



April 24, 2023

US AbilityOne Commission  
1401 S Clark St  
Suite 715  
Arlington, Virginia, 22202

**RE: Comment on the AbilityOne Commission's Draft Compliance Policies 51.400, 51.403 and 51.405**

**By email: [policy@abilityone.gov](mailto:policy@abilityone.gov)**

Dear Commissioner Koses, Vice Chair Feldblum and Executive Director Zeich:

The National Disability Rights Network (NDRN)\* writes to comment on the AbilityOne Commission's Draft Compliance Policies. Over the years, NDRN and our members, the nationwide network of Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies have led the campaign for greater inclusion of people with disabilities in the workforce. In particular, we have been [vocal and adamant](#) about the need to eliminate section 14(c) of the Fair Labor Standards Act (FLSA), which permits employers to pay certain people with disabilities less than the applicable federal minimum wage, as well as ensuring integration of people with disabilities in the workforce.

NDRN documented the concerns of the P&A / CAP Network and the broader disability community about work performed by persons with disabilities in segregated settings including in sheltered environments, in two reports: [Segregated and Exploited](#) and [Beyond Segregated and Exploited](#). Additionally, concerns about sub-minimum wages were well documented in the award-winning film [Bottom Dollars](#). The evidence over the years has shown that full employment of people with disabilities is not only possible, but also probable if high expectations are set and individuals are provided with the supports and services they need.

Overall, we appreciate the Commission's work on these policies and think they make many important contributions to working toward our goal of people with disabilities working in competitive, integrated settings. Our comments will go through each document individually and suggest edits with wording to specific sections.

## **DRAFT Policy 51.400 - ABILITYONE COMMISSION COMPLIANCE PROGRAM**

### **4. DEFINITIONS AND ACRONYMS.**

Integrated Workplace – We believe that this definition can be strengthened to better move toward the goal of integrated employment. Thus, we propose the following definition:

Integrated work setting means a work setting where the majority of people employed are individuals without disabilities in which the individual with the most significant disability interacts on a regular basis in the performance of work duties with employees who are not disabled.

Job Individualization – We believe that the first sentence of this definition should be reworked to be from the viewpoint of the individual with a disability. Thus, we would propose the following for the first sentence and then keeping the second sentence:

A flexible, thoughtful, and deliberate process designed to respectfully incorporate the expressed interests of the individual to personalize the employment relationship between a participating employee and the NPA in a way that meets the needs of both the employer and employee.

Compliance Program – NDRN believes that the outcome of this oversight, review, and evaluations through this program should be transparent to the public. This transparency will ensure better compliance with the policies and procedures of the Commission. Therefore, we would suggest that the definition add the word “public” before evaluations in this definition.

Person – Centered Employment Plan – While we think that the definition proposed in these documents is a good start, more can be said to ensure the full and necessary involvement of the individual in this plan. Thus, we would propose the following definition:

A written employment plan that is jointly developed between the participating employee and employer that is based on the interests, skills, and capacities of the individual, identifies the employee’s strengths, goals, needs for employment services, and desired outcomes with respect to employment; and includes benefits counseling.

## **5. RESPONSIBILITIES**

(a)(iv) - As an organization that promotes full employment of people with disabilities in competitive, integrated environments, we suggest adding the phrase “towards competitive, integrated employment” at the end of (a)(iv). The addition of this phrase will ensure that the job individualizations, person-centered employment planning, and career advancement programs work toward the ultimate goal of competitive, integrated employment.

## **6. POLICY**

(c)(i) – As discussed above, NDRN and the P&A/CAP Network are in full support of encouraging competitive, integrated employment for people with disabilities. To achieve that goal, we suggest adding “competitive, integrated” before employment in this section.

(c)(iv) &(vi) – To ensure full transparency of the oversight and outcomes of the program, NDRN feels it is critical that both the procedures and processes, and the data collected, need to be publicly available. Without full transparency of these procedures, processes, and the ultimate data that comes from these, it would be impossible for the public to know if the program is fulfilling its goals and aspirations.

(d)(iv) – Finally in this document, again in support of encouraging competitive, integrated employment, we believe “to encourage competitive, integrated” should be added at the end of this section.

## **Draft Policy 51.403 - DETERMINING ELIGIBILITY OF PARTICIPATING EMPLOYEES**

### **4. DEFINITIONS**

Significant Job Support – We think that the proposed definition is a good starting point for defining this term. We would suggest adding the following second sentence to this definition:

Significant job supports should be as non-intrusive as possible, using natural supports, to build confidence and encourage skill development and not further stigmatize the individual or make them stand out from other workers.

Technical Assistance – To support competitive, integrated employment, we suggest you add the phrase “toward competitive, integrated employment” following capacity.

### **6. POLICY.**

(a)(i) – As an organization promoting the full integration of people with disabilities in the workforce, we do not believe as currently administered that the AbilityOne program is a “wellspring of opportunity”. We suggest changing “a wellspring of” to “an”.

(c)(ii) – This section describes the use of a document establishing eligibility for Vocational Rehabilitation (VR) services as being sufficient to establish medical documentation of a disability for this program. While we have no concern with the use of this document to establish medical documentation of a disability, we think it is critical to emphasize that while establishing the disability, that the ultimate placement made will not satisfy the integration mandate for a successful placement under VR. We would suggest adding a new sentence in (c)(ii) that states this.

(e)(i) – This provision misstates the law and requirements of the program. To be a participating employee requires that the individual have a significant disability, not that they also require significant job supports. There are people with significant disabilities that do not require significant job supports, but should be eligible to be a participating employee, and there are those without significant disabilities that may require significant job supports that should not qualify to be a participating employee. We believe (e)(i) as currently written should be stricken from this document.

## **7. PROCEDURES**

(c) - To ensure full transparency of the oversight of the program, NDRN feels it is critical that the decisions and determinations of the Commission be publicly available. We think this is especially important for decisions where the Commission is allowing the Non-profit agencies (NPAs) to use qualified licensed professionals to provide medical documentation to determine a disability. Thus, we feel that the written determination in this section needs to be clear that it will be a publicly available document for review and oversight of these decisions by the independent public.

## **DRAFT Policy 51.405 – RESPONSIBILITIES TOWARDS PARTICIPATING EMPLOYEES**

### **4. DEFINITIONS.**

Career Advancement Program – In furtherance of the ultimate goal of competitive, integrated employment for all people with disabilities, we suggest adding “in competitive, integrated employment” at the end of this definition.

Job Individualization – As we said in our response to this definition in 51.400 - We believe that the first sentence of this definition should be reworked to be from the viewpoint of the individual with a disability. Thus, we would propose the following for the first sentence and then keeping the second sentence:

A flexible, thoughtful, and deliberate process designed to respectfully incorporate the expressed interests of the individual to personalize the employment relationship between a participating employee and the NPA in a way that meets the needs of both the employer and employee.

Outward Employment – In furtherance of the goal of competitive, integrated employment, we believe it is important to add the phrase “is competitive and integrated and” after the first “that” in this definition. Without this addition, we are concerned that the outward employment could be to another segregated, sub-minimum wage employment situation which is contrary to the wishes and desires of the disability community for competitive integrated employment.

Upward Employment – To achieve the goal of full competitive, integrated employment for people with disabilities, we feel it is important that this definition for upward employment must include that this progression must be to a more competitively paid or integrated position to be considered upward employment.

Technical Assistance – In support of the goal of competitive, integrated employment, we suggest adding “in competitive, integrated employment” after capacity in this definition.

## **5. RESPONSIBILITIES**

(a)(iv) and (v) – In order to be fully transparent, the final determinations on phase-in timelines and the results of the Commission’s inspections should be publicly available. Without this transparency, it will be impossible for the general public, stakeholders, and those that oversee the program to know if the program is making progress in achieving competitive, integrated employment for people with disabilities.

(b)(iii) – The recommendations by the CNAs for phase-in timelines should be public information so the general public understands the timelines CNAs are using to update their policies to achieve the desires of the disability community for competitive, integrated employment.

(c)(ii) – The data produced by the NPAs on use of job individualization, PCEPs, and career advancement programs should be publicly accessible so that the general public, the oversight entities, and other interested stakeholders can follow how well the CNAs are using these programs.

## **6. POLICY**

(a) (i) – add “competitive, integrated” after “quality” and “additional” to ensure that we continue to work toward the goal of full competitive, integrated employment for people with disabilities.

(a)(ii) – Drop significant in front of “job supports”. Only allowing individualization to occur if the individual needs “significant” supports misses out on the opportunity to support individuals with disabilities in their desired employment outcomes if all they require is a non-significant support. This misses out on the ability to match an individual with a job of choice by requiring the support to be “significant”.

(b)(i)(d) – The recommendations made by the CNAs for phased in timelines for specific NPAs should be publicly available data so that the general public, employees, oversight agencies, and other stakeholders have this information and can evaluate the progress of NPAs on achieving competitive, integrated employment.

(b)(i)(e) – The data collected by the CNAs here on the NPA’s progress on providing job individualization, PCEPs, and career advancement programs also needs to be publicly available so that interested individuals, employees, stakeholders, and oversight agencies can evaluate the work of the NPAs to providing these services to people with disabilities.

## 7. PROCEDURES

Add a new (c) and re-letter – While (a) and (b) talk about the creation of standards for job individualizations, PCEPs, and career advancement programs, the current (c) immediately moves into an exemption protocol if the NPA lacks resources to create these items. We feel that this is the improper way of looking at the situation. If there is a concern that the NPAs will lack resources or information to create these items or programs, it is incumbent upon the Commission to provide funding to make these items and programs a reality.

So, we suggest creating a new (c) here that requires the Commission to fund and create the expertise at the NPAs. This focuses the work on implementing these important items and programs rather than on providing exemptions. We offer this language as a possibility of a new (c):

(c) If an NPA is unable to use (or have enough of) its own available resources to obtain federal, state, local, community resources to provide job individualizations, PCEPs and career advancement programs, the NPA shall send a detailed description of its efforts with a request for the needed resources. The request shall be sent first to its designated CNA. The CNA shall review and evaluate the facts proffered to justify the need and shall recommend to the Commission whether the resources should be granted. The Commission will determine whether the resources will be granted to the NPA under those circumstances.

Current (c) – Should the new (c) be created or not, then we suggest that all the information around the exemption or request for funding be made public. We believe it is critical for the public to know which NPAs are requesting exemptions or funding, what the rationale is for the exemption or resources, and finally what the determination of the request for an exemption or funding was. Without this information being public, it would be impossible for the public to know if the NPAs are working toward the goal of competitive, integrated employment and providing opportunities for upward or outward employment.



NDRN and the nationwide network of P&A and CAP agencies appreciate this opportunity to provide comments on these proposed policies and procedures. Please be in touch with Eric Buehlmann, Deputy Executive Director for Public Policy at [eric.buehlmann@ndrn.org](mailto:eric.buehlmann@ndrn.org) with any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Marlene Sallo". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

**Marlene Sallo**  
**Executive Director**  
**National Disability Rights Network**

\* NDRN is the non-profit membership association of Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies located in all 50 States, the District of Columbia, and the United States Territories. In addition, there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

P&A and CAP agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A /CAP Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. NDRN and the P&A /CAP Network advocate for many people with disabilities concerning the employment of people with disabilities.