%2015Aug2020.pdf) (“Nonprofit agencies that are not in full compliance with the applicable regulations may face a range of sanctions based on the type, certification, and severity of the infraction. These include, but may not be limited to, corrective actions, probation, or deauthorization to perform a project on the Procurement List.”); see generally, Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/Commission%20Policy%2051.403%20Effective%2012Nov2020.pdf)

certification, and the severity of the infraction. The Commission may issue corrective action plans, place an NPA on probation or suspension status, deauthorization of an individual project, Commission hearings, or full removal from the Program.⁹¹ Instances of false certifications or other illegal activity shall be considered for referral to AbilityOne OIG, an appropriate U.S. Attorney's Office, or other appropriate authority.⁹² The Policy also states that [f]or instances of noncompliance with Department of Labor (DOL) laws or regulations, pertinent information shall be considered for referral to DOL.⁹³

While, as stated above, in conducting the investigation of the allegation, AbilityOne OIG focused on the seven high-risk areas of noncompliance, Policy 51.403 also provides a list of secondary areas of noncompliance and instances of noncompliance with other federal contracting provisions that will trigger corrective action.⁹⁴ Repeated violations of secondary reasons for noncompliance or a pattern of noncompliance will also elevate an NPA to "high-risk" status and may warrant probation or consideration for removal.⁹⁵

While the AbilityOne OIG investigation did not address areas of noncompliance apart from the high-risk ones, it is important to note that NPAs are still subject to corrective or disciplinary action for noncompliance for secondary reasons. Many NPAs fail the annual compliance reviews for secondary reasons listed in Policy 51.403. The Policy notes that a pattern of noncompliance or consecutive violations of secondary issues may elevate the NPA to a high-risk, result in corrective action, probation or suspension, Commission hearings, or removal from the Program.⁹⁶

1. Items listed as NPA responsibilities within Policy 51.403 are not fulfilled.

Policy 51.403 provides that NPAs authorized to participate in the Ability One Program must comply with all requirements of the JWOD Act, regulations, and Compliance policies. As such,

⁹¹ *Id.*

⁹² See AbilityOne Compliance Policy 51.403(6)(f)(i-ii), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) (available at: https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.403%20Effective%2012Nov2020.pdf).

⁹³ See *id.* at (6)(f)(iii).

⁹⁴ *Id.* at (6)(c) (listing as secondary Program-related reasons for noncompliance, OSHA violations and not paying the correct wages and benefits to direct labor hour employees, as mandated by the Service Contract Act (SCA), Davis Bacon Act (DBA) and the Federal Labor Standards Act (FLSA) and listing other federal contract violations as inadequate adherence to Affirmative Action Plans, EEO-1 Form, VETS-4212 Form, Compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), Drug- Free Workplace Policy, and Family & Medical Leave Policy).

⁹⁵ *Id.* at (6)(d)(iii-iv) (NPAs found to be out of compliance for the same secondary problem(s) on consecutive visits, or have a pattern of non-compliance, will be considered "High Risk" and may be placed on probation and not allowed to be assigned or begin new PL work until the issues are corrected. If the next Commission visit finds the NPA is still out of compliance, the NPA will be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.").

⁹⁶ *Id.*

NPAs are responsible for submitting key documentation for the Commission to track Program data and ensure the Program requirements are met. Specifically, Policy 51.403 lists the following three submission requirements:

- a) Annual certifications to the Commission through the appropriate CNA by December 1st of each year;
- b) Quarterly reports to the Cooperative Agreement report deliverables to the appropriate CNA if authorized by the Commission to produce a product or provide a service on the PL; and
- c) A Corrective action plan for non-compliance issues within the specified time established by the Commission, when necessary.⁹⁷

a. Annual Reps&Certs

Under 51 C.F.R. § 51-4.3, to maintain qualification in the AbilityOne Program, NPAs must submit an Annual Representations and Certifications (Reps&Certs) Form (OMB Form 3037-0013), on which the NPA's Chief Executive Officer or Executive Director and Board of Directors Chairperson must certify, under penalty of 18 U.S.C. § 1001, that the statements are accurate and correct to the best of their knowledge and belief.⁹⁸ According to the policy, NPAs which do not fulfill the requirements listed as necessary to maintain qualification will be deauthorized from participating in the AbilityOne Program and lose its PL projects.⁹⁹

⁹⁷ See Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) (available at:

https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.403%20Effective%2012Nov2020.pdf).

⁹⁸ 51 C.F.R. § 51-4.3 ("each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification (Committee Form 403 or 404) covering the fiscal year ending the preceding September 30."); AbilityOne Compliance Policy 51.409(6)(a)(iii), *Maintaining Qualifications of Nonprofit Agencies* (2020) (available at:

https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.409%20Effective%2015Aug2020.pdf) (requiring NPAs to "submit [] Annual Representations and Certifications, signed by the appropriate NPA leaders, to the CNA(s) who represent it by November 1 of each year, covering the fiscal year ending the preceding September 30"); see also OMB Form 3037-0013, *Representations and Certifications* (Committee Form 403 or 404) (available at: <https://ombreport/icr/201505-3037-001/doc/57855801>) ("THIS IS TO CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION AND DATA FROM THE RECORDS OF THE AGENCY SUBMITTED* TO THE COMMISSION THROUGH THE DESIGNATED CENTRAL NONPROFIT AGENCY IN SUPPORT OF THE AGENCY'S PARTICIPATION IN THE ABILITYONE PROGRAM FOR FEDERAL FISCAL YEAR {x} ARE ACCURATE, COMPLETE AND CURRENT AS OF . . . THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18 USC1001.").

⁹⁹ AbilityOne Compliance Policy 51.409(6)(b), *Maintaining Qualifications of Nonprofit Agencies* (2020) (available at:

The eight-page Reps&Certs Form requires the NPA to certify that major Program requirements are met, including provisions of the JWOD Act, AbilityOne regulations, Compliance policies, as well as other applicable laws and regulations. The Reps&Certs form also requires the NPA report key Program-metrics including DLR, number of employees, hours worked, revenue streams, Veterans' employment, and subcontracts.

According to the policy, if a Commission compliance inspection reveals evidence that one or more NPA executives signed an incorrect annual Reps&Certs, or other illegal activity, the Commission will notify AbilityOne OIG.¹⁰⁰

The Annual Reps&Certs Form serves as one of the most important documents in which the Commission may monitor NPA compliance with key Programmatic documents.

Since the inception of the first AbilityOne Inspector General in 2017, the Commission has referred zero notifications to AbilityOne OIG of an incorrect Reps&Certs submission by an NPA. However, during the course of this investigation, AbilityOne OIG has become aware of at least one NPA, NPA1, which the Commission had evidence since at least May of 2022 to suggest an NPA submitted a false Reps&Certs Form. Submission of materially false statements or omissions should have warranted notification to the OIG under Policy 51.403 and in accordance with the IG Act.¹⁰¹ Such notification would have alerted the OIG of possible illegal activity by the NPA, known to the Commission. Additionally, at least one Compliance Office staff member expressed concerns that Compliance Office leadership failed to provide clear guidance on the Compliance Office employee's ability to refer findings to OIG or other entities and failed to provide guidance and training on what constituted appropriate referral to OIG or other federal entities.¹⁰²

A copy of the Annual Representations and Certifications (Reps&Certs) Form (OMB Form 3037-0013) is attached at Exhibit A.

b. Quarterly Reporting

Each quarter, NPAs must self-report to their respective CNA data aligned with the key Program metrics tracked on the Annual Reps&Certs, including DLR, number of employees, hours worked, revenue streams, etc. The CNAs will then send warning letters to the NPAs with an ODLR below

https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.409%20Effective%2015Aug2020.pdf.

¹⁰⁰ See AbilityOne Compliance Policy 51.403(6)(f)(i) *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) (available at:

https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.403%20Effective%2012Nov2020.pdf).

¹⁰¹ *Id.* at (5)(f)(i) ("If a Commission compliance inspection reveals evidence that one or more NPA executives signed an incorrect annual certification or self-certification audit results, or information indicating that any other possible illegal activity may have taken place, the Commission will notify the AbilityOne Office of the Inspector General, in accordance with the Inspector General Act of 1978, as amended, and will make referral to the appropriate office of the United States Attorney or other interested Federal official.").

¹⁰² See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023).

75% after the second quarter and to all the NPAs which failed to meet the 75% ODLR in the previous fiscal year.¹⁰³ The warning letters shall include indication of the process/consequences triggered if the NPA finishes the federal fiscal year with its ODLR below 75%.¹⁰⁴

The OIG Audit of the Compliance Program found that the Commission Office of Compliance's quarterly monitoring "does not properly and timely identify NPA noncompliance. This is inconsistent with the *Green Book* which requires management to identify, analyze, and respond to risks, including the potential for fraud, to ensure the appropriate level of internal controls are in place."¹⁰⁵ While CNAs are required to report to the Commission which NPAs failed to maintain ratio, the CNAs provide no information about the underlying data, rendering the Commission incapable of verifying the information submitted or tracking trends across quarters.¹⁰⁶ In April and May of 2022, pursuant to modifications in each CNA's Cooperative Agreement, both CNAs began providing routine access to the reported data to mitigate risk.¹⁰⁷

c. Corrective Action Plans

To maintain its status as a qualified AbilityOne NPA, in the case of inadequate documentation or other deficiencies in complying with the Commission's requirements, all NPAs must submit any corrective action plans within the prescribed timeline.¹⁰⁸ Under Policy 51.409, NPAs which do not

¹⁰³ See AbilityOne Compliance Policy 51.403(5)(b)(ii-iii) *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) (stating that it is the CNA's responsibility to "[s]end warning letters to its NPAs with cumulative overall direct labor hour ratios below 75 percent after the second quarter. The warning letters to the NPA Board Officer (as listed on the latest Annual Representations and Certifications form) and Executive Director/President shall include the process that is followed if the NPA finishes the Federal fiscal year with its direct labor hour ratio below 75 percent. Report the status of an NPA's cumulative overall direct labor hour ratio to the Commission after the end of the second quarter, for all NPAs whose direct labor hour ratio was below 75 percent for the prior Federal fiscal year").

¹⁰⁴ *Id.*

¹⁰⁵ U.S. AbilityOne Commission Office of Inspector General, *Performance Audit Report of the Compliance Program* p. 25 (available at: <https://abilityone.oversight.gov/reports>) (forthcoming Jan. 2023—Feb. 2023) ("The information the Commission's OCD requires each CNA to provide in two key compliance areas, RRAVs and the quarterly monitoring of the 75% ODLH requirement, is summary in nature, and the Commission does not request access to detailed information needed to independently verify the NPAs' compliance with statutes, regulations, and Commission policies. This increases the risk that the Commission does not properly and timely identify NPA noncompliance. This is inconsistent with the *Green Book*²³ which requires management to identify, analyze, and respond to risks, including the potential for fraud, to ensure the appropriate level of internal controls are in place.")

¹⁰⁶ *Id.* ("Also, while the CNAs are required to report the NPAs that are below the 75% ODLH ratio in the quarterly report provided in pdf format, the underlying data is not provided. Without access to the underlying data, the Commission OCD staff cannot independently verify the results provided by the CNAs or easily monitor activity to identify negative trends from quarter to quarter (e.g., NPA reported for more than one quarter).")

¹⁰⁷ *Id.* ("The Commission has taken steps to address this issue in FY 2022. The Cooperative Agreement with NIB was modified in May 2022 to require them to provide a quarterly data extract of the AR&C data and any updates within five business days of the NPA making them. The Cooperative Agreement with SA was modified in April 2022 to require them to provide routine access to the AR&C data. Commission OCD staff told us that SA is providing a weekly data extract and that these new weekly or quarterly data extracts from the CNAs are not being uploaded to PLIMS.").

¹⁰⁸ See AbilityOne Compliance Policy 51.403(6)(a)(iv)(b) (prescribing that NPAs must "Comply with all requirements of 41 C.F.R. 51-4.3, as implemented through the Commission's NPA compliance-related policies

fulfill the requirements listed as necessary to maintain qualification will be deauthorized from participating in the AbilityOne Program and lose its PL projects.¹⁰⁹

The Compliance Office, through the CNAs, issues corrective action after finding an instance of noncompliance during a Compliance Review.¹¹⁰ CNA reviewers may issue process improvements in lieu of corrective action.¹¹¹

Timeline

Under Policy 51.409, all NPAs found to be noncompliant with the Commission's regulations will be given a corrective action deadline, defaulted to 30 days, to resolve the issues and report back to the Commission.¹¹² The Commission may decide to schedule a second NPA within 60 days after the corrective action period to confirm whether the issues have been corrected.¹¹³ If the Commission finds that the NPA is still out of compliance in the following visit, the NPA must appear before the Commission and explain why they should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.¹¹⁴ If an NPA submits a corrective action response but, upon subsequent Compliance Reviews by the Commission or the designated CNA, have failed to correct the findings, they will be immediately placed on probation and given 60 days to correct the findings.¹¹⁵ If still found non-compliant, the NPA will appear before the Commission and explain why they should not be removed from the AbilityOne Program.¹¹⁶

NPAs may request an extension to the corrective action's deadline. Per the Cooperative Agreement, each designated CNA has the authority to grant the NPA's request for one extension of the corrective action deadline.¹¹⁷ The Cooperative Agreements do not prescribe specific

(51.400 – 51.410), which include but are not limited to: . . . Satisfactory completion of corrective action assigned by the Commission or a CNA to address inadequate documentation or other deficiencies in complying with the Commission's requirements, as elaborated in Policy 51.403").

¹⁰⁹ AbilityOne Compliance Policy 51.409(6)(b) *Maintaining Qualifications of Nonprofit Agencies* (2020).

¹¹⁰ AbilityOne Compliance Policy 51.403(6)(d) *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020)(6)(d) ("In all cases of non-compliance, a corrective action deadline date will be established by the Commission for the NPA to resolve the issue(s) and to report back to the Commission. The Commission's report of non-compliance and timing for corrective action will be provided to the appropriate CNA, who will contact the NPA and determine whether any assistance is necessary.").

¹¹¹ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023) ("This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office Employee] advised as follows:. . . A process improvement is sometimes issued if the CNA reviewer doesn't feel that there was a rise to a full corrective action.").

¹¹² *Id.*; see also Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Aug. 8, 2022).(noting that corrective action deadlines are generally defaulted to 30 days).

¹¹³ AbilityOne Compliance Policy 51.403(6)(d) *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

¹¹⁴ *Id.* at (6)(d)(iv).

¹¹⁵ *Id.* at (6)(e)(i)

¹¹⁶ *Id.* at (6)(e)(i-ii)

¹¹⁷ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Aug. 8, 2022); See, Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled

conditions, considerations, or criteria the CNAs must follow to grant an extension.¹¹⁸ The Compliance Office receives extension requests only when an NPA has requested a second extension.¹¹⁹ When determining whether to grant a second extension request, the Director of Compliance evaluates the NPA's justification for why more time is needed to correct the findings.¹²⁰

Tracking Issuance and Timely Completion of Corrective Actions

Prior to March of 2022, the CNAs were largely responsible for the corrective action process without much oversight from the Compliance Office.¹²¹ The CNAs set the deadline and were responsible for tracking progress towards completion, ensuring the NPA submitted the response by the deadline, and also verified that the NPA's response fully addressed any adverse finding.¹²² Currently, CNAs are responsible for uploading corrective action documentation, including extensions, into PLIMS.¹²³ However, as PLIMS is a dated, limited system the CNA does not have the ability to provide updates, meaning the information is added at the end of the transaction when the corrective action has been completed.¹²⁴ Compliance Office employees need to reach out to the corrective action specialist at the respective CNA to verify if an NPA has submitted a sufficient

and SourceAmerica, 3.3.1.3 NPA Regulatory Review and Assistance Visits (RRAV), (Effective Date 4/7/2022), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%20MOD8%20Final.pdf ("NPAs may not be granted more than one (1) Corrective Action Plan extension from the CNA without prior approval from the Commission Director, Oversight and Compliance."); *see* Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and National Industries for the Blind, (Effective Date 4/7/2022), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/NIB%20CA%20Negotiation%20Mod%2010%20Final%205.2.22.pdf

¹¹⁸ *See generally id.*

¹¹⁹ *Id.*

¹²⁰ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Aug. 8, 2022).

¹²¹ *See generally* Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 8, 2022) (discussing the Commission's need for and steps towards more oversight of the corrective action process).

¹²² *Id.*

¹²³ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 8, 2022) ["This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [The Director of Compliance] advised as follows: When a CNA receives an email extension request from an NPA, and the extension gets approved, the CNA will either include a copy of the extension approving email with the transaction on PLIMS or incorporate the approval email within the transaction itself, usually within the executive summary. Occasionally, the CNA will note in the transaction that an extension was requested and approval with the date of request and the new deadline. It is the CNA's responsibility to note the extension request and approval in PLIMS. The shortcoming with the PLIMS system is that the transaction only comes in upon the completion of corrective action or correction of the finding. Therefore, there is no opportunity for progress information."].

¹²⁴ *Id.*

corrective action.¹²⁵ Each CNA is using different measurables in implementing corrective action, leading to different results.¹²⁶

According to the Director of Compliance, March 2022, marked the Commission's shift towards a more active oversight role in the corrective action process.¹²⁷ The Director of Compliance observed frequent occurrences in which NPAs submitted corrective action responses after the deadline, causing the Director to begin "assessing whether the CNAs were not timely submitting records, which happened in some instances, or whether the CNA was failing to hold NPAs accountable when missing deadlines."¹²⁸ Consequently, Compliance implemented a new process of holding weekly standing meetings with the CNAs where the Director of Compliance works through Compliance Reviews conducted the previous week, discussing whether corrective action is required and the deadlines prescribed.¹²⁹ The Director of Compliance relies on these weekly meetings to "maintain an overall tracker."¹³⁰

Notably, the Director of Compliance is the only Commission employee who receives notifications that NPAs have requested a corrective action deadline extension.¹³¹ The Director of Compliance noted that this structure creates potential risk that emails could be lost or overlooked, and Compliance staff may be unaware of extensions; therefore, the Director has been working to create a new system.¹³²

U.S. AbilityOne Commission policy does not address when a corrective action response is submitted after the corrective action deadline. If a corrective action response is inadequate to remedy the findings of the Compliance Review, Compliance will determine whether the NPA is

¹²⁵ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023) ("This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office Employee] advised as follows: . . . [Compliance Office employees] can see a corrective action on a report or on a review, but unless we explicitly state that we want to be involved in it, or we have to approve it before it's approved, then its up to SourceAmerica or NIB.").

¹²⁶ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023) ("This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office Employee] advised as follows: . . . [U.S. AbilityOne Commission] have two CNAs under one Program with different measurables for conducting the same work, so you're going to get different results from both. It's not articulated in their Cooperative Agreements. You have to leave it to their interpretation, if any.").

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* ["This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [The Director of Compliance] advised as follows: . . . the Director of Compliance] is fixing how corrective action extension requests are communicated. Currently, [the Director of Compliance] is the only Commission employee who receives notifications that an NPA has requested a corrective action extension through an email from the CNA. [The Director of Compliance] also receives second extension requests through email. These emails could potentially get lost or overlooked. "I shouldn't be the only person notified that an extension is out there. I'm working to bring that into a completely different system.").

¹³² *Id.*

to have a second Compliance Review within 60 days.¹³³ While there have been instances where an NPA has not submitted a corrective action response prior to the established deadline, or submitted a corrective action response deemed inadequate, the Director of Compliance has never instructed a subsequent Compliance Review of an NPA.¹³⁴

1. Evidence that the overall DLR is not going to meet the 75 percent requirement by the end of the Federal fiscal year.

Under the JWOD Act, to maintain its status as a qualified AbilityOne NPA, all NPAs must maintain a 75% ODLR.¹³⁵ Compliance Policy 51.409 also states that NPAs which do not fulfill the requirements listed as necessary to maintain qualification will be deauthorized from participating in the AbilityOne Program and lose its PL projects.¹³⁶ The DLR is an important requirement of the AbilityOne Program and is addressed in the Annual Reps&Certs, Quarterly reporting, and Compliance Office visits.

According to Compliance Policy 51.401, CNAs collect quarterly data from their NPAs, particularly direct labor hours, and based on their review and analysis of that data, CNAs take action as appropriate to assist NPAs that appear to be trending towards noncompliance. CNAs will assist NPAs that appear to be collecting or presenting their quarterly data in an incorrect manner.¹³⁷

A finding that the ratio is not projected to meet the 75% DLR by the end of the year triggers different compliance implications than if the ratio is not brought up by the end of the fiscal year. Since Compliance Reviews are performed year-round, an NPA which is reviewed at the beginning of the fiscal year may have four quarters to come into compliance.

Currently, NPAs which do not come into compliance by the end of the fiscal year are subject to corrective actions under the 2020 version of Policy 51.403.¹³⁸ Notably, the Commission's two separate 2020 versions of Policy 51.403 treat NPAs which fail to satisfy the 75% ODLR materially

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ 41 U.S.C. § 8501(6)(C) (stating that a “qualified nonprofit agency for the blind,” means “that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.” 41 U.S.C. § 8501(7)(C)).¹³⁵ The implementing regulations require AbilityOne to “Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities;” *see also* AbilityOne Compliance Policy 51.403(6)(a), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

¹³⁶ AbilityOne Compliance Policy 51.409(6)(b), *Maintaining Qualifications of Nonprofit Agencies* (2020).

¹³⁷ *Compare* 41 U.S.C. § 8501(6)(C) & (7)(C) (showing that the statutory language is unclear as to whether the 75% DLR requirements apply at the individual contract level or across all contract) *with* AbilityOne Compliance Policy 51.401(5)(b)(ii), Direct Labor Ratio Requirements (showing that the Commission policy clarifies grey areas within the JWOD Act to set the DLR at the NPA level, requiring NPAs to employ people who are blind or who have significant disabilities for at least 75 % of their “overall direct labor hours” (ODLH) during the federal fiscal year).

¹³⁸ AbilityOne Compliance Policy 51.403(8) (2020) (“If an NPA fails to meet the 75 percent overall direct labor hour ratio requirement in any Federal fiscal year, the Commission will initiate corrective action. *See* U.S. AbilityOne Commission Procedures 51.403-01.”).

differently than the previous 2013 version of the Policy. While the 2020 Policy versions grant the Commission unfettered discretion to determine what corrective action is appropriate, the 2013 version of the Policy prescribed that any NPA which failed to meet the 75% ODLR “will” be placed on probation, “will” be ineligible for new contracts until the ratio had been brought back to 75%, will be required to report DLR quarterly to the Commission, and could be removed from the program after the first year, if warranted.¹³⁹ Additionally, under the 2013 version of Policy 51.403, failing to meet the 75% ODLR for two consecutive years would result in the Commission requiring the NPA to defend its place in the Program.¹⁴⁰ The 2020 version contains no similar provisions prescribing increased corrective or disciplinary action for NPAs out of compliance for two consecutive years.¹⁴¹

2. AbilityOne project(s) are being performed at DLRs significantly below what submitted by the NPA during the PL addition or transfer of the project.

While the JWOD Act specifies a 75% overall average of direct labor hours requirement, the Commission may authorize lower ratios for good or a service for a specific PL project as long as the NPA maintains compliance with the 75% ODLR statutory requirement as an average across all contracts.¹⁴²

¹³⁹ AbilityOne Compliance Policy 51.403(8) (2013) (“If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur: 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. 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 project on a case-by-case basis if the NPA can present a compelling argument to the Commission for an addition while below 75 percent. 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. 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. 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. 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.”).

¹⁴⁰ *Id.* (“When an NPA fails to meet the 75 percent ratio for a second consecutive year: 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. 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. . . .”).

¹⁴¹ See generally AbilityOne Compliance Policy 51.403(8) (2020).

¹⁴² AbilityOne Compliance Policy 51.401(6)(e), *Direct Labor Ratio Requirements* (2020).

As part of the PL addition package, NPAs submit an Estimated Direct Labor Hour (EDLH) Form on which both the CNA and NPA certify the estimated DLR the project will start at, how long it will take to bring the DLR to 75%, and where the project DLR will end at (e.g. 75% or below).¹⁴³ EDLH Forms correspond to the “employment potential” prong of the four Suitability Criteria that must be met under 41 C.F.R. 51-2.4 for a project to be added to the PL.¹⁴⁴ The Commission considers employment potential as meaning “[t]he proposed addition must demonstrate a potential to generate employment and that an appropriate level of direct labor hours is to be performed by people who are blind or have significant disabilities.”¹⁴⁵ Commission Members are provided Decision Document Letters by Commission staff which discuss whether the NPA meets the Suitability Criteria.¹⁴⁶ The *Employment Potential* section includes the project-level DLR, jobs created for people who are blind or have significant disabilities, and whether a Phase-In is needed, among other factors.¹⁴⁷

When the Commission conducts an inspection or a CNA conducts a Compliance Review, the NPA is required to make its cumulative direct labor hours for the current fiscal year available for all projects so that the Commission may verify ratio compliance.¹⁴⁸ The Commission requests, but does not require, the NPA to provide its most current EDLH Form for each project on the PL.¹⁴⁹ If a Commission compliance inspection or a CNA regulatory assistance visit finds that an NPA’s project-level direct labor hour ratio is more than 10 percent (%) below the level estimated at the time of Procurement List addition, corrective action will be prescribed.¹⁵⁰

¹⁴³ See AbilityOne Estimated Direct Labor Hour Form (requiring the NPA and CNA sign “I certify that this agency has or expects to have the number of trained blind or severely disabled persons required to meet or exceed the percentage of Blind/Disabled Labor shown at Item 9 upon start of this time frame required by Item 10” and, for additions that require a phase-in, certify “also agree to report monthly, through the appropriate CNA, the hours and percentage of Blind/Disabled Direct Labor on this service until the Percentage of Blind/Disabled Labor stated in Item 6 is achieved.”).

¹⁴⁴ 41 C.F.R. 51-2.4 (determining suitability of a proposed project by requiring the NPA satisfy the four listed criteria: (1) employment potential for people with significant disabilities, (2) nonprofit agency qualifications, (3) capability of nonprofit agency to meet quality and delivery standards, and (4) impact on current or most recent contractor. Employment potential shows that “[t]he proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.”); U.S. ABILITYONE COMM’N, ADDING A COMMODITY TO THE PROCUREMENT LIST (2022) (available at: https://www.abilityone.gov/procurement_list/services_commodity.html).

¹⁴⁵ *Id.*

¹⁴⁶ See PLIMS, Add Service Package Document, *U.S. ABILITYONE COMMISSION ADDITION TO THE PROCUREMENT LIST FOR DECISION*, (“A. DETERMINATION OF SUITABILITY FOR ADDITION TO PROCUREMENT LIST: In accordance with 41 CFR 51-2.4, “Determination of Suitability,” each of the following criteria must be satisfied for a service to be suitable for addition to the Procurement List (PL): 1. EMPLOYMENT POTENTIAL EMPLOYMENT OF PEOPLE WHO ARE BLIND OR SIGNIFICANTLY DISABLED” and includes the following employment potential fields: EXTENT OF LABOR OPERATIONS, WORK YEARS OF PBSO, % DIRECT LABOR HOURS PERFORMED BY PBSO, Direct Labor Positions, Number of PBSO, PROJECT PHASE-INS, SECURITY CLEARANCES WORKFORCE AVAILABILITY).

¹⁴⁷ *Id.*

¹⁴⁸ AbilityOne Compliance Policy 51.401(6)(a)(i), *Direct Labor Ratio Requirements* (2020).

¹⁴⁹ *Id.* at (6)(a)(iii).

¹⁵⁰ AbilityOne Compliance Policy 51.401(6)(ie)(iv), *Direct Labor Ratio Requirements* (2020).

The Director of Compliance stated to AbilityOne OIG that the EDLHs are “aspirational” as in nature as opposed to a binding certification which the Compliance Office would hold the NPA to; and that NPAs which are underperforming on a specific projected project-level ratio, as reported in the EDLH Form, are invited to resubmit a corrected EDLH Form.¹⁵¹ NPAs must provide justification for underperforming such as COVID or changes to the scope of work – changes are not automatically approved.¹⁵²

The Director of Compliance stated to AbilityOne OIG that he has asked his supervisors, the Executive Director, for guidance on the range within which a newly proposed project-level EDLH may deviate from the original EDLH before the project would require reconsideration by the Commission Members.¹⁵³ The Commission has not established a *de minimis* threshold in which NPAs may adjust their EDLH projections; the Director of Compliance stated that, because there is no prescribed threshold, he allows variances up to 30% without triggering notification to the Commission Members.¹⁵⁴ For example, an NPA may inform the Commission it will operate at a project-level ratio of 75% to secure a new project assignment but then change the projected ratio to 45% without a new Commission Member vote.¹⁵⁵ If the change in the project-level EDLH would impact the NPA’s ODLR by more than 5%, the Director of Compliance notifies his supervisors.¹⁵⁶

¹⁵¹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023) [“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [The Director of Compliance] advised as follows: ...the project ratios will be identified as to whether or not they are deviating from the EDLH that was originally prescribed. If that is present, then through corrective action, the NPA explains how that project ratio has been deviated. Reasonably, it could be attributed to COVID-19, but that’s not necessarily always true. Also as part of the corrective action, we encourage NPAs to re-assess their EDLH forms that were submitted and approved because most ELDHs, in their present form, are aspirational in nature and do not necessarily reflect true understanding of performance of the underlying procurement list project.’ While the NPAs are certifying on the EDLH form that the numbers they are projecting are reasonable and what is expected to be achieved, ‘ but it is still a projection as opposed to an actual informed representation as to the labor required. The other thing that regrettably occurs is that the frequency of the scope of the underlying project changes and the EDLH is not automatically updated either. And that could be both contractually or expansion, or a bit of both.”).

¹⁵² *Id.*

¹⁵³ *Id.* (“I’ve separately also asked my superiors is there a floor or ceiling where this needs to be subsequently considered by the Commission Members, because, let’s say for instance it goes from a million hours to a thousand percent employment to a zero hours and zero employment for people with disabilities, I don’t think that necessarily should be something that is approved by me. I think that there should be subsequent consideration by others that are originally or are now at the position of deciding that that should be added to that procurement list.”).

¹⁵⁴ *Id.* (“Since no threshold has been established for modification allowed to the EDLH, [the Director of Compliance’s] practice is to hold the threshold to a deviation greater than 30 percent from its original position. Currently if an NPA originally certifies that their project would be at a 75% DLH ratio and the Commission Members approve it, but later the project is modified to 45%, the modification would not trigger a notification to the Commission Members.”).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* (“[the Director of Compliance] would put his findings into the transaction record including how the modification would impact of their overall ratio. If the impact for the NPA’s overall ratio is greater than 5% then [the Director of Compliance] would seek approval from a person “in a different position from myself. I take it up to superiors.”).

A copy of the Estimated Direct Labor Hour Form is attached at Exhibit B.

RECOMMENDATION 1: AbilityOne OIG recommends that the Commission identify and clarify the policy, and issue new policy as needed, regarding whether Commission staff has the authority or ability to lower an NPA's PL project-level EDLH after the Commission Members have voted on and approved a PL project-level EDLH, and, if so, establish reasons and guidelines for Commission staff to grant a modification and the threshold which will warrant notification to and reconsideration by the Commission Members.

RECOMMENDATION 2: AbilityOne OIG recommends that the Commission identify the instances where Commission staff approved, authorized, or otherwise allowed a lower PL project-level EDLH without Commission Members' approval or knowledge, and determine whether staff had the authority or acted within their delegated authority in doing so and that the Commission determine the course of actions it deems appropriate, accordingly.

3. Individual Employment Evaluations (IEE) and/or adequate medical documentation are missing from a significant number of files.

To remain a qualified NPA, all NPAs must maintain an ongoing Individual Eligibility Evaluation (IEE) program to determine an individual's initial program eligibility and conduct a reevaluation at least annually.¹⁵⁷ If the CNA finds that an NPA is not meeting Program qualification requirements, under the authority delegated to the CNA by the Commission under 41 CFR 51-3.2(b), the CNA shall require the NPA to initiate and complete corrective action(s).

4. Inadequate evidence of an ongoing placement program.

To remain a qualified NPA, NPAs must maintain an ongoing placement program that liaison with appropriate community services and help place employees who are determined to be "capable and desirous of competitive employment" into competitive employment.¹⁵⁸ If the NPA operates the placement program, the NPA must have policies and procedures in place, and must report the results via quarterly reports and the Annual Reps&Certs.¹⁵⁹ For placement programs contracted out by the NPA, the NPA must have documentation showing a valid agreement with its placement services provider, in addition to reporting results quarterly and in the Reps&Certs.¹⁶⁰

According to the policy, NPAs which do not fulfill the requirements listed as necessary to maintain qualification will be deauthorized from participating in the AbilityOne Program and lose its PL

¹⁵⁷ 51 C.F.R. § 51-1.3(1); *OIG Note*: Policy 51.405 (Individual Eligibility Evaluations (IEE) Documentation) is "coming soon." IEEs are currently addressed in AbilityOne Compliance Policy 51.407 (Disability Documentation Requirements – People who are Blind) (2020) and AbilityOne Compliance Policy 51.408 (Disability Documentation Requirements – People With Significant Disabilities) (2020).

¹⁵⁸ See AbilityOne Compliance Policy 51.409(6)(a)(vii), *Maintaining Qualification of Nonprofit Agencies* (2020); see also *infra* at p. 16 "Normal Competitive Employment"

¹⁵⁹ AbilityOne Compliance Policy 51.409(6)(a)(vii)(a), *Maintaining Qualifications of Nonprofit Agencies* (2020).

¹⁶⁰ *Id.* at (6)(a)(vii)(b).

projects.¹⁶¹

5. Policy Governing Repeat finding of a problem noted from previous Commission compliance inspections or CNA regulatory visits.

According to the policy, NPAs found to be out of compliance for the same secondary problem(s) on consecutive visits, or have a pattern of non-compliance, will be considered “High Risk” and may be placed on probation and not allowed to be assigned or begin new PL work until the issues are corrected.¹⁶² If the next Compliance Office visit finds the NPA is still out of compliance, the NPA will be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.¹⁶³ If an NPA is out of compliance for two or more of four Compliance Reviews, the current protocol is that the NPA should be subject to an additional Compliance Review.¹⁶⁴ If the noncompliance appears to be “all over the map” the Compliance Office tries to determine what will be the best way to assess what is transpiring with that organization.¹⁶⁵

According to the policy, NPAs that report correcting Commission non-compliance findings but, upon subsequent inspections by the Commission or Compliance Reviews by the CNAs, have failed to correct the findings will be immediately placed on probation.¹⁶⁶ In such cases, the NPA will be given 60 days to correct these findings and may be inspected on-site by the Commission or reviewed by the CNA.¹⁶⁷ If still out of compliance, the policy states, that NPA will be required to appear before the Commission and explain why its eligibility to participate in the AbilityOne Program should not be removed.¹⁶⁸

6. NPA fails to fully cooperate with a compliance inspection or to provide the information necessary to complete the inspection.

To remain a qualified NPA, NPAs must make records available for inspection at reasonable times and fully cooperate with the Commission’s inspections and CNA Compliance Reviews.¹⁶⁹ According to the policy, NPAs which do not fulfill the requirements listed as necessary to maintain

¹⁶¹ *Id.* at (6)(b).

¹⁶² AbilityOne Compliance Policy 51.403(6)(d)(iii), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

¹⁶³ *Id.* at (6)(d)(iv).

¹⁶⁴ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022).

¹⁶⁵ *Id.*

¹⁶⁶ AbilityOne Compliance Policy 51.403(6)(e), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

¹⁶⁷ *Id.* at (6)(e)(i).

¹⁶⁸ *Id.* at (6)(e)(ii).

¹⁶⁹ 51 C.F.R. § 51-4.3; AbilityOne Compliance Policy 51.409(6)(a)(iv)(c); *see generally* AbilityOne Compliance Policy 51.404, Onsite Compliance Reviews (prescribing the policy governing on-site compliance reviews of Nonprofit Agencies (NPA) participating in the AbilityOne Program).

qualification will be deauthorized from participating in the AbilityOne Program and lose its PL projects.¹⁷⁰

ISSUE 2: NPA Noncompliance:

- a. **Allegation: A significant number of NPAs receiving federal contracts through AbilityOne are currently failing to meet basic JWOD Contract requirements, like proving that blind or severely disabled workers perform 75 percent of their direct labor, as required by law.**

The Commission's most recent Performance and Accountability Report (PAR) to the President for Fiscal Year 2022, issued November 15, 2022, provided the chart below demonstrating the percentage of NPAs out of compliance with the 75% ODLR for each respective fiscal year.¹⁷¹

Table 1. NPAs in Compliance with 75% Overall Direct Labor Hour Ratio Requirement					
	FY 2017 Results	FY 2018 Results	FY 2019 Results	FY 2020 Results	FY 2021 Results
NPAs in Compliance / Total NPAs	496/511	469/483	461/480	402/469	353/450
Percentage of NPAs in Compliance	97%	97%	96%	86% ⁴	78% ⁵

The Commission FY21 PAR and FY22 PAR both attribute a lower rate of compliance with the 75% ODLR to the impact of COVID-19. Specifically, the Commission states:

“FY 2020 NPA compliance with this key requirement was lower than previous years due to COVID-19 pandemic impacts that included staffing shortages, supply chain issues, and employees needing to quarantine if affected by or infected with COVID-19. Responding to the unique circumstances presented by COVID-19, and consistent with Agency practice relating to emergency responses, the Agency expanded exceptions to its Direct Labor Ratio Requirements for FY 2020 and FY 2021. These exceptions included flexibilities to allow nonprofit agencies to notify the Commission if they will operate at a ratio below 75 percent due to, or in support of, the COVID-19 emergency response or recovery period.”¹⁷²

Note: The Commission stated that it currently does not anticipate issuing Pandemic-Related Waivers for FY23, unless there is a significant change in COVID-19 conditions.

¹⁷⁰ AbilityOne Compliance Policy 51.409(6)(b), *Maintaining Qualifications of Nonprofit Agencies* (2020).

¹⁷¹ U.S. AbilityOne Commission Fiscal Year 2022 Performance and Accountability Report, at p. 21 (available at: <https://www.abilityone.gov/documents/U.S.%20AbilityOne%20Commission%20FY2022%20PAR%20Final.pdf>).

¹⁷² U.S. AbilityOne Commission Fiscal Year 2021 Performance and Accountability Report, at p. 16 (available at: <https://www.abilityone.gov/commission/documents/U.S.%20AbilityOne%20Commission%20FY2021%20PAR%2015Nov2021%20-%20Final.pdf>).

Investigation Methodology

For FY17 – FY21, AbilityOne OIG conducted independent analysis, discussed in detail below, to verify the Commission’s representations of the rate of NPAs in compliance with the 75% ODLR as reported in the FY22 PAR Table 1 (displayed above).

Additionally, for FY20–FY22, in which the Commission issued Pandemic-Related Waivers, AbilityOne OIG analyzed the NPAs that failed to meet the statutorily required 75% ODLR but had submitted and were granted a Pandemic-Related Waiver.¹⁷³

AbilityOne OIG’s method analyzed both the total number of NPAs below ratio and the number of NPAs below ratio who were granted a Pandemic-Related Waiver because, while these waivers excused the NPA from corrective or disciplinary action by the Commission if the NPA failed to meet the ratio, the waiver cannot eliminate the statutory requirement to meet the 75% ODLR. Therefore, NPAs with Pandemic-Related Waivers who failed to meet the 75% ODLR should still be calculated as out of compliance with the statutorily required ratio, as the Commission showed in its reporting in the FY21 PAR and FY22 PAR.

Verifying Rate of Compliance with the Overall Direct Labor Ratio

AbilityOne OIG identified and downloaded a preconfigured report within PLIMS titled “NPA Extract.” AbilityOne OIG entered the fiscal year and created separate reports for fiscal years 2017, 2018, 2019, 2020, and 2021. PLIMS delivered the results of the report within the web browser in a table format. PLIMS provided AbilityOne OIG the capability to download a comma-separated value file entitled “NPAExtract.xlsx” containing the data and tables previously displayed in the web browser.

The PLIMS extract did not independently identify the percentage of NPAs which were in compliance with the 75% ratio; therefore, AbilityOne OIG consulted the Director of Compliance to identify the correct fields within the “NPAExtract” that would provide the analysis needed to determine ODLR. The Director of Compliance indicated to AbilityOne OIG that the column “Hours AllBlind Total” should be used in lieu of the column “Hours AllBlind JWOD total” as ODLR is calculated based on all direct labor hours worked in the production or performance of

¹⁷³ See *infra* at p. 13 ‘Pandemic-Related Waivers’ ; see also AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (April 1, 2020) available at: https://www.abilityone.gov/media_room/documents/AbilityOne%20Cmsn%20Statutory%20DLH%20Ratio%20Exception%20FY2020%20FINAL%201APR20%20signed.pdf; AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (October 1, 2020) (available at: https://www.abilityone.gov/media_room/documents/AbilityOne%20Compliance%20Ratio%20Flexibilities_FY2021.pdf); See AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program (April 6, 2022)(available at: <https://www.abilityone.gov/commission/documents/FY22%20ODLH%20Exception%20Memo%20Signed%206Apr2022.pdf>).

both AbilityOne and non-AbilityOne goods and services.¹⁷⁴ AbilityOne OIG added column “Hours AllBlind Total” with column “Hours AllSighted Total” to create a “Total Direct Labor Hours” column. AbilityOne OIG then divided “Hours AllBlind Total” by “Total Direct Labor Hours” column to generate ODLR. The equation provided a decimal value that can be converted into a percentage by multiplying the output value by 100.

Compliance Policy 51.403 provides that a ratio of 74.51% will round up to 75% and be deemed compliant with the JWOD ratio requirement.¹⁷⁵ Following that, AbilityOne OIG accounted any NPA with a ratio above 74.51% as compliant with the 75% ODLR.

Note: AbilityOne OIG’s and the Commission’s calculations of the total number of NPAs reflect minor variances as NPAs may enter or leave the Program during the year.¹⁷⁶ AbilityOne OIG’s calculation result were within a reasonable margin of rounding error from the Commission’s calculation results; therefore, AbilityOne OIG determined the noted variances for FY17 – FY21 were statistically insignificant.

Analyzing the Impact of COVID-19 & the Issuance of Pandemic-Related Waivers on Compliance with Overall Direct Labor Ratio for FY20 & FY21

The Office of Compliance provided AbilityOne OIG a copy of spreadsheet entitled “NPAS-Approved ODLH Ratio Exceptions” and explained its tracking system of NPAs which had requested a Pandemic-Related Waiver for at least one of the FYs in which the waivers were granted (FY20 – FY22).¹⁷⁷ If the NPA is not listed in the spreadsheet, it has not been approved for a

¹⁷⁴ 41 U.S.C. § 8501 (6)(C) (defining a qualified NPA for the blind as one “that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”); 41 U.S.C. § 8501((7)(C)(defining a qualified NPA for the severely disabled as one “that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”).

¹⁷⁵ See Compliance Policy 51.403(6)(a)(ii) (“Direct labor hour ratio information must be reported to two decimal places. The Commission will use standard rules for rounding numbers to determine compliance. A direct labor hour ratio at or above 74.51% will meet the 75% requirement.”).

¹⁷⁶ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022) (““This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [the Director of Compliance] advised as follows: . . . NPAs may leave or join the Program during the year. [Director of Compliance] has instructed the designated CNA to include all NPAs who filed an Annual Reps&Certs form in the calculations, even in instances where an NPA decides to leave the Program the day before the fiscal year ends or the very first day of the new fiscal year. The Compliance Office does not want to potentially ignore data that has been submitted. In almost all the instances, NPAs who have signaled or taken earnest steps to depart from the Program will not file the Reps&Certs. “It is a combination of the CNA tracking how earnestly the NPA is departing from the Program, coupled with the fact that they don’t submit any data, that they are intentionally ignored or excluded from the calculus.”).

¹⁷⁷ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022). “This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [the Director of Compliance] advised as follows: . . .

COVID-19 ratio exception in any year.¹⁷⁸ No other documents are kept by the Commission to account for NPA waiver exemptions.¹⁷⁹

FY 17: AbilityOne OIG determined that 3% of NPAs were out of compliance with the 75% ODLR.

AbilityOne OIG identified 518 NPAs which had participated in the Program for FY17. Of the 518 total NPAs, the OIG identified 15 NPAs which did not meet the 75% ODLR.

AbilityOne OIG’s analysis confirms and validates the Commission’s statements made in the 2022 PAR. Dividing the 15 NPAs below the required 75% ODLR by the total number of 518 NPAs equals 0.029 which converts, when rounded up, to 3%. AbilityOne OIG’s analysis confirms that 3% of the NPAs were not in compliance while the remaining 97% of NPAs were in compliance with the required 75% ODLR for FY17.

FY18: AbilityOne OIG determined that 3% of NPAs were out of compliance with the 75% ODLR.

AbilityOne OIG identified 495 NPAs which had participated in the Program for FY18. Of the 495 total NPAs, the OIG identified 14 NPAs which did not meet the 75% ODLR.

AbilityOne OIG’s analysis confirms and validates the Commission’s statements made in the 2022 PAR. Dividing the 14 NPAs below the required 75% ODLR by the total number of 495 NPAs equals 0.028 which converts, when rounded up, to 3%. AbilityOne OIG’s analysis confirms that 3% of the NPAs were not in compliance while the remaining 97% of NPAs were in compliance with the required 75% ODLR for FY18.

Columns D “FY20,” F “FY21,” and H “FY22,” show whether the NPA was approved for the COVID-19 ratio exception; Column A indicates a running number of NPAs that requested a ratio exception in FY20. The rows that do not have a number in column A reflect that an NPA requested the ratio exception in FY21 or FY22; Column H displays one highlighted cell indicating the first instance that that NPA had requested a ratio exception. The number “1” to get a running calculation at the bottom of the spreadsheet; Column E “FY20 ODLM Ratio” and column G “FY21 ODLM Ratio,” show the final ratio reported by each NPA on their annual Reps&Certs. A few cells in the spreadsheet are intentionally highlighted to show which NPAs reported a ratio lower than 75%; and Column B has NPA highlighted in yellow indicating the NPA is in the top 25 of either total employment or total contract dollar revenue. NPAs highlighted in orange show ratios that are “remarkably low”; and Column G shows a “+” symbol next to NPA [OMITTED], which indicates that the NPA failed to file their annual Reps&Certs. Since the last update to the spreadsheet, [NPA] has filed.”).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

FY19: AbilityOne OIG determined that 5% of NPAs were out of compliance with the 75% ODLR.

AbilityOne OIG identified 480 NPAs which had participated in the Program for FY19. Of the 480 total NPAs, the OIG identified 23 NPAs which did not meet the 75% ODLR. The AbilityOne Commission had not created a Pandemic Ratio Waiver in 2019.

AbilityOne OIG's analysis confirms and validates the Commission's statements made in the 2022 PAR. Dividing the 23 NPAs below the required 75% ODLR by the total number of 480 NPAs equals 0.048 which converts, when rounded up, to 5%. AbilityOne OIG's analysis confirms that 5% of the NPAs were not in compliance while the remaining 95% of NPAs were in compliance with the required 75% ODLR.

FY20: AbilityOne OIG determined that 14% of NPAs were out of compliance with the 75% ODLR.

AbilityOne OIG identified 471 NPAs which participated in the Program for FY20. Of the 471 total NPAs, OIG identified 65 NPAs which did not meet the 75% ODLR.

AbilityOne OIG's analysis confirms and validates the Commission's statements made in the 2022 PAR. Dividing the 65 NPAs which were below the 75% ODLR by the total number of 471 NPAs equals 0.1380 which converts, when rounded up, to 14%. AbilityOne OIG's analysis confirms that 14% of NPAs were out of compliance while the remaining 86% of NPAs were in compliance with the ODLR requirement.

Of the total 65 NPAs which were below ratio, all but 4 NPAs had submitted and were approved for a Pandemic-Related Waiver providing flexibility to drop below 75% ODLR.

FY21: AbilityOne OIG determined that 20% of NPAs were out of compliance with the 75% ODLR.

AbilityOne OIG identified 475 NPAs which participated in the Program for FY21. Of the 475 total NPAs, the OIG identified 95 NPAs which did not meet the 75% ODLR.

AbilityOne OIG's analysis confirms and validates the Commission's statements made in the 2022 PAR. Dividing the 95 NPAs which were below ratio by the total number of 475 NPAs equals 0.20 which converts to 20%. AbilityOne OIG's analysis confirms that 20% of NPAs were out of compliance while the remaining 80% of NPAs were in compliance with the ODLR requirement.

Of the 95 NPAs below ratio, all but 1 NPA had submitted and were approved for a Pandemic-Related Waiver providing flexibility to drop below 75% ODLR.

Analyzing the Commission's Response to NPAs Below Ratio

After analyzing the rate of noncompliance with the 75% ODLR discussed above, AbilityOne OIG then analyzed whether the Commission took appropriate corrective action – as specified in Policy 51.403: *NPAs Out of Compliance With Commission Regulations* – against the specific NPAs which failed to meet the ODLR in FY17 – FY22. Three versions of Policy 51.403 governed during the sample date range. The 2020 versions and the 2013 version contain material differences in the Commission's response to NPAs which failed to satisfy the 75% ODLR requirement. While under the two 2020 Policy versions the Commission has discretion to determine what corrective action is appropriate, the 2013 version of the Policy prescribed that any NPA which failed to meet the 75% DLR “will” be placed on probation, “will” be ineligible for new contracts until the ratio had been brought back to 75%, will be required to report DLR quarterly to the Commission, and could be removed from the program after the first year, if warranted.¹⁸⁰ Additionally, under the 2013 version of Policy 51.403, failing to meet the 75% ODLR for two consecutive years would result in the Commission requiring the NPA to defend its place in the Program to the Commission.¹⁸¹ The 2020 version contains no similar provisions

¹⁸⁰ Compare AbilityOne Compliance Policy 51.403(8) (2020) (“If an NPA fails to meet the 75 percent overall direct labor hour ratio requirement in any Federal fiscal year, the Commission will initiate corrective action. See U.S. AbilityOne Commission Procedures 51.403-01.”) with AbilityOne Compliance Policy 51.403(8) (2013) (“If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur: 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. 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 project on a case-by-case basis if the NPA can present a compelling argument to the Commission for an addition while below 75 percent. 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. 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. 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. 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.”).

¹⁸¹ *Id.* (“When an NPA fails to meet the 75 percent ratio for a second consecutive year: 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. 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. . . .”).

showing increased disciplinary action for NPAs which are out of compliance for two consecutive years.¹⁸²

The 2013 version of Policy 51.403 remained effective from March 22, 2013, until August 15, 2020. The 2013 version governs discipline of NPAs which failed to satisfy the 75% ODLR in FY13 to FY19. NPAs below the 75% ODLR between FY13 – FY19 would be ineligible to for new PL project awards for the following fiscal year (e.g. if an NPA failed to meet ratio in FY13, the NPA would be ineligible for new project awards in FY14).

On August 15, 2020, the Commission issued a new version of Policy 51.403 and an additional version on November 12, 2020 – which currently governs.¹⁸³ Policy 51.403 grants the Commission unrestricted discretion to determine what is appropriate corrective action to take when an NPA fails to meet the 75% ODLR requirement, meaning that the Commission could remove the NPA from the Program upon first instance of failing to meet ratio or take no remedial action.

Methodology

Under “Procurement List Annual Reports” within PLIMS, AbilityOne OIG extracted a “Year End Report” from PLIMS for the date range of October 1st, 2018, to September 30th, 2022.¹⁸⁴ Next, OIG analyzed whether any NPA was awarded any new contracts for the fiscal year after the NPA had failed to meet ratio for the previous year. AbilityOne OIG also checked the data in PLIMS to verify whether the Commission took corrective action, such as probation letters. AbilityOne OIG also asked the Director of Compliance to produce any *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* which had not been uploaded to PLIMS.

Investigatory Findings

FY17

AbilityOne OIG identified the following NPAs that, in FY17, failed to satisfy the 75% ODLR. The NPAs which failed to maintain ratio in FY17 were ineligible for new PL projects in FY18 under Policy 51.403 (2013 version).

¹⁸² See generally AbilityOne Compliance Policy 51.403(8) (Aug. 15, 2020); AbilityOne Compliance Policy 51.403(8) (Nov. 12, 2020).

¹⁸³ AbilityOne Compliance Policy 51.403(8) (Aug. 15, 2020); AbilityOne Compliance Policy 51.403(8) (Nov. 12, 2020).

¹⁸⁴ PLIMS, Standard Reports, Procurement List Annual Reports, Year End Report.

NPA	Ratio	Program Status	FY18 New Contracts	Corrective Action
KEYSTONE VOCATIONAL SERVICES, INC	16%	Active	No	No corrective action issued in PLIMS for FY17.
Delaware Division for the Visually Impaired	56%	Pending Deletion – Last Active FY18	No	No corrective action issued in PLIMS for FY17.
Morningside	59%	Pending Deletion – Last Active FY17	No	No corrective action issued in PLIMS for FY17. NPA indicated intent to exit the Program when its contract ended in June of 2017 after receiving a FY16 Notice of Failure to Maintain Qualification which placed the NPA on probation for FY17. ¹⁸⁵
Provail	62%	Pending Deletion – Last Active FY18	No	No corrective action issued in PLIMS for FY17. For FY15 and FY16, on March 16, 2017, the Commission sent a Notice of Failure to Maintain Qualification to Participate in the Program for two consecutive years. ¹⁸⁶

¹⁸⁵ PLIMS, Morningside, FY16 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (March 16, 2017) (“Morningside’s ratio for FY 2016 was 51.34%. Consequently, Morningside is not in compliance with the direct labor hour requirement of the Javits-Wagner-O’Day Act. Complying with the “75% direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne® Program and is critical to the integrity of the program. Due to the failure to comply with the 75% direct labor hour requirement, Morningside is placed on probation for FY 2017. During this probationary period, Morningside will not be considered for any additional AbilityOne Program projects.1 Accordingly, Morningside must submit a written report on the corrective actions you are taking to reach and maintain the 75% direct labor hour requirement within 30-days of receipt of this letter. Also, Morningside will submit a copy of your SourceAmerica quarterly reports to this office concurrent with your submission to SourceAmerica, including the first quarter report for FY17.”); *see also* email from Morningside Vice-President to the Compliance Office, (Mar. 20, 2017) (“We received your letter of Morningside’s failure to maintain qualification to participate in the Ability One program. I wanted to let you know that we notified Source America and GSA in December 2016 (letters attached), that with the conclusion of our current contract (originally set to expire on March 31, 2017), we would not be renewing. We did however, extend the contract with GSA for three additional months at their request in order to allow them additional time to find a replacement contractor. Our contract extension now ends on June 30, 2017. Therefore, as we will be exiting the program at that time and do not have a written report regarding corrective actions.”).

¹⁸⁶ PLIMS, Provail, FY16 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program*, (March 16, 2017) (“According to your report, Provail’s ratio for FY 2016 was 62.02%. Consequently, Provail is not in compliance with the direct labor hour requirement of the Javits-Wagner-O’Day Act. In fact, this is Provail’s second consecutive year not in compliance with the direct labor hour requirement of the Javits-Wagner-O’Day Act. The Commission takes this continued noncompliance very seriously, and in accordance with Commission Policy 51.403 “Nonprofit Agencies Out of Compliance with Commission Regulations”, must consider the removal of Goodwill’s authorization to participate in the AbilityOne Program.” The Commission required the NPA to notify the

ContracTech, Inc.	67%	Active	No	On June 15, 2018, the Commission placed the NPA on probation for FY18. Notice was not stored in in PLIMS. ¹⁸⁷
Able Forces, Inc	70%	Pending Deletion – Last Active FY17	No	On June 15, 2018, the Commission placed the NPA on probation for FY18. Notice was not stored in in PLIMS. ¹⁸⁸
Herkimer County Chapter NYSARC, Inc.	70%	Pending Deletion – Last Active FY18	No	No corrective action issued in PLIMS for FY17. The Commission sent a FY16 Notice of Failure to Maintain Qualification which placed the NPA on probation for FY17. ¹⁸⁹
Relay Resources	70%	Active	No	On June 15, 2018, the Commission placed the NPA on probation for

Commission of its intent to remain or exit Program, submit corrective action, make its case to remain in the Program during the next public Commission meeting, and submit quarterly reports to the Commission.).

¹⁸⁷See, *Notice of ContracTech, Inc.'s Failure to Maintain Qualification to Participate in the AbilityOne Program* (June 15, 2018) (“Complying with the “75 percent agency overall direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne Program and is critical to the integrity of the program. Due to the failure to comply with the 75 percent agency overall direct labor hour requirement, ContracTech is placed on probation for FY 2018. During this probationary period, ContracTech will not be considered for any additional AbilityOne Program projects. Accordingly, ContracTech must submit a written report of the corrective actions being taken to reach and maintain the 75 percent direct labor hour requirement within 30-days of receipt of this letter. Also, ContracTech must submit a copy of each of its SourceAmerica Quarterly Employment Reports (QER) to this office concurrent with its submission to SourceAmerica, including the first QER for FY18.”).

¹⁸⁸See, *Notice of Able Forces Inc.'s Failure to Maintain Qualification to Participate in the AbilityOne Program* (June 15, 2018) (“Complying with the “75 percent agency overall direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne Program and is critical to the integrity of the program. Due to the failure to comply with the 75 percent agency overall direct labor hour requirement, Able Forces is placed on probation for FY 2018. During this probationary period, Able Forces will not be considered for any additional AbilityOne Program projects. Accordingly, Able Forces must submit a written report of the corrective actions being taken to reach and maintain the 75 percent direct labor hour requirement within 30-days of receipt of this letter. Also, Able Forces must submit a copy of each of its SourceAmerica Quarterly Employment Reports (QER) to this office concurrent with its submission to SourceAmerica, including the first QER for FY18.”).

¹⁸⁹PLIMS, *NOTICE OF HERKIMER COUNTY CHAPTER, NYSARC FAILURE TO MAINTAIN QUALIFICATION TO PARTICIPATE IN THE ABILITYONE PROGRAM* (March 16, 2017) (“Herkimer County Chapter, NYSARC’s ratio for FY 2016 was 67.22%. Consequently, Herkimer County Chapter, NYSARC is not in compliance with the direct labor hour requirement of the Javits-Wagner-O’Day Act. Complying with the “75% direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne® Program and is critical to the integrity of the program. Due to the failure to comply with the 75% direct labor hour requirement, Herkimer County Chapter, NYSARC is placed on probation for FY 2017. During this probationary period, Herkimer County Chapter, NYSARC will not be considered for any additional AbilityOne Program projects.1 Accordingly, Herkimer County Chapter, NYSARC must submit a written report on the corrective actions you are taking to reach and maintain the 75% direct labor hour requirement within 30-days of receipt of this letter.”).

				FY18. Notice was not stored in in PLIMS. ¹⁹⁰
Peninsula Services	72%	Active	No	No corrective action issued in PLIMS for FY17. The Commission sent a FY16 Notice of Failure to Maintain Qualification which placed the NPA on probation for FY17. ¹⁹¹
CRI Federal Services	73%	Active	No	No corrective action issued in PLIMS for FY17.
Opportunities, Inc. of Jefferson County	73%	Active	No	On June 15, 2018, the Commission placed the NPA on probation for FY18. Notice was not stored in in PLIMS. ¹⁹²
Orion Career Works	73%	Pending Deletion – Last Active FY19	No	Commission sent a letter stating the NPA would not be placed on probation due to a valid Phase-In under Policy 51.401-01 ¹⁹³

¹⁹⁰ See, *Notice of Relay Resources' Failure to Maintain Qualification to Participate in the AbilityOne Program* (June 15, 2018) "Complying with the "75 percent agency overall direct labor hour ratio requirement" is a fundamental responsibility of each nonprofit agency participating in the AbilityOne Program and is critical to the integrity of the program. Due to the failure to comply with the 75 percent agency overall direct labor hour requirement, Relay Resources is placed on probation for FY 2018. During this probationary period, Relay Resources will not be considered for any additional AbilityOne Program projects. If Relay Resources wishes to remain in the AbilityOne Program, it must submit a written report of the corrective actions being taken to reach and maintain the 75 percent direct labor hour requirement within 30-days of receipt of this letter. Also, Relay Resources must submit a copy of each of its SourceAmerica Quarterly Employment Reports (QER) to this office concurrent with its submission to SourceAmerica, including the first QER for FY18.").

¹⁹¹ PLIMS, Peninsula Services, FY16 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (March 16, 2017) ("Peninsula Services ratio for FY 2016 was 68.25%. Consequently, Peninsula Services is not in compliance with the direct labor hour requirement of the Javits-Wagner-O'Day Act. Complying with the "75% direct labor hour ratio requirement" is a fundamental responsibility of each nonprofit agency participating in the AbilityOne® Program and is critical to the integrity of the program. Due to the failure to comply with the 75% direct labor hour requirement, Peninsula Services is placed on probation for FY 2017. During this probationary period, Peninsula Services will not be considered for any additional AbilityOne Program projects.").

¹⁹² See, *Notice of Opportunities Incorporated of Jefferson County's Failure to Maintain Qualification to Participate in the AbilityOne Program* (June 15, 2018) ("Complying with the "75 percent agency overall direct labor hour ratio requirement" is a fundamental responsibility of each nonprofit agency participating in the AbilityOne Program and is critical to the integrity of the program. Due to the failure to comply with the 75 percent agency overall direct labor hour requirement, Opportunities is placed on probation for FY 2018. During this probationary period, Opportunities will not be considered for any additional AbilityOne Program projects. If Opportunities wishes to remain in the AbilityOne Program, it must submit a written report of the corrective actions being taken to reach and maintain the 75 percent direct labor hour requirement within 30-days of receipt of this letter. Also, Opportunities must submit a copy of each of its SourceAmerica Quarterly Employment Reports (QER) to this office concurrent with its submission to SourceAmerica, including the first QER for FY18.").

¹⁹³ AbilityOne Compliance Policy 51.403(8) (2013 ("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

Helena Industries, Inc.	74%	Pending Deletion – Last Active FY17	No	On June 15, 2018, the Commission placed the NPA on probation for FY18. ¹⁹⁴ Notice was not stored in in PLIMS.
PACE Enterprises of West Virginia, Inc.	74%	Active	No	No corrective action issued in PLIMS for FY17. The Commission sent a FY16 Notice of Failure to Maintain Qualification which placed the NPA on probation for FY17. ¹⁹⁵

New Contracts

AbilityOne OIG found that, based on PLIMS transaction records, no NPA was awarded a new contract in FY18 after failing to meet the 75% ODLR for FY17.

Probation Notices Letters & Corrective Action

circumstances have been presented and approved by the Commission. *See* U.S. AbilityOne Commission Procedures 51.401-01 and 51.401-02.”) *See generally* AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013); PLIMS, Orion Career Works, Phase-In for FY16 for Orion Career Workswcw.pdf (“OCWs ratio for FY 2016 was 64.55%. Complying with the “75% direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne® Program and is critical to the integrity of the program. However, the Commission recognizes that the cause of OCW’s failure to meet ratio is your agency’s 18 month phase-in plan for Help Desk Support Services at Joint Base Langley-Eustis, VA. Therefore, the Commission will not place your agency on probation for FY 2017. Accordingly, OCW must submit a written report on the current status of your phase-in plan and the steps you are taking to reach and maintain the 75% direct labor hour requirement. . . .The Commission policy requires all nonprofit agencies whose overall direct labor hour ratio is below 75% for two consecutive years to make a presentation to the Commission explaining their circumstances, progress towards corrective action, and why their agency should not be removed from the AbilityOne Program. Therefore, unless your agency finishes fiscal year 2017 above 75%, you will be required to make a presentation at a Commission meeting in early 2018.”).

¹⁹⁴ *See, Notice of Helena Industries Inc.’s Failure to Maintain Qualification to Participate in the AbilityOne Program* (June 15, 2018) (“Complying with the “75 percent agency overall direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne Program and is critical to the integrity of the program. Due to the failure to comply with the 75 percent agency overall direct labor hour requirement, Helena is placed on probation for FY 2018. During this probationary period, Helena will not be considered for any additional AbilityOne Program projects. If Helena wishes to remain in the AbilityOne Program, it must submit a written report of the corrective actions being taken to reach and maintain the 75 percent direct labor hour requirement within 30-days of receipt of this letter. Also, Helena must submit a copy of each of its SourceAmerica Quarterly Employment Reports (QER) to this office concurrent with its submission to SourceAmerica, including the first QER for FY18.”).

¹⁹⁵ PLIMS, PACE Enterprises of West Virginia, Inc., FY16 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (March 16, 2017) (“PACE Enterprises of West Virginia ratio for FY 2016 was 73.71%. Consequently, PACE Enterprises of West Virginia is not in compliance with the direct labor hour requirement of the Javits-Wagner-O’Day Act. Complying with the “75% direct labor hour ratio requirement” is a fundamental responsibility of each nonprofit agency participating in the AbilityOne® Program and is critical to the integrity of the program. Due to the failure to comply with the 75% direct labor hour requirement, PACE Enterprises of West Virginia is placed on probation for FY 2017. During this probationary period, PACE Enterprises of West Virginia will not be considered for any additional AbilityOne Program projects.”).

In FY17, AbilityOne OIG identified fourteen total NPAs which failed to maintain the requisite 75% ODLR.¹⁹⁶ The Commission issued one NPA a valid Phase-In, under Policy 51.401.-01, which allowed flexibility to drop below 75% ODLR for the one nonconsecutive year without disciplinary action.¹⁹⁷ Five of the NPAs failed to maintain the 75% ODLR for two consecutive years.¹⁹⁸

Under Policy 51.403 (2013), NPAs which fail to satisfy the 75% ODLR due entirely to an approved Phase-In will not be subject to disciplinary actions prescribed in the Policy.¹⁹⁹ In FY17, AbilityOne OIG identified one NPA with an approved valid Phase-In.²⁰⁰ The Commission issued Orion Career Works a Phase-In and sent a letter recognizing that Orion Career Works's failure to maintain ratio was due to the Phase-In.²⁰¹ Therefore, the Commission complied with Policy 51.403 by taking no adverse action against Orion Career Works for failing to maintain ratio in FY17.

Under Policy 51.403 (2013), NPAs which fail to satisfy the 75% ODLR will be placed on probation and will also be ineligible for new contracts until the NPA reaches 75% ODLR again.²⁰² In FY17, AbilityOne OIG identified fourteen NPAs below ratio. Only Orion Career Works was excused from probation because of a valid Phase-In. Morningside expressed its intent, and took steps, to leave the Program at the end of FY17, rendering probation for FY18 moot.²⁰³ The Commission

¹⁹⁶ KEYSTONE VOCATIONAL SERVICES, INC., Delaware Division for the Visually Impaired, Morningside, Provail, Herkimer County Chapter NYSARC, Inc., ContracTech, Inc., Able Forces, Inc., Relay Resources, Peninsula Services, CRI Federal Services, Opportunities, Inc. of Jefferson County, Helena Industries, Inc., PACE Enterprises of West Virginia, Inc., Orion Career Works.

¹⁹⁷ See generally AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013); Compliance Policy 51.403 (2013) ("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.").

¹⁹⁸ Morningside, Provail, Herkimer County Chapter NYSARC, Inc., Peninsula Services, PACE Enterprises of West Virginia, Inc.

¹⁹⁹ Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) ("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.").

²⁰⁰ *Id.*

²⁰¹ PLIMS, Orion Career Works, Phase-In for FY16 for Orion Career Workswcw.pdf ("the Commission recognizes that the cause of OCW's failure to meet ratio is your agency's 18 month phase-in plan for Help Desk Support Services at Joint Base Langley-Eustis, VA. Therefore, the Commission will not place your agency on probation for FY 2017.").

²⁰² Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) ("If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur: 1. The Commission will place the NP A on probation and its CNA will notify the NP A by letter. The letter will explain the process if the NP A wishes to remain in the AbilityOne Program.").

²⁰³ See email from Morningside Vice-President to the Compliance Office, (Mar. 20, 2017) ("We received your letter of Morningside's failure to maintain qualification to participate in the Ability One program. I wanted to let you know that we notified Source America and GSA in December 2016 (letters attached), that with the conclusion of our current contract (originally set to expire on March 31, 2017), we would not be renewing. We did however, extend

placed five NPAs on probation.²⁰⁴ The Notices, however, were not stored in PLIMS and were produced by the Director of Compliance at the request of OIG. The Commission failed to place any of the additional seven NPAs on probation or provide a valid Policy justification for forgoing probation.²⁰⁵ The Commission's failing to do so appears to be in violation of the probation requirement of Commission's Policy 51.403.

Under Policy 51.403 (2013), in addition to probation and ineligibility for new contracts, NPAs which fail to maintain ratio for two consecutive years will be required to come before the Commission to defend their place in the Program or may choose to exit the Program.²⁰⁶ AbilityOne OIG identified five NPAs which, by 2017, had failed to maintain ratio for two consecutive years: the NPAs are PACE Enterprises of West Virginia, Inc., Peninsula Services, Morningside, Provail, and Herkimer County Chapter NYSARC, Inc. Notably, Provail failed to maintain ratio in FY15, FY16, and FY17 and would go on to fail to meet ratio in FY18. The OIG found no evidence that the Commission issued letters to any of the five NPAs to appear before the Commission to defend their continued participation in the Program. However, after receiving a Notice of Failure to Maintain Ratio in FY16, Morningside notified the Commission and its CNA that it was ending its contracts in FY17 and would voluntarily exit the Program in FY17, rendering a letter discussing potential continuation in the Program for FY18 moot.²⁰⁷ Therefore, the Commission violated Policy 51.403 by failing to require PACE Enterprises of West Virginia, Inc., Peninsula Services,

the contract with GSA for three additional months at their request in order to allow them additional time to find a replacement contractor. Our contract extension now ends on June 30, 2017. Therefore, as we will be exiting the program at that time and do not have a written report regarding corrective actions.”).

²⁰⁴ ContracTech, Inc; Able Forces, Inc.; Relay Resources; Helena Industries, Inc.; Opportunities, Inc. of Jefferson County

²⁰⁵ See e.g., AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013); AbilityOne Compliance Policy 51.401-02, *Surge Requirements* (2012); Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (“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.”).

²⁰⁶ Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (“When an NPA fails to meet the 75 percent ratio for a second consecutive year: 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. 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. . . .”).

²⁰⁷ Email from Morningside Vice-President to the Compliance Office, (Mar. 20, 2017) (“We received your letter of Morningside’s failure to maintain qualification to participate in the Ability One program. I wanted to let you know that we notified Source America and GSA in December 2016 (letters attached), that with the conclusion of our current contract (originally set to expire on March 31, 2017), we would not be renewing. We did however, extend the contract with GSA for three additional months at their request in order to allow them additional time to find a replacement contractor. Our contract extension now ends on June 30, 2017. Therefore, as we will be exiting the program at that time and do not have a written report regarding corrective actions.”).

Provail, and Herkimer County Chapter NYSARC Inc. to come before the Commission to defend continued participation in the Program after failing to maintain the 75% ODLR ratio for two consecutive years.

FY18

In FY18, AbilityOne OIG identified the following fourteen NPAs as failing to satisfy the 75% ODLR. NPAs which failed to maintain ratio in FY18 were ineligible in FY19 for new contracts under Policy 51.403 (2013 version).

NPA	Ratio	Program Status	FY19 New Contracts	Corrective Action
Delaware Division for the Visually Impaired	8%	Pending Deletion – Last Active FY18	No	No corrective action issued in PLIMS.
KEYSTONE VOCATIONAL SERVICES, INC	46%	Active	No	No corrective action issued in PLIMS.
Southeast Vocational Alliance, Inc.	64%	Pending Deletion – Last Active FY18	No	On September 25, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18. ²⁰⁸ The Notice recognized the NPA satisfied ratio in FY19 and did not issue corrective action.
Provail	64%	Pending Deletion – Last Active FY18	No	On Sept. 28, 2020, Compliance Office sent a Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program. ²⁰⁹ Despite failing to satisfy ratio for four consecutive years, the Notice only recognizes

²⁰⁸ PLIMS, Southeast Vocational Alliance, Inc., FY18 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“Southeast Vocational Alliance, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus Southeast Vocational Alliance, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that Southeast Vocational Alliance, Inc. reported returning to ratio compliance by the end of FY 2019.”).

²⁰⁹ PLIMS, Provail, FY18 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“PROVAIL was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus PROVAIL was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. PROVAIL notified SourceAmerica in January 2019 of its desire to leave the AbilityOne Program. On November 4, 2019, PROVAIL was changed in SourceAmerica’s database to a Former Affiliate, and there are no active or in-active Procurement List projects associated with your agency.”).

				failure to meet ratio in FY18. The Notice did not issue corrective action and notes the NPA has taken colorful steps to leave the Program.
Herkimer County Chapter NYSARC, Inc	64%	Pending Deletion – Last Active FY18	No	No corrective action issued in PLIMS.
L. E. Phillips Career Development Center, Inc.	69%	Pending Deletion – FY21 Last Active	No	In September of 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18 and FY19, noting no corrective action issued due to pandemic. ²¹⁰
Community Alternatives, Incorporated	72%	Active	No	On September 25, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18 and FY19, noting no corrective action issued due to pandemic. ²¹¹
LC Industries, Inc.	72%	Active	No	On September 28, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18. ²¹²

²¹⁰ PLIMS, L.E. Phillips Career Development Center, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that L.E. Phillips Career Development Center, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus L.E. Phillips Career Development Center, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for those time periods. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.” Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”)

²¹¹ PLIMS, *Community Alternatives, Incorporated Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that Community Alternatives, Incorporated was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus Community Alternatives, Incorporated was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for those time periods. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²¹² PLIMS, *LC Industries, Inc. Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that LC Industries, Inc. was not in

Winston-Salem Industries for the Blind, Inc	73%	Active	Yes	On September 28, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY 2018. ²¹³
Brooke Industries, Inc.	73%	Active	No	On September 28, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY 2018. ²¹⁴ The Notice recognized the NPA satisfied ratio in FY19 and did not issue corrective action.
ACHIEVA Support	73%	Active	No	On September 28, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY 2018. ²¹⁵ The Notice recognized the NPA satisfied ratio in FY19 and did not issue corrective action.
Ka Lima O Maui, Ltd.	74%	Active	No	On September 28, 2020, Compliance Office issued Notice of Failure to

agency overall direct labor hours ratio compliance at the end of FY 2018, and thus LC Industries, Inc. was not maintaining qualification at that time. The Commission will continue to monitor LC Industries, Inc. ratio compliance with the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 8501-8506) and regulations (41 C.F.R. Chapter 51) administered by the Commission, and, if applicable to your agency, with the Commission-granted Exception for ratio relief in accordance with the Commission Chairperson's memorandum dated April 1, 2020, entitled, "AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020."").

²¹³ PLIMS, Winston-Salem Industries for the Blind, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) ("A review of the U.S. AbilityOne Commission's records shows that Winston-Salem Industries for the Blind, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus Winston-Salem Industries for the Blind, Inc. was not maintaining qualification at that time. The Commission will continue to monitor Winston-Salem Industries for the Blind, Inc. ratio compliance with the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 8501-8506) and regulations (41 C.F.R. Chapter 51) administered by the Commission, and, if applicable to your agency, with the Commission-granted Exception for ratio relief in accordance with the Commission Chairperson's memorandum dated April 1, 2020, entitled, "AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020."").

²¹⁴ PLIMS, Brooke Industries, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) ("A review of the U.S. AbilityOne Commission's records shows that Brooke Industries, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus Brooke Industries, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that Brooke Industries, Inc. reported returning to ratio compliance by the end of FY 2019.").

²¹⁵ PLIMS, ACHIEVA Industries, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) ("A review of the U.S. AbilityOne Commission's records shows that ACHIEVA Support was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus ACHIEVA Support was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that ACHIEVA Support reported returning to ratio compliance by the end of FY 2019.").

				Maintain Qualification to Participate in the AbilityOne Program for FY 2018 ²¹⁶ The Notice recognized the NPA satisfied ratio in FY19 and did not issue corrective action.
San Antonio Lighthouse for the Blind	74%	Active	No	On September 28, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY 2018, noting no corrective action issued due to pandemic. ²¹⁷
CARC, Inc.	74%	Pending Deletion – Last active FY19	No	On September 25, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program. ²¹⁸ The Notice recognized the NPA satisfied ratio in FY19 and did not issue corrective action.

New Contracts

AbilityOne OIG identified that, based on PLIMS transaction records, one NPA received a new contract in FY19 after failing to meet the 75% ODLR in FY18.

Though Winston-Salem failed to maintain ratio in FY18, the NPA was awarded the following seven new FY19 contracts:

²¹⁶ PLIMS, Ka Lima O Maui, Ltd., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that Ka Lima O Maui, Ltd. was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus Ka Lima O Maui, Ltd. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that Ka Lima O Maui, Ltd. reported returning to ratio compliance by the end of FY 2019.”).

²¹⁷ PLIMS, San Antonio Lighthouse for the Blind, *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that San Antonio Lighthouse for the Blind was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus San Antonio Lighthouse for the Blind was not maintaining qualification at that time. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²¹⁸ PLIMS, CARC Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that CARC was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus CARC was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that CARC reported returning to ratio compliance by the end of FY 2019.”).

- (PL# 20190007) published as a final rule on the Federal Register on 12/14/2018 with an annual value of \$0 dollars.
- (PL# 20190016) published as a final rule on the Federal Register on 4/19/2019 with an annual value of \$19,051.20.
- (PL# 20180029) published as a final rule on the Federal Register on 5/3/2019 with an annual value of \$26,064.
- (PL# 20190028) published as a final rule on the Federal Register on 5/3/2019 with an annual value of \$22,200.
- (PL# 20190030) published as a final rule on the Federal Register on 5/3/2019 with an annual value of \$37,000.
- (PL# 20190027) published as a final rule on the Federal Register on 5/3/2019 with an annual value of \$27,216.
- (PL# 20190031) published as a final rule on the Federal Register on 5/31/2019 with an annual value of \$66,749.04.

The Commission sent a Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program to Winston-Salem on September 28, 2020, informing the NPA it was out of compliance with the 75% ODLR for FY18.²¹⁹ The Notice did not recognize the NPA as receiving any applicable Phase-In or surge-requirement protection that would have allowed the NPA to evade probation nor do any files houses within PLIMS suggest any applicable waivers were granted.²²⁰

Therefore, the Commission appears to have violated Policy 51.403 by failing to place the NPA on probation and awarding Winston-Salem new contracts in FY19.

Probation Notices Letters & Corrective Action

In FY18, AbilityOne OIG identified fourteen total NPAs that failed to maintain the requisite 75% ODLR.²²¹ Under Policy 51.403 (2013), NPAs which fail to satisfy the 75% ODLR will be placed on probation and will also be ineligible for new contracts until the NPA reaches 75% ODLR again, unless the sole reason for not meeting ratio is due to a valid Phase-In under Policy 51.401.²²² The

²¹⁹ PLIMS, Winston-Salem Industries for the Blind, Inc., Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 28, 2020).

²²⁰ See *id.* See generally Winston-Salem Industries for the Blind, Inc., Files Section.

²²¹ Southeast Vocational Alliance, Inc., Brooke Industries, Inc., ACHIEVA Support, Ka Lima O Maui, Ltd., CARC, Inc., L. E. Phillips Career Development Center, Inc., Community Alternatives, Incorporated, San Antonio Lighthouse for the Blind, Delaware Division for the Visually Impaired, KEYSTONE VOCATIONAL SERVICES, INC., Herkimer County Chapter NYSARC, Inc., LC Industries, Inc., Winston-Salem Industries for the Blind, Inc., and Provail.

²²² Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (“If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur: 1. The Commission will place the NP A on probation and its CNA will notify the NP A by letter. The letter will explain the process if the NP A wishes to remain in the AbilityOne Program.”); see generally AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013); Compliance Policy 51.403 (2013) (“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

Commission sent no FY18 *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program (Notice)* stating an NPA was granted flexibility to drop below 75% ODLR for the one nonconsecutive year without triggering probation pursuant to a valid Phase-In. Of the fourteen NPAs AbilityOne OIG identified that failed to maintain the requisite 75% ODLR the Commission placed none on probation.

Specifically, in September of 2020, the Commission sent five NPAs *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program*, notifying that the NPAs had failed to maintain ratio in FY18, but that corrective action would not be issued since the NPA met the ODLR in FY19.²²³ It appears that the Commission violated Policy 51.403 by failing to place five NPAs on probation in FY19.

Also in September of 2020 – nearly two years after receiving the FY18 Reps&Certs – the Commission sent *Notices* for FY18 to three NPAs, noting that while the NPAs failed to maintain ratio for FY18, no corrective action would be assigned due to the pandemic if the NPA had an applicable Pandemic-Related Waiver for FY20.²²⁴ Notably, the Notices were often sent just once, covering two years, as one single letter covering failure to meet ratio in both FY18 and FY19, instead of being sent twice, one for each year’s failure. AbilityOne OIG has found no authority to support the Commission’s reliance on FY20 Pandemic-Related Waivers to retroactively excuse noncompliance with the 75% ODLR in FY18. As to its authority to waive Policy 51.403’s probation requirements for FY18, the Commission cites FY20 Pandemic-Related Waivers; however, this Waiver was issued nearly two years after the NPAs submitted their FY18 Reps&Certs and roughly seven months after the probationary term for NPAs who failed to meet ratio for FY18 should have ended.²²⁵ Additionally, the FY20 Waivers were only applicable to

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.”).

²²³ Southeast Vocational Alliance, Inc., Brooke Industries, Inc., ACHIEVA Support, Ka Lima O Maui, Ltd., CARC, Inc.

²²⁴ L. E. Phillips Career Development Center, Inc., Community Alternatives, Incorporated, and San Antonio Lighthouse for the Blind; *See e.g.*, PLIMS, San Antonio Lighthouse for the Blind, *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that San Antonio Lighthouse for the Blind was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus San Antonio Lighthouse for the Blind was not maintaining qualification at that time. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²²⁵ *See generally* Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (discussing corrective action in terms of fiscal years and referencing process delineated in *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program*); *see e.g.*, PLIMS, Peninsula Services, FY16 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (March 16, 2017) (“Due to the failure to comply with the 75% direct labor hour requirement, Peninsula Services is placed on probation for FY

NPAs which informed the Commission that they were unable to maintain the 75% ODLR in FY20 and that the cause of that failure was COVID-19.

The FY20 Pandemic-Related Waivers shall not apply to excuse below-ratio in FY18. It appears the Commission violated Policy 51.403 by failing to place on probation these three NPAs at the end of FY18.

It also appears that the Commission improperly utilized the 2020 Pandemic-Related Waivers in an attempt to retroactively excuse the NPA's failure to comply with the ratio Program requirement in FY 2018, notably, before the occurrence of the Pandemic in 2020.

In September of 2020, the Commission sent NPA Provail a *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* noting that Provail had taken steps in January of 2019 to exit the Program and was changed to inactive in SourceAmerica's system in November of 2019.²²⁶ Provail sold its manufacturing division to another AbilityOne NPA, Skookum Educational Programs, which assumed eleven of Provail's AbilityOne projects over the final months of 2019.²²⁷

In September of 2020, the Commission sent NPAs LC Industries, Inc. and Winston-Salem Industries for the Blind, Inc. *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program* which, though, did not place the NPAs on probation, did not state that the Commission was waiving the corrective action requirements due to the COVID-19 Pandemic, and

2017. During this probationary period, Peninsula Services will not be considered for any additional AbilityOne Program projects."); PLIMS, *NOTICE OF HERKIMER COUNTY CHAPTER, NYSARC FAILURE TO MAINTAIN QUALIFICATION TO PARTICIPATE IN THE ABILITYONE PROGRAM* (March 16, 2017) ("Due to the failure to comply with the 75% direct labor hour requirement, Herkimer County Chapter, NYSARC is placed on probation for FY 2017. During this probationary period, Herkimer County Chapter, NYSARC will not be considered for any additional AbilityOne Program projects.").

²²⁶ PLIMS, Provail, FY18 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 28, 2020) ("PROVAIL was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus PROVAIL was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. PROVAIL notified SourceAmerica in January 2019 of its desire to leave the AbilityOne Program. On November 4, 2019, PROVAIL was changed in SourceAmerica's database to a Former Affiliate, and there are no active or in-active Procurement List projects associated with your agency.").

²²⁷ PLIMS, Transaction Id. No. 35484, ("Provail informed SourceAmerica that it intends to sell its manufacturing division, which produces all of the PL Clamp Loops, to another NPA, Skookum Educational Programs. The sale will include the manufacturing facility, all equipment, and all materials. Additionally, all of Provail's current direct labor employees and manufacturing director will continue to work for Skookum. Also, please note that the current NPA, Provail, is cited within the Capability Description for Skookum. This was done to document that SourceAmerica has observed the manufacturing facility, equipment, and labor force that Skookum will be obtaining. The sales document has been signed (see attached; please note that Skookum Educational Programs is related to Skookum Enterprises LLC, another legal entity which holds all non-AbilityOne work.) and the sale will be final on 10/31/2018. All of Provail's PL projects will need to be transferred to Skookum by this date. Therefore, we are requesting the Commission's expedited review of this package. This is the second of 11 packages that will be submitted to transfer these projects to Skookum. All are being transferred at the current PL prices so there will be no follow-on price change transactions.").

did not state the NPA had come back into compliance with the 75% ODLR in FY19.²²⁸ It appears that the Commission violated Policy 51.403 by failing to timely place LC Industries, Inc. and Winston-Salem Industries for the Blind, on probation at the end of FY18.

In September of 2020, the Commission sent Herkimer County NYSARC, Inc. a Notice noting that the NPA did not meet ratio in FY18 but left the Program at the end of FY18 and, as such, gave up all PL contracts.²²⁹ Herkimer sought re-entry into the Program in 2020 and its CNA submitted a PLIMS package in May of 2021 asking the Commission to verify the NPA's eligibility to re-enter the Program.²³⁰ While the May transaction notes the NPA was recommended for a new PL assignment, according to PLIMS, as of January 2023, the NPA has no PL assignments.²³¹

Lastly, the Commission failed to issue *Notices* to two NPAs, Delaware Division for the Visually Impaired and KEYSTONE VOCATIONAL SERVICES, INC., which failed to maintain ratio in FY18.²³² Therefore, it appears that the Commission violated Policy 51.403 by failing to place these three NPAs on probation.

Under Policy 51.403 (2013), in addition to probation and ineligibility for new contracts until the NPA returns to the required 75 ODLR, NPAs which fail to maintain ratio for two consecutive years will be required to come before the Commission to defend their place in the Program or may choose to exit the Program.²³³ AbilityOne OIG identified four NPAs which, in FY18, had failed to maintain ratio for two consecutive years: Delaware Division for the Visually Impaired, KEYSTONE VOCATIONAL SERVICES, INC., Herkimer County Chapter NYSARC, Inc., and

²²⁸ See PLIMS, LC Industries, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020); PLIMS, Winston-Salem Industries for the Blind, Inc., *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 28, 2020).

²²⁹ See, *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that was not in Herkimer County Chapter, NYSARC agency overall direct labor hours ratio compliance at the end of FY 2018, and thus Herkimer County Chapter, NYSARC was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Herkimer County Chapter NYSARC, Inc. left the program in 2018; gave up all Procurement List related projects and became a former SourceAmerica affiliated agency in February of 2020; and is currently compiling the necessary paperwork and completing the training requirements to request re-verification.”).

²³⁰ See, PLIMS, Transaction Id. No. 43488, (“This package is to request the Commission's verification of Herkimer County Chapter NYSARC, Inc. (#0345) which is a private NPA. This NPA has been recommended for an opportunity on the PL. Please reference documents tab for legal documents.”).

²³¹ See also, PLIMS, Herkimer County Chapter, NYSARC, PL Products and Services.

²³² Delaware Division for the Visually Impaired and KEYSTONE VOCATIONAL SERVICES, INC.

²³³ Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (“When an NPA fails to meet the 75 percent ratio for a second consecutive year: 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. 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. . . .”).

Provail.²³⁴ Provail failed to maintain ratio in FY15, FY16, FY17, and FY18. Herkimer County Chapter NYSARC, Inc. failed to meet ratio in FY16, FY17, and FY18. The Commission did not issue Notices to any of the five NPAs to appear before the Commission to defend their continued place in the Program. It appears that the Commission violated Policy 51.403 by failing to require Delaware Division for the Visually Impaired, KEYSTONE VOCATIONAL SERVICES, INC., Herkimer County Chapter NYSARC, Inc., and Provail to come before the Commission to defend their place in the Program after failing to maintain the 75% ODLR ratio for two consecutive years in FY18.

FY19

AbilityOne OIG identified the following twenty-three NPAs as failing to satisfy the 75% ODLR in FY19. NPAs which failed to maintain ratio in FY19 were ineligible in FY20 for new contracts under Policy 51.403 (2013 version).

NPA	Ratio	Program Status	FY20 New Contracts	Corrective Action
Bona Vista Programs, Inc.	56%	Pending Deletion – Last Active FY19	No	No corrective action issued in PLIMS for FY19.
CARC, Inc.	61%	Pending Deletion – Last Active FY19	No	On September 25, 2020, the Commission sent a Notice stating the Commission was pleased to see the NPA had returned to 75% ratio for FY19. ²³⁵ Based on OIG’s calculations and the NPA Report section in PLIMS, the NPA failed to maintain ratio in FY19.
Community Alternatives, Incorporated	62%	Active	No	On September 25, 2020, Compliance Office issued Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18

²³⁴ Delaware Division for the Visually Impaired, KEYSTONE VOCATIONAL SERVICES, INC., Herkimer County Chapter NYSARC, Inc., and Provail.

²³⁵ PLIMS, CARC Inc., Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“CARC was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus CARC was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that CARC reported returning to ratio compliance by the end of FY 2019. The Commission will continue to monitor CARC ratio compliance with the Javits-Wagner-O’Day (JWOD) Act (41 U.S.C. §§ 8501-8506) and regulations (41 C.F.R. Chapter 51) administered by the Commission, and, if applicable to your agency, with the Commission-granted Exception for ratio relief in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.”).

				and FY19, noting no corrective action issued due to pandemic. ²³⁶
L. E. Phillips Career Development Center, Inc.	62%	Pending Deletion – FY21 Last Active	No	Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18 and FY19 sent in Sept. of 2020, noting no corrective action issued due to pandemic. ²³⁷
Columbia Lighthouse for the Blind	63%	Active	No	No corrective action issued in PLIMS for FY19.
Kent-Sussex Industries, Inc.	65%	Active	No	On September 28, 2020, the Commission sent a Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19, noting no corrective action issued due to pandemic. ²³⁸

²³⁶ PLIMS, Community Alternatives, Incorporated Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“A review of the U.S. AbilityOne Commission’s records shows that Community Alternatives, Incorporated was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus Community Alternatives, Incorporated was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for those time periods. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²³⁷ PLIMS, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 28, 2020) (“L.E. Phillips Career Development Center, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus L.E. Phillips Career Development Center, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for those time periods. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²³⁸ PLIMS, Kent-Sussex Industries, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Kent-Sussex Industries, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus Kent-Sussex Industries, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

Peninsula Services	67%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²³⁹
The Center for Individual and Family Services	71%	Pending Deletion – Last Active FY20	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴⁰
The ARC of Hilo	71%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴¹

²³⁹ PLIMS, Peninsula Services, FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Peninsula Services was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus Peninsula Services was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.” If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴⁰ PLIMS, The Center for Individual and Family Services, FY19 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“The Center for Individual and Family Services was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus The Center for Individual and Family Services was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴¹ PLIMS, ARC of Hilo, *FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (Sept. 25, 2020) (“The ARC of Hilo was not in agency overall direct labor hours (DLH) ratio compliance at the end of FY 2019, and thus The ARC of Hilo was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19)

Goodwill Industries of South Florida, Inc.	71%	Active	Yes	No corrective action issued in PLIMS for FY19.
Hope Services	72%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴²
KEYSTONE VOCATIONAL SERVICES, INC	72%	Active	No	No corrective action issued in PLIMS for FY19.
Opportunities, Inc. of Jefferson County	72%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴³
ODC Government Services, Inc.	73%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to

Emergency and Recovery for the duration of the Fiscal Year 2020.. If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴² PLIMS, Hope Services, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Hope Services, Inc. was not in agency overall direct labor hours (DLH) ratio compliance at the end of FY 2019, and thus Hope Services, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.” If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴³ PLIMS, Opportunities Incorporated of Jefferson County, FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Opportunities Incorporated of Jefferson County was not in agency overall direct labor hours (DLH) ratio compliance at the end of FY 2019, and thus Opportunities Incorporated of Jefferson County was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

				Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴⁴
ReadyOne Industries, Inc.	73%	Active	No	No corrective action issued in PLIMS for FY19.
San Antonio Lighthouse for the Blind	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY18 and FY19 noting no corrective action issued due to pandemic. ²⁴⁵
Rochester Rehabilitation Center	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴⁶

²⁴⁴ PLIMS, ODC Government Services, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“ODC Government Services, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus ODC Government Services, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴⁵ PLIMS, San Antonio Lighthouse for the Blind, FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“San Antonio Lighthouse for the Blind was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus San Antonio Lighthouse for the Blind was not maintaining qualification at that time. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²⁴⁶ PLIMS, Rochester Rehabilitation Center, FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Rochester Rehabilitation Center was not in agency overall direct labor hours (DLH) ratio compliance at the end of FY 2019, and thus Rochester Rehabilitation Center was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any

Crossroads Rehabilitation Center, Inc.	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴⁷
VIA VISUALLY IMPAIRED ADVANCEMENT	74%	Active	No	No corrective action issued in PLIMS for FY19.
Lillie Rice Center, Inc.	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁴⁸
WorkSource Enterprises	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no

extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴⁷ PLIMS, Crossroads Rehabilitation Center, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Crossroads Rehabilitation Center, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus Crossroads Rehabilitation Center, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁴⁸ PLIMS, Lillie Rice Center, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Lillie Rice Center, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

				corrective action issued due to pandemic. ²⁴⁹
J.P. Industries, Inc.	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁵⁰
Sunrise Enterprises of Roseburg, Inc.	74%	Active	No	On Sept. 25, 2020, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program for FY19 noting no corrective action issued due to pandemic. ²⁵¹

²⁴⁹ PLIMS, WorkSource Enterprises, FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“WorkSource Enterprises was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus WorkSource Enterprises was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁵⁰ PLIMS, J.P. Industries, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“J.P. Industries, Inc. was not in agency overall direct labor hours ratio compliance at the end of FY 2019, and thus J.P. Industries, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

²⁵¹ PLIMS, Sunrise Enterprises of Roseburg, Inc., FY19 Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“Sunrise Enterprises of Roseburg, Inc. was not in agency overall direct labor hours (DLH) ratio compliance at the end of FY 2019, and thus Sunrise Enterprises of Roseburg, Inc. was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, ‘AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.’ If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”).

Contracts

The Commission awarded NPA Goodwill Industries of South Florida a new contract (PL# 20195040) and published it as a final rule on the Federal Register on May 1, 2020, with an annual value of \$873,282.²⁵² Goodwill of South Florida failed to maintain a 75% ODLR in FY19. Consequently, the NPA should have been ineligible to receive new contracts in FY20 unless the NPA had been granted an applicable exception. The OIG found that Goodwill of South Florida received a Phase-In for PL# 1995518 in May of 2019 which allowed the NPA to operate below 75% ODLR for a defined period.²⁵³ As Policy 51.403 allows for exceptions for NPAs with, for instance, a valid Phase-In to operate for a specific amount of time following the issuance of a new PL project without triggering probation, it appears that the Commission did not violate Policy 51.403 by awarding Goodwill of South Florida PL#20195040 in May of 2020.²⁵⁴

Probation Notices Letters & Corrective Action: AbilityOne OIG identified twenty-three total NPAs which, in FY19, failed to maintain the requisite 75% ODLR.²⁵⁵ Under Policy 51.403 (2013), NPAs which fail to satisfy the 75% ODLR will be placed on probation and will also be ineligible for new contracts until the NPA reaches 75% ODLR again, unless the sole reason for not meeting ratio is due to a valid Phase-In under Policy 51.401.¹ Of the twenty-three NPAs AbilityOne OIG identified, the Commission placed no NPA on probation.

Specifically, at the end of September of 2020 – roughly ten months after receiving the FY19 Reps&Certs by the NPAs in December of 2019 – the Commission sent *Notices* for FY19 to sixteen NPAs, noting that while the NPAs failed to maintain ratio for FY19, no corrective action would be assigned due to the pandemic, so long as the NPA had an applicable Pandemic-Related Waiver for FY20.²⁵⁶ Notably, the *Notices* were often sent as one letter covering failure to meet ratio for

²⁵² PLIMS, Goodwill Industries of South Florida, Transaction Id. No. 38654.

²⁵³ See generally AbilityOne Compliance Policy 51.401-01, *Phase-In Requirements* (2013); PLIMS, Goodwill Industries of South Florida, Transaction Id. No. 36081, (tracking the NPA's progress towards returning to the 75% ODLR from May of 2019 until August of 2020).

²⁵⁴ *Id.*; see AbilityOne Compliance Policy 51.403(8) (2013) (“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.”).

²⁵⁵ CARC Inc.; Bona Vista Programs, Inc.; Columbia Lighthouse for the Blind; Goodwill Industries of South Florida, Inc. KEYSTONE VOCATIONAL SERVICES, INC., ReadyOne Industries, Inc.; VIA VISUALLY IMPAIRED ADVANCEMENT; Rochester Rehabilitation Center; Crossroads Rehabilitation Center, Inc.; WorkSource Enterprises; L. E. Phillips Career Development Center, Inc.; The Center for Individual and Family Services; Community Alternatives, Incorporated; Kent-Sussex Industries, Inc.; Peninsula Services; The ARC of Hilo; Hope Services; Opportunities, Inc. of Jefferson County; ODC Government Services, Inc.; San Antonio Lighthouse for the Blind; Lillie Rice Center, Inc.; J.P. Industries, Inc.; and Sunrise Enterprises of Roseburg, Inc.

²⁵⁶ L. E. Phillips Career Development Center, Inc., Community Alternatives, Incorporated, and San Antonio Lighthouse for the Blind; See e.g., PLIMS, San Antonio Lighthouse for the Blind, Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 28, 2020) (“A review of the U.S. AbilityOne

both FY18 and FY19. AbilityOne OIG has found no authority to support the Commission's application of FY20 Pandemic-Related Waivers to retroactively cure or excuse noncompliance with the 75% ODLR in FY19. As its authority to waive Policy 51.403's probation requirement for FY19, the Commission cites FY20 Pandemic-Related Waivers; however, this Waiver contains no provision stating that corrective actions for the previous fiscal year would be waived, was issued nearly one year after the NPAs submitted their FY19 Reps&Certs, and NPAs presumably should have been placed on the probation term prior to April of 2020, when the Waiver was granted.²⁵⁷ While Policy 51.403 does not prescribe a date for which *Notices* must be sent, the Policy suggests that the *Notices* need to be issued in the first quarter of the next FY.²⁵⁸ For example, NPAs are subject to quarterly reporting starting at the end of the first quarter of their probationary fiscal year and, in order to ensure that NPAs who failed to satisfy the ratio in the prior FY do not receive new contracts, the Commission would need to identify which NPAs are ineligible for new contracts early in the fiscal year.²⁵⁹ Historically, the Compliance Office sent the *Notices* out between February and March.²⁶⁰ In addition to their untimeliness, the Pandemic-Related Waivers

Commission's records shows that San Antonio Lighthouse for the Blind was not in agency overall direct labor hours ratio compliance at the end of FY 2018 and at the end of FY 2019, and thus San Antonio Lighthouse for the Blind was not maintaining qualification at that time. Normally, the Commission would have assigned corrective action earlier in FY 2020. However, due to the pandemic, the Commission granted Exception for ratio relief for NPAs that requested it by August 14, 2020, in accordance with the Commission Chairperson's memorandum dated April 1, 2020, entitled, 'AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.' Therefore, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired.”).

²⁵⁷ See generally Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (discussing corrective action in terms of fiscal years and referencing process delineated in *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program*); see e.g., PLIMS, Peninsula Services, FY16 *Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program* (March 16, 2017) (“Due to the failure to comply with the 75% direct labor hour requirement, Peninsula Services is placed on probation for FY 2017. During this probationary period, Peninsula Services will not be considered for any additional AbilityOne Program projects.”); PLIMS, *NOTICE OF HERKIMER COUNTY CHAPTER, NYSARC FAILURE TO MAINTAIN QUALIFICATION TO PARTICIPATE IN THE ABILITYONE PROGRAM* (March 16, 2017) (“Due to the failure to comply with the 75% direct labor hour requirement, Herkimer County Chapter, NYSARC is placed on probation for FY 2017. During this probationary period, Herkimer County Chapter, NYSARC will not be considered for any additional AbilityOne Program projects.”).

²⁵⁸ See generally Compliance Policy 51.403(8)(a)(iii), *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013).

²⁵⁹ See generally *id.* at (8)(a)(iii) (“If an NPA fails to meet the 75 percent overall direct labor ratio requirement in any fiscal year, the following will occur: . . . The NP A 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.”).

²⁶⁰ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023) (“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office Employee] advised as follows:. . . [Compliance Office Employee] does not know why *Notices of Failure to Maintain Qualifications to Participate in the AbilityOne Program* for FY2018 and FY2019 were sent out in 2020. That was under another leadership. It is not common practice to send a letter so far after the submission of the Reps&Certs. The *Notices* usually go out between February or March of the new fiscal year.”).

emphasize that applicability is limited to FY20 and only to NPAs that informed the Commission that they were unable to maintain the 75% ODLR in FY20 and that COVID-19 caused this failure..²⁶¹

The FY20 Pandemic-Related Waivers shall not apply to excuse below-ratio in FY19. It appears the Commission violated Policy 51.403 by failing to place on probation these sixteen NPAs at the end of FY19.

It also appears that the Commission improperly utilized the 2020 Pandemic-Related Waivers in an attempt to retroactively excuse the NPA's failure to comply with the ratio Program requirement in FY 2019, before the arrival of the Pandemic in 2020. The Commission's *Notice* stated:

“If your NPA has submitted such notification that it will use the Exception, the Commission will suspend the requirement for corrective action to reach 75 percent until such time as the Commission Exception, and any extension of that Exception, have expired. If your NPA did not submit a requested use of the Exception, then please submit to the Commission any and all corrective action your NPA has taken to reach 75 percent by the end of FY 2020.”

AbilityOne OIG determined that five out of the sixteen NPAs which received the *Notice* had not received a Pandemic-Related Waiver for FY20.²⁶² AbilityOne OIG found no documentation in PLIMS demonstrating that the NPAs which had not received a Pandemic-Related Waiver provided corrected action as directed by the *Notice*.

In September of 2020, the Commission sent CARC Inc. a *Notice* noting that CARC Inc. was out of compliance for FY18, but the Commission was pleased to see the NPA had returned to compliance by the end of FY19.²⁶³ AbilityOne OIG questions the Commission's determination as stated in the letter as OIG's independent ratio calculations determined that CARC Inc. had only maintained a ratio of 61% in FY19 and PLIMS FY19 NPA Report also denotes a ODLR of

²⁶¹ See, AbilityOne Commission Memorandum for Qualified Nonprofit Agencies in the AbilityOne Program, (April 1, 2020) (available at:

https://www.abilityone.gov/media_room/documents/AbilityOne%20Cmsn%20Statutory%20DLH%20Ratio%20Exception%20FY2020%20FINAL%201APR20%20signed.pdf);

²⁶² Rochester Rehabilitation Center; Crossroads Rehabilitation Center, Inc.; WorkSource Enterprises; L. E. Phillips Career Development Center, Inc. – (noting no waiver granted in FY20 – NPA left Program in FY21);The Center for Individual and Family Services – ((noting no waiver granted in FY20 – NPA left Program in December of 2020 without submitting Annual Reps&Certs).

²⁶³ PLIMS, CARC Inc., Notice of Failure to Maintain Qualification to Participate in the AbilityOne Program (Sept. 25, 2020) (“CARC was not in agency overall direct labor hours ratio compliance at the end of FY 2018, and thus CARC was not maintaining qualification at that time. SourceAmerica sent out a Q2 Warning Letter to your agency for that time period; and, the Commission is pleased to see that CARC reported returning to ratio compliance by the end of FY 2019. The Commission will continue to monitor CARC ratio compliance with the Javits-Wagner-O’Day (JWOD) Act (41 U.S.C. §§ 8501-8506) and regulations (41 C.F.R. Chapter 51) administered by the Commission, and, if applicable to your agency, with the Commission-granted Exception for ratio relief in accordance with the Commission Chairperson’s memorandum dated April 1, 2020, entitled, “AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the duration of the Fiscal Year 2020.”).

61.36%.²⁶⁴ It appears that the Commission violated Policy 51.403 by failing to place CARC Inc. NPAs on probation.

Lastly, the Commission failed to issue any *Notices* to six NPAs which failed to maintain ratio in FY18.²⁶⁵ Therefore, the Commission violated Policy 51.403 by failing to place these six NPAs on probation.

Under Policy 51.403 (2013), in addition to probation and ineligibility for new contracts until the NPA returns to the required 75 ODLR, NPAs which fail to maintain ratio for two consecutive years will be required to come before the Commission to defend their place in the Program or may choose to exit the Program.²⁶⁶ In FY19 AbilityOne OIG identified four NPAs which had failed to maintain ratio for two consecutive years: CARC Inc., L. E. Phillips Career Development Center, Inc., Community Alternatives, Incorporated, San Antonio Lighthouse for the Blind, and KEYSTONE VOCATIONAL SERVICES, INC.²⁶⁷ The OIG found that the Commission did not issue *Notices* to any of the five NPAs to appear before the Commission to defend their continued participation in the Program. It appears that the Commission violated Policy 51.403 by failing to require these five NPAs to come before the Commission to defend their continued participation in the Program after failing to maintain the 75% ODLR ratio for two consecutive years in FY18.

RECOMMENDATION 3: AbilityOne OIG recommends that the Commission review *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program* which cite Pandemic-Related Waivers as authority to retroactively excuse NPAs which failed to meet ratio in FY18 or FY19 from the corrective or disciplinary required under Policy 51.403.

FY20

AbilityOne OIG identified the four NPAs that, in FY20, failure to satisfy the 75% ODLR and did not possess a Pandemic-Related Waiver. Under Policy 51.403 (2020 version) the Commission has discretion to determine what corrective action is appropriate for NPAs that failed to maintain ratio

²⁶⁴ PLIMS, CARC, NPA Reports (2019).

²⁶⁵ Bona Vista Programs, Inc., Columbia Lighthouse for the Blind, Goodwill Industries of South Florida, Inc., KEYSTONE VOCATIONAL SERVICES, INC., ReadyOne Industries, Inc., and VIA VISUALLY IMPAIRED ADVANCEMENT

²⁶⁶ Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) (“When an NPA fails to meet the 75 percent ratio for a second consecutive year: 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. 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. . . .”).

²⁶⁷ CARC Inc.; L. E. Phillips Career Development Center, Inc.; Community Alternatives, Incorporated; San Antonio Lighthouse for the Blind; and KEYSTONE VOCATIONAL SERVICES, INC.

in FY20.²⁶⁸ Unlike Policy 51.403 (2013 version), the 2020 version contains no prohibition to receiving new contracts in the following fiscal year for NPAs which failed to maintain ratio.²⁶⁹

NPA	Ratio	Program Status	FY21 New Contracts	Corrective Action
Opportunity Workshop of Lexington, Incorporated	38%	Active	No	No corrective action issued in PLIMS.
Crowder Industries, Inc.	60%	Pending Deletion – Last Active FY20	No	No corrective action issued in PLIMS.
Gateway Industries, Inc.	70%	Active	No	No corrective action issued in PLIMS.
Opportunity Village	72%	Active	No	No corrective action issued in PLIMS.

New Contracts

In FY20, no NPA which had failed to maintain the 75% ODLR and lacked a Pandemic-Related Waiver received a new PL project.

Probation Notices Letters & Corrective Action

Under Policy 51.403 (2020 version), the Commission “will initiate corrective action” to any NPA which fails to maintain the 75% ODLR.²⁷⁰ While the 2020 Policy 51.403 mandates that the Commission initiate corrective action, it provides no guidance as to what that corrective action would entail.²⁷¹ AbilityOne OIG identified four NPAs that, in FY20, failed to maintain the 75% ODLR and had not obtained a Pandemic-Related Waiver for FY20 to permit the NPA to operate under 75% ODLR as a result of the pandemic. The Commission, according to PLIMS, issued no Probation Notices Letters or other corrective action to these four NPAs. It appears that the Commission violated Policy 51.403 (2020) by failing to initiate any corrective action.

²⁶⁸ Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2020) (“If an NPA fails to meet the 75 percent overall direct labor hour ratio requirement in any Federal fiscal year, the Commission will initiate corrective action. See U.S. AbilityOne Commission Procedures 51.403-01.”).

²⁶⁹ Compare Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2013) with Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2020).

²⁷⁰ See Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2020).

²⁷¹ See generally *id.*

FY21

In FY21, AbilityOne OIG identified one NPA, SVRC Industries, Inc., as failing to satisfy the 75% ODLR and did not possess a Pandemic-Related Waiver. Under Policy 51.403 (2020 version), the Commission has discretion to determine what corrective action is appropriate for NPAs which failed to maintain ratio in FY21. Unlike Policy 51.403 (2013 version), the 2020 version has no prohibition against NPAs which failed to maintain ratio receiving new contracts in the following fiscal year.

NPA	Ratio	Program Status	FY22 New Contracts	Corrective Action
SVRC Industries, Inc.	74%	Active	No	No corrective action issued in PLIMS.

New Contracts

In FY21, no NPA which had failed to maintain the 75% ODLR without a Pandemic-Related Waiver received a new PL project.

Probation Notices Letters & Corrective Action

Under Policy 51.403 (2020 version), the Commission “will initiate corrective action” to any NPA which fails to maintain the 75% ODLR.²⁷² While the 2020 version of Policy 51.403 mandates that the Commission initiate corrective action, it provides no guidance as to what that action would entail.²⁷³ AbilityOne OIG identified four NPAs which, in FY21, failed to maintain the 75% ODLR and had not obtained a Pandemic-Related Waiver for FY21 to permit the NPA to operate under 75% ODLR as a result of the pandemic. The Commission, according to PLIMS, issued no Probation Notices Letters or other corrective action these four NPAs. It appears that the Commission violated Policy 51.403 (2020) by failing to initiate any corrective action.

FY22

AbilityOne OIG did not analyze the ODLR for FY22 as Annual Reps&Certs were not due to the Commission until December and must then be input into PLIMS. Subsequently, the Commission has not yet issued FY22 *Notice of Failure to Maintain Qualification to Participate in the*

²⁷² Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2020) (“If an NPA fails to meet the 75 percent overall direct labor hour ratio requirement in any Federal fiscal year, the Commission will initiate corrective action. See U.S. AbilityOne Commission Procedures 51.403-01.”).

²⁷³ See generally Compliance Policy 51.403, *Nonprofit Agencies Out of Compliance with Commission Regulations*, (2020)

AbilityOne Program. However, the Director of Compliance stated to AbilityOne OIG that roughly 30 to 36 NPAs failed to meet the requisite ODLR in FY22 lacking an applicable waiver.²⁷⁴

The Director of Compliance stated that several of the NPAs failed to meet ratio as a result of a Compliance Office Review flagging medical documentation as deficient and requiring the NPA to back out the hours.²⁷⁵ The NPA may resume counting the employee's hours towards the 75% ODLR only after the NPA has obtained and shows sufficient documentation of disability.²⁷⁶ The Director of Compliance also stated that NPAs have requested that the Commission issue waivers to excuse the NPAs for their failure to satisfy ODLR due to inadequate medical or IEE documentation from probation or other consequences.²⁷⁷ The Director of Compliance also stated that the Commission has never issued these types of waivers.²⁷⁸ It is unclear, based on the interviews with the Director of Compliance and Compliance Office staff, whether the Commission will issue the waivers.

RECOMMENDATION 4: AbilityOne OIG recommends that the Commission develop a system to track NPAs which have failed to maintain the applicable ODLR in the prior fiscal year(s) and track issuance of *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program*, and the progress on and completion of corrective action. OIG recommends that the Commission store the records in PLIMS to ensure transparency and that all appropriate users have ready access to it.

RECOMMENDATION 5: AbilityOne OIG recommends that the Commission issue clear, transparent, policy to be applied equitably to all NPAs delineating what corrective or disciplinary action will be taken if an NPA fails to maintain the applicable ODLR, including specifically what

²⁷⁴ See Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023).

²⁷⁵ See *id.* ("This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Director of Compliance] advised as follows: The Executive Director grants waivers to NPAs, not [the Compliance Office]. Some of the 30 to 36 NPAs that failed to meet ODLR in FY22 justified their noncompliance by stating that a finding during a compliance review that identified large number of deficient medical documentation and IEEs which caused the NPA to drop below 75% ODLR when they were required to back out a large number of hours. Historically, the Commission has never granted waivers for insufficient medical documentation. Executive Director. has the authority to decide whether to grant these waivers. These waivers have not yet been issued."); see Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023) (This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office employee] advised as follows: 'There were other requests that they could have made to the Director of Compliance, such as a review or, if I found that their medical doc. or IEE wasn't compliant, then they could then request an exception to ratio because of a compliance finding.' Based on COVID-19 or compliance findings, if the Compliance Office found that an NPA wasn't compliant with the Program, the NPA could ask to have the statutory 75% requirement excused for that year. When Compliance Office employees raised concerns about failing to follow AbilityOne policies and regulations, there would always be a reason given by [Director of Compliance or Compliance Manager] but 'it didn't necessarily always make sense.'").

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

will result in inability to receive new contracts, in loss of existing contracts, probation, removal from the Program, or other clearly defined consequences.

AbilityOne OIG's analysis of FY17-FY22 shows the Commission application of Policy 51.403 has been inconsistent, nontransparent, and unevenly applied. The lack of clear guidance and the uneven application have resulted in different outcomes when failing to maintain the applicable ODLR ratio, with some NPAs receiving probation while other NPAs had no corrective action issued, allowing NPAs with a demonstrated pattern on noncompliance with the ratio requirements to continue to perform existing PL contracts and to receive new contracts. AbilityOne OIG recommends that the Commission identify NPAs which demonstrate a pattern of failing to maintain the 75% ODLR – whether for consecutive years or nonconsecutive years – and implement and track corrective action.

AbilityOne OIG recommends that the Commission, through the AbilityOne Commission Office of General Counsel, perform legal review of ODLR waivers.

b. Allegation that 54 of 120 NPAs inspected by the whistleblower that fall alphabetically between the states of Alabama to Idaho were not compliant with the JWOD Act

OSC requested—as part of a series of communications, many of which were verbal—a statistically significant sample size of NPAs, including PLIMS screen captures, that demonstrated the "N" rate at annual Compliance Office Review. The statistically significant sample included NPAs located in states that fall alphabetically between Alabama and Idaho which had received a "N" in PLIMS, supplemented by the whistleblower's personal knowledge and expertise.²⁷⁹

Understanding "Y" and "N" in PLIMS

Per the Cooperative Agreements, the designated CNA adds the compliance visit report to PLIMS for the Compliance Office to review.²⁸⁰ The first page of the report is a summary page with a series of prompts with "Y," "N," and "N/A" as the only available options. At the bottom of the page, there is an overall "Y" or "N" that should reflect the previous responses indicating whether the NPA was overall adequate for the compliance visit. The Director of Compliance informed that, if an NPA received a "Y" for overall adequate, there cannot be any "Ns" in the prompts above, and that if the NPA received an "N" for overall adequate, the NPA cannot have all "Ys" in the prompts

²⁷⁹ Memorandum of Interview with Whistleblower, U.S. AbilityOne Comm'n (Aug. 1, 2022).

²⁸⁰ See Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and SourceAmerica, (Effective Date 4/7/2022), available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%20MOD8%20Final.pdf; see, Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and National Industries for the Blind, (Effective Date 4/7/2022) (available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/NIB%20CA%20Negotiation%20Mod%2010%20Final%205.2.22.pdf); see also Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 12, 2022).

above.²⁸¹ An NPA that receives an “N” for overall adequate will be given a copy of the compliance visit report, stating the corrective action is needed to come back into compliance with the AbilityOne Program.²⁸² The Commission does not change the “N” rating after the NPA submits a successful corrective action and the review records and corrective action records are both recorded and linked in PLIMS.²⁸³

Since a NPA will be marked as overall inadequate if they receive at least one “N” in any category, AbilityOne OIG cautions that every NPA must be reviewed for its individual facts and circumstances to determine whether the NPA failed to meet key Programmatic requirements, whether the issue was remedied with corrective action, and whether the issue has reoccurred or is at risk of reoccurring. Relying solely on the “N” may be misleading for several reasons including that, first, an NPA may be marked as overall inadequate for reasons described as secondary under Policy 51.403.²⁸⁴ For example, a nonprofit may be overall inadequate because it filed a DOL Form 300 for its headquarters but not a satellite location and its corrective action may be to file to form with DOL or an NPA may have an anti-retaliation poster hanging in the lunchroom with the corrective action saying to move the poster to a more private location. Secondly, an NPA may be marked as overall inadequate for key Programmatic requirements, but the underlying issue would not rise to the severity in which the NPA failed to maintain qualification or jeopardize its ability to contract with the government. For example, an NPA may employ 90 out of 100 employees with qualifying significant disabilities who each work 40 direct-labor hours a week, resulting in a 90% ODLR. If the Compliance Office Review indicated three employees have inadequate medical documentation, the NPA would need to deduct the employees’ direct labor hours resulting in a new ODLR of 87%. So, while the NPA may receive an “N” in this scenario for improper medical documentation, the NPA has not dropped below the 75% ODLR and may remedy the situation by backing out the three employees’ hours which were improperly counted towards the ODLR without sufficient documentation and then obtain new medical documentation if the NPA wishes to resume counting these employees towards the ODLR going forward. Third, the Compliance Review is a snapshot in time at a certain point within the fiscal year while the JWOD Act

²⁸¹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Aug, 8, 2022).

²⁸² *Id.*

²⁸³ Email from Dir. of Compliance, U.S. AbilityOne Commission to Acting Deputy Inspector General and Assistant Inspector General for Investigations, U.S. AbilityOne OIG (Aug. 19, 2022, 18:36 EST).

²⁸⁴ AbilityOne Compliance Policy 51.403(c) (“At risk secondary programmatic and additional reasons for a non-compliance finding include, but are not limited to: i. Not paying the correct wages and benefits to direct labor hour employees, as mandated by the Service Contract Act (SCA), Davis Bacon Act (DBA) and the Federal Labor Standards Act (FLSA), ii. Inadequate evidence of the following Occupational Safety & Health Administration (OSHA) standards; specifically a. Inadequate evidence of a safety program. b. Inadequate evidence of a Bloodborne Pathogen program, and c. Inadequate completion of the OSHA 300 Form iii. Inadequate adherence to other Federal Contract Requirements: a. Affirmative Action Plan (applies to Federal contracts of > \$50,000 and 50 employees) or Affirmative Action Policy (applies to Federal contracts > \$10,000) b. EEO-1Form (applies to Federal contracts > 100 employees or; 50 or more employees AND Federal contracts > \$50,000) c. VETS-4212 Form (applies to Federal contracts > \$150,000) d. Compliance with the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (VEVRAA) e. Drug- Free Workplace Policy (applies to Federal contracts > \$100,000) f. Family & Medical Leave Policy (applies to Employers with > 50 employees.”).

determines compliance with ODLR as an average of all direct labor hours worked across the fiscal year.²⁸⁵ So, an NPA may fail a Compliance Review for being below ratio in at the start of the fiscal year in a November Compliance Review, but, under the JWOD Act, the NPA has eleven months to raise the ODLR to 75%. Last, NPAs which receive an “N” are then issued corrective action, meaning the underlying issue that resulted in a “N” should, in theory, be corrected to a state in which the Commission is satisfied that the conduct has been remedied and is no longer an issue. An NPA’s adequate corrective action response does not change the findings of the Compliance Review, and therefore the “N” rating does not get changed.

Methodology

AbilityOne OIG sought to independently verify whether the 54 NPAs identified in the statistically significant sample had failed their last Compliance Review, whether the NPA was issued corrective action, whether the NPA submitted its corrective action by the deadline, and whether the corrective action was deemed adequate. AbilityOne OIG relied on the most recent Compliance Review added to PLIMS. For the majority of the NPAs, the last Compliance Review occurred in FY22 or FY21 but a few NPAs have not been reviewed for many years.

Findings

AbilityOne OIG found that, as of January 2023, 50 NPAs within the statistically significant sample failed their most recent Compliance Review. Of the 50 which failed, all were issued corrective action. 11 of the NPAs submitted corrective action by the deadline. eleven of the NPAs have not submitted corrective action to date. Four of the NPAs have outstanding corrective action responses with deadlines that extend beyond the timeline of this report into February 2023. Five NPAs submitted corrective action that was not deemed adequate.

A detailed review of AbilityOne OIG’s findings is attached at Exhibit C: *54 NPA AL to ID Statistically Significant Sample Recent Compliance Review*.

Categories of Compliance Violations

AbilityOne OIG pulled ‘Compiled Visit Information’ from PLIMS’s Compliance Reports section. The Report provided aggregated data grouping the reasons NPAs were found to be out of compliance into six issue categories: issues with competitive employment statements, medical

²⁸⁵ 41 U.S.C. § 8501(6)(C) (“The term ‘qualified nonprofit agency for other severely disabled’ means an agency . . . that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”); 41 U.S.C. § 8501(7)(C) “The term “qualified nonprofit agency for the blind” means an agency . . . that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”).

documentation, DOL issues, tracking direct labor, OSHA, and Placement Programs. The chart below demonstrates the percentages of NPAs which had an adverse compliance finding in each category. PLIMS calculated the percentages by dividing the number of NPAs with an adverse finding in each category over the total number of NPAs reviewed in that respective fiscal year.

	FY18	FY19	FY20	FY21	FY22
# of NPAs reviewed	665	617	386	547	445
% of NPAs Out of Compliance	77%	74.50%	74.60%	68.40%	87%
Competitive Employment Statement	50.98%	50.43%	56.60%	51.87%	79.07%
Medical Documentation	15.82%	14.35%	15.28%	27.54%	76.23%
DOL Issues	62.11%	71.96%	79.86%	95.45%	85.01%
Tracking Direct Labor	69.73%	85.43%	90.97%	110.70%	89.66%
OSHA	11.33%	13.04%	7.99%	12.30%	8.79%
Placement Program	8.59%	7.17%	7.64%	16.58%	31.01%

c. Allegation: 7 NPAs have failed compliance for more than a decade.

The whistleblower’s statistically significant sample identified the following seven NPAs as having failed Compliance Reviews for more than a decade:

- Abilities Unlimited of Ft. Smith (2012 to present)
- Alabama Goodwill Industries, Inc. (2012 to present)
- Easter Seal Society of Superior California (2008 to present)
- Life Options, Vocational and Resource Center (2005 to present)
- Pathfinder, Inc. (2009 to present)
- VTC Enterprises (2011 to present)
- Middle Flint Behavioral HealthCare (2011 to present)

AbilityOne OIG analyzed these seven named NPAs to determine the reasons for noncompliance, whether corrective action was issued, whether the NPA completed the corrective action, and whether the NPA still performs AbilityOne PL projects. The findings are discussed in the section below.

Additionally, AbilityOne OIG expanded the sample pool to analyze every NPA between October 1, 2012, to September 30th, 2022 (FY12 – FY22). Within PLIMS, AbilityOne OIG created a standardized Compliance Visit report of “FY Visits Completed” for each FY within the sample

range.²⁸⁶ AbilityOne OIG then identified every NPA which has not received a “Y” overall compliant rating since FY13. In total, AbilityOne OIG identified 50 NPAs which have failed every Compliance Review for a decade. PLIMS lists 16 of the 79 NPAs identified as “Pending Deletion.”

Due to the size of NPAs identified, AbilityOne OIG determined to attach Exhibit D: *NPAs which failed every Compliance Review Since 2013* at the end of the report listing every NPA which has failed Compliance Reviews for a decade and noting the categories of reasons why the NPA was found as overall not adequate for that respective FY. As discussed in *Understanding “Y” and “N” in PLIMS* Section above, AbilityOne OIG cautions that relying solely on the “N” or “Y” overall compliant rating within PLIMS may be misleading.²⁸⁷ Due to the dated and limited features of PLIMS, any adverse finding in any category will result in the NPA being marked as overall inadequate, including for secondary reasons which may not rise to a severity that would threaten participation in the Program or indicate issues that are not easily remedied. Therefore, it is necessary to review each NPA based on the facts and circumstances to determine why the NPA received an adverse finding, whether the finding was remedied, chances of repeat behavior, and whether the issues have repeated in subsequent visits.

AbilityOne OIG, however, emphasizes that ten consecutive years of inadequate compliance findings raises concerns as to whether these NPAs demonstrate effective compliance programs and whether the NPAs “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law” as required of all federal contractors under the Federal Acquisition Regulations (FAR) Code of Business Ethics as a precondition of contracting with the federal government, including through the AbilityOne Program.²⁸⁸ The FAR’s Code of Business Ethics is mirrored in AbilityOne General Policy 51.100 stating NPAs shall “uphold the highest levels of stewardship, integrity, and performance excellence” and in AbilityOne Compliance Policy 51.400 stating “[a]s all NPAs in the AbilityOne Program are Federal contractors, the Commission expects and the FAR dictates that they adhere to the highest ethical standards.”²⁸⁹

RECOMMENDATION 6: AbilityOne OIG recommends that the Commission conduct an in-depth review of the NPAs indicated in Exhibit D of this report which have failed Compliance Reviews over a range of ten years to determine whether the noncompliance demonstrates a pattern

²⁸⁶ PLIMS, Standard Reports, Procurement List Reports, Compliance Reports, FY Visits Complete, October 1, 2012 to September 30, 2022.

²⁸⁷ See *infra* at p. 69 Understanding “Y” and “N” in PLIMS.

²⁸⁸ Federal Acquisition Regulation, 48 C.F.R. 52.203-13(b)(2), *Contractor Code of Business Ethics and Conduct*, (“The Contractor shall (i) Exercise due diligence to prevent and detect criminal conduct; and (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”).

²⁸⁹ AbilityOne General Policy Series, *AbilityOne Program Policy Statement* 51.100(6)(d) (Apr. 24, 2012) (All Program stakeholders are expected to uphold the highest levels of stewardship, integrity, and performance excellence.”); AbilityOne Compliance Policy 51.400(5)-(6)(a) *Nonprofit Agency Overall Compliance Policy* (“NPAs stay informed of and comply with all statutes, regulations, and policies applicable and necessary for full participation in the AbilityOne Program. . . . As all NPAs in the AbilityOne Program are Federal contractors, the Commission expects and the FAR dictates that they adhere to the highest ethical standards.”).

of conduct that brings into question whether the NPA should be issued a corrective action, placed on probation, or removed from the Program.

Findings:

AbilityOne OIG confirmed that the seven named NPAs within the whistleblower's sample had received an "N" rating as not overall adequate in their Compliance Reviews for at least a decade. AbilityOne OIG then reviewed the Compliance Reports in PLIMS and whether the NPA had submitted a corrective action. AbilityOne OIG determined that all seven NPAs had submitted corrective action responses deemed adequate by the CNA and the Commission, meaning the NPA had corrected the finding of noncompliance and is no longer out of compliance. Despite submitting adequate corrective action, PLIMS does not change the "N" overall adequate rating to reflect a "Y" NPA is overall adequate.

AbilityOne OIG reviewed Compliance Reports available in PLIMS for the seven NPAs identified in the whistleblower's statistically significant sample as failing compliance for more than a decade. For these specific seven, OIG completed a deep dive into the compliance records to understand whether the seven NPAs had completed corrective action and review the reasons corrective action was issued.

Abilities Unlimited of Ft. Smith

Abilities Unlimited of Ft. Smith is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs one PL service project and produces zero PL products.²⁹⁰ On its FY22 Reps&Certs, the NPA reported in \$1,438,729.02 in total agency sales – of which, \$196,081.73 derived from the performance of AbilityOne PL services.²⁹¹

Abilities Unlimited of Ft. Smith has failed every annual Compliance Review since 2012.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Signed Medical Documentation - Proper Evaluation	10/24/2012	10/24/2012	10/24/2012	N/A
FY16	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Contract Clause	10/28/2015	Yes	No	N/A

²⁹⁰ PLIMS, Abilities Unlimited of Ft. Smith, *Services on the PL*.

²⁹¹ Abilities Unlimited of Ft. Smith, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

	- DOL Commensurate Wages				
FY17	Proper Evaluation	8/8/2017	Yes	N/A	Yes
FY18	Signed Medical Documentation	8/27/2018	Yes	No	Yes
FY20	- Proper Evaluation - OSHA Compliance - Placement Program - Contract Clause - DOL Commensurate Wages - SCA Compliance	11/20/2019	Yes	Yes	Yes
FY21	Proper Evaluation	4/13/2021	Yes	Yes	Yes
FY22	Service Contract	5/25/2022	Yes	No	Yes

Alabama Goodwill Industries, Inc.

Alabama Goodwill Industries, Inc. is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs seven PL service projects and produces zero PL products.²⁹² On its FY22 Reps&Certs, the NPA reported \$985,196.60 in total agency sales – of which, \$972,193.68 derived from the performance of AbilityOne PL services.²⁹³

Alabama Goodwill Industries has failed every annual Compliance Review since 2012.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	Signed Medical Documentation	2/1/2012	N/A	N/A	N/A
FY14	- Special Minimum Wage Certificate - SCA Compliance	8/14/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - SCA Compliance	7/26/2017	Yes	Yes	Yes
FY19	- Proper Evaluation - Special Minimum Wage Certificate	12/20/2018	Yes	N/A	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate	2/5/2020	Yes	No	Yes

²⁹² PLIMS, Alabama Goodwill Industries, Inc., *Services on the PL*.

²⁹³ Alabama Goodwill Industries, Inc OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

FY22	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Placement Program - SCA Compliance - AbilityOne DL Ratio	10/27/2021	Yes	No	Yes
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Easter Seal Society of Superior California

Easter Seal Society of Superior California is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs three PL service projects and produces zero PL products.²⁹⁴ On its FY22 Reps&Certs, the NPA reported \$1,145,296.29 in total agency sales – of which, \$743,797.00 derived from the performance of AbilityOne PL services.²⁹⁵

Easter Seal Society of Superior California has failed every annual Compliance Review since 2008.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY14	- DOL Commensurate Wages - SCA Compliance	2/18/2014	N/A	N/A	N/A
FY17	- Proper Evaluation - DL Ratio - Placement Program - Contract Clause - DOL Commensurate Wages - SCA Compliance - AbilityOne DL Ratio	3/14/2017	Yes	Yes	N/A
FY18	DOL Commensurate Wages Adequate	3/28/2018	Yes	No	Yes
FY19	Proper Evaluation	6/18/2019	Yes	Yes	Yes
FY21	- Special Minimum Wage Documentation	1/5/2021	Yes	Yes	Yes
FY22	- DL Ratio - SCA Compliance - AbilityOne DL Ratio	1/20/2022	Yes	No	No

²⁹⁴ PLIMS, Easter Seal Society of Superior California, *Services on the PL*.

²⁹⁵ Easter Seal Society of Superior California, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales (FY22)*.

Life Options, Vocational and Resource Center

Life Options, Vocational and Resource Center (Life Options) is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs one PL service project and produces zero PL products.²⁹⁶ On its FY22 Reps&Certs, the NPA reported \$6,146,272.87 in total agency sales – of which, \$2,850,010.62 derived from the performance of AbilityOne PL services.²⁹⁷

Life Options has failed every annual Compliance Review since 2005.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY15	- Signed Medical Documentation - Proper Evaluation - DL Ratio - AbilityOne DL Ratio	9/1/2015	Yes	N/A	N/A
FY18	Proper Evaluation	12/20/2017	Yes	Yes	Yes
FY19	Proper Evaluation	2/6/2019	Yes	Yes	Yes
FY21	- Proper Evaluation - DOL Commensurate Wages - SCA Compliance	11/9/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Placement Plan - AbilityOne DL Ratio	3/9/2022	Yes	Yes	Yes

Pathfinder, Inc.

Pathfinder, Inc. is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs four PL service projects and produces zero PL products.²⁹⁸ On its FY22 Reps&Certs, the NPA reported \$3,069,577.28 in total agency sales – of which, \$2,917,338.52 derived from the performance of AbilityOne PL services.²⁹⁹

²⁹⁶ PLIMS, Life Options, Vocational and Resource Center, *Services on the PL*.

²⁹⁷ Life Options, Vocational and Resource Center, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales (FY22)*.

²⁹⁸ PLIMS, Pathfinder, Inc., *Services on the PL*.

²⁹⁹ Pathfinder, Inc., OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales (FY22)*.

Pathfinder, Inc. has failed every annual Compliance Review since 2009.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Proper Evaluation - Contract Clause - AbilityOne DL Ratio	11/29/2012	N/A	N/A	N/A
FY17	Proper Evaluation	8/26/2017	Yes	Yes	Yes
FY19	AbilityOne DL Ratio	11/28/2018	Yes	Yes	Yes
FY20	- Proper Evaluation - OSHA Compliance - DOL Commensurate Wages	1/20/2020	Yes	No	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - AbilityOne DL Ratio - Placement Program	10/26/2021	Yes	Yes	Yes

VTC Enterprises

VTC Enterprises is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs five PL service projects and produces zero PL products.³⁰⁰ On its FY22 Reps&Certs, the NPA reported \$6,010,226.00 in total agency sales – of which, \$5,133,588.00 derived from the performance of AbilityOne PL services.³⁰¹

VTC Enterprises has failed every annual Compliance Review since 2011

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY14	- Proper Evaluation - AbilityOne DL Ratio	12/9/2013	Yes	N/A	N/A
FY15	- Signed Medical Documentation - Proper Evaluation - AbilityOne DL Ratio	9/22/2015	Yes	N/A	N/A
FY18	- Proper Evaluation	12/19/2017	Yes	No	Yes

³⁰⁰ PLIMS, VTC Enterprises, *Services on the PL*.

³⁰¹ VTC Enterprises, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

	- Special Minimum Wage Certificate				
FY19	- Special Minimum Wage Certificate - SCA Compliance	2/7/2019	Yes	Yes	Yes
FY21	- Proper Evaluation - Special Minimum Wage Certificate	10/23/2020	Yes	No	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Placement Program - Special Minimum Wage Certificate - AbilityOne DL Ratio	3/10/2022	Yes	Yes	Yes

Middle Flint Behavioral HealthCare

Middle Flint Behavioral HealthCare is an active AbilityOne NPA currently participating in the Program. The NPA performs one PL service project and produces zero PL products.³⁰² On its FY22 Reps&Certs, the NPA reported sales of \$49,145.40 total agency sales which included \$16,381.80 from AbilityOne PL goods and services.³⁰³

Middle Flint Behavioral HealthCare has failed every annual Compliance Review since 2011.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Special Minimum Wage Certificate - SCA Compliance	11/30/2011	Yes	N/A	N/A
FY13	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	4/1/2013	Yes	No	N/A
FY16	- Signed Medical Documentation - Proper Evaluation	6/22/2016	Yes	No	Yes

³⁰² PLIMS, Middle Flint Behavioral HealthCare, *Products on the PL, Services on the PL*.

³⁰³ Middle Flint Behavioral HealthCare, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

	- Special Minimum Wage Certificate - SCA Compliance				
FY17	- Signed Medical Documentation - Proper Evaluation - OSHA Compliance - Special Minimum Wage Certificate - SCA Compliance	7/12/2017	Yes	Yes	Yes
FY19	- Signed Medical Documentation - Placement Program - Special Minimum Wage Certificate - SCA Compliance	11/15/2018	Yes	No	Yes
FY21	- Proper Evaluation - DL Ratio - Special Minimum Wage Certificate - AbilityOne DL Ratio	10/27/2020	Yes	No	Yes
FY22	- Proper Evaluation - OSHA Compliance - Special Minimum Wage Certificate - SCA Compliance	3/23/2022	Yes	No	Yes

d. Allegation: 7 NPAs did not qualify as nonprofit entities 501(c)(3) according to Internal Revenue Services (IRS) and tax filings, and that the CNAs and the Commission fail to monitor the NPAs' nonprofit statuses at annual inspections.

OSC provided AbilityOne OIG with the following seven NPAs identified as entities which potentially failed to maintain nonprofit status with the IRS and their respective home state:

1. Able Force, Inc.
2. Easter Seals Alabama, Inc.
3. Easter Seals of the Birmingham Area
4. Middle Flint Behavioral HealthCare Community Service Board
5. iCan Resources, Inc.
6. Pacific Ability Resources, Inc. (PARI)
7. NPA1

Investigation

AbilityOne OIG found that one the seven named NPAs, NPA1, had its federal tax-exempt status revoked by the IRS and had failed to maintain nonprofit status in good standing with its home state of incorporation. In addition to the seven named NPAs, AbilityOne OIG reviewed the nonprofit status of every NPA currently participating in the Program and found no additional NPAs that had failed to maintain nonprofit status in good standing with either the IRS or its respective home state.

Initial Verification of Nonprofit Status

The JWOD Act requires that NPAs are nonprofits “organized under the laws of the United States or a State” but does not prescribe specific documentation or verification procedures for determining or ascertaining nonprofit status.³⁰⁴ The Commission, at 41 C.F.R. § 51-4.2, prescribed that NPAs seeking admission to the AbilityOne Program submit the articles of incorporation showing the date of filing and the signature of an appropriate State official and a copy of the bylaws certified by an officer of the corporation, and one acceptable form of written acknowledgement that no income will inure to a private individual.³⁰⁵ If the NPA is state-run, operated, or established as part of a state entity, the NPA must submit a certified true copy of the State statute establishing the nonprofit agency(ies) for persons who are blind or have other severe disabilities or “in the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.”³⁰⁶

NPAs seeking admission to the AbilityOne Program must affiliate with one of the CNAs, to help the NPA navigate the admission process.³⁰⁷ The NPA provides the CNA the requisite legal

³⁰⁴ See generally 41 U.S.C. § 8501(6) (“The term “qualified nonprofit agency for other severely disabled” means an agency— (A)(i) organized under the laws of the United States or a State, (ii) operated in the interest of severely disabled individuals who are not blind; and (iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual; (B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”); 41 U.S.C. § 8501(7) (“The term “qualified nonprofit agency for the blind” means an agency—A)(i) organized under the laws of the United States or a State; (ii) operated in the interest of blind individuals; and (iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual; (B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.”).

³⁰⁵ 41 C.F.R. § 51-4.2(1).

³⁰⁶ *Id.* at § 51-4.2(2).

³⁰⁷ AbilityOne Compliance Policy 51.403(5-6) *Initial Qualification of Nonprofit Agencies* (Mar. 22, 2013) (“CNAs have been delegated authority to assist the Commission in collecting and initially assessing NP A legal

documents for the CNA to review before the CNA transmits an initial qualification package via PLIMS to the Commission.³⁰⁸ The Commission's Office of General Counsel reviews Program applications, including all supporting documentation such as State business licenses and IRS tax-exemption status, to ensure the organization is an appropriate nonprofit organization.³⁰⁹ NPAs with the requisite nonprofit designation – and which meet other Programmatic requirements such as the 75% ODLR – will be admitted to the Program.

Annual Verification of Nonprofit Status

The Director of Compliance stated that the CNAs and Compliance Office staff should assess the current nonprofit status at two key points: after the filing of Annual Reps&Certs and when researching the NPA in preparation for an upcoming Compliance Review.³¹⁰

The Director of Compliance stated to OIG that, since around the beginning of 2022, he has instructed the assigned reviewers to check Form 990s via GuideStar or the IRS website before a Compliance Reviewer.³¹¹ However, Compliance Office staff stated to OIG that they were either unaware of this instruction or thought it was a prospective policy not yet implemented.³¹² As this

documentation used by the Commission to determine whether the NP A is qualified and can receive verified status to participate in the AbilityOne Program. . . . (a) To participate in the AbilityOne Program, an NPA must be represented by the appropriate CNA. NPAs serving individuals who are blind shall be represented by National Industries for the Blind (NIB), and NPAs serving individuals who have other significant disabilities shall be represented by NISH. (41CFR 51-3.1) 1. For an NPA to be represented by NIB, it must meet the requirements of a 'Qualified Nonprofit Agency for the Blind' as defined in 41 USC 8501 and 41 CFR 51.4. 11. For an NPA to be represented by NISH, it must meet the requirements of a 'Qualified Nonprofit Agency for Other Severely Disabled' as defined in 41 USC 8501 and 41 CFR 51.4.”).

³⁰⁸AbilityOne Compliance Policy 51.403(6)(b) *Initial Qualification of Nonprofit Agencies* (Mar. 22, 2013) (“To qualify for participation in the AbilityOne Program, an NPA's legal documentation and completed Initial Certification Form must be submitted through the appropriate CNA to the Commission and receive the Commission's subsequent approval.”).

³⁰⁹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 12, 2022).

³¹⁰ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 12, 2022) (“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [The Director of Compliance] advised as follows: The CNA and Compliance Office should assess NPAs' nonprofit status twice. The most predictable occurrence would be on the filings of the Annual Reps&Certs. Shortly after, the CNA should review those responses and assess 501(c)(3) status via IRS systems and GuideStar. GuideStar allows the CNA and Compliance Office to look more extensively at the 501(c)(3) status and to see whether the NPA has filed their recent Form 990s. Not filing Form 990 could be an early indication that the NPA may be “heading for some trouble with the IRS.” Shortly before a scheduled NPA review, the assigned reviewer should check IRS systems and GuideStar to better assess the NPA. If an NPA is scheduled for review on December 1st, around November 1st, the reviewer should do the background investigation about the NPA to make sure they are going to the right location and have good contact information.”).

³¹¹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023)

³¹² See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023); see Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023) (“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Compliance Office Employee] advised as follows The process of checking nonprofit status of NPAs while conducting annual reviews has been done on a case-by-case basis. ‘I have had requests over the years to pull 990s on an agency but that has been a request for information.

instruction is not covered in the Cooperative Agreement, prescribed in official policy, nor included on a written compliance trip worksheet, it is unclear whether the CNAs are bound to the Director of Compliance's instruction or whether this instruction is currently aspirational.³¹³ Additionally, it is unclear whether all reviewers have been made aware of, and are practicing, this instruction.³¹⁴ Staff informed OIG that historically they may have checked a Form 990 if a reason arose to warrant a closer look at the NPA, but this is not common practice.³¹⁵

RECOMMENDATION 7: AbilityOne OIG recommends that the Commission's guidance relating to compliance will be in written format and look into the gap about the "instructions" the Director of Compliance claims he provided and Staff claiming to not have knowledge of it as currently applicable.

The AbilityOne Commission's Annual Reps&Certs Form requires each NPA's Board of Directors Chairperson and President to certify, under penalty of 18 U.S.C. § 1001, numerous material representations relating to the NPAs nonprofit status, including the two applicable certifications below:

- Section 6, *AbilityOne Program Requirements*, Line 6A: "[i]n accordance with 41 CFR § 51-4.3(a), the NPA complies *"with the requirements of a "nonprofit agency for other significantly disabled" or a "nonprofit agency for the blind" as defined in 51-1 .3."*
- Section 7, *Nonprofit Agency Requirements*, Line 7C: "[i]f applicable, did the NPA submit the IRS Form 990 to the IRS within the last year?"³¹⁶

Nothing that we've been asked in Compliance to analyze, just as a matter of providing to the requestor.' In previous years, requests for 990s for a particular agency would need to go through Compliance. The current Director of Compliance wants to put into place the practice of checking 990s before conducting an annual review. [Compliance Office Employee] believes that the Director of Compliance wants to assign that task to the CNAs when the submit the Annual Reps&Certs. 'That's all preliminary, there's nothing to substantiate what I just said, it's just conversation.' There is no written policy in place that Compliance [Office] are to check 990s annually, its been simply at a request.'").

³¹³ See generally, 41 U.S.C. § 8501, et. seq.; 41 C.F.R. § 51 et. seq.; Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and SourceAmerica, 3.3.1.3 NPA Regulatory Review and Assistance Visits (RRAV), (Effective Date 4/7/2022), *available at*: https://www.abilityone.gov/laws_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%20MOD8%20Final.pdf ("NPAs may not be granted more than one (1) Corrective Action Plan extension from the CNA without prior approval from the Commission Director, Oversight and Compliance."); see Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and National Industries for the Blind, (Effective Date 4/7/2022), *available at*: https://www.abilityone.gov/laws_regulations_and_policy/documents/NIB%20CA%20Negotiation%20Mod%2010%20Final%205.2.22.pdf; see also, Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023).

³¹⁴ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023); see, Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023).

³¹⁵ See *id.*

³¹⁶ OMB Form No. 3037-0013, *Representations and Certifications*, at Line 6A and Line 7C.

Though the Repts&Certs Form requires this data point and its certification by the CNAs, Commission staff or the CNAs do not independently verify whether the information is accurate.³¹⁷

Methodology

First, AbilityOne OIG reviewed the publicly available IRS *Return of Organization Exempt From Income Tax Form 990* (Form 990) for each NPA currently participating in the AbilityOne Program which are registered as 501(c)(3) tax-exempt organizations.³¹⁸ Though the JWOD Act does not require AbilityOne NPAs to seek designation as 501(c)(3) tax-exempt organizations, Form 990s serve as a readily available data source that could confirm the nonprofit status for a vast majority of the NPAs. Most tax-exempt organizations are required to file Form 990s unless the entity qualifies for an exception.³¹⁹ The IRS revokes nonprofit status automatically for failure to file a Form 990 for three consecutive years.³²⁰ Tax-exempt organizations may request an exemption from filing a Form 990 if the organization qualifies for an enumerated exception, such as for entities operating an instrumentality of a state government or entities affiliated with a church.³²¹ Additionally, certain organizations may qualify to have their tax-exempt status retroactively reinstated as valid up to the date of automatic revocation, if they meet certain reasonable cause and timeline conditions, and they “back file” the Form 990s for the missed years.³²²

Tax-exempt organizations which are not granted an exception must file their Form 990 by the fifteenth day of the fifth month after the end of their tax year, so, while deadlines which operate

³¹⁷ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023) (discussing the level of review of the Repts&Certs nothing that [u]nfortunately, we don’t have the systems in place to systematically go to do that type of analytical work of line by line, the way we should process analytical data.”)

³¹⁸ See 26 C.F.R. § 1.501(a)-1(b)(1)(d) *Exemption from taxation*; 26 C.F.R. § 1.6033-1, *Returns by exempt organizations* (discussing tax-exemptions organizations requirements to file Form 990, the required disclosures, and applicable exemptions); Internal Revenue Services, *About Form 990, Return of Organization Exempt from Income Tax* (available at: <https://www.irs.gov/forms-pubs/about-form-990>); see also NIB Associated Nonprofit Agencies – AbilityOne Program December 2020 (available at: https://www.abilityone.gov/abilityone_network/documents/NIB%20List%20of%20AbilityOne%20Agencies%20December%202020.pdf); see *SourceAmerica Producing Member NPAs as of 6/9/20* (available at: [https://www.abilityone.gov/abilityone_network/documents/SourceAmerica Producing Member NPAs 06-08-20.pdf](https://www.abilityone.gov/abilityone_network/documents/SourceAmerica%20Producing%20Member%20NPAs%2006-08-20.pdf)).

³¹⁹ See 26 C.F.R. § 1.501(a)-1(b)(1)(d) *Exemption from taxation*; 26 C.F.R. § 1.6033-1; see also Dept. of Treasury, Internal Revenue Serv., *Automatic Revocation of Exemption for Non-Filing: Frequently Asked Questions* (available at: https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf#:~:text=All%20exempt%20organizations%20required%20to%20file%20an%20annual,file%20a%20return%20or%20notice%20C%20sec%20Annual%20Exempt).

³²⁰ *Id.*

³²¹ *Id.*; see also, Dept. of Treasury, Internal Revenue Serv., *Requesting Exemption from Requirement to File Form 990 or Form 990-EZ*, available at: <https://www.irs.gov/charities-non-profits/requesting-exemption-from-requirement-to-file-form-990-or-form-990-ez>

³²² See Dept. of Treasury, Internal Revenue Serv. *Automatic Revocation - How to Have Your Tax-Exempt Status Reinstated*, available at: <https://www.irs.gov/charities-non-profits/charitable-organizations/automatic-revocation-how-to-have-your-tax-exempt-status-reinstated>

NPAs on the calendar year schedule had a deadline for May 15, 2022.³²³ However, IRS offers an automatic six-month extension upon request.³²⁴ NPAs which were granted an extension and which operate on a tax year that follows the calendar year would have an extended deadline of November 15, 2022.³²⁵

AbilityOne OIG analyzed Form 990s for tax year 2020 in lieu of the more recent tax year 2021 filing. AbilityOne OIG determined that 2021 Form 990 filings are not a readily reliable dataset because the majority of this investigation occurred during the extension period, extension requests are not publicly available, and the IRS may need time to publicly post Form 990 filings submitted at the end of the extension period. Additionally, any NPA which filed a Form 990 in tax year 2020 would not be at risk of automatic revocation for failure to file for three consecutive years, and therefore, presumably, would not be at risk of failing to meet the nonprofit status designation needed to participate in the AbilityOne Program.

Second, AbilityOne OIG identified every NPA that did not have a publicly available Form 990 for tax year 2020. AbilityOne OIG then verified, through publicly available state business records or through Thomas Reuters CLEAR, whether the NPA was a registered nonprofit in good standing with their home state.

Lastly, if AbilityOne OIG was unable to verify that the NPA was or was not in good standing with its home state, AbilityOne OIG either issued a records request to the NPA's respective CNA or engaged directly with the NPA to obtain the needed information.

Findings

AbilityOne OIG found that one the seven named NPAs had failed to maintain nonprofit status in good standing with the IRS or their home state of incorporation. In addition to the seven named NPAs, AbilityOne OIG reviewed the nonprofit status of every NPA currently participating in the Program and found no additional NPAs which had failed to maintain nonprofit status in good standing with either the IRS or their home state.

³²³ See Dept. of Treasury, Internal Revenue Serv., *Publication 4839, Annual Form 990 Filing Requirements for Tax Exempt Organizations (Rev. 1-2020)* (available at: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>); see also Dept. of Treasury, Internal Revenue Serv., *Exempt Organization Filing Requirements: Form 990 Due Date* (available at: <https://www.irs.gov/charities-non-profits/political-organizations/exempt-organization-filing-requirements-form-990-due-date>); Dept. of Treasury, Internal Revenue Serv., *Current Edition of Exempt Organizations Updates* (available at: <https://www.irs.gov/charities-non-profits/current-edition-of-exempt-organizations-update>).

³²⁴ See, Dept. of Treasury, Internal Revenue Serv., *Publication 4839, Annual Form 990 Filing Requirements for Tax Exempt Organizations (Rev. 1-2020)*, available at: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>; See, Dept. of Treasury, Internal Revenue Service, *Return Due Dates for Exempt Organizations: Annual Return* (available at: <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>).

³²⁵ *Id.*

1. Able Force, Inc. of Florida

Able Force, Inc. is a nonprofit in good standing with the state of Florida.

Able Force, Inc. of Florida, is an active AbilityOne NPA currently participating in the AbilityOne Program. The NPA performs two PL service projects and produces zero PL products.³²⁶ On its FY22 Reps&Certs, the NPA reported in \$3,824,369.17 in total agency sales – all of which derived from AbilityOne PL goods and services with \$0 in other agency sales.³²⁷

Note: Able Force, Inc. of Florida (EIN: 59-371390) is a different NPA than the similarly named NPA Able Forces, Inc. of Virginia (EIN: 27-0881311) which is pending deletion as an AbilityOne NPA in PLIMS and has no current goods or services on the AbilityOne PL.

According to the IRS's tax-exempt organization search tool, Able Force, Inc. of Florida last filed a Form 990 with the IRS in 2018.³²⁸ If Able Force does not file a Form 990 in tax year 2021, the NPA will have its federal tax-exempt status automatically revoked for failure to file for three consecutive years.³²⁹ While the deadline to file Form 990 varies, many nonprofits who follow a calendar year and sought an automatic filing extension would have reach the 2021 tax year filing deadline on November 15, 2022.³³⁰ As of January 10, 2023, the IRS website has not yet been updated to reflect whether Able Force, Inc. has had its tax-exempt status revoked.³³¹

AbilityOne OIG verified the NPA's status with its home state of Florida. Able Force filed its 2022 Not-For-Profit Organization Annual Report with the Florida Secretary of State on April 28, 2022. Florida's Division of Corporations currently lists Able Force as an active nonprofit in good standing with the state.³³²

³²⁶ PLIMS, Able Forces, Inc, *Services on the PL*.

³²⁷ Able Forces, Inc. of Florida, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³²⁸ See Dept. of Treasury, Internal Revenue Serv., Tax-exempt Organization Search, Able Force, Inc. (available at: <https://apps.irs.gov/app/eos/detailsPage?ein=593713900&name=ABLE%20FORCE%20INC&city=&state=&countryAbbr=US&dba=&type=DETERMINATIONLETTERS,%20REVOCATION,%20COPYOFRETURNS&orgTags=DETERMINATIONLETTERS&orgTags=REVOCATION&orgTags=COPYOFRETURNS>).

³²⁹ Dept. of Treasury, Internal Revenue Serv., *Automatic Revocation of Exemption for Non-Filing: Frequently Asked Questions* (available at: https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf#:~:text=All%20exempt%20organizations%20required%20to%20file%20an%20annual,file%20a%20return%20or%20notice%2C%20see%20Annual%20Exempt).

³³⁰ See Dept. of Treasury, Internal Revenue Service, *Return Due Dates for Exempt Organizations: Annual Return* (available at: <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return0>

³³¹ See Dept. of Treasury, Internal Revenue Service, Tax-exempt Organization Search, Able Force, Inc. (available at: <https://apps.irs.gov/app/eos/detailsPage?ein=593713900&name=ABLE%20FORCE%20INC&city=&state=&countryAbbr=US&dba=&type=DETERMINATIONLETTERS,%20REVOCATION,%20COPYOFRETURNS&orgTags=DETERMINATIONLETTERS&orgTags=REVOCATION&orgTags=COPYOFRETURNS>).

³³² Florida Dept. of State, Dept. of Corp., Business Entity Search, Able Force, Inc. (available at: <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ABLEFORCE%20N140000116120&aggregateId=domnp-n14000011612-ac52f913-fdcb-49e9-aa31-bcea9a46e109&searchTerm=able%20force&listNameOrder=ABLEFORCE%20F100000043970>).

While Able Force may have potentially had its federal tax-exempt status automatically revoked for failure to file a Form 990 with the IRS for three consecutive years, the NPA is in good standing with its home state of Florida. Since the JWOD Act permits both state or federal level nonprofit designations, Able Force Inc. has satisfied the nonprofit status Program requirement as a “qualified nonprofit agency.”³³³

2. Able Forces Inc., of Virginia

Able Forces, Inc. of Virginia (EIN: 27-0881311) is no longer an active NPA in the AbilityOne Program and is pending deletion in PLIMS. The NPA left the Program in FY19 following its acquisition by another AbilityOne NPA, Global Connections to Employment. Able Forces has not provided goods or services on the AbilityOne PL since FY19.

Before departing the Program in FY19, Able Forces (VA) had three projects on the PL.

PL Number	Date Added	Date Deleted	FY19 Value*
20115019	1/31/2011	4/17/2019	\$170,522.26
20115069	4/22/2011	9/26/2019	\$135,316.76
20115017	5/24/2011	5/1/2019	\$162,220.80

For contract value, AbilityOne OIG selected in PLIMS “Pricing Info” “Service Price History” and selected on the negotiated contract value for FY19 – the last fiscal year in which the NPA performed work on all three projects before the projects were deleted from the PL or transferred to another NPA. On projects where the NPA did not perform services for the entire fiscal year, the actual value accrued by the NPA, presumably, would be lower.

Able Forces Inc. last submitted Annual Reps&Certs in FY17 on which it reported \$1,019,802.43 in total agency sales, of which, \$100,289.70 derived from AbilityOne PL goods and services.³³⁴ SourceAmerica’s Annual Reps&Certs Report for FY18 shows that Able Forces was merging in FY18.³³⁵ PLIMS project data, displayed in the chart above, shows that the NPA performed PL work until FY19.

According to the IRS’s tax-exempt organization search tool, Able Forces, Inc. of Virginia (Able Forces VA) (EIN: 27-0881311) last filed a Form 990 with the IRS in 2019.³³⁶ If the NPA does not

³³³ 41 U.S.C. § 8501(6-7).

³³⁴ Able Forces, Inc. OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY17).

³³⁵ SourceAmerica Annual Reps&Certs Report for FY18, at p.22.

³³⁶ See Dept. of Treasury, Internal Revenue Serv., Tax-exempt Organization Search, Able Forces, Inc. (available at: [https://apps.irs.gov/app/eos/details/https://apps.irs.gov/app/eos/detailsPage?ein=593713900&name=ABLE FORCE INC&city=&state=&countryAbbr=US&dba=&type=DETERMINATIONLETTERS, REVOCATION, COPYOFRETURNS&orgTags=DETERMINATIONLETTERS&orgTags=REVOCATION&orgTags=COPYOFRETURNS](https://apps.irs.gov/app/eos/details/https://apps.irs.gov/app/eos/detailsPage?ein=593713900&name=ABLE%20FORCE%20INC&city=&state=&countryAbbr=US&dba=&type=DETERMINATIONLETTERS,REVOCATION,COPYOFRETURNS&orgTags=DETERMINATIONLETTERS&orgTags=REVOCATION&orgTags=COPYOFRETURNS)).

file a Form 990 for tax year 2022, the IRS will automatically revoke Able Forces, Inc.’s tax-exemption for failure to file for three consecutive years.³³⁷

According to Virginia Corporate Filings, available through Thomas Reuters CLEAR, Able Forces Inc. originally filed in Virginia on September 14, 2009, where the NPA remained active until January 20, 2021.³³⁸

Since Able Forces maintained good standing with both the IRS and its home state of Virginia throughout 2019, Able Forces has satisfied the nonprofit status Program requirement of a “qualified nonprofit agency” until its departure from the AbilityOne Program in 2019.³³⁹

3. Easter Seals Alabama, Inc. (previously known as “The Opportunity Center Easter Seal Facility - The Alabama Easter Seals Society, Inc.”)

Easter Seals Alabama, Inc. is a nonprofit in good standing with the state of Alabama.

AbilityOne OIG confirmed that Easter Seals of Alabama, Inc. – Opportunity Center (Opportunity Center) is an active NPA currently participating in the Program. Opportunity Center (EIN: 63-0727732) is a subordinate entity of its parent group Easter Seals of Alabama, Inc. (EIN: 63-0320188). The NPA’s 2013 bylaws, maintained in PLIMS, note the NPA changed its name in 2011 to “Easter Seals of Alabama, Inc” and has gone through several mergers and name changes, including changing from the “The Easter Seals Society, Inc.”³⁴⁰ However, PLIMS still lists the NPA name as “The Opportunity Center Easter Seal Facility - The Alabama Easter Seals Society, Inc.” (The Ala ES Soc., Inc.) despite the legal name change(s). NPAs may request names changes in PLIMS via the CNAs but are not always changed.³⁴¹ NPAs may also choose to go by a catchy or trendy name or acronym whether as a true d/b/a or a business activity title.³⁴² Multiple names have caused confusion even to users with knowledge of the NPA relationships.³⁴³

³³⁷ See Dept. of Treasury, Internal Revenue Serv., *Automatic Revocation of Exemption for Non-Filing: Frequently Asked Questions* (available at: https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf#:~:text=All%20exempt%20organizations%20required%20to%20file%20an%20annual,file%20a%20return%20or%20notice%2C%20see%20Annual%20Exempt)

³³⁸ Thomas Reuters CLEAR, Corporate Filings, Able Forces, Inc.

³³⁹ 41 U.S.C. § 8501(6-7).

³⁴⁰ See PLIMS, the Opportunity Center Easter Seal Facility - The Alabama Easter Seals Society, Inc., Articles of Amendment to the Articles of Incorporation of Alabama Easter Seals Society, Inc.; Email Easter Seals of Alabama, Inc., to AbilityOne OIG, (Jan. 3, 2023) (“Attached are the 2015, 2019, and 2022 IRS affiliate group exemptions that were submitted to the IRS as verification. Easter Seals Alabama, Inc. was a name change/merger with The Easter Seals Society, Inc. Years before these mergers & name changes, our name was Alabama Society of Crippled Children Association (ASCCA)”).

³⁴¹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023).

³⁴² *Id.*

³⁴³ *Id.*

Opportunity Center performs four PL service projects and produces four PL products.³⁴⁴ On its FY22 Reps&Certs, the NPA reported in \$4,000,192.42 in total agency sales – \$2,863,763.46 of which derived from AbilityOne PL goods and services.³⁴⁵

The IRS's tax-exempt organization search tool yields multiple tax-exempt entity Employer Identification Numbers (EINs) operating under the name of "Easter Seals of Alabama, Inc." or similar names.³⁴⁶ The Director of Compliance noted that NPAs report their EIN on their initial Program applications, but the Commission does not monitor EINs afterwards.³⁴⁷ The initial applications are not housed in PLIMS and other AbilityOne Commissions key records, such as the Annual Reps&Certs Form OMB (Form 3037-0013), do not require NPAs to list EIN information. As many NPAs operate affiliated entities with different EINs, different names or former names, the Commission's current recordkeeping makes identifying which legal entity is affiliated with the Program challenging and confusing.

At the request of AbilityOne OIG, Easter Seals of Alabama, Inc. provided three 501(c)(3) Group Exemption Letter verification letter from the IRS from tax years 2015, 2019, and 2022, its most recently filed Form 990 for tax year 2021, and an Alabama Department of Revenue State Use and Tax Certificate of Exemption dated November 9, 2022, with an expiration date of December 31, 2023.³⁴⁸ The IRS may issue a group exemption for nonprofits affiliated under a central group which grants the entire group 501(c)(3) status without the need for every subordinate group

³⁴⁴ PLIMS, the Opportunity Center Easter Seal Facility - The Alabama Easter Seals Society, Inc., *Services on the PL*.

³⁴⁵ Opportunity Center Easter Seal Facility - The Alabama Easter Seals Society, Inc., OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³⁴⁶ See Dept. of the Treasury, Internal Revenue Service, Tax-exempt Organization Search, Easter Seals of Alabama, Inc., *available at*: <https://apps.irs.gov/app/eos/details/>

³⁴⁷ Email AbilityOne General Counsel to AbilityOne OIG (Dec. 27, 2022) on file with AbilityOne OIG.

³⁴⁸ See Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Apr. 13, 2015) ("As a holder of a group exemption letter, you are required to annually provide us with current information about each subordinate unit included under your ruling. This information will help us update our records."); Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Apr. 22, 2019); Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Nov. 9, 2022) (providing only the list sent to the IRS – letter omitted); Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Sept. 9, 2015) ("This is in response to your Sept, 01, 2015, request for information about your tax-exempt status. Our records indicate that you were issued a determination letter in July 1964, and that you are currently exempt under section 501(c)(3) of the Internal Revenue Code. Based on the information supplied, we recognized the subordinates named on the list you submitted as exempt from Federal income tax under section 501(c)(3) of the Code"); Easter Seals Alabama, Inc. Form 990 (making required disclosure for tax year 2021 covering the period of Oct. 1, 2020 to Sept. 31, 2021); Alabama Department of Revenue State Use and Tax Certificate of Exemption, Easter Seals Alabama, Inc. (Nov. 9, 2022) (showing a list of all EINs under the parent Easter Seals of Alabama Inc. all qualifying for tax exemption under Ala. Admin. Code r. 810-6-5-.02 - State Sales And Use Tax Certificate Of Exemption (Form STE-1) - Issued For Wholesalers, Manufacturers And Other Product Based Exemptions through the expiration date of December 31, 2023.); *see also* Email Easter Seals Alabama, Inc.. to AbilityOne OIG (Jan. 3, 2023) on file with AbilityOne OIG.

member to apply for recognition of 501(c)(3) status.³⁴⁹ The central entity of the group may file a group return or individual entities may file individual Form 990s.³⁵⁰

Based on the EIN provided on the NPA's original 501(c)(3) designation letter, AbilityOne OIG verified that the central group member (or parent company) Easter Seals Alabama Inc. (EIN: 63-0320188) had filed the Form 990 in tax-year 2021 and was currently in good standing with the IRS.³⁵¹ Since a central entity of the group may file a group return in lieu of individual Form 990s, based on the information submitted, Opportunity Center (EIN: 63-0727732) is in good standing with the IRS.³⁵²

Additionally, the NPA's 2022 State Use and Tax Certificate of Exemption issued by Alabama's Department of Revenue shows that Easter Seals of Alabama, Inc. (EIN: 63-0320188) holds several EINs and files annually as a tax-exempt group under Alabama Admin. Code r. 810-6-5-.02.³⁵³ AbilityOne OIG verified that the Opportunity Center (EIN: 630727732) – the legal entity under the group exemption which is affiliated with the AbilityOne Program – was listed on the 2022 Certificate of Exemption as in good standing with the state of Alabama.³⁵⁴

Since Opportunity Center (EIN: 630727732) and its parent Easter Seals Alabama, Inc. (EIN: 63-0320188) have maintained nonprofit statuses currently in good standing with both the IRS and its home state of Alabama, the participating NPA (Opportunity Center) has satisfied the nonprofit status Program requirement of a “qualified nonprofit agency.”³⁵⁵

³⁴⁹ See Dept. of the Treasury, Internal Revenue Service, *Group Exemptions*, available at: <https://www.irs.gov/charities-non-profits/group-exemptions-1> (“The IRS sometimes recognizes a group of organizations as tax-exempt if they are affiliated with a central organization. This avoids the need for each of the organizations to apply for exemption individually. A group exemption letter has the same effect as an individual exemption letter except that it applies to more than one organization. For more information about group exemption requirements and procedures, see Group Exemption Resources.”).

³⁵⁰ See Dept. of the Treasury, Internal Revenue Service, *Exempt Organizations Annual Reporting Requirements - Overview - Returns by Members of Group Ruling*, available at: <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-overview-returns-by-members-of-group-ruling> (“Do individual members of a group exemption ruling have to file separate Form 990 returns? The parent and subordinate organizations of each group exemption ruling must agree on their filing responsibilities. If the parent chooses to file a group return for some or all of its subordinate organizations, and those subordinate organizations agree to be included, then the subordinate organizations should not file their own separate returns. However, if a subordinate organization is not included in a group return, then it must file its own return unless it meets another exception to the filing requirements. See Filing Requirements for more details.”).

³⁵¹ See Dept. of the Treasury, Internal Revenue Service, Tax-exempt Organization Search, Easter Seals of Alabama, Inc., Form 990, available at: https://apps.irs.gov/pub/epostcard/cor/630320188_202109_990_2022082920303440.pdf

³⁵² See Dept. of the Treasury, Internal Revenue Service, *Exempt Organizations Annual Reporting Requirements - Overview - Returns by Members of Group Ruling*, available at: <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-overview-returns-by-members-of-group-ruling>

³⁵³ Alabama Department of Revenue State Use and Tax Certificate of Exemption, Easter Seals Alabama, Inc. (Nov. 9, 2022).

³⁵⁴ *Id.*

³⁵⁵ 41 U.S.C. § 8501(6-7).

4. Easter Seals of the Birmingham Area

AbilityOne OIG confirmed that Easter Seals of Birmingham Area (Easter Seals Birmingham) is no longer an NPA in the AbilityOne Program. PLIMS lists the NPA as “pending deletion.” The NPA’s last year fully participating in the AbilityOne Program was 2019. On its FY19 Reps&Certs, the NPA reported sales of \$415,118.72 total agency sales which included \$45,766.85 from AbilityOne PL goods and services.³⁵⁶ The NPA has no current goods or services on the AbilityOne PL.³⁵⁷

In early 2020, SourceAmerica notes within its Compliance trip report that the NPA’s new Executive Director indicated his intent to exit the Program and SourceAmerica provided the NPA Document No. USOP-0012 *Policy for NPA Notification of SourceAmerica of Desire to Terminate Product or Service Contract on the Procurement List*.³⁵⁸ Easter Seals Birmingham did not file an Annual Reps&Certs in FY20. The Director of Compliance informed “[i]n almost all the instances, NPAs which have signaled or taken earnest steps to depart from the Program will not file the Reps&Certs.”³⁵⁹

Easter Seals Birmingham (EIN 63-0570609) is a subsidiary of its parent company, Easter Seals Alabama, Inc.³⁶⁰ As discussed in detail in the section above, the IRS granted Easter Seals Alabama, Inc. a group exemption extending recognition of its 501(c)(3) status to its subordinate entities listed in the group.³⁶¹ Easter Seals Alabama, Inc. provided documentation demonstrating that the IRS recognizes Easter Seals Birmingham as a tax-exempt entity under the group exemption.³⁶²

³⁵⁶ Middle Flint Behavioral HealthCare, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³⁵⁷ PLIMS, Easter Seals of the Birmingham Area, *Products on the PL, Services on the PL*.

³⁵⁸ PLIMS, Easter Seals of the Birmingham Area, *Compliance Visit*, Transaction ID no. 40499, (summarizing findings from the compliance review conducted by SourceAmerica in February 2022 and noting that “the agency has a newly appointed Executive Director of 3 months and left behind was very little in the way of policy and procedure with regard to compliance with the AbilityOne Program. Discussion was held with {OMITTED}, the current Executive Director and the NPA is planning to exit the Program; the process by which this is accomplished has been provided (Document No. USOP-0012) Policy for NPA Notification of SourceAmerica of Desire to Terminate Product or Service Contract on the Procurement List.”).

³⁵⁹ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022).

³⁶⁰ See PLIMS, Easter Seals of the Birmingham Area, Bylaws (Apr. 26, 2012).

³⁶¹ See *infra* at p. 88; see also Dept. of the Treasury, Internal Revenue Service, *Group Exemptions*, available at: <https://www.irs.gov/charities-non-profits/group-exemptions-1> (“The IRS sometimes recognizes a group of organizations as tax-exempt if they are affiliated with a central organization. This avoids the need for each of the organizations to apply for exemption individually. A group exemption letter has the same effect as an individual exemption letter except that it applies to more than one organization. For more information about group exemption requirements and procedures, see Group Exemption Resources.”).

³⁶² See Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Apr. 13, 2015) (listing Easter Seals of the Birmingham Area EIN 63-0570609 as a “sub” and stating that “[a]s a holder of a group exemption letter, you are required to annually provide us with current information about each subordinate unit included under your ruling. This information will help us update our records.”); Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter

The central entity of the group may file a group return or individual entities may file individual Form 990s.³⁶³ According to the IRS's tax-exempt organization search tool, Easter Seals Birmingham (EIN: 63-0570609) has never filed its own separate IRS Form 990 and yields no search results.³⁶⁴

Additionally, the NPA's State Use and Tax Certificate of Exemption issued by Alabama's Department of Revenue shows that Easter Seals of Alabama, Inc. is currently a nonprofit in good standing with the state of Alabama.³⁶⁵ The Certificate notes that the entity holds several EINs filed annually as a tax-exempt group under Alabama Admin. Code r. 810-6-5-.02.³⁶⁶ AbilityOne OIG verified that the Certificate of Exemption listed Easter Seals Birmingham (EIN: 63-0570609) as a subordinate under Easter Seals Alabama, Inc.³⁶⁷

Since Easter Seals Birmingham and its parent Easter Seals Alabama, Inc. (EIN: 63-0320188) have maintained nonprofit status currently in good standing with both the IRS and its home state of Alabama, Easter Seals Birmingham satisfied the nonprofit status Program requirement of a "qualified nonprofit agency" during the NPA's tenure in the Program before voluntarily terminating participation in 2019.³⁶⁸

RECOMMENDATION 8: The Commission should enhance the collection and storage of documentation in PLIMS demonstrating the current nonprofit status of an NPA, if an NPA has been removed from the Program, if an NPA has voluntarily left the Program, or that an NPA has signaled intent or taken earnest steps to leave the Program. The Commission should also include documentation demonstrating that an NPA no longer participating in the Program have had its projects removed from the PL or transferred to another NPA.

(Apr. 22, 2019); Dept. of the Treasury, Internal Revenue Service, Easter Seals Alabama, Inc., 501(c)(3) Group Exemption Letter (Nov. 9, 2022) (providing only the list sent to the IRS – letter omitted);

³⁶³ See Dept. of the Treasury, Internal Revenue Service, *Exempt Organizations Annual Reporting Requirements - Overview - Returns by Members of Group Ruling*, available at: <https://www.irs.gov/charities-non-profits/exempt-organizations-annual-reporting-requirements-overview-returns-by-members-of-group-ruling> ("Do individual members of a group exemption ruling have to file separate Form 990 returns? The parent and subordinate organizations of each group exemption ruling must agree on their filing responsibilities. If the parent chooses to file a group return for some or all of its subordinate organizations, and those subordinate organizations agree to be included, then the subordinate organizations should not file their own separate returns. However, if a subordinate organization is not included in a group return, then it must file its own return unless it meets another exception to the filing requirements. See Filing Requirements for more details.").

³⁶⁴ See Dept. of the Treasury, Internal Revenue Service, Tax-exempt Organization Search, Easter Seals of the Birmingham Area, available at: <https://apps.irs.gov/app/eos/details/> (yielding no search results for EIN 63-0570609).

³⁶⁵ Alabama Department of Revenue State Use and Tax Certificate of Exemption, Easter Seals Alabama, Inc. (Nov. 9, 2022) (listing Easter Seals of the Birmingham Area EIN 63-0570609 as a sub).

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ 41 U.S.C. § 8501(6-7).

Currently, there is insufficient documentation in PLIMS that would signal to users that an NPA has left the Program or the underlying reasons why the NPA left the Program. (e.g. voluntarily or involuntarily). For example, the only documentation that Easter Seals Birmingham planned to leave the Program is found in notes from a Compliance Review trip report that includes unclear dicta indicating the NPA may leave the Program. PLIMS contains no follow-up documentation to demonstrate that the NPA ever actually left the Program, steps taken to remove the projects from the PL, or attempts to transfer the NPA's Projects to another NPA or remove them from the PL. PLIMS has no documentation demonstrating that interested parties - authorized distributors, contracting activities, etc. – have been informed the NPA is no longer authorized to provide its previously held AbilityOne PL projects.

1. Middle Flint Behavioral Healthcare Community Service Board

Middle Flint Area Community Service Board (d/b/a Middle Flint Behavioral Healthcare) is a nonprofit organization, established under Georgia Code § 37-2-6, as an instrumentality of the state of Georgia government.

AbilityOne OIG verified that Middle Flint Behavioral HealthCare, is an active AbilityOne NPA currently participating in the Program. The NPA performs one PL service project and produces zero PL products.³⁶⁹ On its FY22 Reps&Certs, the NPA reported sales of \$49,145.40 total agency sales which included \$16,381.80 from AbilityOne PL goods and services.³⁷⁰

On December 5th, 2022, the NPA informed AbilityOne OIG that the NPA is an instrumentality of the state of Georgia government established as a Community Service Board.³⁷¹ The NPA is named “Middle Flint Area Community Service Board” (the Board) with the d/b/a “Middle Flint Behavioral HealthCare.”³⁷² Under Georgia Code § 37-2-6, Community Service Boards are instrumentalities of the state of Georgia government and operated as nonprofits providing mental health, disability, and addiction healthcare services.³⁷³ Since the Board is an instrumentality of the

³⁶⁹ PLIMS, Middle Flint Behavioral HealthCare, *Products on the PL, Services on the PL*.

³⁷⁰ Middle Flint Behavioral HealthCare, OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³⁷¹ See Email Middle Flint Area Community Service Board to AbilityOne OIG (Dec. 5, 2022) on file with AbilityOne OIG.

³⁷² *Id.*

³⁷³ GA Code § 37-2-6 (2021) (“Community service boards in existence on June 30, 2014, are re-created effective July 1, 2014, to provide mental health, developmental disabilities, and addictive diseases services Such boards shall be considered public agencies. Each community service board shall be a public corporation and an instrumentality of the state; provided, however, that the liabilities, debts, and obligations of a community service board shall not constitute liabilities, debts, or obligations of the state or any county or municipal corporation and neither the state nor any county or municipal corporation shall be liable for any liability, debt, or obligation of a community service board. Each community service board re-created pursuant to this Code section is created for nonprofit and public purposes to exercise essential governmental functions.”); GA Code § 37-2-6.1 (“Each community service board exists for nonprofit and public purposes, and it is found and declared that the carrying out

state established by statute, the registration and other requirements delineated in Georgia Code Title 14 Chapter 3 “Nonprofit Corporations” are inapplicable.³⁷⁴

Note: The Board informed AbilityOne OIG that it created Middle Flint Behavioral Healthcare Foundation (the Foundation), but the Foundation was never utilized in connection with the AbilityOne Program. The Board no longer utilizes the Foundation and, due to its inactivity, the IRS has revoked the Foundation’s tax-exempt status for failure to file Form 990s and the State of Georgia has dissolved the entity.

Specifically, according to the IRS’s tax-exempt organization search tool, Middle Flint Behavioral Healthcare Foundation, Inc. (EIN: 26-2836002), last filed a Form 990 with the IRS in 2017.³⁷⁵ The IRS automatically revoked the NPAs tax-exempt status effective May 15, 2021, for failure to file for three consecutive years.³⁷⁶ The IRS publicly posted the notice on its automatic revocation list as of August 9, 2021.³⁷⁷

The Foundation’s home state of Georgia administratively dissolved the entity effective August 24, 2017.³⁷⁸ George’s Administrative Dissolution Filing Number 14822385 notes that the Foundation “in accordance with Title 14 of the Official Code of Georgia Annotated and was involuntarily or administratively dissolved or its certificate of authority revoked by the Office of Secretary of State on 08/24/2017 for failure to file its annual registration, failure to maintain a registered agent or registered office in this state, and/or failure to submit payment for a dishonored fee payment or for fees, taxes, or penalties owed.”³⁷⁹

of the purposes of each community service board is exclusively for public benefit and its property is public property. Thus, no community service board shall be required to pay any state or local ad valorem, sales, use, or income taxes.”).

³⁷⁴ GA Code § 14-3-1701 (2021) (providing that Chapter 3: Nonprofit Corporations is not applicable to corporations or public authorities established under another Georgia statute”).

³⁷⁵ See Internal Revenue Service, Tax-exempt Organization Search, Middle Flint Behavioral Healthcare Foundation, Inc., *available at*:

<https://apps.irs.gov/app/eos/detailsPage?ein=262836002&name=MIDDLE%20FLINT%20BEHAVIORAL%20HEALTHCARE%20FOUNDATION&city=AMERICUS&state=GA&countryAbbr=US&dba=&type=DETERMINATIONLETTERS,%20REVOCATION,%20COPYOFRETURNS&orgTags=DETERMINATIONLETTERS&orgTags=REVOCATION&orgTags=COPYOFRETURNS>

³⁷⁶ *Id.*; see also Dept. of Treasury, Internal Revenue Serv., *Automatic Revocation of Exemption for Non-Filing:*

Frequently Asked Questions (available at: https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf#:~:text=All%20exempt%20organizations%20required%20to%20file%20an%20annual,file%20a%20return%20or%20notice%2C%20see%20Annual%20Exempt.)).

³⁷⁷ See Internal Revenue Service, Tax-exempt Organization Search, Middle Flint Behavioral Healthcare Foundation, Inc.

³⁷⁸ See Georgia Corporation Division, Business Search, Middle Flint Behavioral Healthcare Foundation, Inc., Administrative Dissolution, Filing No. 14822385 (available at: <https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings>).

³⁷⁹ *Id.*

Since Middle Flint is a nonprofit organization, established under Georgia Code § 37-2-6, as an instrumentality of the state of Georgia government, the NPA has satisfied the nonprofit status Program requirement of a “qualified nonprofit agency.”³⁸⁰

2. iCan Resources, Inc.

iCan Resources, Inc. is a nonprofit in good standing with the Territory of Gaum.

AbilityOne OIG verified that iCan Resources, Inc. (iCan), is an active AbilityOne NPA currently participating in the Program. The NPA performs five PL service projects and produces zero PL products.³⁸¹ On its FY22 Reps&Certs, the NPA reported \$8,984,373.71 in total agency sales – all of which derived from the sale of AbilityOne PL goods and services with \$0 in other agency sales.³⁸²

The Territory of Gaum tax structure functions similar to the mainland U.S. noting that “{t}he U.S. Congress created the Territorial Government of Guam as a separate taxing jurisdiction by enactment of the Organic Act of Guam in 1950. Section 31 of the Act provides that the income tax laws in force in the United States shall be the income tax laws of Guam, substituting Guam for the United States where necessary and omitting any inapplicable or incompatible provisions. The U.S. Internal Revenue Code with such changes constitutes the Guam Territorial Income Tax Law.”³⁸³ Just like the U.S., the Territory of Gaum issues 501(c)(3) designations for nonprofits and requires the submission of Form 990s.

According to the IRS’s tax-exempt organization search tool, iCan Resources, Inc. (iCan) (EIN: EIN: 66-0728657) last filed a Form 990 in tax year 2016.³⁸⁴ However, IRS’s website does not list iCan’s tax-exempt status as automatically revoked for failure to file for three consecutive years.

Next AbilityOne OIG attempted to verify whether iCan was a nonprofit in good standing with its home Territory of Gaum. Gaum does not offer publicly available infrastructure similar to the IRS’s tax-exempt organization search tool which rendered AbilityOne OIG unable to obtain readily accessible information verifying that iCan had filed Form 990s with the Territory of Gaum. Gaum’s Department of Revenue issued a List of Tax-Exempt Organizations for 2022 which did include iCan as an active 501(c)(3) operating within the Territory.³⁸⁵ Since Gaum’s list included

³⁸⁰ 41 U.S.C. § 8501(6-7).

³⁸¹ PLIMS, iCan Resources, Inc., *Services on the PL*.

³⁸² iCan Resources, Inc., OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³⁸³ Gaum Department of Revenue, Gaum Tax Structure (available at: [https://www.guamtax.com/info/structure.html#:~:text=Guam%20Tax%20Structure.%20The%20U.S.%20Congress%20created%20the,necessary%20and%20omitting%20any%20inapplicable%20or%20incompatible%20provisions\).](https://www.guamtax.com/info/structure.html#:~:text=Guam%20Tax%20Structure.%20The%20U.S.%20Congress%20created%20the,necessary%20and%20omitting%20any%20inapplicable%20or%20incompatible%20provisions).)

³⁸⁴ See Internal Revenue Service, Tax-exempt Organization Search, iCan Resources, Inc., available at: <https://apps.irs.gov/app/eos/detailsPage?ein=660728657&name=ICAN%20RESOURCES%20INC&city=&state=&countryAbbr=US&dba=&type=COPYOFRETURNS&orgTags=COPYOFRETURNS>

³⁸⁵ Gaum Department of Revenue, Tax-Exempt Organizations (Sept. 30, 2022), available at: <https://www.guamtax.com/notices/2022NonProfitListingUpdate.pdf>

iCan as a 501(c)(3) as opposed to a nonprofit established under Gaum's Business Privilege Tax Code Section 26203(d), AbilityOne OIG determined to seek additional independent verification beyond this list demonstrating that the NPA had fulfilled the requirements, such as filing a Form 990, necessary to maintain 501(c)(3).

AbilityOne OIG then issued a records request to iCan's CNA, SourceAmerica, asking for information to verify iCan's current nonprofit status. SourceAmerica provided iCan's:

- Articles of Incorporation and bylaws with the Territory of Gaum business registration dated stamp establishing the charitable purposes of employing people with disabilities,
- OMB Form No. 3037-0003 Initial Certification – Qualified Nonprofit Agency Serving People with Disabilities, and
- the original transmittal letter asking SourceAmerica to review the NPA's eligibility as a nonprofit employing people with disabilities.³⁸⁶

SourceAmerica also provided several worksheets including for initial Program qualifications, an initial qualification packet, reporting updates to the Articles of Incorporation and Bylaws, and a copy of SourceAmerica's Compliance Review worksheet showing NPAs must provide copies of Articles of Incorporation and Bylaws during the visit, and a Reps&Certs checklist.

SourceAmerica's production verifies iCan's eligibility at the time of its admittance to the AbilityOne Program in 2011 but does not sufficiently demonstrate independent verification of iCan's current nonprofit status.

On December 6, 2022, AbilityOne OIG requested iCan produce documentation showing that the NPA had maintained a nonprofit status in good standing with the IRS or with its home Territory of Gaum.³⁸⁷ iCan promptly produced a copy of original 501(c)(3) designation letter from Guam Department of Revenue & Taxation dated February 17, 2011, its most recently filed Form 990 for tax year 2021 stamped as received by Gaum Department of Revenue & Taxation as of November 14, 2022, and a current Certificate of Existence from Guam Department of Revenue & Taxation used for its SAM renewal in June 2022 dated June 21, 2022.³⁸⁸

Since iCan has maintained current nonprofit status with its home Territory of Gaum, the NPA has satisfied the nonprofit status Program requirement of a "qualified nonprofit agency."³⁸⁹

³⁸⁶ See AbilityOne OIG Records Request SourceAmerica (Oct. 18, 2022); Email from SourceAmerica Counsel to AbilityOne OIG (Nov. 11, 2022); Email from SourceAmerica Counsel to AbilityOne OIG (Dec. 1, 2022).

³⁸⁷ See Email AbilityOne OIG to iCan Resources, Inc. (December 6, 2022) on file with AbilityOne OIG.

³⁸⁸ See Email iCan Resources, Inc. to AbilityOne OIG (December 8, 2022) on file with AbilityOne OIG.

³⁸⁹ 41 U.S.C. § 8501(6-7).

3. Pacific Ability Resources, Inc. (PARI)

Pacific Ability Resources, Inc. is a nonprofit in good standing with the Territory of Gaum.

AbilityOne OIG verified that Pacific Ability Resources, Inc. (PARI) is an active AbilityOne NPA currently participating in the Program. The NPA performs two PL service projects and products zero PL products.³⁹⁰ On its FY22 Reps&Certs, the NPA reported \$857,397.52 in total agency sales – \$426,705.73 derived from the sale of AbilityOne PL goods and services with \$430,691.79 derived from other agency sales.³⁹¹

According to the IRS's tax-exempt organization search tool, PARI (EIN: 66-0761594) last filed a Form 990 in tax year 2015.³⁹² However, IRS's website does not list PARI's tax-exempt status as automatically revoked for failure to file for three consecutive years.³⁹³

Next AbilityOne OIG attempted to verify whether PARI was a nonprofit in good standing with its home Territory of Gaum. Gaum does not offer publicly available infrastructure similar to the IRS's tax-exempt organization search tool which rendered AbilityOne OIG unable to obtain readily accessible information verifying that PARI had filed Form 990s with the Territory of Gaum. Gaum's Department of Revenue issued a List of Tax-Exempt Organizations for 2022 which did include PARI as an active 501(c)(3) operating within the Territory.³⁹⁴ Since Gaum's list included PARI as a 501(c)(3) as opposed to a nonprofit established under Gaum's Business Privilege Tax Code Section 26203(d), AbilityOne OIG determined to seek additional independent verification beyond this list demonstrating that the NPA had fulfilled the requirements, such as filing a Form 990, necessary to maintain 501(c)(3).

AbilityOne OIG then sent a records request to PARI's CNA, SourceAmerica, asking for information to verify PARI's current nonprofit status. SourceAmerica provided PARI's:

- Articles of Incorporation and bylaws with the Territory of Gaum business registration dated stamp establishing the charitable purposes of employing people with disabilities,
- OMB Form No. 3037-0003 Initial Certification – Qualified Nonprofit Agency Serving People with Disabilities, and

³⁹⁰ PLIMS, Pacific Ability Resources, Inc., *Services on the PL*.

³⁹¹ Pacific Ability Resources, Inc., OMB Form No. 3037-0013, *Representations and Certifications*, at Section 12, *Agency and AbilityOne Sales* (FY22).

³⁹² See Internal Revenue Service, Tax-exempt Organization Search, Pacific Ability Resources Inc., *available at*: <https://apps.irs.gov/app/eos/detailsPage?ein=660761594&name=PACIFIC%20ABILITY%20RESOURCES%20INC&city=&state=&countryAbbr=US&dba=&type=COPYOFRETURNS&orgTags=COPYOFRETURNS>

³⁹³ *Id.*

³⁹⁴ Gaum Department of Revenue, Tax-Exempt Organizations (Sept. 30, 2022), *available at*: <https://www.guamtax.com/notices/2022NonProfitListingUpdate.pdf>

- the original transmittal letter asking SourceAmerica to review the NPA’s eligibility as a nonprofit employing people with disabilities.³⁹⁵

SourceAmerica also provided several worksheets including for initial Program qualifications, an initial qualification packet, reporting updates to the Articles of Incorporation and Bylaws, and a copy of SourceAmerica’s Compliance Review worksheet showing NPAs must provide copies of Articles of Incorporation and Bylaws during the visit, and a Repts&Certs checklist.

SourceAmerica’s production verifies PARI’s eligibility at the time of its admittance to the AbilityOne Program in 2011 but does not sufficiently demonstrate independent verification of PARI’s current nonprofit status.

On December 6, 2022, AbilityOne OIG requested PARI produce documentation showing that the NPA had maintained a nonprofit status in good standing with the IRS or with its home Territory of Guam.³⁹⁶ PARI promptly produced a copy of original 501(c)(3) designation letter from Guam Department of Revenue & Taxation dated January 11, 2012, its most recently filed Form 990 for tax year 2021 stamped as received by Guam Department of Revenue & Taxation as of March 9, 2022, and a current Certificate of Existence from Guam Department of Revenue & Taxation dated December 7, 2022.³⁹⁷

Since PARI has maintained current nonprofit status with its home Territory of Guam, the NPA has satisfied the nonprofit status Program requirement of a “qualified nonprofit agency.”³⁹⁸

4. NPA1

NPA1 has not been a nonprofit organization in good standing with either the IRS or the NPA’s home state since 2021.

According to the IRS’s tax-exempt organization search tool, NPA1 last filed a Form 990 with the IRS in 2015. The IRS automatically revoked the NPAs tax-exempt status effective May 15, 2019, for failure to file a Form 990 for three consecutive years.³⁹⁹ The IRS publicly posted the notice on its automatic revocation list as of August 12, 2019.

Effective August 23, 2021, according to Thomas Reuters CLEAR, NPA1’s home state’s Secretary of State involuntarily revoked NPA1 in its home state because of a tax forfeiture or an administrative forfeiture. While home state Comptroller of Public Accounts does not list a date of

³⁹⁵ See AbilityOne OIG Records Request SourceAmerica (Oct. 18, 2022); Email from SourceAmerica Counsel to AbilityOne OIG (Nov. 11, 2022); Email from SourceAmerica Counsel to AbilityOne OIG (Dec. 1, 2022).

³⁹⁶ See Email AbilityOne OIG to PARI Resources, Inc. (December 6, 2022) on file with AbilityOne OIG.

³⁹⁷ See Email PARI Resources, Inc. to AbilityOne OIG (December 6, 2022) on file with AbilityOne OIG; *see also* Email PARI Resources, Inc. to AbilityOne OIG (December 7, 2022) on file with AbilityOne OIG.

³⁹⁸ 41 U.S.C. § 8501(6-7).

³⁹⁹ *Id.*; *see also*, Dept. of Treasury, Internal Revenue Serv., *Automatic Revocation of Exemption for Non-Filing: Frequently Asked Questions* (available at: https://www.irs.gov/pub/irs-tege/auto_rev_faqs.pdf#:~:text=All%20exempt%20organizations%20required%20to%20file%20an%20annual,file%20a%20return%20or%20notice%2C%20see%20Annual%20Exempt.)).

revocation, its records note that NPA1's Right to Transact Business in the State is currently involuntarily revoked "as a result of a tax forfeiture or an administrative forfeiture by the home state's Secretary of State."

Since NPA1 failed to maintain nonprofit status with its home state, the NPA has not satisfied the AbilityOne Program's nonprofit status requirement of a "qualified nonprofit agency" since 2021.⁴⁰⁰

Fraudulent Representations on NPA1's Annual Reps&Certs

The U.S. AbilityOne Commission's Annual Reps&Certs Form asks each NPA's Board of Directors Chairperson and President to certify, under penalty of 18 U.S.C. § 1001, numerous material representations relating to the NPAs nonprofit status, including the two applicable certifications below:

- Section 6, *AbilityOne Program Requirements*, Line 6A: "[i]n accordance with 41 CFR § 51-4.3(a), the NPA complies *"with the requirements of a "nonprofit agency for other significantly disabled" or a "nonprofit agency for the blind" as defined in 51-1 .3."*
- Section 7, *Nonprofit Agency Requirements*, Line 7C: "[i]f applicable, did the NPA submit the IRS Form 990 to the IRS within the last year?"⁴⁰¹

On its Annual Reps&Certs for FY16, FY17, FY18, FY19, FY20, and FY21, NPA1's Board of Directors Chairperson and President both signed and certified under penalty of 18 U.S.C. § 1001 that "yes" the NPA had complied with the requirements on a nonprofit agency employing the significantly disabled as defined in AbilityOne regulations at 41 C.F.R. § 51-1.3.⁴⁰² Specifically, 51-1.3 references the requirement that qualified NPAs must be nonprofits "organized under the laws of the United States or any State."⁴⁰³

On its Annual Reps&Certs for FY16, FY17, FY18, FY19, FY20, and FY21, NPA1's Board of Directors Chairperson and President both signed and certified, under penalty of 18 U.S.C. § 1001, that "Yes" NPA1 had submitted its Form 990 to the IRS within the last year.⁴⁰⁴ Users are prompted

⁴⁰⁰ 41 U.S.C. § 8501(6-7).

⁴⁰¹ NPA1, OMB Form No. 3037-0013, *Representations and Certifications*, at Line 6A and Line 7C.

⁴⁰² NPA1, OMB Form No. 3037-0013, *Representations and Certifications*, at Line 7C (FY16, FY17, FY18, FY19, FY20, and FY21)

⁴⁰³ 41 C.F.R. § 51 1.3 ("*Qualified nonprofit agency for other severely handicapped* (hereinafter nonprofit agency employing persons with severe disabilities) (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services."); NPA1 OMB Form No. 3037-0013, *Representations and Certifications*, at Line 6A (FY16, FY17, FY18, FY19, FY20, and FY21).

⁴⁰⁴ NPA1, OMB Form No. 3037-0013, *Representations and Certifications*, at Line 7C (FY16, FY17, FY18, FY19, FY20, and FY21).

to select “Yes” or “No” and to attach an explanation to the form, or “No” Form 990 is not applicable to the NPA.⁴⁰⁵

Tax-exempt organizations which are not granted an exception must file their Form 990 by the fifteenth day of the fifth month after the end of their tax year but will receive an automatic six-month extension upon request.⁴⁰⁶ For organizations which use the calendar year as their tax year, the filing deadline falls on May 15th and the filing deadline for those which requested an automatic extension falls on November 15th of the following year. Since NPA1 filed its 2015 tax-year Form 990 on November 14, 2016, AbilityOne OIG determined that NPA1 follows the calendar year as its tax year and, presumably, requested an automatic extension.⁴⁰⁷ Extensions requests are not disclosed publicly by the IRS.

The FY16 Annual Reps&Certs covers October 1st, 2015 to September 30, 2016. NPA1’s Board of Directors Chairperson and its President signed the Annual Reps&Certs on November 25th, 2016. Based on the executives’ signature date of November 25th, 2016—signed ten days after filing the tax-year 2015 filing on November 14, 2016—NPA1 did not submit false certifications on Line 7C of its FY16 Reps&Certs.

However, AbilityOne OIG’s preliminary investigation yielded evidence to suggest that NPA1 made false representations on Line 7C of its Reps&Certs submitted for FY17, FY18, FY19, FY20, and FY21 when the NPA certified to the Commission that it had submitted its Form 990 to the IRS within the last year when, in fact, the NPA has not filed a Form 990 since tax-year 2015 submitted on November 14, 2016.⁴⁰⁸ These five potential counts of false material representations on its Annual Reps&Certs may serve as the basis for prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, and other applicable criminal laws, and may subject the NPA to civil penalties under the False Claims Act and other applicable civil fraud remedies. The findings of AbilityOne OIG’s preliminary investigation warrant a full investigation.

AbilityOne OIG will coordinate with the Department of Justice to pursue appropriate criminal and civil dispositions. These efforts will encompass all relevant potential violations that may arise from further investigative activities that are within the scope of AbilityOne OIG’s jurisdiction, or the jurisdiction of our law enforcement partners. Consistent with AbilityOne OIG policy, OIG will not comment further on the investigation until it is completed. When our investigation is

⁴⁰⁵ *Id.*

⁴⁰⁶ See Dept. of Treasury, Internal Revenue Serv., Publication 4839, *Annual Form 990 Filing Requirements for Tax Exempt Organizations* (Rev. 1-2020), available at: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>

⁴⁰⁷ See Dept. of Treasury, Internal Revenue Serv., Publication 4839, *Annual Form 990 Filing Requirements for Tax Exempt Organizations* (Rev. 1-2020) (available at: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>); See Dept. of Treasury, Internal Revenue Service, *Return Due Dates for Exempt Organizations: Annual Return* (available at: <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return>).

⁴⁰⁸ See Dept. of Treasury, Internal Revenue Service, Tax-exempt Organization Search, NPA1, IRS Form 990 Tax Year 2015.

concluded, AbilityOne OIG will proceed with the process for releasing our findings in accordance with applicable laws, regulations, and policies.

Removing NPA1 from the AbilityOne Program

On May 13, 2022, SourceAmerica informed the Commission that NPA1 was delinquent in Program Fee payments.⁴⁰⁹ which triggered a heightened Compliance Review of the NPA by the CNA in which the CNA discovered that the IRS had revoked the NPA's 501(c)(3) status for failing to file their Form 990s. On May 16, 2022, SourceAmerica and the Commission conducted a prescheduled, routine, onsite Compliance Review of NPA1, in which they issued corrective action for missing IEEs, missing signatures on previous IEEs, and lack of a placement program. The reviewers confirmed that the IRS had revoked NPA1's 501(c)(3) status and, through public records, discovered that NPA's home state had also revoked their business license.⁴¹⁰

The Commission intended to provide the NPA a chance to cure the Program requirement deficiency; however, NPA1 failed to submit adequate corrective action by the June 15, 2022, deadline. NPA1 submitted an inadequate corrective action response on June 23, 2022.⁴¹¹

On July 27, 2022, the Commission temporarily suspended new assignments and allocations to NPA1, Inc. and provided the NPA until August 15, 2022, to provide proof of nonprofit status between 2016 to present or proof of corrective action.⁴¹² NPA1 did not respond to the Commission's requests.

On September 8, 2022, the Commission deauthorized NPA1 from participating in the Program for failure to maintain status as a nonprofit, as required by the JWOD Act.⁴¹³ The Commission's deauthorization notice stated that "NPA1 is no longer authorized to provide products and services in the AbilityOne Program. NPA1 has a contract to provide stamp products to GSA/FAS ADMIN SVCS ACQUISITION BR. The Commission has directed SourceAmerica to work with NPA1 to complete any open orders it is able to fulfill through October 31, 2022, after which time, NPA1

⁴⁰⁹ See email from Dir. of Compliance, U.S. AbilityOne Commission to Acting Deputy Inspector General and Assistant Inspector General for Investigations, U.S. AbilityOne OIG (Aug. 19, 2022, 18:36 EST); Email from SourceAmerica to Compliance Manager, U.S. AbilityOne Commission (May 13, 2022, 15:33 EST).

⁴¹⁰ Email from Vocational Rehabilitation Specialist, U.S. AbilityOne Commission to Dir. of Compliance, U.S. AbilityOne Commission (May 23, 2022, 08:49 EST); see Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 4, 2023); see Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm'n (Jan. 5, 2023).

⁴¹¹ *Id.*

⁴¹² Letter from Executive Dir., U.S. AbilityOne Commission, to Bd. Chairman, NPA1 and President, NPA1 (July 27, 2022) ("Accordingly, you are directed to submit facts and documentary evidence demonstrating that NPA1 is currently a nonprofit agency, and proof of previous compliance dating back to 2016 or completed corrective action. This information must be provided to the Commission no later than August 15, 2022.").

⁴¹³ Letter from Executive Dir., U.S. AbilityOne Commission, to Bd. Chairman, NPA1 and President, NPA1 (Sept. 8, 2022).

will no longer be authorized to fill any additional orders or execute a follow-on contract with GSA, including any remaining options or extensions.”⁴¹⁴

RECOMMENDATION 9: AbilityOne OIG recommends that the Commission adopt a process to independently verify, on an annual basis, that the NPA’s nonprofit status is in good standing with either the NPA’s home state or the IRS, if applicable.

While the Commission has a process to verify nonprofit status at the time of initial AbilityOne Program Qualification, subsequently the Commission’s process for annual nonprofit status verification appears to rely solely on the NPA’s self-certification under penalty of 18 U.S.C. 1001 on its Annual Reps&Certs. The Commission’s reliance on self-certification creates risk that an NPA may conceal it has lost its good standing as a nonprofit with its home state or the IRS by falsely certifying that it has maintained status. As shown above, the Commission’s process of relying on self-certification was unable to detect an AbilityOne NPA which had lost its nonprofit designation.

- e. **Allegation: The Commission failed to take appropriate corrective action, according to the whistleblower, after two employees at NPA1, Inc., complained that the NPA was falsely reporting that 100 percent of its direct labor hours were completed by the two employees and that the SourceAmerica inspection visit in 2016 was “staged” to hide the fact that non-disabled workers were instead performing the work. The workers also asked for more adaptive equipment to increase safety, accessibility, and productivity, but said they were told that funds were not available even while money was spent on another family business, cars for family members and ski trips.**

Complaint Regarding NPA1 received by AbilityOne OIG

AbilityOne OIG also received a similar hotline complaint in June of 2020; however, OIG has conducted no significant investigatory efforts. The OIG exercises independent judgment in determining priorities and the best use of available resources to meet our responsibilities under the Inspector General Act. Based on our review of the allegation, OIG determined a preliminary investigation was warranted but other OIG active criminal, civil, and administrative cases took precedence. The complaint remains open in OIG’s case management system (CMS) for a potential future review depending on priorities and resources.

As a result of investigatory efforts conducted pursuant to this OSC complaint, AbilityOne OIG has determined that there is evidence suggesting NPA1 made materially false misrepresentations or omissions on its Annual Reps&Certs which may serve as the basis for prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, and other applicable criminal laws, as discussed in the section above.

⁴¹⁴ *Id.*

AbilityOne OIG will coordinate with the Department of Justice to pursue appropriate criminal and civil disposition.

INVESTIGATION

Original Complaint

On January 26, 2017, the U.S. AbilityOne Commission received a telephone call from a whistleblower who reported that NPA1 was allegedly defrauding the AbilityOne Program by employing people who were not blind or did not have significant disabilities to perform in direct labor hour positions and that NPA1 tricked and prevented the SourceAmerica compliance reviewer from discovering the fraud by performing a “staged” compliance visit in which NPA1 instructed the non-blind/non-disabled employees to not perform their “regular” direct labor hour work during the compliance visit.⁴¹⁵

Investigation

Initially, to investigate the allegations from the OSC complaint, AbilityOne OIG sought to determine what steps the Commission took in response to the 2017 complaint against NPA1 and analyze whether the Commission’s response in 2017 adhered to protocols established under Policy 51.410, *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*. However, the Commission issued its first iteration of Compliance Policy 51.410 on April 3, 2017, but the Commission received the complaint against NPA1, in January of 2017, two months before the issuance of the Policy. As the Commission did not have an applicable Policy in effect when the Commission received the complaint in 2017, AbilityOne OIG’s current investigation reviewed the Commission’s electronically stored email communications, reviewed documents in PLIMS, conducted interviews of Compliance staff, and interviewed the SourceAmerica Compliance Specialist from the 2017 visit to determine what steps the Commission undertook in response to the 2017 complaint. OIG recommends that the Commission determine whether the Commission’s actions or lack thereof, constituted a reasonable response in light of the absence of a governing Policy and process.

Commission’s Response in 2017 to the Complaint

On Monday January 30, 2017, the Director of Contracting forwarded a summary of the whistleblower’s telephone allegations to the Compliance Manager and requested that the Compliance Manager follow-up.⁴¹⁶ On Thursday February 16, 2017, the Compliance Manager

⁴¹⁵ See email AbilityOne Commission Business Management Specialist to Director of Business Operations and Director of Contracting (Jan. 26, 2017, at 4:03pm) (detailing the allegations made in a telephone call from a whistleblower on Thursday January 26, 2017, at approximately 3:00pm).

⁴¹⁶ See email Director of Contracting to Compliance Manager (January 30, 2017).

forwarded the complaint summary to the employee then serving as Director of Compliance (“Former Director of Compliance”).⁴¹⁷

On Friday February 17, 2017, the Compliance Manager emailed the Former Director of Compliance a draft summary of the complaint against NPA1 stating that “[b]ased on the complainant’s allegations, the information in PLIMS, and along with FY16 AR&C; it is likely that the NPA is not reporting accurately. The requested FY15/16 QERs should be able to add to the conversation about the NPAs reporting once SourceAmerica submits the reports.”⁴¹⁸

On Friday February 17, 2017, at the Commission’s request, a SourceAmerica Program Analyst emailed Adobe PDF files of NPA1’s FY15, FY16, and Q1 FY17 Quarterly Employment Reports (QER) to Former Director of Compliance.⁴¹⁹

On Monday March 6, 2017, Compliance Manager emailed an attachment to the Former Director of Compliance summarizing the complaint and stated, “[a]t the time there was no policy and procedure in place. We did discuss and impromptu visit to the NPA.”⁴²⁰ AbilityOne OIG was informed by the Compliance Manager in 2023 that the impromptu visit never occurred.⁴²¹ The Manager—who at the time of the complaint was not in a leadership or decision-making role—could not recall whether the reason why the trip did not occur was due to budget concerns, government furlough, or other reasons.⁴²² AbilityOne OIG reviewed email correspondence and PLIMS but was unable to locate evidence showing or suggesting why the impromptu compliance visit never occurred.

March of 2017 until May of 2022.

AbilityOne OIG found no evidence that the Commission took any additional steps to investigate the complaint between March of 2017 until May of 2022.

2022

On May 18, 2022, the Compliance Manager emailed the then Deputy Executive Director/Acting Executive Director indicating that she consolidated the communications about NPA1 that began in late 2016.⁴²³ The Compliance Manager notes that the NPA1’s maintaining qualification history, the 2017 complaint about it, and the NPA’s omission of information from FY19 through FY21 on

⁴¹⁷ See email Director of Contracting to Compliance Manager (Feb. 17, 2017, at 8:28 am).

⁴¹⁸ See email Compliance Manager to the Former Director of Compliance (February 17, 2017, at 8:28 am).

⁴¹⁹ See email SourceAmerica Program Analyst to Former Director of Compliance (February 17, 2017, at 9:00 am).

⁴²⁰ See email Compliance Manager to the Former Director of Compliance (March 6, 2017, at 8:50am) (containing a Word document titled “NPA1, Inc.docx”)

⁴²¹ See Memorandum of Interview with Compliance Manager Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023).

⁴²² *Id.*

⁴²³ See email Compliance Manager to Deputy Executive Director/Acting Executive Director (May 18, 2022, at 12:59 pm)

its Annual Repts&Certs Line7C (Form 990s) suggests that NPA1's CEO and Board Chair falsified a federal document with signatures that the information reported is accurate.⁴²⁴ Compliance Manager also stated, "in consideration that NPA1 did not have a successful CNA/OCD review on Mon, 5/16; I recommend that NPA1 come before the Commission Board for a vote to determine its remaining participation in the AbilityOne Program."⁴²⁵ Despite in 2022 identifying evidence that suggests an NPA submitted a false certification, the Compliance Office did not notify AbilityOne OIG as is required under Policy 51.403.⁴²⁶

On June 27, 2022, the then Acting Director of Compliance emailed the Compliance Manager requesting that the Compliance Manager prepare a draft Suspension Letter for NPA1.⁴²⁷

On Wednesday, July 27, 2022, the Commission's Acting Executive Director emailed an official letter of temporary suspension to the President of NPA1, instructing NPA1 to submit facts and documentary evidence demonstrating that NPA1 is currently a nonprofit agency in good standing and proof of previous compliance dating back to 2016 or a recent corrective action.⁴²⁸ The letter also informed NPA1 that the Commission had exercised its regulatory authority to direct SourceAmerica to temporarily suspend new assignments and allocations to NPA1, effective immediately.⁴²⁹

On Tuesday August 16, 2022, the Acting Executive Director emailed the Commission's Acting Director of Compliance, General Counsel, and Acting Deputy Executive Director directing the Commission's staff to continue to draft a Decision Document to suspend NPA1 from the AbilityOne Program.⁴³⁰

On Wednesday August 17, 2022, the Acting Executive Director emailed the President of NPA1, informing NPA1 that the AbilityOne Commission has not received a response to its July 27, 2022,

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ See AbilityOne Compliance Policy 51.403(6)(f)(i-ii), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020) ("If a Commission compliance inspection reveals evidence that one or more NPA executives signed an incorrect annual certification or self-certification audit results, or information indicating that any other possible illegal activity may have taken place, the Commission will notify the AbilityOne Office of the Inspector General, in accordance with the Inspector General Act of 1978, as amended, and will make referral to the appropriate office of the United States Attorney or other interested Federal official") (available at: https://www.abilityone.gov/laws,_regulations_and_policy/documents/Commission%20Policy%2051.403%20Effective%2012Nov2020.pdf).

⁴²⁷ See email then Acting Director of Compliance to the Compliance Manager (June 27, 2022, at 1:24 pm).

⁴²⁸ See email then Deputy Executive Director to the President of NPA1 (July 27, 2022); Letter from Executive Dir., U.S. AbilityOne Commission, to Bd. Chairman, NPA1 and President, NPA1 (July 27, 2022) ("Accordingly, you are directed to submit facts and documentary evidence demonstrating that NPA1 is currently a nonprofit agency, and proof of previous compliance dating back to 2016 or completed corrective action. This information must be provided to the Commission no later than August 15, 2022.").

⁴²⁹ *Id.*

⁴³⁰ See email then Deputy Executive Director sent to the Commission's then Acting Director of Compliance, General Counsel, and Acting Deputy Executive Director (August 16, 2022, at 9:48 am).

temporary suspension letter and that an extension for a response was granted to Friday August 19, 2022, at 5:00 pm.⁴³¹

On Tuesday August 30, 2022, the Acting Deputy Executive Director sent an email to the President of NPA1, which informed NPA1 that the AbilityOne Commission has not received a response to the July 27, 2022, or August 17, 2022, requests and that an extension for a response was granted to Friday September 2, 2022, at 5:00 pm EST.⁴³²

AbilityOne OIG reviewed the Compliance Visits Reports on PLIMS for NPA1's December 2016 compliance review which was conducted by Senior Subject Matter Regulatory Oversight & Monitoring Specialist, SourceAmerica (SourceAmerica Specialist). The Trip Reports files and comments contained no references to the 2017 allegations. AbilityOne OIG interviewed the SourceAmerica Specialist but the SourceAmerica Specialist did not recall the allegations or any notable findings or details from the trip, as "the trip occurred roughly six years ago."⁴³³ The allegations were made directly to Commission staff, and AbilityOne OIG did not discover evidence suggesting SourceAmerica had knowledge of the allegation which would have triggered SourceAmerica's obligations under the Cooperative Agreement to provide the Commission a Mandatory Disclosure and an explanation of how the CNA is educating the NPA to prevent future issues.⁴³⁴ While the CNA is required to inform the Commission of certain complaints, neither

⁴³¹ See email then Deputy Executive Director to the President of NPA1 (August 17, 2022, at 11:35 am).

⁴³² See email then Deputy Executive Director to the President of NPA1 (August 30, 2022, at 11:40 am).

⁴³³ See Memorandum of Interview with Senior Subject Matter Regulatory Oversight & Monitoring Specialist, SourceAmerica (documenting that the OIG asked several questions surrounding the allegation made by the whistleblower; including 1) Do you recall anything specific about NPA1's Compliance Review from December 2016?; 2) Do you recall conducting an interview of any AbilityOne Program participants during the NPA1 Compliance Review from December 2016?; 3) Do you recall speaking to anyone during the NPA1 Compliance Review from December 2016 who may have provided details that NPA1 staged the business area?; 4) Do you recall speaking to anyone during NPA1's Compliance Review from December 2016 in which you were provided details that NPA1. was unable to provide adaptive equipment to blind workers due to NPA1. spending funds on another family business, car, family members or ski trips? The Senior Subject Matter Regulatory Oversight & Monitoring Specialist's response to the above four questions was "No;" and the Specialist also did not recall or have any information related to the Compliance Review of NPA1s in 2016, aside from only conducting the compliance review.).

⁴³⁴ See, Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and SourceAmerica, 3.3.1.3 NPA Regulatory Review and Assistance Visits (RRAV), (Effective Date 4/7/2022), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%20MOD8%20Final.pdf ("The CNA shall disclose, in writing to the Commission PMO, all litigation and all allegations, findings or knowledge of violations of federal law (such as fraud, bribery, or gratuity violations) by the CNA and/or its NPAs involving the AbilityOne Program within five (5) business days of initial notice to the CNA, to the extent permitted by law, or not otherwise advised against by the investigating official (noted in Deliverables Schedule as "Mandatory Disclosures"). The CNAs shall also provide the Commission PMO with an explanation of how the violation occurred as that information becomes available and the steps the CNA is taking to educate the NPA on how to prevent similar or future violations related to the AbilityOne Program. If the violation occurred by the CNA, the CNA shall provide the Commission PMO with the steps the CNA is taking to prevent further similar violations. In addition, the CNAs shall report in writing any potential conflict of interests affecting the PL and AbilityOne Program to the Commission PMO within five (5) business days of learning of the actual or perceived conflict of interest.").

Commission policy nor the Cooperative Agreements, as well as best practice for ensuring confidentiality where appropriate, suggest that Commission staff should inform the CNA of complaints.⁴³⁵

No additional records or Compliance personnel are available for additional investigative efforts.

CURRENT POLICY

Compliance Policy 51.410, Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program

On April 3, 2017, the AbilityOne Commission issued the first iteration of Compliance Policy 51.410, *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*.⁴³⁶ Policy 51.410 has been revised on August 10, 2020⁴³⁷, and again on November 12, 2020.⁴³⁸ The November 2020 version currently governs.⁴³⁹ The policy revisions are materially the same but now include updates to administrative process (e.g. such as a new online complaint intake form and updated email addresses), list more detail on what complaints will be referred to federal agencies with special jurisdiction, and include language emphasizing the Commission's increased coordination and referrals to AbilityOne OIG, which had just been established shortly after the issuance of the 2017 policy version.⁴⁴⁰ The first IG was appointed in May of 2017 after a national search. AbilityOne OIG will distinguish between policy versions below, as applicable.

Under both the 2017 and 2020 versions of Policy 51.410, the Executive Director has delegated authority to the Director of Compliance to process complaints.⁴⁴¹ The Director of Compliance “shall ensure the compliance team members are trained to receive and process complaints and establish annual refresher training; review and approve all complaints processed by the compliance team; conduct after-action reviews for closed complaints; provide weekly updates to the Deputy Executive Director; and provide monthly updates to the Executive Director on any systemic

⁴³⁵ *Id.*

⁴³⁶ AbilityOne Compliance Policy 51.410 (April 3, 2017), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%2051.410%20Signed.pdf

⁴³⁷ AbilityOne Compliance Policy 51.410 (Aug. 15, 2020), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/Commission%20Policy%2051.410%20signed%20effective%2015Aug2020.pdf; AbilityOne Compliance Policy 51.410 (Nov. 12, 2020), *available at*: https://www.abilityone.gov/laws_regulations_and_policy/documents/Commission%20Policy%2051.410%20Effective%2012Nov2020.pdf

⁴³⁸ AbilityOne Compliance Policy 51.410 (Nov. 12, 2020).

⁴³⁹ *Id.*

⁴⁴⁰ *See generally*, AbilityOne Compliance Policy 51.410 (April 3, 2017); AbilityOne Compliance Policy 51.410 (Aug. 15, 2020); AbilityOne Compliance Policy 51.410 (Nov. 12, 2020).

⁴⁴¹ AbilityOne Compliance Policy 51.410(5)(a) (April 3, 2017); AbilityOne Compliance Policy 51.410(5)(a) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(5)(a) (Nov. 12, 2020).

issue.”⁴⁴² The Director of Compliance has sixty days under the Policy to establish and maintain a tracking and reporting system and establish and publish the complaint process on the Commission's website.⁴⁴³ Commission staff outside of the Compliance Office are expected to forward any complaints received to a Compliance staff member.⁴⁴⁴

The Commission will investigate complaints as appropriate, refer complaints to appropriate authorities, protect anonymity as feasible, and “under no circumstances shall anyone interfere, obstruct, impede or otherwise disrupt the complaint process.”⁴⁴⁵

Under the Policy, “compliance team members will be assigned to process complaints by the Director of Oversight and Compliance based on an internal duty roster.”⁴⁴⁶ The Compliance Office staff member must process the complaint within two business days, including preparing and sending the Compliance Director a written report that recommends a course of action for review and approval.⁴⁴⁷

The Compliance Director will obtain a legal consultation from Office of General Counsel.⁴⁴⁸ Compliance Office will forward complaints to agencies with proper jurisdiction (e.g. fraud complaints to AbilityOne OIG, wage violations to age and Hour Division, Department of Labor, etc.).⁴⁴⁹

Training

Compliance Policy 51.410, *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program* states that “[t]he Director of Oversight and Compliance shall: [e]nsure the Compliance Office team members are trained to receive and process complaints and establish annual refresher training.”⁴⁵⁰ The Director of Compliance informed OIG that trainings are offered to employees “as necessary,” to employees who specifically seek out the training, or to employees who are expected to process complaints

⁴⁴² AbilityOne Compliance Policy 51.410(5)(b) (April 3, 2017); AbilityOne Compliance Policy 51.410(5)(b) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(5)(b) (Nov. 12, 2020).

⁴⁴³ AbilityOne Compliance Policy 51.410(5)(c) (April 3, 2017); AbilityOne Compliance Policy 51.410(5)(c) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(5)(c) (Nov. 12, 2020).

⁴⁴⁴ AbilityOne Compliance Policy 51.410(5)(e) (April 3, 2017); AbilityOne Compliance Policy 51.410(5)(e) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(5)(e) (Nov. 12, 2020).

⁴⁴⁵ AbilityOne Compliance Policy 51.410(6) (April 3, 2017); AbilityOne Compliance Policy 51.410(6) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(6) (Nov. 12, 2020).

⁴⁴⁶ AbilityOne Compliance Policy 51.410(8)(F) (April 3, 2017); AbilityOne Compliance Policy 51.410(8)(f) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(8)(f) (Nov. 12, 2020).

⁴⁴⁷ AbilityOne Compliance Policy 51.410(8) (April 3, 2017); AbilityOne Compliance Policy 51.410(8) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(8) (Nov. 12, 2020).

⁴⁴⁸ AbilityOne Compliance Policy 51.410(8)(G) (April 3, 2017); AbilityOne Compliance Policy 51.410(8)(g) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(8)(g) (Nov. 12, 2020).

⁴⁴⁹ AbilityOne Compliance Policy 51.410(8) (April 3, 2017); AbilityOne Compliance Policy 51.410(8) (Aug. 15, 2020); AbilityOne Compliance Policy 51.410(8) (Nov. 12, 2020).

⁴⁵⁰ AbilityOne Compliance Policy 51.410(5)(b) (April 3, 2017), *available at*: https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%2051.410%20Signed.pdf

but there is no formalized annual training.⁴⁵¹ Compliance Office staff informed OIG that they had never received training on processing complaints and felt there was no clear guidance.⁴⁵² As training on AbilityOne policies, new Compliance Office staff were told to read the policies on their own and had to acquire requisite knowledge without structured or formalized training.⁴⁵³ Compliance Office staff did not feel this method was effective.⁴⁵⁴

RECOMMENDATION 10: In order to comply with Policy 51.410 *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*, AbilityOne OIG recommends that the Commission develop formal training for all its Compliance Office staff and contractors on Policy 51.410, and other policies, as applicable, to be taken annually as a refresher and for new Compliance Office staff and contractors to be taken at onboarding.

Processing Complaints

Compliance Policy 51.410 *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program* states that “[w]ithin sixty days, the Director of Oversight and Compliance shall: [e]stablish and maintain the tracking and reporting systems.”⁴⁵⁵ The Director of Compliance stated that Compliance has a “virtual system” to track complaints that should include “what was the last touch that was associated with that complaint.”⁴⁵⁶ Compliance staff expressed confusion around the process and informed OIG that there is not a clear process capable of being duplicated.⁴⁵⁷

Policy 51.410 states that “[i]ndividuals should submit their complaint in writing via the Complaint In-take Form located at https://www.abilityone.gov/abilityone_program/compliance.html on the website, or by sending an email, letter, or other form of written communication to the Compliance

⁴⁵¹ See Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023) (“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [Director of Compliance] advised as follows: Training on Policy 51.410 on how to process complaints coming from NPA employees are available to Compliance Office staff ‘for those who seek the training. Many of our staff members have been present even before the policy existed, so they know it better than I do, or they know the expectation certainly.’ New Compliance Office employees who are expected to be complaint responders or coordinators are offered the training. Compliance Office offers employees refresher trainings on Policy 51.410 ‘as necessary,’ but there is not a specific date that is used for an annual training.”)

⁴⁵² See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 4, 2023).

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ AbilityOne Compliance Policy 51.410(5)(b)(April 3, 2017), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%2051.410%20Signed.pdf

⁴⁵⁶ *Id.* at (5)c).

⁴⁵⁷ See, Memorandum of Interview with Compliance Manager Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023). (“there has not been a consistent process for Compliance to track when a complaint has been sent to OIG, another agency, or whether Compliance has conducted its own interviews. “If you had to go back and duplicate a process...I can’t offer you a duplicated process.”

team. However, verbal complaints will be accepted.”⁴⁵⁸ OIG found that the link provided above does not take users to an online intake form. Upon reasonable searching of the Commission’s website, AbilityOne OIG could not locate an online intake form. Additionally, the Commission directs complainants to send mail to the Commission’s old physical address in Virginia from before the Agency’s relocation to Washington, D.C.

Policy 51.410 states that “[i]f the complaint involves fraud, waste, abuse or reprisal for protected communications, the Director of Oversight and Compliance will refer the complaint to the Commission OIG, as required by the IG Act, at 703-603-2124 and igoffice@oig.abilityone.gov.” However, the telephone number provided is no longer in use as the Agency has relocated, and AbilityOne OIG has never had access to the email address provided. AbilityOne OIG has expressed concerns to the Director of Compliance about the inaccurate contact information since 2020.

AbilityOne OIG is concerned that listing outdated Agency and OIG contact information or contact information that was inaccurate at the inception of the Policy may result in individuals making important complaints which never reach the appropriate entity.

RECOMMENDATION 11: AbilityOne OIG recommends that the Commission conduct an in-depth review of whether the Office of Compliance’s practices adhere to the procedural requirements of Policy 51.410 *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*. OIG recommends that the Commission ensure all open complaints have been given proper resolution in accordance with the procedural requirements of Policy 51.410. OIG recommends that the Commission correct outdated links, intake forms, and contact information to ensure complainants may reach the appropriate entity.

f. Allegation: Lighthouse of San Francisco has been failing to comply with AbilityOne requirements since 2019 but has received over \$7 million through JWOD contracts since then.

AbilityOne OIG verified that Lighthouse for the Blind and Visually Impaired (d/b/a Lighthouse of San Francisco) is an active NPA in the AbilityOne Program. The NPA currently produces five PL products and performs zero services.⁴⁵⁹ The NPA reported the following earnings on its Repts&Certs for FY19 through FY21.

⁴⁵⁸ AbilityOne Compliance Policy 51.410(8)(d) (April 3, 2017), *available at*:

https://www.abilityone.gov/laws_regulations_and_policy/documents/Policy%2051.410%20Signed.pdf

⁴⁵⁹ PLIMS, Lighthouse for the Blind and Visually Impaired, PL Services, PL Projects.

FY	AbilityOne PL goods and services	Total Agency Sales
FY19	\$2,599,396	\$2,910,305
FY20	\$2,439,576	\$4,832,734
FY21	\$2,316,781	\$3,233,728

AbilityOne OIG reviewed Lighthouse for the Blind and Visually Impaired's (d/b/a Lighthouse of San Francisco) Compliance Visit Reports on PLIMS. The NPA received an "overall adequate rating" in Compliance Reviews from FY11 through FY18.⁴⁶⁰ However, the NPA received a "not overall adequate" rating during their FY19, FY21, and FY22 compliance visits.⁴⁶¹ The NPA did not have a compliance visit in FY20.⁴⁶²

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY19	- Signed Medical Documentations - Special Minimum Wage Certificate - DOL Commensurate Wages - OSHA Compliance	5/31/ 2019	Yes	No	N/A
FY21	- Proper Evaluation - Special Minimum Wage Certificate	9/28/2021	N/A	N/A	N/A
FY22	- Signed Medical Documentation - Proper Evaluation	2/23/2022	Yes	No	Yes

⁴⁶⁰ PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id 16100, 22518, 31235, and 34888)

⁴⁶¹ PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id 41495, 37082, 44523, 45005, 46819, and 45416)

⁴⁶² See generally, PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits

Submission of Corrective Action

While the Commission has not prescribed any deadline for NPAs to respond to corrective action in any written regulation, policy, or guidance document, the deadline has been defaulted to thirty days.⁴⁶³ CNAs may grant one extension request and the Compliance Office must grant any additional requests.⁴⁶⁴ Based on the records housed in PLIMS or provided by the Commission and interviews with the Director of Compliance, AbilityOne OIG found no evidence showing that Lighthouse of San Francisco was granted a corrective action deadline extension in FY19, FY21, and FY22.⁴⁶⁵ It appears that Lighthouse of San Francisco failed to submit corrective action within the prescribed thirty-day deadline for FY19, FY21, and FY22. In FY19, Lighthouse of San Francisco submitted an untimely corrective action response, and PLIMS does not note whether the Commission deemed the response adequate.⁴⁶⁶

Since no corrective action was housed in PLIMS for FY21 and FY22, OIG asked the Director of Compliance on September 8, 2022, whether Lighthouse of San Francisco had submitted corrective action for FY21 and FY22.⁴⁶⁷ On September 8, 2022, the Director of Compliance informed OIG that “Compliance [Office] received a response from Lighthouse of San Francisco regarding the corrective action issued for 2021 and 2022. Lighthouse has addressed all issues in the corrective action except for completing the Individual Eligibility Evaluation (“IEE”) for one employee. [The Director of Compliance] is waiting for confirmation that the outstanding issue has been completed and that NIB has reviewed it and determined the response is satisfactory.”⁴⁶⁸ On September 9, 2022, Compliance Office added a summary of completed corrective action to PLIMS.⁴⁶⁹ As of January 17, 2023, no FY21 corrective action submission has been added to PLIMS.

⁴⁶³ See Memorandum of Interview with Employee Oversight & Comp., U.S. AbilityOne Comm’n (Jan. 5, 2023)

⁴⁶⁴ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Aug. 8, 2022); See, Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and SourceAmerica, 3.3.1.3 NPA Regulatory Review and Assistance Visits (RRAV), (Effective Date 4/7/2022), available at:

https://www.abilityone.gov/laws_regulations_and_policy/documents/SourceAmerica%20Cooperative%20Agreement%20MOD8%20Final.pdf (“NPAs may not be granted more than one (1) Corrective Action Plan extension from the CNA without prior approval from the Commission Director, Oversight and Compliance.”); see Cooperative Agreement Between Committee for Purchase From People Who Are Blind or Severely Disabled and National Industries for the Blind, (Effective Date 4/7/2022), available at: https://www.abilityone.gov/laws_regulations_and_policy/documents/NIB%20CA%20Negotiation%20Mod%2010%20Final%205.2.22.pdf

⁴⁶⁵ PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id Nos. 41495, 37082, 44523, 45005, 46819, 45416)

⁴⁶⁶ *Id.* at (Transaction Id Nos. 41495 and 37082)

⁴⁶⁷ See Email AbilityOne OIG to Director of Compliance (September 8, 2022) on file with AbilityOne OIG.

⁴⁶⁸ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 8, 2022).

⁴⁶⁹ PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id No. 46819) (“To Whom It May Concern: LightHouse immediately acted when advised to correct all areas of the Medical Eyes Exams/Staff Members during NIB Technical visit in February 2022. HR worked closely with LHI Staff Members,

Appointment of CEO of Lighthouse of San Francisco as AbilityOne Commissioner

Consistent with this statutory mandate, on August 13, 2021, the President announced his appointment of [REDACTED], the CEO of Lighthouse of San Francisco, to the Commission.⁴⁷⁰ At the time of Commissioner [REDACTED]'s appointment, Lighthouse of San Francisco had been deemed "overall inadequate" on the NPA's most recent Compliance Review in FY19 for findings of noncompliance with medical records, OSHA, and wage-related requirements.⁴⁷¹ Under Policy 51.403 (2020 version), findings of noncompliance with medical records requirements constitutes a "high risk program-related reason" for noncompliance, while OSHA and wage and hour violations fall under "at risk secondary programmatic and additional reasons for a non-compliance."⁴⁷² NPAs found to be out of compliance for "significant reasons," for the same secondary reason on consecutive visits, or which demonstrate a pattern of noncompliance, become "high-risk" NPAs.⁴⁷³ High-risk NPAs may be subject to probation, ineligible for new contracts, or required to come before the Commission. NPAs which are found to be out of compliance for secondary reasons are considered "at-risk."⁴⁷⁴ The Director of Compliance informed OIG that "despite the current policy, there is no location or record where Compliance Office designates NPAs as "At Risk" or "High Risk" and that Compliance Office does not assess NPAs under these terms, due in part to a lack of a clear definition of "significant reasons" or "secondary reasons."⁴⁷⁵

While Compliance Office may not label NPAs under Policy 51.403, the Policy still prescribes the use of such labels. It is unclear whether, in August of 2021, Lighthouse of San Francisco would

Managers and [OMITTED] for completion in its entirety, now completed. Furthermore, Lighthouse has completed the last corrective item/advised during our active Staff Performance Review period (August 2022). There is 1 completed Correction Action Item(s) in total: 1. 2nd round of IEE (Individual Eligibility Evaluations): completed.").

⁴⁷⁰ [REDACTED], Joseph R. Biden, *Press Release - President Biden Appoints Members to U.S. AbilityOne Commission*, THE AMERICAN PRESIDENCY PROJECT (Aug. 13., 2021), available at: <https://www.presidency.ucsb.edu/documents/press-release-president-biden-appoints-members-us-abilityone-commission>

⁴⁷¹ AbilityOne Compliance Policy 51.403(6), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020). PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id Nos. 41495 and 37082).

⁴⁷² *Id.*

⁴⁷³ *Id.* at (6)(d) ("In addition to a prescribed corrective action deadline date, NPAs found to be out of compliance for significant reasons are considered "High Risk" and may be placed on probation and therefore not eligible for new assignments of PL work until the non-compliance is corrected, reported, and deemed satisfactory by the Commission. The NPA, represented by its CNA(s), may be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA. ii. NPAs found to be out of compliance for secondary reasons are considered "At Risk" and will be provided a corrective action completion date by the Commission. NPAs found to be out of compliance for the same secondary problem(s) on consecutive visits, or have a pattern of non-compliance, will be considered "High Risk" and may be placed on probation and not allowed to be assigned or begin new PL work until the issues are corrected. iv. If the next Commission visit finds the NPA is still out of compliance, the NPA will be required to appear before the Commission and explain why it should not be removed from the AbilityOne Program for failure to maintain status as a qualified NPA.").

⁴⁷⁴ *Id.*

⁴⁷⁵ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm'n (Sept. 8, 2022).

have constituted an “at-risk” NPA or a “high risk” NPA under Policy 51.403.⁴⁷⁶ Since Lighthouse of San Francisco had been deemed “overall adequate” on every NPA Compliance Review between FY11 through FY18, the NPA does not appear to show a pattern of noncompliance and had not been flagged for secondary reasons in two consecutive years; therefore, the OSHA and wage violations in FY19 would only render the NPA “at risk.”⁴⁷⁷ However, the Policy is unclear as to whether a finding of medical documentation automatically renders the NPA “high risk” because, as noted by the Director of Compliance, the Policy fails to clearly articulate what constitutes a “significant reason” of noncompliance.⁴⁷⁸

The JWOD Act does not preclude the appointment of Private Citizen Commissioners from NPAs which are currently out of compliance, or which have been deemed “at risk” or “high risk.”⁴⁷⁹

ISSUE 3: FY2021 Performance and Accountability Report to Congress

Allegation: The Commission’s FY2021 Performance and Accountability Report to Congress was inaccurate in its statement that “86 percent of NPAs in the AbilityOne Program are in compliance with the JWOD Act’s 75-percent direct-labor-ratio requirement.”

This whistleblower disclosed that the Commission provided an inaccurate statement in its FY21 Performance and Accountability Report (PAR) to the President, when it stated on page 16 of the report that “86% of the NPAs in the AbilityOne Program are in compliance with the JWOD Act’s 75-percent direct-labor-ratio requirement.”⁴⁸⁰ The 2021 PAR includes the chart below.⁴⁸¹

⁴⁷⁶ AbilityOne Compliance Policy 51.403(6)(d), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

⁴⁷⁷ PLIMS, Lighthouse for the Blind and Visually Impaired, Compliance Visits (Transaction Id 16100, 22518, 31235, and 34888).

⁴⁷⁸ AbilityOne Compliance Policy 51.403(6), *Nonprofit Agencies Out of Compliance with Commission Regulations* (2020).

⁴⁷⁹ 41 U.S.C. § 8502(b)(4); 41 U.S.C. § 8502(b)(5).

⁴⁸⁰ U.S. AbilityOne Commission Fiscal Year 2021 Performance and Accountability Report, at p. 16, *available at*: <https://www.abilityone.gov/commission/documents/U.S.%20AbilityOne%20Commission%20FY2021%20PAR%2015Nov2021%20-%20Final.pdf>

⁴⁸¹ *Id.*

Strategic Objective 2.1.1

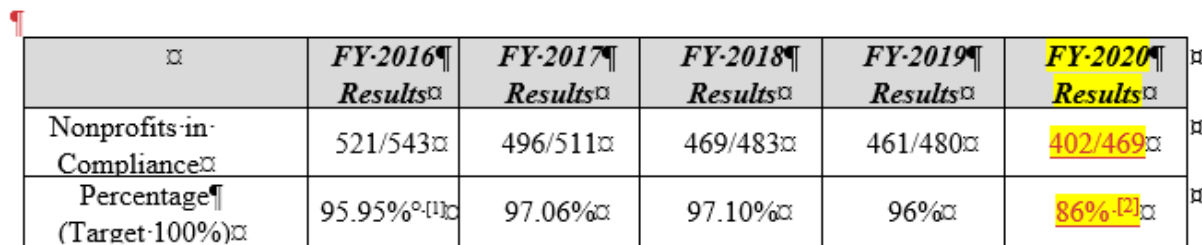
One hundred percent (100%) of AbilityOne-participating NPAs are in full compliance with all statutory and regulatory requirements.

Table 1. NPAs in Compliance with 75% Overall Direct Labor Hour Ratio Requirement

	FY 2016 Results	FY 2017 Results	FY 2018 Results	FY 2019 Results	FY 2020 Results
NPAs in Compliance/ Total NPAs	521/543	496/511	469/483	461/480	402/469
Percentage of NPAs in Compliance	95.95% ⁴	97.06%	97.10%	96%	86% ⁵

Investigation

At the request of AbilityOne OIG, the Commission provided supporting documentation on how the Commission calculated the reported 86% compliance rate. The Commission provided an email sent Public Affairs Manager, U.S. AbilityOne Commission, to the Senior Advisor, Strategic Communications and Government Affairs, U.S. AbilityOne Commission.⁴⁸² The email included the table in the screenshot below and a clean copy appears in the Commission’s 2021 PAR as “Table 1: NPAs in Compliance with 75% Overall Direct Labor Ratio Requirement” demonstrating the Commission reported 402 of 469 or 86% of NPAs were in compliance with the 75% Overall Direct Labor Ratio (ODLR).⁴⁸³



	<i>FY-2016</i> <i>Results</i>	<i>FY-2017</i> <i>Results</i>	<i>FY-2018</i> <i>Results</i>	<i>FY-2019</i> <i>Results</i>	<i>FY-2020</i> <i>Results</i>
Nonprofits in Compliance	521/543	496/511	469/483	461/480	402/469
Percentage (Target: 100%)	95.95%	97.06%	97.10%	96%	86%

AbilityOne OIG sought to independently verify that 86% of NPAs were in compliance with the 75% ODLR by reviewing and analyzing data within PLIMS for FY20.

Methodology

Note: AbilityOne OIG independently verified the number of NPAs satisfying the 75% ODLR requirement reported for FY16-FY21 earlier in this report found at Section 2.a. Please refer to Section 2.a for additional information.

⁴⁸² See email Public Affairs Manager, U.S. AbilityOne Commission to the Senior Advisor, Strategic Communications and Government Affairs, U.S. AbilityOne Commission (Aug. 24, 2021) (containing attachment entitled “Budget Request_Compliance Section_20210824.docx”).

⁴⁸³ U.S. AbilityOne Commission Fiscal Year 2021 Performance and Accountability Report.

AbilityOne OIG repeated the methodology discussed in full detail in Section 2.a to independently verify the ODLR for NPAs in FY21.⁴⁸⁴ In sum, AbilityOne OIG extracted a preconfigured report from PLIMS entitled “NPAExtract” for FY20 and calculated ODLR by dividing the total direct labor hours worked by the number of direct labor hours performed by people who are blind or who have a significant disability. AbilityOne OIG’s and the Commission’s calculations of the total number of NPAs reflects minor variance as NPAs may enter or leave the Program during the year.⁴⁸⁵ AbilityOne OIG’s calculations were within a reasonable margin of rounding errors, AbilityOne OIG determined the variance was insignificant.

Results

FY20: AbilityOne OIG determined that 14% of NPAs were out of compliance with the 75% ODLR. AbilityOne OIG’s findings validate the rate of compliance with DLR reported by the Commission in the FY21 PAR.

AbilityOne OIG identified 471 NPAs which participated in the Program for FY20. Of the 471 total NPAs, the OIG identified 65 NPAs which did not meet the 75% ODLR.

AbilityOne OIG’s analysis confirms and validates the Commission’s statements made in the 2021 PAR. Dividing the 65 NPAs which were below the 75% ODLR by the total number of 471 NPAs equals 0.1380 which converts, when rounded up, to 14%. AbilityOne OIG’s analysis confirms that

⁴⁸⁴ See *infra*, Section 2.a (“PLIMS delivered the results of the report within the web browser in a table format. PLIMS provided AbilityOne OIG the capability to download a comma separated value file entitled “NPAExtract.xlsx” containing the data and tables previously displayed in the web browser. The extract did not independently identify the percentage of NPAs who were in compliance with the 75% ratio. AbilityOne OIG consulted with the Director of Compliance to identify the correct fields within the “NPAExtract” that would provide the analysis needed to determine ODLR. The Director of Compliance instructed AbilityOne OIG that the column “Hours Allblind Total” should be used in lieu of the column “Hours Allblind JWOD total” as ODLR is calculated based on all direct labor hours worked in the production or performance of both AbilityOne and non-AbilityOne goods and services. AbilityOne OIG added column “Hours Allblind Total” with column “Hours AllSighted Total” to create a “Total Direct Labor Hours” column. AbilityOne OIG then divided “Hours Allblind Total” by “Total Direct Labor Hours” column to generate ODLR. The equation provided decimal value that can be converted into a percentage by multiplying the output value by 100. Compliance Policy 51.403 provides that a ratio of 74.51% will round up to 75% and be deemed compliant with the JWOD ratio requirement. AbilityOne OIG’s and the Commission’s calculations of the total number of NPAs reflects minor variance as NPAs may enter or leave the Program during the year. AbilityOne OIG’s calculations were within a reasonable margin of rounding errors, AbilityOne OIG determined the variance was insignificant.”).

⁴⁸⁵ Memorandum of Interview with Dir. Office of Oversight & Comp., U.S. AbilityOne Comm’n (Sept. 12, 2022) [“This Memorandum of Interview (MOI) is intended to provide a non-verbatim summary of the interview. The video recording may be found on file with AbilityOne OIG. [The Director of Compliance] advised as follows: . . . NPAs may leave or join the Program during the year. [Director of Compliance] has instructed the designated CNA to include all NPAs who filed an Annual Reps&Certs form in the calculations, even in instances where an NPA decides to leave the Program the day before the fiscal year ends or the very first day of the new fiscal year. Compliance [Office] does not want to potentially ignore data that has been submitted. In almost all the instances, NPAs who have signaled or taken earnest steps to depart from the Program will not file the Reps&Certs. “It is a combination of the CNA tracking how earnestly the NPA is departing from the Program, coupled with the fact that they don’t submit any data, that they are intentionally ignored or excluded from the calculus.”)].

14% of NPAs were out of compliance while the remaining 86% of NPAs were in compliance with the ODLR requirement.

ISSUE 4: Conflict of Interest - [REDACTED] (Lighthouse of San Francisco) and [REDACTED] (AtWork! Products)

Allegation: Two of the Commission’s Committee members are CEOs at NPAs that currently receive contracts through AbilityOne, creating an apparent conflict of interest. [REDACTED], the Chief Executive Officer of Lighthouse in San Francisco, California, and [REDACTED], the Chief Executive Officer of AtWork! in Bellevue, Washington, joined the Committee in October 2021 but remain the CEOs of their respective NPAs. According to the whistleblower, there is no policy that prohibits this.

The JWOD Act, as codified at 41 U.S.C. § 8502(b), specifies that “Committee consists of 15 members appointed by the President” to include:

“One member from individuals who are not officers or employees of the Federal Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.”⁴⁸⁶

“One member from individuals who are not officers or employees of the Federal Government and who represent severely disabled individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely disabled individuals.”⁴⁸⁷

Consistent with this statutory mandate, on August 13, 2021, the President announced his appointment of [REDACTED] and [REDACTED] to the Commission.⁴⁸⁸ As stated during the Commission public meeting on August 5, 2021, where the nominees [REDACTED] were introduced as CEOs of the respective NPAs and as published on the AbilityOne Commission website, [REDACTED] “is CEO of the [NPA] Lighthouse for the Blind and Visually-Impaired in San Francisco, a 119-year-old nonprofit devoted to the comprehensive training and employment of blind people,”⁴⁸⁹ and [REDACTED] is the CEO of the nonprofit AtWork!, “a nationally recognized best-practice provider of customized and integrated community employment for people with

⁴⁸⁶ 41 U.S.C. § 8502(b)(4).

⁴⁸⁷ 41 U.S.C. § 8502(b)(5).

⁴⁸⁸ [REDACTED], *Joseph R. Biden, Press Release - President Biden Appoints Members to U.S. AbilityOne Commission*, THE AMERICAN PRESIDENCY PROJECT (Aug. 13., 2021), available at: <https://www.presidency.ucsb.edu/documents/press-release-president-biden-appoints-members-us-abilityone-commission>

⁴⁸⁹ U.S. AbilityOne Commission, *Public Member [REDACTED]*, available at: [https://www.abilityone.gov/commission/commission_members_\[REDACTED\].html](https://www.abilityone.gov/commission/commission_members_[REDACTED].html)

intellectual and developmental disabilities.⁴⁹⁰ Both San Francisco Lighthouse and AtWork! participate in the U.S. AbilityOne Program and have business before the Commission.

Under the relevant conflict-of-interest ethics rule, “[a]n employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.”⁴⁹¹

AbilityOne Commission Administrative Policy 51-203 governing voting protocols provides that “[e]ach Member is responsible for determining if they should recuse themselves from a vote for any financial conflict of interest or appearance thereof in accordance with the Standards of Conduct. Members are required to contact the Commission's designated ethics officer to discuss any potential conflicts or the propriety of recusing themselves from a vote before doing so.”⁴⁹²

In an email dated August 8, 2022, the Commission’s Assistant General Counsel (AGC) and Alternate Designated Ethics Official (ADAEO) presented OIG with documentation related to training and recusal for both [REDACTED]. The documentation included two separate memorandums, one for [REDACTED] (dated November 16, 2021) and one for [REDACTED] (dated November 10, 2021), entitled, “Notification of Commitment to Recuse.” The memoranda, attached as appendices to this report and signed by [REDACTED] and [REDACTED], outline the relevant conflicts-of-interest restrictions and procedures for recusal.

A copy of *Notification of Commitment to Recuse* [REDACTED] is attached at Exhibit E. A copy of *Notification of Commitment to Recuse* [REDACTED] is attached at Exhibit F.

The AGC/ADAEO also provided an Outlook Calendar appointment for August 30, 2021 for “Private Citizen Members – Orientation.” Both [REDACTED] and [REDACTED] are included as “Required Attendees,” and confirmed that they were in fact in attendance. The AGC/ADAEO provided the PowerPoint file, “16Jul2021 New Employees ethics Training,” which he indicated was presented during the August 30, 2021, training that [REDACTED] and [REDACTED] attended. The presentation included nine slides covering conflicts-of-interest, resolution of conflicts, and recusal.⁴⁹³

The statutory composition of the Commission, which includes Private Citizen Members who represent blind and severely disabled individuals employed in qualified nonprofit agencies for the

⁴⁹⁰ U.S. AbilityOne Commission, *Public Member* [REDACTED], available at: [https://www.abilityone.gov/commission/commission_members_\[REDACTED\].html](https://www.abilityone.gov/commission/commission_members_[REDACTED].html)

⁴⁹¹ 5 C.F.R. § 2635.402(a).

⁴⁹² AbilityOne Commission Administrative Policy 51-203(6)(c)(viii), *U.S. AbilityOne Commission Voting Protocols* (2012).

⁴⁹³ U.S. AbilityOne Commission Assistant General Counsel /Alternate Designated Ethics Official PowerPoint “16Jul2021 New Employees ethics Training,” at slides 15–24.

blind and other severely disabled individuals, presents the potential for conflicts of interest. Commission counsel provided us documentation that they have taken measures to prevent [REDACTED] and [REDACTED] from participating in matters that affect the financial interests of the organizations they represent as CEOs.

AbilityOne OIG conducted an independent review in PLIMS of all contract votes that came before the Commission between August 1, 2021 and August 8, 2022 and confirmed that neither [REDACTED]. [REDACTED] nor [REDACTED] voted on any matter affecting their respective organizations.

After reviewing the documentation provided, official voting records within PLIMS, and discussing with the AGC/ADEAO, AbilityOne OIG found no evidence that either [REDACTED] or [REDACTED] have participated in matters affecting their respective organizations while serving in their capacities as Private Citizen Members.

EXHIBITS

- **Exhibit A:** Annual Representations and Certifications (Reps&Certs) Form (OMB Form 3037-0013)
- **Exhibit B:** Blank Estimated Direct Labor Hour (EDLH) Form
- **Exhibit C:** 54 NPA AL to ID Statistically Significant Sample Recent Compliance Review
- **Exhibit D:** NPAs which failed every Compliance Review Since 2013
- **Exhibit E:** Notification of Commitment to Recuse [REDACTED]
- **Exhibit F:** Notification of Commitment to Recuse [REDACTED]
- **Exhibit G:** Compliance Worksheet NIB
- **Exhibit H:** Compliance Worksheet SourceAmerica

APPENDIX (Recommendations)

RECOMMENDATION 1: AbilityOne OIG recommends that the Commission identify and clarify the policy, and issue new policy as needed, regarding whether Commission staff has the authority or ability to lower an NPA's PL project-level EDLH after the Commission Members have voted on and approved a PL project-level EDLH, and, if so, establish reasons and guidelines for Commission staff to grant a modification and the threshold which will warrant notification to and reconsideration by the Commission Members.

RECOMMENDATION 2: AbilityOne OIG recommends that the Commission identify the instances where Commission staff approved, authorized, or otherwise allowed a lower PL project-level EDLH without Commission Members' approval or knowledge, and determine whether staff had the authority or acted within their delegated authority in doing so and that the Commission determine the course of actions it deems appropriate, accordingly.

RECOMMENDATION 3: AbilityOne OIG recommends that the Commission review *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program* which cite Pandemic-Related Waivers as authority to excuse NPAs which failed to meet ratio in FY18 or FY19 from the corrective or disciplinary required under Policy 51.

RECOMMENDATION 4: AbilityOne OIG recommends that the Commission develop a system to track NPAs which have failed to maintain the applicable ODLR in the prior fiscal year(s) and track issuance of *Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program*, and the progress on and completion of corrective action. OIG recommends that the Commission store the records in PLIMS to ensure transparency and that all appropriate users have ready access to it.

RECOMMENDATION 5: AbilityOne OIG recommends that the Commission issue clear, transparent, policy to be applied equitably to all NPAs delineating what corrective or disciplinary action the Commission will take if an NPA fails to maintain the applicable ODLR, including specifically what will result in inability to receive new contracts, in loss of existing contracts, probation, removal from the Program, or other clearly defined consequences.

RECOMMENDATION 6: AbilityOne OIG recommends that the Commission conduct an in-depth review of the NPAs indicated in Exhibit D of this report which have failed Compliance Reviews over a range of ten years to determine whether the noncompliance demonstrates a pattern of conduct that brings into question whether the NPA should be issued a corrective action, placed on probation, or removed from the Program.

RECOMMENDATION 7: AbilityOne OIG recommends that the Commission's guidance relating to compliance will be in written format and look into the gap about the "instructions" the Director of Compliance claims he provided and Staff claiming to not have knowledge of it as currently applicable.

RECOMMENDATION 8: The Commission should enhance the collection and storage of documentation in PLIMS demonstrating the current nonprofit status of an NPA, if an NPA has been removed from the Program, if an NPA has voluntarily left the Program, or that an NPA has signaled intent or taken earnest steps to leave the Program. The Commission should also include documentation demonstrating that an NPA no longer participating in the Program have had its projects removed from the PL or transferred to another NPA.

RECOMMENDATION 9: AbilityOne OIG recommends that the Commission adopt a process to independently verify, on an annual basis, that the NPA's nonprofit status is in good standing with the NPA's home state, as required, and if applicable, with the IRS, as well, and apply the corresponding policy regarding consequences for NPAs that are not or have not been in compliance.

While the Commission has a process to verify nonprofit status at the time of initial AbilityOne Program Qualification, the Commission's process for annual nonprofit status verification appears to rely solely on the NPA's self-certification under penalty of 18 U.S.C. 1001 on its Annual Reps&Certs. The Commission's reliance on self-certification creates risk that an NPA may conceal it has lost its good standing as a nonprofit with its home state or the IRS by falsely certifying that it has maintained status. As shown above, the current process of self-certification was unable to detect an AbilityOne NPA which had lost its nonprofit designation.

RECOMMENDATION 10: In order to comply with Policy 51.410 *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*, AbilityOne OIG recommends that the Commission develop formal training for all its Compliance Office staff and contractors on Policy 51.410, and other policies, as applicable, to be taken annually as a refresher and for new Compliance Office staff and contractors to be taken at onboarding.

RECOMMENDATION 11: AbilityOne OIG recommends that the Commission conduct an in-depth review of whether the Office of Compliance's practices adhere to the procedural requirements of Policy 51.410 *Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program*. OIG recommends that the Commission ensure all open complaints have been given proper resolution in accordance with the procedural requirements of Policy 51.410. OIG recommends that the Commission correct outdated links, intake forms, and contact information to ensure complainants may reach the appropriate entity.

**Exhibit A Annual Representations and
Certifications (Reps&Certs) Form (OMB
Form 3037-0013)**

ANNUAL REPRESENTATIONS AND CERTIFICATIONS FOR ABILITYONE QUALIFIED NONPROFIT AGENCY

INSTRUCTIONS FOR COMPLETION

Each section of the form is detailed below with the information needed to complete the form correctly as well as justifications and authorities. The interactive form can be completed in Word and printed with any necessary attachments; signatures must be original.

DEFINITIONS AND ACRONYMS

Acronym or Term	Definition or Description
AbilityOne Commission	The Commission's legal name remains the Committee For Purchase From People Who are Blind or Severely Disabled. However, since 2006 the Committee has been operating as the U.S. AbilityOne Commission. This document uses Commission except for Where the Commission's legal name is used and for quotations from the Commission's regulations.
Central Nonprofit Agency (CNA)	NIB and SourceAmerica are the two Central Nonprofit Agencies designated by the U.S. AbilityOne Commission. <u>41CFR 51-3</u>
Community Rehabilitation Program (CRP)	The terminology used in the Rehabilitation Act and by SourceAmerica. CRPs are organizations that perform services or produce products with Contracting Activities that require a specific product or service. Term currently preferred is NPA (Nonprofit Agency).
Direct labor	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. <u>41 CFR 51-1.3</u>
Inure	To take effect or to result. The Treasury regulations apply the rule for tax exempt status to define an organization as "not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals." <u>26 C.F.R. § 1.501(c)(3)-1(c)(2)</u> (1984).
Javits-Wagner-O'Day (JWOD) Act	Established an employment program designed to provide job opportunities for people who are blind or who have other significant disabilities. These jobs involve the sale of goods or services to the Federal Government. <u>41 USC 8501-8506.</u>
Material (Section 7.A)	Having influence or effect and goes to the substantial matter at issue. The Tax Court has revoked tax exempt status where non-profit entities have never fulfilled "religious, charitable, or educational" purposes required for the exemption or where the circumstances of the business practice have materially changed such that the entity no longer meets the tax exempt criteria.

Military resale commodities	Commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.
NIB	National Industries for the Blind
Nonprofit Agency (NPA)	NPA is an alternate term for CRP. NPAs are organizations that perform services or produce products with Contracting Activities that require a specific product or service.
Other severely disabled and severely disabled individuals (hereinafter persons with significant disabilities)	A person (other than a blind person) who has a significant physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect), which limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) such 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, at 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 significant 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 significantly disabled" within the meaning of the definition.
Participating nonprofit agency	A nonprofit agency that has been authorized by the Commission furnish a commodity or service to the Government under the JWOD Act.
Qualified nonprofit agency for the blind (hereinafter nonprofit agency for the blind)	An agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.
Qualified nonprofit agency for other severely disabled (hereinafter nonprofit agency employing persons with significant disabilities)	An agency organized under the laws of the United States or any State, operating in the interests of persons with significant disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with significant disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

Acronym or Term	Definition or Description (continued)
Service-Disabled Veteran-Owned Small Business	A small business that meets the eligibility requirements established by the Small Business Administration regulations (13 CFR 125.8-125.13) that require the business to be owned and controlled by service-disabled veterans (also known as a Service-Disabled Veteran-Owned SBC) who have a service-connected disability that has been determined by the VA, in writing, to be a permanent and total service-connected disability as set forth in 38 CFR 3.340 for purposes of receiving disability compensation or a disability pension.
Significantly Disabled individual or persons with a significant disability	A person other than a blind person who has a significant 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 significant 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 significantly disabled" within the meaning of the definition. In correspondence and policy, the term "significant disability" is synonymous with the term "severe disability" as defined in 41 U.S.C. 8501 and the applicable regulations.
SourceAmerica	SourceAmerica® is a national nonprofit that creates job opportunities for a skilled and dedicated workforce: people with significant disabilities. We are the vital link between this exceptional workforce, the network of community-based nonprofits, and the Federal Government and commercial companies that need the products and services the nonprofits provide. SourceAmerica is an AbilityOne authorized enterprise.
Subcontracting	Any acquisition from another source of materials, including raw materials, or services required by the nonprofit agency(ies) to provide a Procurement List product or service allocated under the AbilityOne Program.
Veteran	Shall have the same meaning in 38 U.S.C. § 101(2) and means a person who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable.

OVERALL – APPENDICES

- All required Appendices shall be presented in the form of a written narrative, not to exceed 3 pages (per Appendix). Exceptions to this would be Articles of Incorporations, Bylaws, and Revisions to State or Local State Statutes. The written narrative should be formatted in accordance with the following guidance:
 - (a) Font**
 - i. Use an *Arial or Times New Roman* typeface, a black font color, and a font size of 12 points or larger. A symbol font may be used to insert Greek letters or special characters; the font size requirement still applies.
 - (b) Page Formatting**
 - i. Specifically identify the Section and Line Item Number (i.e 6.A.2)
 - ii. Provide a written narrative explanation, single-sided and single-spaced.
 - iii. All appendix narrative explanations should be attached as a single PDF file.-

INSTRUCTIONS - SECTIONS 1-5: GENERAL INFORMATION

- **Agency Name:** Enter the incorporated name of the nonprofit agency (NPA), as stated in the organization's Articles of Incorporation.
- **D-U-N-S Number:** Enter the corporation's Dun & Bradstreet D-U-N-S number. *NOTE: The D-U-N-S Number is a unique nine-digit number assigned to an entity by Dun & Bradstreet that identifies business entities on a location-specific basis. If the NPA has multiple D-U-N-S Numbers, enter all associated D-U-N-S Numbers for the NPA.*
- **Mailing Address:** Enter the NPA's mailing address, including street address, city, state and zip code. *NOTE: Do not enter a P.O. Box. The address entered should be the location where the President/Executive Director's office is located.*
- **Form Completed By:** Enter the name of the individual who completed the form.
- **Fiscal Year Ending:** Enter the end date of the NPA's current fiscal year.

INSTRUCTIONS - SECTION 6: ABILITYONE REQUIREMENTS:

- Lines 6.A-6.L requires the NPA to certify an answer of "Yes", "No" or "N/A" by marking each statement with an "☒" as appropriate. If the NPA marks "No" for any of the statements in lines 6.A-6.L, the NPA is required to provide an explanation in the form of an attachment, as instructed in the form.

NOTE: Additional guidance and clarifications are provided below for "Section 6: AbilityOne Requirements" statements.

Guidance and Clarifications

- Attached Appendices are to include a proposed corrective action plan for approval by the Commission or a plan already approved by the Commission. Each Appendix is limited to a maximum response of three (3) pages.
- Any certification by an NPA of “No” for lines 6.A-6.L means the NPA acknowledges it is not in compliance with the AbilityOne Program regulations. Non-compliant NPAs may be placed on probation, which would make the NPA ineligible for new AbilityOne work. While on probation, the NPA may also be subject to the removal of its authorization to provide a product or service from the Procurement List or removal from the AbilityOne Program.

NOTE: Commission policy, “51.403, Nonprofit agencies out of compliance with Commission Regulations,” will govern the process used by the Commission to evaluate non-compliant NPAs.

INSTRUCTIONS - SECTION 7: NONPROFIT AGENCY REQUIREMENTS:

- Lines 7.A-7.G requires the NPA to certify an answer of “Yes” or “No” by marking each statement with an “☒” as appropriate. If the NPA marks an answer in any of the statements in lines 7.A-7.G requesting an attachment, the NPA is required to provide an explanation in the form of an attached Appendix for EACH line marked, as instructed in the form.

NOTE: Additional guidance and clarifications are provided below for “Section 7: Nonprofit Agency Requirements” statements.

Guidance and Clarifications

- Attached Appendices are to include a narrative explanation of the specific situation related to the “No” answer to a specific statement in lines 7.A-7.G.
- Section 7 consists of seven statements related to the operations of your NPA. A response of “yes” or “no” does not imply your NPA is not in compliance. Some responses, however, may be a concern to the Commission about an NPA’s ability to correctly function within the AbilityOne Program as a Federal Government contractor and may result in requests for additional information.

INSTRUCTIONS - SECTION 8: ABILITYONE PROGRAM INTEGRITY:

- Lines 8.A-8.E require the NPA to certify the answer of “Yes” or “No” by marking each statement with an “☒” as appropriate. If the NPA marks “Yes” for any of the statements in lines 8.A-8.E, the NPA is required to provide an explanation in the form of an attached Appendix for EACH line marked “Yes”, as instructed in the form.

NOTE: Additional guidance and clarifications are provided below for “Section 8: AbilityOne Program Integrity” statements.

Guidance and Clarifications

- Attached Appendices are to include a narrative explanation of the specific situation related to the “Yes” answer to a specific statement in lines 8.A-8.E.
- Section 8 consists of statements your NPA answered as part of the annual System Award Management (SAM) certification. As the answers to these questions can result in the removal of the contract from your NPA, the Commission must know how these questions were answered by your NPA in the SAM certification.

SECTIONS 9- 14, ANNUAL OPERATIONAL DATA

The following instructions provide directions to properly complete Sections 9-14 of the form. The information entered by the NPA should be for the fiscal year coming to an end. All questions pertain to the current, ending Federal fiscal year.

INSTRUCTIONS - SECTION 9: NIB AGENCIES ONLY (DOES NOT APPLY TO SOURCEAMERICA AGENCIES):

Lines 9.A-9.D require the NPA to certify an answer of "Yes", "No", or "N/A" by marking each statement with an "☒" as appropriate. If the NPA marks "No" for any of the statements in lines 9.A-9.D, the NPA is required to provide an explanation in the form of an attached Appendix for EACH line marked "No", as instructed in the form.

It is suggested that NIB NPAs complete the data entry for Section 9.1 and 9.2 PRIOR to answering items 9.A-9.D

NOTE: Additional guidance and clarifications are provided below for "Section 9: NIB Agencies Only" statements.

9.A & 9.B	Direct labor is defined as all hours required for preparation, processing and packaging of a product or hours directly related to the performance of a service but does not include supervision, administration, inspection or shipping. Hours performed by a subcontractor related to providing the product or service are not included. Direct labor hours performed by temporary workers are included. Also included are hours paid for vacation, holidays and sick leave.
9.C	The Javits-Wagner-O'Day Act requires nonprofit agencies participating in the AbilityOne Program to maintain an overall direct labor hour ratio of at least 75%. The Commission allows normal rounding procedures, i.e. your agency's overall direct labor ratio must be higher than 74.50%.
9.D	The Javits-Wagner-O'Day Act requires all direct labor hours performed at an NPA be included in the ratio calculation. This includes all direct labor performed by temporary employees of the NPA or employees and/or employees contracted from a temporary employment agency. Direct labor hours performed by a subcontractor related to providing the product or service are not included.
9.1 DATA FOR THE TOTAL AGENCY	
9.1.A	Enter the total direct labor hours performed by people who are blind for this fiscal year.
9.1.B	Enter the total direct labor hours performed by people who are sighted for this fiscal year.
9.1.C	Enter the sum of lines 9.1.A and 9.1.B to calculate the total of all direct labor performed by the agency for this fiscal year.
9.1.D	Calculate the percentage of direct labor hours performed by people who are blind on AbilityOne product and service contracts by dividing line 9.1.A by line 9.1.C. To be in compliance with statutory requirements, the result must be at least 75%. The Commission allows normal rounding procedures, i.e. your agency's overall direct labor ratio must be higher than 74.50%.
9.1.E	Enter in the appropriate columns the number of people who are blind and performed direct labor on products and/or service contracts during this fiscal year.
9.1.F	Enter the number of people who are blind and have an additional physical or mental disability who performed direct labor during this fiscal year.
9.1.G	Enter the sum of lines 9.1.E and 9.1.F
9.1.H	Enter in the appropriate columns the total wages paid to people who are blind performing direct labor on products and/or service contracts. Include paid vacation, holidays, sick leave

	and Service Contract Act fringe benefits paid in cash.
9.1.I	Enter in the appropriate columns the total direct labor hours performed by veterans who are blind from line 9.1.A.
9.1.J	Enter in the appropriate columns the total veterans who are blind from line 9.1.G
9.1.K	Enter in the appropriate columns the total wages paid to veterans who are blind and performed direct labor from line 9.1.I. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.
9.2 DATA FOR THE ABILITYONE PROGRAM ONLY	
9.2.A	Enter in the appropriate columns the direct labor hours paid to all employees who are blind and performed direct labor on AbilityOne contracts during this fiscal year.
9.2.B	Enter in the appropriate columns the direct labor hours paid to all employees who are sighted and performed direct labor on AbilityOne contracts during this fiscal year.
9.2.C	Enter the sum of 9.2.A and 9.2.B to calculate the total of all AbilityOne direct labor hours performed during this fiscal year.
9.2.D	Calculate the percentage of direct labor hours performed by people who are blind on AbilityOne product and service contracts by dividing line 9.2.A by line 9.2.C.
9.2.E	Enter in the appropriate columns the number of people who are blind only performing direct labor on products and service contracts.
9.2.F	Enter in the appropriate columns the number of people who are blind and have significant disabilities performing direct labor on products and service contracts.
9.2.G	Enter the sum of 9.2.E and 9.2.F
9.2.H	Enter in the appropriate columns the total wages paid to employees performing direct labor on AbilityOne product and service contracts. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.
9.2.I	Enter in the appropriate columns the total direct labor hours from 9.2.A performed by veterans who are blind.
9.2.J	Enter in the appropriate columns the total direct labor hours from 9.2.G performed by veterans who are blind.
9.2.K	Enter in the appropriate columns the total amount of wages paid to veterans who are blind and performed direct labor on AbilityOne product and service contracts from line 9.2.I. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.

INSTRUCTIONS - SECTION 10: SOURCEAMERICA AGENCIES ONLY (DOES NOT APPLY TO NIB AGENCIES):

Lines 10.A-10.D requires the NPA to certify an answer of “Yes”, “No”, or “N/A” by marking each statement with an “☒” as appropriate. If the NPA marks “No” for any of the statements in lines 10.A-10.D, the NPA is required to provide an explanation in the form of an attached Appendix for EACH line marked “No”, as instructed in the form.

It is suggested that SOURCEAMERICA NPAs complete the data entry for Section 10.1 and 10.2 PRIOR to answering items 10.A-10.D

NOTE: Additional guidance and clarifications are provided below for “Section 10: SourceAmerica Agencies Only” statements.

10.A & 10.B	Direct labor is defined as all hours required for preparation, processing and packaging of a product or hours directly related to the performance of a service but does not include supervision, administration, inspection or shipping. Hours performed by a subcontractor related to providing the product or service are not included. Direct labor hours performed by temporary workers are included. Also included are hours paid for vacation, holidays and sick leave.
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10.C	The Javits-Wagner-O'Day Act requires nonprofit agencies participating in the AbilityOne Program to maintain an overall direct labor hours ratio of at least 75%. The Commission allows normal rounding procedures, i.e. your agency's overall direct labor ratio must be higher than 74.50%.
10.D	The Javits-Wagner-O'Day Act requires all direct labor hours performed at a nonprofit agency be included in the ratio calculation. This includes all direct labor performed by temporary employees of the agency or employees and/or employees contracted from a temporary employment agency. Direct labor hours performed by a subcontractor related to providing the product or service are not included.
10.1 DATA FOR THE TOTAL AGENCY	
10.1.A	Enter the total direct labor hours performed by people who are blind or significantly disabled for this fiscal year in the appropriate category.
10.1.B	Enter the total direct labor hours performed by people without significant disabilities for this fiscal year in the appropriate category.
10.1.C	Enter the sum of lines 10.1.A and 10.1.B to calculate the total of all direct labor performed by the agency for this fiscal year.
10.1.D	Calculate the percentage of direct labor hours performed by people who are blind or significantly disabled on AbilityOne product and service contracts by dividing line 10.1.A by line 10.1.C. To be in compliance with statutory requirements; the result must be at least 75%. The Commission allows normal rounding procedures, i.e. your agency's overall direct labor ratio must be higher than 74.50%.
10.1.E	Enter in the appropriate columns the number of people who are blind and performed direct labor on products and/or service contracts during this fiscal year.
10.1.F	Enter in the appropriate columns the total number of people with significant disabilities, including those who are blind, who have performed direct labor hours on Products and or services during this fiscal year.
10.1.G	Enter in the appropriate columns the total wages paid to people with significant disabilities, including blindness, performing direct labor on product and/or service contracts. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.
10.1.H	Enter in the appropriate columns the total direct labor hours performed by veterans who are blind or have a significant disability.
10.1.I	Enter in the appropriate columns the total number of veterans who are blind or have significant disabilities included in line 10.1.F.
10.1.J	Enter in the appropriate columns the total wages paid to veterans who are blind or have significant disabilities included in line 10.1.I. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.
10.2 DATA FOR THE ABILITYONE PROGRAM ONLY	
10.2.A	Enter in the appropriate column the total direct labor hours performed by people who are blind or significantly disabled on AbilityOne contracts during this fiscal year.
10.2.B	Enter in the appropriate column the direct labor hours performed by people without significant disabilities on AbilityOne contracts during this fiscal year.
10.2.C	The sum of lines 10.2.A and 10.2.B is the total of all AbilityOne direct labor hours performed during this fiscal year.
10.2.D	Calculate the percentage of direct labor hours performed by people who are blind or significantly disabled on AbilityOne product and service contracts by dividing line 10.2.A by line 10.2.C.
10.2.E	Enter in the appropriate columns the number of people who have blindness as a disability and worked on AbilityOne product and/or service contracts during this fiscal year.
10.2.F	Enter the total number of people with significant disabilities, including those who are blind (line 10.2.E), that have worked on AbilityOne products during the last year.
10.2.G	Enter in the appropriate columns the total wages paid to people with significant disabilities

	who worked on AbilityOne contracts. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.
10.2.H	Enter in the appropriate columns the total direct labor hours performed by veterans who are blind or have significant disabilities from line 10.2.A.
10.2.I	Enter in the appropriate columns the total number of veterans, from 10.2.F, who are blind or have significant disabilities.
10.2.J	Enter the total amount of wages paid to veterans who are blind or have significant disabilities who performed direct labor on AbilityOne contracts from line 10.2.H. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.

INSTRUCTIONS - SECTION 11: INFORMATION ON AGENCY AND ABILITYONE PLACEMENT AND PROMOTION OF PEOPLE WHO ARE BLIND OR HAVE SIGNIFICANT DISABILITIES:

11.A	Enter in the appropriate column the number of people who are blind or have significant disabilities who were placed into competitive employment as defined by the AbilityOne Program during this fiscal year. NOTE: The number is to be broken down to indicate placement from AbilityOne projects, non AbilityOne projects and direct placements as well as the Agency total. Placement of an individual onto an AbilityOne job can only be counted if the individual's hours are not counted towards the 75% direct labor ratio requirement. It is important to note the definition of competitive employment used by the Commission: that the individual is capable of obtaining and maintaining the job without assistance. This means that supported employment positions are not considered competitive employment. Direct placement means that the Agency placed an individual into a competitive job, but the individual never performed direct labor at the Agency.
11.B	Enter in the appropriate column the number of people who are blind or have significant disabilities who were placed into supported employment as defined by the AbilityOne Program during this fiscal year. NOTE: The number is to be broken down to indicate placement from AbilityOne projects and non AbilityOne projects and direct placements as well as the Agency total. These placements include all workers who had been placed into positions other than competitive employment. Placement of an individual onto an AbilityOne job does not count toward this total. Direct placement means that the Agency placed an individual into a supported job, but the individual never performed direct labor at the Agency.
11.C	This question seeks information on people who are blind or have significant disabilities who are working for the NPA, not in supervisory or management positions, (whether in a client or other employee status) and who were promoted to a new job or workstation within the Agency that paid increased wages or benefits. This question should not include individuals whose wages increased due to cost of living raises or productivity increases. Do not include people who continued to perform the same job but were hired from a client status into a permanent employee status.
11.D	This question seeks information on people who are blind or have significant disabilities who are working for the NPA (whether a client or other employee status) and who were promoted to a new job or workstation within the Agency that paid increased wages or benefits and which included increased supervisory, management or technical skills. This question should not include individuals whose wages increased due to cost of living raises or productivity increases. Do not include people who continued to perform the same job but were hired from a client status into a permanent employee status.

INSTRUCTIONS - SECTION 12: AGENCY AND ABILITYONE SALES:

AbilityOne sales are broken into three categories: 1) Military Resale; 2) Products; and 3) Services. Report only the value of those Military Resale items that were produced in the NPA. Services are items that were added to the Procurement List as services and products are items that were added to the Procurement List as products. Report on each line (12.A.1 – 12.A.3) the sales from the previous fiscal year. Line 12.A.4 is the total AbilityOne sales.

12.A.1	Enter dollar value of Military Resale (Direct) sales This dollar value should include both Direct and Warehouse Sales.
12.A.2	Enter dollar value of AbilityOne Products sales
12.A.3	Enter dollar value of AbilityOne Service sales
12.A.4	Enter total AbilityOne sales. Sum of lines 12.A.1, 12.A.2 and 12.A.3
Indicate sales by Base Supply Centers to Federal customers. Those agencies that sell directly to Base Supply Centers should continue to record those sales as AbilityOne sales.	
12.B.1	Enter dollar value of Base Supply Center, AbilityOne Products sales
12.B.2	Enter total Base Supply Center sales. This calculation should include dollar value in 12.B.1
Indicate the totals of any Federal sales and/or other agency contract and subcontract work not recorded as AbilityOne sales or Base Supply Center sales.	
12.C	Enter total of Federal sales other than for those set aside under the AbilityOne Program or Base Supply Center.
12.D	Enter total sales of other agency contract and subcontract work
Total Agency Sales	
12.E	Enter total agency sales Sum of lines 12.A.4, 12.B.2, 12.C and 12.D

INSTRUCTIONS - SECTION 13: SUBCONTRACTING / VENDOR ACTIVITY:

Subcontracting values are broken into three categories: 1) Nonprofit Entities; 2) Small Business Entities; and 3) Large Business/Commercial entities. Report only the total values paid by the NPA to the subcontractor. The NPA will be prompted for AbilityOne subcontract totals and total agency subcontract totals throughout Section 13. NPAs should **NOT** include values paid to vendors or distributors where a formal subcontract does not exist. Enter the total dollar values paid by the NPA for each subcontract category identified in lines 13.A-13.D. If unknown, enter "Unknown." In the appropriate line(s).

Nonprofit Entities	
13.A.1	Enter dollar value of subcontracts paid to AbilityOne NPAs through a Procurement List, mandatory subcontract.
13.A.2	Enter dollar value of subcontracts paid to any other nonprofits (exclude line 13.A.1)
13.A.3	Enter total dollar value of subcontracts paid to nonprofit entities. Sum of lines 13.A.1 and 13.A.2
Small Business Entities	
13.B.1	Enter dollar value of subcontracts paid to Women-Owned businesses
13.B.2	Enter dollar value of subcontracts paid to Veteran-Owned and/or Service-Disabled Veteran-Owned businesses.

13.B.3	Enter total dollar value of subcontracts paid to all small business entities. Include lines 13.B.1, 13.B.2, and any other type of small business entities
Large Business/Commercial Entities	
13.C.1	Enter total dollar value of subcontracts paid to large business/commercial entities
Total Subcontracts	
13.D	Enter total dollar values paid to subcontractors. Sum of lines 13.A.3, 13.B.3, and 13.C.1

INSTRUCTIONS - SECTION 14: VETERANS:

14.A	Enter total number of veterans who are employed by your agency, regardless of where they work, or if they are blind or have a significant disability. The VA defines “veterans” as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (38 U.S.C. § 101(2))
14.B	Enter number of veterans with a service connected disability, as determined by the VA, who are employed by your agency.
14.C	Enter number of Wounded Warriors who are employed by your agency, regardless of where they work, or if they are blind or have a significant disability. NOTE: Veterans must suffer from wounds, illnesses or injuries incurred in the line of duty after September 10, 2001 AND receive or expect to receive at least a 30% rating from the Integrated Disability Evaluation System (IDES) for one of the conditions listed below: • Post-traumatic stress (PTS or PTSD) • Severe traumatic brain injury (TBI) • Severe loss of vision/blindness • Severe hearing loss/deafness • Fatal/incurable disease with limited life expectancy • Loss of limb • Spinal cord injury • Permanent disfigurement • Severe burns • Severe paralysis • Receive a 30% rating or greater for one Veterans Affairs Scheduled Rating Decision (VASRD) as rated by the Physical Evaluation Board (PEB) in any other Special Category (SPECAT)/ Enabling Care (EC) or combat/combat-related condition OR receive a combined 50% IDES rating for any other combat/combat-related condition

The information collected by this form is mandatory for the nonprofit Agency to obtain or retain the benefits of participation in the AbilityOne Program (41 U.S.C. 46-48c, 41 CFR 51); this information is used to ensure that nonprofit agencies participating in the AbilityOne Program are meeting the Program's requirements; comments may be submitted to [REDACTED], Committee for Purchase From People Who Are Blind or Severely Disabled, [REDACTED]; the estimated burden per respondent is **XXX** hours and the cost of sending the form to NIB or SourceAmerica; the OMB approval number is 3037-**0013** the expiration date is **XX/XX/201X**.

ANNUAL REPRESENTATIONS AND CERTIFICATIONS FOR ABILITYONE QUALIFIED NONPROFIT AGENCY (NPA) FORM			APPROVED OMB NO.
			EXPIRES
1. AGENCY NAME	[enter agency name]	2. D-U-N-S NUMBER(s)	[enter D-U-N-S number]
3. MAILING ADDRESS	[enter mailing address]		
	[enter city]	[enter state]	[enter zip code]
4. FORM COMPLETED BY	[enter POC name]	5. FISCAL YEAR ENDING	[enter month/day/year]
THE NPA CERTIFIES THAT THE INFORMATION PROVIDED IN SECTION 6 – SECTION 14 BELOW IS ACCURATE, COMPLETE, AND CURRENT.			
6. ABILITYONE PROGRAM REQUIREMENTS			
6.A	In accordance with 41 CFR 51-4.3(a), the NPA complies <i>"with the requirements of a "nonprofit agency for other significantly disabled" or a "nonprofit agency for the blind" as defined in 51-1.3."</i>	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.A
-6.A.1	In furnishing products or services (whether or not the products or services are procured under these regulations) during the fiscal year, the NPA <i>"employs blind individuals and/or individuals with significant disabilities for not less than 75 percent of the work-hours of direct labor required to furnish such products or services."</i> (41 CFR 51-4.1.3) NOTE: If the NPA answers "YES" to this statement, the overall direct labor hour ratio reported in line 9.1.D or line 10.1.D <i>must</i> be not less than 75%. The Commission allows normal rounding procedures, i.e. your agency's overall direct labor ratio must be higher than 74.50%.	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.A.1
-6.A.2	The NPA complies with the requirement to include a statement in its bylaws that the net income of the NPA <i>"does not inure in whole or in part to the benefit of any shareholder or other individual."</i> (41 CFR 51-4.1.3)	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.A.2
6.B	The NPA furnishes <i>"products or services in strict accordance with Government orders."</i> (41 CFR 51-4.3(b)(1))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.B
6.C	The NPA complies <i>"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."</i> (41 CFR 51-4.3(b)(2))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.C
-6.C.1	The NPA complies with all applicable contract clauses, such as affirmative action, EEO, FMLA, drug free workplace, Vets-4212 and code of business ethics and conduct.	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.C.1
-6.C.2	The NPA complies with the applicable compensation and employment standards prescribed by the Secretary of Labor (such as Fair Labor Standards Act, Service Contract Act and the Davis-Bacon Acts), including procedures to encourage filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other significant disabilities.	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.C.2
		☐	NO , The agency was audited by DOL. The DOL findings report is attached: labeled Attachment 6.C.2

-6.C.3	The NPA complies with applicable Occupational Safety and Health Act (OSHA) standards as prescribed by the Secretary of Labor. The NPA has, at a minimum, a hazard safety plan.	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.C.3
		☐	NO , The agency was inspected and citations were received, the inspector's report is attached: labeled Attachment 6.C.3
6.D	The NPA complies "with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations." (41 CFR 51-4.3(b)(3))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.D
6.E	The NPA makes "its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency." (41 CFR 51-4.3(b)(4))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.E
6.F	The NPA maintains "records of direct labor hours performed in the nonprofit agency by each worker." (41 CFR 51-4.3(b)(5))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.F
6.G	The NPA maintains "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 government entity." (41 CFR 51-4.3(b)(6))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.G
		☐	N/A , Individuals who are blind are <u>NOT</u> served by the NPA.
6.H	The NPA maintains "in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination." (41 CFR 51-4.3(b)(7))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.H
		☐	N/A , Individuals that are blind are <u>NOT</u> served by the NPA.
6.I	For each individual with a significant disability, the NPA maintains a file that contains "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 significant disability, or a certification of the disability or disabilities by a State or local governmental entity." (41 CFR 51-4.3(c)(1))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.I
		☐	N/A , 6.I does not apply to <u>ANY</u> NIB NPA.
		☐	N/A , Individuals with significant disabilities are <u>NOT</u> served by the NPA.
6.J	For each individual with a significant disability the NPA maintains a file that contains "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." (41 CFR 51-4.3(c)(2))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.J
		☐	N/A , 6.j does not apply to <u>ANY</u> NIB NPA.
		☐	N/A , Individuals with significant disabilities are <u>NOT</u> served by the NPA.
6.K	The NPA maintains "an ongoing placement program operated by or for the nonprofit agency to include a 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." (41 CFR 51-4.3(b)(8))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.K

6.L	Upon receipt of payment by the Government for products or services furnished under the AbilityOne Program, the NPA pays "to the central nonprofit agency a fee which meets the requirements of 41 CFR 51-3.5." (41 CFR 51-4.3(b)(9))	☐	YES
		☐	NO , Attach Explanation: labeled Attachment 6.L
7. NONPROFIT AGENCY REQUIREMENTS			
7.A	Has the NPA had a material change in: 1) corporate structure or leadership control; or 2) structure at the Board of Directors Officer or Chief Executive Officer level since the last submitted AbilityOne Annual Representations and Certifications?	☐	YES , Attach explanation: labeled Attachment 7.A
		☐	YES , The change was identified in project specific certifications for PL Addition _____ dated _____. <i>NOTE: No appendix required.</i>
		☐	NO , A material change did not occur.
7.B	Has the NPA submitted any changes to: 1) the corporate Articles of Incorporation / State Statutes; or 2) the corporate Bylaws/Implementing Regulations that occurred since the last submitted AbilityOne Annual Representations and Certifications?	☐	YES , Attach explanation: labeled 7.B for: 1) Date(s) of change: Article/State Statutes and/or Bylaws/Implementing Regulations; and 2) Copies of the specific change(s)
		☐	NO , A change did not occur.
7.C	If applicable, did the NPA submit the IRS Form 990 to the IRS within the last year?	☐	YES
		☐	NO , Attach explanation: labeled Attachment 7.C
		☐	NO , IRS Form 990 <u>NOT</u> <u>APPLICABLE</u> to this agency
7.D	Did the NPA receive an independent financial audit report for the last year? <i>NOTE: This can be calendar or fiscal year, depending on the NPA's financial closing period.</i>	☐	YES
		☐	NO , Attach explanation: labeled Attachment 7.D
7.E	Does the NPA abide by the AbilityOne licensee agreement?	☐	YES
		☐	NO , Attach explanation: labeled Attachment 7.E
7.F	Does <u>ANY</u> part of the net income of the nonprofit agency inure to the benefit of any shareholder or other individual?	☐	YES , Attach explanation: labeled Attachment 7.F
		☐	NO
7.G	Does the NPA comply with cost principles identified in 2 CFR Part 230, Cost Principles for Non-profit Organizations (formerly OMB Circular A-122)?	☐	YES
		☐	NO , Attach explanation: labeled Attachment 7.G

8. ABILITYONE PROGRAM INTEGRITY			
8.A	Is this entity, or any of its principals, currently debarred, suspended, proposed for debarment or declared ineligible for the award of contracts by any federal agency? (FAR 52.209-5, FAR 52.212-3) <i>NOTE: The CNA will check the exclusions list for the D-U-N-S number(s) of your entity and indicate whether any exclusion records exist.</i>	☐	YES , Attach explanation: labeled Attachment 8.A
		☐	NO
8.B	In the past three (3) years, has this entity, or any of its principals, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property? (FAR 52.209-5, FAR 52.212-3)	☐	YES , Attach explanation: labeled Attachment 8.B
		☐	NO
8.C	Is this entity, or any of its principals, presently indicted for, or otherwise criminally or civilly charged by Government entity with, commission of any of these offenses enumerated in 8.B? (FAR 52.209-5, FAR 52.212-3)	☐	YES , Attach explanation: labeled Attachment 8.C
		☐	NO
8.D	In the past three (3) years, has this entity been notified of any delinquent Federal taxes in the amount that exceeds \$3,000 for which the liability remains unsatisfied? (FAR 52.209-5, FAR 52.212-3)	☐	YES , Attach explanation: labeled Attachment 8.D
		☐	NO
8.E	In the past three (3) years, has this entity had one or more contracts terminated for default by any Federal agency? (FAR 52.209-5)	☐	YES , Attach explanation: labeled Attachment 8.E
		☐	NO
9. ALL SECTIONS (9, 9.1, AND 9.2), ARE TO BE COMPLETED <u>ONLY</u> BY NIB AGENCIES			
9.A	Data in line 9.1.A are the direct labor hours paid to employees of the NPA who are blind as defined in 41 CFR 51-1.3 of the Commission regulations. Both sets of hours include vacation, holiday and paid sick leave.	☐	YES
		☐	NO , Attach explanation: labeled Attachment 9.A
9.B	Data in line 9.1.B are the direct labor hours performed by people who are sighted. Both sets of hours include vacation, holiday and paid sick leave.	☐	YES
		☐	NO , Attach explanation: labeled Attachment 9.B
9.C	The overall direct labor hours ratio reported in line 9.1.D is greater than 74.50%.	☐	YES
		☐	NO , Attach explanation: labeled Attachment 9.C
9.D	Total direct labor hours performed by temporary employees or employees of temporary employment agencies are included.	☐	YES
		☐	NO , Attach explanation: labeled Attachment 9.D
		☐	N/A , No temporary individuals or individuals from temporary employment agencies provided direct labor hours.

9.1 DATA FOR THE TOTAL AGENCY		PRODUCTS	SERVICES	TOTAL
9.1.A	Direct labor hours performed by people who are blind			
9.1.B	Direct labor hours performed by people who are sighted			
9.1.C	Total direct labor hours performed (9.1.A + 9.1.B)			
9.1.D	Percent of direct labor hours performed by people who are blind			
9.1.E	Total number of people who are blind only (regardless of hours worked)			
9.1.F	Total number of people who are blind with other disabilities (regardless of direct labor hours worked)			
9.1.G	Total number of people who are blind performing direct labor (9.1.E + 9.1.F)			
9.1.H	Direct labor wages paid to people who are blind. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
9.1.I	Direct labor hours performed by veterans included in line 9.1.A			
9.1.J	Total number of veterans included in line 9.1.G			
9.1.K	Direct labor wages paid to the veterans included in line 9.1.I. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
9.2 DATA FOR THE ABILITYONE PROGRAM ONLY		PRODUCTS	SERVICES	TOTAL
9.2.A	Direct labor hours performed by people who are blind			
9.2.B	Direct labor hours performed by people who are sighted			
9.2.C	Total direct labor hours performed (9.2.A + 9.2.B)			
9.2.D	Percent of direct labor hours performed by people who are blind			
9.2.E	Number of people who are blind only (regardless of hours worked)			
9.2.F	Number of people who are blind with other disabilities (regardless of hours worked)			
9.2.G	Total number of people who are blind performing direct labor (9.2.E + 9.2.F)			
9.2.H	AbilityOne direct labor wages paid to people who are blind. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
9.2.I	Direct labor hours performed by veterans included in line 9.2.A			
9.2.J	Total number of veterans included in line 9.2.G			
9.2.K	Direct labor wages paid to the veterans included in line 9.2.I. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
10. ALL SECTIONS (10, 10.1, AND 10.2) ARE TO BE COMPLETED ONLY BY SOURCEAMERICA AGENCIES				
10.A	Data in line 10.1.A are the direct labor hours paid to employees of the NPA who are blind or have other significant disabilities as defined in 41 CFR 51-1.3 of the Commission regulations. Both sets of hours include vacation, holiday and paid sick leave.	☐	YES	
		☐	NO, Attach explanation: labeled Attachment 10.A	
10.B	Data in line 10.1.B are the direct labor hours performed by people who do not meet the Commission's definition of blind or have significant disabilities. Both sets of hours include vacation, holiday and paid sick leave.	☐	YES	
		☐	NO, Attach explanation: labeled Attachment 10.B	
10.C	The overall direct labor hours ratio reported in line 10.1.D is greater than 74.50%.	☐	YES	
		☐	NO, Attach explanation: labeled Attachment 10.C	

10.D	Total direct labor hours performed by temporary employees or employees of temporary employment agencies are included.	☐	YES	
		☐	NO, Attach explanation: labeled Attachment 10.D	
		☐	N/A, No temporary individuals or individuals from temporary employment agencies provided direct labor hours.	
10.1 DATA FOR THE TOTAL AGENCY		PRODUCTS	SERVICES	TOTAL
10.1.A	Direct labor hours performed by people with significant disabilities			
10.1.B	Direct labor hours performed by people without significant disabilities			
10.1.C	Total direct labor hours performed (10.1.A + 10.1.B)			
10.1.D	Percent of direct labor hours performed by people with significant disabilities			
10.1.E	Total number of people who are blind (regardless of hours worked)			
10.1.F	Total number of people with significant disabilities (regardless of hours worked; include numbers from line 10.1.E)			
10.1.G	Direct labor wages paid to people with significant disabilities. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
10.1.H	Direct labor hours performed by veterans included in line 10.1.A			
10.1.I	Total number of veterans included in line 10.1.F			
10.1.J	Direct labor wages paid to the veterans in line 10.1.H. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
10.2 DATA FOR THE ABILITYONE PROGRAM ONLY		PRODUCTS	SERVICES	TOTAL
10.2.A	Direct labor hours performed by people with significant disabilities			
10.2.B	Direct labor hours performed by people without significant disabilities			
10.2.C	Total direct labor hours performed (10.2.A + 10.2.B)			
10.2.D	Percent of direct labor hours performed by people with significant disabilities			
10.2.E	Total number of people who are blind (regardless of hours worked)			
10.2.F	Total number of people with significant disabilities (regardless of hours worked; include numbers from line 10.2.E)			
10.2.G	AbilityOne direct labor wages paid to people with significant disabilities. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$
10.2.H	Direct labor hours performed by veterans included in line 10.2.A			
10.2.I	Total number of veterans included in line 10.2.F			
10.2.J	Direct labor wages paid to the veterans in line 10.2.H. Include paid vacation, holidays, sick leave and Service Contract Act fringe benefits paid in cash.	\$	\$	\$

11. INFORMATION ON AGENCY AND ABILITYONE PLACEMENT AND PROMOTION OF PEOPLE WITH SIGNIFICANT DISABILITIES

		ABILITYONE	NON-ABILITYONE	DIRECT PLACEMENT	TOTAL
11.A	Number placed into competitive employment				
11.B	Number placed into supported employment				
11.C	Number promoted into a new job, other than supervisory or management positions, that included increased wages and/or benefits, not cost of living raises or productivity increases			Not Applicable	
11.D	Number promoted into a new job requiring supervisory, management or technical skills, that included increased wages and/or benefits, not cost of living raises or productivity increases			Not Applicable	

12. AGENCY AND ABILITYONE SALES

12.A	Procurement List Items	
-12.A.1	NPA Sales of Military Resale (Direct & Warehouse)	\$
-12.A.2	NPA Sales of AbilityOne Products	\$
-12.A.3	NPA Sales of AbilityOne Services	\$
-12.A.4	<u>Total AbilityOne Sales</u>	\$
12.B	Base Supply Centers	
-12.B.1	NPA Sales of AbilityOne products	\$
-12.B.2	<u>Total Base Supply Centers Sales</u>	\$
12.C	<u>Total Other Federal non-AbilityOne Sales</u>	\$
12.D	<u>Total Other NPA Sales and Subcontracting</u>	\$
12.E	TOTAL AGENCY SALES	\$

13. SUBCONTRACTING ACTIVITY

Provide the total amount of subcontract dollars paid to each category of subcontractor entity in sections 13.A, 13.B and 13.C. Include ONLY dollar values for entities the NPA holds a valid subcontract with the entity.

		ABILITYONE	AGENCY TOTAL (to include AbilityOne)
13.A	Nonprofit Entities		
-13.A.1	Total value of subcontract(s) with AbilityOne NPAs (Procurement List, mandatory subcontracts)	\$	Not Applicable
-13.A.2	Total value of subcontract(s) with other nonprofits (excluding AbilityOne mandatory subcontracts)	\$	\$
-13.A.3	<u>Total subcontract value with Nonprofit Entities</u>	\$	\$
13.B	Small Business Entities		
-13.B.1	Total value of subcontract(s) with Women-Owned businesses	\$	\$
-13.B.2	Total value subcontract(s) with Veteran-Owned businesses and/or Service-Disabled Veteran-Owned businesses	\$	\$
-13.B.3	<u>Total subcontract value with all Small Business Entities (Sum of lines 13.B.1 and 13.B.2 and any other small businesses)</u>	\$	\$
13.C	Large Business/Commercial Entities		
-13.C.1	<u>Total subcontract value with Large Business/Commercial Entities</u>	\$	\$
	TOTAL SUBCONTRACTS	\$	\$

14. VETERANS

The numbers reported for line 14.A, 14.B, and 14.C should include **all** veterans / Wounded Warriors working at the NPA, whether working in management, indirect labor categories or already counted in items 9.1 or 10.1.)

14.A	Total number of veterans employed at your NPA, regardless of position	
14.B	Total number of veterans who have a disability in accordance with VA's definition of disability	
14.C	Total number of Wounded Warriors employed at your NPA, regardless of position	

THIS IS TO CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION AND DATA FROM THE RECORDS OF THE AGENCY SUBMITTED* TO THE COMMISSION THROUGH THE DESIGNATED CENTRAL NONPROFIT AGENCY IN SUPPORT OF THE AGENCY'S PARTICIPATION IN THE ABILITYONE PROGRAM FOR FEDERAL FISCAL YEAR [INSERT YEAR] ARE ACCURATE, COMPLETE AND CURRENT AS OF [INSERT DATE]*****

THE CERTIFICATE DOES NOT CONSTITUTE A REPRESENTATION AS TO THE ACCURACY OF THE ABILITYONE AGENCY CHIEF EXECUTIVE OFFICER (CEO) / EXECUTIVE DIRECTOR AND THE BOARD CHAIR OR VICE CHAIR'S JUDGEMENT OF FACTS RECEIVED AFTER THE DATE OF CERTIFICATION. IT APPLIES TO THE DATA UPON WHICH THE ABILITYONE AGENCY CEO / EXECUTIVE DIRECTOR AND THE BOARD CHAIR OR VICE CHAIR'S JUDGEMENT WAS BASED. THE DISTINCTION BETWEEN FACT AND JUDGEMENT SHOULD BE CLEARLY UNDERSTOOD. IF THE ABILITYONE AGENCY HAD INFORMATION REASONABLY AVAILABLE AT THE TIME OF CERTIFICATION SHOWING THAT THE CERTIFICATION WAS NOT BASED ON ACCURATE, COMPLETE AND CURRENT DATA, THE ABILITYONE AGENCY'S RESPONSIBILITY IS NOT LIMITED BY ANY LACK OF PERSONAL KNOWLEDGE OF THE INFORMATION ON THE PART OF THE ABILITYONE AGENCY'S CEO / EXECUTIVE DIRECTOR AND BOARD CHAIR OR VICE CHAIR SIGNING THE CERTIFICATION.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18 USC 1001.

* In accordance with the guidance and instructions of the Annual Representations and Certifications Form.

** Identify the fiscal year being reported.

*** Insert the day, month and year when the Annual Representations and Certifications Form is accurate, complete and current. This should be no later than the date of certification by the NPA's CEO / Executive Director and Board Chair or Vice Chair.

(SIGN) →		(mm/dd/year)	(SIGN) →		(mm/dd/year)
SIGNATURE (NPA's BOARD CHAIR OR VICE CHAIR)		DATE	SIGNATURE (NPA'S CEO / EXECUTIVE DIRECTOR)		DATE
NAME:	(PRINT)		NAME:	(PRINT)	
TITLE:	(PRINT)		TITLE:	(PRINT)	
			EMAIL:	(PRINT)	

Exhibit B EDLH Form

Project Estimated Direct Labor Hours

PL#: _____
Project#: _____

CNA: _____
NPA: _____

1. Service Type/NSN(s) - Product Name(s): _____

NOTE This must match what appears on the Procurement List.

2. Mandatory for: _____

3. Blind/Disabled Direct Labor Hours _____

4. Non-Blind/Non-Disabled Direct Labor Hours _____

5. Total Direct Labor Hours Worked (Add Items 3 + 4) _____

6. Percent of Blind/Disabled Direct Labor (Line 3 divided by line 5 x 100%) _____

NOTE: This should be a whole number

7. Blind/Disabled Work Years (Line 3 divided by 2,000) _____

NOTE: Calculated number should be displayed to 2 decimal places, i.e. 1.20

8. Actual number of people that are blind or severely disabled that will work on the project at any one time _____

NOTE: This should be a whole number that is equal or greater than the Blind/Disabled Work Years shown in Item 7

9. Percentage of Blind/Disabled Direct Labor utilized upon start up _____

NOTE: This should be a whole number

10. Number of months required to meet Percent of Blind/Disabled Direct Labor (Item 6) _____

NOTE: If more than 1 month attach Phase-In Schedule

11. Anticipated AbilityOne Start Date _____

NOTE: For Price Changes or Base Year renewals enter contract renewal date

12. Will the addition of this project cause the NPA's Overall agency ratio to drop below 75%? _____

If yes, when will the agency ratio be at or above 75% again? _____

NOTE: For Price Changes or Base Year renewals, select NIA.

13. Will the addition of this project cause the NPA's AbilityOne ratio to drop below 75%? _____

If yes, when will the AbilityOne ratio be at or above 75% again? _____

NOTE: For Price Changes or Base Year renewals, select NIA.

I certify that this agency has or expects to have the number of trained blind or severely disabled persons required to meet or exceed the percentage of Blind/Disabled Labor shown at Item 9 upon start of this time frame required by Item 10.

I also agree to report monthly, through the appropriate CNA, the hours and percentage of Blind/Disabled Direct Labor on this service until the Percentage of Blind/Disabled Labor stated in Item 6 is achieved.

SIGNATURE NONPROFIT CONCURRENCE

SIGNATURE CNA CONCURRENCE

Exhibit C 54 NPA AL to ID Statistically Significant Sample Recent Compliance Review

ID	Name	City	State	NPA Status	CNA	NPA Deemed Overall Adequate	Compliance Review Date	CA Received	Timely Submitted	Submission Deemed Adequate	Extension
864	Assets, Inc.	Anchorage	AK	Producing	SourceAmeri	No	9/21/2022	No	No	N/A	
3814	M. C. Resource Management	Anchorage	AK	Producing	SourceAmeri	No	9/20/2022	No	No	N/A	Extension
1416	REACH, Inc.	Juneau	AK	Producing	SourceAmeri	No	7/26/2021	Yes	No (11/1/2021)	Yes	Extension
1303	Alabama Goodwill Industries, Inc.	Birmingham	AL	Producing	SourceAmeri	No	1/9/2023	No	C.A. due 2/10/20	N/A	
453	The Opportunity Center Easter Seal Facility - The Ala ES Soc, Inc.	Anniston	AL	Producing	SourceAmeri	No	1/4/2023	No	C.A. due 2/10/20	N/A	
538	Huntsville Rehabilitation Found	Huntsville	AL	Producing	SourceAmeri	No	7/20/2022	No	No	N/A	Extension
1116	Easter Seals of the Birmingham	Birmingham	AL	Pending Delet	SourceAmeri	No	2/13/2020	No	No	N/A	Extension
793	Pathfinder, Inc	Jacksonville	AR	Producing	SourceAmeri	No	10/26/2021	Yes	Yes (2/4/2022)	Yes	Extension
469	Abilities Unlimited of Ft. Smith, Van Buren		AR	Producing	SourceAmeri	No	5/25/2022	Yes	No (7/8/2022)	Yes	
1527	The Centers for Habilitation/TCI	Tempe	AZ	Producing	SourceAmeri	No	12/7/2022	No	C.A. due 1/23/20	N/A	
492	Achieve Human Services, Inc	Yuma	AZ	Producing	SourceAmeri	No	11/1/2021	Yes	No(1/14/2022)	Yes	
AZP	Arizona Industries for the Blind	Phoenix	AZ	Producing	NIB	Yes	11/17/2022	Overall Adeq	Overall Adequate	Adequate	
621	Beacon Group, Inc.	Tucson	AZ	Producing	SourceAmeri	No	5/3/2022	No	No	N/A	
1104	Catholic Community Services of Tucson		AZ	Producing	SourceAmeri	No	5/4/2022	Yes	Yes (6/9/2022)	Yes	
2040	J.P. Industries, Inc	Tucson	AZ	Producing	SourceAmeri	No	5/2/2022	Yes	No (7/11/2022)	Yes	
2606	ServTech	Glibert	AZ	Producing	SourceAmeri	No	3/1/2022	No	No	N/A	
S051	Life Options, Vocational and Re	Lompoc	CA	Producing	SourceAmeri	No	3/9/2022	Yes	Yes (5/6/2022)	Yes	
T936	Easter Seal Society of Superior C	Sacramento	CA	Producing	SourceAmeri	No	1/20/2022	Yes	No (3/2/2022)	No	
377	VTC Enterprises	Santa Maria	CA	Producing	SourceAmeri	No	3/10/2022	Yes	Yes (5/25/2022)	Yes	
3847	Bona Fide Conglomerate, Inc.	El Cajon	CA	Producing	SourceAmeri	No	2/5/2022	Yes	No (5/23/2022)	Yes	Extension
1300	Goodwill Industries of Southern	Panarama City	CA	Producing	SourceAmeri	No	5/17/2022	Yes	No (9/30/2022)	No	
S224	Calidad Industries, Inc.	Oakland	CA	Producing	SourceAmeri	No	6/2/2022	Yes	No (7/28/2022)	Yes	
411	The ARC of Ventura County, Inc	Ventura	CA	Verified	SourceAmeri	No	5/6/2019	Yes	Yes (7/16/2019)	Yes	
691	Fontana Resources at Work	Fontana	CA	Producing	SourceAmeri	No	12/8/2021	Yes	Yes (1/27/2022)	Yes	
S303	Shasta County Opportunity Cent	Redding	CA	Producing	SourceAmeri	No	11/16/2021	Yes	Yes (12/28/2021)	Yes	
RC10	Goodwill Service Connection, Inc	Stockton	CA	Verified	SourceAmeri	No	1/22/2020	Yes	Yes (2/24/2020)	Yes	
821	Crossroads Diversified Service, Inc	Sacramento	CA	Pending Delet	SourceAmeri	No	6/17/2019	Yes	N/A (7/24/2019)	Yes	
3333	Job Options, Inc.	San Diego	CA	Producing	SourceAmeri	No	9/7/2022	Yes	Yes	Yes	
CAS	Lighthouse for the Blind and Vis	San Francisco	CA	Producing	NIB	No	2/23/2022	Yes	N/A (9/9/2022)	N/A	
1223	ARC-Imperial Valley	El Centro	CA	Producing	SourceAmeri	No	2/14/2022	Yes	No (6/6/2022)	Yes	Extension

1381	Imperial County Work Training	El Centro	CA	Producing	SourceAmeriNo	12/20/2021	Yes	No (3/16/2022)	Yes	
815	The Arc Fresno/Madera Countie	Fresno	CA	Producing	SourceAmeriNo	12/13/2021	No	No	No	
718	Lincoln Training Center and Rehabilitation Workshop	South El Mont	CA	Producing	SourceAmeriNo	2/15/2022	Yes	No (6/7/2022)	Yes	Extension
S215	Solano Diversified Services	Vallejo	CA	Producing	SourceAmeriYes	1/11/2023	Overall Adeq	Overall Adequate	Overall Adequate	
1185	Bayaud Industries, Inc. Diversus Health Inc.	Denver	CO	Producing	SourceAmeriNo	10/12/2021	Yes	No (3/30/2022)	Yes	Extension
3651	(AspenPointe Employment) Easter Seals Capital Region &	Colorado Sprin	CO	Producing	SourceAmeriNo	7/20/2022	No	No	N/A	Extension
276	Eastern Connecticut, Inc.	Windsor	CT	Producing	SourceAmeriNo	11/9/2022	No	No	N/A	
541	Anchor Mental Health Associati	Washington	DC	Producing	SourceAmeriNo	10/18/2021	Yes	Yes (2/10/2022)	Yes	Extension
S149	Challenge Enterprises of North F	Green Cove Sp	FL	Producing	SourceAmeriNo	12/16/2021	No	No	N/A	Extension
2544	Global Connections to Employm	Pensacola	FL	Producing	SourceAmeriNo	7/18/2022	Yes	No (11/29/2022)	Yes	
2237	Able Force, Inc. CARC-Advocates for Citizens	Tampa	FL	Producing	SourceAmeriNo	12/13/2021	Yes	No (3/30/2022)	Yes	Extension
2000	with Disabilities, Inc.	Lake City	FL	Producing	SourceAmeriNo	9/24/2021	Yes	No (11/19/2021)	Yes	
S188	Bridges BTC, Inc.	Rockledge	FL	Producing	SourceAmeriNo	12/14/2022	No	C.A. due 1/20/20	N/A	
444	Abilities, Inc. of Florida	Clearwater	FL	Producing	SourceAmeriYes	8/4/2016	Overall Adeq	Overall Adequate	Overall Adequate	
3535	Easter Seals South Florida, Inc.	Miami	FL	Producing	SourceAmeriNo	2/10/2022	Yes	No (5/31/2022)	No	Extension
1997	The Right 2 Work Corporation	Jacksonville	FL	Producing	SourceAmeriNo	12/13/2021	Yes	Yes (1/18/2022)	Yes	
FLL	Lighthouse Works!, Inc Middle Flint Behavioral HealthCare - Sumter County	Orlando	FL	Producing	NIB No	4/12/2022	No	N/A	N/A	
1902	MR Center	Americus	GA	Producing	SourceAmeriNo	3/23/2022	Yes	No (6/24/2022)	Yes	Extension
374	Easter Seals East Georgia, Inc.	Augusta	GA	Producing	SourceAmeriNo	6/6/2022	Yes	No (11/4/2022)	No	
1013	Thomas Grady Service Center, I	Thomasville	GA	Producing	SourceAmeriNo	11/4/2021	Yes	No (2/4/2022)	Yes	Extension
1898	The ARC of Hilo	Hilo	HI	Producing	SourceAmeriNo	3/10/2022	Yes	No (6/23/2022)	Yes	Extension
491	Ka Lima O Maui, Ltd.	Wailuku	HI	Producing	SourceAmeriNo	4/29/2022	Yes	No (8/24/2022)	Yes	
381	WITCO, Inc.	Caldwell	ID	Producing	SourceAmeriYes	6/29/2022	Overall Adeq	Overall Adequate	Overall Adequate	
1035	South Dakota Achieve	Sioux Falls	ID	Producing	SourceAmeriNo	2/10/2022	Yes	No (6/30/2022)	No	Extension

Exhibit D NPAs which failed every Compliance Review Since 2013.pdf

NPA's Out of Compliance since FY12-FY14

Abilities Unlimited of Ft. Smith Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Signed Medical Documentation - Proper Evaluation	10/24/2012	10/24/2012	10/24/2012	N/A
FY16	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Contract Clause - DOL Commensurate Wages	10/28/2015	Yes	No	N/A
FY17	Proper Evaluation	8/8/2017	Yes	N/A	Yes
FY18	Signed Medical Documentation	8/27/2018	Yes	No	Yes
FY20	- Proper Evaluation - OSHA Compliance - Placement Program - Contract Clause - DOL Commensurate Wages - SCA Compliance	11/20/2019	Yes	Yes	Yes
FY21	Proper Evaluation	4/13/2021	Yes	Yes	Yes
FY22	Service Contract	5/25/2022	Yes	No	Yes

Ability Building Center, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	Contract Clause	10/16/2012	10/16/2012	10/16/2012	N/A
FY17	Contract Clause	8/23/2017	Yes	Yes	Yes
FY19	- Proper Evaluation - Contract Clause	10/30/2018	Yes	Yes	Yes
FY20	- Signed Medical Documentation - JWOD DL Ratio - DOL Commensurate Wage - Contract Clause	7/28/2020	Yes	No	Yes

Alabama Goodwill Industries, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Signed Medical Documentation	2/1/2012	N/A	N/A	N/A
FY14	- Special Minimum Wage Certificate - SCA Compliance	8/14/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - SCA Compliance	7/26/2017	Yes	Yes	Yes
FY19	- Proper Evaluation - Special Minimum Wage Certificate	12/20/2018	Yes	N/A	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate	2/5/2020	Yes	No	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - DL Ratio - Placement Program - SCA Compliance - AbilityOne DL Ratio	10/27/2021	Yes	No	Yes

Arbor Products, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation - Special Minimum Wage Certificate	10/11/2011	N/A	N/A	N/A
FY14	- Contract Clause	7/10/2014	N/A	N/A	N/A
FY17	- Proper Evaluation - Special Minimum Wage Certificate	12/7/2016	Yes	Yes	Yes
FY18	- Special Minimum Wage Certificate - OSHA Requirement	3/1/2018	Yes	Yes	No

	- Contract Clause				
FY19	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate - OSHA Requirement	5/29/2019	Yes	No	Yes
FY21	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate	2/10/2021	Yes	Yes	Yes
FY22	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate	5/16/2022	Yes	No	No

Avenues, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- SCA Compliance	5/16/2012	N/A	N/A	N/A
FY17	- DOL Commensurate Wage - OSHA Requirements	8/29/2017	Yes	No	Yes
FY19	- Proper Evaluation - SCA Compliance - OSHA Requirements	10/26/2018	Yes	Yes	Yes
FY20	- Proper Evaluation - SCA Compliance - Contract Clause	3/3/2020	Yes	N/A	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - JWOD DL Ratio	5/16/2022	Yes	No	Yes

Blind Center of Nevada, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Overall DL Ratio - Special Minimum Wage Certificate	5/2/13	N/A	N/A	N/A

FY14	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio Adequate - Special Minimum Wage Certificate	6/19/2014	N/A	N/A	N/A
FY17	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate	8/18/2017	N/A	N/A	N/A
FY18	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - Placement Program - OSHA Requirements	9/20/2018	N/A	N/A	N/A
FY19	- Signed Medical Documentation - Proper Evaluation - Placement Program - Special Minimum Wage Certificate - OSHA Requirements - Contract Clause	9/18/2019	N/A	N/A	N/A
FY21	- Phase-In Plan - Placement Program - Special Minimum Wage	8/22/2021	Yes	No	Yes
FY22	- Signed Medical Documentation	9/7/2022	N/A	N/A	N/A

CARC, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	N/A	7/14/2011	N/A	N/A	N/A
FY14	- Proper Evaluation - Overall DL Ratio - DOL Commensurate Wage - SCA Compliance - Contract Clause	1/9/2014	Yes	Yes	N/A
FY17	- Proper Evaluation	2/15/2017	N/A	N/A	N/A

	- JWOD DL Ratio				
FY18	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio	2/21/2018	Yes	Yes	Yes

CHI Centers, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	N/A	5/10/2011	N/A	N/A	N/A
FY12	- Proper Evaluation - SCA Compliance - Contract Clause	11/14/2013	N/A	N/A	N/A
FY16	- Proper Evaluation - Placement Program - DOL Commensurate Wage - SCA Compliance - OSHA Requirements - Contract Clause	5/10/2016	Yes	Yes	Yes
FY17	- Signed Medical Documentation - Proper Evaluation - OSHA Requirements - Contract Clause	8/3/2017	Yes	Yes	Yes
FY19	- Signed Medical Documentation - Proper Evaluation - Placement Program - Special Minimum Wage Certificate - OSHA Requirements - Contract Clause	9/13/2018	Yes	Yes	Yes
FY20	- Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate - SCA Compliance - Contract Clause	1/29/2020	Yes	No	Yes
FY21	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio	11/1/2021	Yes	No	No

	- Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements				
--	---	--	--	--	--

CRI Federal Services

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Placement Program - Special Minimum Wage Certificate	12/19/2013	Yes	Yes	N/A
FY16	- DOL Commensurate Wage - OSHA Requirements	12/6/2016	Yes	No	No
FY18	- Proper Evaluation - Special Minimum Wage Certificate	2/28/2018	Yes	Yes	Yes
FY19	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements	7/10/2019	Yes	Yes	Yes
FY21	- Special Minimum Wage Certificate - OSHA Requirements - Contract Clause	3/17/2021	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate - DOL Commensurate Wage Adequate	5/17/2022	Yes	No	No

Delaware Division for the Visually Impaired (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Special Minimum Wage Certificate	3/4/2013	N/A	N/A	N/A

	- Contract Clause				
FY17	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate - Contract Clause	8/29/2017	N/A	N/A	N/A

Dorchester County Board of Disabilities and Special Needs

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Proper Evaluation - SCA Compliance - Contract Clause	11/17/2010	N/A	N/A	N/A
FY13	- Proper Evaluation - Contract Clause	3/8/2013	N/A	N/A	N/A
FY14	- N/A	7/17/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - SCA Compliance	4/20/2017	Yes	No	N/A
FY18	- SCA Compliance	4/20/2018	Yes	No	No
FY19	- Proper Evaluation	9/17/2019	Yes	Yes	No
FY21	- Proper Evaluation - SCA Compliance - Contract Clause	4/14/2021	Yes	No	No
FY22	- Signed Medical Documentation - Proper Evaluation - Placement Program	4/14/2022	Yes	Yes	Yes

Easter Seals East Georgia, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- DOL Commensurate Wage Adequate	6/11/2013	N/A	N/A	N/A
FY16	- Signed Medical Documentation	8/3/2016	Yes	Yes	Yes
FY18	- Proper Evaluation	3/8/2018	Yes	Yes	Yes

	- Contract Clause				
FY19	- Proper Evaluation - SCA Compliance	5/6/2019	Yes	Yes	No
FY21	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate	1/25/2021	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - Placement Program - Special Minimum Wage Certificate - SCA Compliance	6/6/2022	Yes	No	No

EnableUtah

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY08	- Signed Medical Documentation - Proper Evaluation	9/16/2008	N/A	N/A	N/A
FY11	- Signed Medical Documentation - Proper Evaluation - Contract Clause	8/9/2011	N/A	N/A	N/A
FY12	- N/A	6/13/2012	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - SCA Compliance - Contract Clause	8/22/2017	Yes	Yes	Yes
FY19	- Signed Medical Documentation - Proper Evaluation - DOL Commensurate Wage Adequate - SCA Compliance - Contract Clause	11/27/2018	Yes	No	Yes
FY21	- Proper Evaluation - SCA Compliance	11/30/2020	Yes	No	Yes

	- Contract Clause				
FY22	- JWOD DL Ratio - Contract Clause	3/29/2022	Yes	Yes	Yes

Florence County Disabilities and Special Needs Board

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY10	- Proper Evaluation	2/3/2010	N/A	N/A	N/A
FY11	- N/A	2/9/2011	N/A	N/A	N/A
FY14	- Overall DL Ratio - JWOD DL Ratio - Placement Program - SCA Compliance - Contract Clause	11/25/2013	N/A	N/A	N/A
FY17	- Proper Evaluation	11/11/2016	N/A	N/A	N/A
FY18	- Proper Evaluation - Contract Clause	1/17/2018	Yes	Yes	Yes
FY19	- Proper Evaluation - SCA Compliance	3/13/2019	Yes	Yes	Yes
FY21	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - DOL Commensurate Wage Adequate - SCA Compliance - Contract Clause	11/17/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - SCA Compliance	2/23/2022	Yes	Yes	Yes

Foothills Gateway, Inc.- Pending Deletion

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Contract Clause	8/25/2011	N/A	N/A	N/A
FY14	- Proper Evaluation	4/30/2014	N/A	N/A	N/A
FY15	- N/A	8/11/2015	N/A	N/A	N/A
FY17	- Proper Evaluation	9/6/2017	Yes	Yes	Yes

Genesis Development (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- N/A	11/10/2010	N/A	N/A	N/A
FY14	- DOL Commensurate Wage Adequate - Contract Clause	10/16/2013	N/A	N/A	N/A
FY17	- Contract Clause	10/20/2016	N/A	No	N/A
FY18	- Proper Evaluation - DOL Commensurate Wage Adequate	3/8/2018	Yes	Yes	Yes
FY19	- Proper Evaluation - DOL Commensurate Wage Adequate - Contract Clause	5/16/2019	Yes	Yes	N/A
FY21	- Signed Medical Documentation - Overall DL Ratio - Special Minimum Wage Certificate - SCA Compliance	2/11/2021	Yes	Yes	No

Glenkirk

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- N/A	12/9/2010	N/A	N/A	N/A
FY13	- DOL Commensurate Wage	8/9/2013	Yes	Yes	N/A
FY16	- Overall DL Ratio - JWOD DL Ratio	6/22/2016	Yes	Yes	Yes
FY18	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - SCA Compliance	11/15/2017	Yes	No	Yes
FY19	- SCA Compliance	2/8/2019	Yes	No	No
FY21	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - DOL Commensurate Wage Adequate - SCA Compliance	2/22/2021	Yes	Yes	No

Goodworks, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY03	- N/A	2/3/2003	N/A	N/A	N/A
FY07	- N/A	6/20/2007	N/A	N/A	N/A
FY09	- N/A	3/3/2009	N/A	N/A	N/A
FY12	- Proper Evaluation - SCA Compliance - Contract Clause	12/14/2011	N/A	N/A	N/A
FY14	- Overall DL Ratio - JWOD DL Ratio	9/22/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate	8/24/2017	Yes	Yes	Yes
FY19	- Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements - Contract Clause	12/13/2018	Yes	No	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate	1/13/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate	9/26/2022	No	No	N/A

High Sierra Industries, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation	3/13/2012	N/A	N/A	N/A
FY15	- DOL Commensurate Wage - OSHA Requirements	8/29/2017	Yes	No	Yes
FY17	- Proper Evaluation	10/26/2018	Yes	Yes	Yes

	- SCA Compliance - OSHA Requirements				
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Hope Enterprises, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY14	- Proper Evaluation	12/17/2013	N/A	N/A	N/A
FY15	- N/A	8/18/2015	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate	7/6/2017	N/A	N/A	N/A

Houston County Association for Exceptional Citizens, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- DOL Commensurate Wage	5/31/2012	N/A	N/A	N/A
FY17	- Overall DL Ratio - JWOD DL Ratio	1/12/2017	No	No	N/A
FY18	- Proper Evaluation	1/31/2018	Yes	N/A	Yes

J.M. Murray Center, Inc. – (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Proper Evaluation - DOL Commensurate Wage Adequate	6/22/2011	N/A	N/A	N/A
FY14	Committee Review	8/15/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation	8/30/2017	Yes	Yes	Yes

Jefferson County Comprehensive Services, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation - SCA Compliance	6/19/2012	N/A	N/A	N/A
FY17	- Proper Evaluation - SCA Compliance	6/6/2017	Yes	Yes	Yes
FY18	- Proper Evaluation	8/13/2018	Yes	No	Yes
FY20	- DOL Commensurate Wage Adequate - SCA Compliance	10/16/2019	Yes	Yes	No
FY21	- Proper Evaluation - SCA Compliance	5/10/2021	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Placement Program - DOL Commensurate Wage Adequate - SCA Compliance -	8/16/2022	No	No	N/A

Life Options, Vocational and Resource Center

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY05	Committee Review	6/21/2005	N/A	N/A	N/A
FY11	- Signed Medical Documentation - Overall DL Ratio	3/30/2011	N/A	N/A	N/A
FY15	Committee Review	9/1/2015	N/A	N/A	N/A
FY18	- Proper Evaluation	12/20/2017	Yes	Yes	N/A
FY19	- Proper Evaluation	2/6/2019	Yes	Yes	Yes
FY21	- Proper Evaluation - DOL Commensurate Wage Adequate - SCA Compliance	11/9/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation	3/9/2022	Yes	Yes	Yes

	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Placement Program				
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Lifetime Assistance, Inc. – (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Proper Evaluation	3/28/2013	N/A	N/A	N/A
FY15	- Committee Review	6/3/2015	N/A	N/A	N/A
FY17	- Proper Evaluation - SCA Compliance - Contract Clause	9/15/2017	Yes	Yes	No

Louise Graham Regeneration Center, Inc. – (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Placement Program	5/16/2012	N/A	N/A	N/A
FY16	- Proper Evaluation	8/29/2017	Yes	Yes	Yes

Middle Flint Behavioral HealthCare- Sumter County MR Center

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Special Minimum Wage Certificate - SCA Compliance	11/30/2011	N/A	N/A	N/A
FY13	Committee Review	4/1/2013	N/A	N/A	N/A
FY16	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	6/22/2016	Yes	Yes	Yes
FY17	- Proper Evaluation - SCA Compliance - Contract Clause	7/12/2017	N/A	N/A	N/A
FY19	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate	11/15/2018	Yes	No	Yes

	- Contract Clause				
FY21	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate	10/27/2020	Yes	N/A	Yes
FY22	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements	3/23/2022	Yes	No	Yes

OAHE, Inc.- (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- SCA Compliance - OSHA Requirements - Contract Clause	8/29/2012	N/A	N/A	N/A
FY16	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance - Contract Clause	12/2/2015	Yes	Yes	N/A
FY18	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate - Contract Clause	11/1/2017	Yes	N/A	Yes

Occupational Development Center, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY14	- Overall DL Ratio - SCA Compliance	11/20/2013	N/A	N/A	N/A
FY14	Committee Review	7/16/2014	N/A	N/A	N/A
FY18	- Proper Evaluation - DOL Commensurate Wage Adequate	11/15/2017	Yes	No	Yes

	- Contract Clause				
FY19	- Contract Clause	7/16/2019	Yes	N/A	Yes
FY21	- Proper Evaluation	9/9/2021	Yes	Yes	Yes

On Our Own Services, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Signed Medical Documentation	1/24/2012	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance - Contract Clause	6/14/2017	Yes	N/A	Yes
FY18	- Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate	9/20/2018	Yes	No	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	2/4/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Placement Program - Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements - Contract Clause	12/8/2021	Yes	No	No

Oswego Industries, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Proper Evaluation - Phase-in Adequate	3/26/2013	N/A	N/A	N/A

FY14	Committee Review	8/13/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Placement Program - DOL Commensurate Wage Adequate - SCA Compliance - Contract Clause	5/10/2017	Yes	Yes	Yes
FY18	- Signed Medical Documentation - Proper Evaluation	5/23/2018	Yes	No	Yes
FY19	- Signed Medical Documentation - Proper Evaluation - JWOD DL Ratio	7/16/2019	Yes	No	Yes
FY20	- Signed Medical Documentation - Proper Evaluation - Placement Program - DOL Commensurate Wage Adequate - SCA Compliance	8/9/2021	Yes	No	Yes
FY23	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - SCA Compliance	11/29/2022	No	No	N/A

PACE Enterprises of West Virginia, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	Committee Review	11/8/2012	N/A	N/A	N/A
FY18	- Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate	10/24/2017	Yes	No	Yes
FY18	Committee Review	6/21/2018	N/A	N/A	N/A
FY19	- Proper Evaluation - Special Minimum Wage Certificate	8/14/2019	Yes	N/A	Yes
FY21	- Proper Evaluation	7/22/2021	Yes	Yes	Yes

	- Special Minimum Wage Certificate				
FY23	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Placement Program - Special Minimum Wage Certificate - Contract Clause	11/16/2022	No (Extension granted; due 2/13/2023)	N/A	N/A

Pathfinder, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY09	- Signed Medical Documentation - Proper Evaluation	9/24/2009	N/A	N/A	N/A
FY13	- Proper Evaluation - JWOD DL Ratio - Contract Clause	11/29/2012	N/A	N/A	N/A
FY17	- Proper Evaluation	8/16/2017	Yes	Yes	N/A
FY19	- JWOD DL Ratio	11/28/2018	Yes	Yes	Yes
FY20	- Proper Evaluation - DOL Commensurate Wage Adequate - OSHA Requirements	1/22/2020	Yes	No	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - JWOD DL Ratio - Placement Program	10/26/2021	Yes	Yes	Yes

Portco, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
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FY13	- Signed Medical Documentation	2/21/2013	N/A	N/A	N/A
FY16	- Signed Medical Documentation - Proper Evaluation - SCA Compliance - OSHA Requirements - Contract Clause	3/2/2016	N/A	N/A	N/A
FY18	- DOL Commensurate Wage Adequate	3/7/2018	Yes	No	Yes
FY19	- SCA Compliance - OSHA Requirements	4/17/2019	Yes	N/A	Yes
FY21	- Signed Medical Documentation - Proper Evaluation - JWOD DL Ratio	2/23/2021	Yes	No	Yes
FY22	- SCA Compliance - OSHA Requirements	7/27/2022	Yes	Yes	Yes

Provail- (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation - Special Minimum Wage Certificate	6/20/12	N/A	N/A	N/A
FY16	- Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate	8/25/2016	N/A	N/A	N/A
FY17	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate	8/14/2017	Yes	No	Yes

Rauch, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	Committee Review	9/23/2013	N/A	N/A	N/A
FY16	- Proper Evaluation	7/26/2016	Yes	N/A	N/A

	- DOL Commensurate Wage Adequate - Contract Clause				
FY18	- Proper Evaluation	3/28/2018	Yes	Yes	Yes
FY19	- Proper Evaluation - JWOD DL Ratio	4/9/2019	Yes	No	Yes
FY21	No "N" on PLIMS	3/1/2021	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation	6/15/2022	Yes	Yes	Yes

Rising Star Resource Development Corporation

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Signed Medical Documentation - Proper Evaluation - Placement Program - OSHA Requirements	10/25/2012	N/A	N/A	N/A
FY15	Committee Review	4/23/2015	N/A	N/A	N/A
FY16	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Placement Program - Special Minimum Wage Certificate - SCA Compliance - OSHA Requirements - Contract Clause	5/19/2016	No	N/A	N/A
FY18	- Proper Evaluation - Special Minimum Wage Certificate	2/27/2018	Yes	Yes	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	11/18/2019	Yes	Yes	Yes
FY21	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate - Contract Clause	8/10/2021	Yes	N/A	Yes

FY23	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate	12/13/2022	N/A	No	N/A
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Seven hills Occupational & Rehabilitation Services, Inc. (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY06	No Transaction ID	3/14/2006	N/A	N/A	N/A
FY09	- Proper Evaluation - SCA Compliance	1/22/2009	N/A	N/A	N/A
FY16	- Special Minimum Wage Certificate - SCA Compliance - Contract Clause	3/1/2016	Yes	Yes	N/A
FY18	- Special Minimum Wage Certificate - Contract Clause	9/26/2017	Yes	No	Yes
FY18	- Special Minimum Wage Certificate - Contract Clause	7/24/2018	Yes	Yes	Yes

Skills'kin

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation	8/14/2012	N/A	N/A	N/A
FY12	Committee Review	9/12/2012	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate	8/31/2017	Yes	Yes	Yes
FY19	- Proper Evaluation - Overall DL Ratio - JWOD DL Ratio	12/5/2018	Yes	Yes	Yes

	- Special Minimum Wage Certificate - Contract Clause				
FY20	- Proper Evaluation - Special Minimum Wage Certificate	8/4/2020	Yes	No	Yes
FY22	- Special Minimum Wage Certificate	3/16/2022	Yes	Yes	Yes

St. Clair Associated Vocational Enterprises, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- DOL Commensurate Wage Adequate	6/21/2012	N/A	N/A	N/A
FY17	Committee Review	6/7/2017	N/A	N/A	N/A
FY18	- Proper Evaluation - Contract Clause	6/21/2018	Yes	Yes	Yes
FY20	- Signed Medical Documentation - Proper Evaluation - Contract Clause	10/15/2019	Yes	No	Yes
FY21	- JWOD DL Ratio - DOL Commensurate Wage Adequate	9/27/2021	Yes	Yes	Yes

St. Lawrence County Chapter, NYSARC (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Proper Evaluation	6/14/2011	N/A	N/A	N/A
FY14	Committee Review	6/24/2014	N/A	N/A	N/A
FY17	- Contract Clause	3/29/2017	Yes	Yes	N/A
FY18	- Contract Clause	5/1/2018	Yes	Yes	Yes
FY19	- Proper Evaluation	9/11/2019	Yes	No	Yes

SW Resources, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY04	- No Transaction ID	3/10/2004	N/A	N/A	N/A

FY07	- No Transaction ID	8/8/2007	N/A	N/A	N/A
FY10	- Special Minimum Wage Certificate - DOL Commensurate Wage Adequate - Contract Clause	6/9/2010	N/A	N/A	N/A
FY11	- Committee Review	9/14/2011	N/A	N/A	N/A
FY14	- Signed Medical Documentation - Proper Evaluation	5/14/2014	N/A	N/A	N/A
FY17	- Proper Evaluation - Placement Program - Special Minimum Wage Certificate - SCA Compliance	3/1/2017	Yes	No	N/A
FY18	- Proper Evaluation - Special Minimum Wage Certificate	3/7/2018	Yes	Yes	Yes
FY19	- Overall DL Ratio - Special Minimum Wage Certificate - SCA Compliance	5/29/2019	Yes	Yes	Yes
FY21	- Special Minimum Wage Certificate - SCA Compliance	3/29/2021	Yes	N/A	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	9/8/2022	No	No	N/A

The Arc of Greater New Orleans

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	Committee Review	11/15/2012	N/A	N/A	N/A
FY17	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance - Contract Clause	8/23/2017	Yes	Yes	Yes
FY19	- Special Minimum Wage Certificate	12/12/2018	Yes	No	Yes

	- SCA Compliance - Contract Clause				
FY20	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	1/14/2020	Yes	No	Yes
FY21	- Proper Evaluation - Special Minimum Wage Certificate	9/29/2021	No	No	No

The Arc of Montgomery County, Inc.- (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	Committee Review	4/4/2011	N/A	N/A	N/A
FY14	- No "N" on PLIMS	11/13/2013	N/A	N/A	N/A
FY17	- Proper Evaluation - SCA Compliance - Contract Clause	11/30/2016	Yes	No	N/A
FY18	- Special Minimum Wage Certificate - SCA Compliance	2/14/2018	Yes	N/A	Yes
FY19	- Proper Evaluation - Special Minimum Wage Certificate - SCA Compliance	5/21/2019	Yes	Yes	Yes

The Arc of the Quad Cities Area

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY12	- Proper Evaluation	8/22/2012	N/A	N/A	N/A
FY14	- Committee Review	4/21/2014	N/A	N/A	N/A
FY17	- Signed Medical Documentation - Proper Evaluation - Contract Clause	4/18/2017	Yes	Yes	N/A
FY18	- No "N" on PLIMS	7/17/2018	Yes	Yes	Yes
FY20	- Special Minimum Wage Certificate - Contract Clause	11/21/2019	Yes	Yes	Yes

FY21	- Proper Evaluation - JWOD DL Ratio	7/26/2021	Yes	No	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Placement Program - Contract Clause	11/3/2022	No	N/A	N/A

The Opportunity Center Easter Seal Facility- The Ala ES Soc, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY13	- Committee Review	1/24/2013	N/A	N/A	N/A
FY16	- Proper Evaluation - Special Minimum Wage Certificate - Contract Clause	10/9/2015	Yes	N/A	Yes
FY17	- Proper Evaluation - Special Minimum Wage Certificate	7/24/2017	Yes	Yes	Yes
FY19	- Proper Evaluation - Overall DL Ratio - Special Minimum Wage Certificate	12/19/2018	Yes	Yes	Yes
FY20	- Proper Evaluation - Special Minimum Wage Certificate - Contract Clause	2/14/2020	Yes	Yes	Yes
FY22	- Overall DL Ratio - JWOD DL Ratio - Special Minimum Wage Certificate - SCA Compliance	12/9/2021	Yes	No	Yes

Trico Opportunities, Inc. – (Pending Deletion)

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Signed Medical Documentation - Proper Evaluation	6/15/2011	N/A	N/A	N/A

	- DOL Commensurate Wage Adequate				
FY16	- Proper Evaluation - Contract Clause	4/20/2016	Yes	N/A	N/A
FY18	- Proper Evaluation - JWOD DL Ratio - Placement Program	2/21/2018	Yes	Yes	Yes

Vocational Training Center

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Proper Evaluation	10/18/2010	N/A	N/A	N/A
FY13	- SCA Compliance - Contract Clause	4/24/2013	Yes	N/A	N/A
FY16	- Proper Evaluation - DOL Commensurate Wage Adequate - OSHA Requirements - Contract Clause	8/9/2016	Yes	Yes	Yes
FY18	- Contract Clause	7/10/2018	Yes	Yes	Yes
FY19	- Proper Evaluation	7/18/2019	Yes	Yes	Yes
FY21	- Proper Evaluation	8/30/2021	Yes	N/A	Yes
FY23	- Proper Evaluation	11/30/2022	No (CA due 1/31/2023)	N/A	N/A

VTC Enterprises

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Signed Medical Documentation	3/31/2011	Yes	N/A	N/A
FY14	- Proper Evaluation - JWOD DL Ratio	12/9/2013	N/A	N/A	N/A
FY15	- Committee Review	12/9/2013	N/A	N/A	N/A
FY18	- Proper Evaluation - Special Minimum Wage Certificate	12/19/2017	Yes	Yes	Yes
FY19	- Special Minimum Wage Certificate - SCA Compliance	2/7/2019	Yes	N/A	Yes
FY21	- Proper Evaluation	10/19/2020	Yes	No	Yes

	- Special Minimum Wage Certificate				
FY22	- Signed Medical Documentation - Proper Evaluation - Overall DL Ratio - JWOD DL Ratio - Placement Program - Special Minimum Wage Certificate	3/10/2022	Yes	Yes	Yes

Weaver Industries, Inc.

Year	Reason for Noncompliance	Compliance Review Date	Corrective Action Received	Timely Submitted	Submission Deemed Adequate
FY11	- Proper Evaluation	9/29/2011	N/A	N/A	N/A
FY14	- Committee Review	4/2/2014	N/A	N/A	N/A
FY17	- DOL Commensurate Wage Adequate - SCA Compliance	8/23/2017	Yes	Yes	Yes
FY19	- SCA Compliance	10/24/2018	Yes	N/A	Yes
FY21	- Proper Evaluation	12/15/2020	Yes	Yes	Yes
FY22	- Signed Medical Documentation - Proper Evaluation - Placement Program - SCA Compliance	3/22/2022	Yes	N/A	Yes

Exhibit E Notification of Commitment to Recuse





Presidential Appointee of the Commission

MEMORANDUM

TO: U.S. AbilityOne Committee Members

██████████ Acting Executive Director

FROM: ██████████, Committee Member

DocuSigned by:

██
CEO, Lighthouse for the Blind and Visually Impaired - San Francisco, CA

DATE: November 16, 2021

RE: Notification of Commitment to Recuse

This memorandum is to provide you with written notification of my commitment to refrain from participation in voting on certain matters in which I have or had a financial interest or a personal or business relationship and to describe the steps that I am taking to implement this commitment to recuse. I understand that where there is no real or apparent conflict of interest regarding a matter, I am not precluded from participating in those other matters before the Commission in accordance with my appointment pursuant to 41 U.S.C. § 8502.

This recusal arises because of my position as the Chief Executive Officer (CEO) of Lighthouse for the Blind and Visually Impaired (the "Lighthouse") in San Francisco, CA. The Lighthouse operates employment programs for individuals who are blind or visually impaired as a qualified nonprofit agency affiliated with National Industries for the Blind (NIB) and participating in the U.S. AbilityOne Program.

Under 18 U.S.C. § 208, I am prohibited from participating personally and substantially in any matter that would have a direct and predictable effect on my own financial interests or those of certain other persons or organizations identified in section 208 or that would give rise to the appearance that I am doing so. In my position as a private citizen Member of the Committee for Purchase From People Who Are Blind or Severely Disabled (hereinafter "Committee"), I may be called upon to participate in matters affecting the Lighthouse.

To ensure I do not participate officially in these matters, I will refrain from interacting with the Commission staff, Committee Members and NIB on the Lighthouse's PL additions, and I will recuse myself from voting on matters related to the Lighthouse, including PL additions. Since NIB has exclusive authority for project allocations, I will also refrain from interacting with NIB on matters related to the same line of business as the Lighthouse that may come before NIB during the allocation

process. Further, [REDACTED] Lighthouse Chief Operating Officer (COO) has been designated to coordinate with NIB directly on new projects being added to the PL.

If, or when, I become aware that the Lighthouse has submitted, will submit or is discussing internally on whether to submit a proposal to a NIB allocation opportunity, I will notify the Chairperson and the Executive Director of my intention to recuse myself from coordinating the Lighthouse's submission with Commission staff or NIB and I will refrain from discussing the Lighthouse's submission with other Committee Members. Lastly, if any Commission staff, Committee Members or NIB personnel pose questions to me regarding the Lighthouse's projects being considered for PL addition, I will direct those inquiries to [REDACTED] the COO who is coordinating these matters on behalf of the Lighthouse.

To ensure this recusal commitment remains effective, I will take the following steps: (1) I will affirmatively revise and update this memorandum whenever it is warranted by changes in my financial interests or the nature of my duties, or other changed circumstances, and provide you, the person exercising my authority, the DAEO (or Alternate DAEO) and any other individuals necessary with a copy; and (2) I will advise the Chairperson, the Executive Director, the DAEO (or Alternate DAEO) of any such changes.

cc: Jeffrey Koses, Chairperson
[REDACTED], DAEO
[REDACTED], ADAEO

Exhibit F Notification of Commitment to Recuse





Presidential Appointee of the Commission

MEMORANDUM

TO: U.S. AbilityOne Committee Members
[REDACTED], Acting Executive Director

FROM: [REDACTED] Committee Member *CD*

DATE: November 10, 2021

RE: Notification of Commitment to Recuse

This memorandum is to provide you with written notification of my commitment to refrain from participating in voting on certain matters in which I have or had a financial interest or a personal or business relationship and to describe the steps that I am taking to implement this commitment to recuse. I understand that where there is no real or apparent conflict of interest regarding a matter, I am not precluded from participating in those other matters before the Commission.

This recusal arises because of my position as the President and Chief Executive Officer (CEO) of AtWork!. AtWork! operates employment and social services programs for individuals with Intellectual Developmental Disabilities as a qualified nonprofit agency affiliated with SourceAmerica and participating in the U.S. AbilityOne Program ("Program"). At Work! currently has existing contracts in the Program. AtWork! also has one project being reviewed by SourceAmerica for Procurement List ("PL") addition, which involves AtWork! employees providing labeled sample vials to the National Oceanic and Atmospheric Administration (NOAA). Although AtWork! has been performing this contract for NOAA since 2006, it is under development with SourceAmerica as a Designated Source recommendation pursuant to NOAA's procurement strategy utilizing AbilityOne.

AtWork! has a for-profit, wholly-owned subsidiary called AtWork Commercial Enterprises (ACE). ACE is currently involved in grounds maintenance services and has \$2 million in annual revenue, which helps fulfill ACE's purpose of covering a percentage of AtWork!'s administrative costs and providing funding for AtWork!'s continued investments in Competitive Integrated Employment and Community Inclusion programs. Additionally, AtWork! is working with SourceAmerica and the Department of Veterans on a groundskeeping services PL addition at the Puget Sound Healthcare System and ACE will be the subcontractor for AtWork! during the first-year, phase-in period. A pricing proposal for this PL addition was submitted in September 2021, but I was not involved in that submission.

Importantly, ACE has a separate Board of Directors with three members: two members are from AtWork!, the third is a community member and all are duly elected. The manager and Chief Officer of ACE is [REDACTED], AtWork!'s Chief Financial Officer (CFO). [REDACTED] manages ACE's business

and personnel and works directly with ACE's Board of Directors. I have no official capacity with ACE. I do attend ACE Board meetings as an oversight function of AtWork! and to provide information about AtWork! as needed; however, I do not vote.

Under 18 U.S.C. § 208, I am prohibited from participating personally and substantially in any matter that would have a direct and predictable effect on my own financial interests or those of certain other persons or organizations identified in section 208 or that would give rise to the appearance that I am doing so. In my position as a private citizen Member of the Committee for Purchase From People Who Are Blind or Severely Disabled (hereinafter "Committee"), I may be called upon to participate in matters affecting AtWork!.

To ensure I do not participate officially in these matters, such as the examples provided above, I will refrain from interacting with the Commission staff and Committee Members on AtWork! PL additions, and I will recuse myself from voting on matters related to AtWork!, including PL additions. Since SourceAmerica has exclusive authority for project allocations, I will also refrain from interacting with SourceAmerica on matters related to the same line of business as AtWork! that may come before SourceAmerica during the allocation process.

Within AtWork! we have established a set of internal control policies to ensure my non-participation. [REDACTED], the CFO, and [REDACTED] AtWork!'s Chief Operating Officer (COO) are the designated signatories of all SourceAmerica and AbilityOne documents, including bids, contracts, reports and all other correspondence. I will not be involved in communications regarding SourceAmerica and the COO is responsible for responding to opportunities, developing bids and proposals, and negotiating with SourceAmerica and Federal customers. I will notify SourceAmerica and the Commission of these internal control policies, and I have asked the Commission's ethics officials for assistance in drafting an email message I can send to SourceAmerica and AtWork! personnel.

If, or when, I become aware that AtWork! has submitted, will submit or is discussing internally on whether to submit a proposal to a SourceAmerica Opportunity Notice, I will notify the Chairperson and the Executive Director of my intention to recuse myself from coordinating AtWork!'s submission with Commission staff or SourceAmerica and I will refrain from discussing AtWork!'s submission with other Committee Members. Lastly, if any Commission staff, Committee Members or SourceAmerica personnel pose questions to me regarding AtWork!'s projects being considered for PL addition, I will direct those inquiries to [REDACTED] or [REDACTED] who are coordinating these matters for AtWork!.

To ensure this recusal commitment remains effective, I will take the following steps: (1) on an annual basis the COO will reaffirm AtWork!'s point of contact with SourceAmerica and the Commission (or more often if required); (2) AtWork!'s COO will inform me there are new SourceAmerica opportunities being considered (notice only, not a substantive discussion) so I can timely inform the Chairperson and other Commission Members; (3) I will affirmatively revise and update this memorandum whenever it is warranted by changes in my financial interests or the nature of my duties, or other changed circumstances, and provide you, the person exercising my authority, the DAEO (or Alternate DAEO) and any other individuals necessary with a copy; and (4) I will advise the Chairperson, the Executive Director, the DAEO (or Alternate DAEO) of any such changes.

cc: Jeffrey Koses, Chairperson
[REDACTED], DAEO
[REDACTED] ADAEO

11/10/2011

Exhibit G Compliance Worksheet NIB



**TRIP REPORT
FOR
National Industries for the Blind
NONPROFIT AGENCY**

Reference: NIB Cooperative Agreement Objective 3.3 Support and Assist NPAs with AbilityOne Regulatory and Federal Business Requirements, Section 3.3.1.3 NPA Regulatory Assistance, Performance Requirement Advance NPA Capabilities, and Deliverable Requirement NPA Regulatory Assistance Visits Post-Visit Reports

Virtual Technical Assistance Visit

Package# _____
Transaction# _____

Date of Review: [Click here to enter a date.](#)
Reviewer:

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

Point of Contact: [Click here to enter text.](#)
Phone Number

Title:
Email: [Click here to enter text.](#)

Additional Work site(s) street address, city, and state:

Previous Review Date: [Click here to enter a date.](#)

Previous Reviewer: [Click here to enter text.](#)

- ☐ NIB
☐ Commission

Previous Deficiencies: [Click here to enter text.](#)

Have all deficiencies been corrected? ☐ Yes ☐ No

Comments: [Click here to enter text.](#)

1. Articles of Incorporation & Bylaws

1. Have there been any changes to articles of incorporation or bylaws since _____ ?

☐ Yes ☐ No

If yes, when [Click here to enter text.](#) (Attach a copy of amendments)

2. Is the agency a related corporation, i.e., an affiliate of a parent corporation? ☐ Yes ☐ No

Comments: [Click here to enter text.](#)

2. File Review for Medical Documentation & Competitive Employability

Total number of files for all blind or severely disabled direct labor employees

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

Total number of files reviewed.

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

A. Number of files which contained documentation of blindness or significant disability:

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

Rating [Choose an item.](#)

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 every individual's capability for normal competitive employment.

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

Rating [Choose an item.](#)

Comments: [Click here to enter text.](#)

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

Does the agency have a policy and procedure for placement services? ☐ Yes ☐ No

Comments: [State of Tennessee](#)

4. Direct Labor Ratios

FY 2021 cumulative hours through 3/31/2021

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

Are temporary employees being counted correctly in the ratio calculation? ☐ Yes ☐ No

Does Agency have a current Ratio Waiver? ☐ Yes ☐ No

A. Total Agency Direct Labor

Blind Hours	_____	(+)	Sighted Hours	_____	(=)	Total	_____
Blind Hours	_____	(/)	Total Hours	_____	(=)	Ratio	_____

B. AbilityOne Direct Labor

Blind Hours	_____	(+)	Sighted Hours	_____	(=)	Total	_____
Blind Hours	_____	(/)	Total Hours	_____	(=)	Ratio	_____

Comments: [Click here to enter text.](#)

5. AbilityOne Project Ratios

FY ____ cumulative hours through

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

Project # ____ Ratio on EDLH

Is the project on-schedule? ☐ Yes ☐ No ☐ NA

Blind Hours	_____	(+)	Sighted Hours	_____	(=)	Total	_____
Blind Hours	_____	(/)	Total Hours	_____	(=)	Ratio	_____

Project # ____ Ratio EDLH

Is the project on-schedule? ☐ Yes ☐ No ☐ NA

Blind Hours	_____	(+)	Sighted Hours	_____	(=)	Total	_____
Blind Hours	_____	(/)	Total Hours	_____	(=)	Ratio	_____

Project # [Click](#) Ratio on EDLH

Is the project on-schedule? ☐ Yes ☐ No ☐ NA

Blind Hours	_____	(+)	Sighted Hours	_____	(=)	Total	_____
Blind Hours	_____	(/)	Total Hours	_____	(=)	Ratio	_____

Comments: [Click here to enter text.](#)

6. Commensurate Wages

A. Special Wage Certificate

Does the agency have a certificate authorizing special minimum wage?

☐ Yes ☐ No

Expiration Date [Click here to enter a 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 ☐ NA

Have calculations been verified to match payroll records?

☐ Yes ☐ No ☐ NA

B. Prevailing Wage

Has the prevailing wage survey been completed annually?

☐ Yes ☐ No ☐ NA

Does the prevailing wage survey have all the following:

☐ Yes ☐ No ☐ NA

Contact date, company name, address, phone number, contact person's 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.

Have the employees' wages been adjusted no later than the first complete pay period following the prevailing wage review?

☐ Yes ☐ No ☐ NA

Have all monetary calculations been rounded up?

☐ Yes ☐ No ☐ NA

C. Hourly Production Standards

Is there a job description and task analysis for work being performed?

☐ Yes ☐ No ☐ NA

Has a standard been set using employees who are not disabled for the work?

☐ Yes ☐ No ☐ NA

Have employees' productivity been measured within the first month of employment?

☐ Yes ☐ No ☐ NA

Is employee performance being reviewed every six months or when the workers change jobs?

☐ Yes ☐ No ☐ NA

Are production standards reviewed periodically?

☐ Yes ☐ No ☐ NA

Have all monetary calculations been rounded up?

☐ Yes ☐ No ☐ NA

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 ☐ NA

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 ☐ NA

Are piece rates calculated correctly? ☐ Yes ☐ No ☐ NA
(Prevailing wage divided by non-disabled standard = piece rate)

Have all monetary calculations been rounded up? ☐ Yes ☐ No ☐ NA

Comments: [Click here to enter text.](#)

7. Service Contract Act (SCA)

Is the current wage determination rate being used? ☐ Yes ☐ No ☐ NA

Which health & welfare benefits are being paid? ☐ Cash ☐ Benefit Plan ☐ Both

Explain benefit plan, in component parts and percentages of H&W: [Click here to enter text.](#)

Has payment to the benefit provider been verified? ☐ Yes ☐ No ☐ NA

Holidays paid? ☐ Yes ☐ No ☐ NA

Vacation benefits paid? ☐ Yes ☐ No ☐ NA

Sick Leave benefit paid? ☐ Yes ☐ No ☐ NA
(Executive Order 13706- January 17, 2017)

Payroll records match? ☐ Yes ☐ No ☐ NA

Current Wage Determination(s) Posted? ☐ Yes ☐ No ☐ NA

Comments: [Click here to enter text.](#)

8. Davis Bacon Act (DBA)

Is the current wage determination rate being used? ☐ Yes ☐ No ☐ NA

How are fringe benefits being dispersed? ☐ Cash ☐ Benefit Plan ☐ Both

Is fringe benefit plan funded or unfunded? ☐ Funded ☐ Unfunded

Has payment to the funded benefit provider been verified? ☐ Yes ☐ No ☐ NA

Explain benefit plan, in component parts and percentages fringe benefit:

[Click here to enter text.](#)

Are certified payrolls submitted weekly? ☐ Yes ☐ No ☐ NA

Do the certified payrolls have all the following: ☐ Yes ☐ No ☐ NA

Although use of Form WH-347 is optional, payroll records submitted must contain: Name, address, and social security number of each employee, each employee's work classification(s), Hourly rate(s) of pay (including rates of contributions or costs anticipated for bona fide Fringe benefits or cash equivalents daily and weekly number of hours worked; deductions made. and actual wages paid

Are commensurate wages being paid (This should be a No. If NPA is paying ☐ Yes ☐ No ☐ NA

commensurate wages, they are in violation of the Davis Bacon Act)?

Do you have an apprenticeship program?

☐ Yes ☐ No ☐ NA

If Yes, is it approved by the state?

☐ Yes ☐ No ☐ NA

Comments: [Click here to enter text.](#)

9. Occupational Safety & Health Administration (OSHA)

Safety Program and Committee?

☐ Yes ☐ No

Meeting quarterly?

☐ Yes ☐ No

Safety Data Sheets?

☐ Yes ☐ No

Bloodborne Pathogens Program

☐ Yes ☐ No ☐ NA

If No, do you have someone that is a First Responder?

☐ Yes ☐ No ☐ NA

If No, do you perform a risk analysis regarding Bloodborne Pathogen?

☐ Yes ☐ No ☐ NA

OSHA Form(s) 300A

☐ Yes ☐ No ☐ NA

Comments: [Click here to enter text.](#)

10. Additional Federal Contractor Requirements:

Affirmative Action Policy

☐ Yes ☐ No ☐ NA

(A Federal Contract of $\geq$ \$10,000)

Affirmative Action Plan

☐ Yes ☐ No ☐ NA

(A Federal Contract of $\geq$ \$50,000 and 50 employees)

VEVRA of 1974 (Update in 2014. Federal contracts and subcontract of $>$ \$100,000)

☐ Yes ☐ No ☐ NA

EEO-1 Form

(>50 employees, and are prime contractors or first-tier subcontractors
and have a contract, subcontract, or purchase order amounting to \$50,000 or more)

☐ Yes ☐ No ☐ NA

Vets-4212 Form

☐ Yes ☐ No ☐ NA

(A Federal contract $\geq$ \$100,000)

Drug- Free Workplace Policy

☐ Yes ☐ No ☐ NA

(A Federal Contract $\geq$ \$150,000)

Family & Medical Leave Policy

☐ Yes ☐ No ☐ NA

(Employers with $\geq$ 50 employees)

Comments: [Click here to enter text.](#)

11. Contractor Code of Business Ethics and Conduct (new requirement)

Is the agency required to have a Code of Business Ethics and Conduct?

☐ Yes ☐ No ☐ NA

(Contract $\geq$ \$5 mil; renewed after 12/12/2008; Clause 52.203-13 checked)

If yes, the agency must have all the following:

A written Code of Ethics?

☐ Yes ☐ No ☐ NA

Hotline or similar confidential reporting system (internal or external)?

☐ Yes ☐ No ☐ NA

Ethics training for employees, staff, and management of the agency?

☐ Yes ☐ No ☐ NA

Does the agency display a Hotline Poster?
(Clause 52.203-14 checked)

☐ Yes ☐ No ☐ NA

Comments: [Click here to enter text.](#)

REVIEW SUMMARY or additional overall comments: No Recommendations for Agency.

|

Exhibit H Compliance Worksheet SourceAmerica

Regulatory Review Worksheet

NPA #	NPA Name	FY
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The SourceAmerica Regulatory Review will consist of an assessment of a nonprofit agency's records to determine whether the requirements specified in the Code of Federal Regulations 41 CFR § 51-4.3 - Maintaining qualification are being met (see full citation immediately below).

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a commodity, or a service shall continue to comply with the requirements of a "nonprofit agency for other severely handicapped" or a "nonprofit agency for the blind" as defined in §51-1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification (Committee Form 403 or 404) covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating in the Ability One Program shall:

- (1) Furnish commodities or services in strict accordance with Government orders.
- (2) 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.
- (3) Comply with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations.
- (4) Make its records available for review at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.
- (5) Maintain records of direct labor hours performed in the nonprofit agency by each worker.
- (6) 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.
- (7) Maintain in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination.
- (8) 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.
- (9) Upon receipt of payment by the Government for commodities or services furnished under the Ability One Program, pay to the central nonprofit agency a fee which meets the requirements of §51-3.5 of this chapter.

(c) 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:

(1) 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.

(2) 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.

(d) The information collection requirements of §§51-4.2 and 51-4.3 and the recordkeeping requirements of §51-4.3 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511).

Each nonprofit agency should ensure staff review, understand, and comply with 41 CFR Chapter 51, U.S. AbilityOne Commission Nonprofit Agency Compliance Policy (51.400 series) and U.S. AbilityOne Commission Oversight and Compliance Directorate Frequently Asked Questions. [Link to these resources on the SourceAmerica Extranet](#)

The Regulatory Reviewer will select a predetermined number of employee files of individuals with significant disabilities who perform disabled direct labor on AbilityOne and, if applicable, Non-AbilityOne projects.

Use of this checklist provides both structure and standardization to the review process. Submission of requested documents/information prior to the review date should reduce the amount of time required for the review. The appropriate NPA staff members should be involved in completing this checklist and be available for discussion of their respective regulatory areas during the review.

****All shaded areas are to be completed by the SourceAmerica Regulatory Reviewer only. Please complete all other areas. ****

Documents to provide during a SourceAmerica Regulatory Review (as applicable)

Non-Personally Identifiable Information (PII) documents may be provided in advance of the scheduled Regulatory Review date. All applicable documents may be submitted via e-mail, Dropbox, or other agreed upon file sharing platform(s). For virtual Regulatory Reviews, please have all applicable documentation uploaded prior to the review start date.

Review Documents	Requirement
☐ Articles of Incorporation	Most recent document.
☐ Bylaws	Most recent document.
☐ Placement Program	Policy/procedure or signed letter of agreement with another agency providing placement services.
☐ AbilityOne Individual Project Ratios	Completed AbilityOne Individual Project Ratio Form (see attached). Submission will only be accepted on the provided SourceAmerica form.
☐ Safety Program and Committee Meeting Minutes	A copy of the written safety program and training materials accompanied by the two most recent safety meeting minutes.
☐ Safety Data Sheets (SDS)	SDS binder (on-site) or a predetermined number of safety data sheets (virtual).
☐ Bloodborne Pathogens Program	A copy of the Bloodborne Pathogens Program and corresponding training materials.
☐ EEO-1 Form (Applies to a prime or first-tier subcontract of \$50,000 or more and 50 or more employees. This is not a cumulative amount; at least one of the employer's contracts or subcontracts must be at least \$50,000.)	Most recent submission.
☐ Vets-4212 (To be completed by all nonexempt Federal contractors and subcontractors with a contract or subcontract in the amount of \$150,000 or more with any department or agency of the United States. This threshold is applied to each contract held. Agencies with ten or more locations are required to file electronically; smaller firms have the option of filing by mail or electronically.)	Most recent submission.
☐ Drug-Free Workplace Policy (Applies to all federal grantees (regardless of the amount of the grant) and most prime contracts more than \$100,000. Coverage is on a contract-by-contract basis—not on an enterprise basis—so not all employees may be covered. Subcontractors on a covered contract are not subject to the	Current policy.

Review Documents		Requirement
	provisions. Contracts paid from non-appropriated funds are not subject to this program.)	
☐	OSHA 300 Form	Most recent submission.
☐	Family & Medical Leave Policy (Applies to organizations with 50 or more employees in 20 or more workweeks in the current or preceding calendar year. No dollar threshold – dependent on number of employees only.)	Current policy.
☐	Affirmative Action Policy (Employers with \$10,000 plus in Federal contracts in one year must establish a nondiscrimination policy. The \$10,000 applies to the aggregate value of all Federal contract work performed in a year—not the value of any one contract.)	Current policy.
☐	Affirmative Action Written Program (Applies to employers with \$50,000 plus in Federal contracts annually and 50 or more employees. The “\$50,000 plus amount” applies to the aggregate value of all Federal contract work performed annually—not the value of any one contract.)	Current written program
☐	Code of Business Ethics and Conduct (Applies to a prime or subcontract with a performance period of at least 120 days that has an expected value of more than \$6 Million. This dollar value applies to the value of the base contract year and all option years.)	Current policy.
☐	Special Minimum Wage Certificate (14c) (if applicable, Non-AbilityOne or approved AbilityOne extension)	A copy of the current certificate or, if expired, provide the letter of acknowledgment from Department of Labor (DOL) that confirms receipt of your application materials.
☐	Hourly and Piece Rate Standards	Hourly and/or piece rate standards based upon the reviewer’s selection of specific individuals from the employee lists provided.

Applicable Personally Identifiable Information (PII) documents will be provided on-site on the first day of the Regulatory Review. For virtual Regulatory Reviews, PII will be provided in the secure agreed upon document sharing platform with temporary access granted for the review period only. PII and access must be removed immediately thereafter.

Review Documents		Requirement
☐	Medical Documentation	Reference U.S. AbilityOne Commission Oversight and Compliance Directorate Frequently Asked Questions for criteria for acceptable Medical Documentation. Link to these resources on the SourceAmerica Extranet Please note, the reviewer will determine the employee names and number of files for review in accordance with a modified ANSI sampling standard.
☐	Individual Eligibility Evaluation (IEE)	The two most recent IEEs. If a selected employee has been employed less than a year only the initial IEE is required. IEEs are required for each employee selected.
☐	E-Verify	A sampling of approval letters with case numbers generated from the E-Verify system. The reviewer will determine the sampling number.
☐	Employment Eligibility Verification (Form I-9)	As of 4/2021, SourceAmerica no longer reviews I-9 forms. No need to present.
☐	Commensurate Wage (if applicable, Non-AbilityOne or approved AbilityOne extension)	- Hourly and/or piece rate standards. - Hourly employee productivity ratings (time studies) - the 2 most recent. Please note, employee names will be selected by the reviewer. - Payroll documentation to verify hourly and/or piece rate wages have been properly paid. Employee names and payroll period will be determined by the reviewer.
☐	Service Contract Act (SCA)	- Payroll documentation (Note: employee names and payroll period will be determined by the reviewer). - Corresponding Wage Determination. - If Health & Welfare is dispensed as a benefit, a copy of the invoice and proof of payment to the third-party benefit provider.
☐	Davis Bacon Act (DBA)	- Copies of certified payroll (Note: employee names and payroll period will be determined by the reviewer). - Copies of corresponding Wage Determination/DBA pay schedule. - Proof of payment to the third-party benefit provider(s).

Type of Regulatory Review: Choose an item.

Beginning Date of Review: Click or tap to enter a date.

End Date of Review: Click or tap to enter a date.

Regulatory Reviewer: Choose an item.

Regulatory Reviewer: Choose an item.

Commission Participation? : Choose an item.

If Yes, Commission Participant Name: {Enter Name}

Section I: Agency Details

Agency Headquarters Details	
NPA #	Click or tap here to enter text.
NPA Name	Click or tap here to enter text.
Headquarters Street Address	Click or tap here to enter text.
City	Click or tap here to enter text.
State	Click or tap here to enter text.
Zip Code	Click or tap here to enter text.
Review Site Address	Click or tap here to enter text.
Review Site City	Click or tap here to enter text.
Review Site State	Click or tap here to enter text.
Review Site Zip Code	Click or tap here to enter text.
CEO/Executive Director	Click or tap here to enter text.
Regulatory Review POC	Click or tap here to enter text.
POC Title	Click or tap here to enter text.
POC Phone Number	Click or tap here to enter text.
POC E-mail Address	Click or tap here to enter text.

1. Articles of Incorporation and Bylaws

Date of current Articles of Incorporation: Click or tap to enter a date.

Date of current Bylaws: Click or tap to enter a date.

Did Articles of Incorporation change since last Reps and Certs? Choose an item.

If, "Yes" provide a copy and date of change: Click or tap to enter a date.

Did the Bylaws change since last Reps and Certs? Choose an item.

If, "Yes" provide a copy and date of change: Click or tap to enter a date.

2. Corporate Structure

Is the agency a related corporation, i.e., an affiliate of a parent corporation? Choose an item.

If the agency is a related corporation, enter the name of the parent corporation and describe the nature of relationship and the responsibilities of the parent corporation: Click or tap here to enter text.

Does the agency have subsidiary related corporation(s)?

Choose an item.

If the agency has subsidiary related corporation(s), enter the name(s).

Click or tap here to enter text.

3. Scope of Producing Agency

What is the agency's overall budget for the current Federal fiscal year (Oct 1 through Sept 30)?

\$Click or tap here to enter text.

Beyond the AbilityOne Program, in what other community endeavor(s) is the agency involved? (check all that apply)

- | | |
|---|--------------------------|
| Residential Services | ☐ |
| Transportation Services | ☐ |
| Preschool | ☐ |
| Daily Living Skills | ☐ |
| Pre-Vocational Work Activity Center (WAC) | ☐ |
| Senior Citizen Services | ☐ |
| Adult Literacy Program | ☐ |
| Computer Skills | ☐ |
| Job Clubs | ☐ |
| Other* | ☐ |
| None | ☐ |

*** If, "Other" provide information below.**

Click or tap here to enter text.

4. Beyond AbilityOne contract(s), what other contract work does the agency perform or provide? (check all that apply)

- | | |
|---|-----------------|
| Commercial | Choose an item. |
| State Use | Choose an item. |
| Federal contract that is not AbilityOne | Choose an item. |

5. Is the agency participating in the Quality Work Environment initiative?

Choose an item.

6. Has the agency's Senior Manager attended the AbilityOne Academy? (See Commission Policy 51.402)

Choose an item.

If "Yes", enter the date

Click or tap to enter a date.

7. Note all changes in the following during the current Federal FY, (Oct 1 - Sept 30) of each year.

- | | |
|---------------------------------|-----------------|
| Sales from AbilityOne Products: | Choose an item. |
| Sales from AbilityOne Services: | Choose an item. |
| Total AbilityOne Sales: | Choose an item. |
| Base Supply Centers: | Choose an item. |

Other Federal Sales: Choose an item.
Other Sales & Subcontracting (Includes state use sales): Choose an item.
Total Agency Sales: Choose an item.

Section II: Medical Documentation Individual Eligibility Evaluations (IEE) Placement Program

8. File Review

Total number of files for all significantly disabled direct labor employees:
(This is the total number of disabled direct labor employee files, not the number of files for review).

AbilityOne: Click or tap here to enter text.
Non-AbilityOne: Click or tap here to enter text.
Total: Click or tap here to enter text.

For Reviewer Use Only

Total number of files reviewed:

AbilityOne: Click or tap here to enter text.
Non-AbilityOne: Click or tap here to enter text.
Total: Click or tap here to enter text.

Number of files which did not contain adequate documentation of a
significant physical or mental impairment:

AbilityOne: Click or tap here to enter text.
Non-AbilityOne: Click or tap here to enter text.
Total: Click or tap here to enter text.

Does the review of medical documentation in the files merit a rating of
adequate?

Choose an item.

Comments:

Number of files which did not contain sufficient information developed by an ongoing evaluation program
that includes a preadmission evaluation and reevaluation at least annually for each worker with a
significant disability:

AbilityOne: Click or tap here to enter text.
Non-AbilityOne: Click or tap here to enter text.
Total: Click or tap here to enter text.

Does the review of the files indicate that Individual Eligibility Evaluations
prepared by the agency are adequate?

Choose an item.

Comments: Click or tap here to enter text.

9. Placement Program

This agency (choose one)

Choose an item.

Does the agency have written policies and procedures for placement services?

Choose an item.

If "No", does the NPA have a letter of agreement with another agency that provides placement services? If "Yes", provide a copy of the letter of agreement.

Choose an item.

For Reviewer Use Only

Is the agency's placement program or agreement with another agency adequate?

Choose an item.

Comments: [Click or tap here to enter text.](#)

Section III: Direct Labor AbilityOne Ratios Commensurate Wages

10. Direct Labor Ratios

Does the agency ever use temporary workers?

Choose an item.

If "Yes" how is the labor recorded for direct labor ratios?

[Click or tap here to enter text.](#)

Are employee hours being classified correctly as direct or indirect?

Choose an item.

What is the time-period covered by the direct labor ratios computed in this section? **(All direct labor hours and ratios should be calculated from the beginning of the current fiscal year (October 1) through the date of the last pay period just prior to the review.)**

Beginning Date: [Click or tap to enter a date.](#)

End Date: [Click or tap to enter a date.](#)

Total Agency Direct Labor

Disabled Hours

[Click or tap here to enter text.](#)

Non-Disabled Hours

[Click or tap here to enter text.](#)

Total Hours

[Click or tap here to enter text.](#)

Ratio

[Click or tap here to enter text.](#)

AbilityOne Direct Labor*

Disabled Hours

[Click or tap here to enter text.](#)

Non-Disabled Hours

[Click or tap here to enter text.](#)

Total Hours

[Click or tap here to enter text.](#)

Ratio

[Click or tap here to enter text.](#)

***Note: Total AbilityOne Direct Labor Hours should match the total for all individual AbilityOne projects. Please confirm these hours match what is captured within the Individual AbilityOne Project Ratio Form (see Item 11. below).**

For Reviewer Use Only

Is the Total Agency Direct Labor Hour Ratio adequate?
Is the Total AbilityOne Direct Labor Hour Ratio adequate?

Choose an item.
Choose an item.

Comments: Click or tap here to enter text.

11. AbilityOne Individual Project Ratios

Note: The agency must complete the AbilityOne Individual Project Ratio Form and return it to the Regulatory Reviewer prior to the review date. For review purposes, this is the only form SourceAmerica will accept for recording individual AbilityOne project ratios. Any other format will be returned to the agency for replacement. A products or services “family” (defined by Commission Procedure 51.401-01 as “a group of closely related projects that utilize the same workforce”) may be combined but should be annotated as such on the form. If any of the project ratios are below 60%, or more than 10% below the approved project ratio, without an approved phase-in, surge request or other Commission approved exception the reviewer will assign corrective action(s).

If your agency has AbilityOne project(s) being tracked for a phase-in, have the project tracking milestones been met?

Choose an item.

For Reviewer Use Only

Have the AbilityOne Project phase-in project tracking milestones been met?

Choose an item.

Comments: Click or tap here to enter text.

12. Department of Labor - Commensurate Wages (if applicable, Non-AbilityOne or approved AbilityOne extension)

Does the agency have a Certificate from the US Department of Labor authorizing the payment of commensurate wages under Section 14(c) of the Fair Labor Standards Act (FLSA)? **If no, skip to Section 13**

Choose an item.

Does the agency pay commensurate wages to any workers with disabilities?

Choose an item.

What is the expiration date of the Certificate?

Click or tap to enter a date.

For Reviewer Use Only

Have calculations been verified to match payroll records?

Choose an item.

Comments: Click or tap here to enter text.

Prevailing Wages

Have the prevailing wage surveys been completed annually?

Choose an item.

For Reviewer Use Only

Do the prevailing wage surveys have all the following? Name, address, phone number, contact person's name and title, brief description of work involved, wage rate & basis for concluding the wage data provided was not for an entry level position

Choose an item.

Have the employees' wages been adjusted no later than the first complete pay period following the prevailing wage review?

Choose an item.

Have all monetary calculations been rounded up?

Choose an item.

Comments: [Click or tap here to enter text.](#)

Hourly Wages

Does the agency pay hourly commensurate wage rates?

Choose an item.

Is there a job description and task analysis for work being performed?

Choose an item.

Has a standard been set using employees who are not disabled for the work?

Choose an item.

Have employees' productivity been measured within the first month of employment?

Choose an item.

Is employee production being reviewed every six months or when the workers change jobs?

Choose an item.

Have all monetary calculations been rounded up?

Choose an item.

For Reviewer Use Only

Comments: [Click or tap here to enter text.](#)

Piece Rates

Does the agency pay commensurate wages to workers receiving piece rates?

Choose an item.

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?

Choose an item.

Have standards been set using employees who are not disabled for the work and appropriate time allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9-10 minutes per hour) shall be used in conducting time studies.

Choose an item.

For Reviewer Use Only

Are piece rates calculated correctly?

Choose an item.

Have all monetary calculations been rounded up?

Choose an item.

Are the DOL commensurate wages being paid by the agency adequate?

Choose an item.

Comments: [Click or tap here to enter text.](#)

13. Service Contract Act (SCA)

Does the agency perform on a SCA contract as a prime contractor or a subcontractor? **If no, skip to Section 14.** [Choose an item.](#)

Are the proper SCA wage determination rates being paid to all service employees? [Choose an item.](#)

How does the agency pay SCA health and welfare fringe benefits? [Choose an item.](#)

Does the agency compute and pay SCA health and welfare fringe benefits to any employees based on the 'average cost' method? [Choose an item.](#)

"Average cost" health and welfare fringe benefit – Where the SCA wage determination states this type of fringe benefit, the employer contribution is required to average at least the health and welfare rate stated in the SCA wage determination computed on the basis of all hours worked – including overtime hours – by service employees employed on the contract (or portion of the contract to which the wage determination applies). 29 C.F.R. § 4.175(b).

Explain how the H&W fringe benefit is distributed through the agency's benefit plan, e.g., Medical, Dental, 403b, etc. [Click or tap here to enter text.](#)

For Reviewer Use Only

Has payment to the benefit provider been verified? [Choose an item.](#)

Have holiday benefits been properly paid? [Choose an item.](#)

Have vacation benefits been properly paid? [Choose an item.](#)

Have payroll records been checked for verification of payment of wage rates, fringe benefits, holiday pay, vacation pay, and sick leave (if applicable)? [Choose an item.](#)

Is the agency's adherence to the SCA labor standards adequate? [Choose an item.](#)

Comments: [Click or tap here to enter text.](#)

Executive Order 13658 - Federal Minimum Wage

Does the agency have a Federal contract dated on or after January 1, 2015, one that has renewed as a result of a [Choose an item.](#)

solicitation, or one awarded outside the solicitation process on or after January 1, 2015? (If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. Coverage is not triggered by the unilateral exercise of a pre-negotiated option to renew or extend an existing contract by the Federal Government. Reference [DOL 13658 and 14026 Side-By-Side](#))

Is Federal Acquisition Regulation (FAR) clause 52.222-55 Establishing a Minimum Wage for Contractors Under Executive Order 13658 included in the new contract?

Choose an item.

Does the NPA display a Minimum Wage poster?

Choose an item.

For Reviewer Use Only

If agency contracts are subject to Executive Order 13658, is the agency paying the current minimum wage as required by the Executive Order?

Choose an item.

Comments: Click or tap here to enter text.

Executive Order 14026 - Federal Minimum Wage

Does the agency have a Federal contract that was entered into on or after January 30, 2022, or the contract was renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022? (Executive Order 14026 generally applies to the contract. Coverage is triggered by the exercise of an option on or after January 30, 2022. Reference [DOL 13658 and 14026 Side-By-Side](#))

Choose an item.

Is Federal Acquisition Regulation (FAR) clause 52.222-55 Establishing a Minimum Wage for Contractors Under Executive Order 14026 included in the new contract?

Choose an item.

For Reviewer Use Only

If agency contracts are subject to Executive Order 14026 is the agency paying the current minimum wage as required by the Executive Order?

Choose an item.

Comments: Click or tap here to enter text.

Executive Order 13706 - Sick Leave

Does the agency have a new Federal contract dated on or after January 1, 2017 or one that has been renewed (started a new base year) since January 1, 2017?

Choose an item.

Is Federal Acquisition Regulation (FAR) clause 52.222-62 Paid Sick Leave Under Executive Order 13706 included in the new contract?

Choose an item.

If agency contracts are subject to Executive Order 13706, is the agency tracking sick leave as required by the Executive Order?

Choose an item.

Has Sick Leave tracking been verified?

Choose an item.

For Reviewer Use Only

Comments: Click or tap here to enter text.

14. Davis Bacon Act (DBA)

Does the agency perform work subject to the DBA? **If no, skip to Section 15.**

Choose an item.

For Reviewer Use Only

Is the correct wage determination rate being used?

Choose an item.

Are employees properly classified and paid the correct DBA wage rates?

Choose an item.

Are employees paid weekly for their DBA work?

Choose an item.

How are fringe benefits being disbursed?

Choose an item.

Is the agency's fringe benefit plan funded or unfunded?

Choose an item.

Has payment to the funded benefit provider been verified?

Choose an item.

Explain any funded benefit plans—how much is contributed to each plan per employee/per hour worked, and the benefits provided to employees by each plan:

Click or tap here to enter text.

Are certified payrolls submitted weekly?

Choose an item.

Do the certified payrolls have all the following?

Name, address, social security number of each employee, each employee's work classification(s), hourly rate(s) of pay (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents, daily and weekly number of hours worked, actual wages paid, and the required certification statement and signature

Choose an item.

Are commensurate wages being paid to employees for hours worked on a DBA contract?

Choose an item.

Is the agency's adherence to the DBA labor standards adequate?

Choose an item.

Comments: Click or tap here to enter text.

15. Occupational Safety and Health Administration (OSHA)

Does the agency have a Safety Program and a Safety Committee? (See Commission Policy 51.403) Choose an item.

Does the agency maintain the proper Safety Data Sheet(s)? Choose an item.

Does the agency have a Bloodborne Pathogens Program? Choose an item.

OSHA Form 300 maintained? (posted February 1 to April 30 of the year following the year covered by the form) Choose an item.

For Reviewer Use Only

Overall OSHA adherence adequate? Choose an item.

Comments: [Click or tap here to enter text.](#)

16. Additional Federal Contractor Requirements

Has the agency submitted the EEO-1 report(s)? (Applies to a prime or first-tier subcontract of \$50,000 or more and 50 or more employees. This is not a cumulative amount; at least one of the employer's contracts or subcontracts must be at least \$50,000.) Choose an item.

Has the agency filed the Vets-4212 report with DOL? (This report is to be completed by all nonexempt federal contractors and subcontractors with a contract or subcontract in the amount of \$150,000 or more with any department or agency of the United States. This threshold is applied to each contract or subcontract held.) Choose an item.

Does the agency have a Drug-Free Workplace Policy? (Federal contract greater than \$100,000): Choose an item.

Does the agency adhere to the Family Medical Leave Act (FMLA) (50 or more employees within a 75-mile radius of the employee's worksite)? Choose an item.

Does the agency have an Affirmative Action Policy? (Federal contracts with an annual value of \$10,000 or more)? Choose an item.

Does the agency have a written Affirmative Action Written Program (AAP) with proper clauses? (Federal contracts valued at more than \$50,000 and at least 50 employees) Choose an item.

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Overall, is the agency's performance related to the applicable items above adequate? Choose an item.

Comments: [Click or tap here to enter text.](#)

17. Code of Business Ethics and Conduct

Does the agency have a written Code of Business Ethics and Conduct? Choose an item.
(Applies to a prime or subcontract with a performance period of at least 120 days that has an expected value of more than \$6 Million. This dollar value applies to the value of the base contract year and all option years.)

Is FAR Clause 52.203-13 Contractor Code of Business Ethics and Conduct incorporated in the Federal Contract? **If no, skip to Section 18.** Choose an item.

Has the agency established a Hotline or similar confidential reporting system (internal or external)? Choose an item.

Does the agency display a Hotline Poster in accordance with FAR Clause 52.203-14 Display of Hotline Poster(s)? Choose an item.

Has the Agency made provisions for the protection of Whistleblowers (FAR Clause 52-203.15)? Choose an item.

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Has the Agency provided ethics training for employees, staff, and management of the agency? Choose an item.

Is the agency's Code of Business Ethics and Conduct adequate? Choose an item.

Comments: [Click or tap here to enter text.](#)

18. E-Verify

Does the agency utilize the E-Verify System? Choose an item.
(Applies when the NPA has a prime contract of at least \$150,000 or has a subcontract of at least \$3,000 (on a covered contract of at least \$150,000).

For Reviewer Use Only

Comments: [Click or tap here to enter text.](#)



OFFICE OF INSPECTOR GENERAL
COMMITTEE FOR PURCHASE FROM PEOPLE
WHO ARE BLIND OR SEVERELY DISABLED
(U.S. ABILITYONE COMMISSION)

July 17, 2025

RE: OSC File DI-22-0590

Recommendation Updates

RECOMMENDATION 1: AbilityOne OIG recommends that the Commission identify and clarify the policy, and issue new policy as needed, regarding whether Commission staff has the authority or ability to lower an NPA's PL project-level ratio after the Commission Members have voted on and approved a PL project-level ratio, and, if so, establish reasons and guidelines for Commission staff to grant a modification and the threshold which will warrant notification to and reconsideration by the Commission Members.

Agency Response: *Project level ratios are not required by statute or regulation. The only requirement to maintain a specific project level ratio is specified in Commission Policy 51-401 and 51-401.1. Commission Policy 51-401 is being replaced with Commission Policy 51.404, and the requirements related to maintaining a project level ratio will be amended. Maintaining a 75 percent EDLH will be “encouraged” but not “required.” Instead, project level ratio will only be assessed as a noncompliance issue if it causes an NPAs overall DLH (ODLH) ratio to drop below the statutory requirement.*

Update as of July 17, 2025: *Effective October 1, 2024, the Commission rescinded former Policy 51-401 and adopted Commission Policy 51.404 Direct Labor Hour Ratio Requirements. Under Policy 51.404, NPAs may request, and the Commission may approve, a direct labor hour (DLH) ratio lower than 75 percent for an individual AbilityOne PL project, provided the NPA remains in compliance with the statutory 75 percent overall DLH (ODLH) requirement. While the Commission continues to approve project-level ratios at the time of the PL addition, the new policy authorizes the Executive Director to approve subsequent changes to the project-level ratio. To request a change, an NPA must submit an updated Estimate Direct Labor Hour (EDLH) form to the Commission. The new policy does not prescribe a threshold in which the Executive Director may approve changes to the project-level ratio without notification to the Commission Members. If an NPA’s actual ratio falls significantly below what was originally proposed or approved, the Commission may require a corrective action plan.*



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RECOMMENDATION 2: AbilityOne OIG recommends that the Commission identify the instances where Commission staff approved, authorized, or otherwise allowed a lower PL project-level ratio without Commission Members' approval or knowledge, and determine whether staff had the authority or acted within their delegated authority in doing so and that the Commission determine the course of actions it deems appropriate, accordingly.

Agency Response: *The Commission acknowledges the recommendation, but the proposed policy changes to how project level ratio will be treated obviates the need to retroactively look at prior projects. The Commission recognizes that project level ratio is difficult to track after it is approved and placed on the PL, especially for performance-based service contracts. However, ODLH is tracked on a quarterly basis and certified annually. Focusing on and monitoring strict compliance with ODLHs is more effective and a more efficient use of Commission resources.*

Update as of July 17, 2025: *While the Commission has acknowledged the recommendation, it has declined to conduct a retrospective review of instances where Commission staff may have approved or authorized lower project-level ratios without Commission Members approval or awareness. Instead, the Commission asserts that its adoption of Commission Policy 51.404 on October 1, 2024, which delegates authority to the Executive Director to approve changes to project-level ratios, addresses the issue. However, the recommendation specifically relates to actions taken prior to the implementation of Policy 51.404 and whether such actions were consistent with the authority that existed at the time. The Commission has not undertaken a review of those historical actions to determine whether staff operated within their delegated authority.*

RECOMMENDATION 3: AbilityOne OIG recommends that the Commission review Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program which cite Pandemic-Related Waivers as authority to retroactively excuse NPAs which failed to meet ratio in FY18 or FY19 from the corrective or disciplinary action required under Policy 51.403.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to ensure that whenever an exception is made to ODLH for any reason it is properly documented and only granted on a prospective basis. The Commission does not intend to go back to previous fiscal years and require corrective action or issue disciplinary measures to an NPA that failed to achieve the required ODLH, especially if the deficiency was tied to the pandemic. Going forward, the Commission does not presently plan to grant any future pandemic related waivers, unless present conditions substantially worsen. Furthermore, if any NPA previously granted a*



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waiver is presently out of compliance, the appropriate corrective action will be administered IAW new Commission Policy 51-406 (currently Policy 51-403).

Update as of July 17, 2025: *The Commission acknowledged the recommendation and agreed that any exceptions to the ODLH requirement should be properly documented and only granted on a prospective basis. To the OIG's knowledge, the Commission has not approved of any new Pandemic-Related Waivers. Further, the Commission has declined to review past Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program that cited Pandemic-Related Waivers as the basis for excusing noncompliance in FY18 or FY19. As a result, it remains unclear whether those exceptions were properly documented or appropriately applied, as recommended.*

One January 1, 2025, the Commission replaced Policy 51.403 with Policy 51.407 Qualification Assessments and Enforcement Actions, and its implementing procedure 51.407-01, which outlines the process for addressing noncompliance, including issuance of corrective actions, probation, suspension, or removal from the Program. These new policies clarify enforcement going forward, but do not address the specific retroactive review recommended by the OIG.

RECOMMENDATION 4: AbilityOne OIG recommends that the Commission develop a system to track NPAs which have failed to maintain the applicable ODLH in the prior fiscal year(s) and track issuance of Notices of Failure to Maintain Qualification to Participate in the AbilityOne Program, and the progress on and completion of corrective action. OIG recommends that the Commission store the records in PLIMS to ensure transparency and that all appropriate users have ready access to them.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to ensure that the ODLH ratio is more efficiently tracked from year-to-year. The Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective action. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

Update as of July 17, 2025: *The Commission agreed with the recommendation and on January 1, 2025, issued Policy 51.407 Qualification Assessments and Enforcement Actions, along with its implementation procedure, Policy 51.407-01. Together, these policies establish a formal process*



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for issuing Notices of Failure to Maintain Qualification, documenting corrective actions, and outlining consequences such as probation, suspension or removal from the AbilityOne Program.

The Commission is in the process of developing PLIMS 2.0, which is expected to include a centralized system to track which NPAs failed to meet the ODLH requirement in prior fiscal years, and to better track the issuance and resolution of corrective actions. The OIG will reassess the recommendation once PLIMS 2.0 is implemented and we are able to evaluate whether its functionality meets the intent of the recommendation.

RECOMMENDATION 5: AbilityOne OIG recommends that the Commission issue clear, transparent, policy to be applied equitably to all NPAs delineating what corrective or disciplinary action the Commission will take if an NPA fails to maintain the applicable ODLR, including specifically what will result in inability to receive new contracts, in loss of existing contracts, probation, removal from the Program, or other clearly defined consequences.

Agency Response: *The Commission acknowledges the recommendation, and agrees to take steps to fully articulate how it will administer corrective actions and implement appropriate administrative actions to remedy noncompliance. As stated previously, the Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective actions. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete a corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

Update as of July 17, 2025: *On January 1, 2025, the Commission issued Policy 51.407 Qualification Assessments and Enforcement Actions along with its implementation procedures in Policy 51.407-01, which together establish a clear framework for assessing NPA compliance with AbilityOne Program requirements, ODLR.*

The policy and procedures outline the range of corrective and disciplinary actions available to the Commission, such as probation, suspension, and removal from the Program, and set forth a defined process for determining when and how those actions may be taken. Policy 51.407 also clarifies the impact of noncompliance on the NPA's eligibility for future contract opportunities.



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RECOMMENDATION 6: AbilityOne OIG recommends that the Commission conduct an in-depth review of the NPAs indicated in Exhibit D of this report which have failed Compliance Reviews over a range of ten years to determine whether the noncompliance demonstrates a pattern of conduct that brings into question whether the NPA should be issued a corrective action, placed on probation, or removed from the Program.

Agency Response: *The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic plan. This means that there is likely little utility in looking back at previously failed Compliance reviews, especially since the agency would be obligated to apply the old standards. However, the NPAs indicated in Exhibit D will be subject to heightened scrutiny to better ensure that prior behavior is identified and promptly addressed. As stated previously, the Commission is in the process of updating Commission Policy 51-403 (renumbered to Commission Policy 51-406), which will describe the CNA's responsibility to monitor and to report completion of corrective actions. However, before a corrective action is closed out, the specific corrective action must be cleared and approved by the Commission staff. Proposed Policy 51-406 will also outline the consequences for failing to complete a corrective action and the process for placing an NPA on probation, suspension, or disqualifying it from the Program.*

Update as of July 17, 2025: *The Commission declined to conduct a retrospective review of the 50 NPAs listed in Exhibit D of the report, which failed compliance reviews over the past ten years. The Commission stated that it would not be practical to apply current standards to past reviews and instead indicated that those NPAs would be subject to heightened scrutiny going forward.*

Since the agency's response, the Commission has issued a new set of compliance policies under the 51.400 series, including Policy 51.402 Qualified Nonprofit Agency Requirements and Policy 51.407 Qualification Assessments and Enforcement Actions, along with implementing procedures in Policy 51.407-01. These policies create a formal framework for determining whether an NPA should be issued a corrective action plan, placed on probation, suspended, or removed from the Program.

However, to the OIG's knowledge, the Commission has not reviewed the 50 NPAs identified in Exhibit D to assess whether their histories of noncompliance demonstrate a pattern of conduct requiring enforcement under the new policies.



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RECOMMENDATION 7: AbilityOne OIG recommends that the Commission’s guidance relating to compliance will be in written format and look into the gap about the “instructions” the Director of Compliance claims he provided and Staff claiming to not have knowledge of it as currently applicable.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic Plan.*

Update as of July 17, 2025: *The Commission agreed with the recommendation and stated that it is overhauling the compliance program to address systemic challenges and to better align with its Strategic Plan. Since 2024, the Commission has issued eight new compliance related policies under the 51.400 series Nonprofit Agency Compliance Policies. These new policies help formalize the Commission’s compliance framework, establish written standards for monitoring and enforcement, and improve internal accountability. However, these policies are still in the process of being implemented, and not all related procedures have been finalized or put into practice. As a result, the OIG cannot yet confirm that the communication gap- specifically the discrepancy between undocumented “instructions” issued by the Director of Compliance and staff awareness- have been resolved. Until all relevant policies and procedures are consistently implemented and accessible, this recommendation remains unresolved.*

RECOMMENDATION 8: The Commission should enhance the collection and storage of documentation in PLIMS demonstrating the current nonprofit status of an NPA, if an NPA has been removed from the Program, if an NPA has voluntarily left the Program, or that an NPA has signaled intent or taken earnest steps to leave the Program. The Commission should also include documentation demonstrating that an NPA no longer participating in the Program has had its projects removed from the PL or transferred to another NPA.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with monitoring corrective action and to better align it with the new Strategic plan. This will include training compliance members on the Commission staff and at each CNA. The Commission is also in the process of updating PLIMS and hiring a Program Manager to manage the new system to ensure that it is fully responsive to the needs of the agency.*

Update as of July 17, 2025: *The Commission agreed with the recommendation and has stated that it is overhauling its compliance program to address issues related to documentation,*



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oversight, and monitoring. Since 2024, the Commission has issued eight new compliance policies under the 51.400 series Nonprofit Agency Compliance Policies, including policies on corrective action and enforcement actions, which are intended to improve how compliance related events, such as NPA disqualifications or voluntary withdrawals, are tracked and managed.

In addition, the Commission has been preparing to launch PLIMS 2.0. Once fully launched, this system is expected to support better documentation and tracking of key Program data, including corrective action plans, current nonprofit status of NPAs, records of disqualification or voluntary departure from the Program, and project removals or transfers from the PL.

These are positive developments, but until PLIMS 2.0 is fully implemented and the new policies are consistently put into practice, the OIG cannot confirm that the documentation and tracking gaps identified in this recommendation have been addressed.

RECOMMENDATION 9: AbilityOne OIG recommends that the Commission adopt a process to independently verify, on an annual basis, that the NPA's nonprofit status is in good standing with either the NPA's home state or the IRS, if applicable.

While the Commission has a process to verify nonprofit status at the time of initial AbilityOne Program Qualification, the Commission's process for annual nonprofit status verification appears to rely solely on the NPA's self-certification under penalty of 18 U.S.C. 1001 on its Annual Reps&Certs. The Commission's reliance on self-certification creates risk that an NPA may conceal it has lost its good standing as a nonprofit with its home state or the IRS by falsely certifying that it has maintained status. As shown above, the current process of self-certification was unable to detect an AbilityOne NPA which had lost its nonprofit designation.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with the self-certification process and to better align it with the new Strategic plan. This includes tying nonprofit status more closely with filing an IRS form 990, which can be independently verified. In the absence of a 990, NPAs will be required to provide explicit evidence from a state certifying official to properly verify an NPA's nonprofit status.*

Update as of July 17, 2025: *The Commission agreed with the recommendation and acknowledged the risks associated with relying solely on the NPA self-certification to verify nonprofit status. On January 1, 2025, the Commission issued Policy 51.407 Qualification Assessment and Enforcement Actions, which explicitly states that an NPA may be disqualified from the Program if it fails to maintain its nonprofit status. This policy helps formalize*



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enforcement authority related to nonprofit status, which supports part of the OIG's recommendation.

However, the Commission has not yet implemented or documented a formal process to collect and review state certification evidence from NPAs that do not file a Form 990. Until this additional verification requirement is fully implemented and enforced, the risk of relying solely on self-certification remains.

RECOMMENDATION 10: In order to comply with Policy 51.410 Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program, AbilityOne OIG recommends that the Commission develop formal training for all its Compliance Office staff and contractors on Policy 51.410, and other policies, as applicable, to be taken annually as a refresher and for new Compliance Office staff and contractors to be taken at onboarding.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with processing employee complaints and to better align it with the new Strategic plan. This includes creating a new Commission Policy (renumbered to Policy 51-407) that requires Commission staff involvement in the receipt of complaints, ensuring each complaint is forwarded to the appropriate investigative entity, and closing out the complaint once the matter has been resolved and/or properly forwarded.*

Update as of July 17, 2025: *The Commission agreed with the recommendation and noted that it is addressing systemic challenges relating to the handling of NPA employee complaints as part of its broader compliance program overhaul. As part of that effort, on January 1, 2025, the Commission issued Policy 51.406 Rights of Participating Employees, which outlines procedures for how complaints from employees of NPAs participating in the AbilityOne Program must be handled.*

Specifically, Policy 51.406 requires that complaints received by the NPAs and CNAs be documented, tracked, and forwarded to the Commission. It also states that Commission staff are responsible for ensuring that complaints are referred to the appropriate investigative entity and that proper closeout occurs once the matter is resolved or forwarded.

While the policy provides an important foundation, the OIG specifically recommended that the Commission develop and implement formal training, and annual refresher, for Compliance Office staff and contractors. As of this update, the OIG is not aware of any formal training program that has been developed or implemented to meet this requirement.



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RECOMMENDATION 11: AbilityOne OIG recommends that the Commission conduct an in-depth review of whether the Office of Compliance’s practices adhere to the procedural requirements of Policy 51.410 Processing Complaints by Employees of Nonprofit Agencies Performing Work on Contracts Under the AbilityOne Program. OIG recommends that the Commission ensure all open complaints have been given proper resolution in accordance with the procedural requirements of Policy 51.410. OIG recommends that the Commission correct outdated links, intake forms, and contact information to ensure complainants may reach the appropriate entity.

Agency Response: *Agreed. The agency is in the process of overhauling the entire compliance program to address systemic challenges with processing employee complaints and to better align it with the new Strategic Plan. This includes creating a new Commission Policy (renumbered to Policy 51-407) that requires Commission staff involvement in the receipt of complaints, ensuring each complaint is forwarded to the appropriate investigative entity, and closing out the complaint once the matter has been resolved and/or properly forwarded.*

Update as of July 17, 2025: *On January 1, 2025, the Commission replaced Policy 51.410 with Policy 51.406 Rights of Participating Employees, which outlines updated procedures for handling complaints from NPA employees. The policy assigns responsibility to NPAs, CNAs, and the Commission for receiving, documenting, and addressing complaints. It also directs the Commission to ensure that complaints are referred to the appropriate investigative entity and properly closed out.*

However, unlike the previous policy, Policy 51.406 no longer includes a section instructing individuals where or how to submit a complaint. Instead, the policy directs CNAs to notify the OIG within five business days when they receive credible information alleging fraud, waste, or abuse- using the OIG’s hotline phone number or email address. This change may cause confusion for individuals seeking to file complaints directly.