

POLICY PRIORITY: ABILITYONE MODERNIZATION

The AbilityOne Program uses the purchasing power of the federal government to increase employment of people who are blind or have significant disabilities. Initiated by the Wagner-O'Day Act in 1938 and expanded in 1971 with the Javits-Wagner-O'Day (JWOD) Act, the AbilityOne Program directs federal agencies to buy products and services from participating, community-based nonprofit agencies (NPAs) nationwide who are dedicated to training and employing individuals who are blind or have significant disabilities. Through the AbilityOne Program, people who are blind or have significant disabilities experience meaningful employment and enjoy full participation in their community.

While the JWOD Act has not been updated in over 50 years, the AbilityOne Program and its participating NPAs have evolved along with modern disability employment policies and continue to provide meaningful, relevant, and competitive employment opportunities for people who are blind or have significant disabilities. Stakeholders agree, it's time for the JWOD Act and AbilityOne Program regulations to modernize.

Peckham is a long-time participant in and proponent of the AbilityOne Program. As one of the largest NPAs in the nation, providing both products and services to our federal customers, we are uniquely positioned to provide insight and recommendations on the AbilityOne Program modernization process. Our focus is for the AbilityOne Program to modernize in ways that continue the mission of increasing meaningful competitive employment for people who are blind or have significant disabilities.

RATIO RECOMMENDATIONS

The AbilityOne Program ratio focuses on the direct labor hours performed on federal contracts. Currently, the JWOD Act requires that NPAs maintain an overall ratio of **75% of direct labor hours** be performed by people who are blind or have significant disabilities. This was intended to maximize employment opportunities for people who are blind or have significant disabilities.

There are concerns with the current ratio, for number of reasons, both perceived and real:

- A 75% direct labor ratio makes it more difficult for people both with and without disabilities to work together
- A ratio that only includes direct labor limits the ability for individuals to move to higher level supervisory positions
- A 75% ratio limits diversity in the workforce
- An overall agency ratio limits the NPAs ability to diversify employment and training opportunities through partnership within the commercial sector

In order to create a ratio that both meets the AbilityOne Program's mission and encourages integrated and inclusive workplaces, **Peckham recommends the following updates to the AbilityOne Program ratio:**

- Reduce the ratio to a minimum of 51%
- Do not include a maximum or "cap" on the ratio
- Apply the ratio only to AbilityOne Program contracts
- Include both direct and indirect (supervisory and non-supervisory) labor positions
- Of the 51%, a minimum of 25% must be individuals with the most significant disabilities ("targeted disabilities" as defined in sf256)
- As part of the annual AbilityOne Program reps and certs, every agency must file an EEO report. For any disability category over 50%, the NPA must submit a plan demonstrating their efforts to achieve greater disability diversity.

A 51% ratio will maintain the integrity of the AbilityOne Program's mission to increase and expand employment for people who are blind or have significant disabilities. 51% would have validity within the context of all federal procurement set-asides (small business, etc). Some have suggested lowering the direct labor hours ratio below 51%. This would weaken the impact of the AbilityOne Program to both employ and, more broadly, champion the employment of people who are blind or who have significant disabilities. It also decreases the impact of the AbilityOne Program, making it less attractive to federal contracting officers who have multiple competing interests when making procurement decisions. A lower ratio calls into question the value of the set-aside and if this procurement vehicle is worth using. A lower ratio must also take into consideration that too low a ratio could endanger the charitable mission status of NPAs.

We vehemently oppose any maximum or cap on the hiring of people with significant disabilities. Not only is this in opposition to multiple federal civil rights laws (ADA, EEOC), it is contrary to the purpose and mission of the AbilityOne Program.

The requirement that 25% of individuals be those with the most significant disabilities allows us to continue a priority to serve individuals most at risk of losing employment through modernization. We would define "most significant disabilities" as those listed as "targeted disabilities" on sf256, the U.S Office of Personnel Management's "Self-Disclosure of Disability." This allows the AbilityOne Program to maintain alignment with the federal government's own employment priorities.

Including a requirement to achieve disability diversity provides an avenue for the AbilityOne Program to promote inclusive and integrated work settings. Some critics call NPAs segregated or isolating, arguments which are primarily directed at employment opportunities which primarily or exclusively employ people who have cognitive or intellectual disabilities. It is not intended that a lack of diversity would lead to the loss of a contract, but that NPAs should show plans to achieve greater disability

DEFINITION OF SIGNIFICANT DISABILITY

The JWOD Act currently includes the following **definition of significant disability** (formerly called "other severely disabled"):

"The term "other severely disabled" means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment."

There are two major concerns with this definition that should be addressed through modernization:

The current definition implies that a person with a disability is not capable of competitive integrated employment, which is at odds with modern disability employment practices

The current definition ties the disability to an individual's employment history. The inclusion of employment history in the definition is not also mirrored in the definition of individuals who are blind.

PECKHAM IS PROPOSING TWO OPTIONS TO UPDATE THE DEFINITION OF SIGNIFICANT DISABILITY.

OPTION ONE:

Use the existing definitions in the Office of Personnel Management (OPM) SF 256 "Self-Identification of Disability." SF 256 is based on a comprehensive list maintained by OPM and updated by the Secretary, and it aligns with Section 501 goals for direct hiring by the federal government. Based on our ratio recommendations as described above, the definition of "most significant disabilities" would align with SF 256's category of "targeted disabilities or serious health conditions," and the definition of "significant disabilities" would align with SF 256's category of "other disabilities or serious health conditions." Individuals would still have to provide documentation of the disability in order to qualify.

OPTION TWO:

Adapt the existing definition of disability from the Rehabilitation Act:

Individuals with significant disabilities:

- Individuals with a severe physical or mental impairment that seriously limits two of the seven functional capacities in terms of an employment outcome and
- Who, in order to maintain employment, requires ongoing supports or services beyond what is required under the the Americans with Disabilities Act

Option 1 is preferred, as it addresses both concerns with the current definition of significant disability. Option 2 will modernize the definition and eliminate the need to define a person as not capable of employment, but it does still tie the definition to a person's employment history. Our preference is Option 1, but we know that many stakeholders would prefer Option 2.

In either option, qualifying employees should be able to use existing documentation from other services such as SSI, SSDI, state VR, or the VA to provide proof of disability. However, employees should NOT be limited to those other services given the extremely long wait lists and barriers to receiving these services.

Finally, regardless of which option we use, no component of this definition should include any assumption or indication that the individuals are not capable of employment of any kind.

CAREER PATHWAYS

Peckham believes that it is the obligation of every good employer to support employee growth and advancement, and that this is even more important for individuals with disabilities for whom sustained and meaningful employment has been difficult if not impossible to achieve. People with disabilities are significantly underrepresented in the workforce, and those that are working are often relegated to entry-level jobs earning minimum wages with no opportunities for advancement. We firmly believe that the AbilityOne Program should provide opportunities and supports for people to not just find a job, but to find a career that leads to economic stability.

The U.S. Department of Health and Human Services identifies economic stability as one of the primary social determinants of health. In the United States, 1 in 10 people live in poverty, and many people can't afford things like healthy foods, health care, and housing. People with steady employment are less likely to live in poverty and more likely to be healthy, but many people have trouble finding and keeping a job. People with disabilities may be especially limited in their ability to work. In addition, many people with steady work still don't earn enough to afford the things they need to stay healthy.

Peckham recommends that **AbilityOne Program modernization include requirements for NPAs to advance career pathways** as follows:

- Document and market opportunities for advancement both within AbilityOne contracts and within the NPAs
- Provide individualized support to develop career plans and goals for every AbilityOne employee, leading to advancement within the AbilityOne Program, within the NPA in an indirect or supervisory role, or to other employment within the broader community, in line with each individual's interests and career aspirations
- Provide opportunities for training to advance along career pathways
- Provide support for AbilityOne employees to connect to external resources that can lead to career advancement

We do not support a mandate to place individuals outside of the AbilityOne Program, time limits on employment within the AbilityOne Program, or any other requirements that could mean that an individual has to leave AbilityOne employment if that is inconsistent with his/her/their career goals.

COMPETITIVE INTEGRATED EMPLOYMENT

The Workforce Innovation and Opportunity Act (WIOA) of 2014 included an updated definition of competitive integrated employment (CIE) for the Rehabilitation Act. In January 2017, the U.S. Department of Education's Rehabilitation Services Administration (RSA) issued a Frequently Asked Questions (FAQs) document regarding the definition of competitive integrated employment (CIE) and if an AbilityOne job could count as CIE for purposes of the state Vocational Rehabilitation (VR) agencies. RSA's guidance claimed that employment at a community rehabilitation program (CPR), or employment through the AbilityOne Program, does not count as competitive integrated employment. This was an overreach and misinterpretation of the WIOA statute and was not in line with Congressional intent. In 2021, RSA updated its guidance, reiterating this misinterpretation of the definition of CIE and more clearly stating that AbilityOne Program employment does not count as CIE.

This overreach has been causing immediate and real harm to people with disabilities and their employment outcomes since the initial 2017 FAQs. Individuals in 22 states, including Michigan, must choose between the publicly funded services designed to help people with disabilities find employment, or employment in the AbilityOne Program. This puts people with disabilities, who are severely underrepresented in the labor market, in the position to have to choose between needed benefits, such as training or transportation, or an AbilityOne job.

Peckham is proposing that **AbilityOne Program modernization include legislative language that recognizes the AbilityOne Program as competitive integrated employment** and requires RSA and state VR agencies to review AbilityOne jobs on a case-by-case basis against the statutory criteria for CIE.

COMPETITION AND PRICING

The Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity, known as the "898 Panel," recommended that the AbilityOne Commission establish business rules for competition and assignment of work among AbilityOne Program NPAs. This recommendation targets new work to the program as well as introducing recompetition among NPAs for work already on the Procurement List.

We understand the Federal customer's interest in more transparency and involvement in the NPA recommendation process. It is important that any recompetition process support the mission of the AbilityOne Program to provide employment for people who are blind or have significant disabilities, and therefore not to disrupt or cause negative employment consequences for any employees in AbilityOne direct labor positions.

Peckham is recommending that **competition be limited to AbilityOne services contracts and not include AbilityOne products contracts**. In addition, we are recommending that **competition be limited to AbilityOne services contracts where there would be no job loss for current direct labor employees (i.e., where employees can be rebadged) and where the employees' work location would remain the same**.