Office of Inspector General

Committee for Purchase From People Who Are Blind or Severely Disabled (U.S. AbilityOne Commission)

November 12, 2020

MEMORANDUM

FOR: Jeffrey Koses
Chairperson
U.S. AbilityOne Commission

FROM: Thomas K. Lehrich
Inspector General

SUBJECT: Top Management and Performance Challenges Report

In accordance with the Reports Consolidation Act of 2000, the Office of Inspector General (OIG) reports on the most serious management and performance challenges facing the U.S. AbilityOne Commission for inclusion in the Commission's Performance and Accountability Report (PAR) for fiscal year 2020.

The Commission designates Central Nonprofit Agencies (CNAs) to facilitate the employment of people who are blind or have significant disabilities, and the dynamics of the CNAs in the program are changing and growing. Our reporting reflects on, and seeks to assist in, this challenging environment. OIG talked with the Commissioners to understand their perspective on the challenge areas, and OIG requested feedback from the staff regarding the challenges. Chairperson Koses, together with the Commission members made tremendous strides in creating three Commissioner-led subcommittees on enterprise risk management and auditing, performance management, and competition, which will introduce innovation and advance transparency. In this year's Top Management and Performance Challenges Report we include as the most pressing challenges: 1) allocation of roles, resources responsibilities, and authorities, 2) implementation of 898 panel recommendations, 3) Anti-deficiency Act violations, 4) transparency, 5) erosion of statutory program authority, 6) implementation of cooperative agreements, 7) a lack of risk management, and 8) needed enhancements to program compliance.

We thank you for your support and we look forward to working with the Commission and the AbilityOne stakeholders, as the OIG continues its oversight mission.

Enclosure: Top Management and Performance Challenges Report

Top Management and Performance Challenges Report

Introduction

In accordance with the Reports Consolidation Act of 2000 (P.L. 106-531), the Office of Inspector General (OIG) reports on the most significant management and performance challenges facing the U.S. AbilityOne Commission (Commission), for inclusion in the Commission's Performance and Accountability Report (PAR) for fiscal year (FY) 2020.

The challenge areas identified are connected to the Commission's mission to provide employment and training opportunities in the manufacture and delivery of products and services to the Federal Government for people who are blind or have significant disabilities.

The OIG identified the top management and performance challenges (TMPC) for fiscal year (FY) 2020 as:

- Allocation of Roles, Resources, Authorities, and Responsibilities Among the Commission Senior Staff;
- Successful Implementation of the Section 898 Panel Recommendations;
- Addressing Anti-deficiency Violations and Strengthening Financial Management;
- Higher Level of Transparency and Communication Needed to Enhance Program Confidence;
- Erosion of Statutory Program Authority;
- Implementation of Cooperative Agreements given Central Nonprofit Agencies (CNA) Growth;
- Establishing an Enterprise-wide Risk Management Framework; and
- Enhancement of Program Compliance.

The topics discussed in the report encompass multiple challenge areas and attest to the complex nature of the AbilityOne Program. In last year's report, we introduced the allocation of roles, authorities, and responsibilities among the Commission senior staff as a "watch-list" item. However, due to the continued challenges in the allocation of resources and responsibilities by senior staff, we are including this topic as a "reportable challenge" in this year's report. The allocation of resources and responsibilities among the Commission senior staff creates challenges in achieving positive business outcomes such as the ability to timely implement policies and initiatives, effectively execute changes in the programs, and support program growth.

This report is based on OIG, and U.S. Government Accountability Office (GAO) audits and reviews, as well as our knowledge of the AbilityOne programs and operations. OIG reached out to Commission leadership to gain their perspective on the challenge areas and considered the accomplishments the staff reported as of September 30, 2020. OIG also received input on the challenges to the program from Congress, CNAs, and Non-Profit Agencies.

Background

Enacted in 1938, the Wagner-O'Day Act established the Committee on Purchases of Blind-Made Products to provide employment opportunities for the blind. Legislation sponsored by Senator Jacob K. Javits was signed in 1971, amending and expanding the Wagner-O'Day Act to include persons with other severe disabilities. The Act, as amended, became known as the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. §§8501–8506), and the program's name became the JWOD Program. The 1971 amendments also established the federal agency as the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) to reflect the expanded capabilities of the JWOD Program. In 2006, the Committee changed the program's name from the JWOD Program to the AbilityOne Program. The Committee is now known as the U.S. AbilityOne Commission (Commission).

By statute, the Commission is composed of fifteen Presidential appointees: eleven members representing federal agencies and four members serving as private citizens from the blind and disabled community, bringing their expertise in the field of employment of people who are blind or have significant disabilities. In the composition of the Commission's fifteen Presidential appointees, there are nine vacancies: seven federal agencies and two private citizens. This amounts to more than half of the Commission membership being vacant (9 out of 15).

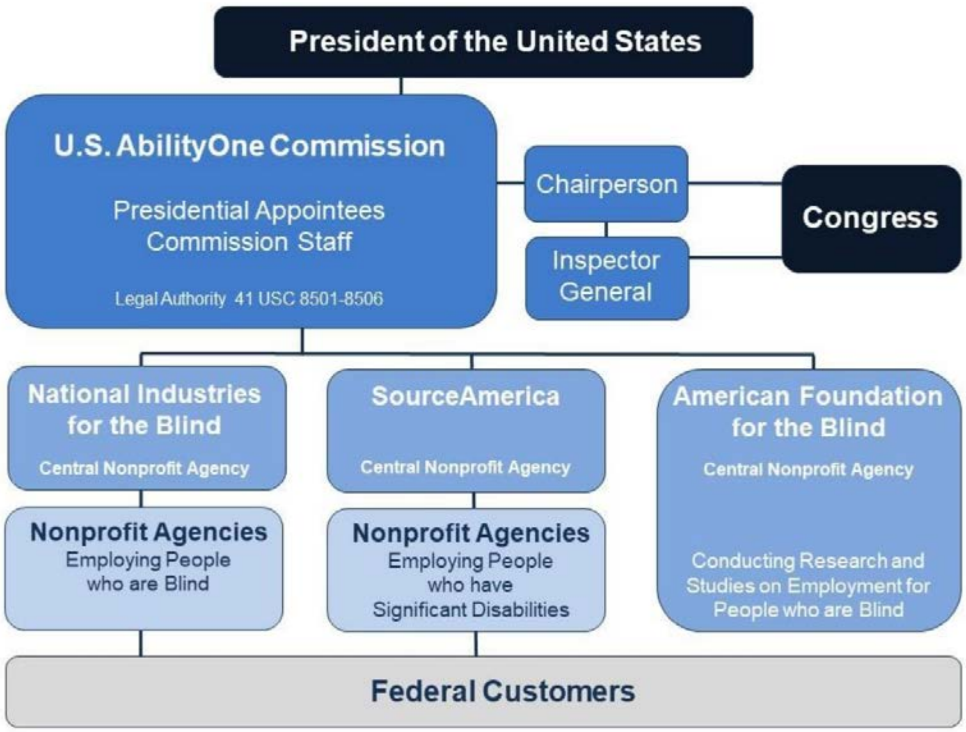
The Commission has about 32 full-time employees for the administration of the AbilityOne Program. The Program is a source of employment for approximately 45,000 people who are blind or have significant disabilities through contracts across all fifty states and U.S. territories by more than 500 nonprofit agencies with federal agencies. The Commission administers contracts for more than $4 billion annually in products and services to the federal government through the AbilityOne Program.

The Commission designates CNAs to facilitate the employment by NPAs of people who are blind or have significant disabilities. The Commission currently administers the AbilityOne Program with the assistance of two CNAs,[1] the National Industries for the Blind (NIB) (established in 1928) and SourceAmerica (established in 1974). On July 26, 2018, the Commission designated the American Foundation for the Blind (AFB) as a third CNA, with an initial phase of research and studies. Each CNA has its own Cooperative Agreement with the Commission, and that Agreement helps govern the relationship and performance of each CNA. AFB is not fully operating as a CNA as it doesn't have any NPAs or AbilityOne Program contracts.

The Commission is ultimately responsible for the administration of the $4 billion worth of contracts between the NPAs and the federal government. Stakeholders expect greater program integrity, efficiency, accountability, and transparency across its operations. The OIG will continue to report on management progress and to highlight the benefits of an open and transparent culture, ultimately leading to a more resilient AbilityOne Program.

[1] 41 CFR § 51-3.1.

Figure 1:
AbilityOne Program Organization



Management Challenge 1:
The Commission is challenged with allocation of roles, resources, authorities, and responsibilities among the Commission Senior Staff

Why This Is a Challenge

In last year's Top Management Challenges Report, we introduced an emerging challenge with organizational governance and placed it on a watch list as a potential, reportable challenge for the Commission. The management and allocation of scarce resources by the senior staff has not improved. The allocation of roles, responsibilities, and resources among the Commission senior staff creates challenges in achieving positive business outcomes such as the ability to timely implement policies and initiatives, effectively execute changes in the programs, and support program growth. In the U.S. AbilityOne Commission Audit of the U.S. AbilityOne Program Fee Report, dated December 20, 2019, the OIG performance audit made several recommendations. One of the recommendations stated that in order to effectively manage the Program fee, the Commission should complete a workforce analysis to determine Commission staffing requirements based on major mission activities and cross-cutting priority goals. Among the additional findings were that the management of the fee determination and implementation of the policies has produced poor outcomes.

In addition, the various business areas managed by the senior staff have poor allocation of resources. The Program Compliance Office, for instance, recently lost their Director of Compliance, as he left the Agency. The Compliance Office has an acting director filling the recent vacancy. As we reported in the compliance challenges section in this Report, the number of staff in the Compliance Office is lower than the level from several years ago and is constituted by two staff members at the Commission's HQ, in the DC area. A significant challenge for the Commission is the effective allocation of resources and responsibilities among the staff.

In September of this year, the Office of Government Ethics (OGE) issued a report[2] identifying numerous and serious deficiencies in the AbilityOne Commission's ethics program, including issues with financial disclosure review and certification, and lack of ethics training. The report highlights the Commission's challenges in allocating resources effectively to manage programs as well as risk. Ethics programs promote confidence in the decision making of government agencies, help avoid current and future conflicts of interest, and provide essential training to avoid violations of the ethics rules. The weaknesses identified by OGE in the AbilityOne Commission's ethics program represent a major obstacle to the effective, transparent, and accountable administration of the AbilityOne's Commission and programs. In its September 2020's Report, OGE made 10 recommendations to the Commission to address the weaknesses in its ethics program.

Management Challenge 2:
Successful implementation of the Section 898 Panel recommendations for increased accountability, oversight and integrity in the Program

Why This Is a Challenge

Section 898 of the National Defense Authorization Act for Fiscal Year 2017 established the 898 Panel with the goal of increased accountability, oversight, and integrity in the AbilityOne program. The Panel consists of representatives, including the Office of the Secretary of Defense (DoD) and its DoD Inspector General, the Chairperson for the Commission, and the Commission's Inspector General, as members. The Panel's membership also consists of senior leaders and representatives from the military service branches, Department of Justice, Commission, Department of Veterans Affairs, Department of Labor, the General Services Administration, and the Defense Acquisition University.

The primary mission of the Panel is to identify vulnerabilities and opportunities in the Department of Defense contracting with the AbilityOne Program, and recommend improvements. The Panel goals include improving the experience of the Department of Defense as a customer. The Panel established subcommittees to fulfill its duties as determined by Section 898(c), and working on

---

[2] U.S. AbilityOne Commission Ethics Inspection Report (Report No. 20-50I, September 29, 2020) (https://www.oge.gov/web/oge.nsf/0/62932FC1D2F1AD7D852585F8005C77F4/$FILE/2020%20AbilityOne%20Inspection%20Report%2020-50I.PDF).

implementing the recommendations involves several Agencies and disciplines. In December 2020, the Panel's third annual report to Congress will be published. The upcoming report provides progress on the implementation of the recommendations identified in the Panel's first and second reports to Congress. This third annual report covers the period of November 1, 2019 through October 31, 2020. A significant challenge for the Commission this year will be implementing the 898 Panel recommendations to improve oversight, accountability, transparency, and integrity in contracting with the AbilityOne Program. The majority of the recommendations require action by the Commission to establish or update policy, business practices, and regulations, or to recommend Congressional amendment of the Javits-Wagner-O'Day (JWOD) Act. The success in completing these recommendations is spread among multiple Panel offices however the Commission implementing necessary measures is vital to ensure the effective completion of the desired improvements, identified by the work of the 898 Panel.

Progress In Addressing The Challenge

During the previous reporting period, the 898 Panel's Subcommittee for Waste, Fraud, and Abuse recommended additional resources for the AbilityOne OIG and the office of compliance. The Panel is following the status of its previously issued twenty-five (25) recommendations with several having been completed to date. The majority of the recommendations require action by the Commission to establish or update policy, business practices, and regulations, or to recommend Congressional amendment of the Javits-Wagner-O'Day (JWOD) Act. The success of these recommendations is contingent upon the Commission implementing necessary measures to ensure the effective completion and success of the desired improvements.

The challenge for the Commission is to successfully implement and execute the work that flows from the excellent work of the 898 Panel. In describing this challenge, we have included a table of panel recommendations. The Commission work to implement and integrate the recommendations to increase the accountability, oversight, and integrity of its Program is a challenge for this year. Execution of these recommendations will have a positive impact on the employment opportunities for individuals who are blind or have other significant disabilities.

#	Recommendation
Subcommittee One: Inspector General	
1	Implement existing policy by DoD requiring Contracting Officers to check the AbilityOne Procurement List, and take training on the AbilityOne Program
2	U.S. AbilityOne Training must be continually updated, as Panel recommendations are implemented
Subcommittee Two: Eliminate Waste, Fraud, and Abuse	

#	Recommendation
3	Increase oversight and strengthen audit coverage
4	Impose stricter requirements on NPAs for documentation and disability determinations
5	Prohibit Use of Program Fee for Lobbying Expenses
Subcommittee Four: Laws and Regulations	
6	Amend the Javits-Wagner-O'Day Act's 75% Direct Labor Hour ratio requirement, 41 U.S.C. §§ 8501(6)(C), (7)(C), to promote employment and upward mobility of individuals with disabilities in integrated work environments, and provide for implementation requirements and guidelines
7	Amend the Javits-Wagner-O'Day Act's definition of "Direct labor," 41 U.S.C. §§ 8501(3), to encourage upward mobility and hiring of people with disabilities in supervisory and other indirect labor positions (this recommendation is now incorporated into Recommendation 6)
8	Amend the Javits-Wagner-O'Day Act's definition of "severely disabled," 41 U.S.C. §§ 8501(5) and (8), to eliminate the presumption that eligible individuals are not competitively employable and to clarify and institute a workable definition
Subcommittee Six: Acquisition and Procurement	
9	Develop policy and implement business practices that provide sufficient oversight and transparency. Create incentives for inclusion and mentoring of smaller nonprofit agencies, and for veteran employment opportunities in DoD contracts with AbilityOne nonprofit agencies
10	Develop policy establishing NPA recommendation/allocation procedures
11	Establish business rules for competition and assignment of work among AbilityOne Program NPAs.
12	Establish penalties if a CNA or NPA does not follow policies and procedures
13	Reduce the existing gaps and deficiencies in CNAs' processes
14	Revise 41 CFR 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the PL.

#	Recommendation
Subcommittee Seven: Business Process Re-engineering	
15	Update the Procurement List Information Management System (PLIMS) to reflect detailed information, improve the search functions to enable a more user-friendly interface, and be usable to outside agencies
16	Deploy an IT solution either utilizing a system where the Procurement List (PL) can be linked to existing contracting vehicles or develop a common system that routes purchases through the PL prior to other avenues
17	Build a centralized pricing database, require fair market pricing and prevailing wage documentation in contracts with Federal customers
18	Implement DoD wide policy to designate an AbilityOne Representative (ABOR) program similar to the Air Force model and includes a goal for growth in AbilityOne Program participation
19	Pursue DFARS (PGI language) to detail how to do business with the AbilityOne Program
20	Recommend change to allotted timeframe currently required by the Administrative Procedures Act when adding products or services to the Procurement List
21	Incorporate Section 508 training for contracting personnel to address DoD-wide section 508 compliance shortfall and use DAU online and classroom training to teach AbilityOne information

Management Challenge 3:
Addressing Anti-deficiency Violations and Strengthening Financial Management

Why This Is a Challenge

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. The Antideficiency Act (ADA) broadly prohibits federal employees from making or authorizing an expenditure or obligation from any fiscal year appropriation in excess of the amount available. In December 2019, OIG transmitted to the Commission the financial statement audit performed by the independent and certified Public Accounting Firm Allmond & Company, LLC (Allmond).[3] Allmond's audit report of the Commission's financial statements identified significant departures from federal reporting requirements and accounting principles. The statements and omissions included the failure to accurately record liabilities, materially misstating the Commission's beginning and ending fiscal year balances, and omitting required information.

Allmond noted that the Commission potentially violated 31 U.S.C. § 1501(a) of the ADA by not supporting obligations with adequate documentation and potentially violated 1502(a) of the ADA by making or authorizing new expenditures and obligations beyond the Congressional appropriation for the fiscal year. Allmond's findings noted 17 potential violations of the ADA, including eight new obligations totaling $704,875.19 that were recorded in the general ledger for FY17 and 18 but occurred during FY19. The findings noted two instances totaling $451,333.08 in which lump sums of payments recorded to current year obligations were transferred to prior years, as well as six instances in which the amount recorded the Commission's general ledger to obligate prior year funds did not agree to the source documentation. The Commission concurred with Allmond's findings.

In December 2019 and February 2020, OIG issued memoranda to the Chairperson and senior agency personnel outlining the agency's reporting requirements under the Antideficiency Act. OIG explained that the Antideficiency Act and OMB Circular A-11 required the Commission to investigate the violations. On concluding that a violation of the ADA had occurred, an agency must "immediately" report the violations, along with relevant facts and a statement of actions taken, to the President, Congress, and the Comptroller. The Commission engaged the General Services Administration (GSA) to conduct an investigation of the potential ADA violations. GSA issued a final report on July 28, 2020, and it confirmed that numerous ADA violations had occurred.[4] The report stated that "[t]he misrecording of obligations and expenditures to prior year BBFYs after USDA notified AbilityOne of insufficient funds strongly suggests intent."

---

[3] *See* Allmond & Company, LLC, *Independent Auditors' Report*, December 13, 2019 https://abilityone.gov/commission/performance.html

[4] *See Final ADA Investigation Report*, ACCOUNTING & FINANCIAL REPORTING DIVISION at 9, July 28, 2020.

The Commission has acknowledged the existence of ADA violations since December 2019, when it concurred with Allmond's audit findings in its management response. Since then, in summer 2020, two memoranda from the Inspector General and a GSA Investigation confirmed the existence of the ADA violations and have laid out the Commission's reporting requirements to the President, Congress, and the Comptroller General.

The Commission uses the USDA as a financial services provider. While the USDA provides support services, this arrangement requires the Commission to have a certain level of expertise in recording, accounting, financial statements, and appropriations. Ensuring that level of expertise, reporting the ADA violations as required by statute, addressing their underlying cause, and preventing future violations constitutes a serious challenge for agency leadership.

Progress In Addressing The Challenge

Newly elected Chairperson Koses, together with the Commission members made excellent strides in creating three Commissioner-led subcommittees on enterprise risk management and auditing, performance management, and competition, which will introduce innovation and advance transparency. The Commission has hired a new Chief Financial Officer (CFO); in his CFO role, this agency official is intended to address the ADA violations and institute stronger controls to prevent future violations. Upon the Commission briefing the Office of Management and Budget (OMB) on the ADA violations, OMB has assigned an ADA team to work with the Commission to comply with the statutory requirement to report the violations to the President, Congress, and the Comptroller General.

Management Challenge 4: Higher Level of Transparency Needed to Enhance Program Confidence

Why This Is a Challenge

The Commission faces challenges with improving the transparency in its administration of the AbilityOne Program. Commissions and Boards typically benefit from publishing quality information and program-wide communication pertinent to its agency business. Increased use of appropriate methods of communication such as social media outreach and reporting on metrics and compliance data could provide useful communication on project status and needs, updates of activities, and performance planning. The Commission takes only some advantage of this and publishes an annual regulatory agenda. Agencies are increasingly using electronic filing and document dissemination systems to manage deadlines and actions.

During the pandemic, the Commission has taken steps to increase outreach with stakeholders in its COVID-19 efforts. For instance, the Commission initiated an information exchange with the CNAs on a real-time basis with Federal customers and other stakeholders. In addition, the Commission launched a COVID-19 page on https://www.abilityone.gov/covid19.html that provides the Commission's pandemic guidance, communications, and other topics involving the global pandemic.

Stakeholders and program participants are extremely interested in the Commission activities including effective communication by the Commission on program operations. The AbilityOne Program is challenged with improving transparency.[5] Congress has made repeated observations regarding challenges in transparency, especially in a program that employs over 45,000 blind and severely disabled workers. Congress has consistently commented on the expectations of a high level of practices by the Commission with communicating effectively to the interested public. During the amendments of the Wagner-O'Day Act in 1971, Congress stated:

> *The Committee's procedures have not necessarily complied with due process of law, such as adequate notice, presentation of views prior to adding to or removing commodities at a fair market price from the Schedule of Blind-Made Products. As a result, actions of the Committee in carrying out its role under the Wagner-O'Day Act have been subject to question and review in a court decision.*[6]

Greater level of communication by the Agency staff would enhance operations in administering the program and result in increased program confidence. Several factors point to the benefits of improving transparency in the program. The GAO report published in May 2013 identified the need to enhance program oversight and transparency as a challenge for the Commission.[7] In addition, a recent report published on by the National Council on Disability (NCD) concluded that the AbilityOne Program is hampered by a lack of transparency and confusion over compliance roles.[8]

Commission Meetings

The Commission's public meetings are regularly held four times a year.[9] The holding of public meetings at each of the CNA's Annual Conference has positively impacted transparency and maximized access and consumption of information. The Commission transitioned to virtual meetings during the global pandemic and the meeting attendance and engagement increased. Commission meetings, enhanced by advance subcommittee work, with larger and more robust agendas that have open discussions, would work better to inform stakeholders. A positive milestone was accomplished early in Chairperson Koses tenure. The Commission members made tremendous strides in creating three Commissioner-led subcommittees on enterprise risk management and auditing, performance management, and competition, which will introduce innovation and advance transparency.

Revitalizing the Commission-led subcommittee system will increase open dialogue among the members (the Commissioner) and generating solutions. These Commission-led subcommittees can

---

[5] GAO-13-457, "Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed," (May 2013). See also "Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity" 2018 First Annual Report to Congress (898 Panel Report (2018).

[6] U.S. Congress, House of Representatives, Government Operations Committee, *Amendments to the Wagner-O'Day Act: Report (To accompany H.R. 8011),* 92nd Cong., 1st Sess., 1971, H.R. Rep. 92-228, 1082.

[7] GAO-13-457, "Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed," (May 2013).

[8] Policies from the Past in a Modern Era: The Unintended Consequences of the AbilityOne Program & Section 14(c)

[9] 2019 Commission Public Meetings.

also leverage resources, for instance, by establishing liaisons from each of the CNAs to provide input. Subcommittees will have the goal of completing initiatives. A better organized library of public meetings with a collection of content material would increase communication and provide access from stakeholders to relevant and reliable information related to AbilityOne Program's events.

The Commission inhibits transparency with two practices: the frequent use of executive sessions (non-public sessions) and the execution of nondisclosure agreements (NDAs) with Commission members and third-parties. Both practices are permissible and needed in many instances, but they limit transparency and encourage participants and other stakeholders to infer that Commission actions are not meant to be well understood. Encouraging the dynamics of information flow would benefit information exchange, with the Commission acting as a leader in communication practices and not viewed as controlling or restricting it. For instance, a House Report points to questions raised by Congress about language in the Cooperative Agreements between the Commission and the CNAs requiring the CNAs to notify in advance and report to the Commission any meetings with key stakeholders, including with Congressional members and staff.[10]

Progress In Addressing The Challenge

In 2015, the Commission published a series of pricing policies ranging from market research, development and recommendation, submission and negotiation of Fair Market Prices (FMP) for products on the AbilityOne Program Procurement List (PL).[11] The Cooperative Agreements, as required by the Consolidated Appropriations Act of 2016, measure CNA operations.[12] This is a step in the right direction. The step should also, though, include a description of the Commission's review procedures of pricing packages so that CNAs and NPAs can prepare the pricing packages accordingly.

The Cooperative Agreement between the Commission and AFB, signed in July 2018, is supposed to provide an enhanced CNA model focusing on increasing job placement and career-advancement opportunities in knowledge-based positions. However, AFB has no NPAs and no AbilityOne contracts. At this time, the work of AFB, the third Commission-designated CNA, consists of research and studies. Upon completion of 12 to 15 months (since July 2018), not to exceed 18 months, the Commission stated it plans to conduct a review of AFB's Phases. In December 2018, the renewal of the Cooperative Agreements with NIB and SourceAmerica was intended to be a step taken by the Commission to strengthen oversight and evaluate performance.[13]

In the 2017 NDAA, Congress created a Panel, the Department of Defense and AbilityOne Contracting, Oversight, Accountability, and Integrity[14] (hereinafter, the "898 Panel"). The mandate of the 898 Panel includes making recommendations to Congress regarding the JWOD Act and improving the AbilityOne Program.

---

[10] House Report 116 -62 at 223.
[11] AbilityOne Program Procurement List Pricing Policy (51.600 series)
[12] Public Law 114-113.
[13] See NIB Cooperative Agreement; See also SourceAmerica Cooperative Agreement.
[14] Pub. L. 114-328, FY 2017 National Defense Authorization Act.

The 898 Panel is responsible for recommendations in seven areas of Congressional interest. The primary mission of the Panel is to identify vulnerabilities and opportunities in the Department of Defense contracting with the AbilityOne Program and recommend improvements through a Report to Congress. The upcoming one will be the Panel's third annual report, which provides progress on the implementation of the recommendations identified in the first and second reports to Congress. The third annual report covers the period of November 1, 2019, through October 31, 2020. The implementation of the work by the Commission on a majority of the recommendations to establish or update policy, business practices, and regulations, or to recommend Congressional amendment of the Javits-Wagner-O'Day (JWOD) Act will have a positive impact on the transparency of the AbilityOne Program. The success of these recommendations is contingent upon the AbilityOne Commission implementing necessary measures to ensure the effective completion and success of the desired improvements identified by the excellent work of the 898 Panel.

The 898 Panel has given Commission leadership opportunities for increasing its outreach through program visits, meeting with DoD customers, and designing a communication initiative for the 898 Panel recommendations for the CNAs and the NPAs. This includes town halls and webcasts hosted or sponsored by the Commission, and commitment and collaboration of the Panel members and subcommittees to engage CNAs' perspective and inputs to improve the AbilityOne Program.

Management Challenge 5:
Erosion of Statutory Program Authority

Why This Is a Challenge

The challenge of program erosion is at a pivotal stage. During the last three reports, we presented the concept of erosion of statutory program authority as a challenge to ensure this excellent program has the resources and support it needs to grow and increase the employment of blind and severely disabled workers. The legal framework for the AbilityOne Program was created in 1938 and amended in 1971. Since then, it has not had a reauthorization or modernization. Since 1971 Congress has enacted, and agencies have implemented, multiple acquisition reform laws designed to modernize the way government agencies buy goods and services. Some of these laws have created conflict with the AbilityOne Program. This year brought progress with an effort to preserve the employment of the blind and severely disabled, Congress passed the *VA Contracting Preference Consistency Act of 2020,*[15] which became law on August, 8, 2020, and was created to preserve the AbilityOne Program with respect to products and services that the VA was purchasing before the VBA was enacted in 2006.

The Veterans Benefit Act of 2006 and the "Rule of Two"

Congress passed the Veterans Benefits Act (VBA of 2003), which encouraged contracts awarded to service-disabled veterans with the explicit exclusion that such award should not be made if the procurement is available as a JWOD set-aside. In 2006, however, Congress enacted the Veterans

[15] Public Law No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).

Benefits, Health Care, and Information Technology Act (VBA of 2006), which removed JWOD language from the VBA of 2003 and created ambiguity as to which law (JWOD or VBA 2006) took priority in determining contract source.

In *Kingdomware Technologies, Inc. v. United States,*[16] the Supreme Court held that VA contracting officers are required to give veteran-owned small businesses (VOSBs) procurement priority when there is a "reasonable expectation" that two or more VOSBs will bid on the contract "at a fair and reasonable price that offers best value to the United States."[17] This is known as the "Rule of Two" analysis. The Court also held that this analysis was required regardless of whether the VA had already met its annual minimum VOSB contracting goals.[18]

In its 2018 decision, *PDS Consultants*,[19] the U.S. Court of Appeals, Federal Circuit, ruled that the 2006 VBA requirements took priority over the AbilityOne procurement list, jeopardizing contracts for products and services that had previously been provided through AbilityOne program contracts. The Court of Federal Claims held that the VA must conduct a "Rule of Two" analysis for all new procurement contracts before treating the AbilityOne Procurement List as a mandatory source pursuant to the JWOD Act. The Court of Federal Claims also held that because the VBA of 2006 applied only to the VA's procurements, the VBA was a more specific statute than the JWOD Act's broad application government-wide, and thus the VBA would take precedence, regardless of the existence of a prior contract with a Procurement List contractor.

In an effort to preserve the employment of the blind and severely disabled, Congress passed the *VA Contracting Preference Consistency Act of 2020,*[20] which became law on August, 8, 2020, and was created to preserve the AbilityOne Program with respect to products and services that the VA was purchasing before the VBA was enacted in 2006. The Veterans First Program under the VBA still applies to all other products and services. In order to ensure compliance with *VA Contracting Preference Consistency Act of 2020*, the VA revised its Acquisition Regulation VAAR at Part 808 to restore AbilityOne as a priority mandatory source for covered products on the Procurement List, except that contracts previously awarded to VOSBs between December 22, 2006 and August 7, 2020 shall continue to receive preference under certain conditions.

Randolph-Sheppard Act

The Randolph-Sheppard Act (RSA) was passed in 1936 and amended in 1954 and 1974.[21] Its implementation has been in conflict with the JWOD Act since the latter's 1938 inception. The RSA was enacted to provide blind persons with remunerative employment, enlarge their economic opportunities, and encourage their self-support through the operation of vending facilities in federal buildings. The U.S. Department of Education (ED) prescribes regulations for the Randolph Sheppard Vending Facility Program ("vending program") as set forth in 34 CFR, Part 395, implementing RSA as amended.

---

[16] 136 S.Ct. 1969 (2016).
[17] Veterans Benefits Act of 2006, 38 U.S.C. § 8127(d).
[18] *Kingdomware Technologies, Inc. v. United States*, 136 S.Ct. 1969 (2016).
[19] *PDS Consultants, Inc. v. U.S., Winston-Salem Industries for the Blind*, 907 F.3d 1345 (October 17, 2018).
[20] Public Law No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).
[21] 20 U.S.C. § 107 et. seq.

Under ED's vending program, "state licensing agencies recruit, train, license, and place individuals who are blind as operators of vending facilities located on federal and other properties. The RSA authorizes a blind individual licensed by the state to conduct specified activities in vending facilities through permits or contracts."[22] However, recent progress has been made by RSA participants and supporters to implement the respective mandates as Congress intended.

In 2006, Congress sought to dispel the confusion and conflict between the JWOD and RSA Acts via the 2006 National Defense Authorization Act. Congress required the agencies administering both the JWOD Act and the RSA (the Commission and ED, respectively), as well as the Department of Defense (DoD) to issue a joint statement clarifying "the application of those Acts to both operation and management of all or any part of a military mess hall, military troop dining facility, or any similar dining facility."[23]

The Commission, ED, and the DoD complied with this Congressional directive. The three agencies developed a task force comprised of representatives from each agency that "met weekly and engaged in almost daily discussions by electronic mail and telephone to develop a joint statement of policy pursuant to Section 848 [of the 2006 NDAA]."[24] The three agencies also "solicited public comments through a notice in the Federal Register, and approximately 240 comments were received."[25]

The agencies memorialized their agreement as to the policy that should govern the application of the JWOD Act and RSA to military dining facilities in a joint report to Congress dated August 29, 2006 (the "Joint Policy Statement"). According to the Joint Policy Statement, "contracts will be competed under the RSA when the [DoD] solicits a contractor to exercise management responsibility and day-to-day decision-making for the overall functioning of a military dining facility," i.e., operation of the military dining facility.[26] However, "In all other cases, the contracts will be set aside for JWOD performance."[27]

After two years[28] of lost AbilityOne Program jobs, the Unified Agenda[29] published on June 11, 2018, includes an entry by DoD regarding this proposed rule. The DoD entry states that the "DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) . . . to implement the Joint Report and Policy Statement (Joint Policy Statement) issued by DoD, the Department of Education, and the CFP pursuant to section 848 of the NDAA for FY 2006.

---

[22] *https://www2.ed.gov/programs/rsarsp/index.html*.

[23] NDAA of 2006, Pub. L. No. 109-163, § 848(b), 119 Stat. 3136, 3395 (2006).

[24] Joint Report to Congress, Section 848 of the National Defense Authorization Act for Fiscal Year 2006: Application of the Javits-Wagner-O'Day Act and the Randolph-Sheppard Act to the Operation and Management of Military Dining Facilities (Aug. 29, 2006) ("Joint Policy Statement") at 3.

[25] *Id.*; *see also* Statement of Policy and Report Relating to Contracting with Employers of Persons with Disabilities, 71 Fed. Reg. 5819 (Feb. 3, 2006) (requesting public comments).

[26] Joint Policy Statement at 4, Full Food Services (FFS).

[27] *Id.* (emphasis added).

[28] *See* FY 2015 NDAA Joint Explanatory Statement (prompting the DFARS rule). P.L. 113-291 (December 2014).

[29] The Unified Agenda is a semi-annual report on the actions that agencies plan to issue in the near and long term.

This program continues to face challenges to its authority. In *Top Gun Services, LLC v. U.S.*[30], Top Gun alleged that the Defense Commissary Agency's (DeCa) Notice to Trade utilized a sole-source method in violation of the Competition in Contracting Act. Top Gun contended that DeCa had "deprived it of the opportunity to compete for the work it [was] awarding through NTT 2020." However, the Court dismissed the suit on the grounds that Top Gun lacked proper standing. The Court ruled that Top Gun lacked subject-matter jurisdiction. In order for it to establish standing, the Court stated that it must show: "(1) that it is an actual or prospective bidder or offeror and (2) that it has a direct economic interest which would be affected by the award of the contract or by failure to award a contract." Top Gun failed to establish that it was a qualified bidder, it was not a nonprofit agency, and it did not fall within the definition of qualified nonprofit agency" as set forth in 41 U.S.C. §§ 8501(6), 8501(7), and 8503(a)(1).

E-Commerce

Government-wide use of procurement through E-Commerce portals is both an opportunity and a challenge to the AbilityOne Program. The FY 2018 NDAA was signed by the President on December 12, 2017, and included Section 846[31]. Section 846 directed the General Services Administration (GSA), in partnership with the Office of Management and Budget (OMB), to "…establish a program to procure commercial products through commercial E-Commerce portals for the purposes of enhancing competition, expediting procurements, enabling market research, and ensuring reasonable pricing of commercial products."

The Commission announced the end of the pilot program between the Commission and Amazon at the end of the 2019 fiscal year. While the Commission was able to gain insight into E-commerce platforms, the pilot did not lead to an increase in AbilityOne sales. Amazon did not block "essentially the same" (ETS)[32] offerings on its platform and substitute those products with AbilityOne products, which is a feature that the Commission requires of its authorized distributors. This required feature is accomplished when the E-Commerce purchases comply with the JWOD Act, which requires that government agencies buy from the AbilityOne Program.

On April 2019, the U.S. General Services Administration (GSA) and OMB issued the phase 2 joint implementation plan, which focuses on market research. Phase 3 of the plan will focus on implementation guidance, informed by an initial proof of concept, and continued stakeholder engagement.[33] GSA's implementation of the Section 846 E-Commerce Platform is expected to extend through FY 2020. On October 1, 2019, GSA issued a solicitation seeking platform providers in support of this initiative. The solicitation requires respondents to respect the mandatory source requirements of the AbilityOne Program; providers must block "Essentially The Same" (ETS) items in the E-marketplace and substitute AbilityOne items. The solicitation also includes FAR 52.208-9, Contractor Use of Mandatory Sources of Supply or Services, and references to the mandatory source requirements in FAR 8.002, 8.004, and 8.005.

---

[30] *Top Gun Services, LLC v. U.S.*, 1:20-cv-00908-DAT, No. 20908C (Fed. Cl, Nov. 11, 2020).
[31] Pub. L. 115-91.
[32] ETS products are commercial products that the Commission has determined to be essentially the same as products included in the Procurement List.
[33] Procurement Through Commercial E-Commerce Portals, *Phase II Report: Market Research & Consultation*.

On April 1, 2020, GSA provided an update that the Commercial Platform's Acquisition was delayed due to the fact that GSA's resources and priorities have shifted to support the COVID-19 response. On May 4, 2020, GSA released its Spring 2020 Federal Marketplace (FMP) Strategy. The release includes various project improvements related to the COVID-19 response and other updated policies. For instance, to support the federal government's response to COVID-19, GSA has created buying guides to make it easier to identify building, screening, and IT services available for acquisition. The Acquisition Resources Hub on GSA's website also has a hub where suppliers can submit modifications to temporarily add non-Trade Agreement Act (TAA) products. GSA continues to update its INFORM pilot program, which creates an enhanced notification and selection process. GSA began expanding the INFORM effort in FY2020 and continues to do so through the present day. See here for more details regarding policy improvements by GSA.

In June 2020, GSA awarded E-Commerce platform contracts to three providers: Amazon Business, Fisher Scientific, and Overstock.com Inc. In August 2020, GSA released the first of a series of posts designed to educate stakeholders on topics related to the E-commerce platform, focusing on supply chain risk management and protecting users against counterfeit goods.

The OIG views the innovations of E-Commerce as the future of an evolving marketplace. There is, however, the risk for significant program erosion despite the shared success of the E-Commerce platform. It is paramount that the buyers of products and services, i.e. the government agencies and their purchase officers, understand that the customer that the E-Commerce platform seeks to serve is the AbilityOne Program itself.

Additional Examples of Erosion of Statutory Program Authority

The following illustrates additional examples of AbilityOne Program erosion:

a. Recommendations for changes to the AbilityOne Program and the definition of "competitive integrated employment" resulting from the report of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities established under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of the Workforce Innovation and Opportunity Act.
b. The 898 Panel report identified definitions that should be amended to bring JWOD into compliance with the Workforce Innovation and Opportunity Act;[34]
c. Efforts by the Small Business Administration to assert its preference programs over the mandated priority of the JWOD Act;
d. Lack of enforcement capabilities for the AbilityOne Program to assert its mandated source-priority when federal agencies fail to purchase AbilityOne products and services;
e. Increased legal challenges from qualified NPAs questioning the Commission's ability to administer the AbilityOne Program;
f. As discussed in more detail in the transparency challenge,[35] a provision increasing

[34] "Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity" 2018 First Annual Report to Congress (898 Panel Report (2018)) at 19.
[35] FY 2019 NDAA Chairman's Mark.

contracting goals, and thus AbilityOne Program size, was not passed. The reason discussed by lawmakers was: "…both the [AbilityOne] Inspector General and the [DoD] Panel are generating findings and recommendations for needed reforms and expect the AbilityOne Commission to take appropriate steps in the future to increase transparency and effectiveness of the program."[36]

Progress In Addressing The Challenge

In an effort to preserve the employment of the blind and severely disabled, Congress passed the *VA Contracting Preference Consistency Act of 2020,*[37] which became law on August, 8, 2020, and was created to preserve the AbilityOne Program with respect to products and services that the VA was purchasing before the VBA was enacted in 2006.

As mandated by Congress, the Commission is a member of the 898 Panel. The mandate of the 898 Panel includes making recommendations to Congress regarding the JWOD Act and improving the AbilityOne Program. The 898 Panel released its second annual report to Congress in January 2020.[38] Issuing 26 recommendations, the 898 Panel identified as a "significant overarching challenge . . . the limited resources available" to the Commission and OIG.[39] The 26 recommendations were grouped into seven areas. The 898 Panel's third annual report to Congress is scheduled to be issued at the end of December 2020.

The Commission will continue to work with Congress to update legislation improving the AbilityOne Program's statutory authority per the 898 Panel's recommendations that the Commission do so. The Commission continues to seek increased cooperation from AbilityOne Program CNA and NPAs participants to improve processes and controls, and to recognize the market evolution where NPAs increasingly contribute their own ideas for inclusion of items to the Procurement List.

What Needs To Be Done

While the Commission continues its work with the 898 Panel and agency partners, it is vital that contracting officials in federal agencies have a thorough understanding of the AbilityOne Program requirements. The implementation of 898 Panel's requirements will ensure Program growth for AbilityOne. In an effort to improve awareness about the AbilityOne Program, the Commission issues educational materials to agencies to help their respective contracting officials understand how the AbilityOne Program works.

The lack of Commissioners currently appointed, due to corresponding vacancies from federal government agencies,[40] deprives the agencies of a senior government official with AbilityOne

[36] FY 2019 NDAA House Conference Report 115-874 at 920.
[37] Public Law No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).
[38] 898 Panel 2018 Annual Report to Congress.
[39] *Id.* at 2.
[40] 41 U.S.C. § 8502(b)(1)(A)-(K) (listing the 11 Agencies that AbilityOne Commissioners must come from as the Department of Agriculture, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Department of Education, Department of Commerce, Department of Veterans Affairs, Department

Commission-specific expertise, and deprives the Commission of a representative voice in those federal agencies. As a result, these unrepresented departments or agencies[41] may be disadvantaged, and so is the Commission.

Management Challenge 6: Implementation of Cooperative Agreements with CNAs

Why This Is a Challenge

The Commission designates CNAs to facilitate the employment and training opportunities of people who are blind or have significant disabilities. The dynamics of the CNAs in the program are changing and growing. The Commission administers the AbilityOne Program with the assistance of two CNAs—NIB and SourceAmerica. The Commission designated AFB as a third CNA on July 26, 2018. This third CNA, AFB, is conducting research and studies, and has no NPAs or AbilityOne contracts.

The Commission is responsible for overseeing the implementation of the Cooperative Agreements with the CNAs to ensure performance.[42] The Commission established a Program Management Office (PMO) with two professional staff to administer the implementation of the Cooperative Agreements. The new Director has been onboard since 2018 and has enhanced the performance of the PMO significantly during her tenure with improved communication, effective management of timelines and deliverables, and developing positive workflow with the stakeholders. The Director and Deputy Director of the PMO however, are understaffed to efficiently analyze and manage large volumes of deliverables received and reviewed annually in the administration for the three CNA Cooperative Agreements. Nevertheless, the Commission PMO is performing well and building the infrastructure needed to strengthen its oversight through Cooperative Agreements with designated CNAs. The positive results flow from stronger leadership in the PMO organization under the Director. Increased resources are needed for the PMO. The Cooperative Agreements emphasize employment growth, program integrity, support for nonprofit agency employers participating in the AbilityOne Program, as well as enhanced training and communications. A strong focus on increasing resource allocation to the PMO office needs to be addressed by the Commission.

Progress In Addressing The Challenge

In December 2018, the renewal of the Cooperative Agreements with NIB and SourceAmerica was intended to be a step taken by the Commission to strengthen oversight and evaluate performance. In April 2020, the OIG issued a report on the audit of the implementation on Cooperative Agreements between the Commission and NIB and SourceAmerica.[43] The objectives of the audit were to determine whether:

---

of Justice, Department of Labor, and General Services Administration).

[41] *Id.* at (b)(1) (stating that Commissioners are Presidential Appointees that must be nominated by the head of the department or agency). There are no confirmed Commissioners from the Departments of Agriculture, Defense, Army, Navy, Education, Veterans Affairs, and Justice.

[42] U.S. AbilityOne Commission Fiscal Year 2020 Budget Justification.

[43] AbilityOne OIG Cooperative Agreement Audit

- The Agreements are adequately designed and operating effectively to improve performance and transparency of the AbilityOne Program (Program); and
- The performance criteria are reasonable, measurable, and implemented to achieve effective oversight of the CNAs.

The audit concluded that while the Agreements were effective and designed to enhance accountability, operational effectiveness, integrity, and transparency of the Program, there are opportunities for improvements with the Commission's oversight of CNAs as it relates to compliance, deliverables, and performance measurements contained in the Agreements. The Commission PMO is performing well and building the infrastructure needed to strengthen its oversight through Cooperative Agreements with designated CNAs. The positive results flow from stronger leadership in the PMO organization under the PMO Director.

The Cooperative Agreements include the Commission's requirements for timeliness and accuracy in the CNAs' reporting submissions, requests for Procurement List or pricing transactions. The Cooperative Agreements have Quality Assurance Surveillance Plans that measure the timeliness and accuracy in accordance with specified standards. Additionally, the Cooperative Agreements address the AbilityOne Program fee ceiling determination and implementation. In accordance with the Consolidated Appropriations Act of 2016, the Cooperative Agreements require program fees and expenditures to be disclosed to Congress on a quarterly basis.

Challenges in the implementation of the cooperative agreements has had positive results with stronger leadership in the PMO organization under the Director however, increased resources are needed for the PMO. A strong focus on increasing resource allocation to the PMO office needs to be addressed by the Commission.

Management Challenge 7: Establishing an Enterprise-wide Risk Management Framework

Why This Is a Challenge

The Commission does not have a formal enterprise-wide program for organizational risk and, as a result, is unable to effectively prioritize and manage risks. Since 2017, the OIG identified a lack of risk management as a serious management challenge. The Agency has made virtually no progress in addressing the challenge.

In July 2016, OMB issued an update to Circular A-123 requiring federal agencies to implement Enterprise Risk Management (ERM) procedures so executives can ensure the achievement of the agency's strategic objectives. OMB Circular A-123 provides guidance to Federal Managers on improving the accountability and effectiveness of Federal programs and operations by identifying and managing risks, establishing requirements to assess, correct, and report on the effectiveness of internal controls.

In July 2020, OIG issued a management alert to the Agency to assist with progress in risk management.[44] In the management alert, OIG concluded that the lack of progress by the Commission in implementing an ERM framework coupled with open audit recommendations leaves the Commission vulnerable to fraud and mismanagement of resources, and diminishes reasonable assurance that the AbilityOne program is being managed and administered efficiently, effectively, and in compliance with applicable laws and regulations.

The Commission has continuously failed to prepare a risk profile document as required by OMB guidance, or make progress toward achieving this goal. This has limited the Commission's ability to identify challenges early, bring them to the attention of Commission leadership, and to develop the needed solutions. Like other agencies, the Commission is required to align ERM processes with its goals and objectives, and to report on each of the identified risk areas. The Commission has acknowledged the need to establish a risk profile. The primary purpose of a risk profile is to provide an analysis of the risks an Agency faces toward achieving its strategic objectives arising from its activities and operations, and to identify appropriate options for addressing significant risks.[45] To this date, the Commission has not been able to use available staff or resources to accomplish the ERM Framework.

The Commission needs to implement ERM to effectively respond to both expected and unexpected events. ERM is beneficial because it addresses a fundamental organizational principle: the need for information about major risk to flow both vertically (i.e. up and down) and horizontally (i.e. across business functions). As the Commission continues to explore opportunities to increase resources as addressed in the Agency's Congressional Budget Justification, prioritizing to improve risk planning will better help achieve the intended benefits of the program.

Progress In Addressing The Challenge

Newly elected Chairperson Koses, together with the Commission members, made tremendous strides in creating three Commissioner-led subcommittees on enterprise risk management and auditing, performance management, and competition. The Commission has hired a new Chief Financial Officer; in his CFO role, this agency official is intended to address and institute stronger controls and building ERM. The Commission carries considerable risk areas such as implementing corrective action plans, and meeting- the statutory requirement to report ADA violations[46] to the President, Congress, and the Comptroller General.

Beginning in 2018, the Commission's Oversight and Compliance Office initiated a risk-based model to help identify at-risk or high-risk levels of an NPA's compliance with the AbilityOne Program. The office utilizes an internal control system using quantifiable metrics and the automated documentation system, referred to as the Procurement List Information Management

---

[44] AbilityOne OIG Management Alert: Lack of Management Action on Enterprise Risk Management and Internal Control Enters Critical Stage

[45] OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Controls,* July 15, 2016, Section II.B - Risk Profiles.

[46] See Management Challenge 3: Addressing Anti-deficiency Violations and Strengthening Financial Management, at page 8 of this report.

System (PLIMS). The risk-based model, when fully implemented, should help integrate risk management and internal control activities into the compliance framework.

Management Challenge 8:
Enhancement of Program Compliance

Why This Is a Challenge

Support by senior staff leadership of the compliance program continues to be ineffective. Pursuant to Title 41 CFR 51-4, the Commission's Oversight and Compliance Office assesses the 500 AbilityOne NPAs with their 45,000 employees for compliance with AbilityOne program requirements. Inspections by the office involve the NPA compliance of direct labor hour ratios, eligibility requirements (i.e. NPA-provided documentation regarding the employee's significant disability), and company health and safety standards. In FY2020 the Compliance office failed to complete one onsite visit inspection or review for a NPA.

While the Office of Compliance has made progress in providing oversight and has improved communication with the stakeholders, it remains that the Commission has not prioritized the allocation of sufficient resources to it for executing its compliance responsibilities. This includes full policy guidance, conducting routine inspections, providing comprehensive reviews of annual certifications, and training the NPAs participating in the AbilityOne Program. The Office of Compliance, which is located at the HQ in the DC area, was composed of only three employees. The staff of the Office of Compliance is only two employees, and the Office's director, the third employee of it, has recently left the Commission. Subsequent to the Compliance director's leaving, the Commission selected an acting director to manage the Compliance Office from the Commission's Western field office, located at Joint Base Lewis-McChord, in Washington state. The Western field office is staffed with one employee, the field office director.

Without allocating additional resources to its Office of Compliance, the Commission cannot meet its compliance mission.

The Compliance Office delegates certain compliance duties to the CNAs. Since 2011 the Compliance Office has not performed meaningful compliance visits to NIB-affiliated NPAs. This lack of direct oversight of the approximately 60 NPAs under NIB poses a risk to program-wide compliance. In addition, an appropriately higher rate of compliance oversight by the Commission on the CNAs will help identify risks for fraud, as reported on the civil fraud case involving Goodwill Memphis, a SourceAmerica-affiliated NPA.[47]

Essential and basic areas of program integrity are still in progress. For instance, NPAs have expressed concerns about the absence of a revised and finalized compliance guidance, procedures, and practices by the Commission to fulfill compliance requirements. The Commission abandoned the completion of the compliance manual over the summer and issued a number of new and revised compliance policies. The policies have been published on the Commissions website.

---

[47] https://www.justice.gov/usao-wdtn/pr/memphis-goodwill-industries-inc-will-pay-150000-united-states-claims-were-violation

Progress In Addressing The Challenge

The OIG previously reported progress made on this management challenge. The hiring of a new Director (who recently has left the Agency), the implementation of virtual NPA documentation assessments, and streamlining of the compliance standardization processes all contributed to making progress. The Commission working with the 898 Panel and completing compliance policies has contributed to progress. In addition, the Commission's Oversight and Compliance Office designed a risk-based model. The risk-based model introduced a process for the identification of NPAs considered either at-risk or at high risk, through the automated documentation system – PLIMS –tracking quantifiable metrics. The risk model was derived from the International Standard for Compliance Management (ISO) 19600: The Development of Global Standard on Compliance Management.

Conclusion

The OIG reports on the most significant management and performance challenges facing the Commission, in accordance with the Reports Consolidation Act of 2000 (P.L. 106-531), for inclusion in the Commission's Performance and Accountability Report for FY 2020. The challenge areas identified by the OIG are connected to the Commission's mission to provide employment and training opportunities in the manufacture and delivery of products and services to the Federal Government for people who are blind or have significant disabilities.

The OIG identified the top management and performance challenges facing the U.S. AbilityOne Commission as: Allocation of Roles, Resources Authorities, and Responsibilities Among the Commission Senior Staff; Successful Implementation of the Section 898 Panel Recommendations; Addressing Anti-deficiency Violations and Strengthening Financial Management; Higher Level of Transparency and Communication Needed to Enhance Program Confidence; Erosion of Statutory Program Authority; Implementation of Cooperative Agreements given Central Nonprofit Agencies Growth; Establishing an Enterprise-wide Risk Management Framework; and Enhancement of Program Compliance.

The topics discussed in the report encompass multiple challenge areas and attest to the complex nature of the AbilityOne Program. In this report, we report on a new challenge with organizational governance. The allocation of resources and responsibilities among the Commission senior staff creates challenges in achieving positive business outcomes.