Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity

Third Annual Report to Congress

For the period November 1, 2019 through October 31, 2020



Office of the Under Secretary of Defense for

Acquisition and Sustainment

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**Panel on Department of Defense and AbilityOne Contracting Oversight,**

**Accountability and Integrity**

**Background**

Section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Public Law 114-328) required the Secretary of Defense to establish the “Panel on Department of Defense and U.S. AbilityOne Contracting Oversight, Accountability, and Integrity” (“the Panel”). The primary mission of the Panel is to identify vulnerabilities and opportunities in Department of Defense (DOD) contracting within the AbilityOne Program and, at a minimum, recommend improvements in the oversight, accountability, and integrity of the Program. The Panel established subcommittees to fulfill its duties as required by section 898(c) and to assist the Panel members and senior-level representatives from Department of Defense agencies, the Department of Justice (DOJ), the U.S. AbilityOne Commission, and other Federal agencies and organizations. As required by section 898(i)(2), the Panel submits an annual report on its activities. The Panel has submitted three reports to Congress: a progress report in September 2017, the first annual report in January 2018, and the second annual report in January 2020. This is the Panel’s third annual report to Congress that covers the period of November 1, 2019, through October 31, 2020. This report provides progress on the implementation of the recommendations in the first and second reports to Congress.

**Panel Accomplishment Highlights**

During my nearly two-year tenure as the Chair, the Panel, supported by six subcommittees, has made tremendous progress towards implementing the Panel recommendations and modernizing the AbilityOne Program. In 2020, the Panel convened quarterly and the subcommittees met regularly. In March, the Panel successfully converted to conducting business virtually due to the global pandemic.

Over the past year, the Panel increased outreach, engagement and consultation with AbilityOne Program stakeholders. Prior to the pandemic, the Panel held a quarterly meeting at the headquarters of National Industries for the Blind (NIB). This was an impactful meeting as the Panel members learned from employees who are blind about the importance of accessibility, adaptive technology, and universal design in the workplace. The Panel Members heard firsthand about the criticality of adaptive environments for the success of employees with disabilities or who are blind to perform their jobs as well as for increasing new employment opportunities by removing barriers against productive work. In December, I was a guest speaker at a National Council of SourceAmerica Employers (NCSE) event, and was able to do site visits to local AbilityOne nonprofit agencies (NPAs), including the San Antonio Lighthouse for the Blind and the Visually Impaired, where program participants who are blind are working alongside Air Force personnel, a positive example of an ability-diverse workplace. I also had informative discussions during my visit at San Antonio Goodwill Business Services where employees with disabilities are performing work on a diversity of contracts.

A highlight of the Panel year was the virtual meeting held in August. The DOJ Panel members organized a meeting with impressive expert-driven panels that focused on the topic of Competitive Integrated Employment (CIE) and its relevance to the AbilityOne Program. The meeting was a tremendous use of technology and a shining example of collaboration across the Federal government, including involvement of the Department of Education, Office of Special Education and Rehabilitative Services, and the Department of Labor, Office of Disability Employment Policy (ODEP), and attendance of disability employment service providers and self-advocates. The meeting included a session on the legal requirements and policy background and context of CIE, presentations by advocates with disabilities about CIE and its importance to them, and presentations by providers of supported and customized employment services around the country about providing individualized employment services in myriad employment contexts, including using technology to increase access to a greater range of CIE opportunities. Various organizations and employees with disabilities participated, ranging from Federal agencies to an AbilityOne NPA. The presentations and personal testimonies heard during the meeting served as a reminder of the Panel’s mission to recommend measures that would create employment opportunities for people with disabilities that are integrated, pay competitive wages and salaries, and offer opportunities for upward mobility and individualized career development. One of the strongest messages conveyed to the Panel, particularly by several self-advocate presenters, was that each person should be in the driver’s seat when it comes to his or her own employment goals, services, and career development. This means that employment services—including those that help people with disabilities develop employment goals, find job opportunities, and obtain and retain jobs—need to be individualized and based on the recipient’s stated interests, skills, and goals. Programs and services should not be one-size-fits-all or based on assumptions about a person’s capabilities and prospects, but rather should start from the goals of facilitating both community integration and individual autonomy.

All of these engagements and conversations assist the Panel in making informed decisions, provide valuable context for the work of the Panel and subcommittees, and result in more collaborative outcomes for the AbilityOne Program and employees. For example, the Panel’s engagement with a range of stakeholders has enabled it to develop a recommendation, included in this Report, regarding how to amend the statutory direct labor hour ratio and definition of direct labor so as to both facilitate integration within the AbilityOne Program and incentivize upward mobility for employees with disabilities within the program and outward mobility into the competitive labor market. The Panel believes its recommendation addresses both the need for modernization of the program in light of current disability rights law and employment policy, and the goal of increasing quality employment opportunities for people with disabilities across the country.

As a result of Panel proceedings over the past year, the Panel prioritized the 25 recommendations identified in the second annual report, some of which were completed by actions taken and others which are in various stages of implementation. A few recommendations were combined or modified as explained within the report. The feasibility of certain recommendations continue to be explored by stakeholders with new initiatives. The actions taken to date are improving the oversight, accountability, and transparency in contracting with the AbilityOne Program network, increasing employment opportunities, and should result in the DOD improving the customer experience with the AbilityOne Program.

A significant accomplishment during this reporting period is the issuance of needed and essential compliance policies by the U.S. AbilityOne Commission. This action is the result of a recommendation shepherded by Subcommittee Two. The compliance policies begin to install needed guidance across the AbilityOne network. Another significant action completed is the establishment of the AbilityOne Representative (ABOR) program across the Department of Defense, effective October 1, 2021. This action is the result of a recommendation by Subcommittee Seven to establish a program based on the successful Air Force ABOR program. The ABOR Program includes a strategic and data-driven approach to identifying new lines of business with the AbilityOne Program and establishes a management level procurement goal. The Panel, through Subcommittee One, continues to track the number of individuals completing the AbilityOne training at the Defense Acquisition University (DAU). Subcommittee One has helped the enterprise realize that training improves opportunity for program growth and ensuring a better customer experience. All of these actions have a positive impact on the U.S. AbilityOne Commission oversight function and employment growth for the Program.

**Panel Findings**

A significant overarching challenge for the AbilityOne Program continues to be the limited resources available for the U.S. AbilityOne Commission, as well as for its Office of Inspector General (OIG). The Panel and the U.S. AbilityOne Commission OIG have submitted recommendations for modernizing and improving the transparency and effectiveness of the AbilityOne Program as well as for employment growth. The Commission’s Office of Inspector General is a young office and has already contributed greatly to the Panel and improving the economies and efficiencies of the Commission. The majority of the recommendations require action by the U.S. AbilityOne Commission to establish or update policies, business practices, and regulations, or to recommend Congressional amendment(s) of the Javits-Wagner-O’Day (JWOD) Act.

In order to implement the Panel recommendations, modernize the AbilityOne Program, and fulfill the mission to employ people who are blind or have significant disabilities, it is critical that the U.S. AbilityOne Commission have sufficient resources and be able to prioritize the scarce resources. The Commission is operating on an insufficient budget of $7.5 million for FY 2019. In accordance with the U.S. AbilityOne Commission FY 2018 annual data compiled from the NPAs’ submission of Representations and Certifications, this lean budget is used to oversee the Program’s three Central Nonprofit Agencies (CNAs) and 472 geographically dispersed NPAs that employ 45,000 individuals who are blind or have significant disabilities, with a program size of $3.8 billion dollars.

In the first and second reports to Congress, the Panel concluded and recommended allocating additional staff and funding for improvements to information systems for the U.S. AbilityOne Commission. The staffing and funding of the three AbilityOne CNAs and the funding of the Federal customers who contract with AbilityOne NPAs far exceed the funding and resources of the U.S. AbilityOne Commission.

The Panel recommendations are effecting a paradigm shift in the AbilityOne Program and the U.S. AbilityOne Commission’s responsibility to manage it. This results in positive outcomes for the customers and employees the AbilityOne Program serves. However, crucial funding and resources are needed for the U.S. AbilityOne Commission to fully implement the recommendations of the Panel and the AbilityOne OIG, and to enable the modernization of the AbilityOne Program's policies and business practices.

Another common and consistent theme of discussion among the Panel and in communications with the AbilityOne CNAs, affiliated associations, and NPAs remains the need for a statutory DOD AbilityOne contract goal. A 1.5 percent goal was recommended in the Panel’s first and second reports to Congress. Once enacted, the goal will be achieved with the improvement of the Commission’s programs and operations, all of which would establish increased confidence in the AbilityOne Program. Continuing to enhance the operation of the program and to implement the Panel recommendations such as the issuance of compliance policies should give Congress the confidence to enact the 1.5 percent goal. Establishing an AbilityOne contracting goal will put the Program on par with other statutory program goals, and make it easier for the acquisition workforce to support the addition of new products and services to the Procurement List (PL). The result will be increased employment across the AbilityOne Program.

**Final Thoughts**

AbilityOne companies and workforce have proven to be a vital segment of the defense industrial base and contribute to communities and local economies across the country. Since the beginning of the COVID-19 pandemic, DOD contracting professionals have processed 600 contract actions, valued at $43 million, with AbilityOne companies. These companies increased surge capacity to manufacture and deliver critical products and to maintain essential services to support the ongoing COVID-19 national emergency response. AbilityOne workers were and remain on the front lines of defense, keeping our workforce safe and buildings operational during this pandemic. Employees who are blind or visually impaired, or who have significant disabilities, are sewing and delivering high-demand items such as masks, gowns, and military uniforms, and helped load meals into the USNS *Comfort* for its mission support to the pandemic response in New York City. AbilityOne employees with disabilities are working extra shifts to produce hand-sanitizers, construction kits, and Personal Protective Equipment, and to provide laundry and deep-cleaning disinfecting services for military hospitals.

Cole DeLuca at IFB Solutions in Winston-Salem, NC, is one of more than 25 IFB Solutions employees working to produce tens of thousands of masks for the U.S. Air Force.

DOD continues to be the lead customer of the AbilityOne Program, procuring more than $2.3 billion of products and services in FY 2020. Today, nearly 35,000 individuals who are blind or have significant disabilities perform work on DOD contracts with approximately 472 community-based NPAs across the United States and its territories. The AbilityOne Program conducted nearly $3.6 billion in business with Federal agencies. Appendix A is a United States map that identifies the AbilityOne Program dollars in each State.

The respective Federal agencies represented on the Panel, as well as the CNAs and NPAs, are investing significant resources to implement Panel recommendations that result in greater transparency, compliance, and employment in the AbilityOne Program. The U.S. AbilityOne Commission will analyze currently available resources and, via budget requests, communicate shortfalls impacting the implementation of recommendations with greater mission capacity and speed of business. The implementation of updated business practices that drive greater performance and competition, for example, within the AbilityOne Program is a necessity and aligns with the National Defense Strategy.

The Panel continues to work on AbilityOne Contracting Oversight, Accountability, and Integrity within the authorities of the NDAA, and procurement statutes and regulations. The Panel also supports pilot tests that may provide a basis for amending the JWOD Act, as it pertains to contracts employing people who are blind or have significant disabilities.

The work of the Panel over the past three years has involved significant dedication and effort to first develop recommendations to address the statutory duties of the Panel. The second year focused on developing implementation plans, initiating pilot tests, and engaging in expansive outreach. During the third year, the Panel has implemented recommendations, overseen the pilot tests, and worked on changes to laws, regulations, and policies. During 2021, the Panel will continue outreach communications, feasibility studies, implementation of actionable recommendations, and consideration of how to sustain the work of the Panel for the Program’s future. The Panel expects to submit the fourth report by December 31, 2021.

To accomplish the multi-faceted mission of the Panel, I am pleased to have the full participation on the Panel of the Chairperson, Executive Director, Director of Veterans Employment and Initiatives, and Inspector General of the U.S. AbilityOne Commission, DOJ, and other statutory members. Appendix B of this report is a memorandum from the Chairperson of the U.S. AbilityOne Commission.

The AbilityOne Program workforce is incredibly talented and has valuable experience to assist customers in addressing top business concerns, pricing impasses, and performance issues to ensure uninterrupted service across the Federal government. Through the commitment in action of the Panel, the AbilityOne community, and Congress; professionals and employees with differing abilities; veterans; veterans with disabilities; and individuals who are blind, visually impaired, or have significant disabilities will have a greater opportunity to work, lead independent and dignified lives, serve in communities, contribute to military readiness, and to the strength of our Nation’s economic success.

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Kim Herrington

Chair

Panel on Department of Defense and

AbilityOne Contracting Oversight,

Accountability and Integrity

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**Panel on Department of Defense and AbilityOne Contracting Oversight,**

**Accountability and Integrity**

**Section I: Introduction**

**Panel Membership**

As of December 2018, Mr. Kim Herrington, Acting Principal Director, Defense Pricing and Contracting, assumed the role of the Panel Chairman (“the Chair”). The Panel consists of representatives of Office of the Secretary of Defense and its DOD Inspector General, the U.S. AbilityOne Commission, and the U.S. AbilityOne Commission Inspector General, as statutory members. The Panel’s membership also consists of senior leaders and representatives from the military service branches, Department of Justice, Department of Veterans Affairs, Department of Labor, the General Services Administration, and the Defense Acquisition University. Section 898(a)(2) was specific in the composition of the Panel, provided as Appendix C, and also provides discretion to the Panel Chair in identifying other representatives, as needed. As identified in the first Report to Congress, the DOD organizations and other applicable organizations responded to the USD(A&S) call for nominations. The Panel Chair and Executive Secretary reviewed the nominations of the members to serve on the Panel, and identified members from other organizations. The Panel Chair added members from the Army Fellowship program and several other advisors to augment the Panel’s veterans subcommittee responsible for defining the eligibility criteria to employ seriously wounded, ill, and injured veterans to the AbilityOne Program. The membership includes representatives from agencies and departments who can offer expertise to accomplish the specified Panel duties. The following organizations are represented on the Panel:

**Figure 01.** Panel Membership

| **Representatives (Organizations)** | **Office/Position** |
| --- | --- |
| Panel Chairman | Office of the Under Secretary of Defense (Acquisition and Sustainment); Principal Director, Defense Pricing and Contracting (SES) |
| Executive Secretary | Department of the Army, Army Contracting Command – Aberdeen Proving Ground; Executive Director (SES) |
| U.S. AbilityOne Commission | Chairperson (SES) |
| U.S. AbilityOne Commission | Executive Director (SES) |
| U.S. AbilityOne Commission | Directorate of Veteran Employment Initiatives |
| Office of the Under Secretary of Defense (Acquisition and Sustainment) | Director, Contract Policy, Defense Pricing and Contracting (SES) |
| Department of the Army | Deputy Assistant Secretary of the Army (Procurement) (SES) |
| Department of the Air Force | Associate Deputy Assistant Secretary of the Air Force (Contracting) (SES) |
| Department of the Navy | Deputy Assistant Secretary of the Navy; Naval Supply Systems Command, Assistant Commander for Contracting (SES) |
| Department of the Navy | Deputy Assistant Secretary of the Navy; Naval Facilities Command, Assistant Commander for Acquisition (SES) |
| Defense Logistics Agency | Troop Support, Acquisition Executive (SES) |
| Defense Contract Management Agency | Director, Contract Management Branch (SES) |
| Defense Contract Audit Agency | Assistant Director for Policy and Plans (SES) |
| Department of Defense Office of Inspector General | Assistant Inspector General for Contract Management and Payments (SES) |
| U.S. AbilityOne Commission Office of Inspector General | Inspector General |
| Air Force Audit Agency | Associate Director, Acquisition Division |
| Defense Acquisition University | Center Director for Contracting |
| Defense Health Agency | Director of Contracting (SES) |
| U.S. Department of Justice | Office of the Assistant Attorney General, Civil Rights Division, Deputy Assistant Attorney General |
| U.S. Department of Justice | Civil Rights Division, Disability Rights Section, Deputy Chief |
| U.S. Department of Justice | UNICOR, General Counsel |
| U.S. Department of Justice | Office of the Inspector General, Deputy Assistant Inspector General for Investigations |
| U.S. Department of Labor | Office of Disability Employment Policy, Senior Advisor |
| U.S. General Services Administration | Federal Acquisition Service, Office of Supplies and Services Categories |
| National Aeronautics and Space Administration | Headquarters, Procurement |
| U.S. Department of Education | Office of Special Education and Rehabilitative Services, Deputy Commissioner, Rehabilitation Services Administration |
| U.S. Department of Veterans Affairs | Veterans Readiness and Employment Service; Director, Rehabilitations Services (SES) |
| National Veteran Small Business Coalition | Executive Director |
| In addition to the above membership, the Office of Management and Budget is included on the Panel email communications and invitations for meetings. | |
|  | |

**Meetings and Events in 2019 and 2020**

As specified in section 898, the Panel meets as determined necessary by the Chair, but not less than once every four months. The Panel subcommittees meet regularly, as determined by the subcommittee lead, in order to make progress in achieving its mission. Below, in Figure 02, is a summary of the Panel meetings and associated agendas from November 1, 2019, through October 31, 2020. During the meetings, Panel members shared information, ideas, and perspectives; reviewed status of implementing actionable recommendations; and what they had learned from AbilityOne stakeholders.

**Figure 02.** Schedule of Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity meetings in late 2019 and during 2020.

| **Date** | **Purpose** |
| --- | --- |
| November 7, 2019 | Panel Meeting   * Held at NIB headquarters * Learned from employees who are blind about the importance of accessibility, adaptive technology, and universal design in the workplace * DAU training update * Army analysis of the competition pilot * Subcommittee updates |
| January 29, 2020 | Panel Meeting   * Reviewed Panel Focus for 2020 * Status of recommendations * Subcommittee updates |
| May 6, 2020 | Panel Meeting (Virtual)   * U.S. AbilityOne Commission Chair remarks about the contributions of the AbilityOne Program employees’ to the COVID-19 national emergency response * Subcommittee updates |
| August 4, 2020 | Panel Meeting (Virtual)   * Organized by the DOJ Panel members * Panel I - Overview of the Federal Civil Rights & Policy Framework related to Advancing CIE * Panel II - Why Prioritizing CIE is so Important, from the Perspective of Self-Advocates (Advocates with Disabilities) * Panel III - Making Employment Service Provider/NPA Transformation to Integration Possible |
|  | |

**Outreach and Consultation**

In accordance with section 898, consultation with the CNAs and NPAs continues to be of upmost importance for the Panel. Below, in Figure 03, is a table of stakeholder outreach with the CNAs and NPAs. This list does not include all of the meetings and communications between the subcommittees and the CNAs and NPAs. The written inputs received from SourceAmerica, the NCSE, NIB, and the National Association for Employment of People Who Are Blind (NAEPB) are included in Appendix D. The respective written documents were shared with the Panel members and subcommittee leads for consideration in the implementation of the recommendations.

**Figure 03.** External Outreach Events with Stakeholders

| **Date** | **Purpose** |
| --- | --- |
| November 7, 2019 | Quarterly Panel meeting held at NIB headquarters. Panel members toured the new accessible facility and spoke with employees. |
| November 20, 2019 | Subcommittee Four conducted an NPA site visit to VisionCorps in Lancaster, PA. |
| November 26, 2019 | Subcommittee Four conducted an NPA site visit to Blind Industries and Services of Maryland (BISM) in Baltimore, MD. |
| December 2-4, 2019 | Panel Chair spoke at the SourceAmerica/NCSE Senior Leadership and NPA CEO Forum in San Antonio, Texas. Panel Chair participated in meetings and spoke with AbilityOne employees at Goodwill Business Services, a SourceAmerica associated agency, and the San Antonio Lighthouse for the Blind and the Visually Impaired, an NIB associated agency. |
| February 12, 2020 | Commission Public Meeting hosted at U.S. AbilityOne Commission. |
| March 25, 2020 | Subcommittee Two invited the President and CEO of Peckham, Inc. to address the subcommittee about disability documentation reviews. Peckham is one of the larger AbilityOne Program NPAs affiliated with SourceAmerica. |
| April 7, 2020 | Panel Chair invited as a keynote speaker at the 2020 SourceAmerica National Training and Achievement Conference. *This event was cancelled due to the national COVID-19 response.* |
| April 8, 2020 | Commission Public Meeting hosted at SourceAmerica Annual Training & Achievement Conference. *This meeting was cancelled due to the national COVID-19 response.* |
| May 4, 2020 | Subcommittee Four invited SourceAmerica to a subcommittee meeting to provide an update on the Direct Labor Hour ratio pilot. |
| June 24, 2020 | Subcommittee Two invited the President of BISM to address the subcommittee about NPA compliance practices. |
| July 14, 2020 | Subcommittee 8b invited the Vice President of Global Connections to Employment to discuss the pilot project they are working on with the Defense Health Agency and to discuss challenges, issues, and concerns with hiring veterans. |
| July 28-29, 2020 | SourceAmerica and NCSE hosted the U.S. AbilityOne Commission at the NCSE CEO/Senior Leadership Forum where the progress on the Panel recommendations was discussed. The U.S. AbilityOne Commission and SourceAmerica attended a General Services Administration (GSA) Office Hours session to discuss the specifics of the Acquisition Gateway Pricing Database. |
| July 30, 2020 | The U.S. AbilityOne Commission and SourceAmerica met with one of two Direct Labor Hour ratio pilot participants to discuss current progress. |
| August 4, 2020 | SourceAmerica attended the quarterly Panel meeting to discuss section 14(c) of the Fair Labor Standards Act and CIE. |
| August 11, 2020 | Subcommittee 8b invited CNA members from NIB and SourceAmerica to discuss the process used to identify labor type (direct/indirect), hiring practices (barriers to employment), and incentives for hiring veterans. Additionally, the Panel invited two veterans who currently work in the AbilityOne Program to talk about their personal experiences with the AbilityOne Program, the President and CEO of BOSMA, and the Deputy Director, Defense Manpower Data Center – Fort Knox. |
| September 3, 2020 | The U.S. AbilityOne Commission, SourceAmerica, and the Ratio CEO Roundtable met to discuss updates on the Direct Labor Hour ratio pilot. |
| September 21, 2020 | Subcommittee Four invited SourceAmerica to a subcommittee meeting to provide an update on the Direct Labor Hour ratio pilot. |
| October 6, 2020 | Commission Public Meeting hosted virtually |
| October 13, 2020 | Panel Chair gave keynote remarks at the virtual 2020 NIB/NAEPB National Training Conference and Expo. |
| October 21, 2020 | Subcommittee Four provided a briefing and question-and-answer session on the Panel’s proposed dual-ratio recommendation to representatives of the U.S. AbilityOne Commission, the American Foundation for the Blind, NIB, SourceAmerica, and the NCSE Executive Committee. |
| October 27, 2020 | Subcommittee Four’s lead participated in the virtual 2020 JWOD Legal & Policy Symposium, hosted by AbilityOne NPA Melwood, to provide a public briefing and solicit feedback on the Panel’s proposed dual-ratio recommendation. The audience consisted of approximately 80 stakeholders, and a recording of the session has since been posted online. The lead for Subcommittee Six also spoke at the Symposium. |
| October 28, 2020 | Subcommittee Six hosted the U.S. AbilityOne Commission and SourceAmerica to present the proposal for competition. |
| Ongoing | Weekly collaborative meetings with the U.S. AbilityOne Commission, SourceAmerica, and the NCSE Executive Committee to support implementation of the Panel recommendations. |
| Ongoing | Weekly or bi-weekly meetings with the U.S. AbilityOne Commission, SourceAmerica, and Mathematica Policy Research to discuss progress on the Direct Labor Hour ratio pilots. |
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Note: Roundtable discussions were focused on implementing recommendations, impact of recommendations, and obtaining CNA/NPA feedback.

**Summary of Recommendations**

The Panel reported on 25 recommendations in the second Report to Congress. Two recommendations overseen by Subcommittee Four have been combined so the Panel will be tracking 24 recommendations in 2021. Seven recommendations are tracked as completed, and the remaining are in various stages of implementation. Figure 04 is the List of Recommendations and the subcommittees responsible for each recommendation.

**Figure 04.** List of Panel Recommendations

| **#** | **Recommendation** | **Complete** |
| --- | --- | --- |
| **Subcommittee One: Inspector General** | |  |
| 1 | Implement existing policy by DOD requiring Contracting Officers to check the AbilityOne PL, and take training on the AbilityOne Program | ✓ |
| 2 | U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented | ✓ |
| **Subcommittee Two: Eliminate Waste, Fraud, and Abuse** | |  |
| 3 | Increase oversight and strengthen audit coverage |  |
| 4 | Impose stricter requirements on NPAs for documentation and disability determinations |  |
| 5 | Prohibit Use of Program Fee for Lobbying Expenses |  |
| **Subcommittee Three: Employment Initiatives (merged with Subcommittee Five to form Subcommittee Eight)** | | |
| **Subcommittee Four: Laws and Regulations** | |  |
| 6 | Amend the JWOD Act’s 75 percent Direct Labor Hour ratio requirement, 41 U.S.C. §§ 8501(6)(C), (7)(C), to promote employment and upward mobility of individuals with disabilities in integrated work environments, and provide for implementation requirements and guidelines |  |
| 7 | Amend the JWOD Act’s definition of “Direct labor,” 41 U.S.C. §§ 8501(3), to encourage upward mobility and hiring of people with disabilities in supervisory and other indirect labor positions | Now incorporated into Recommend-ation 6 |
| 8 | Amend the JWOD Act’s definition of “severely disabled,” 41 U.S.C. §§ 8501(5) and (8), to eliminate the presumption that eligible individuals are not competitively employable and to clarify and institute a workable definition |  |
| **Subcommittee Five: Veterans Eligibility (merged with Subcommittee Three to form Subcommittee Eight)** | | |
| **Subcommittee Six: Acquisition and Procurement** | |  |
| 9 | Develop policy and implement business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DOD contracts with AbilityOne NPAs | ✓ |
| 10 | Develop policy establishing NPA recommendation/allocation procedures |  |
| 11 | Establish business rules for competition and assignment of work among AbilityOne Program NPAs |  |
| 12 | Establish penalties if a CNA or NPA does not follow policies and procedures |  |
| 13 | Reduce the existing gaps and deficiencies in CNAs’ processes | ✓ |
| 14 | Revise 41 CFR 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the PL |  |
| **Subcommittee Seven: Business Process Re-engineering** | |  |
| 15 | Update the Procurement List Information Management System (PLIMS) to reflect detailed information, improve the search functions to enable a more user-friendly interface, and be usable to outside agencies | ✓ |
| 16 | Deploy an IT solution either utilizing a system where the PL can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues |  |
| 17 | Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers |  |
| 18 | Implement DOD wide policy to designate an AbilityOne Representative (ABOR) program similar to the Air Force model and includes a goal for growth in AbilityOne Program participation | ✓ |
| 19 | Pursue Defense Federal Acquisition Regulation Supplement (DFARS) (Procedures, Guidance, and Information [PGI] language) to detail how to do business with the AbilityOne Program |  |
| 20 | Recommend change to allotted timeframe currently required by the Administrative Procedures Act when adding products or services to the PL |  |
| 21 | Incorporate section 508 training for contracting personnel to address DOD-wide section 508 compliance shortfall and use DAU online and classroom training to teach AbilityOne information | ✓ |
| **Subcommittee Eight: Employment and Veterans Eligibility** | |  |
| 22 | Change the Commission’s regulation for initial qualification for NPAs to participate in the AbilityOne Program to include employment criteria of at least minimum wage comparable to coworkers, a work setting that is inclusive of people with and without disabilities, and opportunities for advancement |  |
| 23 | Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies |  |
| 24 | Require CNAs to develop a certificate-based training program for individuals certifying an individual’s eligibility to work on AbilityOne Program contracts, consider accepting electronic medical documents securely transmitted from Federal and State vocational rehabilitation agencies, and adopt a standardized form approved by Office of Personnel Management (OPM) |  |
| 25 | Recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission |  |
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**Section II: Discussion and Implementation Status of Panel Recommendations**

**Subcommittee One: Inspector General**

Lead Organization: Inspector General, OIG, U.S. AbilityOne Commission

**Recommendations**

1. Implement existing policy by DOD requiring Contracting Officers to check the AbilityOne PL, and take training on the AbilityOne Program. [Complete]
2. U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented. [Complete]

**Panel Recommendation 1:** Implement existing policy by DOD requiring Contracting Officers to check the AbilityOne PL, and take training on the AbilityOne Program.

**Background:**

Section 898 of the NDAA for FY 2017, Public Law 114-328, requires the Panel to establish a more comprehensive AbilityOne training program at DAU. The Subcommittee identified training a key factor in preserving program growth and improving the customer experience in the AbilityOne Program.

Recommendation addresses section 898(c)(1) – review implementation of the DODIG report findings and recommendations; ref DODIG Report 2016-097, published June 27, 2016, includes a recommendation to update training to clearly define the DOD Contracting Officer's roles and responsibilities when awarding contracts with the AbilityOne Program.

**Implementation Status:**

Panel Recommendation 1 was implemented through two different memorandums issued by the Principal Director, Defense Pricing and Contracting (DPC), within the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)).

The first memorandum was signed by the Director, Defense Procurement and Acquisition Policy (now DPC) on November 1, 2017. The memorandum reminded contracting officials to check the AbilityOne PL as part of the market research process and at the time of contract award, to determine whether a product or service is on the list. The guidance also stated that if a required product or service is not on the PL, the DOD customer may work with the U.S. AbilityOne Commission to add it to the list.

The second memorandum, signed by the Principal Director, DPC, on October 11, 2019, reiterated the requirement for contracting officials to check the AbilityOne PL to determine if a required product or service is on the list. The policy memorandum also provided the link to the U.S. AbilityOne training on the DAU website.

Since the recommendation was closed for purposes of tracking, another memorandum, signed by the Principal Director, DPC, on October 8, 2020, encourages contracting professionals to take the DAU Continuous Learning Module (CLM) 023, “DAU AbilityOne Training,” to meet continuous learning requirements. This memorandum is included in this report as Appendix E.

**Panel Recommendation 2:** U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented.

**Background:**

Section 898 of the NDAA for FY 2017, Public Law 114-328, requires the Panel to establish a more comprehensive AbilityOne training program at DAU.

Recommendation addresses section 898(c)(1) – review implementation of the DODIG report findings and recommendations; ref DODIG Report 2016-097, published June 27, 2016, includes a recommendation to update training to clearly define the DOD Contracting Officer's roles and responsibilities when awarding contracts with the AbilityOne Program.

**Implementation Status:**

Panel Recommendation 2 was implemented through a memorandum signed by the Principal Director, DPC on September 7, 2018. The memorandum created and implemented a policy mandating all personnel assigned to the DOD Contracting and Purchasing Acquisition Career Fields complete CLM 023 “DAU AbilityOne Training” in FY 2019. The existing CLM 023 was updated in collaboration between DAU, the U.S. AbilityOne Commission, and the DOD OUSD (A&S) Contracting Functional IPT (chaired by the Principal Director, DPC) and deployed May 7, 2018. The updated training addresses section 898(l) to include specific information about the AbilityOne Program and the mission of the U.S. AbilityOne Commission. It addresses the DODIG recommendations to clearly articulate the roles and responsibilities of contracting officers when procuring from AbilityOne, in accordance with the purchasing priorities of the Federal Acquisition Regulation (FAR), Part 8.002 and Subpart 8.7.

Table 01 provides the total graduation statistics data for CLM 023, as of September 30, 2020.

|  | **Oct 1, 2017 – May 6, 2018** | **May 7 – Sept 30, 2018\*** | **Fiscal Year 2019** | **Fiscal Year 2020** | **Total Completions** |
| --- | --- | --- | --- | --- | --- |
| Army | 8,060 | 4,758 | 22,892 | 12,442 |  |
| Navy | 241 | 162 | 6,823 | 824 |  |
| Air Force | 2,445 | 4,545 | 20,422 | 7,634 |  |
| Fourth Estate - DOD | 352 | 450 | 7,939 | 1,516 |  |
| Federal Government | 59 | 62 | 534 | 326 |  |
| Industry and Other | 125 | 64 | 473 | 175 |  |
| **TOTAL** | **11,283** | **10,041** | **59,083** | **22,917** | **103,324** |
| \*Data after updated CLM 023 deployed | | | |  |  |
|  | | | |  |  |

**Table 01.**  CLM 023 Course Completion Statistics

**Subcommittee Two: Eliminate Waste, Fraud, and Abuse Subcommittee**

Lead Organization: U.S. Department of Justice

**Recommendations**

1. Increase oversight and strengthen audit coverage.
2. Impose stricter requirements on NPAs for documentation and disability determinations.
3. Prohibit use of the Program fee for lobbying expenses.

**Panel Recommendation 3:** Increase oversight and strengthen audit coverage.

**Background:**

Section 898(c)(2) – Take actions to eliminate waste, fraud, and abuse with respect to contracts of DOD and the Commission

The Commission’s Oversight and Compliance Directorate at the headquarters office is responsible to ensure requirements relating to NPA employees’ disability status and direct labor hours are followed. The compliance program is responsible for the CNAs’ compliance initiatives as well. The Oversight and Compliance Directorate accomplishes this through conducting compliance inspections and reviews. The Commission (including its Oversight and Compliance Directorate) is subject to oversight from the Commission’s Office of Inspector General (OIG). The OIG, pursuant to the Inspector General Act of 1978, as amended, has full oversight authority of the programs and operations of the Commission.

The Oversight and Compliance Directorate is a long-established part of the agency. The Directorate’s mission is to monitor and promote compliance with applicable laws, regulations, and policies, and enhance overall program integrity, working with CNAs and NPAs participating in the AbilityOne Program. The Directorate’s responsibilities include issuing policy guidance and training program participants, conducting routine inspections, reviewing and addressing mandatory disclosures and complaints, performing comprehensive reviews of Annual Certifications, reviewing proposed additions of products and services to the PL for NPA qualification and capability, and providing support to OIG and/or DOJ investigations, as needed.

The OIG is a relatively new office and is responsible for conducting audits and investigations, recommending policies and procedures that promote economy, efficiency, and effectiveness of agency resources and programs, and detecting and preventing fraud, waste, abuse, and mismanagement.

Presently, neither the Oversight and Compliance Directorate nor the OIG have the resources necessary to fund sufficient staff to fulfill each of their mandates. Both the Oversight and Compliance Director and the OIG require full funding to exercise their respective responsibilities over AbilityOne and its nearly $4 billion program, which includes approximately 472 NPAs. Providing this comprehensive oversight requires dedicated and sufficient resources for the build-out of the Oversight and Compliance Directorate and start-up activities of the OIG.

**Implementation Status:**

The White House has submitted its budget request for FY 2021. The Panel urges Congress to appropriate to the Commission (for the Oversight and Compliance Directorate) and to the OIG, no less than the amounts requested for each for FY 2021 ($2.30 million for the OIG and $1.379 million for the Oversight and Compliance Directorate). The Panel further recommends that Congress continue increasing these appropriations in future years until they are sufficient to enable each office to fulfill all necessary mission functions (in present-day dollars, $4.60 million for the OIG and $2.384 million for the Oversight and Compliance Directorate).

The FY 2021 budget seeks $2.30 million for the OIG, which would enable the OIG to raise its staffing level to nine full-time equivalent (FTE) positions from its current six, including the Inspector General and counsel. In the longer term, adequate oversight by the OIG of the Commission will require staffing an Office of Audits, an Office of Investigations, and other positions, supporting a business plan for an OIG staff of approximately sixteen FTE positions. This would require an appropriation of $4.60 million.

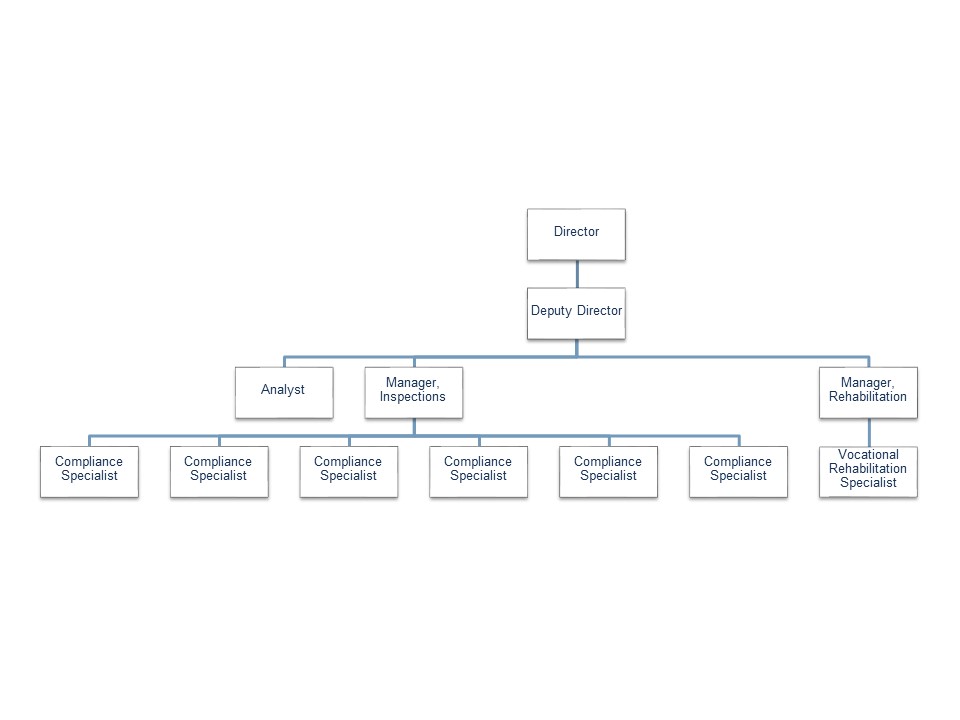
The FY 2021 budget seeks an appropriation for the Commission that would result in an estimated budget of $1.379 million for the Commission’s Oversight and Compliance Directorate. The Commission has not increased resources for the Oversight and Compliance Directorate since FY 2018. For the current fiscal year, these resources were calculated to fund six FTE positions, but the Directorate is currently staffed by only two permanent FTEs and one temporary detailee. Even though this report covers the period through October 30, 2020, it is worth noting that on November 5, 2020, the Director of the Oversight and Compliance Directorate resigned from his position. The Commission has assigned the head of its Western regional office to serve simultaneously as Acting Director of Oversight and Compliance.

Beulah Taylor from the Austin Lighthouse for the Blind helps produce hand sanitizer and soap products used to support the Federal government. Since the COVID-19 crisis began in March 2020, the Austin Lighthouse has shipped more than 13 million bottles of hand sanitizer in response to unprecedented demand. The AbilityOne nonprofit also increased its shipping lines production, tripled employee counts, hired more temporary workers, and invested in more facility equipment.

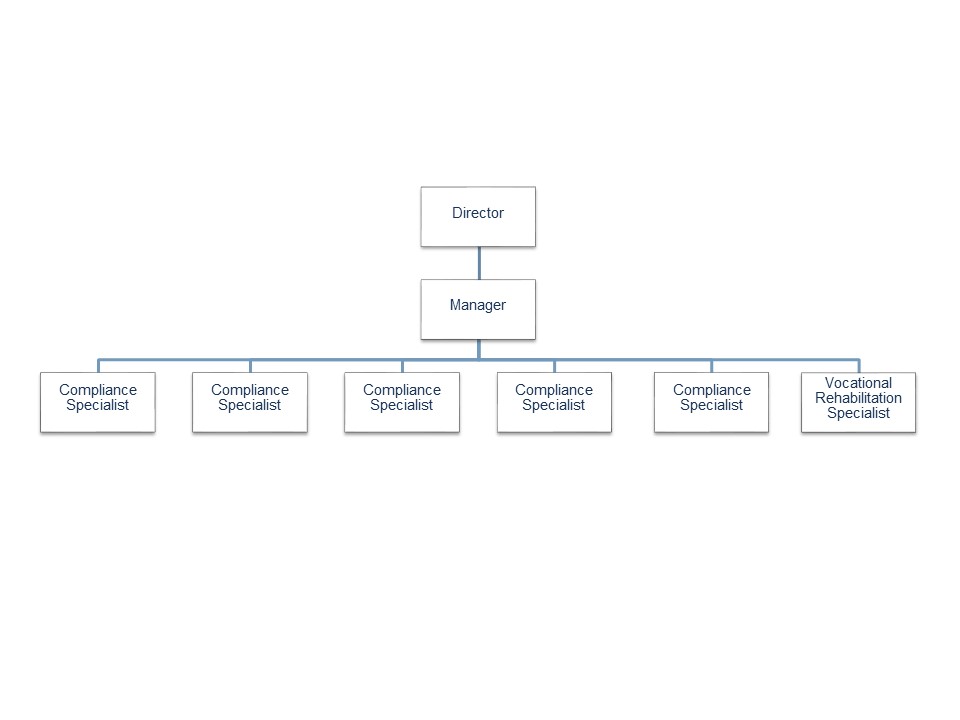
The estimated budget of $1.379 million for FY 2021 would fund 9.33 FTE positions to oversee the Oversight and Compliance Directorate’s responsibilities as discussed in the below paragraph. The Panel recommends to the Commission that it (a) conduct a prompt and thorough search for a highly qualified individual with significant experience in compliance matters to fill the Director position permanently, (b) incorporate greater input from the new Director regarding Directorate staffing levels and hiring decisions than was afforded previously, (c) immediately increase the size of the Directorate’s staff to at least four FTEs aside from the Director, which the Commission’s pre-existing funding levels are already sufficient to fund, and (d) develop written staffing plans for the Directorate and evaluate the proper job series and skill level needed as they continue to hire additional staff for the Directorate in FY 2021 (including, but not limited to a Deputy Director) to the full extent permitted by Congress’s appropriation for that year. In the longer term, 17.66 FTE positions will be needed to adequately staff the Directorate so that it may fulfill all mission functions, at an estimated cost of $2.384 million per year.

The Commission headquarters is responsible for the workload of the Oversight and Compliance Directorate, including product and service additions to the PL, CNA Cooperative Agreement adherence, and NPA paperwork review and evaluation. Therefore, staffing needs should be prioritized to ensure and bolster Compliance as a top priority. The Commission also has a Western U.S. Field Office with compliance-related duties, which will therefore need Compliance staff in addition to the 9.33 FTEs for the Oversight and Compliance Directorate. The Commission has also proposed a Central U.S. Field Office, which will likewise have such duties and require such personnel. Organizational flowcharts are provided below in Figure 05 and Figure 06.

**Figure 05.**  Headquarters Compliance Personnel Future Structure



**Figure 06.** Regional Compliance Personnel Future Structure



**Resource Requirement (if applicable)**:

(1) Funding for FY 2021 in the amount of $2.30 million for the OIG; and $1.379 million representing the share of the Commission’s appropriation that would be allocated to the Oversight and Compliance Directorate.

(2) Increased funding in future fiscal years in the amount of $4.60 million for the OIG; and $2.384 million representing the share of the Commission’s appropriation that would be allocated to the Oversight and Compliance Directorate.

**Panel Recommendation 4:** Impose stricter requirements on NPAs for documentation and disability determinations.

**Background:**

Section 898(c)(2) – Take actions to eliminate waste, fraud, and abuse with respect to contracts of DOD and the Commission

This Subcommittee found that determinations of individual eligibility for the AbilityOne Program were potentially affected by bias, and that NPA performance on JWOD Act requirements was difficult to evaluate due to poor or complicated data/record-keeping and tracking of hours. NPAs’ compliance with documentation and eligibility requirements has in recent years been hindered by a lack of guidance following the Commission’s withdrawal of its outdated Compliance Manual (published in 2007). This is complicated by the Commission’s lack of transparent policy, training, and a clear regulatory agenda in the area of compliance over the NPAs.

**Implementation Status:**

In summer 2020, the Commission did not complete and/or revise the Compliance Manual and instead prepared a series of new and updated draft policies on compliance, which were designed to replace the manual in providing guidance for NPAs. This Subcommittee reviewed the drafts and provided edits and feedback to the Commission. On August 15, 2020, the Commission finalized the majority of these compliance policies, incorporating many of the Subcommittee’s edits and suggestions, and published the policies on its website at https://www.abilityone.gov/laws,\_regulations\_and\_policy/commission\_policy\_51\_400.html.

The new policies are:

51.400 (NPA Overall Compliance Policy)

51.401 (Direct Labor Hour Ratio Requirements)

51.403 (NPA Out of Compliance with Commission Regulations)

51.406 (Equal Employment Opportunity for People with Disabilities at AbilityOne-Participating NPAs)

51.407 (Disability Documentation Requirements – People Who Are Blind)

51.408 (Disability Documentation Requirements – People With Significant Disabilities)

51.409 (Maintaining Qualification of NPAs); and

51.410 (Processing Complaints by Employees of NPAs Performing Work on Contracts Under the AbilityOne Program).

On August 4, 2020, the Commission also created a related Oversight and Compliance Frequently Asked Questions page on its website, which will be updated as needed. Two policies, 51.403 and 51.410, were further revised on November 12, 2020.

Additional revised compliance policies are pending and will be published in the near future. For example, certain policies will need to conform to the implementation of recommendations that will be made by Subcommittee Four, as discussed below. Certain other policies, such as Policy 51.403, should be clearer regarding the scope of the Commission’s referrals to the OIG of information of potential violations and complaints; it is recommended the Commission coordinate with the OIG to ensure that these provisions are written in an optimal manner. Consideration should also be given to ensuring the policies are harmonized with organic authority in the JWOD Act. Subcommittee Two will continue to review and provide feedback and comments on the Commission’s Compliance policies and publications in 2021, as needed.

**Resource Requirement (if applicable)**: See resources identified for Recommendation 3 above.

**Panel Recommendation 5:** Prohibit Use of Program Fee for Lobbying Expenses.

**Background:**

Section 898(c)(2) – Take actions to eliminate waste, fraud, and abuse with respect to contracts of DOD and the Commission

FAR Part 31 prohibits government contractors from using Federal contract funds on lobbying and political activities. However, CNAs use their program fees for lobbying on the basis that the fees do not come directly from Federal government agencies, but from the NPAs.

The Government Accountability Office (GAO) has never issued a formal opinion on whether CNAs’ program fees are subject to any restriction on lobbying, given the uniqueness of the AbilityOne Program’s structure within the Federal government. CNAs’ activities can be restricted pursuant to the terms of the Cooperative Agreements they sign with the Commission, but the Commission does not believe it can effectively, by contract, prohibit CNAs from using their program fees on lobbying.

**Implementation Status:**

The Panel recommends that Congress enact legislation closing the loophole that arguably now allows CNAs to use program fees for lobbying. If Congress wishes to seek a formal opinion from GAO as to whether program fees may be used for lobbying under current law, it may seek a formal opinion from GAO, which prioritizes Congressional requests for opinions.

**Resource Requirement (if applicable)**: Legislation as described above.

**Subcommittee Four: Laws And Regulations**

Lead Organization: U.S. Department of Justice

**Recommendations**

1. Amend the JWOD Act’s 75 percent Direct Labor Hour ratio requirement, 41 U.S.C. §§ 8501(6)(C), (7)(C), to increase employment opportunities for people with disabilities, while also ensuring that these jobs are integrated and competitive, and provide for implementation requirements and guidelines. This recommendation now also incorporates the previously separate recommendation to amend the JWOD Act’s definition of “Direct labor,” 41 U.S.C. §§ 8501(3), to encourage upward mobility and hiring of people with disabilities in supervisory and other indirect labor positions.
2. Note that recommendation 7 is combined with recommdation 6.
3. Amend the JWOD Act’s definition of “severely disabled,” 41 U.S.C. §§ 8501(5) and (8), to eliminate the presumption that eligible individuals are not competitively employable and to clarify and institute a workable definition.

**Panel Recommendation 6:** Amend the JWOD Act’s 75 percent Direct Labor Hour ratio requirement, 41 U.S.C. §§ 8501(6)(C), (7)(C), as recommended in more detail below, to increase employment opportunities for people with disabilities, while also ensuring that these jobs are integrated and competitive, and provide for implementation requirements and guidelines.

**Background:**

Section 898(c)(4) – recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of DOD contracts.

The Panel recommends that the JWOD Act’s 75 percent Direct Labor Hour ratio requirement be amended to achieve two goals: increase employment opportunities for people with disabilities, while also ensuring that these jobs are integrated and competitive (as required by the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act). This recommendation would modernize the AbilityOne Program in light of the preference in Federal law (and in the policy of nearly all states) to employ people with disabilities in integrated settings and in positions offering competitive compensation.

In order to meet these dual goals, the Panel recommends that Congress repeal the Direct Labor Hour ratio currently required under the JWOD Act, *see* 41 U.S.C. § 8501(3), (6)(C), (7)(C), and that Congress replace it with two new ratios, both of which NPAs would be required to meet. These new ratios are structured so as to: (1) remove the current ratio’s barrier to integrated employment settings; (2) incentivize NPAs to promote and hire individuals with disabilities into supervisory, management, executive, and directorial positions, and (3) incentivize NPAs to assist participants with disabilities to obtain CIE that fits their interests, skills, and preferences.

Employees at TRDI, an AbilityOne-participating nonprofit in San Antonio, TX, are among those performing essential janitorial services for Federal agencies including the General Services Administration and the Department of Homeland Security.

**Findings:**

The Subcommittee found, over the course of its three years evaluating potential alternative direct labor hour percentages under the existing 1938 statutory framework, that merely reducing the existing 75 percent Direct Labor Hour ratio requirement would not best achieve these dual goals. The current framework, which ties NPA qualification only to “direct,” non-supervisory labor, fails to incentivize career development of employees with disabilities and upward mobility into supervisory positions within NPAs or CIE positions.

In addition, while reducing the required Direct Labor Hour percentage from 75 percent might facilitate increased integration in AbilityOne workplaces, it would not, by itself, ensure that AbilityOne workplaces are integrated settings where employees with disabilities work side-by-side with colleagues without disabilities and receive competitive wages. Further, it could have the unintended consequence of incentivizing NPAs to eliminate jobs for people with disabilities in order to reduce their direct labor hour percentage.

The Subcommittee developed and the Panel supports this recommendation for two new ratios, defined as follows.

# Recommended Ratio Formulas

NPAs would have to meet **both** of the following ratios:

1. **(A + C + D) / (A + B) > 75%, and**

**(Ratio II) A / (A + B) < 75%,**

where, for each NPA:

A = The number of employees with disabilities working on AbilityOne contracts in non-supervisory positions during the reporting period;

B = The number of employees without disabilities working on AbilityOne contracts only in non-supervisory positions during the reporting period;

C = The total number of individuals with disabilities at the NPA who (i) work in supervisory positions on AbilityOne contracts; (ii) hold management or executive positions at the NPA; or (iii) are serving on the NPA’s Board of Directors during the reporting period; and

D = The total number of employees with disabilities who transitioned, during the reporting period, into non-AbilityOne CIE positions, where the NPA is not their employer.

NPAs currently report direct labor hours, as well as other information, to CNAs quarterly and to the U.S. AbilityOne Commission annually. The Panel is not recommending that this reporting schedule be changed, so the same reporting periods would apply to NPAs’ calculation of the ratios recommended here.

Under this proposal, “employees with disabilities” means blind individuals qualified to participate in the AbilityOne Program under the JWOD Act, 41 U.S.C. § 8501(1), as well as individuals with significant disabilities who meet the definition the Panel is recommending to replace the JWOD Act’s current definition of “severely disabled” (*see* Recommendation 8 herein).

Each “employee” would be counted as a fraction of FTE status, based on the average hours he or she works per week on AbilityOne contracts over the reporting period, as follows: (1) someone working 10 hours or less per week average would count as 0.25; (2) someone working 11-20 hours per week average would count as 0.50; (3) someone working 21-30 hours per week average would count as 0.75; and (4) someone working above 30 hours per week average would count as 1.00. This method of counting employees would allow employees who work on multiple contracts, or in multiple types of positions, to be accurately captured for their time worked on each, while also avoiding duplication (each employee cannot total more than 1.00). It would also encourage NPAs to employ individuals with the most intensive needs, who, current data shows, tend to work less than 40 hours per week. Finally, this methodology is similar to the way NPAs currently track direct labor hours and thus would minimize the administrative burdens imposed by new ratio requirements.

*Additional Details Regarding the Recommended Ratio Formulas*

* Ratio II: Any NPAs operating contracts where employees *only* perform work from home would be exempt from counting those employees in calculating Ratio II.
* Category A: An NPA may subtract from (A) any employee who works alone (*i.e.*, does not have coworkers who do the same job during the same period of time during the day) if an employee without a disability doing the same job would also work alone. These would be jobs filled by one employee (or one employee per shift).

* Category B: An NPA may include in (B) any employees without disabilities who are not employed by the NPA, but who physically work alongside any NPA employees in the (A) category, doing the same jobs as those employees (and are also not their supervisors, managers, or service providers).
* Category D: NPAs may count individuals whom they assisted to obtain positions in CIE as 1.00 FTE only so long as the individuals are no longer employed by the NPA. If an individual obtains a position in CIE and also remains employed by the NPA, the NPA may only count the individual under “D” (with the appropriate fraction of FTE) if the individual is working at least 20 hours per week in CIE. This is to incentivize NPAs to maximally assist their employees with career development and with obtaining and retaining jobs in the competitive labor market, when they so choose, with more than nominal weekly hours and compensation, rather than incentivizing NPAs to retain the financial and program benefit of the labor of employees who would instead prefer to work at their full capacity in the community.
* Employees who are currently working on both AbilityOne contracts as well as non-AbilityOne positions at the NPA in segregated settings should be excluded from the ratios by the end of the phase-in period recommended and described below. NPAs would be encouraged to use the phase-in period to shift these employees fully onto AbilityOne contracts or into CIE.

*Summary of Recommended Ratios*

This dual-ratio recommendation would help ensure more integration of non-supervisory employees with and without disabilities by removing the current ratio’s barrier to integrated work settings (Ratio II), while at the same time encouraging the promotion and hiring of employees with disabilities into supervisory, management, executive, and directorial positions within NPAs, as well as encouraging NPAs to assist employees who want to work in the community to transition into competitive and integrated non-AbilityOne jobs that fit their interests and skills (Ratio I). Rather than incentivizing NPAs to eliminate jobs for people with disabilities or hire only additional people without disabilities, as merely reducing the current 75 percent requirement might, this recommendation would enable NPAs to maximize employment of people with disabilities, both in the AbilityOne Program and in the competitive labor market, and incentivize their employment at all levels of the NPAs.

# Qualitative Reporting Requirements and Technical Assistance

The two new ratio requirements recommended above, while establishing the right incentives, will not by themselves ensure that the employment opportunities the AbilityOne Program offers are in integrated settings and offer competitive wages. Thus, the Subcommittee and Panel continue to recommend[[1]](#footnote-1) that NPAs be required to report to the CNAs and the U.S. AbilityOne Commission additional information that would assist compliance staff in determining whether NPAs’ AbilityOne work settings and compensation are integrated and competitive, respectively, as defined by relevant disability rights laws and regulations.[[2]](#footnote-2) It should be noted that under the Rehabilitation Act, the responsibility to determine whether an employment setting is “competitive integrated employment” under the statute and regulations, for purposes of whether an individual can receive funded vocational rehabilitation services in the employment setting, belongs to State vocational rehabilitation agencies. The requirements of JWOD are separate and, even if amended, would not change the authority of State vocational rehabilitation agencies to make this determination for referral and service funding purposes. However, the requirements proposed here would aim to be consistent with the definitions under the Rehabilitation Act and the Americans with Disabilities Act and their regulations, as well as relevant Medicaid regulations, assisting NPAs in maintaining integrated employment settings.

In addition, the Panel recommends that the CNAs be required to provide technical assistance regarding such reporting requirements to all NPAs, as well as to provide ongoing technical assistance to all NPAs regarding providing, and building capacity to provide, career exploration, job discovery, benefits counseling, and supported and customized employment services. Such technical assistance would support NPAs in complying with new reporting requirements, as well as enable them to maximize their ability to assist employees with disabilities in obtaining and retaining jobs in the community that fit their preferences and skills.

To develop and implement the reporting requirements, the Panel recommends that a committee of representatives with expertise in disability rights law and disability employment policy (specifically, CIE),[[3]](#footnote-3) along with representatives from the U.S. AbilityOne Commission, be created to: determine what information NPAs must report;[[4]](#footnote-4) set specific timelines and processes for U.S. AbilityOne Commission review of NPA reporting; recommend the number of any additional compliance staff the U.S. AbilityOne Commission would need in order to adequately review and ensure NPAs’ compliance with the requirements, along with their required qualifications; and recommend technical assistance methods and content to be used by the CNAs to provide to NPAs. Once the committee completes these tasks, the U.S. AbilityOne Commission would be required to immediately implement the policies and requirements crafted by the committee.

# Phase-In of Recommended Program Requirements

The Subcommittee and Panel continue to recommend that this proposal be implemented using a phase-in approach,[[5]](#footnote-5) such that NPAs have sufficient opportunity to transition to compliance with new program requirements. The Panel recommends the following timeframes for compliance and consequences for noncompliance: (1) NPAs found noncompliant with new program requirements per the first compliance review under these requirements should be required to remedy noncompliant settings or wages within 18 months of the finding of noncompliance; (2) NPAs found noncompliant with the requirements per any subsequent compliance review should be required to remedy noncompliant settings or wages within 12 months of the finding; and (3) any NPA found noncompliant in more than two consecutive compliance reviews under these requirements should be disqualified.

**Implementation Status:**

The Subcommittee is continuing to solicit feedback from stakeholders regarding this recommendation, but anticipates that during the next reporting period, the Panel recommendation will be prepared and submitted as a legislative package.

**Panel Recommendation 8:** Amend the JWOD Act’s definition of “severely disabled,” 41 U.S.C. §§ 8501(5) and (8), to eliminate the presumption that eligible individuals are not competitively employable and to clarify and institute a workable definition.

**Background:**

Section 898(c)(4) – recommend changes to law, regulations, and policy that the Panel determines necessary to eliminate vulnerability to waste, fraud, and abuse with respect to the performance of DOD contracts.

Subcommittee Four continues to support the Panel recommendation that the definition in 41 U.S.C. §§ 8501(5) and (8) be amended as set forth in the Panel’s Second Report to Congress.

**Implementation Status:**

Subcommittee Four expects that this recommendation’s proposed statutory language be included in the forthcoming legislative package that will also include proposed statutory language consistent with Recommendation 6 above.

**Subcommittee Six: Acquisition and Procurement**

Lead Organization: Air Force, Department of Defense

**Recommendations**

1. Develop policy and implement business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DOD contracts with AbilityOne NPAs. [Complete]
2. Develop policy establishing NPA recommendation/allocation procedures.
3. Establish business rules for competition and assignment of work among AbilityOne Program NPAs.
4. Establish penalties if a CNA or NPA does not follow policies and procedures.
5. Reduce the existing gaps and deficiencies in CNAs’ processes. [Complete]
6. Revise 41 CFR 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the PL.

**Panel Recommendation 9:** Develop policy and implement business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DOD contracts with AbilityOne NPAs.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

The Cooperative Agreements established between the U.S. AbilityOne Commission and the CNAs incorporated mechanisms to increase transparency in CNA business practices and established a Program Management Office, in 2016, to ensure oversight of the Cooperative Agreements. The Commission does not have any policy creating incentives for inclusion and mentoring of smaller nonprofits and veteran employment opportunities on DOD contracts.

**Implementation Status:**

Recommendation 9 is closed and marked as complete based on similarities to Recommendations 10 and 11.

**Resource Requirement (if applicable)**:

Recommendation 10 will address resource requirements.

**Panel Recommendation 10:** Develop policy establishing NPA recommendation/allocation procedures.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work. The Panel recognizes and is pleased that the Commission OIG is presently conducting two performance audits related to this area.

OIG initiated the performance audit of the CNA Selection of NPAs for Project Assignment and Allocation of Orders. The objective is to assess the extent to which the implementation of the project assignment and allocation process by the CNAs is effective and follows applicable laws and regulations as well as established policies and procedures. This performance audit is looking at the Commission and CNAs’ policies and procedures as well as best practices for making recommendations to the Commission for NPAs’ project assignments and allocation of orders. The assignment of projects to Base Supply Centers (BSC) will be included as part of the audit scope.

The USNS Comfort arrives in New York Harbor on March 30, 2020, to support national, state and local response to COVID-19. The hospital ship provided approximately 1,000 beds for urgent care patients not infected with the virus, relieving pressure on local hospital systems. People with disabilities employed by VersAbility Resources, an AbilityOne-participating nonprofit in Hampton, VA, loaded the ship with enough meals to feed the 1,000-plus crew members for three weeks.   
Photo by Kenneth Wilsey, FEMA

OIG is also conducting the performance audit of the PL Addition Process, Procedures, and Practices. The overall objective is to determine whether the PL addition process is transparent and performed efficiently, effectively, and in compliance with applicable laws, regulations, and policies. The audit will assess the effectiveness of the policies, procedures, and practices employed by the Commission when approving the addition or removal of products and services from the PL, as well as CNA processes for producing and providing PL addition packages.

These reviews will be instrumental for a variety of needs and improvements with the Commission. The Cooperative Agreements do not include reference to any source recommendation/allocation procedures to measure CNA compliance with fair and equitable recommendations. The Cooperative Agreements currently state the following, “In accordance with Commission policies, the CNA shall conduct fair, transparent and equitable Allocation or Recommendations (A&R) of products and services on the PL to qualified NPAs with impartiality (excluding evaluation factors, such as past performance) and without improper preferential treatment. In making both allocation and recommendation decisions, the CNA shall follow Commission policies.” The policy referenced in the Cooperative Agreements is Commission Policy 51.301, Selection of NPA.

Commission Policy 51.301 states:

“In accordance with Commission policies, the CNA shall conduct fair, transparent and equitable allocation or recommendations of products and services on the PL to qualified NPAs with impartiality (excluding evaluation factors, such as past performance) and without improper preferential treatment. In making both allocation and recommendation decisions, the CNA shall follow Commission policies.”

The CNA’s recommendation package is submitted to the Commission for a vote to determine if additional work should be added to the PL. The current format of the CNA’s recommendation only discusses the recommended NPA and does not provide details on the NPA recommendation process taken to determine the recommended NPA for the work. Currently, no additional documentation is attached discussing in greater detail how the CNA reached their best value recommendation.

The Commission does not have any policy establishing mandatory source recommendation/allocation procedures or establishing a dollar threshold for representations (reps) and certifications (certs) on contracts. Reps and Certs are submitted by the NPAs on an annual basis, at the end of the fiscal year. Per CFR 51-4.3, each NPA must submit to its CNA, 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. The U.S. AbilityOne Commission has a regulation that requires CNAs to submit Annual Reps and Certs for all NPAs to the Commission staff no later than December 1 of each year. The Commission’s Cooperative Agreements with the CNAs includes a metric that ensures compliance with the regulation.

**Implementation Status:**

A Subcommittee Six Policy Working Group was established in February 2020 and is comprised of representatives from Air Force, Army, Navy, OUSD(A&S)/DPC, and the U.S. AbilityOne Commission staff. This working group has been operating to requirements of section 898(c)(6) of the FY17 NDAA to “recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work”. The working group meets almost weekly to establish a source recommendation process, which has been mapped out to completion.

Currently, the CNAs perform the competition that leads to the recommendation of the NPA to the U.S. AbilityOne Commission for addition to the PL; there is no policy or process for routine recompetitions within the program. While SourceAmerica, who holds the majority of service contracts, submits an annual report to AbilityOne that identifies the results of competitions within their network of NPAs based on responses to their Opportunity Notices (ONs), the U.S. AbilityOne Commission does not have visibility into the competition results on individual PL additions. Currently SourceAmerica recommends the NPA based on highest technical rating and past experience only. The Fair Market Price (FMP) is determined after selection and negotiated amongst the CNA, the NPA and the customer.

The new process allows for more transparency and involvement from the Federal customer in the recommendation of the NPA to the U.S. AbilityOne Commission. This process targets new work to the program and recompetition for service contracts valued at $10 million or greater annually and **performed on Federal installations/properties.** The new process will focus on a best value with trade-off analysis that will consider a Social Impact proposal, a Technical proposal, and Price. The CNA will evaluate the Social Impact proposal and the Federal customer evaluates the Technical proposal and Price. The results of the proposal analysis are provided to a member of the U.S. AbilityOne Commission staff designated as the NPA Recommendation Authority (NPARA) who prepares the NPA Recommendation Document (NPARD). The NPARD is provided to the U.S. AbilityOne Commission for vote to complete the allocation process.

The results of the new proposed process will maximize competition within the Program and ensure equitable selection and allocation of work. This includes maximizing job opportunities for persons with disabilities, including veterans with disabilities, through the Social Impact proposal that will identify participation levels for these individuals. It will also consider the size of the NPA, mentorship programs, teaming opportunities, contributions to the community, and the quality of the employment of individuals with disabilities. The Technical proposal will focus on the NPAs’ capability to perform the Performance Work Statement (PWS) and the Price proposal will focus on the cost to the customer for the effort. By evaluating price as part of the recommendation process, the customer could see cost savings while still considering the social impact of creating jobs for persons with disabilities. The new evaluation process that leads to the recommendation will be transparent to the U.S. AbilityOne Commission since they will be provided the source recommendation documentation, the NPARD.

The working group briefed Subcommittee Six on August 20, 2020, the CEO Competition Roundtable (representatives from numerous NPAs in the AbilityOne Program) on September 3, 2020, and the CNA SourceAmerica on October 28, 2020. The working group intends to brief the other two CNAs (NIB and American Foundation for the Blind) in November 2020 prior to obtaining endorsement from the U.S. AbilityOne Commission, planned for December 2020, and prior to creating the new source recommendation AbilityOne policy. Letters, provided as Appendix D), were submitted to the Panel Chair (PD, DPC), from interested parties that will be impacted, addressing the recommendations in the Panel’s Second Annual Report to Congress issued in January 2020. The letters were submitted by NAEPB on July 6, 2020, by NIB on August 3, 2020, and by SourceAmerica and the NCSE on September 30, 2020. The specific comments relating to the recommendations from Subcommittee Six were considered by the working group and addressed at the individual meetings with the parties. In addition, separate comments were provided by the CEO Competition Roundtable after their meeting on September 30, 2020; those comments were considered in the recommendation in this report.

Also, the mechanisms within the existing Cooperative Agreements and the implementation of the new source recommendation process will increase the Commission's transparency and oversight in the CNAs’ processes. The U.S. AbilityOne Commission can then establish a Cooperative Agreement metric that measures compliance with the mandatory NPA Recommendation policy that influences the CNAs’ ceiling fee determination. In addition, the policy working group is developing Source Limitation policy that would require that any restrictions on all NPAs having the ability to apply to Opportunity Notices issued by the CNA must be approved by the U.S. AbilityOne Commission staff. The CNA would have to justify the restriction to full competition, to the satisfaction of the AbilityOne staff, to help ensure equitable selection and allocation of work.

**Resource Requirement (if applicable)**:

* Estimated funding needed: $1.75 million annually (salaries $1.30 million, benefits $0.34 million, and other $0.11 million)
* Personnel: Eight FTEs (Two Competition Leads, two Attorney Advisors, two Contract Specialists and two Price Analysts)
* Other: IT, workspace furniture, rent, travel, training, supplies, etc.

**Panel Recommendation 11:** Establish business rules for competition and assignment of work among AbilityOne Program NPAs.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

The Commission has developed interim policy for competition and re-competition, and it is in the process of revising the CFR to more clearly acknowledge Commission authority to reallocate work. The CFR gives the Commission authority to designate CNAs and to authorize and de-authorize NPAs for performance, but the CFR revisions are necessary to further clarify the Commission’s authority to remove underperforming NPAs.

In accordance with Commission Policy 51.301 Section 5(f), [The Commission] retains the authority, on an exception basis, to direct CNA(s) to reassign or reallocate work using CNA-established procedures when it is in the best interest of the Government. This responsibility can be exercised to meet critical product or service delivery requirements and/or to further the AbilityOne Program mission to enhance employment opportunities or other significant programmatic matters.

In accordance with section 6.1.4.9.1 of NIB’s Assignment policy, when NIB assigns a project that will involve more than one NIB-associated NPA, agencies will be identified based on the assignment recommendation/allocation criteria identified in section 6.1.4.2.2.6, Qualifications. Agencies are identified/communicated within the assignment letter if they are a primary, secondary, or back up agency and based on the condition constituting the assignment disposition.

The Contracting Officer has the same authority they have in any other contract (as set forth in the FAR) to document poor performance and issue a cure notice or terminate contracts; however, before terminating a contract or cancelling an order, the contracting officer is directed in FAR 8.705-4(c) to “refer the matter for resolution first to the [CNA] and then, if necessary, to the Commission.” If a Contracting Officer determines he or she must cancel an order/terminate a contract, they must notify the CNA and request a reallocation of the order pursuant to FAR 8.705-4(d). The CNA must comply with AbilityOne Policy 51.301 and coordinate with the Commission and the Contracting Officer to compete a requirement already on the PL in order to recommend a new NPA.

When work is reallocated within the AbilityOne Program, the jobs of incumbent employees with disabilities need to be protected. The Commission does not have any formal business rules in place that protect disabled employees when work is reallocated; though in practice, the existing workforce is interviewed, their disability documentation is reviewed, and they are normally offered employment by the successor NPA.

**Implementation Status:**

Same as Recommendation 10. This new source recommendation process addresses not only developing policy establishing NPA recommendation/allocation procedures, but also implements business practices that provide sufficient oversight and transparency to the U.S. AbilityOne Commission and the Federal customer. The new process creates incentives for inclusion and mentoring of smaller NPAs, and for veteran employment opportunities in DOD contracts with AbilityOne NPAs.

**Resource Requirement (if applicable)**: None.

**Panel Recommendation 12:** Establish penalties if a CNA or NPA does not follow policies and procedures.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

Commission Policy 51.301 states:

“In accordance with Commission policies, the CNA shall conduct fair, transparent and equitable allocation or recommendations of products and services on the PL to qualified NPAs with impartiality (excluding evaluation factors, such as past performance) and without improper preferential treatment. In making both allocation and recommendation decisions, the CNA shall follow Commission policies.”

The Commission has incorporated penalties for not following policies and procedures within the Cooperative Agreements established with the CNAs. The Quality Assurance Surveillance Plan (QASP), incorporated within the Cooperative Agreements, outlines key performance indicators (KPIs) and metrics that must be met. CNAs that do not comply will receive an unsatisfactory score for the measure in question, and may potentially have a reduction in their Program Fee Ceiling, which will impact the amount of fee collected from contracts awarded throughout the year.

If NPAs do not comply with Direct Labor Hour ratio requirements, the Commission will place them on probation and allow them the opportunity to brief the Commission on their corrective action plan. If the NPAs fails to comply with the corrective action plan, they can be removed from the AbilityOne Program.

CNA Corrective Actions/Penalties currently in place (Ref. SourceAmerica 4 Step Process)

* Consider probation and/or removal from AbilityOne Program for total direct labor hours below 75 percent;
* Consider different penalties between NPAs and CNAs;
* Consider normal FAR penalties for default (i.e.: cure notice, show cause letter, termination, etc.).

The Commission’s mechanism for enforcing policies and procedures is the Cooperative Agreement and QASP, including 4 KPIs: 1. Employment Growth, 2. AbilityOne Program Administration, Oversight, and Integrity, 3. NPA Support, Assistance, and Development, 4. Training and Strategic Communications.

The Commission discusses Semi-Annual Performance Reviews with CNAs and the impact of performance on Program Fee determination.

Currently, DOD contracts in the AbilityOne Program do not require that the JWOD statute or 41 CFR 51 requirements are incorporated into the resultant contract, which makes it difficult to mandate NPA compliance with the unique requirements of the AbilityOne Program. This results in the U.S. AbilityOne Commission not having the authority to penalize the NPAs for non-compliance with policies and procedures. The Panel recommends establishing DFARS language mandating the implementation of the statutory and regulatory requirements in contract provisions which would be required by the regulations to be included in the contract. Such regulatory implementation would enforce the requirement for NPAs to comply.

**Implementation Status:**

The DFARS needs to include language that mandates implementing the JWOD statute and corresponding CFR language in DOD AbilityOne contracts. DPC cannot open a DFARS Case to create this language until 41 CFR 51 is updated in accordance with Recommendation 14 (status provided in that section of the report). It is estimated it will take 24 months after the update to the CFR that the DFARS Case may be fully executed.

Subcommittee Six considered other possible ways to penalize a CNA or NPA for noncompliance policies and procedures, but determined that the executed Cooperative Agreements with the CNAs met that requirement. If a CNA does not meet their performance metrics in their Cooperative Agreements, the agreed-to Ceiling Fee set by the U.S. AbilityOne Commission may be reduced.

**Resource Requirement (if applicable)**:

None. The Defense Acquisition Regulations Council (DARC) and U.S. AbilityOne Commission staff have adequate resources to execute this recommendation.

**Panel Recommendation 13:** Reduce the existing gaps and deficiencies in CNAs’ processes.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

The U.S. AbilityOne Commission does not have policy discussing justification of any deviations from technical team recommendations.

SourceAmerica - In accordance with section 5.4.3 of SourceAmerica’s NPA Recommendation Process and Procedures, in the event there are differing recommendations among evaluation panel members, the Facilitator (SourceAmerica employee designated as Chairperson) is responsible for leading an evaluation panel review meeting to ensure the evaluation summaries of competing NPAs contain sufficient narrative articulation of criteria met. Any strengths or weaknesses for the Recommendation Authority’s review process shall also be assessed at this meeting. An evaluation panel review meeting may also serve to identify distinguishing capability factors in highly competitive scenarios, where more than one NPA provides a strong response, meets all evaluation criteria, and is evaluated as qualified and capable. This process involves a facilitated evaluation panel discussion during which substantive capability factors consistent with the evaluation criteria are identified to distinguish individual NPAs. The evaluation panel thoughtfully considers, analyzes, and discusses all Opportunity Specific response sections in an effort to identify substantive factors that alone or collectively distinguish individual NPAs for Recommendation Authority consideration. Once the evaluation panel review is completed, the Facilitator is responsible for presenting the evaluation summary to the Recommendation Authority for review and consideration. The evaluation panel’s documentation is confidential and internal to SourceAmerica and the U.S. AbilityOne Commission only receives the documentation when there is an appeal.

Per section 5.5 of SourceAmerica’s NPA Recommendation Process and Procedures, the Recommendation Authority’s assessment will consist of reviewing the evaluation panel’s summary documentation, and determining if any special considerations are warranted. The Recommendation Authority’s assessment will result in a recommendation decision document summarizing his/her basis for the recommendation decision. The summary shall rationalize and substantiate the reasoning used by the Recommendation Authority to reach their decision, ensuring it is consistent with, and based solely on, the evaluation criteria stated in the Posting. Any special considerations, e.g., past performance verification, or consultation that is used in the recommendation decision will be articulated in the recommendation decision document. This documentation will be signed by the Recommendation Authority and may be included, as requested by the Commission, in the PL Addition/Transfer Package that is provided to the U.S. AbilityOne Commission for review and approval.

NIB - In accordance with section 6.1.4.3 of NIB’s Assignment Policy, when NIB receives an assignment request, it assesses all requests in a fair and consistent manner. When evaluating the assignment request, each of the criteria listed in 6.1.4.2.2 is considered (Good standing, conflict [with another NIB Agency participating in the AbilityOne Program], management, etc.). The attributes of the opportunity are evaluated in addition to the above criteria to make the assignment recommendation. Assignment evaluation results are documented on the Assignment Decision Document (ADD) in addition to the opportunity evaluation results for NIB-identified opportunities.

The request for information/request for proposal process will be used to evaluate and recommend NPAs based on an analysis of how well the individual NPA’s proposal addressed the stated evaluation criteria. First, the proposals are rated and ranked by an independent, internal NIB Source Selection Board (SSB) led by the Line of Business Director/ Manager; members of the Board may include Subject Matter Experts (SMEs), business development managers, engineers, and operations support assets. Using the criteria in 6.1.4.2.2, the Line of Business Director/ Manager will assign weights or an order of importance to each factor. The weights/factors will change by opportunity so panels may use different criteria, and associated weights, as necessary.

Second, this panel will submit their proposed rankings and justification to the Senior Director/Products and Services to ensure the SSB followed the process of rating each NPA proposal against the evaluation criteria in a fair and consistent manner. All decisions are documented on the ADD. The NIB Vice President of Operations will make the final assignment decision based on the SSB’s input. After the assignment decision is reached, all respondents will be notified of the decision in writing; debriefs will be provided upon request. NIB will publicize the assignment in NIB This Week. The NPA receiving the assignment will receive an official assignment letter.

**Implementation Status:**

Recommendation 13 is closed and marked as complete based on similarities to Recommendation 12.

**Resource Requirement (if applicable):**

Recommendation 12 addresses resource requirements.

**Panel Recommendation 14:**  Revise 41 CFR 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the PL.

**Background:**

Section 898(c)(6) – recommend ways the DOD and the Commission may explore opportunities for competition among AbilityOne NPAs or CNAs and ensure equitable selection and allocation of work.

§51-5.2 regarding the mandatory source requirement is broad and includes the Commission’s authority to designate authorized sources but it does not address un-designation/de-authorization. The current language reads as follows:

**§51-5.2   Mandatory Source Requirement.**

**(a**) Nonprofit agencies designated by the [Committee](https://www.law.cornell.edu/cfr/text/41/51-5.2) are mandatory sources of supply for all entities of the Government for commodities and services included on the [Procurement List](https://www.law.cornell.edu/cfr/text/41/51-5.2), as provided in § 51-1.2 of this chapter.

**(b)** Purchases of commodities on the [Procurement List](https://www.law.cornell.edu/cfr/text/41/51-5.2) by entities of the Government shall be made from sources authorized by the [Committee](https://www.law.cornell.edu/cfr/text/41/51-5.2). These sources may include nonprofit agencies, central nonprofit agencies, Government central supply agencies such as the Defense Logistics Agency and the General Services Administration, and certain commercial distributors. Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies at the addresses noted in § 51-6.2 of this chapter.

**(c)** Contracting activities shall require other persons providing commodities which are on the [Procurement List](https://www.law.cornell.edu/cfr/text/41/51-5.2) to entities of the Government by contract to order these commodities from the sources authorized by the [Committee](https://www.law.cornell.edu/cfr/text/41/51-5.2). [[56 FR 48981](https://www.law.cornell.edu/rio/citation/56_FR_48981), Sept. 26, 1991; [56 FR 64002](https://www.law.cornell.edu/rio/citation/56_FR_64002), Dec. 6, 1991, as amended at [59 FR 59343](https://www.law.cornell.edu/rio/citation/59_FR_59343), Nov 16, 1994; [60 FR 54200](https://www.law.cornell.edu/rio/citation/60_FR_54200), Oct. 20, 1995; [63 FR 16439](https://www.law.cornell.edu/rio/citation/63_FR_16439), Apr. 3, 1998]

The language in 41 CFR 51 regarding disputes is broad, but includes involving the CNA and/or Commission when a dispute cannot be resolved. Any pricing issues should follow the policy on Pricing Impasses, Commission Policy 51.640, which requires a pricing dispute to be brought to the Commission because the Commission, by statute (CFR §51-5.5), has the exclusive authority to set the FMP.

The current language reads as follows:

**§51-6.15   Disputes.**

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by parts 51-5 and 51-6 of this chapter shall be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

**AbilityOne Policy 51.640 reads as follows:**

**Section 6, Policy.**

1. The Commission encourages partnering, team building and mutual gains approaches to problem-solving. Business relationships under the AbilityOne Program must be conducted with fairness, integrity, and openness.
2. When price issues cannot be resolved at the local level, the dispute resolution process described in Section 8 of this policy will be used.
3. The Commission, after obtaining all appropriate information, will act to resolve price impasses in the most expeditious manner.

**Section 8, Procedures.**

Impasse Resolution Process.

(a) Informal Resolution: Disputes should be resolved locally whenever possible, within 30 days. The responsible CNA will be involved in resolution if local attempts to resolve the issue are unsuccessful. Early involvement of the CNA should facilitate a timely resolution. The CNAs are encouraged to issue procedures for resolving FMP issues that support this policy.

(b) Declaration of Impasse: The Impasse Resolution process is initiated by a Declaration of Impasse, which must be in writing to the Executive Director of the Commission; electronic mail is required and should be sent to PLRequest@AbilityOne.gov, with simultaneous copies to the other party and the responsible CNA, only if the following apply:

i. The Declaration, if originating with Contracting Activity, is made by an official at an organizational level above the Contracting Officer.

ii. The Declaration, if from the NPA, is made by the Chief Executive Officer of the NPA, or, if designated by the NPA to represent it in the impasse process: a. NIB Assistant Vice President, Operations Support, b. SourceAmerica Regional Executive Director, or c. Official at an organizational level above these positions.

[62 FR 66529, Dec. 19, 1997. Redesignated at 63 FR 16439, Apr. 3, 1998.]

The protection of employees with disabilities if an NPA loses its authorization to perform an AbilityOne contract(s) is currently not addressed as a policy or regulation within the AbilityOne Program even though there has been a Commission practice to allow employees working for one NPA to transfer to another NPA when a particular contract is transferred. Although the Commission could implement an internal policy regarding a Right of First refusal, it would not have a legally binding effect on other Federal agencies. It also might allow NPAs to challenge whether it is legally binding or whether the Commission has the authority to allow employees to transfer from one NPA to another when it transfers a contract from one NPA to another NPA.

**Implementation Status:**

The U.S. AbilityOne Commission submitted a proposed rule for revisions to 41 CFR 51 that was published in the Federal Register on 26 August 2020 (RIN 3037-AA14.). The revised 41 CFR 51 will clarify the authority of the U.S. AbilityOne Commission to un-designate CNAs and to de-authorize NPAs on the PL. The CFR revision must go through the public comment process before it goes into effect. It will identify maximum contract performance periods of ten years, before performing market analysis for potential recompetition, for service contracts with the same NPA that exceed an annual value of $10 million. The revised CFR will establish an arbitration process similar to the Alternate Disputes Resolution (ADR) process identified in FAR 33.214 for disputes within the program. In addition, the revised CFR will establish protections for disabled employees transferring between NPAs based on the results of recompetition.

**Resource Requirement (if applicable)**:

None. The U.S. AbilityOne Commission staff has adequate resources to execute this recommendation.

**Subcommittee Seven: Business Process Re-engineering**

Lead Organization: Defense Logistics Agency, Department of Defense

**Recommendations**

1. Update the PLIMS to reflect detailed information, improve the search functions to enable a more user-friendly interface, and be usable to outside agencies. [Complete]
2. Deploy an IT solution either utilizing a system where the PL can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues.
3. Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers.
4. Implement DOD wide policy to designate an AbilityOne Representative (ABOR) program similar to the Air Force model and includes a goal for growth in AbilityOne Program participation. [Complete]
5. Pursue DFARS (PGI language) to detail how to do business with the AbilityOne Program.
6. Recommend change to allotted timeframe currently required by the Administrative Procedures Act when adding products or services to the PL.
7. Incorporate section 508 training for contracting personnel to address DOD-wide section 508 compliance shortfall and use DAU online and classroom training to teach AbilityOne information. [Complete]

**Panel Recommendation 15:** Update the PLIMS to reflect detailed information, improve the search functions to enable a more user-friendly interface, and be usable to outside agencies.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

Clarification of this recommendation is necessary because DOD employees need access to the PL, not necessarily PLIMS, which is the database and workflow system used by the Commission. The critical need is for the DOD community to have better functionality and capability for buying offices when checking the PL for mandatory source items. A promising IT solution has been identified and demonstrated for several AbilityOne customers.

**Implementation Status:**

The Commission awarded a contract to implement an enhanced interface to the PLIMS system that will show buyers more quickly and clearly the products and services that are on the PL, along with current pricing information. This tool is under construction and will continue to be developed in FY 2021 with additional data and product photos. Next steps include testing and user training, before the system is debuted for DOD and other AbilityOne customers. After roll-out, this interface will make it faster and easier for DOD and other customers to check the PL and to comply with its mandatory source purchasing requirements.

**Resource Requirement (if applicable)**:

Approximately $250,000 is needed in FY 2021 to complete the development, testing, and training with contractor support. The Commission must also ensure the product and service information loaded into the tool is correct and kept up-to-date, and that a knowledgeable staff member is available to answer questions or provide customer assistance. Maintaining the PLIMS interface tool and customer support requires an additional FTE for the Commission’s Business Operations team.

**Panel Recommendation 16:** Deploy an IT solution either utilizing a system where the PL can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

There is currently no connection between the PL and DOD contracting writing systems.

**Implementation Status:**

Subcommittee Seven is reviewing information about DOD’s portfolio approach to electronic contract writing systems, and is capturing questions regarding how the PL information can be integrated or made available to the systems’ users most efficiently. The ongoing consolidation and modernization of existing systems will facilitate this objective. The PLIMS interface tool described in Recommendation 15 will be sufficiently developed in FY 2021 to support demonstrations and discussions with the DOD Contracting eBusiness office regarding linkages between PL data and the electronic contract writing systems used by DOD acquisition professionals. Subcommittee Seven will meet with the DOD Contracting eBusiness office in the first half of FY 2021 to develop a strategy and milestones to greater inclusion of or connectivity to PL data that will facilitate DOD purchases that are consistently compliant with Federal Acquisition Regulation (FAR) Subpart 8.7.

**Resource Requirement (if applicable)**:

Additional investments will be required to develop the PLIMS interface tool in a manner that supports connectivity with DOD electronic contract writing systems. Subcommittee Seven will identify the estimated resource requirements after discussing a strategy and milestones to greater inclusion of or connectivity to PL data with DPC’s Contracting eBusiness office in FY 2021.

**Panel Recommendation 17:**  Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

Subcommittee Seven consulted with OFPP about other government wide databases and web-based tools. GSA uses a pricing tool called the Prices Paid Portal in the Acquisition Gateway System. GSA proposed that the U.S. AbilityOne Commission explore that portal and consider establishing a “hallway” in the Acquisition Gateway. The Department of Labor has a website that provides wage determination rates applicable to Federal contracts under the Service Contract Act.

**Implementation Status:**

Subcommittee Seven facilitated demonstration meetings between GSA’s Business Intelligence Branch of the Office of Customer Accounts and Research/Federal Acquisition Service and various AbilityOne stakeholders to increase familiarity with the data, tools and dashboards available to Federal users in the Acquisition Gateway. Barriers to existing tools’ effectiveness, such as inconsistent nomenclature for AbilityOne products and NPAs, have been identified for remedial action. Subcommittee Seven is exploring the creation of a unique code or identifier for AbilityOne contracts, and/or a dropdown menu for AbilityOne data fields, to standardize and allow the data to be consolidated. Upon improving the quality of and access to AbilityOne data in existing government wide databases and tools, the Panel recommends educating users about the data and tools available, which fulfill the information needs without requiring additional resources to develop or maintain new systems.

Austin Lighthouse for the Blind tripled the number of employees like Brandon Colvin working on hand sanitizer and soap products for AbilityOne customers. Since the COVID-19 crisis began in March 2020, the Austin Lighthouse has shipped more than 13 million bottles of hand sanitizer in response to unprecedented demand. The AbilityOne-participating nonprofit also increased its shipping lines production, tripled employee counts, hired more temporary workers, and invested in more facility equipment.

**Resource Requirement (if applicable)**:

Upon approval, programming support is needed to create a unique code or identifier for AbilityOne contracts, and/or a dropdown menu for AbilityOne data fields in existing databases and tools, to standardize and allow the data to be consolidated. As these databases are operated by other Federal agencies, not the U.S. AbilityOne Commission and not necessarily DOD, the programming may be incorporated into planned system enhancements and updates to avoid or minimize the resources needed. Additionally, communication and training are needed to increase awareness and understanding of the functionality of the existing government-wide databases, tools, and websites. Subcommittee Seven and the Panel recommend that the communication and training be accomplished with existing DOD and AbilityOne resources.

**Panel Recommendation 18:** Implement DOD-wide policy to designate an AbilityOne Representative (ABOR) program similar to the Air Force model and includes a goal for growth in AbilityOne Program participation.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

The Air Force created the ABOR program in 2017 and implemented it in 2018. The Air Force’s successful roll-out generated lessons learned that can be incorporated by other service components, as appropriate.

**Implementation Status:**

Recommendation 18 is closed and marked as complete. On October 8, 2020, the Principal Director, DPC, directed DOD Components to establish their own ABOR programs with a target implementation date of October 1, 2021. DPC, the U.S. AbilityOne Commission, and the Air Force will host a planning meeting in January 2021 with the other DOD Components. DPC and the Commission will monitor and support the roll-out of the ABOR programs during FY 2021.

**Resource Requirement (if applicable)**:

Minimal resources are required to implement this recommendation. Components should designate ABORs from existing staff. Meeting and/or training costs can be met leveraging existing resources.

**Panel Recommendation 19:** Pursue DFARS (PGI language) to detail how to do business with the AbilityOne Program.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

The AbilityOne Program and the U.S. AbilityOne Commission are “known” by Contracting Commands, but still relatively not understood in depth (policies, practices, business dealings).

**Implementation Status:**

Subcommittee Seven is working with Subcommittee Six on a joint DFARS case to address the recommendations related to doing business with the AbilityOne Program. A request for Frequently Asked Questions from contracting officers was posted on the DAU website. In FY 2021, Subcommittee Seven will host one or more webinars in conjunction with DAU on best practices in contracting with AbilityOne.

**Resource Requirement (if applicable)**:

None.

**Panel Recommendation 20:** Recommend change to allotted timeframe currently required by the Administrative Procedures Act (APA) when adding products or services to the PL.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

Following the APA as required by the JWOD Act requires a 30-day initial notice and a 30-day final notice for public comments on additions to the PL, which adds more than 60 days to the total cycle time for new PL items.

**Implementation Status:**

To shorten the PL cycle time, Subcommittee Seven is coordinating with Subcommittee Four on the development of a legislative proposal to modernize the JWOD Act, and is working with the Commission’s General Counsel in the interim to determine whether there are pathways to a shorter PL timeline within the current statutory authority. Subcommittee Seven is also pursuing efforts to increase process efficiency, such as Indefinite Delivery/Indefinite Quantity (IDIQ) contracts and Lean Six Sigma. This includes that the Subcommittee will evaluate data on all factors that contribute to the length of the approval time for additions to the PL.

**Resource Requirement (if applicable)**:

None.

**Panel Recommendation 21:** Incorporate section 508 training for contracting personnel to address DOD-wide section 508 compliance shortfall and use DAU online and classroom training to teach AbilityOne information.

**Background:**

Section 898(c)(7) – recommend changes to business practices, information systems, and training necessary to ensure Commission and DOD compliance with regulations for use of the PL.

GSA operates a robust website, www.section508.gov, which is a resource for the entire Federal Government. The CIO Council also has a lead role in implementing section 508 compliance.

**Implementation Status:**

Recommendation 21 is closed and marked as complete. Panel Recommendation 21 was implemented through a memorandum signed by the Principal Director, DPC on October 11, 2019. The memorandum, highlighting National Disability Employment Awareness Month, required the acquisition workforce to comply with section 508. The U.S. AbilityOne Commission delivered updated informational documents, including navigation information to section 508 resources, posted to www.abilityone.gov, and sent information to DAU on November 1, 2019.

**Subcommittee Eight: Employment and Veterans Eligibility**

Lead Organization: U.S. AbilityOne Commission

**Recommendations**

1. Change the Commission’s regulation for initial qualification for NPAs to participate in the AbilityOne Program to include employment criteria of at least minimum wage comparable to co-workers, a work setting that is inclusive of people with and without disabilities, and opportunities for advancement.
2. Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies.
3. Require CNAs to develop a certificate-based training program for individuals certifying an individual’s eligibility to work on AbilityOne Program contracts, consider accepting electronic medical documents securely transmitted from Federal and State vocational rehabilitation agencies, and adopt a standardized form approved by OPM.
4. Recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission.

Following the second Report to Congress, the Panel Chair combined Subcommittees Three and Five to form Subcommittee Eight, Employment and Veterans Eligibility, to apply a comprehensive approach to increasing employment opportunities for veterans and non-veterans. Subcommittee Eight was divided into two subgroups, Subcommittee 8a - Employment and Subcommittee 8b - Veterans Eligibility.

Recommendations 22, 23, and 24 were aligned under Subcommittee 8a - Employment. These three Panel recommendations were modified to reflect strategic changes that further advance the Commission initiative to modernize the AbilityOne Program to be consistent with current employment policies, regulations, and statutes.

Recommendation 22 was previously worded as: Further study the need for and benefits of program-wide implementation of case management records and protocols with defined vocational goals/assessments for all AbilityOne qualified NPAs. The Subcommittee determined that Recommendation 22 should be expanded to encompass more than just case management.

Recommendation 23 was previously worded as: Work with Veterans Affairs and the Department of Education on feasibility, impact, and implementation of recommendations that rely on their determination of veteran and non-veteran eligibility for the AbilityOne Program. The Subcommittee modified this recommendation to shift the focus from eligibility determination to providing services that lead to CIE.

Recommendation 24 was previously worded as: Develop a certification/validation program for individuals certifying the Individual Eligibility Evaluation (IEE) form and consider acceptance of VA or State IEE submissions, or contracting for eligibility assessment of individuals whose IEE is not provided by the VA or a State vocational rehabilitation agency. This recommendation was changed to emphasize the role of the CNAs in a more standardized eligibility determination process.

Recommendation 25 was aligned under Subcommittee 8b-Veterans Eligibility. Recommendation 25 was previously worded as: Develop a goal for Veterans to be integrated into the workforce under internships, part time, or full-time employment opportunities and scale NPA employment based on goals/objectives/outcomes. The Subcommittee determined that with the recent approval of the Center for Business Acceleration (CBA) and AbilityOne Professional Skills Apprenticeship program by the Department of Labor, recent collaboration and discussions with the Program Manager of the Department of Defense SkillBridge program, and the fact that there are over 3,000 wounded, ill and injured veterans working in the program today, it would make sense to revert to the original Panel recommendation.

**Panel Recommendation 22:** Change the Commission’s regulation for initial qualification for NPAs to participate in the AbilityOne Program to include employment criteria of at least minimum wage comparable to co-workers, a work setting that is inclusive of people with and without disabilities, and opportunities for advancement.

**Background:**

Section 898(c)(8a) – recommend actions to ensure opportunities for employment of veterans with significant disabilities, and for employment of individuals who are blind or who have significant disabilities.

Subcommittee Eight is working towards a set of actions that ensures employment opportunities offered to individuals who are blind or who have significant disabilities are consistent with the individuals’ vocational rehabilitation needs and goals, with a process in place to document that employees’ informed choice and self-determinations are conducted at least annually by the AbilityOne qualified NPA employers. Previously, this recommendation focused on the use of case management as a technique to accomplish the objective as currently stated. This recommendation has been broadened to recognize that NPAs may employ various techniques to achieve the desired outcomes.

The U.S. AbilityOne Commission issued a declaration to CNAs designated in the JWOD Act in February 19, 2019, calling for the elimination of Fair Labor Standards Act Section 14(c) sub-minimum wage certificates in NPAs participating in the AbilityOne Program. As a result, SourceAmerica is investing resources toward a transition support program, which includes financial assistance to transitioning nonprofits and enhanced productivity engineering support.

**Implementation Status:**

Based on input from the Department of Education and other experts, the Subcommittee recommends the Panel seek to change the Commission’s regulation for initial qualification for NPAs to participate in the AbilityOne Program. The Subcommittee developed an interim change to Commission policy that strengthens the criteria for NPAs to obtain initial qualification or maintain qualification. This interim policy will apply to all new NPA initial qualification requirements and include a time limit requirement for existing NPAs to include a demonstrated process by which those NPAs assess and document employee individualized goals and opportunities for advancement on an annual basis. To make this change permanent and enforceable, the Subcommittee will present a recommended regulatory change to the Panel in 2021.

The recommended employment criteria that complement the Commission’s transition include guidelines established within the Workforce Innovation Opportunity Act addressing at least minimum wage comparable to coworkers, in a work setting that is inclusive of people with and without disabilities and that presents opportunities for advancement.

**Resource Requirement (if applicable)**:

(1) Funding for FY 2021 in the amount of $550,000 for two Commission staff positions qualified as Vocational Rehabilitation Specialists and a Deputy Director of Veterans Employment, to focus on career opportunities and career ladders for the Commission’s Directorate of Veterans Employment and Initiatives. These positions must be supported with an additional $100,000 in funding for travel, training, space, and equipment in FY 2021.

(2) Funding in future fiscal years to sustain and support these positions, at a minimum.

Industries of the Blind, in Greensboro, NC, is among the AbilityOne nonprofit agencies manufacturing masks for DOD.

**Panel Recommendation 23:** Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies.

**Background:**

Section 898(c)(8a) – recommend actions to ensure opportunities for CIE of veterans with significant disabilities and for the employment of individuals who are blind or who have significant disabilities, including veterans and non-veterans referred by other Federal agencies.

The U.S. AbilityOne Commission, CNAs, and NPAs are eager to hire veterans and have developed a pilot program to research the Panel’s proposed definition of “other disabled” and collaborate with state Veteran Readiness and Employment offices on medical interpretation qualifications to maximize veteran participant in the programs.

Additionally, one CNA and the NPAs who testified before the Panel subcommittees agreed that establishing a veteran-focused CNA might be an effective way to further grow and modernize the AbilityOne Program and spearhead discussions on the intersection of disability among severely disabled veterans’ transition to civilian employment. Veteran-centric NPAs’ wage determination rates are commensurate with those across the Federal government and employment opportunities include various technical, adaptive, collaborative, and leadership positions in a diversified and inclusive quality work environment.

**Implementation Status:**

Subcommittee Eight appreciates Congressional interest in creating a vehicle for employment opportunities for returning ill and injured service members and improving the quality work environment for AbilityOne Program employees. The Subcommittee sought input from several of the NPAs and the U.S. AbilityOne Commission’s designated CNAs in the refinement of this recommendation and the courses of action needed for implementation.

In 2021, the Subcommittee will recommend to the Panel that the U.S. AbilityOne Commission research establishing a new CNA with NPAs that are competitive integrated employers, focused on knowledge-based employment opportunities that require professional skills, business competencies, apprenticeships, and certification or credentials in services needed by the Federal Government.

The Subcommittee will also recommend to the Panel a pilot placement program that includes veterans in the AbilityOne Program who experience “significant barrier(s) to employment” based on their medical illness or injury expected to last for one year or longer. Barriers to employment should be consistent with the Department of Labor’s Employment and Training Administration criteria to provide employment-related support to individuals who have disabilities and receive multiple vocational rehabilitation services over an extended period.

Additionally, the Subcommittee will present to the Panel a recommendation that the CNAs collaborate with the Department of Education Rehabilitation Services Administration, which oversees State vocational rehabilitation programs and provides other services to individuals with disabilities, to maximize CIE education for NPAs. Collaboration should include multiple site visits to vocational rehabilitation integrated employment work sites within the AbilityOne Program to see employee independence, integrative workforce, and competitive wages in various labor markets.

Finally, in 2021 the Subcommittee will recommend to the Panel that the Commission work with the Department of Labor’s ODEP National Expansion of Employment Opportunities Network (NEON) program to collaborate with vocational rehabilitation offices to educate, inform, and enhance the AbilityOne Program’s mission during the transition to competitive employment positions for people with significant disabilities. NEON is a new ODEP initiative that partners with national disability service provider organizations to meet their needs in the field and to offer the best employment options for all individuals with disabilities, including those with the most significant disabilities. In collaboration with NEON, the Commission and the CNAs can work to establish employment networks, action plans, and policies to maximize the outcome of CIE for the AbilityOne Program.

**Resource Requirement (if applicable)**:

(1) Funding for FY 2022 in the amount of $700,000 for four Commission staff positions: two FTEs to support the Program Management Office for CNA Cooperative Agreements and two FTEs in Business Operations to work with customers and defense industry partners in the development of the strategic business plan for a veteran-focused CNA. These positions must be supported with an additional $125,000 in funding for travel, training, space, and equipment in FY 2021.

(2) Funding in future fiscal years to sustain and support these positions, at a minimum.

**Panel Recommendation 24:** Require CNAs to develop a certificate-based training program for individuals certifying an individual’s eligibility to work on AbilityOne Program contracts, consider accepting electronic medical documents securely transmitted from Federal and State vocational rehabilitation agencies, and adopt a standardized form approved by OPM.

**Background:**

Section 898(c)(3) – recommend actions to ensure opportunities for employment of veterans with significant disabilities and for the employment of individuals who are blind or who have significant disabilities

Currently, for evaluating a person with a significant disability, the evaluator must be a person or persons qualified by training and experience to assess the work potential, interests, aptitudes, and abilities of persons with disabilities.

AbilityOne Program Compliance Policy governs the IEE certification/validation process; some of the larger NPAs have formal training, certification, and validation programs for their employees who complete the IEE process, while others do not. Most of the smaller NPAs do not have sufficient training personnel to establish a formal training, certification, and validation program, although they typically complete informal training. There is a need to develop a standardized process that lends itself to program-wide compliance with oversight components.

**Implementation Status:**

In 2021, the Subcommittee will present to the Panel a recommendation for the Commission to build into the Cooperative Agreement the requirement for CNAs to establish a certificate-based training program for individuals within the NPAs verifying the IEE or, if adopted, OPM Optional Form (OF) 178, Certificate of Medical Examination. OF 178 is an approved OPM form that meets the criteria of the AbilityOne Compliance Program’s current IEE requirements and supports the Panel recommendations and changes to the current IEE form.

Subcommittee Eight identified the need to revisit the IEE form to include changing the definition and terminology, identifying a suitable name for the form, and establishing a more meaningful form. The form should be *not* be revised until the modernized definitions proposed by Subcommittee Four are approved, after which OF 178 could still be used to certify eligibility for employment for individuals in the AbilityOne Program.

The Subcommittee will also recommend to the Panel that the Commission Compliance Review Policy require qualifying NPAs to maintain an Individualized Plan for Employment (IPE). The IPE would be a written plan that identifies AbilityOne Program employee employment outcomes, referred to as employment goals, the services provided to achieve the employment goals, and the requirement for the CNAs to measure progress toward the employment goals during compliance reviews on an annual basis.

**Resource Requirement (if applicable)**:

None.

**Panel Recommendation 25:**  Recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission.

**Background:**

Section 898(c)(5) – recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that considers the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission

Subcommittee 8b was led by the 15th Sergeant Major of the United States Army and a diverse, inclusive group consisting of currently serving and former Command Sergeant Majors, Sergeant Majors, former Senior Noncommissioned Officers, and Army Fellows with Department of Veterans Affairs, Department of Labor, Department of Education, former Director of the American Legion, Department of Defense Director of the Workforce, Credential and Skill Bridge program, Department of Justice, Association of the United States Army, Defense Health Agency, Warrior Care, Soldier for Life program, U.S. Amy Medical Command, Warrior Transition Unit, and Defense Logistics Agency.

The Subcommittee considered the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission. The Subcommittee determined that the Department of Veterans Affairs (VA) definition of disability does not align with the current JWOD Act intent to determine employment eligibility within the AbilityOne Program. The VA assigns service members a disability rating based on the severity of their service-connected conditions. The VA uses the disability rating to determine how much disability compensation the service member will receive each month, as well as their eligibility for other VA benefits[[6]](#footnote-6). The AbilityOne Program uses the current JWOD definition of disability to determine eligibility to work in the AbilityOne Program.

The Subcommittee determined that the current criteria to work within the AbilityOne Program is straightforward and does not prevent qualified veterans from seeking employment in the AbilityOne Program. The Subcommittee also determined that the VA’s primary purpose to identify and compensate service-related disabilities should not and does not need to be utilized to qualify eligible participants in the AbilityOne Program. However, Subcommittee Eight does support changing the current JWOD definition of “other severely disabled” in accordance with Subcommittee Four’s recommendations.

Based on the Commission’s 2019 Representations and Certifications document, there are more than 7,000 veterans currently employed in the AbilityOne Program, of whom approximately 3,000 meet the current JWOD definition and work in a direct labor role. The Subcommittee’s overall assessment is that there is no need for additional criteria concerning either of the disability definitions used by the VA or the AbilityOne Program and recommend closing Recommendation 25.

**Implementation Status:**

To sustain and improve veteran employment opportunities within the AbilityOne Program in the future, the Subcommittee recommends that the AbilityOne Veterans Employment and Initiatives directorate assume responsibility for implementing the following eight actions.

1. The U.S. AbilityOne Commission educate all participating CNAs and NPAs on the current JWOD Act definition and Subcommittee Four’s proposed definition of other disabilities which includes veterans.
2. Each CNA create a Veteran Hiring Incentive program.
3. The U.S. AbilityOne Commission and the CNAs establish a formal partnership with the VA to ensure VA personnel are aware of the employment opportunities in the AbilityOne Program and employment eligibility criteria. Additionally, the U.S. AbilityOne Commission include in the Cooperative Agreement the requirement for CNAs to educate NPAs on programs offered by the VA, specifically the Veterans Health Administration Compensated Work Therapy program and Veterans Benefits Administration Veterans Readiness and Employment program (formerly known as Vocational Rehabilitation and Employment) for qualified veterans.
4. The U.S. AbilityOne Commission continue to encourage the CNAs and NPAs to participate in the Department of Labor-Veterans Employment and Training Services (DOL-VETS) Medallion program, Worker Opportunity Tax Credit (https://www.dol.gov/agencies/eta/wotc) and any future Veterans Employment Incentive programs developed by DOL-VETS. There are currently 21 NPAs actively participating in the Medallion program, with five of them being DOL-VETS Medallion awardees.
5. AbilityOne employment programs be included in the DOL-VETS FY 2021 Wounded Warrior Transition Assistant Program (TAP) employment curriculum. This new Department of Labor TAP employment curriculum will give special attention to job accommodation resources developed in coordination with ODEP, to ensure recovering service members can realize their full economic potential and a life of purpose despite the injuries they incurred in service. U.S. AbilityOne Commission collaboration with DOL-VETS and ODEP during curriculum development provides an opportunity to further inform transitioning wounded service members of employment opportunities that provide accommodation resources.
6. The U.S. AbilityOne Commission establish a formal partnership with DOL-VETS and the VA VR&E to further inform and educate transitioning service members and veterans about employment opportunities within the AbilityOne Program. DOL-VETS is establishing a formal Employment Navigator and Partnership Pilot through FY 2021 at military installations to assist transitioning service members find a suitable career path and connect to partner resources to help them reach their goals. Additionally, DOL-VETS state workforce development programs provide additional opportunities to engage veterans already in the workforce who would benefit from AbilityOne Program employment support.
7. The U.S. AbilityOne Commission establish a formal partnership with the DOD to inform and educate them about the employment opportunities within the AbilityOne Program for separating wounded, ill and injured service members. This partnership could open opportunities within DOD, like the SkillBridge program, that could lead to apprenticeships for service members assigned to Warrior Transition Units or undergoing Medical Evaluation Boards, and possibly greater use of the programs like Warrior Care, Education and Employment Initiative, and Operation Warfighter.
8. The U.S. AbilityOne Commission establish a formal partnership with Veteran Service Organizations and Military Support Organizations that have a focus on assisting wounded, ill and injured service members, such as Paralyzed Veterans of America, Blind Veterans of America, Disabled American Veterans and American Legion.

**Resource Requirement (if applicable)**:

(1) Funding for FY 2022 in the amount of $2.1 million for thirteen Commission staff positions in the Directorate of Veterans Employment and Initiatives to implement the above recommendations. These positions must be supported with an additional $250,000 in funding for travel, training, space, and equipment in FY 2022.

(2) Funding in future fiscal years to sustain and support these positions, at a minimum.

**Section III: Next Steps**

**Panel Way Ahead in 2021**

After two years as Panel Chair, Mr. Kim Herrington, has recently transitioned this role to Mr. John Tenaglia. Effective November 8, 2020, Mr. Tenaglia is the new Principal Director, Defense Pricing and Contracting. The Panel welcomes Mr. Tenaglia as the new Panel Chair and looks forward to his leadership in 2021.

The work of the Panel the past three years involved significant commitment and collaboration to develop recommendations, implementation of the recommendations, administering on-going pilots, and outreach engagement, all to address the statutory duties of the Panel. However, it is crucial for Congress to appropriate sufficient funding in order for the U.S. AbilityOne Commission to fully implement the recommendations.

The Panel has four meetings scheduled in 2021. The subcommittees will focus on taking actions to implement the recommendations, which will involve drafting changes to law, regulations, or policy to eliminate the specific areas of vulnerability to waste, fraud, and abuse as set forth of Section II of the report. The Panel will continue the outreach communications, feasibility studies, implementation of actionable recommendations, and consider other innovative opportunities for the Program’s future to support growing the employment mission of the AbilityOne Program.

The Department expects to submit the fourth annual Panel report by December 31, 2021.

**Section IV: Appendices** (attached as stated)

Appendix A – U.S. AbilityOne Commission Program Site Map of the United States

Appendix B – Letter from the U.S. AbilityOne Commission Chair to the Panel Chair

Appendix C – Section 898 of the National Defense Authorization Act for FY 2017

Appendix D – Letters from External Organizations to the Panel Chair

Appendix E – DOD National Disability Employment Awareness Month Memorandum

1. *See* Panel’s Second Report to Congress, at page 36. [↑](#footnote-ref-1)
2. *See* 29 U.S.C. § 705(5)(A)-(C) (Rehabilitation Act); 42 U.S.C. §§ 12132, 12182(b)(1)(B) (Americans with Disabilities Act (“ADA”)); 28 C.F.R. §§ 35.130(d), 36.203(a) (ADA regulations), 41.51(d) (Rehabilitation Act Title V regulation); 34 C.F.R. § 361.5(c)(9) (Rehabilitation Act Title I regulation); 41 C.F.R. § 51-10.130(d) (AbilityOne Program regulation); 42 C.F.R. §§ 441.301(c)(4)-(5), 441.710(a)(1)-(2) (Medicaid program regulations); 28 C.F.R. pt. 35, app. B, at 709 (2019) (ADA appendix to implementing regulation). [↑](#footnote-ref-2)
3. The committee should have representatives from the Department of Labor’s Office of Disability Employment Policy and Employment and Training Administration, the National Council on Disability, the Department of Health and Human Services’ Centers for Medicare and Medicaid Services’ Division of Long Term Services and Supports, the Department of Health and Human Services’ Administration for Community Living, and the Department of Education’s Rehabilitation Services Administration. [↑](#footnote-ref-3)
4. For examples of the types of information the committee may consider requiring NPAs to report, such as numbers of employees with and without disabilities in each job category, job descriptions for each job category including descriptions of interactions between employees on the job, and descriptions of physical work environments and how they allow for interaction between colleagues with and without disabilities, see the Panel’s Second Report to Congress, at page 36. [↑](#footnote-ref-4)
5. *See* Panel’s Second Report to Congress, at page 36. [↑](#footnote-ref-5)
6. The VA does not have or use vernacular that would describe disabilities such as “minor” or “severe” since these words are more often used to describe health-related or diagnostic descriptions. VA uses the term “disabilities” to mean diseases/illnesses and injuries that are a result of military service for the purposes of compensation/pension benefits. For more information, see 38 CFR Part 4. The percentages represent average impairment in earning capacity resulting from service-connected disabilities and range from zero to 100 percent. Once a veteran reaches 100% per the VA Schedule for Rating Disabilities, VA describes this as a “total disability rating” which is defined in 38 CFR 4.15. While VA uses the term “total,” a 0% or 10% rating is not described as minor nor a 100% as severe.

   VA has priority processing for disabilities that are categorized as “Very Serious or Serious Illness or Injury.” Service members who are determined by the DOD to be considered seriously or very seriously ill or injured will be considered seriously disabled for VA purposes. This requires VA coordination to confirm that status and to manage these cases for priority processing. However, the DOD makes the determination of “Very Serious/Serious Illness or Injury” and VA handles the file accordingly. [↑](#footnote-ref-6)