

May 6, 1998

COMPLIANCE MEMORANDUM NO. 7

SUBJECT: ON-SITE COMPLIANCE REVIEWS

1. PURPOSE

This memorandum outlines the procedures to be followed by the staff of the Committee for Purchase From People Who are Blind or Severely Disabled, National Industries for the Blind (NIB) and NISH in conducting on-site compliance reviews of nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program. It also explains what information the nonprofit agencies are responsible for providing during such reviews. In addition, this memorandum prescribes the follow-up procedures for the Committee, NIB, or NISH staff member conducting the visit and the nonprofit agency being reviewed. This memorandum supersedes Compliance Memorandum #7 dated May 25, 1995.

2. GENERAL

The procedures in this memo cover the gathering of two different types of information which are recorded on the Nonprofit Agency Review Form. The first involves compliance issues as outlined in the Committee regulations (41 CFR 51-4.3): direct labor ratios, proper medical documentation, annual evaluations for competitive employability, placement programs and Department of Labor (DOL) requirements. The second type of information supplies additional background about the nonprofit agency and serves as a resource for the Committee. Certain additional information is only gathered by Committee staff members.

3. REVIEW SCHEDULE

Prior to any on-site compliance reviews, NIB or NISH provides new nonprofit agencies with information that explains the compliance responsibilities of nonprofit agencies participating in the JWOD Program. A compliance consultation review is conducted by NIB or NISH within 30 days after a new nonprofit agency begins to furnish a commodity or service. A Committee staff member makes an on-site compliance review within six to eight months after NIB or NISH has visited the new nonprofit agency.

Starting with the first Committee staff visit, nonprofit agencies that are found to be not in compliance during a review by either NIB, NISH or Committee staff are reviewed again after 18 months on an alternating basis by the Committee and NIB or NISH staff. Nonprofit agencies which are in total compliance after a Committee or NIB or NISH staff review are reviewed again by the Committee staff after approximately a five-year period. If a nonprofit agency has either a total

agency direct labor ratio below 75 percent, or a JWOD direct labor ratio below 60 percent in a fiscal year, that nonprofit agency may be visited within the following fiscal year. In all cases, that nonprofit agency will be visited on the same schedule (every 18 months) as those nonprofit agencies not in total compliance for other issues. This review schedule may be modified to consolidate visits in a particular area for budgetary purposes.

4. ON-SITE PROCEDURES

NIB or NISH is notified by the Committee staff on a periodic basis of upcoming staff visits. Before the on-site review actually takes place, the Committee staff member contacts the nonprofit agency and confirms the review date. This confirmation also provides an opportunity to answer any questions regarding the compliance review.

A. Areas for Review

The following is an explanatory checklist of key areas covered on the Nonprofit Agency Review Form. Each of these areas is examined by the Committee, NIB, and NISH staff during an on-site review.

(1) Direct Labor (DL) Ratios

Direct labor is defined as "all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping" (41 CFR 51-1.3). The Committee requires that all participating nonprofit agencies employ individuals who are blind and/or have other severe disabilities for at least 75 percent of the direct labor hours worked at the nonprofit agency. The Committee also requires that such individuals perform as much direct labor on JWOD projects as possible, in most cases at least 75 percent of the direct labor hours and in no case--unless explicitly approved by the Committee--less than 60 percent.

The compliance review records the direct labor hours worked by individuals who are blind and/or severely disabled and by individuals who are sighted or nondisabled and the resulting ratio for the current fiscal year up to the most recent date that the nonprofit agency can provide. The nonprofit agency should be able to provide this information for total nonprofit agency work and for JWOD work at the end of each pay period.

(2) Personnel Files

The compliance review includes an examination of personnel files of individuals who are blind and/or have other severe disabilities who have worked on the nonprofit agency's JWOD and non-JWOD contract(s) during the current fiscal year. The total number of files in the nonprofit agency for individuals performing direct labor is also recorded and that number should equal or exceed the number of individuals that the payroll indicates are performing direct labor. The reviewer examines the files for two important sets of documentation.

1. All files for individuals performing direct labor at the nonprofit agency should

include a written report documenting the individual's disability and should be signed by a person licensed by the State to make the appropriate evaluation (i.e., Psychologist or Psychiatrist for mental disabilities, Orthopedic Surgeon for physical disabilities, Ophthalmologist for eye diseases, etc.) Under those circumstances where signed medical documentation is unavailable, a certificate issued by the individual's State may be utilized. This certificate must identify the disability(ies) of the individual and be signed by an employee of the State office issuing the certificate.

2. All files for individuals who are blind and/or severely disabled who are performing direct labor at the agency should include an annual evaluation of whether or not the individual is ready for competitive employment. With regard to those individuals employed at NISH-associated nonprofit agencies, any individual who is capable of competitive employment is not considered "severely disabled" according to the Committee regulations. Such an individual's direct labor hours should be counted as being performed by someone who is not severely disabled. The initial competitive employability evaluation for NISH agencies must be done within 30 days of an individual's employment.

(3) Placement Programs

Committee regulations state that participating nonprofit agencies shall "maintain an ongoing placement program operated by or for the nonprofit agency" (41 CFR 51-4.3(c)(8)). The compliance reviewer records background information regarding referral and placement programs at the nonprofit agency as well as specific numbers of different types of placements made within the current fiscal year.

1. When the agency chooses to run its own placement program, it is expected that one or more individuals should be designated to perform the placement function and that they will be able to describe the program's operation, as well as provide data on the agency's placement history.
2. If the agency chooses to have another organization provide its placement services, the absolute minimum requirement is a letter from the providing organization stating that it will provide placement services for the nonprofit agency. Verbal agreements alone are not acceptable as evidence that the nonprofit agency is meeting the JWOD placement requirement.

(4) Department of Labor Requirements

The Department of Labor's (DOL) Wage and Hour Division, Occupational Safety and Health Administration (OSHA) and the Office of Federal Contract Compliance Programs (OFCCP) all have requirements that directly affect nonprofit agencies participating in the JWOD Program. As a result, during the visits these areas are reviewed to verify that the nonprofit agency is complying with DOL regulations and to provide technical assistance for those nonprofit agencies needing help.

(a) Wage and Hour Division

There are two areas that Wage and Hour administers that affect most nonprofit agencies participating in the JWOD Program: the payment of commensurate wages under the Fair Labor Standards Act (FLSA); and the payment of wages and benefits under the Service Contract Act. The reviewer examines documents such as payroll and time studies to insure that DOL's requirements for both commensurate wages and the Service Contract Act are being met.

(b) OSHA Compliance

If the nonprofit agency has received an OSHA consultation or compliance visit within the last two years, this is confirmed and the date of that visit recorded. In addition, if appropriate, the reviewer provides the nonprofit agency with a point of contact at OSHA and reviews the agency's compliance with OSHA regulations. Any obvious safety or health violations are noted on the review form. The reviewer checks to see if the agency has a satisfactory hazard communication program, primarily by verifying the presence of a safety committee, and a blood borne pathogens program.

(c) Affirmative Action

OFCCP is responsible for enforcement of regulations on equal employment opportunity. As Federal contractors, JWOD participating nonprofit agencies are subject to affirmative action requirements that prohibit discrimination on the basis of race, color, gender, religion, veteran status, national origin or disability. The reviewer checks to see that:

1. If the nonprofit agency has at least \$10,000 in Government contracts, it is in compliance with applicable OFCCP regulations to prohibit discrimination and to ensure that individuals with disabilities have an equal opportunity for employment and advancement in employment within the nonprofit agency; and
2. If the nonprofit agency has 50 or more employees and Government contracts of \$50,000 or more, it maintains a written Affirmative Action Program to ensure equal opportunity for employment and advancement of people with disabilities in accordance with Section 503 of the Rehabilitation Act of 1973 and OFCCP regulations at §60-741 Subpart C. Compliance Memorandum No. 9 provides guidance on Affirmative Action Programs.

B. Statistics Gathered

In addition to these four areas, Committee, NIB and NISH staff record the following: sales and budget information for the previous and current fiscal years, brief descriptions of the nonprofit agency's vocational and nonvocational programs, changes in nonprofit agency Articles of Incorporation or by-laws, hiring and promotion policies, start-up schedule/phase-in plan information, Labor Department wage and production standards, and upward mobility information for the previous and current fiscal years.

Finally, the Committee staff gathers information regarding direct labor ratios on specific JWOD

contracts, State contracts that the nonprofit agency performs, and contracting and inspection contracts on JWOD contracts.

C. Interviews

The Committee staff should interview an officer or member of the nonprofit agency board and may also interview nonprofit agency employees who are performing direct labor on a JWOD contract.

D. Exit Interview

Once this information is gathered, the compliance reviewer performs an exit interview with the Executive Director and/or appropriate staff members to inform them as to what information was gathered and what areas, if any, are in need of correction or modification. If there are any areas that are in need of correction, a plan or schedule is discussed so that the Committee, NIB or NISH has a time frame for use in following up on outstanding issues. At the exit interview, as well as during other segments of the compliance visits, Committee, NIB and NISH staff are expected to provide technical assistance on issues associated with participation in the JWOD Program.

5. FOLLOW-UP PROCEDURES

After the review has been completed, a letter is written to the nonprofit agency confirming the information discussed in the exit interview. If there are any instances of noncompliance that need to be corrected, the letter clearly states what those issues are, how it is understood that they will be corrected, and by what date it is understood that these issues will be addressed. The letter also requests a return letter from the nonprofit agency when all issues of noncompliance have been addressed.

Copies of the completed reports and letters addressing compliance issues are shared. For example, if the Committee staff completes a review, a copy of the report and the follow-up letter is sent to either NIB or NISH, depending on the nonprofit agency reviewed. If there is to be a return letter from the nonprofit agency, the Committee staff notifies NIB or NISH when the compliance issues cited in the report have been addressed. Similarly, if NIB or NISH reviews a nonprofit agency, results of the visit and follow-up materials are provided to the Committee.

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