



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

November 15, 2021

MEMORANDUM

FOR: Jeffrey Koses
Chairperson
U.S. AbilityOne Commission

FROM: Stefania Pozzi Porter
Inspector General (Acting)

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 2021.

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) enhancement of program compliance, 2) breakdowns in internal control over financial management and reporting (formerly named, in the 2020 Report, Addressing Anti-deficiency Violations and Strengthening Financial Management), 3) growing list of unimplemented OIG audit recommendations, 4) successful implementation of the Section 898 Panel recommendations, 5) allocation of roles, resources responsibilities, and authorities and responsibilities among the Commission senior staff, 6) higher level of transparency and communication needed to enhance program confidence, 7) establishing an enterprise-wide risk management framework, 8) implementation of cooperative agreements given Central Nonprofit Agencies (CNA) growth, and 9) erosion of statutory program authority.

We thank you for your support of our role, 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) 2021.

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. With this report, this year, the OIG is adding two Watch Items, one regarding accessibility and the second regarding program growth and resulting risk.

The OIG identified the top management and performance challenges (TMPC) for fiscal year (FY) 2021 as (listed without ranking of importance):

- Enhancement of Program Compliance (pp. 5–6);
- Breakdowns in Internal Control over Financial Management and Reporting (formerly named, in the 2020 Report, Addressing Anti-deficiency Violations and Strengthening Financial Management) (pp. 7–9);
- Growing List of Unimplemented OIG Audit Recommendations (pp. 9–10);
- Successful Implementation of the Section 898 Panel Recommendations (pp. 10–11);
- Allocation of Roles, Resources, Authorities, and Responsibilities Among the Commission Senior Staff (pp. 11–13);
- Higher Level of Transparency and Communication Needed to Enhance Program Confidence (pp. 13–14);
- Establishing an Enterprise-wide Risk Management Framework (pp. 15–16);
- Implementation of Cooperative Agreements given Central Nonprofit Agencies (CNA) Growth (pp. 17–18); and
- Erosion of Statutory Program Authority (pp. 19–25).

Newly Added Watch Item Accessibility

The topics discussed in the report encompass multiple challenge areas and attest to the complex nature of the AbilityOne Program. In this report, we introduce an emerging challenge regarding the existence of appropriate controls (e.g., knowledge, processes, and resources) to ensure accessibility and reasonable accommodations for people who are blind or have significant disabilities. As such, we are placing it on a watch list as a potential, reportable challenge for the Commission. This potential challenge was brought to the attention of the OIG as part of a broader set of employee concerns regarding the Commission's application of protocols and processes to allow equitable access and opportunities for blind or significantly disabled individuals who may

work with the Commission. As a program whose sole purpose is to provide employment opportunities for people with disabilities, it is imperative that the agency understands and utilizes best practices in accessibility and reasonable accommodation.

Newly Added Watch Item

AbilityOne Program Growth and Resulting Risk

In a memo dated October 30, 2020, OMB’s Office of Federal Procurement Policy (“OFPP”),¹ directed agencies across the federal government² to designate an AbilityOne representative (“ABOR”) whose job it is to promote federal procurement in compliance with AbilityOne contract sourcing requirements. The OFPP memo also encourages each agency to pledge to increase its percentage of spend on AbilityOne products and services above its FY 2020 baseline and, to the extent feasible, make a minimum pledge equal to at least 1% of the total amount of funds obligated for contracts entered into with the agency during the fiscal year, with a further goal of increasing spend to 1.5% in FY 2022. As of November 5, 2021, 18 CFO Act agencies have named ABORs, and 12 agencies have made pledges to increase their AbilityOne utilization.³ The Commission anticipates that the ABOR Program will increase AbilityOne contracts, and with growth comes increased risk. Accordingly, we are placing AbilityOne Program growth on a watch list as a potential, reportable challenge for the Commission.

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 communicated with the Commission leadership to gain their perspective on the challenge areas and considered the accomplishments the staff reported as of September 30, 2021. 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

¹ OMB Memo entitled “Increasing the Participation of Americans with Disabilities in Federal Contracting,” dated October 30, 2020.

² The memo applies to the 24 agencies named in the Chief Financial Officers Act, Pub. L. No. 101-576 (November 15, 1990).

³ U.S. AbilityOne Commission’s Comments to OIG’s TMC, “Points for Consideration Top Management Challenges,” dated November 5, 2021.

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 eight vacancies, all of which represent federal agencies (Departments of Agriculture, Air Force, Army, Defense, Education, Justice, Navy, and Veterans Affairs). These vacancies amount to more than half of the Commission membership (eight out of 15) and hinder participation from the eight federal agencies lacking representation.

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.

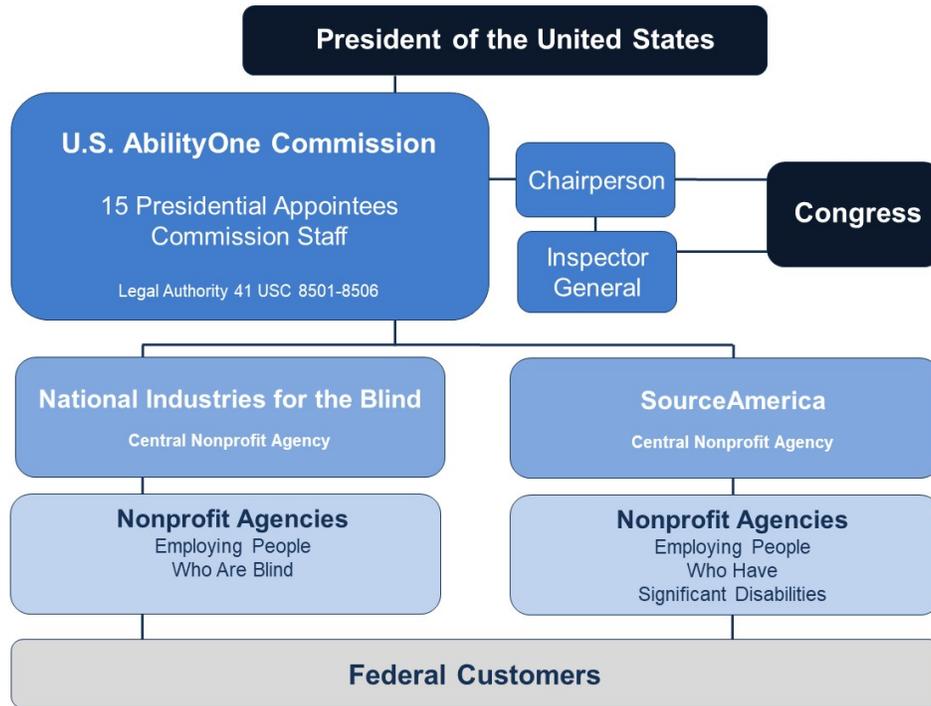
The Commission designates CNAs to facilitate the employment by NPAs of people who are blind or have significant disabilities. The Commission currently administers the AbilityOne Program with the assistance of two CNAs,⁴ the National Industries for the Blind (NIB) (established in 1928) and SourceAmerica (established in 1974).⁵

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.

⁴ 41 CFR § 51-3.1.

⁵ Effective December 31, 2020, the Commission ended a cooperative agreement with a third CNA, the American Foundation for the Blind (AFB) for an initial phase of research.

Figure 1:
AbilityOne Program Organization



Management Challenge 1: Enhancement of Program Compliance

Why This Is a Challenge

Pursuant to 41 CFR Part 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 did not complete onsite visit inspections or review of NPAs.

While the Office of Compliance has made progress in providing oversight and has improved communication with the stakeholders, in previous Top Management Challenges Reports, the Commission had 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 has only two employees, and the Office’s director, the third employee, has recently left the Commission. Subsequently 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. Since 2011 the Compliance Office has not performed meaningful compliance visits to NIB-affiliated NPAs. Although the Compliance Office delegates certain compliance duties to the CNAs, 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 reflected in civil fraud settlements with Goodwill Memphis, Industries for the Blind and Visually Impaired, and CW Resources, SourceAmerica-affiliated NPAs.⁶

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 Commission's website.

Progress In Addressing The Challenge

The Commission has committed several resources to the Office of Oversight and Compliance through the hiring of a Director, a Compliance Inspector, and two Vocational Rehabilitation Specialists. With these recent additions, the Office of Oversight and Compliance has six FTEs.

The Office of Oversight and Compliance is engaging its resources to work cooperatively with the Compliance Offices of SourceAmerica and NIB. In 2021, SourceAmerica reported 250 virtual and 34 on-site NPA compliance reviews. Of these, the Commission participated in 53 virtual and 20 on-site reviews. In 2021, NIB reported 33 virtual and 24 on-site reviews. Of these, the Commission participated in 19 virtual and 7 on-site.

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. What's more, in December 2020, the OIG announced an audit of the Compliance Program to help build confidence in the overall compliance framework. The objective of the audit is to determine whether the Compliance Program has been implemented effectively to provide reasonable assurance of nonprofit agency and central nonprofit agency compliance with applicable laws, regulations, and policies. The audit's scope and methodology will delve into the management and administration of the AbilityOne Compliance Program from FY2018 through FY2020.

⁶ <https://www.justice.gov/usao-wdtn/pr/memphis-goodwill-industries-inc-will-pay-150000-united-states-claims-were-violation>; <https://www.justice.gov/opa/pr/wisconsin-based-nonprofit-pay-19-million-settle-allegations-false-claims-and-kickbacks>; <https://www.justice.gov/usao-ct/pr/connecticut-employment-contractor-pays-600k-resolve-federal-false-claims-act-allegations>.

Management Challenge 2: Breakdowns in internal control over financial management and reporting (formerly named, in the 2020 Report, Addressing Anti-deficiency Violations and Strengthening Financial Management)

Why This Is a Challenge

Sound financial management is vital for federal agencies to accomplish their missions in an effective and efficient manner. Yet, the Commission faces significant challenges related to internal control over its financial management operations. Specifically, in their fiscal year 2020 financial statement audit report, the IPA firm Allmond & Company, LLC (Allmond) noted that the Commission’s financial statements presented fairly, in all material respects, the financial position of the Commission as of September 30, 2020, and 2019 (unmodified or “clean” opinion).⁷ However, the auditors also found serious internal control breakdowns that led to the issuance of six findings and 25 recommendations. The findings included:

- Two material weaknesses related to 1) inadequate preparation of financial statements and related footnotes, and 2) improper estimation or inaccurate recording of year-end accrued liabilities.
- Three significant deficiencies related to 1) shortfalls in the electronic retention of employee benefits election forms, 2) insufficient controls over financial reporting of upward and downward adjustments of prior year obligations, and 3) weaknesses in the recording of reimbursable activity and the collection of reimbursable payments, and
- Instances of non-compliance with the Antideficiency Act.⁸

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

⁷ See Allmond & Company, LLC, Independent Auditors’ Report, November 16, 2020, <https://www.oversight.gov/node/94091>

⁸ The Antideficiency Act prohibits federal employees from, among other things, making or authorizing an expenditure or obligation that exceeds the amount available in an appropriation or fund. 31 U.S.C. § 1341(a)(1)(A). The Commission has been aware of the existence of ADA violations since at least December 2019, when it acknowledged Allmond’s audit findings in its management response. Since then, two memoranda from the Inspector General and a GSA investigation have laid out the reporting requirements and confirmed the existence of the ADA violations. Nevertheless, the Commission has not reported the ADA violations to the President, Congress, and the Comptroller. Reporting the ADA violations as required by statute, addressing their underlying cause, and preventing future violations constitutes a serious challenge for agency leadership.

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."

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.

These findings present serious challenges to the Commission's financial management operations and significantly diminishes reasonable assurance that the Commission will be able to prevent or detect and correct errors in its financial statements and employee payroll records.

[Progress In Addressing The Challenge](#)

The Commission has made progress with this challenge by creating three Commissioner-led subcommittees on enterprise risk management, performance management, and competition, which will introduce innovation and advance transparency. Moreover, the Commission hired a new Chief Financial Officer (CFO) about a year ago, and, in this role, he has been working to address the ADA violations and has instituted stronger controls to prevent future violations. In March 2021, the Commission submitted a draft ASA report to the Office of Management and Budget (OMB). In August 2021, OMB requested an update and revision to the report. The draft ADA report is under review by an OMB Examiner. No additional actions are required by the Commission at the writing of this report.

Specifically, the CFO took the following actions:

- Hired a Deputy CFO who onboarded in July 2021,

- Established a Management Internal Control Program and completed the first annual Federal Manager’s Financial Integrity Act (FMFIA) Statement of Assurance Report, and
- Developed and documented various financial management workflow processes and standard operating procedures.

Management Challenge 3:

The list of unimplemented OIG audit recommendations will continue to grow significantly without an increased effort to implement corrective actions and strengthen Program controls

Why This Is a Challenge

The Commission is faced with the challenge of implementing a list of OIG audit recommendations that has grown at a compound annual growth rate of almost 30 percent since the OIG first issued recommendations in 2017. Moreover, each open recommendation presents 1) an unmitigated risk to the Commission’s achievement of its goals and strategic objectives and 2) an unseized opportunity to improve the Program’s performance. As of September 30, 2021, there are 58 open recommendations, 6 of which were reported as implemented by management but remain open due to inadequate corrective actions or supporting documentation.⁹ It is highly likely this list will continue to grow without a sustained focus on remediating open recommendations and improving overall Program controls.

Progress In Addressing The Challenge

The Commission has taken positive steps to foster improved recommendation remediation. For example, the Commission assigned the CFO, the CIO, and the PMO Director as Audit Follow-Up Officials responsible for working with OIG on resolving the open OIG audit recommendations affecting their respective areas. Furthermore, corrective action by the Commission on deficiencies identified in OIG engagements led to the closure of 19 recommendations (8 for the CFO, 10 for the CIO, and 1 for PMO) since our last TMC report.

Recommendation follow-up is an integral part of good management and is a shared responsibility of agency management and auditors. To that end, the OIG contracted with CLA to establish a process to provide audit recommendation tracking, assessment, and reporting services. As part of this initiative, CLA, in partnership with the OIG, established a process to monitor corrective actions taken by Commission staff as well as assess supporting evidence provided in response to recommendations to determine if the actions and evidence are sufficient to support recommendation closure.

The Commission should continue to devote attention to address the outstanding OIG audit recommendations in efforts to ensure that risks are mitigated, and adequate internal controls are

⁹ Quarterly Audit Recommendation Status Report (Appendix A).

identified, documented, and implemented. The OIG will continue to promote ongoing and recurring discussions with management to help focus attention on current processes and assess actions taken to close out remaining recommendations.

Management Challenge 4: 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 (IG), the Chairperson for the U.S. AbilityOne Commission, and the U.S. AbilityOne 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 implementing the recommendations involves several Agencies and disciplines. The 898 Panel will issue its fourth, and final, report in December 2021 to Congress. The upcoming report provides progress on the implementation of the recommendations identified in the Panel's previous three reports to Congress. The fourth Report will be issued before the end of 2021. It will be the last 898 Panel report, as the panel sunsets in 2021. A significant challenge for the U.S AbilityOne 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 U.S. AbilityOne 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 AbilityOne Commission's implementation of necessary measures remains vital to ensure the effective completion of the desired improvements, identified by the work of the 898 Panel.

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 as an Appendix. The Commission is continuing to work to implement and integrate the recommendations to increase the accountability, oversight, and integrity of its Program, this effort remains a challenge for this year. Execution of these recommendations will positively impact the employment opportunities for individuals who are blind or have other significant disabilities.

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. The majority of the recommendations require action by the U.S. AbilityOne Commission to establish or update policy, business practices, and regulations, or to recommend Congressional amendment of the Javits-Wagner-O’Day (JWOD) Act.

As a result of Panel proceedings over the past year, the Panel prioritized the 25 recommendations identified in the second annual report,¹⁰ some of which were completed by actions taken and others which are in various stages of implementation. Several of the recommendations were combined or modified as explained within the report. The feasibility of certain recommendations continue to be explored by stakeholders with new initiatives. The actions taken to date are improving the oversight, accountability, and transparency in contracting with the AbilityOne Program network, increasing employment opportunities, and should result in the DoD improving the customer experience with the AbilityOne Program.

A significant accomplishment during this reporting period is the issuance of needed and essential compliance policies by the U.S. AbilityOne Commission. This action is the result of a recommendation shepherded by the 898 Subcommittee. The compliance policies represent an important step in providing needed guidance across the AbilityOne network. 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.

Management Challenge 5: The Commission is challenged with the allocation of roles, resources, authorities, and responsibilities among the Commission Senior Staff

Why This Is a Challenge

In previous 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.¹¹ One of the recommendations stated that in order to manage effectively 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

¹⁰ Appendix C.

¹¹ <https://www.oversight.gov/node/21488>

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 Commission, for instance, recently lost their Executive Director, as she had retired from Federal service. The Chairperson has named an Acting Executive Director until the vacancy announcement can be advertised, competed, and a selection made. A significant challenge for the Commission is the effective allocation of resources and responsibilities among the staff.

In September of 2020, the Office of Government Ethics (OGE) issued a report¹² 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. The Ethics program in a government agency is the responsibility of the Delegated Ethics Officer (DEO), the Commission's General Counsel.

Progress In Addressing The Challenge

Adequate financial management systems, reliable financial information, and robust systems of internal controls are necessary to help manage operations and avoid the pitfalls of poorly controlled programs. The consequences of past failures to control adequately AbilityOne financial operations are exemplified by the occurrence of Antideficiency Act violations. In order to address these financial management breakdowns, in 2021 the Commission hired a Chief Financial Officer (CFO) to oversee the Agency's financial systems and operations. With his background, education, and experience, the new Agency CFO should be well equipped to fulfill his role as the focal point for financial management and be a critical factor in reversing the deteriorated state of the Commission's financial management systems and controls.

Related to the recommendation made in the U.S. AbilityOne Program Fee Report, dated December 20, 2019, the Commission has requested and has been subjected to the workforce analysis performed by OPM. This workforce analysis is ongoing, and no final report has been issued to the Commission.

The Commission has been leveraging increased budget appropriations and the consolidation of the Commission's and the Office of Inspector General's office space, for the ability to maximize its mission workforce. In the year 2021, the Commission has increased its workforce from 23 to 29. The Commission has hired personnel to occupy the positions of Chief Financial Officer, Deputy Chief Financial Officer, Director of Oversight and Compliance, and Assistant General Counsel.

¹²[https://www.oge.gov/web/oge.nsf/0/62932FC1D2F1AD7D852585F8005C77F4/\\$FILE/2020%20AbilityOne%20Inspection%20Report%2020-50I.PDF](https://www.oge.gov/web/oge.nsf/0/62932FC1D2F1AD7D852585F8005C77F4/$FILE/2020%20AbilityOne%20Inspection%20Report%2020-50I.PDF) (Appendix C).

It should be noted that at the time of issuance of this report, the Commission informed the OIG that the Commission’s General Counsel had accepted employment with another Federal agency. With this announcement, the Commission has the need to advertise and select an Executive Director and General Counsel. The OIG is not aware of steps that the Commission may have taken to comply with the OGE open recommendations.

Management Challenge 6: 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.

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.¹³ Congress has made repeated observations regarding challenges in transparency, especially in a program that employs over 42,000 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.

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.¹⁴ In

¹³ [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)).

¹⁴ [GAO-13-457, “Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed,” \(May 2013\).](#)

addition, a recent report published by the National Council on Disability (NCD) concluded that the AbilityOne Program is hampered by a lack of transparency and confusion over compliance roles.¹⁵

Commission Meetings

The Commission's public meetings are regularly held four times a year. 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.

In 2021, four (4) new private citizen Commission members were appointed by the President. The new private citizens were recently introduced during a public Commission meeting. The Commission members are making tremendous strides in creating 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 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. Moreover, 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.¹⁶

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).¹⁷ The Cooperative Agreements, as required by the Consolidated Appropriations Act of 2016, measure CNA operations.¹⁸ This is a

¹⁵ [Policies from the Past in a Modern Era: The Unintended Consequences of the AbilityOne Program & Section 14\(c\)](#)

¹⁶ [House Report 116 -62 at 223.](#)

¹⁷ [AbilityOne Program Procurement List Pricing Policy \(51.600 series\)](#)

¹⁸ [Public Law 114-113.](#)

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.

In 2021, the Commission regularly published the Commission's public meetings in the Federal Register. The Commission also conducted additional steps in the publication in its Notice of Proposed Rulemaking (NPRM) that would recommend to end the use of 14(c) certificates on AbilityOne contracts.

The Commission has taken extra steps in an effort to increase transparency with the Commission's proposed rules and all public comments have been made viewable on www.regulations.gov. The Commission has taken a forward stance with press releases for the announcement of the new private citizen Commissioners and changes in senior staff. 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.

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 Commission's implementation 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' perspectives and inputs to improve the AbilityOne Program.

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

Why This Is a Challenge

In previous Top Management Challenges Reports, the Commission did 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. 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.¹⁹ 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 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 has addressed and instituted stronger controls and building ERM.

In 2021, with the hiring of the Commission's CFO, the CFO engaged in efforts in the development and execution of Enterprise Risk Management Planning and made strides in strengthening the Commission's Management Internal Controls Program. These efforts address the establishment of Enterprise Risk Management policy and procedures, the completion of the Commission's Risk Profile, and the identification and finalization of 21 distinct risk mitigation plans for execution. The Commission briefed these actions to the OIG in September 2021.

With the continued development, management, execution, and re-evaluation of the Commission's ERM and Risk Profile, the Commission has an increased ability of mitigating and avoiding risks.

¹⁹ <https://www.oversight.gov/node/72259>

Management Challenge 8: 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. In 2021, AFB was removed from its Commission’s activities as the third CNA.

The Commission is responsible for overseeing the implementation of the Cooperative Agreements with the CNAs to ensure performance. 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 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.

In April 2020, the OIG issued a report on the audit of the implementation of Cooperative Agreements between the Commission and NIB, and SourceAmerica. The objectives of the audit were to determine whether:

- 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.

In the FY22 markups in both the House and Senate, the proposed appropriations contain the below language surrounding the Legislators’ concerns over the Commission’s Cooperative Agreements:

“The Committee is encouraged by the steps the Commission has taken to address concerns regarding the oversight of the central nonprofit agencies [CNA], the independent contracted organizations which administer the program. The Committee is concerned that

CNAs are required to report to the AbilityOne Commission prior to any significant meetings, including congressional oversight meetings, and directs the agency to remove this requirement from the CNA cooperative agreements. The Committee for Purchase From People Who Are Blind or Severely Disabled shall submit in an electronic format quarterly reports on CNA Fees and CNA Expenditures, due no later than 60 days after the end of the fiscal quarter, to the Committees on Oversight and Government Reform and Education and the Workforce of the House of Representatives, Committees on Homeland Security and Governmental Affairs and Health, Education, Labor, and Pensions of the Senate, and Committees on Appropriations of the House of Representatives and the Senate.”

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.

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.

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.

Challenges in the implementation of the cooperative agreements has had positive results with stronger leadership in the PMO organization under the Director. In 2020, the Commission had engaged with the hiring of 11 critical positions that will increase these needed skills in financial management, compliance, vocational rehabilitation, business operations, IT and cybersecurity, legal reviews, and pricing. The Commission hired 1 Chief Financial Officer, 1 Senior Budget Analyst, 3 Compliance and Vocational Rehabilitation Specialists, 2 Business Operations Specialists, 2 Cybersecurity & Information Technology Specialists (converted contractor positions), and 2 Attorneys.

Management Challenge 9: Erosion of Statutory Program Authority

Why This Is a Challenge

The challenge of program erosion remains at a pivotal stage. During the last four 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. Last 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*,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 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 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*,²¹ 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.”²² 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.²³

In its 2018 decision, *PDS Consultants*,²⁴ 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

²⁰ Pub. L. No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).

²¹ 136 S.Ct. 1969 (2016).

²² Veterans Benefits Act of 2006, 38 U.S.C. § 8127(d).

²³ *Kingdomware Technologies, Inc. v. United States*, 136 S.Ct. 1969 (2016).

²⁴ *PDS Consultants, Inc. v. U.S., Winston-Salem Industries for the Blind*, 907 F.3d 1345 (October 17, 2018).

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*,²⁵ 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 1974.²⁶ Its implementation has conflicted 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.

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."²⁷ 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."²⁸

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]."²⁹ The three agencies also "solicited

²⁵ Pub. L. No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).

²⁶ 20 U.S.C. §§ 107 et. seq.

²⁷ <https://www2.ed.gov/programs/rsarsp/index.html>.

²⁸ NDAA of 2006, Pub. L. No. 109-163, § 848(b), 119 Stat. 3136, 3395 (2006).

²⁹ 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.

public comments through a notice in the Federal Register, and approximately 240 comments were received.”³⁰

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.³¹ However, “In all other cases, the contracts will be set aside for JWOD performance.”³²

After two years³³ of lost AbilityOne Program jobs, the Unified Agenda³⁴ 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.

This program continues to face challenges to its authority. In *Top Gun Services, LLC v. U.S.*³⁵, 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 846.³⁶ 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.”

³⁰ *Id.*; see also [Statement of Policy and Report Relating to Contracting with Employers of Persons with Disabilities, 71 Fed. Reg. 5819 \(Feb. 3, 2006\) \(requesting public comments\).](#)

³¹ Joint Policy Statement at 4, Full Food Services (FFS).

³² *Id.* (emphasis added).

³³ See FY 2015 NDAA Joint Explanatory Statement (prompting the DFARS rule). P.L. 113-291 (December 2014).

³⁴ The Unified Agenda is a semi-annual report on the actions that agencies plan to issue in the near and long term.

³⁵ *Top Gun Services, LLC v. U.S.*, 1:20-cv-00908-DAT, No. 20908C (Fed. Cl, Nov. 11, 2020).

³⁶ Pub. L. No. 115-91.

The U.S. AbilityOne 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)³⁷ 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.

In 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.³⁸ GSA’s implementation of the Section 846 E-Commerce Platform is expected to extend through FY2020. 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.

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. It is likewise critical that vendors and the platforms on which they operate are able to block effectively ETS offerings on their websites to help prevent

³⁷ ETS products are commercial products that the Commission has determined to be essentially the same as products included in the Procurement List.

³⁸ [Procurement Through Commercial E-Commerce Portals, Phase II Report: Market Research & Consultation.](#)

government buyers from inadvertently purchasing products that do not fulfill the AbilityOne procurement requirements.

Competitive Source Selection

In May of this year, the United States Court of Federal Claims ruled against the establishment of an AbilityOne Commission Pilot Program for competitive pricing.³⁹ The pilot program was an interim policy modification to follow 898 Panel recommendation for competitive source selection.⁴⁰ The Court found that AbilityOne Commission could not use Section 898 of the 2017 NDAA as authority for making the policy.⁴¹ The court held that 898 Panel recommendations and the acceptance of its reports by Congress does not equate to statutory authority to make regulations.⁴² The Court also found that the interim policy was contrary to the JWOD Act because it did not follow AbilityOne’s regulations.⁴³ The Court held that current AbilityOne regulation 41 C.F.R. § 51-2.7 makes price a factor to be considered and negotiated after a non-profit is awarded a contract, and this paradigm makes competitive programs that factor cost incompatible.⁴⁴ The Commission’s ability to effect change through the rulemaking process, as opposed to interim policies, presents an administrative challenge to the Program and will require sufficient legal staffing and sustained focus.

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;⁴⁵
- 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,⁴⁶ a provision increasing contracting goals, and thus AbilityOne Program size, was not passed. The reason discussed

³⁹ *Melwood Horticultural Training Ctr., Inc. v. United States*, 153 Fed.Cl. 723 (May 4, 2021).

⁴⁰ *Id.* at 731-32.

⁴¹ *Id.* at 736.

⁴² *Id.* at 737-38.

⁴³ *Id.* at 735-41.

⁴⁴ *Id.* at 739.

⁴⁵ [“Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity” 2018 First Annual Report to Congress \(898 Panel Report \(2018\)\) at 19.](#)

⁴⁶ [FY 2019 NDAA Chairman's Mark.](#)

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."⁴⁷

- g. Under its authorizing statute, the 898 Panel's work sunsets this year with the submission of the fourth annual report.⁴⁸ The Panel is tasked with recommending actions to eliminate waste, fraud, and abuse of AbilityOne contracts with the Department of Defense.⁴⁹

Progress In Addressing The Challenge

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 third annual report to Congress in January 2021.⁵⁰ Issuing 25 recommendations, the 898 Panel identified as a "significant overarching challenge . . . the limited resources available" to the Commission and OIG.⁵¹ The 25 recommendations were grouped into eight areas. The 898 Panel's fourth annual report to Congress is scheduled to be issued at the end of December 2021.

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.

The Commission has been working closely with the Department of Defense and civilian agencies to increase the utilization of the AbilityOne Representatives (ABOR) Program. OMB's Office of Federal Procurement implemented the ABOR Program through a policy in October 2020.⁵² To date, 18 CFO Act agencies have named their respective ABORs and 12 agencies have made pledges to increase their AbilityOne utilization.

In an effort to preserve the employment of the blind and severely disabled, Congress passed the *VA Contracting Preference Consistency Act of 2020*,⁵³ 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 legislation amended 38 U.S.C. § 8127 to require VA contracting officers to procure covered products and services on the Procurement List, unless the covered product or service was procured from an eligible SDVOSB or VOSB as a result of a VA Rule of Two determination between December 22, 2006 and August 07, 2020.

⁴⁷ [FY 2019 NDAA House Conference Report 115-874 at 920.](#)

⁴⁸ Pub. L. No. 114-328 §898(j) (130 Stat 2331).

⁴⁹ *Id.* at §898(c).

⁵⁰ [898 Panel Third Annual Report to Congress.](#)

⁵¹ *Id.* at 4.

⁵² https://www.abilityone.gov/media_room/documents/Increasing-the-Participation-of-Americans-with-Disabilities-in-Federal-Contracting.pdf

⁵³ Public Law No. 116-155 (2020) (codified as amended at 38 U.S.C. § 8127).

The compromise legislation restored mandatory status to the AbilityOne Program for VA requirements that were added to the Procurement List prior to December 22, 2006, including replacement products and “essentially the same” products. The Commission staff works with the VA Office of Acquisition to provide a monthly Procurement List spreadsheet sorted by date of addition, to assist VA in complying with the new law. In January 2021, the Commission entered into a new Memorandum of Understanding (MOU) with the Rehabilitation Services Administration. The purpose of the MOU is to increase communication and coordination between the Commission and RSA so that both the JWOD Act and the Randolph-Sheppard Act are followed when food service or other vending opportunities are identified. The MOU is posted on the Commission’s and RSA’s website.

The Commission and RSA conducted a joint training session on the purpose and content of the MOU via YouTube, with live questions and answers, as well as subsequent written Q&A. The Commission views this MOU as a good example of interagency coordination and cooperation that may be replicated.

The Commission continued to monitor the GSA Commercial Platform Initiative (CPI) pilot test. The Commission facilitated meetings with National Industries for the Blind and GSA to discuss concerns with the CPI’s limited sales of AbilityOne products. The Commission’s Fall 2021 Regulatory Agenda includes notice of the Commission’s intent to publish a Notice of Proposed Rulemaking related to protect the exclusivity of AbilityOne mandatory source products from Government purchases of “essentially the same” products. Through the 898 Panel, the Commission met with the Department of Defense’s Director for Contracting eBusiness in the Office of Defense Pricing and Contracting (DPC) to discuss AbilityOne inclusion in other platforms.

What Needs To Be Done

While the Commission continues its work with the 898 Panel (which has a three-year mandate ending in December 2021) 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 eight federal government agencies,⁵⁴ deprives the agencies of a senior government official with AbilityOne Commission-specific expertise, and deprives the Commission of a representative voice in those eight federal agencies. As a result, these unrepresented departments or agencies⁵⁵ may be disadvantaged, and so is the Commission.

⁵⁴ 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 of Justice, Department of Labor, and General Services Administration).

⁵⁵ *Id.* at (b)(1) (stating that Commissioners are Presidential Appointees that must be nominated by the head of the

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 2021. The challenge areas identified by the OIG are connected to the U.S. AbilityOne 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: 1) enhancement of program compliance, 2) breakdowns in internal control over financial management and reporting (formerly named, in the 2020 Report, Addressing Anti-deficiency Violations and Strengthening Financial Management), 3) growing list of unimplemented OIG audit recommendations, 4) successful implementation of the Section 898 Panel recommendations, 5) allocation of roles, resources responsibilities, and authorities and responsibilities among the commission senior staff, 6) higher level of transparency and communication needed to enhance program confidence, 7) establishing an enterprise-wide risk management framework, 8) implementation of cooperative agreements given Central Nonprofit Agencies (CNA) growth, and 9) erosion of statutory program authority.

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 one new challenge related to Growing List of Unimplemented OIG Audit Recommendations and a renamed existing challenge of Breakdowns in Internal Control over Financial Management and Reporting (formerly named, in the 2020 Report, Addressing Anti-deficiency Violations and Strengthening Financial Management). In the issuance of this TMC, we report two new watch items that have been identified as concerns brought to the attention of the OIG by Program stakeholders. The new watch items are Accessibility and the AbilityOne Program's Growth and Resulting Risk.

department or agency). There are no confirmed Commissioners from the Departments of Agriculture, Defense, Army, Navy, Education, Veterans Affairs, and Justice.

**AbilityOne Office of Inspector General (OIG)
Quarterly Audit Recommendation Status Report
As of September 30, 2021**

Appendix A

| No. | Report Short Name | Recommendation | Target Completion Date (Per Agency) | Current Status | Responsible Office ¹ | Recommendation Progress (Per Agency) |
|-----|-----------------------------------|--|-------------------------------------|----------------|---------------------------------|---------------------------------------|
| 1 | FY 2020 Financial Statement Audit | Become familiar with OMB Circular A-136 and other authoritative guidance relating to financial reporting requirements to better oversee the performance of its shared service provider and to ensure that its reporting requirements are being fulfilled <i>(Repeat finding from 2019 Financial Statement Audit)</i> . | 8/31/2022 | Open | CFO | Corrective Action Plan (CAP) in place |
| 2 | FY 2020 Financial Statement Audit | Advise the service provider that outdated/superseded guidance was used in the preparation of its financial statements and footnotes so that this issue can be addressed by the service provider in the future <i>(Repeat finding from 2019 Financial Statement Audit)</i> . | 8/31/2022 | Open | CFO | CAP in place |
| 3 | FY 2020 Financial Statement Audit | Request that the service provider enhance its current review procedures to identify errors and omissions in the required financial statements and footnotes and to ensure that all required presentation and disclosure requirements have been met <i>(Repeat finding from 2019 Financial Statement Audit)</i> . | 8/31/2022 | Open | CFO | CAP in place |
| 4 | FY 2020 Financial Statement Audit | In accordance with generally accepted accounting principles (GAAP), ask the Commission's General Counsel to identify loss contingencies relating to legal matters that should be recorded in the agency's general ledger and/or disclosed in the notes to the | 8/31/2022 | Open | CFO | CAP in place |

¹ Legend for Responsible Office is as follows:
 CFO – Office of the Chief Financial Officer
 CIO – Office of the Chief Information Officer
 PMO – Director of the Program Management Office

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| No. | Report Short Name | Recommendation | Target Completion Date (Per Agency) | Current Status | Responsible Office ¹ | Recommendation Progress (Per Agency) |
|-----|----------------------------------|---|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| | | financial statements and instruct the service provider to record these entries and/or disclose these amounts, as appropriate <i>(Repeat finding from 2019 Financial Statement Audit)</i> . | | | | |
| 5 | FY2020 Financial Statement Audit | If the required statements, variance analyses, and footnotes are not submitted by the service provider on its behalf, then the Commission should consider submitting them to OMB directly. | 8/31/2022 | Open | CFO | CAP in place |
| 6 | FY2020 Financial Statement Audit | Continue to implement management's corrective action plan, including the filling of vacant positions. | 8/31/2022 | Open | CFO | CAP in place |
| 7 | FY2020 Financial Statement Audit | Consider preparing its own financial statements and footnotes, both at interim and year-end if the service provider cannot provide complete and accurate financial statements and footnotes timely. | 8/31/2021 | Open | CFO | Implemented |
| 8 | FY2019 Financial Statement Audit | Commission management should develop a procedure to review disbursements made early in the subsequent reporting period to identify items which should be included in its year-end accounts payable or develop an alternative procedure which appropriately estimates the amount of these liabilities at year-end. | 10/31/2021 | Open | CFO | CAP in place |
| 9 | FY2019 Financial Statement Audit | Commission management should independently verify the amounts recorded for accrued liabilities by its shared service provider or participate in the calculation of the recorded amounts. | 10/31/2021 | Open | CFO | CAP in place |

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|-----|----------------------------------|--|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| 10 | FY2020 Financial Statement Audit | Commission management should develop written policies and procedures for the financial reporting process, including procedures to identify and perform (or assist its service provider in preparing) year-end entries to the general ledger that are required by generally accepted accounting principles (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 10/31/2021 | Open | CFO | CAP in place |
| 11 | FY2019 Financial Statement Audit | Commission management should develop written policies and procedures which define the roles and responsibilities of the service provider and Commission staff in performing financial reporting functions. | 10/31/2021 | Open | CFO | CAP in place |
| 12 | FY2020 Financial Statement Audit | The incoming Chief Financial Officer or other Commission personnel knowledgeable in accounting and finance should independently verify the amounts recorded for accrued liabilities by its shared service provider and examine the entries that the service provider has recorded in its general ledger. | 10/31/2021 | Open | CFO | CAP in place |
| 13 | FY2020 Financial Statement Audit | Commission should consider performing routine reviews of employee benefit elections and Official Personnel Files (OPFs) to ensure they are complete and accurate and address this issue with its shared service provider to ensure that OPM guidance is appropriately followed with respect to the Commission's personnel records (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 10/31/2022 | Open | CFO | CAP in place |
| 14 | FY2020 Financial Statement Audit | The Commission should consider obtaining replacement copies of missing records that have been identified and either provide these documents to the service provider so that the information can be | 8/31/2022 | Open | CFO | CAP in place |

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|-----|----------------------------------|---|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| | | maintained in the e-OPF or consider developing and implementing its own repository of documentation to ease the retrieval and response process. | | | | |
| 15 | FY2020 Financial Statement Audit | The Commission should continue to implement the actions identified in its corrective action plan relating to employee payroll and benefits, dated September 30, 2020. | 8/31/2022 | Open | CFO | CAP in place |
| 16 | FY2020 Financial Statement Audit | Ensure that new obligations are recorded only within the current FY, as required by law (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 10/31/2021 | Open | CFO | CAP in place |
| 17 | FY2020 Financial Statement Audit | Ensure that no payment reclassifications are performed between TAS unless the payment documentation is sufficient to show that the payment was applied to another TAS in error and there are sufficient existing obligated balances in excess of the amount(s) of the payment(s) (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 10/31/2021 | Open | CFO | CAP in place |
| 18 | FY2020 Financial Statement Audit | Ensure that all obligations recorded to the general ledger are properly supported (i.e., the obligated amount recorded agrees to the obligating document) (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 10/31/2021 | Open | CFO | CAP in place |
| 19 | FY2020 Financial Statement Audit | Open and complete a review into the potential ADA violation noted and report to the appropriate parties, as necessary, so that the Commission can determine if an actual violation occurred (<i>Repeat finding from 2019 Financial Statement Audit</i>). | 7/31/2021 | Open | CFO | Implemented |

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| 20 | FY2020 Financial Statement Audit | Fulfill the requirements of 31 USC §1517(b) by reporting the FY 2019 violations to the President, Congress, and the Comptroller General of the United States. | 3/31/2022 | Open | CFO | CAP in place |
| 21 | FY2020 Financial Statement Audit | Continue to implement the measures established in the Commission's corrective action plan relating to budgetary controls, dated September 30, 2020. | 3/31/2021 | Open | CFO | Implemented |
| 22 | FY2020 Financial Statement Audit | The incoming Chief Financial Officer or other Commission personnel knowledgeable in accounting and finance should work with the service provider to identify, at least quarterly, upward adjustments that have been offset by downward adjustments in the general ledger so that manual adjustments can be recorded to properly state the ending balances of both accounts. | 9/30/2022 | Open | CFO | CAP in place |
| 23 | FY2020 Financial Statement Audit | Commission management should work with its service provider to design and implement policies and procedures which enhance the internal review process for upward and downward adjustment transactions and includes a reconciliation of the UDO balances with the supporting documentation to ensure that transactions have been recorded correctly. | 9/30/2022 | Open | CFO | CAP in place |
| 24 | FY2020 Financial Statement Audit | The incoming Chief Financial Officer or other Commission personnel knowledgeable in accounting and finance should independently verify the amounts recorded for reimbursable activity by its shared service provider or participate in the calculation of the recorded amounts. | 10/31/2021 | Open | CFO | CAP in place |

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| 25 | FY2020 Financial Statement Audit | The incoming Chief Financial Officer or other Commission personnel knowledgeable in accounting and finance should develop a procedure to identify accrued liabilities for reimbursable expenses which should be also be recorded as accrued accounts receivable. | 10/31/2021 | Open | CFO | CAP in place |
| 26 | FY2020 FISMA | The Commission should follow their vulnerability remediation policies. | 3/31/2021 | Overdue | CIO | CAP in place |
| 27 | FY2020 FISMA | Scanning should be run on a monthly basis, however if there are medium and/or high vulnerabilities, then they should be remediated, and the scan should be repeated and run again. | 3/31/2021 | Overdue | CIO | CAP in place |
| 28 | Program Fee | We recommend the Commission require the Commission Staff to develop and implement effective policy and procedures on the Program Fee Ceiling criteria and methodology for determining the fee ceiling on the CNAs including aligning legacy and draft policy with the criteria in the Cooperative Agreements. | 11/30/2021 | Open | PMO | CAP in place |
| 29 | Program Fee | The Commission should follow GAO 14-704G, Standards for Internal Control in the Federal Government, Principles 10-15. The principles will assist the Commission to develop, design, and implement timely guidance that is supported by quality information. | 11/30/2021 | Open | PMO | CAP in place |
| 30 | Program Fee | 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. | 11/30/2021 | Open | PMO | CAP in place |

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| 31 | Program Fee | In order to support and inform decision-making processes and ensure effective and greater communication and reporting on the analysis being completed, the Commission should review and analyze the Fee and Expenditure Reports and other materials received from the CNAs for opportunities to use a variety of analytical, research, and evaluation methods. | 11/30/2021 | Open | PMO | CAP in place |
| 32 | Cooperative Agreement Audit | We recommend the Commission implement better practices for the QASP process that includes additions to the QASP plan or a separate procedure that outlines how the QASP and KPI measurements are developed and the basis for measurements. | 11/30/2021 | Open | PMO | CAP in place |
| 33 | Cooperative Agreement Audit | We recommend the Commission to complete a work force analysis to determine staffing requirements based on major mission activities. | 11/30/2021 | Open | PMO | CAP in place |
| 34 | Cooperative Agreement Audit | We recommend the Commission to Ensure the Commission's Agreements are harmonized with compliance enforcement protocol to ensure they are capable of meeting the regulatory requirements of the Agreements by the Commission and CNAs. | 12/31/2021 | Open | PMO | CAP in place |
| 35 | Cooperative Agreement Audit | We recommend the Commission review and assess the requirements of the deliverables listed in Section G, attachment 1 of the Agreements, to determine if there are opportunities to reduce the volume and enhance the preparation effectiveness. | 11/30/2021 | Open | PMO | CAP in place |
| 36 | Cooperative Agreement Audit | We recommend the Commission to review and analyze the Fee and Expenditure Reports and other materials received from the CNAs for opportunities to use a variety of analytical, research, and | 11/30/2021 | Open | PMO | CAP in place |

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| | | evaluation methods to support an informed decision-making process. | | | | |
| 37 | Cooperative Agreement Audit | We recommend the Commission to ensure that responses to follow up questions from CNAs have been addressed and included in the reports prior to sending the Fee and Expenditure Reports to Congress. | 10/5/2020 | Overdue | PMO | CAP in place |
| 38 | Cooperative Agreement Audit | We recommend the Commission to ensure the CNAs have access to clear and complete guidance to follow when responding to Commission requests, enforcing the Commission’s regulatory requirements, and meeting the requirements of the Agreements. | 12/31/2021 | Open | PMO | CAP in place |
| 39 | Audit of Project Assignment and Allocation of Orders | Develop programmatic guidance on the interim pilot test program goals and provide it to the CNAs to help ensure the program achieves its goals, consistent with Standards for Internal Controls in the Federal Government. This includes: <ul style="list-style-type: none"> a. Clarify its authority for conducting the pilot program to address recent federal court decisions that questioned whether the Commission has this authority. b. Clarifying whether the CNAs need to update their project distribution polices to incorporate the changes for the pilot test program. | 9/30/2021 | Open | PMO | Implemented |
| 40 | Audit of Project Assignment and Allocation of Orders | Update policy 51.301 to include clarifying the meaning of equitable and transparent distributions, consistent with Standards for Internal Controls in the Federal Government and prior GAO recommendations. | 3/31/2022 | Open | PMO | CAP in place |

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|-----|--|---|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| 41 | Audit of Project Assignment and Allocation of Orders | Review and address the outstanding issues identified during the Commission's 2017 review to ensure NIB's project assignment policy aligns with Commission policy 51.301. | 3/31/2022 | Open | PMO | CAP in place |
| 42 | Audit of Project Assignment and Allocation of Orders | Ensure that NIB completes its order allocation policy and provide sufficient guidance to NIB to ensure that this policy aligns with Commission policy 51.301. | 3/31/2022 | Open | PMO | CAP in place |
| 43 | Audit of Project Assignment and Allocation of Orders | Require the CNAs to include specific criteria for considering the size of NPAs in their recommendation decisions. As part of this, develop metrics for assessing the CNAs on the equitable distribution of projects and monitor progress on an annual basis, consistent with the Standards for Internal Controls in the Federal Government. | 3/31/2022 | Open | PMO | CAP in place |
| 44 | Audit of Project Assignment and Allocation of Orders | Conduct a study to determine whether a different mix of different sized NPAs could help increase the number of people employed through the program and their total work hours. | 12/31/2021 | Open | PMO | CAP in place |
| 45 | Audit of Project Assignment and Allocation of Orders | Identify metrics for assessing transparency and monitor progress on annual basis, consistent with the Standards for Internal Controls in the Federal Government. | 3/31/2022 | Open | PMO | CAP in place |
| 46 | Audit of Procurement List Additions Process | Develop a systematic approach to reviewing and updating policies and procedures every five years as needed in accordance with policy 51.101 including documentation of the review performed, whether updates are needed, and the prioritization of identified updates. | 11/30/2021 | Open | PMO | CAP in place |
| 47 | Audit of Procurement List Additions Process | Update D&F policy 51.207 to improve transparency by clearly stating its use, purpose, and implementation including how D&F | 12/31/2021 | Open | PMO | CAP in place |

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|-----|---|--|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| | | authority delegated to designated Commission staff is required to be approved by Commission members, documented, and periodically updated. | | | | |
| 48 | Audit of Procurement List Additions Process | Review and evaluate the D&F thresholds, and the eight (8) other criteria for assessing whether using D&F approval authority is appropriate, in determining whether the risk tolerance for the volume of D&F approvals is at an acceptable level. | 12/31/2021 | Open | PMO | CAP in place |
| 49 | Audit of Procurement List Additions Process | Monitor the annual use of D&F authority to include restarting the regular reporting to Commission members about the use of this authority. | 7/1/2021 | Open | PMO | Implemented |
| 50 | Audit of Procurement List Additions Process | Develop comprehensive written documentation of the procedures performed by Commission staff for reviewing and evaluating PL additions including the approval process under D&F authority. | 7/31/2022 | Open | PMO | CAP in place |
| 51 | Audit of Procurement List Additions Process | Complete in a timely manner the implementation to update the middleware software to facilitate the upgrades of the outdated vendor software and implement system patches or security updates as warranted. | 6/26/2021 | Open | PMO | Implemented |
| 52 | Audit of Procurement List Additions Process | Update the Commission's contingency plan to include an offsite or alternative recovery location for PLIMS in the event of a natural disaster or catastrophic incident. | 12/31/2021 | Open | PMO | CAP in place |
| 53 | Audit of Procurement List Additions Process | Review existing enhancements to PLIMS and determine any other enhancements needed to improve the PL additions process. The review should include documenting these processes, prioritizing enhancements, and establishing a timeline for implementation. | 3/31/2022 | Open | PMO | CAP in place |

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| No. | Report Short Name | Recommendation | Target Completion Date (Per Agency) | Current Status | Responsible Office ¹ | Recommendation Progress (Per Agency) |
|-----|---|--|-------------------------------------|----------------|---------------------------------|--------------------------------------|
| 54 | Audit of Procurement List Additions Process | Review the process for extracting and tabulating data to assess the CNAs' performance including new PLIMS data fields and standard reports. The review should include documenting these processes, prioritizing enhancements, and establishing a timeline for implementation. | 3/31/2022 | Open | PMO | CAP in place |
| 55 | Audit of Procurement List Additions Process | Evaluate the security and functionality of PLIMS after enhancements are completed and determine whether the upgraded version of PLIMS addresses the Commission's needs or should be replaced. | 9/30/2023 | Open | PMO | CAP in place |
| 56 | Audit of Procurement List Additions Process | Establish and document a process to ensure final PLIMS data files and other calculations supporting the metrics in assessing and reporting the CNAs' performance on PL additions and other PL transactions are maintained in a centralized location; and all assumptions, adjustments, and decisions made to adjust CNA final metric ratings based on the calculated results are documented. | 12/31/2021 | Open | PMO | CAP in place |
| 57 | Audit of Procurement List Additions Process | Establish and document a process to evaluate the PLIMS information for new metrics prior to including the new metrics in the CNAs' QASPs. | 12/31/2021 | Open | PMO | CAP in place |
| 58 | Audit of Procurement List Additions Process | Identify metrics for assessing the efficiency and effectiveness of the PL additions process and monitor progress on an annual basis. This should include tracking approval rates for PL additions separately as well as end-to-end cycle times for completing a PL addition for products and services under full Commission voting process and D&F authority. | 6/30/2022 | Open | PMO | CAP in place |

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Table 2: Closed During Current Period (July 31, 2021 to September 30, 2021)

| No. | Report Short Name | Recommendation | Close Date | Current Status | Responsible Office ² |
|-----|----------------------------------|--|------------|----------------|---------------------------------|
| 1 | FY2020 Financial Statement Audit | Request that the service provider begin preparing and submitting third quarter notes to the financial statements by the OMB submission deadline, in compliance with the financial reporting requirements which apply to agencies subject to the Accountability of Tax Dollars Act (ATDA) (Repeat finding from 2019 Financial Statement Audit). | 8/10/2021 | Closed | CFO |
| 2 | FY2020 Financial Statement Audit | If a waiver or exemption of the OMB Circular A-136 reporting requirements is deemed to be necessary, then the Commission should submit a request to OMB for consideration and obtain OMB's response in writing which formally waives this requirement. | 8/10/2021 | Closed | CFO |
| 3 | FY2020 Financial Statement Audit | Commission management should record the proposed adjusting entries in order to correct the errors identified. | 9/30/2021 | Closed | CFO |
| 4 | FY2020 FISMA | The Commission should identify any deficiencies (through the development of the SSP) and they should be documented on the SAR. | 9/30/2021 | Closed | CIO |
| 5 | FY2020 FISMA | Once the SAR is completed, the Accrediting Official (AO) should sign off on the SAR indicating their acceptance of risk for this system to be in a production environment. | 9/30/2021 | Closed | CIO |

² Legend for Responsible Office is as follows:
 CFO – Office of the Chief Financial Officer
 CIO – Office of the Chief Information Officer
 PMO – Director of the Program Management Office

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| No. | Report Short Name | Recommendation | Close Date | Current Status | Responsible Office ² |
|-----|-------------------|---|------------|----------------|---------------------------------|
| 6 | FY2020 FISMA | All deficiencies identified on the SAR should then be categorized by risk (low, medium, and high) and then formalized POA&Ms should be created. The POA&Ms should contain the hours needed to remediate the deficiency, personnel required, timeline, and cost. | 9/30/2021 | Closed | CIO |
| 7 | FY2020 FISMA | IT should ensure that backed up data is encrypted. | 9/30/2021 | Closed | CIO |
| 8 | FY2020 FISMA | All users should have their IDs automatically disabled after a period of 90 days of inactivity. | 9/30/2021 | Closed | CIO |
| 9 | FY2020 FISMA | Finalize the Mobile Device Policy and ensure that users of the systems adhere to the stipulations outlined within the Policy. | 9/30/2021 | Closed | CIO |
| 10 | FY2020 FISMA | Ensure that IT finalizes the Enterprise Architecture Policy and then disseminates it to appropriate personnel. | 9/30/2021 | Closed | CIO |
| 11 | Program Fee | We recommend the Commission require the Commission Staff, to work jointly with the CNAs to issue and implement a policy on the methodology for the CNAs to calculate the Program Fee. | 9/30/2021 | Closed | PMO |

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Table 3: Closed Prior to July 30, 2021

| No. | Report Short Name | Recommendation | Close Date | Current Status | Responsible Office ³ |
|-----|----------------------------------|---|------------|----------------|---------------------------------|
| 1 | FY2019 Financial Statement Audit | We recommend that the Commission management develop and document a process to evaluate its internal controls over financial reporting which provides (1) an assessment of the effectiveness of the organization’s internal controls to support reliable financial reporting, effective and efficient programmatic operations, and compliance with applicable laws and regulations, and (2) an assessment of whether financial management systems comply with Federal financial management systems requirements. | 11/15/2020 | Closed | CFO |
| 2 | FY2020 Financial Statement Audit | To ensure that billing and collection activities are complete and timely, the Commission should initiate (or instruct its service provider to initiate) IPACs to receive reimbursement payments from the Requesting Agency at the same time that the transmittal form approving the vendor payment is submitted to the service provider for processing. | 6/30/2021 | Closed | CFO |

³ Legend for Responsible Office is as follows:
 CFO – Office of the Chief Financial Officer
 CIO – Office of the Chief Information Officer
 PMO – Director of the Program Management Office

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Appendix B

| # | Recommendation | Complete |
|--|--|--|
| Subcommittee One: Inspector General | | |
| 1 | Implement existing policy by DoD requiring Contracting Officers to check the AbilityOne PL, 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 | | |
| 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 Three: Employment Initiatives (merged with Subcommittee Five to form Subcommittee Eight) | | |
| Subcommittee Four: Laws and Regulations | | |
| 6 | Amend the JWOD Act's 75 percent 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 JWOD 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 | Now incorporated into Recommendation Six |
| 8 | Amend the JWOD 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 Five: Veterans Eligibility (merged with Subcommittee Three to form Subcommittee Eight) | | |
| 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 NPAs, and for veteran employment opportunities in DoD contracts with AbilityOne NPAs | ✓ |
| 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 Code of Federal Regulation (CFR) 51 to include information regarding undesignation of CNAs and deauthorization of NPAs as the authorized source on the PL | |
| | | |

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Appendix B

| # | Recommendation | Complete |
|--|---|----------|
| 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 Information Technology (IT) solution either utilizing a system where the 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 Defense Federal Acquisition Regulation Supplement (DFARS) (Procedures, Guidance, and Information [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 PL | |
| 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 | ✓ |
| Subcommittee Eight: Employment and Veterans Eligibility | | |
| 22 | Change the Commission's regulation for initial qualification for NPAs to participate in the AbilityOne Program to include employment criteria of at least minimum wage comparable to coworkers, a work setting that is inclusive of people with and without disabilities, and opportunities for advancement | |
| 23 | Develop actions to ensure opportunities for CIE outcomes of individuals who are blind or who have significant disabilities, which include veterans and the referrals from other Federal agencies | |
| 24 | Require CNAs to develop a certificate-based training program for individuals certifying an individual's eligibility to work on AbilityOne Program contracts, consider accepting electronic medical documents securely transmitted from Federal and State vocational rehabilitation agencies, and adopt a standardized form approved by Office of Personnel Management (OPM) | |
| 25 | Recommend criteria for veterans with disabilities to be eligible for employment opportunities through the programs of the U.S. AbilityOne Commission that consider the definitions of disability used by the Secretary of Veterans Affairs and the U.S. AbilityOne Commission | |

ETHICS PROGRAM INSPECTION REPORT

Agency: U.S. Ability One Commission

Report No.: 20-50I

Date: September 29, 2020

Period Covered by Review: January 1, 2019 through December 31, 2019



| RECOMMENDATIONS | | | |
|------------------------|----------------|---|-----------------------|
| # | Element | RECOMMENDATION | Compliance Due |
| 1 | 3.1 | <p><u>RECOMMENDATION:</u> Update the agency's written procedures for public financial disclosure to address how the agency handles the collection, review and certification of termination public financial disclosure reports. OGE also recommends that these procedures be updated to reflect that the ADAEO position is the one responsible for the review and certification of the DAEO's public report.</p> <p><u>AGENCY RESPONSE:</u> The DAEO will coordinate with the Commission's Chief of Staff and OGE Desk Officer to draft written procedures for agency, collection, review and certification of termination public financial disclosure reports. The DAEO has drafted language for the Executive Director's approval to address this recommendation.</p> | November 2020 |
| 2 | 3.4 | <p><u>RECOMMENDATION:</u> Collect the \$200 late filing fee from the Executive Director as a result of the 2019 public financial disclosure report being filed late.</p> <p><u>AGENCY RESPONSE:</u> The Agency is in the process of depositing the late fee collected from the Executive Director for the late filing for the 2019 report (covering 2018) which was filed on August 17, 2020. There is no late fee due for the 2020 report as the Executive Director had an extension through August 13, 2020. The Executive Director filed the 2020 278 report on August 20, 2020, within 30 days of the last extension. Pursuant to 5 C.F.R. § 2634.704(a)(2), no late fee is owed.</p> | November 2020 |
| 3 | 3.12,3.13 | <p><u>RECOMMENDATION:</u> Ensure all public reports are reviewed and certified within 60 days of receipt.</p> <p><u>AGENCY RESPONSE:</u> The DAEO has received 278 reports for 2020 as of August 13 and August 20, 2020, and will ensure they are reviewed and certified within 60 days. Additionally, the DAEO received the Executive Director's 2019 report as of August 17 and will review and certify it within 60 days.</p> | November 2020 |
| 4 | 4.9, 4.10 | <p><u>RECOMMENDATION:</u> Review and certify all confidential reports filed in 2019 and 2020.</p> <p><u>AGENCY RESPONSE:</u> The DAEO and ADAEO will complete all reviews by November 2020.</p> | November 2020 |

ETHICS PROGRAM INSPECTION REPORT

Agency: U.S. Ability One Commission

Report No.: 20-50I

Date: September 29, 2020

Period Covered by Review: January 1, 2019 through December 31, 2019



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| 5 | 5.1 – 5.5 | <p><u>RECOMMENDATION:</u> Ensure that all written offers of employment meet the requirements of 5 C.F.R. § 2638.303.</p> <p><u>AGENCY RESPONSE:</u> The DAEO will coordinate with the Commission’s Chief of Staff and OGE Desk Officer to ensure the GSA HR Shared Service Provider inserts the appropriate language in the written offer letters for Commission employees.</p> | March 2021 |
| 6 | 5.6, 5.8 | <p><u>RECOMMENDATION:</u> Develop written procedures for issuing notices to prospective employees and ensure that prospective employees receive the notices, as required by 5 C.F.R. § 2638.303.</p> <p><u>AGENCY RESPONSE:</u> Again, the DAEO will coordinate with the Commission’s Chief of Staff and OGE Desk Officer to develop procedures for the GSA HR Shared Service Provider to provide the appropriate notices to prospective employees.</p> | March 2021 |
| 7 | 6.1 – 6.4 | <p><u>RECOMMENDATION:</u> Ensure that all written notices to new supervisors meet the requirements of 5 C.F.R. § 2638.306.</p> <p><u>AGENCY RESPONSE:</u> The DAEO will coordinate with the Commission’s Chief of Staff and OGE Desk Officer to ensure the GSA HR Shared Service Provider inserts the appropriate notices to new Commission supervisors.</p> | March 2021 |
| 8 | 6.5 | <p><u>RECOMMENDATION:</u> Develop written procedures for issuing notices to new supervisors and ensure supervisors receive the notices as required by 5 C.F.R. § 2638.306.</p> <p><u>AGENCY RESPONSE:</u> The DAEO will coordinate with the Commission’s Chief of Staff and OGE Desk Officer to develop procedures for the GSA HR Shared Service Provider to provide the appropriate notices to Commission supervisors.</p> | March 2021 |
| 9 | 7.3 | <p><u>RECOMMENDATION:</u> Establish written procedures for initial ethics training as required by 5 C.F.R. § 2638.304(f).</p> <p><u>Agency Comment:</u> The DAEO will coordinate with the Commission’s OGE Desk Officer to develop written procedures for initial ethics training as required by 5 C.F.R. § 2638.304(f).</p> | March 2021 |
| 10 | 8.0, 10.0 | <p><u>RECOMMENDATION:</u> Ensure that all Commission covered employees, including all Commission private members, receive the required annual ethics training by the end of 2020.</p> <p><u>Agency Comment:</u> The DAEO and ADAEO will complete annual ethics training for the Commission covered employees, including the Commission private members, by the end of 2020.</p> | December 2020 |