

Proposed Changes to AbilityOne

Crosswalk of Recent Reports & Proposals

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History

1938

- **Wagner-O'Day Act** enacted to encourage federal purchase of products from providers who employ “individuals who are blind.”

1971

- **Javits-Wagner-O'Day Act (JWOD)** expands the program to “people with other significant disabilities.”
- Statutes and regulations remained substantially unchanged after 1971.

2006

- JWOD program renamed **AbilityOne Program**.

2013 - Present

- Increasing calls for **reform and change**.
- **Allegations** of internal fraud and corruption.
- **Shifts in social policies** and priorities in the field
- Government focus on **reducing contracting costs**.

BACKGROUND

Disruptions & Challenges

Last Six Years

2013

- **GAO Report** finds inadequate controls and risk for widespread corruption.

2015

- **CNN investigation** reports allege corruption, fraud, and violations of law.
- New Hampshire becomes first state to ban use of **FLSA Section 14(c)**.

2016

- Four Inspectors General—GSA, DoD, VA, Dept of State - initiate **formal investigations** into AbilityOne Program.

2017 - 2018

- Congress directs the Secretary of Defense to establish the *Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability and Integrity* (the “**898 Panel**”) “to address the effectiveness and internal controls of the AbilityOne Program related to DoD contracts.”
- The 898 Panel’s **First Report** is issued in 2018 recommending 41 changes to the Program.

Concurrent Disruptions

External environment has been shifting.

Increasing acceptance of neurodiversity in the community.

Heightened corporate interest in expanded diversity.

2014 - Workforce Innovation and Opportunities Act (WIOA)

2016 - the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities Report calls for redesign of the AbilityOne Program and elimination of FLSA Section 14(c).

2017 - U.S. Department of Education guidance asserts AbilityOne employment is not CIE. Half of state VR agencies stop referring people to AbilityOne nonprofits.

Workforce Innovation and Opportunities Act (WIOA)

Emphasized national priority to employ people with disabilities.

Defined “employment” for people with disabilities as “competitive integrated employment” (CIE), meaning:

- people with disabilities must be paid the same wages as people without disabilities and
- interact with and get the same opportunities for career advancement as non-disabled co-workers.

Limited the use of sub-minimum wage & congregate settings (“sheltered workshops”).

Created a federal advisory committee to provide recommendations to Congress and the Labor Secretary about the employment of people with significant disabilities.

Litigation Impacting AbilityOne Program

1999: Olmstead

2012: Systems Application & Technologies

2015: National Telecommuting Institute

2016: Kingdomware

2016: Bona Fide Conglomerate

2017: SourceAmerica v. U.S. Department of Education

2018: PDS Consultants

Disruptions Opened Floodgates

Advocacy groups, trade associations, lobbyists and government agencies calling for significant changes to AbilityOne, including:

Amend JWOD statute to lower the 75% direct labor ratio.

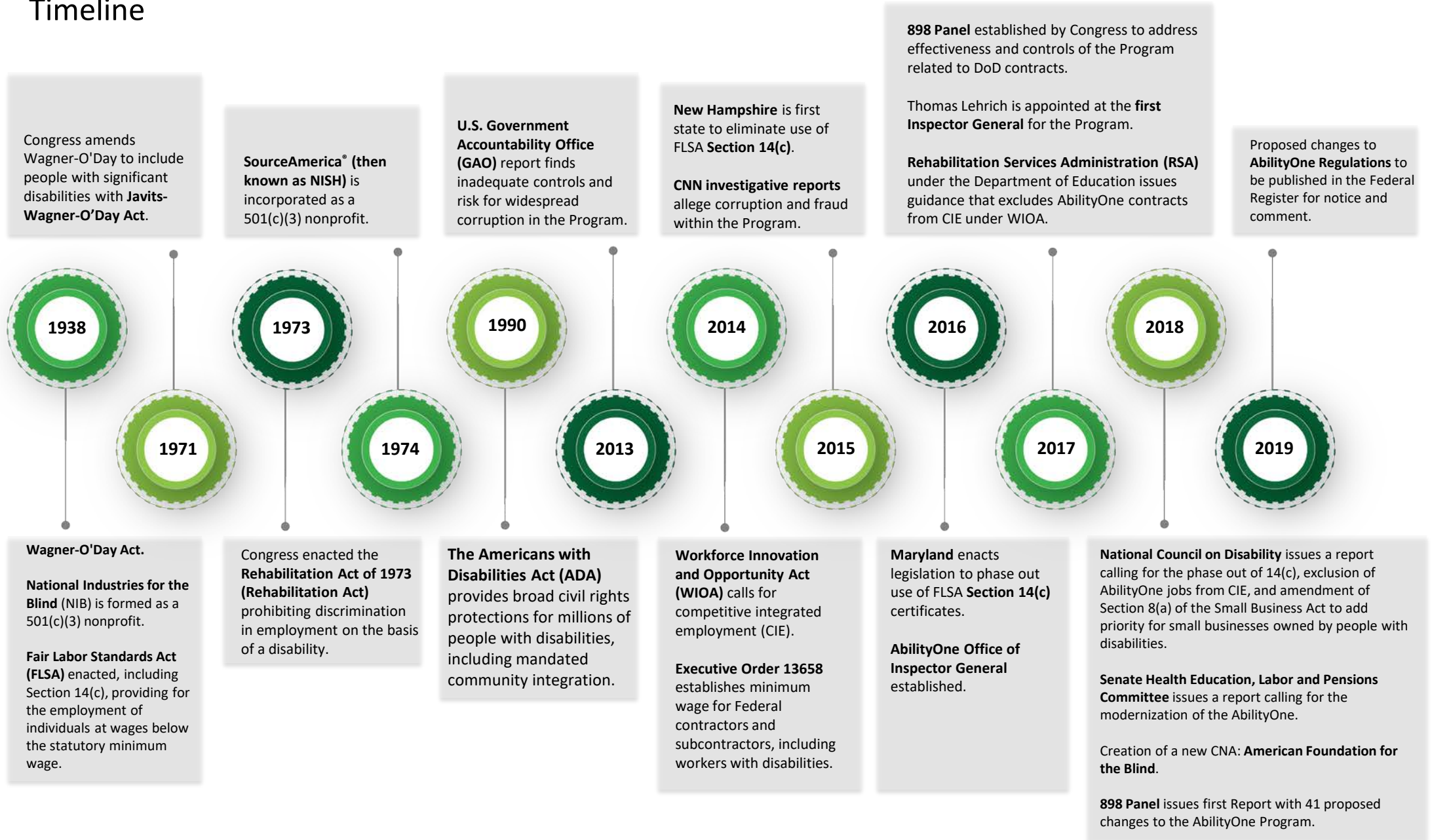
Separate rehabilitation from employment;
one provider cannot do both.

Phase out the Program completely.

Create a procurement priority under the Small Business Administration.

If enacted, will require us to change our business model, operations, funding, governance...

AbilityOne Program Timeline



PROPOSALS

High-Level Analysis of Reports

Key Reports, Cases & Proposals (2013-2019)

GAO Report, May 2013 – Employing People with Blindness or Severe Disabilities: Enhanced Oversight of the AbilityOne Program Needed.

Advisory Committee on Increasing Competitive Integrated Employment of Individuals with Disabilities, September 2016 – Report.

DOD 898 Panel, July 2018 – 1st Annual Report.

GAO Report, September 2018 – Vocational Rehabilitation, Additional Federal Information Could Help State Serve Employers and Find Jobs for People with Disabilities (Initiated by Ranking Member Patty Murray for the Senate HELP Committee).

Sachs Management Report, October 10, 2018 – Similarities and Differences between the 898 Panel Recommendations and the Social Enterprise Set Aside Concept.

National Council on Disability, October 16, 2018 – National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future

U.S. Senate Committee on Health, Education, Labor, and Pensions, October 29, 2018 – Disability Employment: Outdated Laws Leave People with Disabilities Behind in Today's Economy.

National Council on Disability, October 31, 2018 – National Disability Policy: A Progress Report: Has the Promise Been Kept? Federal Enforcement of Disability Rights Laws.

PDS Consultants, Inc. v. United States, No. 2017-2379 (Fed. Cir., October 17, 2018).

AbilityOne OIG, December 2018 – Top Management and Performance Challenges Report.

AbilityOne Commission, January 2019 – Notice of Proposed Rulemaking at 83 FR 58077 (expected February 2019).



Crosswalk of Key Proposals / Reports

COMPARISON OF REPORTS PROPOSING CHANGES TO THE U.S. ABILITYONE PROGRAM (2013-Present)									
Suggestions to Change the AbilityOne Program	Draft Changes to A1 Regulations	OIG Report (Dec. 2018)	NCD Report (Oct 16, 2018)	Small Enterprise Set Aside Proposal (Oct 10, 2018)	Senate HELP Committee Report (October 2018)	GAO Report (Sept. 2018)	898 Panel Report (July 2018)	Advisory Committee Report (Sept. 2016)	GAO Report (May 2013)
JWOD Not Consistent w/ WIOA & CIE			X	X	X	X		X	
Update/Reform/Amend JWOD			X		X		X	X	X
Amend A1 Regulations (41 CFR 51)	X						X		
Amend FAR Subpart 8.7							X		
Reform the Role of the CAN				X					X
Restrict Use of CNA Fees for Lobbying				X			X		X
Maintain JWOD Solely as a Training Program				X					
Phase Out FLSA Section 14(c)			X	X				X	
Increase Competition/Re-Competition	X			X			X	X	
Inclusion of Veterans Disabled under the VA				X			X		
Accepting Disability Documentation from Other Agencies (e.g., VA, Social Security)				X			X	X	
Lower Agency Ratio				X			X	X	
Enhance Program Transparency & Oversight		X		X			X		X
Increased Transparency in Contract Recommendation/Selection Process							X		X
CNAs Should Not be Included in the Process of Awarding Contracts			X					X	
Increase Career Path Opportunities for Persons with Disabilities							X	X	
Change the Definition/Term "Significantly Disabled"			X				X		
Right of Refusal Workforce Policy for Transfers	X						X		
Modify PL Allocation Process	X								
Modify Contract Dispute Processes	X								
Require NPA/CNA Affiliation Agreements	X								
Increased Enforcement & Management of CNA Cooperative Agreements		X							
More Resources at the Commission Level		X					X		
More Education about AbilityOne		X					X		
Implementation of Better/User-Friendly Technology & Establishing an Enterprise-wide Risk Management Framework		X							X
Service Providers Should Not Also Act as Employers			X	X				X	
JWOD Should Evolve to Focus on Industries of the Future.			X						X
Create Small Business Priority for Entities Owned by OR Hiring People with Disabilities			X	X				X	

Substantive Proposals to Change AbilityOne

1. Increase Transparency & Oversight of AbilityOne Program

- Require Cooperative Agreements between NPAs and CNAs
- Increase Compliance, Regulatory Oversight & Audits

2. Allocation of Contracts in the AbilityOne Program

- Introduce Re-competition of Contracts Every 5 Years within the Program
- Lower Current Thresholds/Hurdles for Removal of an NPA from an AbilityOne Contract
- Eliminate the Subcontracting Exclusion from the 75% Ratio Requirement

3. Align the AbilityOne Program with Modern Federal Disability Law, including the Americans with Disabilities Act, the Rehabilitation Act, the Individuals with Disabilities Education Act, the Olmstead decision, and WIOA

- Stop/Phase Out Use of Subminimum Wage/ Section 14(c) of the FLSA
- Lower the 75% Ratio
- Aggregate Direct & Indirect Labor for Purposes of the 75% Ratio

Substantive Proposals to Change AbilityOne

4. Serve a Larger Population of Persons of Differing Abilities

- Inclusion of Veterans Deemed Disabled by the VA into the AbilityOne Program
- Acceptance of Disability Documentation from Other Agencies (e.g., Social Security) for Qualification for the Program
- Change to the Definition of "Significantly Disabled" to Include a Larger Group of Individuals. (current definition provides that persons must be "unable to engage in competitive integrated employment")

5. Reform the Role of the CNAs / Commission

- Reduce the Role of the CNAs, Replace the CNAs or Amend JWOD to Eliminate CNAs
- Restrict CNAs' Ability to Use Fees for Lobbying
- Increase Commission's Authority to Transfer/Re-compete Work
- Increase Resources (Funding and Staff) at the Commission Level

Substantive Proposals to Change AbilityOne

6. **Decrease Scope of AbilityOne /Maintain It Solely as a Short-Term Training/Rehabilitation Program**

- Limit Period of Time that a Person with a Differing Ability Works on an AbilityOne Contract
- Bar NPAs that are Service Providers from Also Acting as Employers

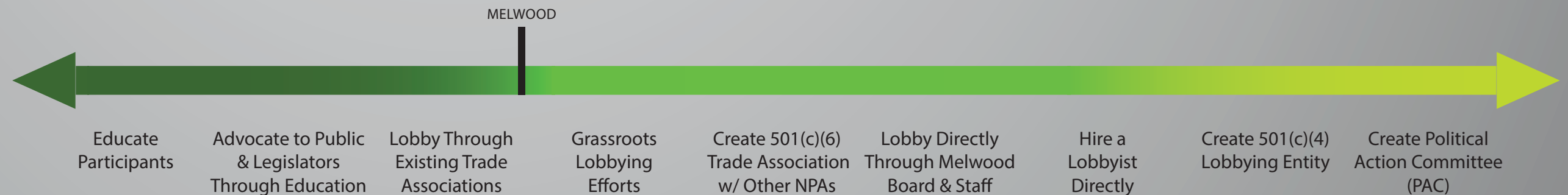
7. **Create Priority for Socio-Economic Programs (e.g., Service Disabled Veteran-Owned Small Businesses)**

- Create New Socioeconomic Priority under the Small Business Administration for Small Businesses that Hire People of Differing Abilities
 - 35% Ratio Requirement (direct & indirect aggregated)
 - Grandfather AbilityOne Contracts for 5-7 Years and then Compete under SBA

Proposed Changes to AbilityOne

	SHORT-TERM (1-2 yrs)	MEDIUM-TERM (3-4 yrs)	LONG-TERM (4+ yrs)
HIGH IMPACT	<ul style="list-style-type: none"> Re-compete Contracts Every 5 Years within the Program. Lower Current Thresholds for Removal of an NPA from an AbilityOne Contract Increase Commission’s Authority to Transfer/Re-compete Work 	<ul style="list-style-type: none"> Inclusion of Veterans Deemed Disabled by the VA into the AbilityOne Program Acceptance of Disability Documentation from Other Agencies (e.g., Social Security) for Qualification for the Program 	<ul style="list-style-type: none"> Decrease the Scope of AbilityOne and Maintain It Solely as a Short- Term Training/Rehabilitation Program Create New Socioeconomic Priority under the Small Business Administration for Small Businesses that Hire People of Differing Abilities
MEDIUM IMPACT	<ul style="list-style-type: none"> Create Priority for Other Socio-Economic Programs (e.g., Service Disabled Veteran-Owned Small Businesses) Clarify WIOA Regs to Provide that AbilityOne Contracts Can Qualify as Competitive-Integrated Employment 	<ul style="list-style-type: none"> Reduce the Role of the CNAs Increase Resources (Funding and Staff) at the Commission Level Restrict CNAs’ Ability to Use Fees for Lobbying Eliminate the Subcontracting Exclusion from the 75% Ratio Requirement 	<ul style="list-style-type: none"> Eliminate/Replace the CNAs Lower the 75% Ratio Aggregate Direct & Indirect Labor for 75% Ratio Bar NPAs that are Service Providers from Also Acting as Employers
LOW IMPACT	<ul style="list-style-type: none"> Stop/Phase Out Use of Subminimum Wage/ Section 14(c) of the FLSA Increase Compliance, Regulatory Oversight & Audits. 	<ul style="list-style-type: none"> Require Cooperative Agreements between NPAs and CNAs. 	<ul style="list-style-type: none"> Change the Definition of “Significantly Disabled” to Include a Larger Group of Individuals Qualified for the Program (current definition provides that persons must be “unable to engage in competitive integrated employment”)

ADVOCACY SPECTRUM



PATH FORWARD

What Every NPA Should Consider

Questions To Ask Ourselves

What proposed changes are field-advancing & further support our work to promote employment of people of differing abilities?

In today's rapidly changing & unpredictable environment, how can we stay nimble to more easily adapt to the proposed changes?

How can we embrace change as an opportunity to better serve our constituents?

How do these proposals align with (or differ from) our current Strategic Plans?

What role, if any, should we take in advocacy around these proposals?

What can NCSE, NAEPB & the CNAs do to be supportive in these efforts?

If we were to design the AbilityOne Program of the future – for 10-20 years from now – what would it look like?