

# TOP 11 PROPOSALS FOR CHANGE TO THE ABILITYONE PROGRAM

(subset of the Melwood Crosswalk of Significant Reports/Proposals)



<u>Proposed Change/Action</u>	<u>Proposing Stakeholders/Reports</u>	<u>Summary of Proposal/Challenge</u>	<u>Potential Impact</u>	<u>Proposed NPA Advocacy Action(s)</u>
<p><b>Modernize the U.S. AbilityOne Program / Make It Consistent with WIOA</b></p>	<p>NCD Report (Feb. 2019)</p> <p>NCD Report (Oct 16, 2018)</p> <p>Senate HELP Committee Report (October 2018)</p> <p>898 Panel Report (July 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p> <p>GAO Report (May 2013)</p>	<p>The AbilityOne Program was created in 1938 through the Wagner-O’Day Act and amended in 1971 as the Javits-Wagner-O’Day Act (“JWOD”). Since then, Congress has not made any major changes to the Program, while, during this period, disability law, social policy and federal procurement processes have evolved. Several reports/proposals call for the modernization of the AbilityOne Program (the “Program”) to align with modern disability policy and law, and to address some of the Program’s management and performance concerns.</p> <p>Key mechanisms to modernize the Program that are consistently seen in Reports/Proposals:</p> <ul style="list-style-type: none"> <li>• Congress amending the JWOD statute; i.e., “opening” up JWOD.</li> <li>• The U.S. AbilityOne Commission (“Commission”) making changes to the AbilityOne Regulations (41 CFR 51).</li> <li>• Eliminate/phase-out use of Section 14(c) under the FLSA and ensure that all AbilityOne employees receive the benefit of relevant labor law coverage, including the National Labor Relations Act and the full scope of FLSA protections.</li> <li>• Ensure that the Program is in alignment with WIOA’s definition of Competitive Integrated Employment (CIE) settings.</li> <li>• Create a goal/program requirement for all AbilityOne employees that participate in the AbilityOne Program to transition to CIE.</li> </ul>	<p>Many NPAs serve as both service providers’ and employers of individuals of differing abilities; their operations must continuously evolve as disability law &amp; social policies change.</p> <p>The likelihood of substantial change to the Program and the corresponding impact (both positive and negative) is high over the next 5-10 years.</p> <p>The extent of any positive or negative impact is largely dependent on the specifics and timing of the proposed changes to the Program, many of which are discussed in the following 10 proposed actions.</p>	<p>To minimize negative, NPAs should have a proactive, united and public voice in the process.</p> <p>Collaborate on a White Paper on the Future Vision for the Program from the perspective of the NPAs, to include ways in which the Program furthers the purpose of disability employment, both now and in our Future Vision.</p> <p>Ensure that findings and recommendations are based on evidence-based research.</p> <p>Explore different structures/business models to align NPAs within the Program with modern disability law &amp; modern social policy, current government procurement goals, and the future of employment for people of differing abilities.</p> <p>Educate Congressional members and the public about the impact and value of the Program, today and for the future.</p> <p>Share best practices among NPAs.</p>

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<p><b>Increase Competition Within the Program.</b></p>	<p>NCSE 898 Panel Presentation (May 2, 2019)</p> <p>DoD Proposed Rulemaking (Apr. 2019)</p> <p>SESA Proposal (Oct 10, 2018)</p> <p>898 Panel Report (July 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p>	<p>Through the 898 Panel, the Department of Defense (DoD) has been a big proponent of increasing competition within the Program by implementing policies and rules to transfer or re-compete contracts on a regular basis, and especially when marginal or poor contract performance is purported.</p> <p>In parallel with the 898 Panel, the Commission has initiated Nonprofit Agency Allocation Competition Pilot Tests and issued Interim Policy 51.620.1 (effective on June 11, 2019) to re-compete contracts already on the Procurement List (PL) and to include pricing in the recommendation process.</p> <p>Increasing competition is also a stated goal of the Social Enterprise Set Aside (SESA) proposal to create a Small Business priority program for for-profit businesses that employ people of differing abilities (at a much lower ratio). SESA is modeled on the principles behind the HUBZone and SBA 8(a) set aside programs; and include competition procedures/requirements, but no vocational support requirements.</p> <p>Similarly, the DoD's Demonstration Project creates a procurement preference for businesses outside of the AbilityOne Program that employ people of differing abilities in a more competitive procurement environment and at a lower ratio than currently required by the Program.</p>	<p><b>Negative:</b></p> <p>NPAs will be required to invest additional resources towards business development (a role traditionally and historically played by the CNAs), as well as capital investments. In addition, NPAs will incur additional start-up costs and will be forced to recover capital expenses over a shorter period, increasing costs to the Government.</p> <p>Agencies may insist on re-competing contracts even when performance has been satisfactory and has met all of the contractual obligations.</p> <p>The more competition in the Program, the more difficult it will become for smaller NPAs to compete due to the increase of additional administrative resources required to compete in a competitive federal procurement environment. This will also result in increased costs for the government.</p> <p>Employees in the Program may lose the historic stability of long-term employment with the same employer as contracts are potentially transferred from one NPA to another every 5 years. This will cause disruption and inconsistency in the lives of people of differing abilities.</p> <p>The CNAs and/or the Commission would require significant additional resources to re-compete contracts every 5 years.</p> <p>Competition on price will require reducing costs in General &amp; Administrative (G&amp;A) Expenses that support employment success for</p>	<p>Explore whether NPAs should advocate to continue to characterize the AbilityOne Program as a socio-economic mandatory source program that does not require competition (or pricing considerations during the selection process) because of the unique nature of the program or whether the Program should transform to be more like other federal procurement programs that require competition &amp; pricing.</p> <p>Educate Congress, Government customers, and the public about the societal cost-savings and other impacts/benefits of the Program.</p> <p>Advocate for changes to the Program's procedures &amp; policies to ensure that the NPA selection process and the FMP determination process is more transparent to the Government.</p> <p>Educate the stakeholders of the program about the contractual price-saving and remedial measures for poor or marginal contract performance; e.g., deductions.</p>

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			<p>people of differing abilities (i.e., vocational supports), which could lead to reduced opportunities and increased turnover.</p> <p><b>Positive:</b></p> <p>Large NPAs may be better able to compete for contracts that are already on the PL, increasing their lines of business, operations and margin.</p> <p>Competition will force NPAs to be more efficient in business operations to keep administrative costs low. NPAs will question the return on investment of the program fees paid to CNAs and demand better services.</p>	

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<p><b>Increase Program Transparency &amp; Oversight</b></p>	<p>OIG Report (June 2019)</p> <p>NCD Report (Feb. 2019)</p> <p>OIG Report (Dec. 2018)</p> <p>SESA Proposal (Oct 10, 2018)</p> <p>898 Panel Report (July 2018)</p> <p>GAO Report (May 2013)</p>	<p>Examples of the lack of transparency and oversight included in proposals for change to the Program include:</p> <ul style="list-style-type: none"> <li>• Commission’s lack of control over the CNAs (spending and use of funds, management of performance goals, and implementation of governance policies and other internal controls);</li> <li>• Transparency in the recommendation process for contracts;</li> <li>• Access to data, reports and records; i.e., quarterly reports on CNA expenditures on salaries and lobbying made available to the public;</li> <li>• Insight into Commission activities and decisions;</li> <li>• Frequent use of executive (non-public) sessions and execution of NDAs; and</li> <li>• Conflicts of interest in regards to the role of the CNA.</li> </ul> <p>Since the establishment of the AbilityOne OIG in 2017, the OIG has been focused on creating internal controls to support audit and investigative efforts.</p> <p>Per the most recent OIG Semiannual Report to Congress, the OIG is planning to seek law enforcement authority.</p> <p>Lack of oversight and transparency in the program is a justification that is used by SESA to propose creating a new program from appropriated funds by Congress, to predicate a competitive procurement and to be accountable to Congress.</p>	<p><b>Positive:</b></p> <p>Create more confidence in the Program among internal and external stakeholders.</p> <p>Provide clear direction, policies and procedures to be followed by CNAs, NPAs, and government agencies in the development of contracts for the PL, the solicitation, review and award of contracts, appeals process and the administrative functions of the Commission and the CNAs.</p> <p><b>Negative:</b></p> <p>Increased CNA oversight has already substantially increased reporting and audit burdens on the NPAs. This proposal could be used to create additional administrative complexity and liability for the NPAs, which historically were not meant to take on the traditional roles of for-profit federal contractors.</p> <p>Previously proposed cooperative agreements between NPAs and CNAs were significantly one-sided and transferred substantial liability to the NPAs.</p> <p>Small NPAs may not be able take on significantly more reporting, auditing and other compliance requirements.</p>	<p>NPAs should take a proactive approach to proposing the best structure for increased program transparency and oversight.</p> <p>NPA input should be taken into consideration when determining the future structure &amp; operations of the CNAs and the Commission (including Program fees paid to the CNAs).</p> <p>Educate Congress and the public about the various oversight measures already in place from FAR Regulations, IRS rules, CARF accreditations, Program requirements, and other compliance &amp; quality mechanisms.</p>

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<p><b>Lower Agency Ratios</b></p>	<p>NCSE 898 Panel Presentation (May 2, 2019)</p> <p>DoD Proposed Rulemaking (Apr. 2019)</p> <p>SESA (Oct 10, 2018)</p> <p>898 Panel Report (July 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p>	<p>This proposal is designed to lower the statutory mandated 75% direct labor hour requirement for NPAs to 33% (DoD Demonstration Project); 35% (SESA); 15%-50% (DoD 898 Panel); or establishing new program participation criteria or measures (Office of Disability Employment Policy (ODEP)).</p> <p>There is a perception that, by having mandated ratio requirements, the Program is not in alignment with modern disability law and social policy goals that are aimed at the full integration of people of differing abilities in the workforce; i.e., the WIOA definition of CIE.</p> <p>In addition, the current 75% requirement has been characterized as creating “segregated” work settings and has even resulted in the Department of Education (through RSA) stating “generally” that work locations funded through AbilityOne contracts and have mandated direct-labor-hour ratios do not fall under the WIOA definition of CIE.</p> <p>Another proposal that has been made in regards to the agency ratio is to allow indirect labor positions to be included in the ratio calculation. In fact, many of the above mentioned proposals to lower the agency ratio are focused on a ratio for the entire workforce as opposed to direct labor.</p>	<p><b>Positive:</b></p> <p>Lowering the agency ratio will be beneficial to NPAs that have TFM or O&amp;M contracts, which historically have been difficult to staff with at least a 75% ratio without subcontracting some of the technical work that requires certifications or specialized skills.</p> <p>The inclusion of indirect labor in the ratio calculation would encourage the promotion of individuals of differing abilities into indirect labor positions. This would further help meet a required element in WIOA’s definition of CIE (opportunities for advancement).</p> <p><b>Negative:</b></p> <p>Lowering the ratio may impact the nonprofit status of NPAs and/or result in unrelated business taxable income (UBTI), depending on how much the ratio is lowered.</p> <p>With a lower ratio, there is a lower number of persons of differing abilities required to be hired under the Program</p> <p>Congress may have to make amendments to JWOD to make the change to the agency ratio, and, once the JWOD statute is opened, other changes may be proposed that may have negative repercussions on the Program.</p>	<p>Monitor the findings from the DoD Demonstration Project.</p> <p>Because the agency ratio is a statutory mandate, making changes may require Congress to make amendments to JWOD.</p> <p>Include this proposal as a section in the “Future Vision” White Paper and ensure that findings and recommendations are based on evidence-based research.</p> <p>Advocate for an increase in contracts on the PL, which would ensure that, in the aggregate, more people are employed.</p> <p>NPAs should request guidance from IRS on lowering ratio and on whether such rules and policies would threaten NPAs’ 501(c)(3) status and/or result in UBTI.</p>

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<p><b>Change Definition of “Significantly Disabled” or “Severely Disabled”</b></p>	<p>NCSE 898 Panel Presentation (May 2, 2019)</p> <p>DoD Proposed Rulemaking (Apr. 2019)</p> <p>NCD Report (Feb. 2019)</p> <p>NCD Report (Oct 16, 2018)</p> <p>898 Panel Report (July 2018)</p>	<p>The current statutory definition of severely disabled is “an individual or class of individuals under a physical or mental disability, other than blindness, which constitutes a substantial handicap to employment and is of a nature that <i>prevents the individual from currently engaging in normal competitive employment.</i>”</p> <p>Changing the definition of “significantly disabled” has been approached from several angles in the proposals/reports to change the Program. The DoD Demonstration Program defines a qualified person with a disability based on the ADA definition and includes “has a severe physical or mental impairment that seriously limits one or more functional capacities”; while the DoD 898 Panel has made a recommendation to expound on the definition and allow veterans in other disabled programs to be included in the definition of severely disabled for the Program.</p>	<p><b>Positive:</b></p> <p>Expands the number of people of differing abilities and disabled veterans that can be employed through the Program.</p> <p>Recognizes that, over the past 45 years, more people of differing abilities are doing more than ever before in all sectors of life; therefore, reform opens the Program to those who experience one or more serious limitations on functional capacity.</p> <p>Expanding the pool of qualified employees could mean increased availability of less significantly challenged individuals with technical skills available for TFM contracts, skilled trade jobs and jobs that require special skills.</p> <p><b>Negative:</b></p> <p>Because the definition is included in the statute Congress may have to amend JWOD to change the current definition, opening the statute to other changes.</p> <p>Expanding the definition could result in significantly disabled persons who have lower productivity not getting hired for positions due to the increase of “higher functioning” people of differing abilities eligible for the program.</p>	<p>Include this proposal as a section in the “Future Vision” White Paper and ensure that findings and recommendations are based on evidence-based research.</p> <p>Monitor the findings from the DoD Demonstration Project.</p> <p>Expanding the definition would result in more eligible employees; therefore, it is important to advocate for an increase in contracts on the PL, which would ensure that, in the aggregate, more people are employed.</p> <p>Explore the possibility of including different categories/definitions and ratio requirements for qualifying individuals for the Program (e.g., a 20% floor for significantly disabled individuals) to ensure that persons with lower productivity stay employed.</p>

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<p><b>Create Small Business Priority Program for Entities Owned By OR Employing People of Differing Abilities</b></p>	<p>DoD Proposed Rulemaking (Apr. 2019)</p> <p>NCD Report (Oct 16, 2018)</p> <p>SESA Proposal (Oct 10, 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p>	<p>The National Council on Disability (NCD) and ODEP have made recommendations to Congress to create a Small Business program for businesses owned by people of differing abilities.</p> <p>The DoD Demonstration Project and SESA focus on creating a Small Business program that employs people of differing abilities.</p> <p>The recommendations from NCD, ODEP and the DoD Demonstration Project are designed to create a program conducted outside of the AbilityOne Program.</p> <p>SESA is designed to replace the AbilityOne Program.</p>	<p><b>Positive:</b></p> <p>The creation of new employment and economic opportunities for people of differing abilities.</p> <p>NPAs could subcontract to or from these entities if the new programs are structured to allow for that.</p> <p><b>Negative:</b></p> <p>This may result in the Program not growing due to contracts going to other procurement programs that have similar objectives – employment of people of differing abilities – but do not have the supports provided by NPAs.</p> <p>If the Program does not improve its brand, reputation and operations, it may be replaced by a new program under these proposals.</p> <p>None of the proposals require these Programs to provide any support or specific training for the people of differing abilities.</p> <p>The SESA proposal would completely disrupt the business model of any NPA that acts as both social service provider and employer.</p>	<p>These are proposals that should be closely monitored. Whether a Small Business program is created for entities owned by or hiring people of differing abilities, these proposals are currently being lobbied for on the Hill, and NPAs should be at the table to provide their subject-matter expertise on these topics.</p> <p>The NPA vision of the Future of the Program should include, in some way, entities owned by people of differing abilities and proposals for other federal contractors to get priority/credit for employing people of differing abilities, without weakening/replacing the current role of the NPAs.</p>

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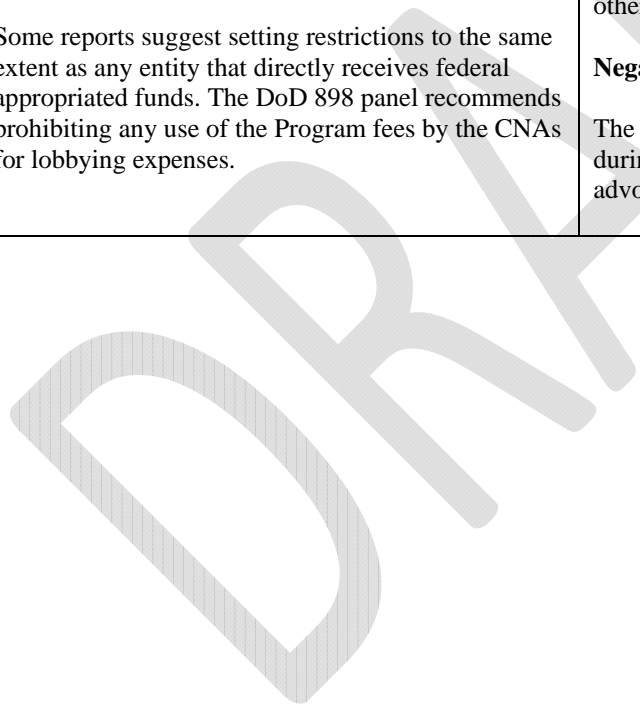
<u>Proposed Change/Action</u>	<u>Proposing Stakeholders/Reports</u>	<u>Summary of Proposal/Challenge</u>	<u>Potential Impact</u>	<u>Proposed NPA Advocacy Action(s)</u>
<p><b>Increase Career Path Opportunities for People of Differing Abilities</b></p>	<p>DoD Proposed Rulemaking (Apr. 2019)</p> <p>NCD Report (Feb. 2019)</p> <p>898 Panel Report (July 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p>	<p>Many reports criticize the Program for not having defined career paths or counseling for people of differing abilities to work towards the goal of competitive integrated employment.</p> <p>The DoD 898 Panel noted that there is a lack of data to evaluate the extent to which case management and/or guidance on career goals are provided, while NCD made a recommendation to Congress to amend JWOD to include the advancement of people of differing abilities into supervisory and management positions and transition into CIE as a measurable and primary outcome of the Program.</p> <p>Indirect labor being excluded from the 75% labor ratio is purported to discourage NPAs from promoting people of differing abilities to managerial positions.</p> <p>The long-term employment of persons of differing abilities in the Program is cited as evidence that the Program has strayed far from its original purpose, which was to create a vocational training program that transitioned people of differing abilities into the private sector.</p> <p>One of the key stated purposes of the SESA proposal is to create a program in which AbilityOne serves primarily as a vocational training program and not long-term employment.</p>	<p><b>Positive:</b></p> <p>The implementation of better defined career goals and paths could result in requirements for NPAs to provide vocational goals/assessments for all participants, and appropriated funding to accomplish these goals.</p> <p>Most NPAs already provide these services, which result in the retention of employees. This is not widely known, which is why NPAs need to be part of these conversations.</p> <p>If married with the proposal to include indirect labor in ratio, creates not only more career paths, but opportunities for workers of differing abilities to gain seniority, supervisory and management positions, and longevity within a single company with enhanced personal and retirement benefits.</p> <p>Could extend funding to support opportunities in other new lines of business, including hard to fill jobs and jobs of the future.</p> <p><b>Negative:</b></p> <p>This could be used as a reason to limit the Program solely to vocational training and to grant a priority to for-profit federal contractors who employ people of differing abilities without the long-term career paths and longevity benefits as stated above.</p>	<p>Include this proposal as a section in the “Future Vision” White Paper and ensure that findings and recommendations are based on evidence-based research; i.e., NPAs that provide vocational rehabilitation services.</p> <p>Educate Congress and the public about the reasons why employees of differing abilities are successful and how NPAs have retained employees for long periods – e.g., competitive wages, benefits, and access to vocational services, factors that are often not available in for-profit businesses.</p>



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<p><b>Restrict CNA Fees for Lobbying</b></p>	<p>NCD Report (Feb. 2019)</p> <p>SESA Proposal (Oct 10, 2018)</p> <p>898 Panel Report (July 2018)</p> <p>GAO Report (May 2013)</p>	<p>This proposal is related to allegations of the Commission’s lack of oversight and transparency over the Program and the CNAs, especially the Commission’s inability to control the extent of lobbying conducted by the CNAs with the revenue that is generated from the CNA Program fee.</p> <p>The CNAs currently have no lobbying restrictions (outside of those provided by the IRS 501(c)(3) rules and the FEC) because the income that CNAs receive from the NPAs are neither appropriated funds from Congress, nor are they directly generated from federal contracts performed by the CNAs.</p> <p>Some reports suggest setting restrictions to the same extent as any entity that directly receives federal appropriated funds. The DoD 898 panel recommends prohibiting any use of the Program fees by the CNAs for lobbying expenses.</p>	<p><b>Positive:</b></p> <p>This could be used as leverage to justify the reduction of CNA Program fees.</p> <p>NPAs could take a more proactive stance and collaborate to advocate on behalf of the Program.</p> <p>CNAs must represent <u>all</u> NPAs on the development and award of federal contracts and should not be seen as lobbying for issues that could impact some NPAs differently than others.</p> <p><b>Negative:</b></p> <p>The CNAs will be restricted from lobbying during a time when the Program needs advocates for positive change.</p>	<p>The NPAs should take a more assertive and coordinated approach to advocacy and lobbying on behalf of the people we serve.</p> <p>If this recommendation is implemented, the NPAs will need to start taking on more lobbying activities on behalf of the Program, whether individually or in collaboration through NCSE, NAEPB, or other associations representing nonprofits in the Program.</p>



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<p><b>Service Providers Should Not Serve as Employers</b></p>	<p>NCD Report (Feb. 2019)</p> <p>NCD Report (Oct 16, 2018)</p> <p>SESA Proposal (Oct 10, 2018)</p> <p>Advisory Committee Report (Sept. 2016)</p>	<p>The premise behind this proposal is that there is an inherent conflict of interest with AbilityOne NPAs serving as both employers and service providers. NCD has taken a particularly strong stance on this issue.</p> <p>Cited examples of the conflicts that may arise include:</p> <ul style="list-style-type: none"> <li>• The determination of who is eligible to participate as an AbilityOne employee is often made by the same NPAs that receives funding to provide vocational support services for these participants; and</li> <li>• An employer serving as an individual’s primary point of contact for all services, including residential support and health care, must make both employment decisions and support decisions.</li> </ul> <p>The SESA proposal purports to eliminate this conflict by proposing that NPAs train individuals on AbilityOne contracts for up to 12 months in conjunction with an approved training program by the State before the individuals’ transition to long-term employment with Small Businesses.</p>	<p><b>Negative:</b></p> <p>This would serve to move most NPAs, as currently structured, out of the federal contracting world and to focus more on providing vocational training and support, and transitioning participants to long-term employment with for-profit community employers without integrated vocational support.</p> <p>This would completely change the current NPAs’ business model and operations.</p> <p>NPAs would need to create new avenues for revenue and, potentially, reorganize their corporate structure and operations to create affiliates and/or subsidiaries, assuming there is no prohibition to doing so within any new law or regulation governing the Program.</p>	<p>Educate Congressional members and the public about the impact and value of the Program, as well as the NPAs’ policies and procedures that already exist to mitigate concerns about conflicts of interest.</p> <p>NPAs are the subject-matter experts (SMEs) in the field of employment of people of differing abilities and the supports that build success; therefore, it is important to establish and articulate the value/impact of the NPAs’ current operations.</p> <p>Support NPAs in exploring different structures/ business models to further limit conflicts of interest.</p> <p>Include this concern as a section in the “Future Vision” White Paper and ensure that findings and recommendations are based on evidence-based research.</p> <p>Stay abreast of proposals to replace NPAs as employers with for-profit businesses. It is important for the expertise of NPAs to be included in any structural changes that are made to the Program and/or the creation of a new program that employs people of differing abilities.</p>

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<p><b>Increased Inclusion of Disabled Veterans in the AbilityOne Program</b></p>	<p>NCSE 898 Panel Presentation (May 2, 2019)</p> <p>898 Panel Report (July 2018)</p> <p>SESA (Oct 10, 2018)</p>	<p>Virtually all of the proposals/reports envision the increased inclusion of disabled veterans in the Program and any future program created to employ people of differing abilities. This is a particular focus of a DOD 898 Panel subcommittee and is also prominently included in the SESA proposal.</p> <p>The DoD Demonstration Program defines a person with a disabilities based on the ADA definition and includes “has a severe physical or mental impairment that seriously limits one or more functional capacities,” while the DoD 898 Panel makes a recommendation to expand the definition to allow veterans qualified as “disabled” by other agencies to be included in the definition of “severely disabled” for the Program.</p> <p>This would require a change in the currently accepted definition of “severely disabled” for purposes of qualifying for the labor ratio tests. It could potentially be done through regulatory guidance by the Commission but, more likely, would require a change to the JWOD statute.</p>	<p><b>Positive:</b></p> <p>This would expand the number of people eligible to be hired in the Program, increasing the pool of eligible employees with many levels of ability.</p> <p>Many NPAs already have programs and services for disabled veterans; therefore, this would complement the work in which NPAs are already engaged.</p> <p><b>Negative:</b></p> <p>Including a higher number of disabled veterans in the Program involves changing the threshold for qualification for employees, and may result in a lower employment rate for severely disabled non-veterans with lower productivity.</p>	<p>Incorporate this proposal as part of the “Future Vision” White Paper and ensure that findings and recommendations are based on evidence-based research.</p> <p>Explore the possibility of including different categories/definitions and ratio requirements for qualifying individuals for the Program (e.g., a 20% floor for significantly disabled individuals) to ensure that persons with lower productivity stay employed.</p> <p>Advocate for an increase in contracts on the PL, which would ensure that, in the aggregate, more disabled veterans and non-veterans are employed.</p>

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 (subset of the Melwood Crosswalk of Significant Reports/Proposals)



<u>Proposed Change/Action</u>	<u>Proposing Stakeholders/Reports</u>	<u>Summary of Proposal/Challenge</u>	<u>Potential Impact</u>	<u>Proposed NPA Advocacy Action(s)</u>
<p><b>Priority of “Rule of Two” Over AbilityOne Mandatory Source</b></p>	<p>VA Interpretation of the Veterans Benefits Act of 2006</p>	<p>The Veterans Benefits Act of 2006 (VBA) gives service-disabled veteran-owned small businesses and veteran-owned small businesses first and second priority status when awarding contracts for VA procurements, even if the product or service is on the AbilityOne PL.</p> <p>In <u>PDS Consultants</u>, the U.S. Court of Appeals for the Federal Circuit, ruled in favor of the VA “Rule of Two” analysis that was implemented through the VBA. In essence, this means that new laws can be enacted to trump the “mandatory” source in JWOD without even opening up the statute.</p> <p>If the current ruling in <u>PDS Consultants</u> remains good precedent, any subsequent legislation/regulation that gives priority to a procurement preference over the PL is a significant threat to the future of the Program. (There are 3 ongoing court cases that may serve to reverse or mitigate the current ruling in the <u>PDS Consultants</u> case.)</p> <p>Further, the VA has recently implemented new policies and programs for the procurement of medical supplies that will have negative implications on the VA’s compliance with the AbilityOne Program.</p>	<p><b>Negative:</b></p> <p>NPAs with VA contracts recently received three-month termination notices from the VA. These notices were based on a VA determination that these services and products on the PL could be provided by Service-Disabled Veteran-Owned Small Businesses (SDVOSBs).</p> <p>If the AbilityOne Program were to permanently lose its mandatory source priority within the VA, the impact would be substantial to the Program and to the people of differing abilities who would no longer be able to obtain employment opportunities through the Program.</p>	<p>Lobby Congressional Members (especially Champions) in districts where AbilityOne NPAs will be affected by the implementation of the <u>PDS Consultants</u> decision, and urge them to protect the PL.</p> <p>Advocate for the increased inclusion of disabled veterans in the Program.</p> <p>Educate Congress about the consequences of the VA’s Rule of Two Analysis and make the distinction that SDVOSBs are not required to hire or promote veterans. The program is not designed to be an employment program, but solely to benefit veteran owners. The AbilityOne Program, on the other hand, is an employment program that employs thousands of people of differing abilities (including disabled veterans) by providing services and products to the VA.</p> <p>This is an opportunity to advocate for the Program – in the courts and in the court of public opinion. NPAs can compare the impact of employment through the Program on employing disabled veterans with the impact of the Rule of Two.</p> <p>NPAs impacted should collaborate on advocacy efforts.</p>