



COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

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Compliance Memorandum No. 5

Subject: ABILITYONE Program – Direct Labor Ratio Data Requirements

1. PURPOSE

This memorandum prescribes the procedures a qualified nonprofit agency participating in the AbilityOne Program must follow in submitting direct labor data for AbilityOne projects to the Committee, NIB or NISH as appropriate. The memorandum also outlines the responsibilities of NIB, NISH and nonprofit agencies when a nonprofit agency does not achieve the expected percentage of direct labor employment for people who are blind or severely disabled on AbilityOne contracts. This memorandum supersedes Compliance Memorandum No. 5, dated October 22, 2004.

2. DIRECT LABOR REQUIREMENT

- A. The definition of a qualified nonprofit agency under the JWOD Act requires the agency to employ people who are blind (in the case of NIB-associated nonprofit agencies serving such individuals) or people who are blind and/or have other severe disabilities (in the case of NISH-associated nonprofit agencies serving such individuals) for at least 75 percent of the direct labor hours performed in the nonprofit agency during any fiscal year (hereinafter 75 percent ratio).
- B. Reserved
- C. The Committee has established a policy that nonprofit agencies associated with NIB may count the labor performed by people with severe disabilities (including severe visual impairment), but who are not legally blind, toward the AbilityOne project direct labor ratio. However, the work done by these people cannot be counted toward the overall direct labor ratio requirement. Additionally, these people must meet the severely disabled and not competitively employable standard that is required of NISH-associated nonprofit agencies.

3. NONPROFIT AGENCY RESPONSIBILITIES

- A. In order to meet the recordkeeping requirements established in 41 CFR 51-4.2 and 51-4.3, the Committee expects that all nonprofit agencies be able to track and maintain

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direct labor hours on at least a product or service family basis. Product or service family means a group of closely related projects that utilize the same workforce. The Committee recommends that nonprofit agencies lacking the capability to track direct labor by individual project investigate the feasibility of revising their labor tracking system to provide that capability.

- B. Prior to verification to participate in the AbilityOne Program, nonprofit management must have attended a central nonprofit agency (CNA) training course on the AbilityOne Program.
- C. Once the Committee has added a nonprofit's first project, personnel from the nonprofit must attend training on the AbilityOne Program.
- D. An annual certification (Committee Form 403 or 404), which is required by the Committee's regulations at 41 CFR 51-4.3(a), is due to NIB or NISH by November 1st for the fiscal year ending the preceding September 30.
- E. Nonprofit agencies must keep track of direct labor hours and sales on AbilityOne products and services. This recordkeeping can be done on each individual AbilityOne project and/or by product or service family.
- F. If a nonprofit agency requests and is authorized a project phase-in period, the nonprofit agency must track and report direct labor on each project phase-in to NIB or NISH on a quarterly basis, in accordance with the procedures outlined below in 5.E.
- G. If at any time after the phase-in period, particularly at the end of a fiscal year, a nonprofit agency is performing an AbilityOne project with a direct labor ratio below 60 percent, the nonprofit agency will notify either NIB or NISH.

4. CENTRAL NONPROFIT AGENCY REQUIREMENTS

- A. NIB and NISH will provide training to nonprofit agencies interested in becoming authorized nonprofits so that the nonprofits are aware of all Program requirements prior to a nonprofit submitting its request for verification.
- B. During a nonprofit agency's first year in the AbilityOne Program, NIB or NISH will monitor and report the nonprofit's performance on a quarterly basis to the Committee.
- C. NIB or NISH will report on a quarterly basis the status of all projects that have a phase-in. This includes projects just added to the Procurement List and any

projects that have been transferred to a different nonprofit agency where the new nonprofit requires a phase-in.

- D. During the initial phase (the first 90 days) of a new AbilityOne project, NIB or NISH will monitor the agency to determine whether the projected direct labor ratio is being attained.
- E. Reserved.
- F. Reserved.
- G. NIB and NISH are required to review and forward their nonprofits' annual certifications to the Committee by December 1.
- H. NIB or NISH will notify the Committee when a nonprofit is performing an AbilityOne project with a direct labor ratio below 60 percent and the project is not on an approved phase-in.

5. PHASE-IN PERIODS – REQUIREMENTS

The Committee realizes that, in some circumstances, nonprofit agencies may not be able to initially meet the direct labor hour ratio on some new projects to qualify the project as suitable for addition to the Procurement List (41 CFR 51-2.4). Therefore, the Committee may allow a nonprofit agency to begin a project at a direct labor ratio less than would normally be considered acceptable. The Committee, however, requires that the nonprofit agency track and report its progress during any phase-in period in order that the Committee can ensure that its suitability determination decision supports the phase-in period.

At the time the CNA submits a request proposing the addition of a product or service to the Procurement List or the transfer of a product or service from one nonprofit to another, the request will be accompanied by an estimate of the direct labor hours that will be performed by people who are blind or have severe disabilities. If the nonprofit is unable to initially perform the project at the direct labor ratio stated on the form, a phase-in must also be requested.

- A. Normally, phase-ins will be reserved for unusual or highly complex projects that are large (more than 10 people) or where unique circumstances exist.
- B. When a phase-in is requested, the following information must be included with the request:

1. A detailed explanation of why the phase-in is required;
 2. The ratio at which the project will actually begin;
 3. The length of time that the phase-in will take;
 4. Whether or not the phase-in will cause the nonprofit's cumulative overall direct labor ratio to drop below 75 percent and, if so, when that ratio will again be at 75 percent.
- C. All phase-ins must be approved by the Committee prior to the nonprofit beginning work on the project. Any project that has a phase-in approved only after the nonprofit has already begun work on that project will not be exempted from meeting the required direct labor ratios.
- D. A phase-in plan must be submitted when one or more of the conditions below apply:
1. The nonprofit agency initially plans to employ less than 60 percent blind or other severely disabled direct labor, but expects to increase the percentage following the start-up phase.
 2. The nonprofit agency will require more than 18 months after it begins work on the project to reach the projected percent of blind or other severely disabled direct labor hours.
 3. The nonprofit agency's overall direct labor ratio will drop below 75 percent as a result of the phase-in.
- E. A phase-in plan must consist of a narrative describing how the nonprofit agency plans to replace non-blind or non-disabled persons in order to reach the projected employment of blind or other severely disabled persons shown on Form ADD-5 or ADD-6. The narrative must be submitted through the CNA and must include:
1. The source or sources of new referrals of blind or other severely disabled persons;
 2. The number of referrals expected each month until the phase-in is complete, accompanied by a letter from the source(s) indicating the projected availability of trainable blind or other severely disabled persons;
 3. The type and extent of the training required, including any on-the-job training;
 4. The number of hours expected to be worked by blind, other severely disabled and non-disabled persons for each month during the phase-in period;

5. Suitable tables showing the progress expected, taking into consideration those individuals who are blind or other severely disabled who will drop out of the training program or leave employment with the nonprofit agency for any reason; and
 6. The signature of the nonprofit agency executive.
- F. A phase-in schedule must be submitted in all cases when a phase-in plan is not required but a nonprofit agency does not expect to begin providing a product or service using the projected percent of blind or other severely handicapped direct labor hours. At a minimum, the schedule will include the direct labor ratio at which the project will be performed for each month of the phase-in.
- G. When a nonprofit agency is required to prepare a phase-in, it must:
1. Submit reports to the CNA on a monthly basis after beginning work on the project. The report must reflect the nonprofit's progress in meeting the phase-in until the phase-in has been completed and the projected percent of direct labor has been achieved
 2. Prepare and submit to the CNA a revised phase-in at any time progress is such that it appears that the nonprofit will not meet the projected percentage of direct labor by the date indicated on Form ADD-5 or ADD-6. The revised phase-in must include a detailed explanation of why the project could not be done as originally planned.
 3. Notify the CNA when the phase-in has been completed and the nonprofit has reached the projected percent of direct labor.
- H. When a phase-in is required, the CNA must:
1. Submit to the Committee a copy of the nonprofit agency's phase-in plan or schedule when it submits the form showing estimated direct labor hours (Form ADD-5 or ADD-6).
 2. Until the phase-in is completed and the projected percent has been reached, submit to the Committee quarterly reports indicating progress in meeting the phase-in.
 3. Submit a revised nonprofit agency phase-in plan to the Committee if the nonprofit agency is not able to meet its schedule. As part of the submission, NIB or NISH will verify the explanation provided by the nonprofit.

4. Notify the Committee in writing when the phase-in has been completed and the projected percent of direct labor hours indicated on the Form ADD-5 or ADD-6 has been achieved.

I. Inability to meet phase-in requirements

1. If, at the end of the quarter following the phase-in period, the ratio for projects being monitored is within five percentage points of the projected ratio and at least 60 percent, no further reporting or monitoring would be required.
2. If, at the end of the quarter following the phase-in period, the ratio for projects being monitored is more than five percentage points less than the projected ratio or below 60 percent, the CNA should advise the Committee staff in writing of the current and expected future status with a brief narrative discussion of the circumstances, the nonprofits revised ADD-5/6 or new phase-in request, and a recommendation.
3. Upon receipt of the information provided in accordance with I.2.above, the Committee staff will review the information submitted by the CNA and may make a determination as to what, if any, further actions or recommendations to the Committee are required.

6. CALCULATION OF DIRECT LABOR RATIOS

The Committee will use normal rounding rules in determining direct labor ratios. However, the ratio should be reported to two decimal places.

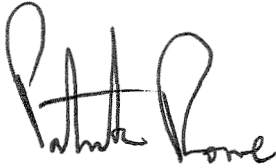
7. Reserved

8. VERIFICATION OF DIRECT LABOR RATIOS

At the time that a Committee compliance staff person makes an on-site visit to an individual nonprofit agency, that nonprofit agency must make available the cumulative direct labor hours being performed on all AbilityOne projects and the direct labor hours for AbilityOne products and services.

Any nonprofit agency that is found with a cumulative direct labor ratio that is not within 10% of the ADD-5 or 6 that was submitted when the nonprofit agency was authorized the project must provide its plan to increase the employment of persons who are blind and/or have severe disabilities and must submit a timing schedule when appropriate.

The Committee staff will review the data submitted and makes a determination as to whether action by the Committee is required. If such action is deemed necessary, the staff will arrange for appropriate presentations before the Committee.

A handwritten signature in black ink, appearing to read "Patrick Rowe". The signature is stylized with large, looping letters.

Patrick Rowe
Acting Executive Director