

**Title: Qualification Assessments and Enforcement Actions Standard Procedures**



1. **PURPOSE**.

This document sets forth the standard procedures applicable to the qualification assessments and enforcement actions set forth in Policy 51.407.

1. **APPLICABILITY**.

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

1. **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

(c) Commission Policy 51.407

1. **DEFINITIONS AND ACRONYMS.**

Definitions, abbreviations, and acronyms frequently used throughout this policy system are found in Policy 51.102, Definitions of Terms. Definitions for terms unique to the compliance policies and this implementing procedure appear in Commission Policies 51.400 and 51.407.

1. **RESPONSIBILITIES**.

(a) The Commission:

1. Establishes standards for Qualification Assessments and Technical Assistance;
2. Approves a CNA’s Inspection Plan and Qualification Inspection Package;
3. 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);
4. Develops and implements a Commission Audit Plan; and
5. Takes enforcement actions as necessary to ensure NPAs’ accountability for complying with all Program requirements.

(b) The CNA:

1. Develops a Qualification Inspection Package and an Inspection Plan, consistent with the Commission’s standards for Qualification Assessment, for Commission approval;
2. Provides technical assistance to the NPAs it represents in meeting Program requirements;
3. 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;
4. Notifies an NPA of a violation(s) and assigns CAP(s);
5. Reports violation(s) and associated CAP(s) to the Commission;
6. Oversees implementation of the CAP(s);
7. Prepares reports on the state of NPA compliance with Program requirements, as requested by the Commission; and
8. Recommends policy changes to the Commission to enhance NPA compliance with Program requirements.

(c) The NPA:

1. Complies with all Program requirements;
2. Maintains information necessary to demonstrate compliance with Program requirements;
3. Accommodates and actively participates in CNA and/or Commission qualification assessments;
4. Takes appropriate steps to address finding(s) and/or violation(s) within the timeframe established by the CNA and/or the Commission;
5. 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
6. Participates in all Commission and/or CNA required technical assistance.
7. **POLICY** **REFERENCE**.

These procedures shall be followed in accordance with Commission Policy 51.407.

1. **PROCEDURES**
2. Establishment of Qualification Inspection Packages.
3. Each designated CNA shall submit a Qualification Inspection Package to the Commission for approval.
4. The Qualification Inspection Package shall address the CNA’s assessment of and technical assistance to the NPAs it represents in meeting the statutory, regulatory, and policy requirements to participate in the AbilityOne Program.
5. At a minimum, the Qualification Inspection Package shall include the elements identified by the Commission.
6. Changes to the Qualification Inspection Package shall be submitted to the Commission for approval as specified in the relevant Cooperative Agreement.
7. Inspections.
8. Notice.
9. The CNAs shall provide an NPA 20 business days’ notice before scheduling an inspection, unless the responsible CNA receives pre-approval from the Commission for a shorter notice period or the Commission’s Director of Compliance has determined there is good cause to address an urgent issue.
10. The Commission will provide an NPA at least 20 business days’ prior notice before conducting a Commission staff inspection, except when the Director of Compliance has determined there is good cause to address an urgent issue.
11. Factors for Inspection Schedule. CNAs shall select and prioritize NPAs for inspection based on the following non-exhaustive factors:
12. Inspection cycle, including the length of time since the last inspection.
13. Findings from the previous three inspections as identified by the Commission or the CNA.
14. NPA receipt of initial and new AbilityOne contracts.
15. Significant changes at the NPA, such as key executive leadership turnover, pattern of overall direct labor hour (ODLH) ratio changes, or recent acquisition of particularly large or complex projects from the Procurement List.
16. Volume, recency, and substance of complaints pursuant to Commission Policy 51.406.
17. Advantages to the Government or the Program as determined by the Commission.
18. NPA-Completed Qualification Inspection Package. An NPA shall submit to the CNA a completed Qualification Inspection Package checklist at least five (5) business days prior to an inspection.
19. Inspection Format.
20. Inspections may be virtual, in-person, or hybrid.
21. The inspection shall include a review of the NPA’s documentation showing its participating employees’ eligibility evaluations.
22. The inspection shall include conversations with participating employees without supervisors present.
23. At the conclusion of the inspection, the inspector(s) shall have an exit briefing with the executive leadership team conveying initial findings from the inspection.
24. The CNA shall not discuss findings of suspected fraud or other criminal matters with the NPA.
25. Post-Inspection Actions.
26. The CNA shall complete a report of the inspection consistent with the Qualification Inspection Package. The CNA shall transmit the report to the NPA and the Commission. The CNA shall discuss the report with the NPA’s executive leadership team.
27. The CNA shall offer technical assistance, if appropriate, to improve the NPA’s operations. The CNA shall document any such technical assistance.
28. Finding(s).
29. 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 CNAs shall send a Notice of Finding(s) to the NPA.
30. The Notice will describe the qualification finding(s), the deadline of the 10-business-day grace period, and the potential next steps to include possible enforcement action(s).
31. If the NPA corrects a finding(s) within the 10-business-day grace period following receipt of the report, the report will be supplemented to reflect such a correction(s).
32. Notice of Violation.
33. Upon determination of a violation, the CNA shall send a Notice of Violation(s) to the NPA, describing each violation(s).
34. The CNA shall transmit a copy of the Notice of Violation(s) to the Commission.
35. An NPA may dispute the violation(s) identified in the notice by submitting a statement of facts to violationsdispute@abilityone.gov [will be activated upon finalization *of the policy*] within 10 business days of receipt of the notice. If the Commission determines that a violation does not exist, the notice will be withdrawn.
36. CorrectiveAction Plan.
37. The CNA shall develop a CAP in consultation with the NPA to remedy the violation(s) identified in the Notice of Violation(s), within 10 business days of the issuance of the Notice, absent exceptional circumstances.
38. A CAP shall:
39. Prescribe the action(s) necessary to remedy the violation(s); and
40. Set forth the time period in which the NPA must complete the corrective action.
41. The CNA shall transmit to the Commission the proposed CAP within 10 business days of establishing the CAP.
42. The Commission will review the CAP and direct any modification(s), if needed.
43. The NPAs may, in advance of the Corrective Action period expiration, contact the CNA in writing and request an extension of time.
44. The CNA has the authority to grant a requesting NPA a single extension of time, not to exceed 60 business days. Upon request from the CNA or NPA, the Commission may grant a further extension.
45. At the close of the CAP’s prescribed time period, the CNA shall transmit to the Commission an assessment (including rationale and supporting documents) of whether the NPA has complied with the CAP.
46. The Commission shall determine whether an NPA has complied with the CAP.
47. Enforcement Actions.
48. Provisional Enforcement Action (PEA).
49. An NPA will receive a written notification from the Director of Compliance (or designee) of the Commission’s intent to place the NPA in PEA status.
50. The NPA may provide a statement of facts to the Director of Compliance disputing the grounds for the PEA or providing evidence of mitigation.
51. A PEA will include the conditions required for the PEA to be lifted.
52. During the period of the PEA, the Commission may prescribe additional CAPs for the NPA to meet.
53. A PEA may be lifted based on a demonstrated effort by the NPA to complete the conditions of the PEA.
54. 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.
55. Suspension of Eligibility to Receive New Authorizations or Allocations.
	* 1. An NPA may only be suspended upon written notification from the Director of Compliance (or designee). A notice of suspension must contain the following information (at a minimum).
	1. The specific violation(s).
	2. Length of suspension.
	3. The necessary steps to remediate the underlying violation(s) (if possible).
	4. The right of an NPA to provide a statement of facts challenging the suspension or to provide evidence of mitigation.
		1. While suspended, the NPA may continue to perform on existing PL authorizations or allocations. The suspension may also be temporarily lifted based on demonstrated NPA effort to complete the conditions of the prescribed CAP by the Director of Compliance.
		2. During the suspension period, the Commission may decide to provide a new authorization, or the CNA a new allocation, with a written decision explaining the special circumstances for doing so.
		3. Suspension may not last longer than 24 months, unless the Director of Compliance determines, in writing, that continued suspension is justified.
56. AbilityOne Project Deauthorization.
	1. Notice. The Director of Compliance (or designee) will communicate the intent to deauthorize an NPA. A Notice of Intent to Deauthorize will contain the following information (at a minimum).
57. The specific violation(s).
58. The necessary steps to remediate the underlying violation(s) (if possible).
59. The right of an NPA to provide a statement of facts challenging the deauthorization, providing evidence of mitigation, and to request a hearing before the Executive Director.
	1. Deauthorization Decision. Within 10 business days from receipt of the Notice of Intent to Deauthorize, the NPA may transmit its response, including a request for hearing, to the Director of Compliance.
60. The deciding official shall consider the NPA’s response.
61. If a hearing is requested, the deciding official will convene a hearing. If a hearing occurs, the NPA may provide additional facts or evidence beyond what has been provided in its written statement. However, a hearing shall not be used as a substitute for a written statement of facts.
62. The deciding official will review all relevant matters and the record to make one of the following determinations in writing:
	* 1. Deauthorization.
		2. Dismissal of the notice to deauthorize.
		3. Any other administrative remedy deemed appropriate, such as extended corrective action with heightened administrative safeguards.
	1. Right to an Appeal.An NPA may appealthe deauthorization decision to the Executive Director (or designee) if any of the following is true:
63. The deciding official failed to follow the procedures described in this policy and failure to do so unfairly harmed the NPA.
64. The deciding official committed a clear error with respect to any material fact, controlling law, regulation, or policy.
65. New facts emerge after the initial statement of facts was submitted and considered. Such facts must be the kind of facts that, if known at the time of the decision, might have reasonably changed the outcome. An appellant may not re-litigate prior facts, or present “new facts” that it could have presented at the time of the initial decision.
66. The intent to appeal is filed within five (5) business days of the deauthorization decision and the written appeal is filed with the agency within 15 business days of the adverse decision.
	1. Final Deauthorization. The final decision to deauthorize an NPA will follow the regular voting procedures of the Commission in authorizing an NPA. In exigent circumstances, the Executive Director (or designee) may deauthorize the NPA.
67. Disqualification Proceedings and Disqualification from the Program.
68. Notice.The Director of Compliance shall send the affected NPA a “Notice of Intent to Disqualify.” The Notice shall include:
	1. The specific violation(s);
	2. The agency’s intent to start disqualification proceedings;
	3. A brief description of the evidence relied upon to trigger disqualification proceedings;
	4. The NPA’s right to provide a statement of facts to challenge the violations or provide evidence in mitigation; and
	5. The right to request a hearing before the Executive Director (or designee).
69. Show Cause.
	1. Within 10 business days from receipt of the Notice of Intent to Disqualify, the NPA may transmit to the Director of Compliance a statement of facts and/or evidence in mitigation showing good cause as to why the NPA should not be disqualified. The NPA may also request a hearing in its response. Examples of good cause include:
	2. A showing that the stated reason for disqualifying the NPA is based on an erroneous understanding of a dispositive fact which, properly considered, would result in a finding that the NPA is qualified;
	3. A showing that the legal basis for disqualification is unsupported by applicable law;
	4. A specific showing of a change in circumstance showing that the NPA is presently compliant; and
	5. Any other exigent circumstance demonstrating that noncompliance was beyond the NPA’s control.
	6. If the Director of Compliance determines that disqualification is still justified after considering the NPA’s response to the show-cause notice, the Director will forward a written determination to the Executive Director (or designee) for a removal decision.
	7. If a hearing is requested, the deciding official will convene a hearing. If a hearing occurs, the NPA may provide additional facts or evidence beyond what has been provided in its written statement. However, a hearing shall not be used as a substitute for a written statement of facts.
70. Disqualification Decision.
	1. The Executive Director (or designee) shall consider the NPA’s statement of facts, arguments at the hearing (if requested), and the record to make one of the following determinations in writing:
71. Disqualification from the Program;
72. NPA is not disqualified from the Program; or
73. Any other administrative remedy deemed appropriate, such as extended corrective action with heightened administrative safeguards.
	1. The Executive Director (or designee) will not rely on substantive evidence that has not been presented to the NPA prior to a removal decision. All decisions will affirmatively state the legal and factual basis for the decision. Substantive evidence is not all evidence, but only the type of evidence that could reasonably shape the outcome.
74. Right to an Appeal.An NPA may appealthe disqualification decision to the Executive Director. An NPA may only appeal a disqualification decision if any of the following is true:
	1. The agency failed to follow the procedures described in this policy and failure to do so unfairly harmed the NPA.
	2. New facts emerge after the disqualification decision but before an 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 Executive Director (or designee) during the show-cause phase.
	3. The intent to appeal is filed within five (5) business days of the disqualification decision and the written appeal is filed with the agency within 20 business days of the adverse decision.
	4. Finality.A removal decision applies to the NPA as a corporate entity and all principals in a substantive leadership position (i.e., CEO, CFO, etc.). If an NPA elects not to appeal the removal decision, that decision will be final. If an NPA elects to appeal said decision to the Executive Director, the Executive Director’s decision is final and may not be reviewed*.*
	5. Reinstatement.
	6. An NPA disqualified may apply for re-qualification after one year pursuant to Policy 51.401.
75. **EXCEPTIONS.**

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



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

Kimberly M. Zeich

Executive Director