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**TITLE: QUALIFICATION ASSESSMENTS AND ENFORCEMENT ACTIONS**

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**1. PURPOSE.**

This policy describes the rules and procedures governing nonprofit agency (NPA) qualification assessments overseen by the U.S. AbilityOne Commission (Commission) and conducted by the Commission or the Central Nonprofit Agencies (CNAs). This policy also describes the administrative status and/or enforcement actions that may be prescribed by the Commission if NPAs are found out of compliance with AbilityOne Program (Program) requirements.

**2. APPLICABILITY.**

This policy applies to the Commission, designated CNAs, and qualified NPAs participating in the Program.

**3. AUTHORITY.**

- (a) 41 U.S.C. §§ 8501-8506, Javits-Wagner-O’Day (JWOD) Act
- (b) 41 CFR Chapter 51, Committee for Purchase From People Who Are Blind or Severely Disabled

**4. DEFINITIONS AND ACRONYMS.**

Definitions, abbreviations, and acronyms frequently used throughout this policy system are found in Policy 51.102, Definitions of Terms. Terms unique to a specific subject matter in this policy or its associated Procedure 51.407-01 are defined below.

<b>Term</b>	<b>Definition</b>
Appellate Authority	A Commission staff member that reviews appeals of initial decisions on deauthorizations and disqualifications of NPAs.
Commission Audit Plan	The Commission plan for auditing the quality of the CNA’s Compliance Program.
Compliance Program	A program that includes oversight, review, and evaluations to determine whether an NPA is meeting the Program’s requirements, and provision of technical assistance to support an NPA’s compliance with the Program’s requirements.
Corrective Action Plan (CAP)	A CAP is an administrative process and form of technical assistance through which an NPA may cure a violation or address other circumstances that cause the CAP to be assigned.



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Deauthorization	Removal of an NPA’s status as an authorized source for a given product or service project on the AbilityOne Procurement List (PL).
Deciding Official	A Commission staff member designated by the Executive Director to make initial decisions on deauthorizations and disqualifications of NPAs in accordance with this policy and Commission Procedure 51.407-01.
Disqualification	The withdrawal of an NPA’s eligibility to participate in the Program.
Finding	A determination that an NPA is not complying with a Program requirement.
Inspection Plan	A standardized and Commission-approved plan outlining the CNA’s methods and goals for conducting qualification assessments over the course of an inspection period.
Program Requirements	The requirements of applicable statutes, regulations, policy, guidance, and other agency directives.
Provisional Enforcement Action (PEA)	A PEA is an initial enforcement status in which the Commission determines that assigning a CAP is not sufficient to ensure that an NPA will address a significant violation.
Qualification Assessment	The oversight, review, and evaluation of an NPA’s compliance with Program requirements.
Qualification Inspection Package	A standardized description and checklist of each inspectable element of the NPA’s operations, a list of required supporting documentation, and an inspection report template.
Qualifying Direct Labor (QDL) Employee	An employee who is blind and/or has a significant disability and is performing work that qualifies to be counted toward the direct labor hour (DLH) ratio, whether or not the products or services are procured under the JWOD Act (per 41 U.S.C. 8501(6)(C) and (7)(C)).
Suspension	Ineligibility of an NPA to be recommended for authorization or receive an order for a new PL project.
Technical Assistance	Targeted training, resources, and support to an NPA to build capability and capacity, or to resolve performance challenges.



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Violation	A finding which an NPA fails to correct within a 10-day grace period.
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#### 5. RESPONSIBILITIES.

(a) The Commission:

- i. Establishes standards for Qualification Assessments and Technical Assistance;
- ii. Approves a CNA's Inspection Plan and Qualification Inspection Package;
- iii. Reviews an NPA's Corrective Action Plan(s) (CAP) and approves the closure of the CAP(s);
- iv. Develops and implements a Commission Audit Plan; and
- v. Takes enforcement actions as necessary to ensure NPAs' accountability for complying with all Program requirements.

(b) The CNA:

- i. Develops a Qualification Inspection Package and an Inspection Plan, consistent with the Commission's standards for Qualification Assessment, for Commission approval;
- ii. Provides technical assistance to the NPAs it represents in meeting Program requirements;
- iii. Collects data and records findings, consistent with the Commission's standards for Qualification Assessment, in an electronic format that the Commission can directly and fully access;
- iv. Notifies an NPA of a violation(s) and assigns CAP(s);
- v. Reports violation(s) and associated CAP(s) to the Commission;
- vi. Oversees implementation of the CAP(s);
- vii. Prepares reports on the state of NPA compliance with Program requirements, as requested by the Commission; and
- viii. Recommends policy changes to the Commission to enhance NPA compliance with Program requirements.

(c) The NPA:

- i. Complies with all Program requirements;
- ii. Maintains information necessary to demonstrate compliance with Program requirements;
- iii. Accommodates and actively participates in CNA and/or Commission Qualification Assessments;
- iv. Takes appropriate steps to address finding(s) and/or violation(s) within the timeframe established by the CNA and/or the Commission;

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- v. Timely delivers requested documentation and other information to the CNA and/or the Commission in the electronic format required by the CNA and/or the Commission; and
- vi. Participates in all Commission- and/or CNA-required technical assistance.

#### 6. POLICY.

- (a) General. The Commission is responsible for determining whether an NPA is meeting Program requirements. This determination is made through several means, including inspections by the CNA and, if appropriate, by the Commission. The Commission enforces an NPA's compliance with Program requirements through appropriate enforcement actions.
  - i. The CNAs will conduct front-line Compliance Programs that include the establishment and use of a Qualification Inspection Package and an Inspection Plan, which must have Commission approval.
  - ii. The Commission will assess NPA compliance through a variety of means, including the reports that result from the CNA Compliance Program and the NPA's Annual Representations and Certifications form.
- (b) Inspections.
  - i. Both the CNA and Commission may conduct an inspection(s) of an NPA.
  - ii. Generally, an NPA will be notified in advance before an inspection is conducted.
  - iii. The Director of Program Oversight may make an exception to the advance notice of inspection, if there is good cause to address an urgent issue.
- (c) Finding(s).
  - i. Upon determination of a finding, whether during an inspection or other means of discovery (e.g., Federal Contracting Activity notification, NPA self-reporting, etc.), the CNA shall send a Notice of Finding(s) to the NPA, describing the finding(s).
  - ii. After the CNA and/or the Commission makes a finding, an NPA shall have a 10-business-day grace period to remedy the finding(s), except as provided in 6(c)(iv). Whenever possible, CNAs shall assist NPAs with correcting any finding(s), including assisting with on-the-spot document corrections.
  - iii. If an NPA self-reports a finding to the CNA, the NPA shall receive the same 10-business-day grace period to correct the self-reported finding, except as provided in 6(c)(iv).
  - iv. Findings of fraud, waste, abuse, repeat of prior violation(s), or a significant violation(s) of laws referenced in Commission Policy 51.406, may not be corrected during the grace period.
- (d) Violation(s).
  - i. A finding which an NPA fails to correct during the 10-business-day grace period becomes a violation.

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- ii. Upon determination of a violation, the CNA shall send a Notice of Violation(s) to the NPA, describing the violation(s).
  - iii. An NPA may dispute a violation. The Commission will review an NPA's dispute and make a determination whether a violation exists.
  - iv. If a CNA does not treat an unresolved finding as a violation, the CNA must notify the Commission of that action and provide a rationale for the CNA's decision.
  - v. The CNA and/or the Commission will impose a Corrective Action Plan (CAP) to remedy the violation(s). As a general matter, the CNA will develop the CAP in coordination with the NPA.
- (e) Corrective Action Plan (CAP).
- i. A CAP is typically assigned when the CNA and/or the Commission has determined an NPA has a violation(s) that can be cured if the NPA is given additional time to remedy the violation.
  - ii. A CAP will include a time frame in which the CAP must be completed, and the conditions required for the CAP to be lifted.
  - iii. The Commission staff will determine whether an NPA has successfully completed the CAP.
- (f) Enforcement Actions.
- i. Provisional Enforcement Action (PEA).
    - 1. A PEA is appropriate, but not limited to, the following circumstances:
      - a. The specific violation(s).
      - b. An NPA has received formal documentation from a Contracting Activity of unsatisfactory contract performance (generally, when the NPA has been placed on a Performance Improvement Plan (PIP), receives a Cure Notice or Show Cause Notice, or similar).
      - c. When the Commission determines that an NPA has failed to complete a previously assigned CAP in a timely manner.
      - d. When an NPA is found to have a repeat violation(s) demonstrating that a previous CAP, although completed, did not cure the violation(s) or the underlying conditions causing the violation(s).
    - 2. An NPA will receive a written notification from the Director of Program Oversight (or designee) of the Commission's intent to place the NPA in a PEA.
    - 3. The NPA may submit a statement of facts disputing the grounds for the PEA or providing evidence of mitigation.
    - 4. A PEA will include the conditions required for the PEA to be lifted.
    - 5. During a PEA of an NPA, the Commission may prescribe additional CAPs for the NPA.

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6. A PEA may be lifted based on a demonstrated effort by the NPA to complete the conditions of the PEA.
  7. The appropriate CNA and the Commission will note that an NPA has an active PEA status when making recommendations or authorizations for new PL assignments. During the PEA period, the Commission may decide to provide a new authorization, or the CNA may make a new allocation, with a written decision explaining the special circumstances for doing so.
- ii. Suspension.
1. The Director of Program Oversight (or designee) will send the NPA a written notification of the Commission's intent to suspend the NPA.
  2. The Commission will direct the responsible CNA to suspend assignments of new PL work for an NPA when, but not limited to, the following circumstances occur:
    - a. After a CAP has been prescribed and the NPA has failed to timely enter into the CAP;
    - b. When an NPA fails to complete a CAP within the time limits prescribed in the CAP; or
    - c. When an NPA has repeated violations of the same or similar Program requirement(s).
  3. The NPA may submit a statement of facts to the Director of Program Oversight disputing the grounds for the suspension or providing evidence of mitigation.
  4. During suspension of an NPA, the Commission may prescribe additional CAPs for the NPA.
  5. The Director of Program Oversight may temporarily remove a suspension based on a demonstrated effort by the NPA to complete the conditions of the suspension.
  6. During the suspension period, the NPA may continue to perform current allocations, but will not be eligible to receive assignments of new work.
  7. During the suspension period, the Commission may provide a new authorization, or the CNA may provide a new allocation, with a written decision explaining the special circumstances for doing so.
  8. A suspension may not last longer than 24 months, except as decided by the Director of Program Oversight. The Director must make a determination, in writing, and notify the NPA that a continued suspension is justified.
- iii. AbilityOne Project Deauthorization.
1. An NPA is eligible for deauthorization when an NPA has failed to remediate the project-specific violation(s) described in this policy within the time specified in the CAP.

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2. The Director of Program Oversight (or designee) will notify the NPA, in writing, of the Commission's intent to deauthorize the NPA for violations described in Policy 51.407.
  3. The NPA has the right to provide a statement of facts to the Director of Program Oversight (or designee) challenging the grounds for the deauthorization and/or providing evidence of mitigation.
  4. The decision to deauthorize an NPA will be made by the Deciding Official consistent with Commission Procedure 51.407-01.
  5. An NPA may appeal a deauthorization decision.
  6. The designated staff appellate authority must be at least one level above the original Deciding Official.
- iv. Disqualification.
1. Disqualification is appropriate, but not limited to, the following circumstances:
    - a. The NPA has failed to remediate violation(s) within the time period prescribed in a notice of suspension and/or deauthorization.
    - b. The NPA as a corporate entity, or its key leaders, has been found liable for criminal misconduct, fraud, waste, or abuse.
    - c. The NPA has failed to maintain nonprofit status.
    - d. The NPA has been suspended or debarred from being a Federal contractor.
  2. The Director of Program Oversight (or designee) will communicate to the NPA the Commission's intent to disqualify the NPA.
  3. The NPA may provide a statement of facts to the Director of Program Oversight (or designee) challenging the grounds for the disqualification and/or providing evidence of mitigation.
  4. The NPA may also request a hearing before the Deciding Official to challenge the grounds for the disqualification and/or to provide evidence of mitigation. The Deciding Official for a disqualification action must be at least one level above the original Deciding Official.
  5. The decision to disqualify an NPA will be made by the Deciding Official in accordance with Commission Procedure 51.407-01.
  6. Right to an Appeal. An NPA may appeal the disqualification decision to the designated staff appellate authority.
    - a. An NPA may only appeal a disqualification decision if any of the following is true:
      - i. The agency failed to follow the procedures described in this policy and failure to do so unfairly harmed the NPA.
      - ii. New facts emerge after the disqualification decision but before an

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appellate decision has been made. Such facts must be the kind of facts that, if known at the time of the removal decision, might have reasonably changed the outcome. An appellant may not re-litigate prior facts, or present “new facts” that it could have presented to the Deciding Official during the show-cause phase.

- iii. The intent to appeal is filed within 5 business days of the disqualification decision and the written appeal is filed with the Commission within 20 business days of the adverse decision.
- b. The appellate authority for a disqualification action must be at least one level above the Deciding Official.
- v. Reinstatement. The period of disqualification shall remain in effect for a period of time set by the Deciding Official, but not to exceed three years. After that, the NPA may send a request for reinstatement to the Executive Director. If approved, the NPA may return to the Program after it has met the requirements for initial qualification as per Commission Policy 51.401.

**7. PROCEDURES.**

See Commission Procedure 51.407-01 Qualification Assessments and Enforcement Actions Procedures.

**8. EXCEPTIONS.**

An NPA must submit any request for exceptions to the Executive Director at [violationsdispute@abilityone.gov](mailto:violationsdispute@abilityone.gov).

**9. SUPERSESSION.**

This policy supersedes Commission Policies 51.403 Nonprofit Agencies Out of Compliance with Commission Regulations, and 51.404 On-Site Compliance Reviews, dated November 12, 2020, and March 22, 2013, respectively, and any other previous sub-regulatory guidance issued by the Commission related to assessing nonprofit agency qualifications and enforcement.



Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Kimberly M. Zeich  
Executive Director

