The National Association for the Employment of People who are Blind

PUBLIC POLICY COMMITTEE REPORT
Submitted by Dan Kelly
Board Meeting: December 16, 2024

TOPICS:

- SSDI cash cliff
- FY2025 NDAA
- NCD doubles down on phasing out the AbilityOne Program
- Responding to AbilityOne Commission 400 series policies
- Meeting of the National Policy Collaborative (NPC)
- 2025 Public Policy priorities

I: SSDI cash cliff

Initiatives continue this quarter on the Social Security Disability cash cliff.

SSDI Employee Survey

We continue to encourage NPA CEOs and HR leaders within all our associated nonprofit agencies to distribute the SSDI Employee Survey sent out by NIB President and CEO, Soraya Correa. This data is critical and will supplement the data NIB collected in 2018. This is important as we consider taking a more active role in pushing for SSDI reform in 2025. We will need personal stories and data to make our case for change with policymakers to eliminate the SSDI cash cliff.

Survey link: https://www.surveymonkey.com/r/H6VR5JN

II: FY2025 NDAA

We recently reported that the VOSB language from the House-passed NDAA bill (Sec. 861) was **NOT** included in the final NDAA package. We appreciate everyone's outreach and engagement with Congress. Additionally, the Conference Committee introduced some report language we were not expecting and also very positive for the AbilityOne Program. The language describing Congresses position on both Sec 861 and the AbilityOne Program

are below.

From p. 215 of the Joint Explanatory Statement from the Servicemember Quality of Life Improvement and National Defense Authorization Act for Year 2025:

"The House bill contained a provision (sec. 861) that would set Department of Defense goals for contracting to veteran owned small businesses. The Senate committee-reported bill contained no similar provision. ***The agreement does not include the House provision*****. (emphasis added)"**

From p. 219 of the same Joint Explanatory Statement comes this intriguing (if not entirely accurate?) language pertaining to DoD, AbilityOne and a utilization goal:

"Report on contract goal for the AbilityOne program

The House bill contained a provision (sec. 884) that would require the Secretary of Defense to provide a report on the contract goal for the AbilityOne program.

The Senate committee-reported bill contained no similar provision.

The agreement does not include the House provision.

We note the value of the AbilityOne program as one of the largest sources of employment in the United States for people who are blind or have significant disabilities. In section 898 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), we directed the Secretary of Defense to establish the "Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity" of senior level representatives from Department of Defense agencies, the U.S. AbilityOne Commission, and other Federal agencies and organizations. We note that the existing 0.5 percent AbilityOne contracting goal for the Department of Defense has remained unchanged since the recommendations of this panel. We recognize that the AbilityOne Commission and the Secretary of Defense are reviewing proposals to increase the threshold."

We can celebrate the fact that Armed Services Committee leadership dropped the VOSB provision, and we have some work to do to better understand what is meant by the language related to the AbilityOne goal as we prepare for taking this issue up again in the 119th Congress. In the meantime, please send your thank-you letters to your Congressional delegations for their help in protecting the AbilityOne Program.

III: NCD Doubles Down on Phasing Out the AbilityOne Program

Since our last board meeting, The National Council on Disability (NCD) released an annual progress report– "National Disability Policy: A Progress Report, 2024" in which it repeated its call for the AbilityOne Program to be phased out and eliminated. It said, in part:

- *"Recent updates to the AbilityOne program do not address the underlying structural problems and incompatibility of the AbilityOne program with modern disability policy. Therefore, NCD continues to recommend a phaseout of the AbilityOne program to be replaced by amending Section 503 of the Rehabilitation Act that would require federal contractors employ a percentage of people with significant disabilities and who are blind."*
- You will find the statement on the AbilityOne program in Section 3 (Employment) of the report, on pages 23 and 24. This annual report is required under NCD's authorizing statute.
- The report language on AbilityOne details some recent regulatory actions by the U.S. AbilityOne Commission, but it discounts those as only useful during a phaseout period of time prior to the program being eliminated.
- Here is a link to the NCD Progress Report: https://www.ncd.gov/report/national-disability-policy-a-progress-report-2024/

We continue to push back on NCD's position in several ways.

- A letter from NIB President & CEO Soraya Correa was sent to the chair and vice chair of NCD expressing concern over the agency's continued recommendation to phase out and eliminate the AbilityOne Program.
- The U.S. AbilityOne Commission also sent a letter to the NCD pushing back on NCD's continued call for elimination of the AbilityOne Program, even in the face of enhancements and positive changes to the Program over the last few years.
- The Congressional Committee staff on Education and the Workforce has also engaged with NCD over NCD's blatant misstatements that "AbilityOne is incompatible with federal law.". NCD committed to Committee staff that they will "redouble their efforts to be sure that language isn't in any documents going forward."
- NAEPB is in process of collecting signatures from members and other blindness organizations to a letter that will shortly be going to NCD. If you haven't connected with Jeff Mittman about your agency's support, please do so soon.

IV: Responding to AbilityOne Commission 400 Series Policies

NAEPB was compelled to respond to a recently released Draft Policy 51.405 relating to Employee Career Development, which was circulated for comment by the Commission, but not circulated through the Federal Register public comment process. The Draft Policy purports to set forth the Commission's expectations for NPAs regarding the provision of

career development to participating employees in the AbilityOne Program. However, instead of providing guidance as to best practices for career development, it mandates obligations for an NPA that not only far exceed the Commission's statutory and regulatory authority, but also will be extremely costly for the NPAs to implement. As a result, such changes can only be made through the regulatory process using the standard notice and rule-making procedures set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. § 553. Without regulatory approval and funding to implement these requirements, the obligations set forth in Draft Policy 51.405 are tantamount to an unfunded mandate and improper agency action in contravention of the APA.

In November We also responded respectfully with comments in response to several Information Collection Requests (ICRs) proposed by the AbilityOne Commission and that actually were published in the Federal Register. These significantly changed ICRs include (1) the Disability Qualification Determination form; (2) the Participating Employee Information form; and (3) the NPA Annual AbilityOne Representations and Certifications (ARC) form.

NAEPB is concerned that the data the Commission seeks to collect through these forms exceeds the Commission's authority under the JWOD Act and its implementing regulations and commented to this effect in its public comments. In addition, the Commission has not provided a rational explanation as to its purpose for seeking this information, why this information is necessary to advance programmatic goals, what it plans to do with the information it gathers, and how the Commission expects to protect the information from release to the public. Among other things, the eligibility criteria for NPAs participating in the Program are clear. This additional information and the establishment of additional and unstated eligibility criteria is impermissible. The information the Commission seeks in no way furthers the mission of the AbilityOne Program. Instead, it overly burdens the NPAs that are seeking to provide employment and stability to a population that is significantly and chronically underemployed. Moreover, there exist other governmental entities that review relevant information, including the U.S. Department of Labor and state authorities that oversee non-profit organizations in their respective jurisdictions. The Commission in some measure is seeking to duplicate efforts and potentially usurp the authority of other independent government actors. In large part, these forms seek confidential business information and personal information regarding the NPA and its employees, none of which is contemplated or permitted to be released under the law.

V: Meeting of the National Policy Collaborative (NPC)

I was pleased to participate in an all-day strategy session of the NPC, a loosely affiliated group of organizations representing all aspects of the blindness field. Hosted at NIB headquarters it was great to have representation from NFB, ACB, AFB, VSA, APH, AER, and many others dedicated to improving the lives of people who are blind.

We held great and frank discussions on the following NPC member priorities to see where we could find alignment and define collective action:

- The Early Detection of Vision Impairments for Children Act (EDVI Act) https://advocacy.preventblindness.org/edvi-act-of-2024/
- Websites and Software Applications Accessibility Act
- Medical Device Nonvisual Accessibility Act
- Blind Americans Return to Work Act
- AbilityOne statutory utilization goal for DoD
- JWOD modernization
- Protecting the APH appropriation
- The general education landscape for meeting the needs of blind and visually impaired students. And the new Disability Innovation Fund grant to provide Monarch's to transition age individuals to demonstrate value for employment and pre-employment support.
- Decoupling vision rehabilitation services from vocational goals; enhancing funding for vision rehabilitation services through Medicaid, Medicare, third party insurance, and other healthcare funds
- Including explicit language acknowledging blindness and vision rehabilitation services in the Older Americans Act Reauthorization
- WIOA Reauthorization

Better understanding of these initiatives being driven by our field will help create public policy priorities for the NAEPB in 2025 and beyond.

VI: 2025 Public Policy Priorities

NIB and NAEPB leadership are working on a strategy document and timeline that will drive our activity around key legislative priorities and transition activities in 2025. I want to thank the NAEPB Public Policy Committee for their feedback on policy and legislative priorities at the last Committee meeting in November. We are working actively to also be coordinated with SourceAmerica and its membership organization, NCSE (National Council of SourceAmerica Employers).

The timeline for acting during the 119th Congress will be accelerated as part of an effort to bolster our chances for success on priority issues and initiatives, and also with the knowledge that we will have over 70 new members serving in the Senate and House, and there will be important work to do in reaching out to them.