

Revised Draft AbilityOne® Recommendations and Accompanying Rationale

1. *Congress should amend the Javits-Wagner-O'Day Act (JWOD) to fully align the Act with modern Federal disability law and policy goals, including the Americans with Disabilities Act, the Supreme Court's *Olmstead* decision, and the Workforce Innovation and Opportunity Act.*
2. *Congress should amend the JWOD Act to include provisions that competitive integrated employment be a stated goal of participation in the AbilityOne® Program. These provisions should:*
 - a. Ensure that all AbilityOne® work is accomplished in competitive integrated settings.
 - b. Eliminate the use of the Fair Labor Standards Act (FLSA) Section 14(c) certificates through a gradual phase-out for all contractors providing products or services to Federal customers under the AbilityOne® Program in order to insure that all employees receive at least the greater of the federal minimum wage, the state minimum wage or the prevailing wage.
3. *Congress should amend the JWOD Act to establish new criteria for who is eligible to work on AbilityOne® contracts that reflect the following principles:*
 - a. All individuals with disabilities are presumed employable. Participating in AbilityOne® should not be predicated on the belief that employment is not possible for certain individuals except through congregate work conditions and “set aside” federal contracts. Thus, Congress should eliminate the requirement that a person eligible for AbilityOne® must have a disability that “prevents the individual from currently engaging in normal competitive employment” as this is inconsistent with the principle of presumed employability.
 - b. Eligibility for AbilityOne®, that is, the documentation of a significant disability, should be determined independently and not by the Qualified Non-profit Agencies (NPAs) who compete for the federal contracts. Rather, eligibility should be established through an

independent determination, which could include, for example: receipt of public disability benefits that require the identification of a significant disability such as SSI/SSDI; through receipt of supported employment services through a State Vocational Rehabilitation (VR) or Employment Network (EN), Intellectual/Developmental Disabilities (I/DD), or Mental Health (MH) agency; and/or through designation by the Veterans Administration of a significant disability. A working group, per recommendation # 6, should evaluate these and other eligibility criteria.

- c. Competitive integrated employment is the goal for all AbilityOne® participants. Consistent with the goals of the ADA, Supreme Court's *Olmstead* decision and the WIOA, contract work should be accomplished in fully integrated work settings where individuals work, on an individual basis, alongside of their non-disabled peers, and where they earn the same wages and benefits as their non-disabled peers while accomplishing the same or similar job.
- d. Congress should consider decreasing the current requirement that 75% of the contract hours under AbilityOne® be accomplished by individuals who are blind or have significant disabilities in order to avoid congregation of people with disabilities in the workplace, and to be consistent with competitive integrated employment goals. Any changes to this requirement should be accomplished in a well-planned manner to mitigate unintended harm to current AbilityOne® workers where career interests and skills are assessed, additional training is provided, opportunities are provided for some employees to experience competitive integrated employment prior to placement, and employees are updated on their employment options and support services available.
- e. Consistent with the consideration to decrease the 75% contract hour requirement, Congress should authorize the AbilityOne® Commission to introduce pilot projects that substantially reduce the contract hour percentage. The pilots should enable the awarding of AbilityOne®

contracts from federal customers to private industries *** [Hold for Fn. On CN SEIU model] who would be allowed to meet the minimum work hour requirements with competitive integrated employment opportunities elsewhere in their business outside the contract. The process and the results of the pilots*** [Hold for OH footnote] should be independently evaluated to inform future decisions about the contract hour requirement.

4. *Congress should amend the JWOD Act to revise the process for procurement selection so that:*

- a. The Inspector General staff, to be located at AbilityOne® in June 2016, provides oversight and is involved in the development of a new selection criteria and process.
- b. The selection process in determining which NPA will be identified to recommend to the Commission for consideration of a contract proposal is outside of the purview of the Central Nonprofit Agencies (CNAs), National Industries for the Blind, and Source America.
- c. The selection process provides for at least two qualified vendors to be referred to the AbilityOne® Commission for consideration for each contract in order to enable greater opportunity, transparency and enhance competition for contracts.
- d. The composition of the AbilityOne® Commission is reflective of more diverse constituent representation, which should include a larger number of individuals with disabilities that hold expertise in disability employment policy and workforce development of people who are blind or have significant disabilities.
- e. The role and function of the Commission and the CNAs are reconsidered to reflect revisions to the procurement selection processes.
- f. Expand opportunities for vendors that meet the eligibility requirements to include both nonprofit organizations not associated with NIB or SourceAmerica and for-profit companies. An

independent study, per recommendation # 6, should evaluate this and other potential vendor selection criteria, including vendor preferences that might be given to small businesses owned by individuals with disabilities.

- g. Qualified and eligible vendors should be awarded additional points in the contract selection process based on the documented number of people with significant disabilities that are specifically AbilityOne employees where the vendors have assisted in their transition into competitive integrated employment.
5. *Congress should direct and facilitate, through any necessary funding, for Ability One to conduct research identifying resources of available data at the State and Federal level establishing Ability One's compliance to established thresholds for the hiring of individuals who are blind or significantly disabled.* Once identified, Congress should direct the state and/or local entities possessing this data to share this data with Ability One for these purposes. Where necessary, these agencies should amend or modify their internal rules for data sharing for this specific purpose, so long as the data transfer is compliant with established state and/ or federal disclosure laws.
6. *Congress should fund and charge the Department of Labor to contract an independent third party evaluation tasked with studying the implementation of the recommendation as submitted herein, and submit a report that identifies and recommends additional policies that may be required in order to implement the changes necessary to reform the JWOD Act as indicated above. This evaluation should be completed within a pre-set time frame and should solicit the input from various AbilityOne® stakeholders and knowledgeable experts such as:*
 - a. Individuals who are current or potential employees under the AbilityOne® Program
 - b. Advocates for these individuals
 - c. Subject matter experts on competitive integrated employment
 - d. Government and private sector economists

- e. Representatives from relevant federal agencies
- f. Current or potential AbilityOne® vendors
- g. Representatives with in-depth knowledge of the AbilityOne® Program
- h. Policy experts on ADA, Olmstead and WIOA