



## U.S. ABILITYONE COMMISSION

Policy 51.211

Effective Date: 01-01-2024

### TITLE: THE ABILITYONE JWOD ACT OMBUDSMAN PROGRAM

#### 1. PURPOSE.

To create a uniform process for resolving certain disputes referred to the U.S. AbilityOne Commission, hearing appeals of other Commission or central nonprofit agency decisions, and to enhance the Commission's oversight of the Javits-Wagner-O'Day (JWOD) Act by establishing a JWOD Act Ombudsman Program (Ombudsman Program) and JWOD Act Ombudsman (Ombudsman) within the Office of General Counsel (OGC).

#### 2. APPLICABILITY.

This policy applies generally to contracting activities (CAs), the central nonprofit agencies (CNAs), and participating nonprofit agencies (NPAs). The scope of the Ombudsman authority is limited to matters related to Commission regulations 41 C.F.R. § 51-3.2(b) (Responsibilities under the AbilityOne Program), 41 C.F.R. § 51-3.4 (Distribution of Orders), 41 C.F.R. § 51-5.8 (Violations by entities of the Government), disputes covered by 41 C.F.R. § 51-6.15 (Disputes), and appeals from Authorized Distributors under Commission Policy 51.540.

#### 3. AUTHORITY.

- (a) The Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. §§ 8501-8506.
- (b) Title 41 Code of Federal Regulations (C.F.R.), Chapter 51

**4. DEFINITIONS AND ACRONYMS.** Definitions, abbreviations, and acronyms frequently used throughout this policy system are provided in Commission Policy 51.102, *Definitions*.

Term	Definition
Appeal	The process in which a matter is reviewed by a higher authority, where one party requests a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarifying an agency position.
Reconsideration	If a party does not agree with a final agency decision, it can ask for a reconsideration of that decision. A request for reconsideration is only granted if the requestor can show that the decision involved a clearly erroneous interpretation of material fact or regulation, or if it will have a substantial impact on the policies, practices, or operations of the agency.
JWOD Act Violation(s)	Any instance when a Federal agency fails to purchase a product or service on the Procurement List (PL), as required by statute and Commission regulations.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

**5. RESPONSIBILITIES.**

(a) The General Counsel (GC):

- i. Oversees the establishment and development of an agency-level Ombudsman Program.
- ii. Oversees the development of the necessary procedures for reporting and inquiring into alleged JWOD Act violations. (41 C.F.R. § 51-5.8).
- iii. Oversees the development of a dispute resolution process to address disagreements between Federal agencies and NPAs for certain matters related to the application of Parts 51-5 and 51-6 (41 C.F.R. § 51-6.15).
- iv. Oversees the development of an appellate process to address disagreements between CNAs and NPAs related to the CNA recommendation process (41 C.F.R. § 51-3.2(b)), distribution of orders (41 C.F.R. § 51-3.4), and Authorized Distributor de-authorizations in accordance with Commission Policy 51.540 and associated procedures.
- v. Appoints an individual in writing to serve as the agency Ombudsman, whether full-time, part-time as an additional duty, or by *ad hoc* appointment, who meets or exceeds the minimum qualifications described in § 6(a) of this Policy.

(b) The Ombudsman:

- i. Provides day-to-day oversight and management of the Ombudsman Program.
- ii. Conducts appropriate factual inquiries into alleged JWOD Act violations and provides an appropriate recommendation and opinion for disposition.
- iii. As approved by the GC, administers a mediation process to resolve the types of disputes described in this policy and provides a written report of all findings and recommendations for each mediation.
- iv. Adjudicates appropriate appeals arising from the CNA recommendation process, a competitive distribution as described at 41 C.F.R. § 51-3.4 and Commission policy and appeals from Authorized Distributors.
- v. Coordinates fact-finding efforts into alleged JWOD Act violations with the Office of Inspector General (OIG), as appropriate.
- vi. Forward complaints that are not within the purview of the Ombudsman's responsibilities to the appropriate staff Directorate, as appropriate.
- vii. Provides regular reports to the GC and Executive Director on applicable investigative trends and recommendations for possible changes in policy or regulations.

(c) The CNA:

- i. Reports all suspected JWOD Act violations to the Ombudsman.
- ii. Provides timely support, as necessary, to the Ombudsman for all fact-finding inquiries into alleged JWOD Act violations and/or, in accordance with 41 C.F.R. 51-6.15, disputes arising under Part 51.5 and Part 51.6.
- iii. Provides timely support on all appeals related to the CNA recommendation process or competitive distributions.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

- (d) The Federal agency (procuring activity):
- i. Provides responsive information to the Ombudsman in support of all fact-finding inquiries related to alleged JWOD Act violations. For the purposes of 41 U.S.C. § 8502(h), and Commission Policy 51.202 § 6(b)i.b., the Chairperson's approval of this policy serves as the Commission's request to an entity of the Federal Government to furnish official information necessary to carry out and administer the JWOD Act, including the Commission's regulatory authority to resolve disputes and inquire into alleged JWOD Act violations.
  - ii. Advises the Ombudsman, in writing and as soon as practicable, whenever a dispute exists over a matter covered in this policy.
- (e) The NPA:
- i. Advises the Commission, in writing, that an alleged JWOD Act violation has occurred as described at section 6(b) of this policy.
  - ii. Advises the Commission, in writing, that a dispute exists between an NPA, and a Federal agency as described at section 6(c) of this policy.
  - iii. Submits requested information, in a timely manner, describing in sufficient detail the nature of the dispute or alleged violation.
  - iv. Continues to provide the product or service in accordance with (IAW) contract's terms, and the Federal agency's delivery schedules.

## 6. POLICY

The JWOD Act authorizes the Commission to determine which products or services are suitable for procurement by the Federal Government and, after doing so, to include the item on the PL. The significance of the PL is two-fold. First, Federal agencies are not required to follow normal competitive procurement procedures when acquiring items on the PL. Instead, Federal entities are required to procure the PL-listed item from qualified NPAs. Second, once an item is placed on the PL, it serves as a steady stream of income for NPAs and a source of employment for tens of thousands of participating employees.

In most cases, when a Federal agency violates the JWOD Act, it has done so inadvertently. However, even when done inadvertently, employees who are blind or have significant disabilities can experience negative effects on their employment, and/or NPAs could incur unnecessary legal expenses to enforce compliance. The goal of this policy is to address this problem by establishing a programmatic framework to conduct appropriate factual inquiries and adjudicate alleged JWOD Act violations.

- (a) Ombudsman Qualifications and Reporting Requirements.
- i. Be a full-time Federal employee at the grade of GS-14 or higher.
  - ii. Have a 905 series job classification or sufficient education, background, and experience in conducting fact-finding inquiries and drafting agency-level recommendations and opinions on complex legal or other administrative matters, especially in Federal procurement law and application of the JWOD Act.
  - iii. Exhibit the appropriate temperament, experience, and professional judgement to mediate disputes in an equitable manner.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

- iv. Provide an annual report, no later than September 30 of each fiscal year, to the Executive Director and General Counsel with the following information:
  - a. The total number of all actions described in this policy.
  - b. The date of occurrence and a detailed summary of all alleged and verifiable JWOD Act violations and, when necessary, a Federal agency's steps to rectify the violation(s).
  - c. A brief discussion of any trends and recommendations for policy or regulatory changes, if any.
  
- (b) JWOD Act Violations.
  - i. A fact-finding inquiry for all allegations of JWOD Act violations shall be completed within 30 days of referral unless an extension is requested and granted by the GC. The referral process is described in § 8 of this policy.
  - ii. The Ombudsman shall make a written determination within 60 days of referral unless additional time is requested, and the GC approves the request.
  - iii. The GC may only grant an extension of up to 30 days for fact-finding, and an extension of up to 60 days to complete the written determination.
  - iv. The Ombudsman's written determination shall serve as the Commission's opinion on the validity of a referred allegation and shall contain, at a minimum, the following information:
    - a. The specific allegation, the impacted PL product or service, and the name of the Federal agency alleged to have committed a violation.
    - b. A summary of the fact-finding inquiry and a determination as to whether the JWOD Act has likely been violated.
    - c. The supporting rationale, the recommended course of action for the Federal agency, and the recommended appropriate action(s) for the Commission.
    - d. Executive Director concurrence.
  - v. The Ombudsman opinion may not be appealed, but a Federal agency may request reconsideration within 30 days of receiving a final Commission opinion.
  
- (c) Dispute Resolution between NPAs and Federal agencies. This policy pertains to disputes between a nonprofit agency and a procuring activity arising out of matters covered by Commission regulations parts 51-5 and 51-6.
  - i. A dispute may only be raised by an NPA, CNA, or a Federal agency.
  - ii. The Ombudsman shall resolve all disputes within 60 days of receipt of a written declaration from an NPA or a Federal agency unless additional time is requested and approved by the GC.
  - iii. The GC may only grant an extension of up to 30 additional days to resolve a dispute.
  - iv. The Ombudsman's written dispute resolution decision (dispute decision) shall serve as the Commission's opinion to the dispute and shall contain, at a minimum, the following information:
    - a. The basis for the dispute, the impacted PL product or service, and the parties involved in the dispute.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

- b. A summary of the facts the Ombudsman relied on to arrive at his or her decision.
  - c. A recommended course of action for the parties.
  - d. GC concurrence or Assistant GC concurrence, if delegated.
  - v. The Ombudsman’s dispute decision is not subject to appeal, but the unsuccessful party may request reconsideration within 30 days of receiving a final decision.
- (d) Appellate Adjudication of CNA Recommendation. This policy is limited to those CNA recommendations covered under 41 C.F.R. § 51-3.2.
- i. The Ombudsman shall resolve all appeals within 30 days of receipt of a written appeal request from an NPA unless additional time is requested and approved by the GC.
  - ii. The GC may only grant an extension of up to 30 additional days to resolve an appeal related to a CNA recommendation.
  - iii. The Ombudsman’s written “appellate decision” shall serve as the Commission’s opinion to the appeal and shall contain, at a minimum, the requirements described at Commission Policy 51.301.
  - iv. The Ombudsman’s appellate decision is final, but the unsuccessful party may request reconsideration within 30 days of receiving a final decision.
- (e) Appellate Adjudication of CNA Order Distribution. This policy is limited to those CNA distributions (allocations) covered under 41 C.F.R. § 51-3.4 and the relevant Commission Policy.
- i. The Ombudsman shall resolve all appeals within 30 days of receipt of a written appeal request from an NPA unless additional time is requested and approved by the GC.
  - ii. The GC may only grant an extension of up to 30 additional days to resolve an appeal related to a CNA recommendation.
  - iii. The Ombudsman’s written appellate decision shall serve as the Commission’s opinion to the appeal and shall contain, at a minimum, the requirements described at Commission regulation 41 C.F.R. § 51-3.4 and Commission policy.
  - iv. The Ombudsman’s appellate decision is final, but the unsuccessful party may request reconsideration within 10 days of receiving a final decision.
- (f) Other matters. Depending on the circumstances, the GC, in coordination with the Executive Director, may refer other matters to the Ombudsman, as appropriate.

## 7. PROCEDURES

- (a) Request and Referral. A referral **request** must be sent to the OGC at [ombudsman@abilityone.gov](mailto:ombudsman@abilityone.gov). (A request is proper if it complies with the requirements described below). If OGC deems the request is proper, it will be forwarded to the Ombudsman as a **referral**. All referrals must be acted upon in the timeframes described in § 6. Only actions described in this policy may be referred to the Ombudsman unless such actions have been specifically delegated to the Ombudsman

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

through another Commission policy. For instance, regulatory violations described under 41 C.F.R. § 51-4.5 are not generally covered by the Ombudsman. Instead, most actions fall under the purview of the Director of Compliance as described in Commission Policy 51.407. However, that same policy provides the Ombudsman with the specific duty to serve as the agency deciding official for all NPA removal actions.

A referral request must include:

- i. JWOD Act Violations.
  - a. The name of the person or entity alleging the violation. The Ombudsman does not act on anonymous complaints but will keep the name of the reporting person or entity confidential, if requested, and to the extent permitted by applicable statute, regulation, or policy.
  - b. The name of the Federal agency involved and a brief description of the alleged violation. The description shall include, at a minimum, the PL service or product impacted by the alleged violation and the specific procuring activity responsible for procuring the product or service.
  - c. The approximate date of the violation(s), a statement of the efforts to resolve the alleged violation including copies of relevant communications, and other relevant information that may help the Ombudsman resolve the matter.
  
- ii. Disputes.
  - a. The name of the entity declaring the dispute.
  - b. The specific grounds for the dispute. A dispute under this authority must be tied to questions concerning:
    1. An NPA's capability to produce or perform a PL requirement. Disputes will not address issues related to contract interpretation, a request for an equitable adjustment, routine contract performance issues, or any other matter normally covered by the Contract Disputes Act, 41 U.S.C. §§ 7101 *et seq.*
    2. Except for instances in which the Commission has issued a Purchase Exception for a product or service, whether an NPA is the mandatory source for a product or service.
    3. The Commission's scoping limitation (or geographic coverage area) of a new or existing PL requirement.
    4. Priority disputes between the Federal Prison Industries (FPI), CNAs and/or NPAs.
    5. Pricing disputes that cannot be resolved between the CNAs as described in Commission Policy 51.542 § 6(g)iii. Price impasses will remain under the purview of the Director of Business Operations in accordance with Commission Policy 51.640.
  - c. The declaring entity must provide the Ombudsman with sufficient information to understand the legal basis giving rise to the dispute, the relevant material facts, and the specific relief sought.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

- iii. Appeals. Requests for appeals must follow the process described in Commission policies and procedures related to CNA recommendations and competitive distributions. Appeals requests must be within the limits of the Commission's appellate authority in the relevant policy or procedure.
- (b) Actions Upon Referral. Once a request for referral is received by the OGC, the requesting party will receive an acknowledgment via email within 24 hours. If acknowledgment is not received, please send a follow-up request, or contact OGC directly. All approved requests will be forwarded to the Ombudsman as a **referral**. Upon referral, the following shall occur:
- i. JWOD Act Violations.
- a. The Federal agency alleged to have violated the JWOD Act (responsible contracting officer) must provide a written statement of fact to the Ombudsman within 10 business days of receiving notification of an alleged violation. The statement of fact shall contain the following information:
    1. A specific response to the allegation(s).
    2. Any defenses as to why the JWOD Act may not be applicable in this instance. *Please cite the legal authority relied upon to support any defenses.*
    3. If no defenses have been raised, the Federal agency must provide a proposed course of action to remediate the alleged violation.
  - b. If the Federal agency voluntarily agrees to remediate a JWOD Act violation after a referral request has been made, the Ombudsman will assist the parties with closing out the matter and memorializing the agreed upon course of action in writing within 10 business days of the date of resolution.
  - c. If the Federal agency disagrees that a JWOD Act violation has occurred, the Ombudsman will conduct additional fact-finding and provide a Commission opinion within the time limits and requirements described in § 6 of this policy.
- ii. Disputes. If there is no legal or factual basis supporting the dispute raised by the requesting party, the Ombudsman will provide a written response within 10 business days of receipt. If the Ombudsman believes there is a legal or factual basis supporting the dispute, the Ombudsman will provide a copy of the referral request to the named party in the dispute. Upon receipt of the referral request, the responding party must provide a response to each allegation within 10 business days of receipt. The respondent is not authorized to procure the product or service commercially while a dispute is ongoing unless it has received a Purchase Exception in accordance with the Commission's regulation at 41 C.F.R. 51-5.4 (or FAR 8.706(e)) or Commission Policy 51.530. After receipt of the responding party's position, the Ombudsman may take the following actions:
- a. Request additional information from the parties and conduct additional independent fact-finding as needed.
  - b. Offer the parties the opportunity to mediate the dispute before the Ombudsman with the goal of reaching a mutually agreeable resolution.
  - c. Provide a written opinion based on the positions of both parties, in accordance with the requirements described at § 6 of this policy.

**U.S. ABILITYONE COMMISSION**  
*The AbilityOne JWOD Act Ombudsman Program*

- iii. Appeals. Appeals will follow the process described in the appropriate Commission policies and procedures related to CNA recommendations and competitive distributions.
- (c) Resolution. All referral decisions must be documented by the Ombudsman within the time limits and requirements described in § 6 of this policy. Referrals resolved via Commission opinion or as a dispute resolution decision will be publicly available on the Commission website within 45 days after finalization. However, a referral resolved through mutual agreement between the parties will be codified in memorandum format by the Ombudsman and will not be publicly available on the Commission website.

**8. EXCEPTIONS**

Any request for exceptions to Part 5 (Responsibilities) and Part 6 (Policy), must be made in writing to the Executive Director. Any request for exceptions or amendments to Part 7 (Procedures) may be approved by the General Counsel. No further delegations are authorized.

**9. SUPERSESSION**

This Policy supersedes Commission Interim Policy 51.205.01, effective March 22, 2023.



**APPROVED:** DocuSigned by:  
*Jeff Koses*  
21BD80B9E8AC4A0... **Date:** 12/15/2023

**Jeffrey A. Koses**  
**Chairperson**

