

**Title: Qualification Assessments and Enforcement Actions**



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.

1. **APPLICABILITY.**

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

1. **AUTHORITY.**
2. 41 U.S.C. §§ 8501-8506, Javits-Wagner-O’Day (JWOD) Act
3. 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 are defined below.

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| Term | Definition |
| Corrective Action Plan (CAP) | A course of action developed by the CNAs in conjunction with an NPA to remedy a violation(s). |
| 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. |
| Inspection Plan | A plan by the CNA for NPA inspections to be conducted during the Federal fiscal year. |
| Deauthorization | Removal of an NPA’s status as an authorized source for a given product or service project on the AbilityOne Procurement List. |
| 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. |
| Program Requirements | The requirements of applicable statutes, regulations, policy, guidance, and other agency directives. |
| Qualification Assessment | The oversight, review, and evaluation of an NPA’s compliance with Program requirements. |
| Suspension | Ineligibility of an NPA to receive new assignments and/or allocations of a Procurement List project. |
| Technical Assistance | Targeted training, resources, and support to an NPA to build capability and capacity, or to resolve performance challenges. |
| Qualification Inspection Package | A description and checklist of each inspectable element of the NPA’s operations, a list of required supporting documentation, and an inspection report template. |
| Violation | A finding which an NPA fails to correct within a prescribed grace period. |

1. **RESPONSIBILITIES.**
2. The Commission:
3. Establishes standards for Qualification Assessments and Technical Assistance;
4. Approves a CNA’s Inspection Plan and Qualification Inspection Package;
5. Reviews an NPA’s Corrective Action Plan(s) (CAP); oversees the completion of an NPA’s CAP(s), and approves the closure of the CAP(s);
6. Develops and implements a Commission Audit Plan; and
7. Takes enforcement actions as necessary to ensure NPAs’ accountability for complying with all Program requirements.
8. The CNA:
9. Develops a Qualification Inspection Package and an Inspection Plan, consistent with the Commission’s standards for Qualification Assessment, for Commission approval;
10. Provides technical assistance to the NPAs it represents in meeting Program requirements;
11. 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;
12. Notifies an NPA of a violation(s) and assigns CAP(s);
13. Reports violation(s) and associated CAP(s) to the Commission;
14. Oversees implementation of the CAP(s);
15. Prepares reports on the state of NPA compliance with Program requirements, as requested by the Commission; and
16. Recommends policy changes to the Commission to enhance NPA compliance with Program requirements.
17. The NPA:
18. Complies with all Program requirements;
19. Maintains information necessary to demonstrate compliance with Program requirements;
20. Accommodates and actively participates in CNA and/or Commission qualification assessments;
21. Takes appropriate steps to address finding(s) and/or violation(s) within the timeframe established by the CNA and/or the Commission;
22. 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
23. Participates in all Commission- and/or CNA-required technical assistance.
24. **POLICY**.
25. 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.
    1. 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, and the review and reporting of mandatory disclosures, among other elements.
    2. The Commission will assess NPA compliance through a variety of means, including the reports that result from the CNA Compliance Programs, mandatory disclosures made in accordance with Policy 51.406, and the Annual Representations and Certifications.
26. Finding(s).
27. A finding is a determination by the CNA and/or the Commission that an NPA is not complying with a Program requirement.
28. Upon determination of a finding, whether during an inspection or other means of discovery, the CNA shall send a Notice of Finding(s) to the NPA, describing the finding(s).
29. 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(b)(v). Whenever possible, CNAs shall assist NPAs with correcting any finding(s), including assisting with on-the-spot document corrections.
30. 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(b)(v).
31. If the finding concerns fraud, waste, or abuse, a repeat of prior violation(s), or a significant violation(s) of laws referenced in Commission Policy 51.406, the grace period does not apply.
32. Violation(s).
    1. A finding that is not corrected during the 10-business-day grace period becomes a violation.
    2. Upon determination of a violation, the CNA shall send a Notice of Violation(s) to the NPA, describing the violation(s).
    3. An NPA may dispute a violation by submitting a statement of facts to [violationsdispute@abilityone.gov](about:blank) [will be activated upon finalization of the policy] within 10 days of receipt of the notice. If the Commission determines that a violation does not exist, the notice will be withdrawn.
    4. 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 its decision.
    5. 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.
33. Corrective Action Plan (CAP).
    1. 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. A CAP is typically assigned when, but not limited to, the following circumstances occur:
       1. The CNA and/or the Commission has determined an NPA has a violation(s).
       2. The Commission has received a mandatory disclosure pursuant to Commission Policy 51.406 that it determines requires a CAP.
    2. A CAP will include a time frame in which the CAP must be completed, and the conditions required for the CAP to be lifted.
    3. The Commission will determine whether an NPA has successfully completed the CAP.
34. Provisional Enforcement Action (PEA).
    1. 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. A PEA is appropriate, but not limited to, the following circumstances:
       1. 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).
       2. An NPA has failed to comply with a mandatory disclosure requirement pursuant to Commission Policy 51.406.
       3. When the Commission determines that an NPA has failed to complete a previously assigned CAP in a timely manner.
       4. 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 Compliance (or designee) of the Commission’s intent to place the NPA in a PEA.
    3. The NPA may provide a statement of facts to the Director of Compliance 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.
    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 authorization for new Procurement List 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.
    8. PEA and additional corrective action will not normally last longer than 12 months.
35. Suspension.
    1. The Commission will direct the responsible CNA to suspend assignments of new Procurement List work for an NPA when, but not limited to, the following circumstances occur:
       1. After a CAP has been prescribed and the NPA has failed to timely enter into the CAP;
       2. When an NPA fails to complete a CAP within the time limits prescribed in the CAP; or
       3. When an NPA has repeated violations of the same or similar Program requirement(s).
    2. An NPA will receive a written notification from the Director of Compliance (or designee) of the Commission’s intent to suspend the NPA.
    3. The NPA may provide a statement of facts to the Director of Compliance 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. A suspension may be temporarily lifted 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. In combination, an NPA will not normally have an enforcement status – whether PEA, suspension, or a combination of the two – for longer than 24 months.
36. Deauthorization.
    1. Deauthorization is appropriate, but not limited to, situations in which an NPA has failed to remediate project-specific violation(s) within the time specified in the CAP.
    2. The Director of Compliance (or designee) will communicate to the NPA the Commission’s intent to deauthorize the NPA.
    3. The NPA has the right to provide a statement of facts to the Director of Compliance (or designee) challenging the grounds for the deauthorization and/or providing evidence of mitigation.
    4. The NPA may request a hearing before the Executive Director (or designee) to challenge the grounds for the deauthorization and/or to provide evidence of mitigation.
    5. The decision to deauthorize an NPA will be made by the Commission consistent with Commission Procedure 51.407-01.
37. Disqualification.
38. Disqualification is appropriate, but not limited to, the following circumstances:
    1. The NPA has failed to remediate violation(s) within the time period prescribed in a notice of suspension and/or deauthorization.
    2. The NPA, as a corporate entity or its key leaders, has been found liable for criminal misconduct, fraud, waste, or abuse.
    3. The NPA has failed to maintain nonprofit status.
    4. The NPA has been suspended or debarred from being a Federal contractor.
39. The Director of Compliance (or designee) will communicate to the NPA the Commission’s intent to disqualify the NPA.
40. The NPA may provide a statement of facts to the Director of Compliance (or designee) challenging the grounds for the disqualification and/or providing evidence of mitigation.
41. The NPA may request a hearing before the Executive Director (or designee) to challenge the grounds for the deauthorization and/or to provide evidence of mitigation.
42. The decision to disqualify an NPA will be made by the Commission in accordance with Commission Procedure 51.407-01.

1. **PROCEDURES.**

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

1. **EXCEPTIONS.**

Any request for exceptions must be made to the Executive Director, in writing.

1. **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 advice received from the Commission.



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

Kimberly M. Zeich

Executive Director