

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY
DISABLED

41 CFR Chapter 51 Parts 51-1, 51-2, 51-3, and 51-4

RIN 3037-AA00

Accountability Standards for Designated Central Nonprofit
Agencies and Nonprofit Agencies Participating in the
AbilityOne Program under the authority of the Javits-Wagner-
O'Day Act.

AGENCY: Committee for Purchase From People Who Are Blind or
Severely Disabled. (Committee)

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the provisions of the Javits-
Wagner-O'Day Act (41 U.S.C. §46-48c), this proposed rule will
establish regulatory accountability standards for Javits-
Wagner-O'Day Act designated central nonprofit agencies and
affiliated nonprofit agencies participating in the
AbilityOne Program (formally known as the JWOD Program).

The Committee is proposing to require designated central and other participating nonprofit agencies to take specific steps to adhere to accountability standards established by the Committee. A key element of this proposed rule is to ensure that executive compensation is such, that revenue of a designated central or other affiliated nonprofit agency, generated through the AbilityOne Program's authority, does not unreasonably inure to an individual, executive, or professional staff member. The proposed rule is also intended to ensure that only qualified, capable, and compliant central nonprofit and nonprofit agencies are allowed to receive and retain Javits-Wagner-O'Day Act sponsored government contracts. Finally this rule will require central nonprofit agencies to adhere to the fee guidance established herein.

The Committee believes that the success of nonprofit sector requires a foundation based on public trust. It follows that central nonprofit and nonprofit agencies should have written policies and procedures in its charter, by-laws, or rules that identify governance structure, financial controls, and executive compensation guidelines to facilitate and maintain the public's trust. Therefore, in

order to help maintain the integrity of the AbilityOne Program, the Committee is proposing to revise, clarify, and add a number of paragraphs to the Code of Federal Regulations, Chapter 51, PARTS 51-1, 51-2, 51-3, and 51-4 to establish accountability standards required of designated central nonprofit agencies and participating nonprofit agencies.

For the purposes of this proposed rule, the collective term accountability standards includes, but is not limited to, the structure of the central nonprofit agencies' or nonprofit agencies' governing authority, such as their Board of Directors; their auditing and reporting of finances; the executive compensation packages they provide; and their conflict of interest policies.

In order to provide some context for the proposed rule the following FY 2006 data is provided: there were 629 AbilityOne affiliated central or other participating nonprofit agencies, with at least one located in 49 of the 50 states;, the AbilityOne Program facilitated the employment of about 47,000 direct labor hour employees who are blind or severely disabled; in FY 2006 these same agencies generated over \$2.3 billion in AbilityOne sales; in

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FY 2006 the average wage per hour (not including benefits) for an AbilityOne employee who was blind was \$8.29; this employee worked an average of 1,199 hours annually; in FY 2006 the average wage per hour (not including benefits) for an AbilityOne employee who was severely disabled was \$9.99; this employee worked an average of 838 hours annually.

DATES: Comments must be received by [insert date 60 days after publication in the Federal Register].

ADDRESSES: Send your comments on the proposed rule in one of the following ways: By electronic mail (preferred method) to rulecomments@jwod.gov; By fax, to the attention of Stephanie Hillmon, at (703) 603-0030; By postal mail to Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259; or through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions on the site for submitting comments. For more information on how to submit your comments, please refer to the "Public Comments Solicited" section below.

You may submit comments on the information collection aspects of the proposed rule to the Desk Officer for the

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Committee for Purchase From People Who Are Blind or Severely Disabled, OMB, Office of Information and Regulatory Affairs, via facsimile or e-mail using the following fax number and e-mail address: (202) 395-6566 (fax);

OIRA_DOCKET@omb.eop.gov (e-mail). Please provide a copy of your comments to Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259; (703) 603-0655 (fax); or rulecomments@jwod.gov (e-mail).

Comments will be made available for public inspection, from 9:00 a.m. to 4:00 p.m. on weekdays, except Federal holidays, at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259.

FOR FURTHER INFORMATION CONTACT: Stephanie Hillmon, by telephone at (703) 603-7740, by fax at (703) 603-0030, by e-mail at rulecomments@jwod.gov, or by postal mail at Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202-3259

SUPPLEMENTARY INFORMATION:

The Committee for Purchase From People Who Are Blind or Severely Disabled (The Committee) has the statutory responsibility to administer and oversee the implementation of the Javits-Wagner-O'Day Act, (41 U.S.C. §46-48c.)

The Committee has concluded that it has the authority to formulate and implement such rules and regulations as may be necessary to carry out the purposes of the Act with the inherent intent to maximize job opportunities for people who are blind or severely disabled, and deter abuses of the AbilityOne Program's mandate, while at the same time minimizing the unintended consequences and administrative burdens caused by new regulations. The Committee is responsible for translating the law into practice by setting standards of compliance, mediating disputes, issuing clarifying regulations and policy, and determining any sanctions to be applied for non-compliance.

The Committee is responsible for ensuring all AbilityOne designated or affiliated nonprofit agencies operate in accordance with accountability standards applicable to financial, governance, and compensation practices, and that all actions involving revenues generated

from the production or provision of commodities or services provided to the Federal Government are transparent to the public. To date, the Committee's regulations have not included accountability standards, but the Committee has concluded that it has the statutory authority to regulate the central nonprofit agencies and nonprofit agencies in this area.

In its oversight and administration capacity, the Committee determines which commodities and services are suitable for production or provision by nonprofit agencies employing people who are blind or have other severe disabilities. The Committee also determines the fair market price that the Government must pay for these commodities and services. The Committee has designated two central nonprofit agencies to facilitate, with guidelines from the Committee, the allocation and distribution of Government contracts to the nonprofit agencies.

The key element underpinning the above Committee functions is that once a service or commodity is added to the Procurement List and allocated to one or more qualified nonprofit agencies, all specified Government agencies are required to procure the commodities or services from the

nonprofit agencies identified by the Committee as qualified, capable and compliant.

This proposed rule is the culmination of actions initiated on November 12, 2004, when the Committee published a proposed set of Governance and Executive Compensation Standards in response to the Committee's concern that the JWOD Program's current regulations did not require that designated central and other participating nonprofit agencies comply with any particular accountability standards.

At the close of the February 10, 2005 comment period, the Committee had received 167 written comments. Commenters included four Members of Congress, numerous representatives from the designated central nonprofit agencies and other participating nonprofit agencies, as well as other interested parties. Among these 167 submissions, six commenters supported the rule in its entirety, and eight supported the rule in part with some recommendations for change. Commenters with objections often provided more than one reason for their objections. For example, 90 comments questioned the Committee's authority to propose any rule on accountability standards; one-hundred and six comments

claimed that the rule was duplicative of efforts of other Federal, State, and local entities; and eighty-four comments claimed the rule was a waste of resources since most nonprofit agencies were already following some standards. The Committee's analysis of all comments showed a variety of other objections, to include a complaint that there had been no public hearings on the proposed rule.

On July 1, 2005, the Committee withdrew the November 2004 proposed rule making stating, "By withdrawing the proposed rule, the Committee will have the flexibility to make use of the valuable insights it has received from reviewing the comments, to construct a new rule or rules, which will address its concerns without unintended consequences and excessive burdens on program participants."

On December 16, 2005, the Committee published an Advanced Notice of Proposed Rule Making (ANPRM). Subsequently, the Committee held public hearings in January 2006, in Arlington, Virginia; Dallas, Texas; and San Francisco, California. During these hearings, about fifty interested persons, including nonprofit agency leaders and board members, discussed the items in the Committee's ANPRM. The Committee also asked attendees to comment on whether or

not executive compensation influenced the fair market price of products and services offered for sale to the Federal customer through the Committee maintained Procurement List. The Committee also asked attendees to comment on whether or not requiring central nonprofit agencies and nonprofit agencies to adhere to governance standards should be considered as a criterion for determining if an agency was qualified to participate in the JWOD Program.

The Committee's purpose in seeking this dialogue was to obtain broad feedback on several key issues and objectives important to the JWOD Program. These include (1) ensuring the continued delivery to Federal customers of high value products and services furnished by Javits-Wagner-O'Day Act affiliated central nonprofit and nonprofit agencies, (2) promoting the adoption of best practices in governance by JWOD affiliated central nonprofit agencies and nonprofit agencies, and (3) addressing the issue of potential excessive compensation being paid to nonprofit officials.

Following the public hearings, the Committee analyzed several hundred statements. Sixteen commenters stated that initial qualifications outlined in the Javits-Wagner-O'Day Act are sufficient; there is no need for other

qualifications to enter or participate in the JWOD Program. Twenty-seven comments were made that accreditation is evidence of good governance, and thirty-six stated that governance standards are appropriate for participants in the JWOD program. Twenty-four commenters stated that size and resources should be considered when determining whether governance standards are appropriate for a particular nonprofit agency, and eighteen stated that governance standards for nonprofit agencies should be created by a third party, not the Committee. Thirty-four comments emphasized that in determining whether governance standards are appropriate, there is a difference between private nonprofit agencies and State and locally operated nonprofit agencies. Twenty commenters stated that conflict of interest issues must be included in any governance standards. Thirty-eight comments were made that executive compensation did not influence the fair market price of JWOD commodities or services. Twenty-seven comments were made that there is no relationship between executive compensation and the compensation paid to direct labor employees. Seventeen commenters stated that the composition of the Board of Directors of nonprofit agencies should be assessed periodically. Twenty commenters stated that only the Internal Revenue Service should have oversight of the

“Rebuttable Presumption of Reasonableness” for executive compensation.

In the interim between the January 2006 public hearings and today, the AbilityOne Program experienced the adverse effect of financial and governance irregularities by a major participating nonprofit agency that violated many of the accountability standards that the Committee’s earlier proposed rules were intended to prevent. This unfortunate event confirms the Committee’s conclusion that without consistent accountability standards established in Federal regulation for designated central nonprofit agencies and other nonprofit agencies participating in the AbilityOne Program, the Committee will be hindered in fulfilling its statutory oversight responsibilities, and that the potential for substantive future abuses will remain unaddressed. Self-regulation and self-certification by the central and other nonprofit agencies in the areas of governance and executive compensation are not deemed by the Committee to be sufficient to ensure sound governance and accountability practices.

In proposing this set of accountability standards for participating central and other nonprofit agencies, the

Committee intends to establish a new level of transparency and accountability that will guide nonprofit agency directors, management, and advisors to achieve a high and consistent level of compliance in these important areas and by doing so, stave off any potential abuses.

The public hearings, coupled with the previously received public comments and a review of the current governance and compensation practices of the nonprofit sector and participating central and other nonprofit agencies, did not dissuade the Committee of the appropriateness and efficacy of this rulemaking. The responses did, however, lead the Committee to consider a number of tests before proposing a specific accountability rule. The tests are: (1) that the record supports the conclusions that underlie the rule; (2) that the policy determinations behind the rule are rational; (3) that the Committee has adequately explained the basis for its conclusions; (4) that the proposed rule does not intrude on the authority of other Federal agencies; and (5) that the rule does not place excessive burdens on Program participants. In all cases, the Committee is satisfied that the proposed rulemaking meets these tests.

As a first step in proposing the current rulemaking, the Committee re-examined its legal authority in light of the comments and concerns noted by numerous commenters, and concluded that the Javits-Wagner-O'Day Act's general rulemaking authority provision (41 U.S.C. 47(d)(1)(C)) does permit the Committee to propose a rule concerning accountability standards as a condition of being found capable of being allocated Government contracts under the AbilityOne Program's mandate.

A central premise to successful implementation of the Javits-Wagner-O'Day Act is that nonprofit agencies affiliated with and participating in the AbilityOne Program should be expected to comply with reasonable rules and regulations. This premise supports the concept that, by law, the AbilityOne Program is "eligibility driven" and is not an "entitlement" program. For "eligibility driven" programs, participation is voluntary. Participating nonprofit agencies are not required by law or regulation to seek government contracts for the provisioning of commodities or services through the AbilityOne Program.

Accountability standards are not only consistent with good Government, they also ensure that the revenue generated

through the Javits-Wagner-O'Day Act Program's procurement preference mandate does not inure unreasonably to an individual, executive, or professional staff.

The Committee believes its proposed rules are a reasonable effort toward ensuring that any nonprofit agency choosing to voluntarily participate under the AbilityOne Program's unique procurement preference program is using sound accountability principles. For the most part, the standards being proposed are ones that the Committee hopes are already being followed by participating nonprofit agencies and that are well established in the nonprofit sector.

There is a proposed change that is different from what is established in the nonprofit sector. The Committee proposes a benchmark compensation amount, which is set as the Vice President's salary plus the value of non-salary benefits received by Executive Branch employees. The Committee believes this amount is reasonable. The Committee's reasons for setting the benchmark compensation amount is that it wanted to use an amount that took into account the massive responsibilities of nonprofit agency

executives and it wanted to use an amount that would maintain the public trust in the AbilityOne program.

In proposing these changes, the Committee recognized the need to balance increased Government oversight and enforcement within the AbilityOne Program, with the obligation to neither unduly burden nor discourage participating central and other nonprofit agencies from participating in the AbilityOne Program.

The Committee believes accountability standards and nonprofit agency independence need not be in conflict if regulations are based on common nonprofit sector practices, and are crafted to allow for flexibility in application according to size, scale, and resources of the affected organizations.

Please find below an outline of the proposed changes:

At PART 51-1, General, the Committee is proposing to add at §51-1.1, Policy, a requirement that designated central nonprofit agencies and other participating nonprofit agencies must comply with a set of accountability standards that are based on common practice throughout the nonprofit

agency community. When fully implemented, these standards will promote sound governance procedures, ensure the effective and transparent administration of Government contract funds, and help maintain a high level of public trust and support for the AbilityOne Program's employment mission. The clarifying language will also lay the foundation that each central nonprofit agency and nonprofit agency participating in the AbilityOne Program must comply with Committee-approved accountability standards in order to maintain its status as a designated central nonprofit agency or a qualified nonprofit agency. At §51-1.3, Definitions, the Committee is proposing a number of new and modified definitions that will help clarify and define terms outlined in the set of accountability standards. These definitions are for "financial expert," "rebuttable presumption of reasonableness," "key employee," "undue influence," "management letter," "excessive compensation," "benchmark compensation amount," and "independent board member."

At PART 51-2, Committee for Purchase From People Who are Blind or Severely Disabled, the Committee is proposing to clarify under §51-2.2, Powers and responsibilities, the Committee's authority to establish a set of accountability standards for its designated central nonprofit agencies and

for participating nonprofit agencies, and to evaluate and provide guidance to its designated central nonprofit agencies and other participating nonprofit agencies. The Committee's proposed rulemaking is designed to demonstrate that Javits-Wagner-O'Day Act affiliated central and other nonprofit agencies are ethical and responsible stewards of the AbilityOne Program's mandate to employ people who are blind or severely disabled through a Federal procurement preference. These standards prescribe policies and procedures pertaining to designated central nonprofit and participating nonprofit agencies on the matters of board of directors governance responsibilities, corporate structure, organizational conflicts of interest, and reasonableness of executive and other employee compensation. Moreover, the Committee proposes to add the clarifying policy that the Committee has the power and authority to provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping nonprofit agencies participate in the AbilityOne Program, by monitoring and conducting periodic evaluations of their activities for the purpose of assuring effective and efficient administration of the Javits-Wagner-O'Day Act.

At §51-2.4., Determination of suitability, the Committee is proposing clarifying language under the criteria for suitability that the Committee's designated central nonprofit agencies and participating nonprofit agencies, when acting as prime or subcontractors on Javits-Wagner-O'Day Act mandated Government contracts, must meet the standards of the broader definition of responsibility as set forth in the Federal Acquisition Regulation (FAR) at 48 CFR Part 9.1. FAR 9.1 provides examples of what it means to be a responsible contractor to the Federal government, e.g. the nonprofit agencies, would be required to have adequate financial resources to perform the contract as well as have a satisfactory record of integrity and business ethics. These changes would apply the same basic standards to the Javits-Wagner-O'Day Act central nonprofit and affiliated nonprofit agencies as are currently applied to other Government contractors.

Finally, at §51-2.10, Violations by central and other nonprofit agencies, the Committee has the authority and responsibility to follow its violations procedures in carrying out the purposes of the AbilityOne Program by applying sanctions to the designated central nonprofit

agencies and the participating nonprofit agencies for violation of Committee regulatory standards.

At PART 51-3, Central Nonprofit Agencies, the Committee is proposing to add at § 51-3.2, Responsibilities under the AbilityOne Program, the responsibilities of the designated central nonprofit agency or agencies to be in full compliance with accountability standards concerning board of director governance responsibilities, corporate structure, and reasonableness of executive and other employee compensation. Moreover, the Committee is proposing to add procedures governing the sanctions that may be applied to the designated central nonprofit agencies for violation of designated statutory or Committee regulatory standards.

At § 51-3.5, Fees, the Committee is proposing to urge the central nonprofit agencies to discount the amount of fee collected from smaller affiliated nonprofit agencies in order to allow these agencies to cover the costs of these proposed rules. At § 51-3.7, Report from the central nonprofit agencies, the Committee is proposing to add the reporting requirement for central nonprofit agencies, regarding compliance with accountability standards or other designated statutory or regulatory responsibilities. The

Committee is proposing to require this information instead of a photocopy of an agency's most recently compiled IRS Form 990s because, due to differing cycles of fiscal years and filing for extensions of the deadline to submit IRS Form 990s, central nonprofit agencies may be two or three years behind the current fiscal year in filing their IRS Form 990s. Out-of-date information would do little to help the Committee determine whether a central nonprofit agency is currently meeting the requirements of the Committee's regulations. Therefore, the Committee will require central nonprofit agencies to submit current information on compliance with applicable standards.

The Committee is proposing to add at § 51-3.8., Initial qualifications, a set of accountability standards, including executive compensation guidelines, and at § 51-3.9. Maintaining qualifications, the requirement to certify that the accountability standards set forth in section in §51-3.8 are being met.

At § 51-3.10, Violations, the Committee is proposing to add that any alleged violations of these regulations by a designated central nonprofit agency shall be investigated by the Committee staff and could lead to sanctions.

Traditionally, the Committee's regulations have focused on the qualifications, capabilities and actions of the participating nonprofit agencies. There is currently little or no guidance on how the Committee should oversee or administer the qualifications, capabilities, and actions of its central nonprofit agencies.

At PART 51-4, Nonprofit Agencies, the Committee is proposing to add at § 51-4.2, Initial qualification, the requirement that a participating nonprofit agency must certify on the appropriate Initial Certification Form whether or not it is in compliance with the Committee's accountability standards. At § 51-4.3, Maintaining qualification, the Committee is proposing to add the requirement that participating nonprofit agencies must be in full compliance with established accountability standards concerning board of directors governance, corporate structure, and reasonableness of executive and other employee compensation. At § 51-4.5, Violations by nonprofit agencies, the Committee is proposing clarifying procedures governing the sanctions that may be applied to participating nonprofit agencies for cause or violation of statutory, regulatory and policy guidelines, and the investigation of same.

Public Comments Solicited

The Committee invites public comments on this proposed rule. Please submit your comments by the date given in the DATES section using one of the options offered in the ADDRESSES section. Please mention the docket number (2006-xx-xx) at the top of your comments. As all comments received will be made available for public inspection, please do not include any information, such as your street address or telephone number that you would prefer to remain private. If you choose to send your comments by postal mail, please include a DOS-formatted 3½-inch disk with your written comments. If you have any questions about how to comment on this proposed rule, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

All comments the Committee receives will be made available for public inspection, from 9:00 a.m. to 4:00 p.m. on weekdays, except Federal holidays, at the address listed in the ADDRESSES section. To facilitate public inspection of comments, please call (703) 603-7740 to notify us of your intention to inspect comments before coming to the Committee office.

Certifications and Required Determinations

Regulatory Flexibility Act

I certify that the changes proposed in this rule will not have, if promulgated, a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The major factors considered for this certification were:

1. If approved, the action only results in central nonprofit agencies and nonprofit agencies that participate in the Javits-Wagner-O'Day Act Program making statements regarding their suitability to participate in the program. No other impact is expected.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c).

Executive Order 12866

Under Executive Order 12866, the agency must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Under section 3(f) of Executive Order 12866, the order defines a "significant

regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action raises novel legal or policy concerns. Therefore, this action is “significant” and subject to OMB review under section 3(f) of Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is

adopted: (1) It will have no preemptive effect on State and local laws and regulations; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 13132

This proposal does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Unfunded Mandates Reform Act

This proposed rule has been reviewed under the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.). If adopted, this proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year, nor would it have a significant or unique effect on State, Tribal, or local governments or the private sector.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act

of 1995 (44 U.S.C. 3501 et seq.). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB regulations at 5 CFR 1320.3(c) define a "collection of information" as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. In addition, the OMB regulations at 5 CFR 1320.3(c)(4)(i) state that any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability (such as this proposed rule) is deemed to involve 10 or more persons. This proposal would require a new certification from nonprofit agencies and would require these agencies to supply information on the total (cash and non-cash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification (as explained above under the heading "Certification"). These new information collections would require OMB approval under the Paperwork Reduction Act.

The application for information collection approval from OMB also requests a revision to our existing annual certification report forms, which are due to the Committee from nonprofit agencies by December 1 of each year. The revised forms would include the new certification proposed in this document and a requirement that nonprofit agencies supply information on the total (cash and non-cash) compensation paid to key employees during the fiscal year for which they are submitting an annual certification. The form would also include a certification from an officer of the Board of Directors that he/she has analyzed the compensation paid to key employees and no nonprofit revenue inures excessively to the benefit of any individual or key employee. The forms will include a certification by an officer of the Board of Directors that the governance standards in 41 CFR §51-3.8, 3.9, 4.2, or 4.3 have or have not yet been met. The Committee will notify the public of OMB's response to our application in the final rule for this regulation.

Simultaneous with the publication of this proposed rule, the Committee has submitted an application for information collection approval from OMB to require a new annual certification from central nonprofit agencies that

the accountability standards in 41 CFR §51-3.8 and 3.9 have or have not yet been met. This certification would include a requirement that central nonprofit agencies that participate in the AbilityOne Program supply information on the total (cash and non-cash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification. The form would also include a certification from an officer of the Board of Directors that he/she has analyzed the compensation paid to key employees and no nonprofit revenue inures excessively to the benefit of any individual, including the key employees.

The Committee is asking OMB to approve, for the first time, a new Committee Form 405, which would be the Annual Certification—Central Nonprofit Agencies. The new form would be due to the Committee by December 1 of each year from the two designated central nonprofit agencies (NIB and NISH). The new form would require an officer of the board for each central nonprofit agency and agency executive to certify, via signature, that the accountability standards in this rule have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. The new form would also require central nonprofit agencies to

supply, and certify the accuracy and completeness of, information on the total (cash and non-cash) compensation paid to their key employees during the fiscal year for which they are submitting an annual certification. The form would also include a certification from an officer of the Board of Directors that he/she has analyzed the compensation (cash and non-cash) and no nonprofit revenue inures excessively to the benefit of any individual, including the key employees. Lastly, the new form would ask if any changes have been made during the past year to the central nonprofit agency's articles of incorporation or bylaws. This last piece of information has been offered sporadically over the years by central nonprofit agencies; including it on the new form would standardize the collection of this information.

The Committee expects that completing this new certification form, Form 405, would require a moderate amount of time for central nonprofit agencies even though the certification and any documents to support the certification do not exceed the knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. The Committee estimates that it would take an average of 5 hours for a respondent to complete the form, including reading the appropriate

instructions; referring to and reading the governance standards (as provided in § 51-3.8 and 3.9, below); certifying that the new standards have or have not been met; if necessary, providing a brief explanation concerning why the governance standards have not yet been met and attaching appropriate documentation; gathering and recording information on the total (cash and non-cash) compensation paid to the agency's key employees during the fiscal year for which the agency is submitting an annual certification; certifying that the central nonprofit agency's articles of incorporation or bylaws have or have not changed during the most recent fiscal year; and, if necessary, attaching any changes to the articles of incorporation or bylaws. Therefore, for the total number of respondents completing this form (2), the new information collection requirements would result in a total annual burden of 10 hours.

Committee Form 403 (Annual Certification—Qualified Nonprofit Agencies Serving People Who Are Blind) and Committee Form 404 (Annual Certification—Qualified Nonprofit Agencies Serving People Who Are Severely Disabled) are already approved by OMB and assigned OMB control numbers 3037-0001 and 3037-0002, respectively. The Committee has submitted a revision request to OMB to update these two

forms to include a new certification statement that would require an officer of the board and agency executive nonprofit agency to certify, via signature, that the governance standards in § 51-4.3 have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. In addition, each nonprofit agency would have to supply, and certify the accuracy and completeness of, information on the total (cash and non-cash) compensation paid to key employees during the fiscal year for which they are submitting an annual certification.

The Committee expects the additional certification on Committee Forms 403 or 404 would require a moderate amount of time for respondents even though the certification and any documents to support the certification do not exceed the knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. The Committee estimates that it would take an average of 3 hours for a respondent to read the appropriate instructions; refer to and read the new standards (as provided in § 51-4.3, below); certify that the new standards have or have not been met; if necessary, provide a brief explanation concerning why the governance standards have not yet been met and

attach appropriate documentation; and gather and record information on the total (cash and non-cash) compensation paid to the agency's key employees during the fiscal year for which the agency is submitting an annual certification. Therefore, for the total number of respondents completing both of these forms (642: 77 for Form 403, and 565 for Form 404), the new information collection requirements would result in an additional annual burden of 1,926 hours (231 hours for Form 403, and 1,695 hours for Form 404). In addition, in accordance with 41 CFR 51-4.3(b)(4), relevant records would have to be made available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

Committee Form 401 (Initial Certification—Qualified Nonprofit Agencies Serving People Who Are Blind) and Committee Form 402 (Annual Certification—Qualified Nonprofit Agencies Serving People Who Are Severely Disabled) are already approved by OMB and assigned OMB control numbers 3037-0004 and 3037-0003, respectively. The Committee has submitted a revision request to OMB to update these two forms to include a new certification statement that would require an officer of the board and agency executive

nonprofit agency to certify, via signature, that the governance standards in § 51-4.2 have or have not yet been met. If the governance standards have not yet been met, an explanation (with relevant documentation attached) would be required. In addition, each nonprofit agency would have to supply, and certify the accuracy and completeness of, information on the total (cash and non-cash) compensation paid to key employees during the fiscal year for which they are submitting an annual certification.

The Committee expects the additional certification on Committee Forms 401 or 402 would require a moderate amount of time for respondents even though the certification and any documents to support the certification do not exceed the knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. The Committee estimates that it would take an average of 3 hours for a respondent to read the appropriate instructions; refer to and read the new standards (as provided in § 51-4.2, below); certify that the new standards have or have not been met; if necessary, provide a brief explanation concerning why the governance standards have not yet been met and attach appropriate documentation; and gather and record information on the total (cash and non-cash) compensation

paid to the agency's key employees during the fiscal year for which the agency is submitting an annual certification. Therefore, for the total number of respondents completing both of these forms (642: 77 for Form 401, and 565 for Form 402), the new information collection requirements would result in an additional annual burden of 1,926 hours (231 hours for Form 401, and 1,695 hours for Form 402). In addition, in accordance with 41 CFR 51-4.3(b)(4), relevant records would have to be made available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

OMB regulations at 5 CFR Part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities. The Committee invites comments on: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (4) ways to minimize the burden of the collection of information on those who are to respond. See the DATES and ADDRESSES sections of this proposed rule for information on submitting your comments on this information collection.

List of Subjects in

41 CFR Part 51-1

Government procurement, Individuals with disabilities

41 CFR Part 51-2

Organization and functions (Government agencies).

41 CFR Part 51-3

Government procurement, Handicapped.

41 CFR Part 51-4

Reporting and recordkeeping requirements.

For the reasons set forth above, the Committee proposes to amend parts 51-1, 51-2, 51-3, and 51-4 of Title 41, Chapter 51 of the Code of Federal Regulations as follows:

1. The authority citation for Parts 51-1, 51-2, 51-3, and 51-4 continues to read as follows:

Authority: 41 U.S.C. 46-48c.

PART 51-1—GENERAL

2. Section 51-1.1 is amended by adding paragraph (c) to read as follows:

§ 51-1.1, Policy

* * * * *

(c) It is the policy of the Committee that any designated central nonprofit agency or qualified nonprofit agency certify its compliance with a set of accountability standards that are based on industry standards or State laws, that are in common practice throughout the nonprofit agency sector, and that when fully implemented, will promote sound governance procedures, ensure the effective and transparent administration of Government contract funds, and will help maintain a high level of public support for the Javits-Wagner-O'Day Act's employment mission.

* * * * *

3. Section 51-1.3 is amended by adding new definitions to read as follows:

§ 51-1.3 Definitions

* * * * *

Benchmark compensation amount is the combination of salary and benefits of the Vice President of the United States, which is currently \$280,145, composed of \$205,031 in base salary plus \$75,114 (36.45%) for benefits. This benchmark compensation amount will be adjusted as the Vice President's compensation increases. The Committee may approve a higher benchmark compensation amount as provided in §51-3.8(b) and §51-4.2(e) of this chapter.

* * * * *

Excessive compensation means compensation derived from contracts under the Committee's program (cash and non-cash) that is paid to an individual or key employee, which unreasonably inures to the benefit of the individual and which exceeds the benchmark compensation amount.

* * * * *

Financial expert means a director that must understand financial statements, have the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves, have

experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the nonprofit's financial statements, or experience actively supervising one or more persons engaged in such activities, have an understanding of internal controls and the procedures for financial reporting, and have an understanding of audit committee functions.

* * * * *

Independent board members means members of the Board of Directors who have not received compensation or material benefits, directly or indirectly, from the central nonprofit or nonprofit agency in the previous 24 months, whose compensation is not determined by other board or staff members, who are not related to someone who received such compensation from the nonprofit agency, or in the case of central nonprofit agency boards of directors, are not officers or representatives of participating nonprofit agencies, state or local government participating organizations or national nonprofit agencies affiliated with participating nonprofit agencies.

* * * * *

Key employee means an employee who exerts a significant influence on an organization's finances or activities.

* * * * *

Management letter means a technical letter, which is prepared by an auditor or audit committee.

* * * * *

Rebuttable presumption of reasonableness means a process for determining executive compensation that: requires maintaining a board of independent members; requires the Board of Directors to approve compensation arrangements for highly paid executives and individuals, using independent comparative salary data gathered from similar organizations for similar executive positions; and documents all data used in decision making for compensation packages, including all annual compensation, incentive compensation plans, long-term incentive plans, supplemental retirement plans, or deferred compensation arrangements and benefits given for any reason.

* * * * *

Undue influence is influence that occurs when an officer, director, or employee of the agency takes any action, directly or indirectly, to coerce, manipulate, mislead, or fraudulently influence the agency's audit committee, Directors, CEO/President or any individual that has authority or power to influence such persons.

PART 51-2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND
OR SEVERELY DISABLED

4. Section 51-2.2 is amended by revising paragraphs (d) and (f) and adding paragraphs (j) and (k) to read as follows:

§ 51-2.2 Powers and responsibilities

* * * * *

(d) Monitor, guide and inspect the activities of any designated central nonprofit agency or qualified nonprofit agency to ensure compliance with Committee regulations.

* * * * *

(f) Designate, set appropriate ceilings on fee paid to central nonprofit agencies by nonprofit agencies selling items under the AbilityOne Program, and provide guidance or direction to any designated central nonprofit agency that is engaged in facilitating the distribution of Government orders and helping nonprofit agencies participate in the AbilityOne Program.

* * * * *

(j) Implement the accountability standards for any designated central nonprofit agency or nonprofit agency participating in the AbilityOne Program that prescribes policies, standards and procedures on matters of board of directors governance, corporate structure, organizational conflicts of interest, reasonableness of executive compensation and other related matters.

(k) Implement the procedures governing the sanctions that may be imposed on any designated central nonprofit agency or nonprofit agency participating in the AbilityOne Program for violation of statutory or regulatory guidelines.

* * * * *

5. Section 51-2.4 is amended by revising paragraph (a)(3) to read as follows:

§51-2.4 Determination of suitability

* * * * *

(a)(3) Capability; The central nonprofit agency or nonprofit agency (or agencies) desiring to furnish a commodity or service under the Act must satisfy the Committee that it will comply with or exceed the established percentage of direct labor for the commodity or service using people who are blind or have other severe disabilities, and that when

acting as prime or subcontractors on Javits-Wagner-O'Day Act-mandated Government contracts that each nonprofit agency will meet the standards set forth in Federal Acquisition Regulation (FAR) Subpart 9.1 for a responsible prospective contractor by the time it begins to supply the commodity or service to the Government under the Act, as well as other Committee established accountability standards and procedures as required in §51-3.8 and §51-4.2 of this chapter.

6. Add Section §51-2.10 under Part 51-2, "COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED" to read as follows:

§51-2.10, Violations by central and other nonprofit agencies
The procedures governing the sanctions that may be imposed on the designated central nonprofit agencies and the participating nonprofit agencies for violation of Committee regulatory standards can be found at §51-3.10 and §51-4.5.

PART 51-3—CENTRAL NONPROFIT AGENCIES

* * * * *

7. Redesignate §51-3.2(n) as §51-3.2(o).

8. Add new §51-3.2(n) to read as follows:

The central nonprofit agencies are responsible for being in full compliance with the accountability standards concerning board of director governance responsibilities, corporate structure, and reasonableness of executive and key employee compensation.

9. Section 51-3.5 is amended by revising the paragraph to read as follows:

§51-3.5 Fees

A central nonprofit agency may charge fees to nonprofit agencies for facilitating their participation in the AbilityOne Program. Fees shall be calculated based on nonprofit agency sales to the Government under the AbilityOne Program. Fees shall not exceed the fee limit approved by the Committee. Fees charged to the affiliated nonprofit agencies should be discounted for small nonprofit agencies to offset the costs of demonstrating compliance with the accountability standards as set forth in §51-4.2., and §51-4.3 of this chapter.

10. Add Section 51-3.7 to read as follows:

§51-3.7 Report from the central nonprofit agencies

Each designated central nonprofit agency is required to submit to the Committee a list of the central nonprofit agency's highest compensated employees as of the end of any given fiscal year. This information can be a photocopy of an agency's most recently compiled IRS Form 990s if the reporting cycle is based on the fiscal year ending in September and if it is submitted within 60 days from the end of the fiscal year.

11. Add Section 51-3.8 to read as follows:

§51-3.8 Initial qualification of central nonprofit agencies

(a) To qualify as a designated central nonprofit agency, the central nonprofit agency's Board of Directors will:

(1) Be composed of individuals who are personally committed to the mission of the organization and possess the specific skills needed to accomplish that mission.

(2) Review its board size periodically, or at least triennially, to determine appropriate size to meet its mission and governance responsibilities.

(3) Have a Board Chair and a majority of the voting directors who are independent.

(4) Ensure that the central nonprofit agency's by-laws or charter have rules that preclude non-independent board members from being in a position to exercise undue

influence.

(5) Set term limits for the service of board members.

(6) Serve without compensation for their service as board members.

(7) Be reimbursed only for expenses directly related to carrying out their board service.

(8) Have at least one financial expert or someone with a financial background serving;

(9) Periodically, or at least triennially, conduct an internal review of the organization's compliance with existing statutory, regulatory and financial reporting requirements and provide a summary of the results of the review to members of the Board of Directors.

(10) Provide to the Committee a management letter on an annual basis which has been prepared by an auditor and make that letter available to the public, as well as information about the organization's mission, program activities, and the agency's financial reports as audited by a Certified Public Accountant. The report should also identify the names of the organization's Board of Directors, and which ones are independent directors, and executive management staff.

(11) Review and validate all Internal Revenue Service (IRS) Form 990s and all attachments, and certify that such

filings identify all sources of compensation income from the central nonprofit agency and related entities;

(12) Have a written conflict of interest policy. The policy shall be applicable to board members and staff who have significant independent decision-making authority regarding the resources of the central nonprofit agency. The policy shall identify the types of conduct or transactions that raise conflict of interest concerns, shall set forth procedures for disclosure of actual or potential conflicts, and shall provide for review of individual transactions by the uninvolved members of the board.—

(13) Hire the chief executive officer, president or executive director, set the individual's compensation, and evaluate that individual's performance at least annually.

(b) The Board of Directors of the central nonprofit agency shall be responsible for determining the compensation of key executives through a "rebuttable presumption" process that ensures the compensation awarded is reasonable and that approval follows certain procedures.

(1) At a minimum, "rebuttable presumption" rules require that (A) any compensation transaction be approved in advance by members of the Board of Directors, none of whom have a conflict of interest with respect to the transaction;

(B) the Board of Directors obtained and relied upon appropriate data as to comparability of compensation; (C) the Board of Directors documented the basis for its determination at the time it made the decision; (D) an exception to the above rules is provided for binding written employment contracts between the central nonprofit agency and any individual that was in effect before the effective date of this rule; (E) a designated central nonprofit incorporate into its bylaws, charter, or other documents a provision that outlines the above rule; (F) a designated central nonprofit agency will submit a certified statement on an annual basis, not later than December 1 in any given year, a listing of the total executive compensation packages for the highest compensated employees.

(2) The benchmark compensation amount does not limit the total compensation that an executive may otherwise receive, but it does limit how much of the total compensation can be paid in any given fiscal year from revenues generated directly from the fees collected by the central nonprofit agencies from the participating nonprofit agencies.

(3) Boards of Directors that elect through the rebuttable presumption process to pay in excess of the benchmark compensation amount, must provide written justification, along with the listing of the highest compensated employees,

as outlined in §51-3.8,(b)(1)(F), that outlines in detail why it is appropriate to exceed the benchmark compensation amount. After review of this justification, the Committee may ask that representatives from the Board of Directors which approved the total compensation that exceeded the benchmark compensation amount appear before the Committee to provide additional information on why the excess compensation must come from the revenues generated from the fees collected by the central nonprofit agencies from the participating nonprofit agencies.

(4) In determining if the Board of Directors' justification for paying beyond the benchmark compensation amount is compelling, the Committee will consider:

(A) The size and complexity of the central nonprofit agency's mission, as compared to other comparable nonprofit agencies.

(B) The mission area, geographic size, and financial condition of the central nonprofit agency.

(C) The technical and professional qualifications required for positions in the central nonprofit agency.

(D) Compensation packages paid at comparable central nonprofit agencies or other nonprofit agencies;

(E) The extent to which the central nonprofit agency's executive compensation packages exceed the Committee's benchmark compensation amount;

(F) If the board of directors of the central nonprofit agency, in approving a specific compensation package, made reasonable attempts to determine whether the compensation amount was an excessive benefit.

(5) If the Board of Directors' justification for paying beyond the benchmark compensation amount is not determined by the Committee to be compelling, the Committee may request that the Board consider reducing the compensation, or submit further justification for review. If the Board of Directors determines that the compensation should not be changed, or if any subsequent justification is deemed by the Committee to be not compelling, the Committee will pursue the matter in accordance with §51-3.10.

If the Committee considers the amount of executive compensation to be excessive, it may refer the matter to the Internal Revenue Service (IRS) for possible independent action under their statutes and regulations.

(6) A designated central nonprofit agency shall submit two completed copies of the Annual certification form (Committee Form 405).

(c) The information collection requirements set forth in this section for central nonprofit agencies are included on Committee Form 405, which has been approved by the Office of Management and Budget (OMB) under OMB control number 3037-xxxx. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

11. Add Section 51-3.9 to read as follows:

§ 51-3.9 Maintaining qualifications.

(a) A central nonprofit agency must submit its report in accordance with §51-3.7. A central nonprofit agency must certify that the accountability standards set forth in section in §51-3.8 have been met during the previous fiscal year by completing the annual certification form (Committee Form 405) and providing the completed form to the Committee by December 1 of each year. The certification requirement set forth in § 51-3.7 can also be satisfied by the designated central adopting a National "certification" system that can be shown to incorporate the accountability standards as set forth in § 51-3.8 and 3.9 of this Chapter. The Committee may publish a list of National, certification programs that comply with the intent of the accountability

standards as set forth by § 51-3.8 and 3.9. Compliance with a National Certification System does not eliminate the requirement for the central nonprofit agency to complete the annual certification form (Committee Form 405) and to provide the completed form to the Committee by December 1 of each year, but the National Certification should be attached to Committee Form 405.

(b) The information collection requirements set forth in this section for central nonprofit agencies are included on Committee Form 405, which has approved by the Office of Management and Budget (OMB) under OMB control number 3037-xxxx.

(c) Central nonprofit agencies already designated at the time of the effective date of this regulation are required to certify compliance not later than the end of the fiscal year following the fiscal year in which this regulation becomes effective.

12. Add Section 51-3.10 to read as follows:

§ 51-3.10 Violations.

Any alleged violation(s) of these regulations by a designated central nonprofit agency will be reported to the

Committee's Executive Director, who shall investigate the alleged violation. In conducting such investigation, the Executive Director shall notify the Board of Directors of the central nonprofit agency and afford it an opportunity to submit information it considers relevant to the matter. The Committee's Executive Director shall report his/her findings, conclusions and recommendations to the Committee, in writing. In reviewing the matter, the Committee may request the submission of additional information. The Committee will afford the central nonprofit agency an opportunity to respond to the Executive Director's report and to address the Committee on the matter. If the Committee concludes that a central nonprofit agency is in violation of these regulations, it will so notify the central nonprofit agency in writing. This notification will include the corrective action deemed necessary by the Committee to bring the central nonprofit agency into compliance with these regulations. If a central nonprofit agency fails to correct its violations of these regulations, the Committee may suspend or terminate the central nonprofit agency's authority to collect a fee from the participating nonprofit agencies or may suspend or terminate the central nonprofit agency's designation as a central nonprofit agency in the AbilityOne Program.

PART 51.4–NONPROFIT AGENCIES

13. Section 51-4.2 is amended by adding paragraphs § 51-4.2, (d), (e), and (f) to read as follows:

§ 51-4.2 Initial qualification

* * * * *

(d) To qualify as a nonprofit agency in the AbilityOne Program, the nonprofit agency's Board of Directors will:

(1) Be composed of individuals who are personally committed to the mission of the organization and possess the specific skills needed to accomplish that mission.

(2) Review its board size periodically, at least triennially, to determine appropriate size to meet its mission and governance responsibilities; a majority of the directors shall be independent.

(3) Ensure that in circumstances where employees of the participating nonprofit agency are voting members of the board, that the nonprofit agency's by-laws or charter have rules that preclude these employees from being in a position to exercise undue influence.

(4) Elect a Board Chairperson that is an independent director, and neither an officer of the nonprofit agency unless State laws or local ordinances require that the Board

Chairperson must be an individual that does not meet the definition of an independent director.

(5) Set term limits for the service of board members, unless State laws or local ordinances prohibit such term limits.

(6) Serve without compensation for their service as board members.

(7) Be reimbursed only for expenses directly related to carrying out their board service.

(8) Have at least one financial expert or someone with a financial background serving.

(9) Periodically, at least triennially, conduct an internal review of the organization's compliance with existing statutory, regulatory and financial reporting requirements and provide a summary of the results of the review to members of the Board of Directors. Internal reviews as directed by State laws and local ordinances are sufficient to satisfy this requirement.

(10) Provide to the Committee a "*Management letter*" on an annual basis which has been prepared by an auditor and make that letter available to the public, as well as information about the organization's mission, program activities, and the agency's financial reports as audited by a Certified Public Accountant. The report should also

identify the names of the organization's Board of Directors, and which ones are independent directors and executive management staff.

(11) Review and validate all Internal Revenue Service (IRS) Form 990s and all attachments, and certify that such filings identify all sources of compensation income from the nonprofit agency and related entities.

(12) Have a written conflict of interest policy. The policy should be applicable to board members and staff who have significant independent decision-making authority regarding the resources of the organization. The policy should identify the types of conduct or transactions that raise conflict of interest concerns, should set forth procedures for disclosure of actual or potential conflicts, and should provide for review of individual transactions by the uninvolved members of the board.

(13) Hire the chief executive officer, president or executive director, set that individual's compensation, and evaluate that individual's performance at least annually.

(e) The Board of Directors shall be responsible for determining the compensation of key executives through a "rebuttable presumption" process that ensures the

compensation awarded is reasonable and that approval follows certain procedures.

(1) At a minimum, rebuttable presumption rules require that: (A) any compensation transaction be approved in advance by members of the Board of Directors, none of whom have a conflict of interest with respect to the transaction; (B) The Board of Directors obtained and relied upon appropriate data as to comparability of compensation; (C) the Board of Directors documented the basis for its determination at the time it made the decision; (D) an exception to the above rules is provided for binding written employment contracts between the nonprofit agency and any individual that was in effect before the effective date of this rule; (E) a participating nonprofit agency incorporate into their bylaws, charter, or other documents a provision that outlines the above rule; (F) a participating nonprofit agency will submit a certified statement on an annual basis, not later than December 1 in any given year, a listing of the total executive compensation packages for the highest compensated employees.

(2) The benchmark compensation amount does not limit the total compensation that an executive may otherwise receive, but it does limit how much of the total compensation can be paid in any given fiscal year from revenues generated

directly from sales generated through the Javits-Wagner-O'Day Act's authority.

(3) Boards of Directors that elect through the rebuttable presumption process to pay in excess of the benchmark compensation amount, must provide written justification, along with the listing of the highest compensated employees as outlined in §51-4.2(e)(1)(F), that outlines in detail why it is appropriate to exceed the benchmark compensation amount. After review of this justification, the Committee, if required, may ask that representatives from the Board of Directors which approved the total compensation that exceeded the benchmark compensation amount appear before the Committee to provide additional information on why the excess compensation must come from through AbilityOne Program-mandated Government contracts in the current fiscal year.

(4) In determining if the Board of Directors' justification for paying beyond the benchmark compensation amount is compelling, the Committee will consider:

(A) The size and complexity of the nonprofit agency's mission, as compared to other comparable nonprofit agencies.

(B) The mission area, geographic size, and financial condition of the nonprofit agency.

(C) The technical and professional qualifications required for positions in the nonprofit agency.

(D) Compensation packages paid at comparable nonprofit agencies or other nonprofit agencies or commercial businesses;

(E) The extent to which the nonprofit agency's executive compensation packages exceed the Committee's benchmark quantity;

(F) If the board of directors of the nonprofit agency, in approving a specific compensation package, made reasonable attempts to determine whether the compensation was excessive.

(G) The extent to which the wages and benefits earned by the direct labor employees who are blind or severely disabled and employed on AbilityOne Government contracts are keeping pace with the wages and benefits being authorized and earned by other employees, and provide a summary of the results of the review to the members of the Board of Directors.

(5) If the Board of Directors' justification for paying beyond the benchmark compensation amount is not determined by the Committee to be compelling, the Committee may request

that the Board consider reducing the compensation or submit further justification for review. If the Board of Directors determines that the compensation should not be changed, or if any subsequent justification is deemed by the Committee to be not compelling, the Committee will pursue the matter in accordance with §51-4.5. If the Committee considers the amount of executive compensation to be excessive, it may refer the matter to the Internal Revenue Service (IRS) for possible independent action under their statutes and regulations.

(6) A participating nonprofit agency shall submit two completed copies of the Annual certification form (Committee Form 401 or 402 as appropriate).

(7) State laws and local ordinances concerning accountability standards that regulate publicly operated affiliated nonprofit agency equivalents take precedence over the requirements listed in § 51-4.2 (e).

(f) The certification standards set forth in Form 401 and 402 can also be satisfied by the participating nonprofit agency by adopting a National "certification" system that can be shown to incorporate the accountability standards as set forth in this section. The Committee may publish a list of National, certification programs that comply with the

intent of the accountability standards as set forth by § 51-4.2. Compliance with a National Certification System does not eliminate the requirement for the nonprofit agency to complete the annual certification form (Committee Form 401 or 402) and to provide the completed form to the Committee by December 1 of each year, but the National Certification should be attached to Committee Form 401 or 402.

14. Part 51-4 is amended by adding paragraphs § 51-4.3, (e), (f), and (g) to read as follows:

§ 51-4.3 Maintaining qualifications.

(e) A nonprofit agency must certify that the accountability standards set forth in §51-4.2 have been met during the previous fiscal year by completing the annual certification form (Committee Form 403 or 404) and providing the completed form to the Committee by December 1 of each year.

The certification standards set forth in § 51-4.2 can also be satisfied by the designated central adopting a National "certification" system that can be shown to incorporate the accountability standards in § 51-4.2. The Committee may publish a list of National, certification programs that comply with the intent of the accountability standards as set forth by § 51-4.2. Compliance with a National

Certification System does not eliminate the requirement for the central nonprofit agency to complete the annual certification form (Committee Form 403 and 404) and to provide the completed form to the Committee by December 1 of each year, but the National Certification should be attached to Committee Form.

(f) The information collection requirements and the recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511). The information collection requirements have been assigned the following OMB control numbers 3037-0001 and 3037-0002. The information collection requirements set forth in this section for nonprofit agencies are included on Committee Forms 403 and 404, which have been approved by the Office of Management and Budget (OMB).

(g) Nonprofit agencies already qualified to participate in the AbilityOne Program at the time of the effective day of this regulation have one fiscal year from the regulation effective date to certify their compliance.

15. Section 51-4.5 is amended by revising paragraphs (a) and (b) to read as follows:

§ 51-4.5 Violations by nonprofit agencies.

(a) Any alleged violation(s) of these regulations by a affiliated nonprofit agency will be reported to the Committee's Executive Director, who shall investigate the alleged violation. In conducting such investigation, the Executive Director shall notify the Board of Directors of the nonprofit agency and afford it an opportunity to submit information it considers relevant to the matter. The Committee's Executive Director shall report his/her findings, conclusions and recommendations to the Committee, in writing. In reviewing the matter, the Committee may request the submission of additional information. The Committee will afford the nonprofit agency an opportunity to respond to the Executive Director's report and to address the Committee on the matter. If the Committee concludes that a nonprofit agency is in violation of these regulations, it will so notify the nonprofit agency in writing. This notification will include the corrective action deemed necessary by the Committee to bring the nonprofit agency into compliance with these regulations.

(b) Until the matter is resolved by the Committee, the Committee has the discretion to suspend the nonprofit agency's authority to be allocated new AbilityOne mandated Government contracts. If a nonprofit agency fails to correct its violations of these regulations, the Committee, may indefinitely suspend or terminate the nonprofit agency's authority to be allocated new AbilityOne projects may transfer the nonprofit agency's AbilityOne contracts to another nonprofit agency, or may terminate the nonprofit agency's eligibility to participate in the AbilityOne Program.

Dated: _____

Signed: _____

Leon A. Wilson, Jr.

Executive Director, Committee for Purchase From People Who
Are Blind or Severely Disabled