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The Special Counsel

August 28, 2026

The President
The White House
Washington, D.C. 20050

Re: OSC File No. DI-22-000590

Dear Mr. President:

I am forwarding to you reports transmitted to the U.S. Office of Special Counsel (OSC) by the U.S. AbilityOne Commission (Commission)[1] in response to the Special Counsel's referral of allegations that officials at the Commission engaged in conduct that constitutes a violation of law, rule, or regulation; gross mismanagement; and a gross waste of funds.[2]

The agency investigation did not substantiate the allegations. In its analysis, the Commission focused exclusively on whether the alleged conduct violated a law, rule, or regulation and failed to assess whether the significant issues uncovered during the investigation met the threshold of gross mismanagement or a gross waste of funds, as identified in OSC's referral. Moreover, the Commission arrived at the sweeping conclusion that no violations of law, rule, or regulation occurred, despite contradictory evidence. Accordingly, in conformance with 5 U.S.C. § 1213(e), OSC reviewed the disclosure and agency report[3] and I have determined that, while the report meets the technical requirements found in the statute, the findings do not appear reasonable.

I. Legal Background

The Commission, as established by the Javits-Wagner-O'Day Act, administers the AbilityOne Program, which creates employment opportunities for blind or severely disabled individuals through government purchasing of commodities and services from qualified nonprofit agencies, as facilitated by two central nonprofit agencies.[4] To qualify, the entity must be a nonprofit organized under federal or state law for the interests of blind or severely disabled individuals and employ such individuals for "at least 75 percent of the hours of direct labor required for the production or provision of the products or services," referred to as the Overall Direct Labor Requirement (ODLR).[5] Moreover, each nonprofit must submit evidence

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[1] The Commission's statutory name is the Committee for Purchase From People Who Are Blind or Severely Disabled.

[2] OSC referred the allegations to the then Acting Executive Director and Chief Executive Officer of the Commission, Kimberly Zeich, for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The U.S. AbilityOne Commission Office of the Inspector General (OIG) conducted the investigation. Then Chairperson Jeffrey A. Koses signed and transmitted the report.

[3] Under 5 U.S.C § 1213(e)(1), whistleblowers may submit comments on the agency report. Here, the whistleblower elected not to submit comments.

[4] Javits-Wagner-O'Day Act, 41 U.S.C. §§ 8501– 8506; *see also* 41 C.F.R. Chapter 51.

[5] 41 U.S.C. § 8501(6)-(7).

that it meets the series of statutory requirements, both at the outset and annually, to maintain its qualification.[6]

II. Allegations

The whistleblower, [redacted],[7] a Compliance Specialist at the Commission, primarily alleged significant weaknesses and failures in the operation of the Commission's compliance program. Based on a sample of 120 nonprofits, he identified 54 nonprofits receiving millions in federal contracts despite not meeting basic program requirements as of their last compliance review, including seven that had not met the requirements on inspections for over a decade and seven that did not qualify as 501(c)(3) nonprofits per Internal Revenue Service (IRS) tax records. He highlighted those nonprofits not meeting the ODLR and, relatedly, alleged that the Commission had inaccurately reported to Congress in the fiscal year (FY) 2021 Performance and Accountability report that the ODLR compliance rate was 86%. He also alleged LightHouse for the Blind and Visually Impaired of San Francisco (Lighthouse), a nonprofit run by a Commission member, received $7 million in contracts despite failing to comply with program requirements since 2019.

The whistleblower further alleged that the Commission lacks appropriate policies or standard operating procedures to address noncompliance with legal program requirements. He alleged this resulted in the Commission failing to address Arbor Product, Inc. employee allegations that the nonprofit agency was using nondisabled employees to perform direct labor and covered up this fact during a 2016 on-site inspection.

Lastly, the whistleblower alleged a conflict of interest created by two Commission members serving as Chief Executive Officers (CEO) at nonprofits receiving AbilityOne contracts.

III. Findings

The investigation reviewed the whistleblower's sample of noncompliant nonprofits and found that the Commission sent notices to take corrective action to 50 of the 54 nonprofits. The report noted that if a nonprofit failed in any category during the compliance review, it failed overall and was demarcated by "N" in the Procurement List Information Management System (PLIMS), the Commission's database. However, the report cautioned that the "N" reflects a snapshot in time (when the review is done) and not if the nonprofit later takes appropriate, timely corrective action. Of the 50 nonprofits, the report noted that 35 submitted corrective action, 11 of which were timely and five of which were inadequate; 11 had not submitted corrective action as of the date of the investigation; and four had corrective action response deadlines beyond the timeline of the report. The report further examined the percentage of all nonprofits receiving AbilityOne contracts from FY 2018 through FY 2022 with adverse compliance findings and found that the percentage of nonprofits out of compliance was generally quite high. For instance, in FY 2022, 87% of nonprofits were found out of compliance.

As to the seven nonprofits identified by the whistleblower as having failed every compliance review for at least a decade, the investigation concluded that all seven had submitted corrective actions deemed adequate by the Commission. The investigation then expanded the review to analyze every participating nonprofit between FY 2013 and FY 2022

[6] 41 C.F.R. §§ 51-4.2 and 51-4.3.
[7] [redacted] consented to the release of his name.

and identified 50 nonprofits that failed every compliance review (i.e., had an adverse finding) for a decade. The report observed that ten consecutive years of compliance issues raised questions about the culture of compliance in these entities, warranting heightened review.

In addition, the investigation reviewed and confirmed the nonprofit status of the seven entities identified by the whistleblower as failing to qualify as 501(c)(3)s, per IRS tax filings. It concluded that all but one were nonprofits organized under state law. The investigation found that the remaining entity, Arbor Products, Inc. (discussed more later), had made false representations regarding its nonprofit status.

As to ODLR compliance, the investigation determined that for FYs 2017-2021 the percentage of nonprofits receiving contracts that were noncompliant was relatively low prior to 2020, in the 3 to 5% range. That percentage increased to a high of 20% in FY 2021. The investigation found that the Commission approved most of the nonprofits for pandemic waivers, which excused these from corrective or disciplinary action. Yet, it concluded that the Commission's application of its policy on addressing noncompliance with ODLR was "inconsistent, nontransparent, and unevenly applied." The investigation found deficient recordkeeping in PLIMS of failure notices and corrective actions and determined that the Commission had inappropriately granted pandemic waivers for years that predated the pandemic.

The investigation verified that 65 out of 471 nonprofits, or 14%, were noncompliant with ODLR in FY 2020. As such, the investigation concluded that the Commission accurately reported to Congress an 86% compliance rate in the Performance and Accountability Report filed the next year.

In reviewing Lighthouse, the investigation confirmed that the Commission found Lighthouse was noncompliant on all compliance visits it conducted since FY 2019. As a result of each finding, the Commission granted Lighthouse the opportunity to submit corrective action to address the violations. While the report concluded that Lighthouse submitted generally satisfactory, though untimely, corrective action, it relied on the Director of Compliance's assertion to arrive at this conclusion, as there was no corrective action recorded in PLIMS.

The investigation generally found that the Commission had policies in place to address noncompliance, and that these policies conformed to the law. However, of the seven high-risk noncompliance areas the investigation chose to focus on, it found that there were notable issues with three—data collection or maintenance, such as a failure to gather underlying data regarding ODLR noncompliance from the central nonprofits that would allow for verification of information or tracking of trends; gaps in policies, such as an absence of instructions on how to address late or inadequate corrective actions; and policy weaknesses, such as leaving the specific corrective action to the unfettered discretion of the Commission. The report also referenced the Commission's policy on designating noncompliant nonprofits as "at risk" vs. "high risk" and noted the Director of Compliance's explanation that, despite the current policy, the Commission did not make such designations in part due to a lack of clarity of the categories' underlying definition.

The report also referred to a concurrent, complementary external audit that the OIG conducted to determine the adequacy and efficacy of the Commission's compliance program. That audit identified weaknesses in policies, procedures, and recordkeeping and found that the compliance program's quarterly monitoring did not properly and timely identify nonprofit noncompliance.

Further, the investigation reviewed the Commission's handling of a 2017 complaint by Arbor Products, Inc. employees alleging that, during an onsite visit, the entity had deceived compliance inspectors into believing that blind or disabled employees were performing all direct labor. The investigation found that, despite a belief at the time that the nonprofit likely was not making accurate reports, the Commission did not further investigate or act on the complaint until May 2022. It was only after Arbor Products, Inc. became delinquent in paying program fees, that the central nonprofit agency conducted a heightened compliance review that uncovered the IRS had revoked the entity's 501(c)(3) status. Almost simultaneously, a prescheduled, routine, onsite compliance review identified other noncompliance issues. After giving the entity opportunities to submit corrective action, the Commission deauthorized it from participating in the program for failure to maintain nonprofit status. In reviewing the agency's inaction, the report recommended that "the Commission determine whether the Commission's actions or lack thereof, constituted a reasonable response in light of the absence of a governing Policy and process." The agency did not do so.

The investigation also looked at the efficacy of the policy on handling nonprofit employee complaints, which was instituted in 2017, shortly after the receipt of the Arbor Products, Inc. employee complaints, discussed above. Compliance staff stated that the complaint process was confusing and could not be duplicated. Although the policy directed individuals to submit written complaints using particular means, these means were ineffective, as links were nonfunctional, forms non-existent, and contact information inaccurate. For years, OIG raised concerns about inaccurate contact information to the Director of Compliance to no avail.

Lastly, the investigation concluded that it was not a conflict of interest for Commission members to serve as the CEOs of nonprofits receiving AbilityOne contracts. The law specifies that the Commission include "one member from individuals . . . who represent blind individuals employed in qualified nonprofit agencies for the blind," and a similarly situated member representing severely disabled individuals.[8] The Commission has protocols for member recusal where there is the appearance of or an actual conflict of interest. Both members received training on the recusal protocol and signed commitments to recuse themselves in such situations. An independent check of contract votes confirmed that neither Commission member voted on any matter affecting their respective organizations.

IV. Conclusion

The Commission's investigation identified significant issues, such as gaps and weaknesses in noncompliance policies, inconsistent and nontransparent application of those policies, and deficient recordkeeping in the face of high rates of compliance failures. Despite these findings, the Commission determined the allegations were not substantiated. In part, it appears the Commission arrived at this conclusion because it failed to assess whether the alleged conduct met the threshold of gross mismanagement or a gross waste of funds. As to its assessment of whether the allegations constituted a violation of law, rule, or regulation, it

[8] 41 U.S.C. § 8502(b)(4)-(5).

categorically concluded that no violations occurred despite presenting evidence to the contrary, such as the continued issuance of AbilityOne contracts to noncompliant nonprofit agencies and the inappropriate granting of compliance waivers.

The agency has acknowledged the need for improvements in its compliance program and is in the process of overhauling its practices and procedures. It has developed and adopted new compliance policies and is in the process of updating its electronic database, PLIMS, to better capture relevant data. However, while the agency agreed with some of the OIG recommendations (i.e., those forward rather than backward looking), the agency does not appear to have made progress on two recommendations: (1) that it create a formal training program on conducting compliance reviews with annual refreshers for Commission staff and contractors, and (2) that it adopt a method of verifying continued nonprofit status for contract recipients, particularly those organized under state law, beyond annual self-certification. Additionally, while the agency has adopted a new policy on processing nonprofit employee complaints, the policy no longer includes instructions for the direct submission of complaints.

Given the agency's failure to consider the evidence as possible gross mismanagement or waste and its conclusion that no violations of law, rule, or regulation occurred despite contradictory findings, I cannot conclude that the Commission's findings appear reasonable.

I wish to thank the whistleblower for bringing these matters to OSC's attention. As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency report to the Chairs and Ranking Members of the Senate Homeland Security and Governmental Affairs Committee and the House Committee on Oversight and Government Reform. OSC will also file redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

Charles N. Baldis

Charles N. Baldis
Special Counsel

Enclosures