



U.S. ABILITYONE COMMISSION

Office of the Chairperson
1401 S. Clark Street, Suite 715
Arlington, Virginia 22202-4149

April 1, 2020

MEMORANDUM

TO: QUALIFIED NONPROFIT AGENCIES IN THE ABILITYONE PROGRAM

FROM: Thomas Robinson, Chairperson 

SUBJECT: AbilityOne Flexibilities Related to the Coronavirus (COVID-19) Emergency and Recovery for the Duration of Fiscal Year 2020

In view of the special circumstances in the national interest presented by the novel coronavirus outbreak (COVID-19), and consistent with agency practice relating to emergency responses, I am expanding exceptions under Commission Policy 51.401, Direct Labor Ratio Requirements.

These exceptions are necessary in light of the unique circumstances posed by the Federal, state and local response to the COVID-19 emergency that may impact the requirements of the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§ 8501-8506) and regulations (41 C.F.R. Chapter 51) administered by the U.S. AbilityOne Commission (Commission). Due to the COVID-19 emergency response needs, many Federal agencies have stopped certain activities, and/or have increased demands for products or activities that directly impact nonprofit agency contract performance and direct labor hour (DLH) ratios.

I am invoking Commission Policy 51.401(b)(ii) to allow nonprofit agencies providing critical or essential products or services during the COVID-19 emergency or recovery period to obtain a **limited exception** from the statutory 75 percent DLH requirement of the JWOD Act.¹

Nonprofit agencies' DLH ratios may be impacted if they are providing critical or essential products or services required by the Government during the national emergency or recovery period. In addition, Federal agencies may award contracts to nonprofit agencies outside the sole source authorities of JWOD Act. If so, the Commission may not have the opportunity to address all situations impacting DLH ratios through its established procedures such as Phase-In Procedures, 51.401-01, or Surge Requirement Procedures, 51.401-02.

Accordingly, I am extending the flexibilities in the Commission's Phase-In Procedures and Surge Requirement Procedures to allow nonprofit agencies to notify the Commission if, due to or in support of the COVID-19 emergency response or recovery period, they will operate at a ratio below 75 percent, but not lower than 35 percent for the remainder of FY 2020, until September 30, 2020. Additionally, the Commission will extend these flexibilities for lower DLH ratios due to curtailed or eliminated products or services on existing contracts related to the COVID-19 emergency or recovery period.

¹ See 41 U.S.C. 8501(6)(c) and (7)(c)

To receive the limited exception to the 75 percent DLH ratio requirement, nonprofit agencies must send notification to the Commission through the Regulatory Assistance Department of their designated Central Nonprofit Agency (CNA) -- National Industries for the Blind (NIB) or SourceAmerica. Provide the CNA with the names, locations, and contract numbers for all AbilityOne or commercial contracts with the Federal Government (including all Department of Defense contracts), which are awarded or impacted by authorities exercised during the COVID-19 emergency or recovery period.

Each qualifying nonprofit agency will receive written confirmation that the exception is granted, and must then meet a DLH ratio of **not less than 35 percent** for the remainder of FY 2020. All nonprofit agencies are still required to track the hours of all direct labor worked, whether by individuals who are blind or have significant disabilities, or those who do not have qualifying disabilities. Quarterly and annual reporting requirements to the CNAs remain in place.

Nonprofit agencies requiring other relief from Commission regulations, policies or procedures, or that have special circumstances requiring a DLH ratio **below 35 percent** for a period of time, are directed to notify their CNA and to provide documentation of the impact of the COVID-19 emergency or recovery period on the nonprofit agency's DLH ratio in their quarterly reports and Annual Representations and Certifications. The Commission will consider these requests on a case-by-case basis.

The limited exception from Commission procedures is available from the date of this memorandum until September 30, 2020, subject to an extension should special circumstances in the national interest so require. This exemption pertains only to the areas previously described above and should not be interpreted as applicable to any other areas or regulations administered by the Commission.

Nonprofit agencies that temporarily close or cease operations due to the COVID-19 emergency should notify their designated CNA. The CNAs are tracking this information daily and are keeping the Commission and AbilityOne customers informed.

In response to nonprofit agencies' inquiries, the Commission is reaching out to the Social Security Administration, to request consideration of an exemption from or waiver of the Substantial Gainful Activity (SGA) limit for Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI), for employees of AbilityOne-qualified nonprofit agencies that are providing critical or essential products or services required by the Government during the national COVID-19 emergency or recovery period.

For more information about the definition of critical or essential products or services, you may refer to the memorandum issued to the Defense Industrial Base by Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment (USD (A&S)) on March 20, 2020, subject, ["Defense Industrial Base \(DIB\) Essential Critical Infrastructure Workforce."](#)

If you have any questions or seek additional clarification of the Commission's guidance regarding compliance-related issues, please contact Michael Mack, Director, Oversight and Compliance, at (703) 603-2112 or mmack@abilityone.gov.