

**Janet Samuelson – Testimony before the Committee for Purchase
Thursday January 12, 2006.**

Good afternoon. My name Janet Samuelson and I am the President and CEO of the ServiceSource Network. Thank you for the opportunity to comment today. We understand and support the Committee's intention of insuring the integrity of the JWOD program and in such a manner that we can maximize opportunities for creating quality jobs for people with disabilities in the production of goods and services to the Federal Government.

My comments represent the ServiceSource Network, which includes four affiliated, non-profit entities participating in the JWOD program, including ServiceSource, based in Virginia, Employment Source in North Carolina, Abilities, Inc. of Florida, and Opportunity Center in Delaware. Our Network serves about 10,000 people with disabilities annually in nine states and the District of Columbia with a wide variety of placement, training, employment, day support, housing, and case management services. Regarding employment programs, last year we placed over 1,100 people with disabilities with third-party community employers. In addition, we directly employ over 1,000 people with disabilities, of whom more than 700 work on JWOD contracts, primarily in the service industry. JWOD program contract revenues represent approximately 60 percent of this fiscal year's anticipated combined program revenues of about \$70 million. Finally, the ServiceSource Network corporations are governed by one regional volunteer Board of Directors and managed by one senior executive staff team.

ServiceSource has been a JWOD provider since 1981 and our experience has shown us that JWOD jobs are, without question, the best jobs for many of the people with disabilities we serve. This is due to the long-term stability and supports afforded by

JWOD, the higher wages and benefits and the level of integration experienced on JWOD service contracts.

We understand that the Committee wants to inform and encourage governance best practices among its participating nonprofits and to provide checks and balances that insure fiduciary oversight and responsibility in the JWOD program. We support the effort to raise standards for participating nonprofits to basic levels of program integrity and quality, provided it is done in a way that does not create unnecessary or cumbersome new requirements or processes that that will not improve outcomes.

On the surface, many of the governance practices published are representative of what might be considered best practices for a large, modern, well-managed, nonprofit organization. However, there are some that need more interpretation for adequate comment and others that seem too specific or without obvious outcome value. I provide specific comment on those as an attachment to these remarks.

In general, the ServiceSource Network is using most of governance practices promoted in the announcement. However, it is a time and resource intensive process; and we are able to focus in this area as a function of our size and economy of scale. I also do not believe most of these processes have created any significant impact in the quality or capacity of our programs, although they have helped perhaps mitigate some potential types of risk or public perception issues. I hope that the Committee will keep in mind that some governance practices suggested are complex, not readily measurable, process focused, and may not result in any real value to assure integrity of the program. However, standards related to independence of directors and decision making, conflict of interest and compensation oversight are of value and should be considered a priority.

I am particularly concerned that any process to assure compliance with whatever standards are adopted be reasonable, cost-effective and have integrity. For most of us, the costs of managing a variety of customers, stakeholders, and third-party funders compliance requirements continues to spiral upwards – and without creating any identifiable benefit to the people we are trying to serve in the allocation of those required resources. I would encourage a reasonable Board self-certification process, perhaps by annual resolution, for as much of the governance process oversight as possible. If external, independent review is required for any of the final requirements, I would urge one of two sources that already are readily and nationally in play.

First, the ServiceSource Network supports the Committee working with CARF to institute and assure any JWOD specific governance or other quality standards when adopted. This third party accreditation is already widely required by rehabilitation funders in the field – all of our four affiliates are accredited and all but one is required to be by state funding sources. CARF is in the process of implementing governance standards and, additionally, I understand from work that NISH has already done, that CARF is willing to develop JWOD specific standards as required to mirror your standards. This would permit an external review to be included in the existing processes for many providers.

Second, we suggest that the independent audit process can be readily used for certain types of periodic external assurance, if that is determined necessary by the Committee. For example, our Board has had our independent audit include a review of our tax-exempt purposes, unrelated business income and executive compensation processes with very little additional work or expense.

We believe that the size, annual revenue and JWOD participation should also be factors included in assessing the level of oversight of governance practices. Small programs or those that minimally participate in the JWOD program should be exempted or provided with an option to attest to compliance without additional external reviews. Board self-certification and current NISH/NIB or Committee compliance reviews can be used as an optional alternative to external reviews for providers below some reasonable threshold.

Generally, it appears that the current enforcement mechanisms articulated in section 51.4 of the JWOD Act are appropriate to deal with any programs that are operating outside of the existing or any new requirements.

In regards to the issue of executive compensation, it is unclear what the Committee intends by the definition of a “highly compensated employee.” If the IRS standard is intended, the \$90,000 threshold is not consistent with 2005 or 2006 limits. Additionally, that definition is intended for entirely different purposes than those with which the Committee is concerned, that is, fair market pricing to the Government customer and public perception. I believe that the Committee already has in place the mechanisms to prevent executive compensation from having an adverse impact on the fair market price. The established processes for JWOD pricing provide transparency to the Federal Government, the CNA, and the Committee. In this context, the well established, “safe harbor” rate of 9.5 percent limits the allowance for General and Administrative (G&A) costs. It is from the G&A that all overhead and indirect costs, such as executive compensation, are paid. The Committee, through normal pricing review processes, may want to assure that any G&A rates over a reasonable threshold (such as 12 percent) require a review for reasonableness. Thus, the Committee already can limit the Fair Market Pricing contribution to any expense

other than direct contract expenses by enforcing a reasonable G&A allowance on any particular contract or sum of contracts.

In reference to public perception, the proposed governance requirements for Board process and review are generally consistent with those required by IRS of tax-exempt organizations. I would encourage the Committee to reference its requirements to those, without specifically restating them, since it appears that they are under review and could change. Having different and potentially conflicting requirements, or having the need to change Committee rules as tax-exempt rules changes seems an unnecessary burden. And, as referenced earlier, Board self-certification or periodic external review could readily assure heightened Board visibility and compliance in this area.

Compensation of employees is a very complex issue impacted by type of programs, geographic areas served, organizational design, labor market competitiveness, types of direct employment provided, and many other factors. The Committee should not be involved in the business of establishing compensation requirements or limits beyond assuring legally required oversight and governance is executed. I am most particularly concerned about the concept of correlating wages of JWOD line workers in any capacity which will affect opportunities for people we serve. We have many, many public funding and regulatory disincentives to serve people with the most significant disabilities and barriers to employment. I would hope that you will not adopt any criteria that would provide a disincentive to serve people with productivity barriers to employment in JWOD contracts.

In conclusion, I hope that you will consider these and other field comments regarding the impact of the proposed changes as you proceed with a process to look at nonprofit qualifications in the JWOD program. To help assure our common purpose, it is

important that the final rules adopted create the intended outcome, without unintended negative consequences on individual or organizational participation in the JWOD program.

Again, thank you for the opportunity to provide public comment on this important issue.

Specific governance practice comments

- 1) This should be written as a requirement that the Board adopt governance principles which identify the qualifications for Board membership, the responsibilities of Board membership, and the relationship with the CEO. As written, this would be difficult to assess.
- 2) Should require that a specific policy be adopted by the Board defining conflict of interests, and how any matter would be handled to prevent a conflict or undue influence. Should be required for JWOD participation.
- 3) "Unrelated" needs to be defined. – Should be required for JWOD participation.
- 4) It is not clear whether this intends that terms be restricted, or whether it requires that a policy regarding terms be adopted, regardless whether terms are restricted or not. Should not be required for JWOD participation.
- 5) It is not clear what this specifically intends. If included, it should be a requirement with 1) , to be included in a statement of governance principles.
- 6) Clear as a requirement. Should be written to require that the Board adopt and implement a policy that.... Should be required for JWOD participation.
- 7) Clear as a requirement. Should be required for JWOD participation.
- 8) In a large and complex organization, this is generally a requirement either of a staff Human Resources Department and / or a Committee, usually Human Resources or Personnel, of the Board. The specific accountability should be eliminated if this requirement is left in. Should not be required for JWOD participation.
- 9) Clear as written – this should be a requirement for JWOD participation.
- 10) Clear as written – this should be a requirement for JWOD participation.
- 11) Clear as written - this should be a requirement for JWOD participation.
- 12) Okay in concept depending on the compliance interpretation – should not be a requirement for JWOD participation.
- 13) Okay in concept but value is questionable – should not be a requirement for JWOD participation.
- 14) "Highly compensated employees" definition is not the same as executive compensation. The standard should be that the Board define and implement an executive compensation review process that, at a minimum, includes the compensation of the CEO/President and utilizes rebuttable presumption mechanisms consistent with IRS tax-exempt standards. This should be a requirement for JWOD participation.