

Lou Bartalot, Director Compliance,
Committee for Purchase from People Who Are Blind or Severely Disabled,
1421 Jefferson Davis Highway,
Jefferson Plaza 2, Suite 10800,
Arlington, VA, 22202-3259;
fax (703) 603-0655;
email rulecomments@abilityone.gov.

Alicia Epstein
aepstein@nish.org
(521) 921-9362

Subject: Federal Register Volume 77, Number 87 FR Doc. 2012-10732 Filed 5-3-12

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Type of Information Collection: **New collection.**

Title: **AbilityOne Program Individual Eligibility Evaluation**

OMB Control Number: **3037-0011.**

Form Number: **Committee Form IEE.**

Recommendations:

- 1. Approve the form, Committee Form IEE, as submitted for a period of two years.**
- 2. Direct the Committee to develop a revised form within two years based on a revision of the Committee's Compliance Manual Chapter 3 to a performance standards for the *Compliance Definitions of Disability* basis of eligibility (currently Chapter 3 is based on prescriptive criteria).**

Executive Summary:

At the 2011 Pacific West and Northwest Joint NCWC several speakers indicated that the US AbilityOne Commission is in the process of revising Chapter 3 of the Compliance Manual. I am suggesting that this may provide the NPA community another opportunity to make recommendations regarding any changes to the Compliance manual. Specifically Jerry Bettenhausen said that it is unlikely that any form of presumptive eligibility is to be addressed appears to be counterproductive - especially for the Wounded Warriors program among others. Also the current definitions and definitions I have seen discussed make it very difficult to build new lines of business such as the TFM effort, the Commercial Lines of Business, or the Contact Call Center business. The Committee Staff Nonprofit Agency Review Manual June 29, 2007 Chapter 3 contains prescriptive or `detailed definitions` and not the Government procurement standard of using Performance requirements. Not only is this a weak approach it is an awkward approach given that 41 CFR 51.4-3(c) requirements are performance requirements. Recommend that all stakeholders be solicited for a needed update to revising Chapter 3 of the Compliance manual. Also recommend that senior leadership be directly involved in the selection and use of performance standards including the presumptive eligibility found in 41 CFR 51.4-3(c) as the preferred approach.

- 3. Adhere to existing Law and practice:** Existing law, PL 41CFR51 4.3 (c)(1) government entity certification, allows for initial assessment the acceptance of ` , or a certification of the disability or disabilities by a State or local governmental entity. _ This law was followed in the 2002 manual but is not followed in the 2007 manual.

Discussion:

The approach recommended is an approach to create compliance documentation that includes all possible participants. It is an alternative to the current approach which creates classes of eligible

persons* and then creates additional classes for special cases of individuals. This latter approach will always not be comprehensive in its outcome.

* Existing law, PL 41CFR51 4.3 (c)(1) government entity certification, allows the acceptance of ` , or a certification of the disability or disabilities by a State or local governmental entity. _ This requirement is changed by the committee by adding at the end of the law the phrase “..., **but must include a diagnosis** _ . This executive agency `reverse earmark_ then becomes a significant driver of the extensive prescriptive criteria documentation requirements.

Veterans Impact: The typical scenario for Veterans who are impacted because of a service related condition is to contact the VA for services. A six to 18 month process is undertaken by the VA to document and qualify the Veteran and in our case of interest qualify the Veteran for VA Vocational Rehabilitation benefits. Training and counseling then follow. The NPA contacts the VA Voc Rehab looking for a disabled Vet who needs a job - typically a Vet who has a long period of unemployment or underemployment. The NPA accepts the VA certificate of disability and the assurance from the VA that the Vet is able to enter the work force considering adjustment, skills and attitude. Of course competitive employers are not hiring the Vet because of real (discernable) characteristics during the interview or because of the perception caused by the `gaps_ on the resume. The NPA does a skill assessment; the Vet is capable of doing the job. The disabled Vet goes to work on an AbilityOne contract. Except, with the current Chapter 3 prescriptive criteria, the NPA has to within 30 days separately duplicate the disability finding of the VA.

This requirement includes all the conditions that do occur in service disabled veterans situations such as chemical poisoning that is indicated by markers in the blood and may or may not have mental impairment confounding issues. All of which may be reluctantly or not fully acknowledged by either the VA or the Vet.

Law Change: The change to existing requirements is the total abandonment of 41CFR51 4.3 (c)(1) government entity certification, the replacement of several pages in a manual, circa 2002, with a manual chapter of 41 pages. The Manual Chapter 3 needs to be reviewed by competent (licensed) medical and rehabilitation professionals and other professionals regularly and continuously engaged in the profession of determining disability impacts on getting and maintaining employment.

Sensitivity to Language and Inclusionary Change:

National Council on Disability

Exploring New Paradigms for the Developmental Disabilities Assistance and Bill of Rights Act: Supplement to the 2011 NCD publication Rising Expectations: The Developmental Disabilities Act Revisited, National Council on Disability 2012 Supplement to 2011 Report

`As Rising Expectations described, the nation’s expectations, attitudes, policies, and services for people with disabilities have changed dramatically since the DD Act was passed in 1963, and they continue to evolve. `

`Presumption of eligibility: Modify current statutory language regarding presumption of eligibility to prevent state VR systems from deeming a person ineligible for employment services, including prevention of such determinations through the inappropriate use of assessment. _

The above quotes from the NCD and the many recent changes by Congress on terminology used to describe persons with disabilities and the language of specific disabilities all speak to the need to modernize the approach used by the Committee. Criteria requiring meeting 2 prescriptive factors excludes those persons otherwise found eligible but only meeting one criteria - an indefensible position in the evolving sensitivity to access by persons with disabilities.

Prescriptive criteria documentation requirements have become outmoded and need to be replaced with inclusionary performance requirements.

Manual Changes:**The Objectives:**

1. Provide access to the employment or training opportunities by the AbilityOne program by persons appearing to meet the requirements of the regulations without enduring other documentation, other procedural requirements or extensive analysis of their situation.
2. Provide proper documentation of persons provided employment or training opportunities by the AbilityOne program.
3. Provide guidance to limit access to employment or training opportunities by the AbilityOne program by persons who would seek or be proposed to be included in the AbilityOne program that otherwise do not meet the regulatory requirements of the AbilityOne program.

Suggested Approach to the Compliance Manual Chapter 3:

- A. Persons who have " or a certification of the disability or disabilities by a State or local governmental entity_ are eligible to be counted toward the direct labor ratio for the AbilityOne program reporting.
- B. The following Government entities have been deemed by the US AbilityOne Commission as Governmental entities whose documentation meets this requirement.
 - a. DOD Wounded Warriors Program " (document type or Form number);
 - b. Dept. of VA Vocational Rehabilitation (letter awarding employment benefits training);
 - c. Dept. of VA Continuous Work Therapy (program admittance letter)
 - d. DOL Division of Federal Employees' (Workers) Compensation (Award letter)
 - e. SSA SSDI (letter describing award)
 - f. State of [All] Department of Rehabilitation (Award of employment training benefits)
 - g. State of [All] Department of Rehabilitation Contractors (In behalf of DOR letters)
 - h. State of [All] Department of Workers Comp (specific type of award letter)
 - i. Etc.

This approach immediately meets documentation and eligibility to be counted toward the direct labor ratio for the AbilityOne program reporting for persons who have been determined to have a disability and that employment is an objective of the outcome of their current therapy.

This also meets the sense of congress that is evidenced in The Americans with Disabilities Act Amendments Act of 2008.

- C. For those individuals not qualifying in A. above will be qualified for by the employer, the AbilityOne affiliated Non Profit Agency (NPA) doing the intake or hiring of the individual, either through internal procedures or by outsourcing the documentations to a qualified medical provider.

- a. *At this point develop and insert the performance requirements that a NPA must meet to be able to provide qualifying documentation for an individual with a disability. These should be standards based requirements. Such as a CARF credentialed organization with written standards and procedures in place to conduct and create the documentation. Note: This credentialing process should include the possibility of enrolling in a Government program to provide additional resources to the individual. Should this happen subsequent documentation would be satisfied under A. above.*
- D. For those individuals whose choice of being provided support is support through the Prevailing Wages and Commensurate Wages under Section 14(c) of the Fair Labor Standards Act (FLSA) the NPA must meet and provide during the compliance review all the documentation including periodic time studies of this act in addition to any other documentation required above.
- E. Persons that have not been awarded a Governmental letter and/or who have not completed a documentation process described in A through D above are not eligible to be counted toward the direct labor ratio for the AbilityOne program reporting. Even if the individual is in all appearance a persons with a disability they cannot be counted as eligible to be counted toward the direct labor ratio for the AbilityOne program reporting until the documentation is complete. Direct labor ratios (*can/cannot*) be retroactively corrected. This also means that it is extremely unlikely that any temporary staffing can be counted as eligible to be counted toward the direct labor ratio for the AbilityOne program reporting.
- F. The annual evaluation contains two requirements:
 - a. Does the disability continue?
 - i. Section 51-4.3 (c) (2) does not recognize a granularity for deciding the type of annual statement based on the original documentation of the employed person. The proposal is that for persons coming from a State or Federal Agency the annual statements take a minimum form. That is especially where the State or Federal Agency includes a statement that "ŭ which is a permanent disability (or diagnostic) ŭ ". The existing regulation at 51-4.3 (c) (1) already recognizes this class of documentation from these Governmental agencies for the initial diagnostic - this suggestion just extends that recognition to the annual statements.
 - ii. *Requirements similar to i. above need to be developed for persons who qualified at C. above for annual documentation requirements.*
 - b. Provide a Competitive Employment Evaluation. Competitive employment evaluation is unique to the individual. Often the competitive employment evaluation has little to do with the disability diagnosis. Antidotal evidence is Stephen William Hawking, Senator John McCain, Senator Max Cleland are all persons with disabilities who have obtained competitive employment. The ability to obtain or return to Competitive Employment is an interaction between the individual and the disability(s) they have or they perceive they have. Probably the best statement that can be made about competitive employment is whether the individual can be recommended to the NPA's placement program without damaging the sense of well-being of the

individual. Guidance for the competitive employment statement should probably take into account the sense of congress that is evidenced in The Americans with Disabilities Act Amendments Act of 2008.

Conclusion:

1. The **Committee Form IEE** as submitted is the best approach to uniform and consistent annual Competitive Employment Evaluation within the current Compliance Manual Chapter 3 and should be approved on an interim basis.
2. Direct the Committee For Purchase From People Who Are Blind Or Severely Disabled to modernize the Compliance Manual Chapter 3 using presumptive inclusionary performance requirements - and then revise the **Committee Form IEE** accordingly.

CHRISTOPHER T. FLYNN PRESIDENT & CEO
PACIFIC COAST COMMUNITY SERVICES 5501 SACRAMENTO AVENUE RICHMOND, CA 94804-5603
PHONE 510.528.3232 FAX 510.528.3668 CELL: 510.813.1609 chris@pccsonline.org www.pccsonline.org