



Weekly Update

July 20, 2022

Nondisplacement of Qualified Workers Under Services Contracts

The Department of Labor's Wage and Hour Division published a notice of rulemaking in the Federal Register on July 15 to implement Executive Order 14055, "[Nondisplacement of Qualified Workers Under Service Contracts.](#)" The publication opened a 30-day public comment period on the proposed rule ending Aug. 15. We encourage you to review and submit comments via [Regulations.gov](#) by the deadline.

President Joe Biden signed EO 14055 on November 18, 2021. Under the Executive Order, service employees whose employment would be terminated will be given the right of first refusal for positions for which they are qualified. The EO also allows the contractor to determine the number of employees necessary for efficient performance. Contractors can elect to employ more or fewer employees than the former contractor employed as needed for efficient performance of the contract.

Unlike the previous version signed by President Barack Obama, EO 14055 does not include an explicit exclusion for contracts awarded for services provided by persons who are blind or have severe disabilities, including contracts awarded under the Javits-Wagner-O'Day Act. However, there is vague language in the executive order and further clarified in the rule, which could allow for the exemption of AbilityOne[®] Program contracts due to the legal and regulatory conflict between JWOD and EO 14055 (see pages 9 and 10 of the proposed rulemaking). Per the rulemaking, the determination of legal conflicts would be made by the Federal agencies awarding contracts on a case-by-case basis.

Despite the included exemption language, SourceAmerica is concerned that the lack of an explicit exemption for the AbilityOne Program may result in inconsistent regulatory interpretations. We encourage NPAs to join SourceAmerica in submitting comments expressing any concerns you have with the proposed rule by the Aug. 15 deadline. The proposed rule is available on the [Federal Register](#), and comments can be submitted at [Regulations.gov](#). Please contact SourceAmerica's Government Affairs team at Advocacy@SourceAmerica.org with any questions.

National Defense Authorization Act Passes House and Moves to Senate Floor

On July 14, the House of Representatives passed [H.R. 7900](#), the National Defense Authorization Act for Fiscal Year 2023. The \$839 billion bill passed by a vote of 329-101 and is \$37 billion more than was requested by the administration. We previously highlighted [amendments](#) from Congressman Waltz and Carson that were potentially problematic for the AbilityOne Program; neither amendment was included in the final version.

The Senate Armed Services Committee filed S. 4543, the James M. Inhofe Defense Authorization Act for Fiscal Year 2023, on July 18. The committee previously voted 23-3 on June 16 to advance the NDAA to the Senate floor for consideration. Alongside [full bill text](#), the committee released an [executive summary](#) and accompanying [report](#). The

bill report identifies the AbilityOne Program as an item of special interest and includes the following promising language:

“The committee commends the work of AbilityOne nonprofit agencies that are critical components of the domestic defense industrial base. This program supports the Department of Defense and employs individuals who are blind or have severe disabilities in accordance with the chapter 85 of title 41, United States Code, while also promoting domestic defense manufacturing and the enhancement of infrastructure.

Therefore, under existing statutes, regulations, and Executive Orders, the committee recommends the Department of Defense consider additional contract opportunities under the priority of source procurement requirements through engagement with the AbilityOne Commission to place Department of Defense supplies and services, or portions of supplies and services, on the AbilityOne Procurement List.”

The Senate version would authorize \$847 billion in defense spending, with \$13 billion of the increased funds going towards offsetting inflation. The Senate isn’t expected to take up the NDAA on the floor until September. A final NDAA will require reconciliation between the House and Senate versions.

Government Affairs Holding Special Edition Coffee Break Aug. 2

The SourceAmerica Government Affairs team will not hold its regular coffee break on July 26 due to the NCSE meeting in Minneapolis, Minn. Instead, we will host a special edition coffee break on Aug. 2 at 12 p.m. ET. Stay tuned for more details and [register](#) for any of our upcoming coffee breaks.