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January 27, 2006

Committee for Purchase from People
Who Are Blind or Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259

ATTN: Mr. Lee Wilson, Executive Director

Reference: Docket ID # fr16de05-22

Dear Mr. Wilson:

National Industries for the Blind (NIB) appreciates the Committee's effort to strengthen the JWOD program by promoting certain governance standards for Central Nonprofit Agencies (CNAs) and nonprofit agencies participating in the JWOD program. This letter constitutes NIB's comment to the Federal Register notice dated December 16, 2005 on the topic of "Nonprofit Agency Governance and Executive Compensation."

NIB had previously responded in detail to the Committee's proposed Rulemaking (since withdrawn) by letter dated February 10, 2005. In that letter, NIB proposed an alternate "self-regulatory" solution that would achieve the objectives of the then proposed Rulemaking but without the Committee itself having to assume the role of a federal accreditation agency. We highlight below in bullet point format the self-regulatory solution previously proposed and also offer a second alternative solution for the Committee's consideration. In addition, enclosure 1 includes our response to the sixteen questions included in the December 16, 2005 Federal Register notice.

"Self-regulatory" solution:

NIB proposes utilizing self-regulation and oversight, as well as the existing JWOD infrastructure and Regulations (specifically the JWOD Regulation at 41 CFR 51-4.1 which requires that in order to participate in the JWOD program, a nonprofit agency must be represented by a CNA) to achieve the objectives.

- The two CNAs will **voluntarily** agree to take a lead regarding governance and compensation issues at their own expense without increasing the cost to the federal government;



- The CNAs will adopt modified standards for association to include many of the governance and compensation issues included in the Federal Register notice dated 12/16/05;
- The association standards will be based on standards adopted by industry accrediting bodies and/or nonprofit associations after being suitably modified for the JWOD program;
- Any alleged violation of these association standards by an associated nonprofit agency will be investigated by the CNA Board Association Committee;
- The Board Association Committee will gather facts and evidence, after giving the affected nonprofit agency an opportunity to present its own case, facts and evidence;
- The Board Association Committee will then make a recommendation to the CNA Board on whether or not the nonprofit agency should continue to be associated with the CNA;
- If the Board decides to revoke the association of the nonprofit agency, such a decision will not be effective for at least 180 days, to allow the nonprofit agency an opportunity to either cure any defects, or to appeal the CNA Board decision to the Committee;
- If the associated agency appeals to the Committee and the Committee overrules the CNA Board decision, the nonprofit agency continues its association with the CNA and continues its participation in the JWOD program;
- However, if the Committee re-affirms the CNA Board decision, the nonprofit agency ceases to be associated with the CNA and thus loses its ability to participate in the JWOD program.

Note: In addition to the above bullet points, implementation of this solution, will require NIB to: 1) adopt association standards from recognized best practices, industry accrediting bodies and/or relevant nonprofit associations; 2) gather and monitor relevant information from associated nonprofit agencies; 3) investigate failure of a nonprofit agency to provide required information, or failure/refusal to come into compliance; and 4) create a Board Association Committee as NIB's self-regulatory enforcement arm. As part of the self-regulatory process, "Appropriate Executive Compensation" should be assessed keeping with accepted best practices and comparisons to appropriately similarly situated organizations.

Alternate solution:

As an alternative approach, NIB is also endorsing the solution being proposed by NIB associated nonprofit agencies participating in the JWOD program through the NAEPB. In essence the NAEPB alternate solution would:

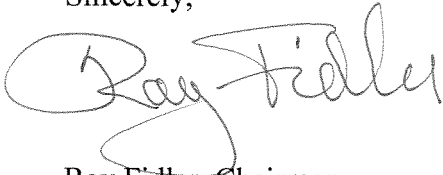
- Require the development of standards of governance for nonprofit agencies through a joint effort of NIB, NAEPB and one or more appropriate third party contractors;
- The standards would include specific and rigorous processes and guidelines for setting of executive compensation, specifically designed to create a fully rebuttable presumption of reasonableness;
- Such standards must be reviewed and endorsed by the Committee prior to being adopted;
- NIB will monitor and certify compliance by nonprofit agencies with these governance standards as part of its annual compliance review process;
- NIB will also include such certification as part of its policy on "Good Standing";
- The Committee will accept NIB's certification as proof of compliance by the nonprofit agency with governance standards, without further review by the Committee;

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- The Committee will adopt and implement a series of progressive disciplinary sanctions for agencies failing to achieve or maintain NIB certification.

NIB appreciates the opportunity to submit these comments. We stand ready to work with the Committee to resolve this important matter. Please advise if we can provide any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Fidler". The signature is written in black ink and is positioned above the typed name.

Ray Fidler, Chairman
NIB Board of Directors

Enclosure a/s

cc: Jim Gibbons, President & CEO, NIB

Enclosure # 1
NIB's Response to December 16, 2005 Federal Register Notice

As stated in our letter, NIB supports the use of third party professionals to develop governance standards (to be reviewed and endorsed by the Committee prior to adoption), and the use of NIB's own resources for monitoring and/or certification of nonprofit agencies meeting such standards.

The December 16, 2005 Federal Register notice provided fourteen examples of governance "best practices" followed by nine specific questions. Our responses are shown in italics under each question.

(1) Are these criteria comprehensive and inclusive enough to effectively evaluate that a nonprofit agency demonstrates good governance practices and should be deemed qualified to participate in the JWOD Program?

Yes. Criteria are both comprehensive and inclusive. NIB supports their consideration as part of a third party development of governance standards.

(2) Are there additional criteria that should be used, or substituted for the above, to evaluate evidence of good governance practices by nonprofit agencies in the Program?

Generally agree with the criteria listed, however, variations may be needed based on agency type, size, location or annual revenues.

(3) Should accreditation by one or more state or national organizations be recognized as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee?

As stated in our letter, we support third party development of governance standards and monitoring and/or certification by NIB as the most efficient and cost-effective method for the Committee to achieve the desired end results. The Committee should review/endorse such governance standards and should accept NIB certification as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee.

(4) Should different benchmarks be used for nonprofit agencies that are state, county, or local government agencies, or should they be exempt from any Committee regulations in this area?

Governance standards developed by third party professionals should take into account any necessary variations between standards for state, county or local government agencies versus other agencies, keeping in mind federalism issues and their implications.

(5) Should the size and/or the annual revenue of the nonprofit agency be a factor or factors in assessing appropriate governance practices?

Same answer as # 2.

(6) What is the best way to ensure that only qualified central nonprofit agencies and nonprofit agencies, with an internal structure that minimizes opportunities for impropriety, participate in the JWOD Program?

Development of governance standards by third party professionals, and monitoring/certification of agencies by NIB.

(7) What if any enforcement mechanisms should be adopted to ensure only the qualified central nonprofit agencies and nonprofit agencies participate in the JWOD Program?

Same answer as # 6. The Committee should accept NIB certification as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee. The Committee should further adopt specific policies for dealing with agencies failing to achieve or maintain such certification.

(8) What steps will the nonprofit agencies and central nonprofit agencies need to take to avoid conflicts of interest among its board members?

Fully comply with the Governance standards developed by professionals that address conflict of interest among both boards and staff of agencies.

(9) What steps will the nonprofit agencies and central nonprofit agencies have to take to demonstrate financial responsibility?

Fully comply with Governance standards that include those "best practices" listed by the Committee that demonstrate financial responsibility.

The Federal Register notice further posed the following seven questions related to Fair Market Price and executive compensation. Our responses are shown in italics under each question.

(1) What is the threshold beyond which the compensation paid to the executives in a JWOD-participating nonprofit agency should be considered as influencing a proposed fair market price determination? For example, if the agency receives more than a certain percentage of its total revenue from sales through the JWOD Program, is there a compensation level (total dollars paid or total dollars paid as a percentage of total revenue) at and above which fair market price impact would be deemed to occur?

We disagree with the underlying thesis that Executive compensation affects Fair Market Price (FMP). A review of Committee's own pricing memoranda for both products and services supports this conclusion. We further believe that most Fair Market prices are negotiated and are based on marketplace comparability and as such Executive compensation is simply not a consideration. Moreover, the Committee limits G&A to 9.5% for service contract pricing. Therefore, even if the Executive compensation was excessive, it could not be passed on to the government through the Fair Market Price.

(2) Conversely, is there a point below which executive compensation, regardless of the dollar amount paid, would not be considered as influencing a recommended fair market price? Is such a de minimis test appropriate for large diversified nonprofits where total JWOD sales represent only a small percentage of total revenue?

See response to question # 1 above.

(3) Without regard to any analysis of JWOD-related revenue, is there an established benchmark or absolute dollar threshold above which compensation would be deemed as influencing a proposed fair market price?

See response to question # 1 above.

(4) Should receipt of documentation to support a "rebuttable presumption of reasonableness" serve to demonstrate that executive compensation does not by itself influence a proposed fair market price or any adjustment thereto?

See response to question # 1 above. However, we agree that the governance standards should include requirements that will permit agencies to demonstrate a rebuttable presumption of reasonableness.

(5) To what extent should there be a relationship between the pay and compensation of line workers and highly compensated individuals?

The wage rates paid to blind employees has been an ongoing concern for NIB Board of Directors which adopted a policy in 1999 to require payment of at least the minimum wage to employees who are legally blind with no additional disabilities. However, we do not endorse arbitrarily establishing a linkage between the pay of employees and executives for following reasons:

- 1. The pay of workers is governed by Fair Labor Standards Act, or the Service Contract Act, as applicable, and may also be affected by individual productivity level.*
- 2. The Governing Body's decision about Executive compensation under standards of good governance would normally be based on the executive's*

duties and responsibilities, marketplace salary comparisons and IRS rules limiting excess compensation.

3. *An unintended consequence of an arbitrary linkage may be reduced employment opportunities rather than increased wages for blind workers.*

(6) At what point would be appropriate to begin a review of an executive compensation package even if the proposed price for a product or service would fall within a range that it could be considered as a fair market price?

See response to question # 1 above.

(7) What approaches are available to identify and monitor nonprofit agencies executive compensation that would provide such information to the Committee routinely but without placing an undue burden on agencies?

An easy solution would be to require nonprofit agencies to provide a copy of their 990 submission to the Committee at the same time it is filed with the IRS.