FEDCAP
Jobs for People...
Services for Business

Response to 41 CFR Parts 51-2, 51-3, 51-4

Nonprofit Agency Governance and Executive Compensation

Submitted by:
Fedcap Rehabilitation Services, Inc.
211 West 14th Street
New York, NY 10011

Susan Fonfa, Executive Director

Fedcap appreciates the opportunity to comment on 41 CFR Parts 51-2, 51-3, 51-4, Proposed Rule Changes in Nonprofit Agency Governance and Executive Compensation, proposed by the Committee for Purchase from People who are Blind or Severely Disabled (Committee for Purchase).

Fedcap is a New York City-based nonprofit organization whose mission is to help individuals with disabilities and other barriers to employment to achieve independence and full participation in the economic mainstream. Founded in 1935, Fedcap seeks to accomplish its mission by providing quality services to individuals, business, and government in accordance with the highest ethical standards. We serve over 3000 individuals every year through our highly regarded evaluation, training, and job placement services.

Fedcap was instrumental in the passage of the JWOD Act in 1971 and was one of its first participants. Currently, we manage 18 JWOD projects for nine federal agencies that provide employment for 361 individuals with severe disabilities. We are proud of our record of service to government and people with severe disabilities under the JWOD program.

Nonprofit Governance

The purpose of the JWOD Act is "to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities…." Section two of the JWOD Act sets forth the powers and responsibilities of The Committee for Purchase, which is charged with carrying out the provisions of the JWOD Act. The Committee for Purchase is responsible for determining which commodities and services should be on the Committee's procurement list, fair market prices, and informing federal agencies about the JWOD program.

Fedcap fully endorses good governance, standards, and accountability for all nonprofit organizations. Currently, Fedcap has in place most of the best practices recommended by The Committee. In addition, two Fedcap divisions are accredited by recognized international governing organizations:

- Fedcap Home Care is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), an independent, not-for-profit organization established in 1951, whose mission is to continuously improve the safety and quality of care provided to the public through the provision of health care accreditation and related services that support performance improvement in health care organizations. JCAHO sets the standards by which health care quality is measured in the US and around the world. To maintain and earn accreditation, organizations must have an extensive on-site review by a team of JCAHO health care professionals, at least once every three years. The purpose of the review is to evaluate the organization's performance in areas that affect patient care. Accreditation may then be awarded based on how well the organizations met JCAHO standards.

- Fedcap's Chelton Loft, a voluntary clubhouse program for people with a history of serious mental illness, is certified by the International Center for Clubhouse Development (ICCD)**,** a global network working to create opportunities for people living with mental illness to be respected members of society. ICCD promotes the development and strengthening of clubhouses; oversees the creation and evolution of standards; facilitates and assures the quality of training, consultation, certification, research and advocacy; and provides effective communication and dissemination of information.

Several nonprofits have proposed accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) – an international nonprofit accrediting body providing accreditation in the human services field focusing on the areas of rehabilitation, employment and community, child and family, and aging services – as evidence of good governance and qualification for participation in the JWOD program. Fedcap would like to note that CARF accreditation is currently only mandated in some states and it is not universally supported. As outlined above, Fedcap supports good governance and accreditation, however requiring CARF as a measure of good governance, would prove to be an additional and unnecessary burden.

Fedcap understands that The Committee wants to protect the integrity and image of the JWOD Program and its participating nonprofits. The importance of good governance has certainly increased in recent years (e.g., the 2002 Sarbanes Oxley Act). Although Fedcap recognizes that negative publicity and negative perceptions by the public and by our Federal customers can stigmatize all participating nonprofits, as well as the JWOD program as a whole, we believe most nonprofits are ethical and follow best practices regarding good governance and executive compensation.

Many nonprofits are governed by a multitude of public and private entities based on the diversity of funding streams that the nonprofit receives. These oversight agencies can include: the Internal Revenue Service, which requires all nonprofits to annually file a Form 990, disclosing to the public its finances, including administrative expenses and executive compensation; State Attorneys General; Department of Labor; Department of Health; State and or City Departments of Mental Health Services; trade associations; and many others. To add additional standards mandated by The Committee for Purchase to this list would create an additional burden on nonprofits dedicated to training and employing people with disabilities and providing quality services and products to Federal customers, and duplicate government functions.

Since the passing of the Sarbanes-Oxley Act in 2002 nonprofits, if they were not already doing so, have adopted several new benchmarks and best practices, such as those developed by Independent Sector, for good governance including: a whistle blower policy; document retention and destruction policy; an audited annual financial report; an audit committee; board review of executive directors' compensation based on market research; and a board and staff code of ethics/conflict of interest policy.

Fair Market Price and Executive Compensation

Fedcap believes that executive compensation should be the sole purview of the nonprofit's board of directors based on market research and existing rules established by the IRS. If a nonprofit agency is in compliance with existing rules and regulations set forth by Federal and state laws, is providing their JWOD customers with excellent quality for goods and/or services at fair prices, and is training and employing people with severe disabilities, executive compensation decisions should be made by each organization's board.

Checks and balances already exist within the JWOD program regarding administrative costs, of which executive compensation is a component. The Committee's Pricing Memorandum Number 3, dated June 21, 2002 states that "a minimum rate of 9.5% will apply for the combination of overhead, G and A, and Net Proceeds. If the Nonprofit Agency proposes a higher rate, the Nonprofit Agency must provide documentation to support the proposed rate. Documentation for higher rates will provide data for each of the three elements – Overhead, G and A, and net proceeds." The taxpaying public is thus already assured that no undue proceeds are allocated to a nonprofit organization's overhead under the JWOD program. Executive compensation should not be an issue if a nonprofit organization's overhead falls into the allowable 9.5%. If a nonprofit exceeds the allowable 9.5%, executive compensation should be subject to review as part of the audit process by NISH and The Committee, which has the authority to award and renew JWOD contracts and establish fair market prices.

The answer to The Committee's question regarding the relationship between the pay and compensation of line workers and highly compensated individuals rests with the Department of Labor. Fedcap agrees that direct labor wages must continue to be protected by Department of Labor regulations and that direct labor wages should not be artificially low so that executives can be better compensated.

The Department of Labor Section 14c regulations protect direct labor wages from impropriety, as the wages are subject to audit from the Department of Labor itself, NISH, and The Committee.

Wages under JWOD can seem artificially low at times because they are based on productivity of the workers. Those who are not paid full prevailing wages are those with the severest disabilities, and who would not be able to work in any other setting because of their limited production. By linking direct labor wages and executive compensation in these cases, executives of JWOD producing nonprofits would be punished for allowing increased employment and training opportunities for persons with the most severe disabilities and low productivity.

Conclusion

Fedcap believes that many of the good governance benchmarks noted by the The Committee, along with additional best practices outlined above, are adequate and essential to ensure good governance among nonprofits and it is the nonprofit's board that must be responsible for ensuring that these qualifications are met. When a nonprofit is considered for a JWOD contract, or renewal of that contract, the nonprofit agency's board should have the responsibility to certify, perhaps in The Committee's Form 404, that the following criteria has been met: a whistle blower policy; document retention and destruction policy; an audited annual financial report; an audit committee; board review of executive directors' total compensation package, including compensation from all sources, based on market research; and a board and staff code of ethics/conflict of interest policy. The Committee and NISH may review this documentation during compliance reviews.

Fedcap appreciates the consideration of our remarks. We look forward to working with The Committee for Purchase and other entities to insure that the JWOD program and participating nonprofit organizations maintain the public trust necessary to achieve their joint mission of training and providing employment for individuals with severe disabilities.