

110TH CONGRESS
2D SESSION

S. 3112

To reauthorize the Javits-Wagner-O'Day Act and the Randolph-Sheppard Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2008

Mr. ENZI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To reauthorize the Javits-Wagner-O'Day Act and the Randolph-Sheppard Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Javits-Wagner-O'Day and Randolph-Sheppard Mod-
6 ernization Act of 2008”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Establishment of Committee.

TITLE I—PROCUREMENT

- Sec. 101. Short title.
- Sec. 102. Purposes.
- Sec. 103. Duties and powers of the Committee relating to procurement.
- Sec. 104. Procurement requirements for the government.
- Sec. 105. Central nonprofit agencies.
- Sec. 106. Qualified nonprofit agencies.
- Sec. 107. Demonstration projects.
- Sec. 108. Records and audits.
- Sec. 109. Study of Federal government utilization.
- Sec. 110. Authorization of appropriations.

TITLE II—RANDOLPH-SHEPPARD ACT

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Operation of vending facilities.
- Sec. 204. Duties and powers of the Committee.
- Sec. 205. State licensing agency powers and duties.
- Sec. 206. Vendors' duties.
- Sec. 207. Authorization of appropriations.

TITLE III—JAVITS-WAGNER-O' DAY AND RANDOLPH-SHEPPARD VENDORS CONTRACTING WITH THE DEPARTMENT OF DEFENSE

- Sec. 301. Definitions.
- Sec. 302. Javits-Wagner-O'Day program.
- Sec. 303. Randolph-Sheppard program.

TITLE IV—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

- Sec. 401. Definitions.
- Sec. 402. Transfer of functions.
- Sec. 403. Determinations of certain functions by the Office of Management and
Budget.
- Sec. 404. Personnel provisions.
- Sec. 405. Delegation and assignment.
- Sec. 406. Reorganization.
- Sec. 407. Rules.
- Sec. 408. Transfer and allocations of appropriations and personnel.
- Sec. 409. Incidental transfers.
- Sec. 410. Effect on personnel.
- Sec. 411. Savings provisions.
- Sec. 412. Separability.
- Sec. 413. Transition.
- Sec. 414. References.
- Sec. 415. Additional conforming amendments.

TITLE V—REPEALS OF FORMER PROVISIONS

- Sec. 501. Repeals.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

1 (1) BLIND.—The term “blind”, used with re-
2 spect to an individual or a class of individuals,
3 means an individual or class of individuals, respec-
4 tively, whose central visual acuity does not exceed
5 20/200 in the better eye with correcting lenses or
6 whose visual acuity, if better than 20/200, is accom-
7 panied by a limit to the field of vision in the better
8 eye to such a degree that its widest diameter
9 subtends an angle of no greater than 20 degrees.
10 For purposes of this paragraph, to determine wheth-
11 er an individual is blind, a physician skilled in dis-
12 eases of the eye, or an optometrist, whichever the in-
13 dividual shall select, shall conduct an examination.

14 (2) CENTRAL NONPROFIT AGENCY.—The term
15 “central nonprofit agency” means an agency des-
16 ignated under section 103(d), that meets the re-
17 quirements for such designation under section 105.

18 (3) COMMITTEE.—The term “Committee”, ex-
19 cept when used as part of another term, means the
20 Committee for the Advancement of Individuals with
21 Disabilities established under section 3.

22 (4) DIRECT LABOR.—The term “direct labor”
23 includes all work required for preparation, proc-
24 essing, and packing of a product, or work directly

1 relating to the performance of a service, but not su-
2 pervision, administration, inspection, or shipping.

3 (5) ELECTRONIC COMMERCE.—The term “elec-
4 tronic commerce” means buying, selling, producing,
5 or working in an electronic medium.

6 (6) EXPERIENTIAL LEARNING OPTION.—The
7 term “experiential learning option” means an option
8 for acquiring firsthand knowledge of, and building
9 social and vocational problem solving skills for, inte-
10 grated competitive employment through active, di-
11 rect participation in individualized work activities,
12 including the use of supported employment services,
13 in an integrated competitive employment environ-
14 ment.

15 (7) FISCAL YEAR.—The term “fiscal year”
16 means the 12-month period beginning on October 1
17 of each year.

18 (8) GOVERNMENT; ENTITY OF THE GOVERN-
19 MENT.—The terms “Government” and “entity of the
20 Government” include any entity of the legislative
21 branch or the judicial branch, any military depart-
22 ment or Executive agency (as such department and
23 agency are respectively defined by sections 102 and
24 105 of title 5, United States Code), the United
25 States Postal Service, and any nonappropriated fund

1 instrumentality under the jurisdiction of the Armed
2 Forces.

3 (9) OTHER SIGNIFICANT DISABILITY.—The
4 term “other significant disability”, used with respect
5 to an individual or a class of individuals, means an
6 individual or class of individuals, respectively, who
7 has an impairment that—

8 (A) is a physical or cognitive impairment,
9 or combination of physical and cognitive impair-
10 ments, other than blindness;

11 (B) results in a work function barrier or
12 employment activity limitation, including the
13 need for ongoing services or supports over an
14 extended period of time; and

15 (C) results in substantial employment
16 functional limitations in 2 or more of the fol-
17 lowing major life activities:

18 (i) Self-care.

19 (ii) Receptive and expressive lan-
20 guage.

21 (iii) Cognitive functioning, including
22 learning.

23 (iv) Mobility.

24 (v) Self-direction.

25 (vi) Capacity for independent living.

- 1 (vii) Economic self-sufficiency.
2 (viii) Emotional adjustment.
3 (ix) Work tolerance, productivity, or
4 quality.

5 (10) QUALIFIED NONPROFIT AGENCY.—The
6 term “qualified nonprofit agency” means an agency
7 selected by a central nonprofit agency to serve as a
8 qualified nonprofit agency, that meets the require-
9 ments for such qualification under section 106.

10 (11) QUALIFIED NONPROFIT AGENCY FOR INDI-
11 VIDUALS WHO ARE BLIND.—The term “qualified
12 nonprofit agency for individuals who are blind”
13 means an agency—

14 (A) organized under the laws of the United
15 States or of any State, operated in the interest
16 of individuals who are blind, and the net income
17 of which does not inure in whole or in part to
18 the benefit of any shareholder or other indi-
19 vidual;

20 (B) that complies with any applicable occu-
21 pational health and safety standard prescribed
22 by the Secretary of Labor; and

23 (C) that—

1 (i) produces products or provides serv-
 2 ices (whether or not the products or serv-
 3 ices are procured under this Act); and

4 (ii) during a fiscal year, employs indi-
 5 viduals who are blind for not less than 75
 6 percent of the person-hours of direct labor
 7 (adjusted in accordance with section
 8 103(g)) required to produce the products
 9 or provide the services.

10 (12) QUALIFIED NONPROFIT AGENCY FOR INDI-
 11 VIDUALS WITH OTHER SIGNIFICANT DISABILITIES.—
 12 The term “qualified nonprofit agency for individuals
 13 with other significant disabilities” means an agen-
 14 cy—

15 (A) organized under the laws of the United
 16 States or of any State, operated in the interest
 17 of individuals with other significant disabilities,
 18 and the net income of which does not inure in
 19 whole or in part to the benefit of any share-
 20 holder or other individual;

21 (B) that complies with any applicable occu-
 22 pational health and safety standard prescribed
 23 by the Secretary of Labor; and

24 (C) that—

1 (i) produces products or provides serv-
2 ices (whether or not the products or serv-
3 ices are procured under this Act); and

4 (ii) during a fiscal year, employs indi-
5 viduals who are blind or individuals with
6 other significant disabilities for not less
7 than 75 percent of the person-hours of di-
8 rect labor (adjusted in accordance with
9 section 103(g)) required to produce the
10 products or provide the services.

11 (13) SIGNIFICANT DISABILITY.—The term “sig-
12 nificant disability”, used with respect to an indi-
13 vidual or a class of individuals, means an individual
14 or class of individuals, respectively, each of whom
15 is—

16 (A) an individual who is blind; or

17 (B) an individual with another significant
18 disability.

19 (14) STATE.—The term “State” means each of
20 the 50 States, the District of Columbia, the Com-
21 monwealth of Puerto Rico, the United States Virgin
22 Islands, Guam, American Samoa, and the Common-
23 wealth of the Northern Mariana Islands.

1 **SEC. 3. ESTABLISHMENT OF COMMITTEE.**

2 (a) ESTABLISHMENT.—There is established a com-
3 mittee to be known as the Committee for the Advancement
4 of Individuals with Disabilities. The Committee shall be
5 composed of 21 voting members, and 5 ex officio non-
6 voting members, appointed as follows:

7 (1) VOTING NUMBERS FROM FEDERAL DEPART-
8 MENTS OR AGENCIES.—

9 (A) IN GENERAL.—Each head of a Federal
10 department or agency described in subpara-
11 graph (C) shall appoint as a member of the
12 Committee 1 officer or employee from an office
13 of administration and management, acquisition
14 policy, procurement, contracting, or finance, or
15 another similar office, of that Federal depart-
16 ment or agency.

17 (B) REHABILITATION SERVICES ADMINIS-
18 TRATION AND OFFICE OF DISABILITY EMPLOY-
19 MENT POLICY.—The Commissioner of the Re-
20 habilitation Services Administration of the De-
21 partment of Education and the Assistant Sec-
22 retary for Disability Employment Policy of the
23 Department of Labor shall also serve as mem-
24 bers of the Committee.

25 (C) FEDERAL DEPARTMENTS AND AGEN-
26 CIES.—The Federal departments and agencies

1 referred to in subparagraph (A) are the Depart-
2 ment of Agriculture, the Department of De-
3 fense, the Department of the Army, the Depart-
4 ment of the Navy, the Department of the Air
5 Force, the Department of Veterans Affairs, the
6 Department of Justice, the Department of
7 Homeland Security, the Department of Housing
8 and Urban Development, and the General Serv-
9 ices Administration.

10 (2) VOTING MEMBERS APPOINTED BY PRESI-
11 DENT.—The President shall appoint to the Com-
12 mittee, by and with the advice and consent of the
13 Senate—

14 (A) 1 member from persons who are not
15 officers or employees of the Government and
16 who are conversant with the problems incident
17 to the employment of individuals who are blind;

18 (B) 1 member from persons who are not
19 officers or employees of the Government and
20 who are conversant with the problems incident
21 to the employment of individuals with other sig-
22 nificant disabilities;

23 (C) 1 member from persons who—

24 (i) are not officers or employees of the
25 Government;

1 (ii) are individuals who are blind or
2 represent such individuals; and

3 (iii) are employed in qualified non-
4 profit agencies for individuals who are
5 blind;

6 (D) 1 member from persons who—

7 (i) are not officers or employees of the
8 Government;

9 (ii) are individuals with other signifi-
10 cant disabilities or represent such individ-
11 uals; and

12 (iii) are employed in qualified non-
13 profit agencies for individuals with other
14 significant disabilities;

15 (E) 1 member from persons who are not
16 officers or employees of the Government and
17 who represent a central nonprofit agency for in-
18 dividuals who are blind, a qualified nonprofit
19 agency for individuals who are blind, or a na-
20 tional association representing qualified non-
21 profit agencies described in this subparagraph;

22 (F) 1 member from persons who are not
23 officers or employees of the Government and
24 who represent a central nonprofit agency for in-
25 dividuals who have other significant disabilities,

1 a qualified nonprofit agency for individuals who
2 have other significant disabilities, or a national
3 association representing qualified nonprofit
4 agencies described in this subparagraph;

5 (G) 1 member from persons who are not
6 officers or employees of the Government and
7 who represent the small business community,
8 the service sector, the product sector, the labor
9 sector, the manufacturing sector, or a national
10 association of small business communities or
11 sectors described in this subparagraph;

12 (H) 1 member from persons who are not
13 officers or employees of the Government and
14 who represent a licensed vendor (as defined in
15 section 202) who is blind, a State agency de-
16 scribed in section 101(a)(2)(A)(i) of the Reha-
17 bilitation Act of 1973 (29 U.S.C.
18 721(a)(2)(A)(i)), or a national association of
19 vendors or agencies described in this subpara-
20 graph; and

21 (I) 1 member from persons who are not of-
22 ficers or employees of the Government and who
23 represent a licensed vendor (as defined in sec-
24 tion 202) with a disability other than blindness,
25 a State agency described in section

1 101(a)(2)(A) of the Rehabilitation Act of 1973
2 (29 U.S.C. 721(a)(2)(A)) (other than clause (i)
3 of such section), or a national association of
4 vendors or agencies described in this subpara-
5 graph.

6 (3) EX OFFICIO, NONVOTING MEMBERS.—The
7 Administrator of the Small Business Administration
8 and the Secretary of Commerce shall appoint as ex
9 officio, nonvoting members of the Committee 1 offi-
10 cer or employee of the Small Business Administra-
11 tion and the Department of Commerce, respectively.
12 The Secretary of Education shall appoint as an ex
13 officio, nonvoting member of the Committee the As-
14 sistant Secretary for Vocational and Adult Edu-
15 cation or the Assistant Secretary for Postsecondary
16 Education. The Director of the Office on Disability
17 of the Department of Health and Human Services
18 and the Chairperson of the National Council on Dis-
19 ability shall also serve as ex officio, nonvoting mem-
20 bers of the Committee.

21 (4) TRANSITION RULES.—

22 (A) DEFINITIONS.—In this paragraph:

23 (i) CURRENT COMMITTEE.—The term
24 “current Committee” means the Com-

1 mittee for the Advancement of Individuals
2 with Disabilities.

3 (ii) FORMER COMMITTEE.—The term
4 “former Committee” means the Committee
5 for Purchase From People Who Are Blind
6 or Severely Disabled.

7 (B) CONTINUATION OF MEMBERS.—If the
8 head of a Federal department or agency ap-
9 pointed an officer or employee described in sub-
10 paragraph (A) or (B) of paragraph (1) to the
11 former Committee, under section 1(a)(1) of the
12 Javits-Wagner-O’Day Act, and the officer or
13 employee was serving on the former Committee
14 on the date of enactment of the Javits-Wagner-
15 O’Day and Randolph-Sheppard Modernization
16 Act of 2008, that officer or employee shall be
17 considered to have been appointed to the cur-
18 rent Committee under paragraph (1). If the
19 President appointed an individual described in
20 any of subparagraphs (A) through (D) of para-
21 graph (2) to the former Committee, under sec-
22 tion 1(a)(2) of the Javits-Wagner-O’Day Act,
23 and the individual was serving on the former
24 Committee on the date of enactment of the Jav-
25 its-Wagner-O’Day and Randolph-Sheppard

1 Modernization Act of 2008, that individual shall
2 be considered to have been appointed to the
3 current Committee under the corresponding
4 subparagraph of paragraph (2).

5 (C) TREATMENT.—An appointment to the
6 current Committee described in subparagraph
7 (B) shall—

8 (i) be treated as a first appointment
9 to the current Committee;

10 (ii) take effect on the date that the
11 first appointments made under any of sub-
12 paragraphs (E) through (I) of paragraph
13 (2) take effect; and

14 (iii) in the case of an individual ini-
15 tially appointed by the President to the
16 former Committee, end on the same date
17 as the initial appointment would have
18 ended.

19 (D) ACTIONS AND AUTHORITIES.—This
20 Act shall not affect any action or authority of
21 any member of the former Committee, or of
22 that Committee.

23 (b) VACANCY.—A vacancy in the membership of the
24 Committee for the Advancement of Individuals with Dis-

1 abilities shall not affect its powers but shall be filled in
2 the manner in which the original appointment was made.

3 (c) CHAIRMAN.—The members of the Committee
4 shall elect 1 of their number to be Chairman.

5 (d) TERMS.—

6 (1) LENGTH AND NUMBER.—Except as pro-
7 vided in subsection (a)(4)(B) and paragraphs (2)
8 and (3), members appointed under paragraph (2) of
9 subsection (a) shall be appointed for terms of 5
10 years. No member of the Committee appointed
11 under such paragraph may serve more than 2 con-
12 secutive full terms, beginning on the date of com-
13 mencement of the member's first full term on the
14 Committee.

15 (2) STAGGERED TERMS.—Of the members first
16 appointed under subparagraphs (E), (F), (G), (H),
17 and (I) of subsection (a)(2)—

18 (A) the member appointed under subpara-
19 graph (H) of that subsection shall be appointed
20 for a term that ends on the same date as the
21 term of the member appointed under subpara-
22 graph (A) of that subsection;

23 (B) the member appointed under subpara-
24 graph (I) of that subsection shall be appointed
25 for a term that ends on the same date as the

1 term of the member appointed under subpara-
2 graph (B) of that subsection;

3 (C) the member appointed under subpara-
4 graph (G) of that subsection shall be appointed
5 for a term that ends on the same date as the
6 term of the member appointed under subpara-
7 graph (C) of that subsection;

8 (D) the member appointed under subpara-
9 graph (F) of that subsection shall be appointed
10 for a term that ends on the same date as the
11 term of the member appointed under subpara-
12 graph (D) of that subsection; and

13 (E) the member appointed under subpara-
14 graph (E) of that subsection shall be appointed
15 for a term that ends 1 year after the date on
16 which the term of the member appointed under
17 subparagraph (B) of that subsection ends.

18 (3) MIDTERM VACANCIES AND EXPIRED
19 TERMS.—Any member appointed under paragraph
20 (2) of subsection (a) to fill a vacancy occurring prior
21 to the expiration of the term for which his prede-
22 cessor was appointed shall be appointed only for the
23 remainder of such term. A member appointed under
24 such paragraph may serve after the expiration of the

1 member's term until the member's successor has
2 taken office.

3 (e) QUORUM.—Ten voting members of the Com-
4 mittee, including not less than 5 members appointed under
5 subsection (a)(2), shall constitute a quorum.

6 (f) PAY AND TRAVEL EXPENSES.—

7 (1) PAY FOR MEMBERS NOT OFFICERS OR EM-
8 PLOYEES OF GOVERNMENT.—Except as provided in
9 paragraph (2), members of the Committee shall each
10 be entitled to receive the daily equivalent of the max-
11 imum rate payable for a position at GS-15 of the
12 General Schedule for each day (including traveltime)
13 during which they are engaged in the actual per-
14 formance of services for the Committee.

15 (2) NO PAY FOR OFFICERS OR EMPLOYEES OF
16 GOVERNMENT.—Members of the Committee who are
17 officers or employees of the Government shall receive
18 no additional pay on account of their service on the
19 Committee.

20 (3) TRAVEL EXPENSES.—While away from
21 their homes or regular places of business in the per-
22 formance of services for the Committee, members of
23 the Committee shall be allowed travel expenses, in-
24 cluding per diem in lieu of subsistence, in the same
25 manner as persons employed intermittently in the

1 Government service are allowed expenses under sec-
2 tion 5703 of title 5 of the United States Code.

3 (g) STAFF.—

4 (1) EXECUTIVE DIRECTOR.—

5 (A) IN GENERAL.—The Committee, by a
6 majority vote of the voting members of the
7 Committee, shall appoint (including having the
8 authority to remove) and shall fix the pay of an
9 Executive Director to assist the Committee, at
10 the direction of the Committee, in carrying out
11 the Committee's duties and powers under this
12 Act.

13 (B) APPLICABLE PROVISIONS.—The rate
14 of pay for the Executive Director shall not ex-
15 ceed the rate payable for level II of the Execu-
16 tive Schedule under section 5313 of title 5,
17 United States Code. The Committee shall other-
18 wise appoint and fix the pay of the Executive
19 Director without regard to the provisions of
20 title 5, United States Code, governing appoint-
21 ments in the competitive service, and the provi-
22 sions of chapter 75 of such title (relating to ad-
23 verse actions), chapter 77 of such title (relating
24 to appeals), and chapter 51 and subchapter III

1 of chapter 53 (relating to classification of posi-
2 tions and General Schedule pay rates.)

3 (C) EFFECT OF REMOVAL.—An Executive
4 Director who is removed by the Committee shall
5 not be eligible to serve as a member of the
6 Committee for 10 years after the date of the re-
7 moval.

8 (2) PERSONNEL.—Subject to such rules as may
9 be adopted by the Committee, the Chairman may
10 appoint (including having the authority to remove)
11 and fix the pay of such personnel as the Committee
12 determines are necessary to assist it in carrying out
13 its duties and powers under this Act. The personnel
14 of the Committee appointed under this paragraph
15 shall be appointed subject to the provisions of title
16 5, United States Code, governing appointments in
17 the competitive service, and shall be paid in accord-
18 ance with the provisions of chapter 51 and sub-
19 chapter III of chapter 53 of such title (relating to
20 classification of positions and General Schedule pay
21 rates).

22 (h) OBTAINING OFFICIAL DATA.—

23 (1) IN GENERAL.—The Committee may secure
24 directly from any entity of the Government informa-
25 tion necessary to enable the Committee to carry out

1 this Act. Upon request of the Chairman of the Com-
2 mittee, the head of such Government entity shall
3 furnish such information to the Committee in a
4 timely and reasonable fashion.

5 (2) EXCEPTIONS.—Paragraph (1) shall not
6 apply to—

7 (A) any classified information; or

8 (B) information from any entity of the
9 Government that discloses the identity of, or
10 any other personally identifiable information re-
11 lated to, any individual.

12 (i) RECUSAL.—Members of the Committee appointed
13 under subparagraph (E), (F), (H), or (I) of subsection
14 (a)(2) shall recuse themselves from voting on any matters
15 that could directly benefit them, or the agencies, associa-
16 tions, or vendors they represent, including the addition of
17 an item to the procurement list. Members of the Com-
18 mittee appointed under any of subparagraphs (A) through
19 (G) of subsection (a)(2) shall recuse themselves from vot-
20 ing on any matters regarding title II. Members of the
21 Committee appointed under subparagraph (H) or (I) of
22 subsection (a)(2) shall recuse themselves from voting on
23 any matters regarding title I.

1 **TITLE I—PROCUREMENT**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Javits-Wagner-O’Day
4 Act”.

5 **SEC. 102. PURPOSES.**

6 The purposes of this title are—

7 (1) to deliver to entities of the Government, at
8 a fair price, products and services of high quality
9 that such an entity would ordinarily procure to meet
10 the entity’s mission;

11 (2) to provide employment to individuals with
12 significant disabilities; and

13 (3) to empower individuals with significant dis-
14 abilities, through informed choice, to maximize em-
15 ployment, economic self-sufficiency, independence,
16 and inclusion in and integration into society, by pro-
17 viding for—

18 (A) a network of nonprofit agencies uti-
19 lizing comprehensive and coordinated state-of-
20 the-art employment technologies, strategies, and
21 approaches;

22 (B) training and skill development; and

23 (C) research.

1 **SEC. 103. DUTIES AND POWERS OF THE COMMITTEE RE-**
2 **LATING TO PROCUREMENT.**

3 (a) IN GENERAL.—In carrying out the purposes of
4 this title—

5 (1) the Committee shall—

6 (A) identify products and services offered
7 for sale by qualified nonprofit agencies and ap-
8 propriate for addition to the procurement list
9 established under subsection (b);

10 (B) inform entities of the Government
11 about the statutory mandate of section 104 that
12 items on the procurement list be purchased
13 from qualified nonprofit agencies; and

14 (C) promote such products and services of-
15 fered for sale by qualified nonprofit agencies
16 and the activities of such agencies pursuant to
17 this title;

18 (2) the Committee shall monitor the compliance
19 of entities of the Government with the requirements
20 of this title, and enforce the requirements; and

21 (3) the Committee shall, not less often than
22 every 5 years, develop or update a strategic plan
23 that establishes the implementation responsibilities
24 and goals of central nonprofit agencies, and qualified
25 nonprofit agencies, for improving activities carried

1 out under this title and related activities, includ-
2 ing—

3 (A) improving data collection;

4 (B) creating employment opportunities for
5 individuals who are blind and individuals with
6 other significant disabilities through activities
7 carried out under this title;

8 (C) creating competitive employment op-
9 portunities for individuals who are blind and in-
10 dividuals with other significant disabilities
11 through activities in this title through experien-
12 tial learning options and activities (such as out-
13 placement and promotion described in sub-
14 section (g)(1)(B)) that are related to activities
15 carried out under this title;

16 (D) increasing wages for individuals de-
17 scribed in subparagraph (B);

18 (E) meeting career advancement indicators
19 for such individuals;

20 (F) increasing sales revenues;

21 (G) monitoring progress toward meeting
22 the objectives of this title; and

23 (H) measuring success toward meeting the
24 objectives.

25 (b) PROCUREMENT LIST.—

1 (1) IN GENERAL.—The Committee shall estab-
2 lish and publish in the Federal Register a list (re-
3 ferred to in this Act as the “procurement list”) of—

4 (A) the products produced by any qualified
5 nonprofit agency for individuals who are blind
6 or by any qualified nonprofit agency for individ-
7 uals with other significant disabilities; and

8 (B) the services provided by any such
9 agency,

10 that the Committee determines are suitable for pro-
11 curement by the Government pursuant to this title.
12 Such list shall initially consist of the procurement
13 list in effect under the Javits-Wagner-O’Day Act on
14 the day before the date of enactment of the Javits-
15 Wagner-O’Day and Randolph-Sheppard Moderniza-
16 tion Act of 2008.

17 (2) ADDITIONS AND REMOVALS.—

18 (A) IN GENERAL.—The Committee may,
19 by rule made in accordance with the require-
20 ments of subsections (b), (c), (d), and (e) of
21 section 553 of title 5, United States Code, add
22 to and remove from the procurement list prod-
23 ucts so produced and services so provided.

24 (B) SALES PRIOR TO ADDITIONS.—If an
25 entity of the Government solicits a qualified

1 nonprofit agency to sell a product or service
2 that such agency is producing commercially,
3 and the entity of the Government is interested
4 in adding the product or service to the procure-
5 ment list, the Committee may allow the quali-
6 fied nonprofit agency to sell the product or
7 service to the Government prior to adding such
8 item to the procurement list. After that sale,
9 the qualified nonprofit agency may continue to
10 sell the product or service to the Government
11 under this title only if the product or service is
12 added to the procurement list under subpara-
13 graph (A).

14 (C) REMOVALS.—

15 (i) IN GENERAL.—If a product or
16 service is on the procurement list but has
17 not been purchased by the Government
18 within the last 36 months, the Committee
19 shall remove the product or service from
20 the procurement list, except as provided in
21 clause (ii).

22 (ii) AGENCY JUSTIFICATION.—The
23 qualified nonprofit agency responsible for
24 producing the product or providing the
25 service may submit a justification to the

1 Committee, in writing and prior to the re-
2 moval, for the continued listing of such
3 product or service. If the Committee deter-
4 mines that the justification is sufficient to
5 warrant the continued listing, the Com-
6 mittee shall not remove the product or
7 service from the procurement list.

8 (D) PROCEDURES FOR APPEALS AND
9 PRESENTATIONS.—The Committee shall create
10 procedures—

11 (i) for qualified nonprofit agencies to
12 appeal a determination—

13 (I) by a central nonprofit agency
14 about the distribution of products and
15 services among such agencies;

16 (II) by the Committee that a
17 product or service will be removed
18 from the procurement list;

19 (III) by the Committee that a
20 product or service will not be added to
21 the procurement list; and

22 (IV) by the Committee that a
23 product or service will be sold to the
24 Government at a revised price; and

1 (ii) for businesses, resellers, and man-
2 ufacturing companies, to give oral presen-
3 tations at Committee meetings—

4 (I) describing the potential im-
5 pact of products or services proposed
6 to be added to the procurement list;
7 and

8 (II) for the potential removal of
9 products or services from the procure-
10 ment list.

11 (E) CONSTRUCTION.—Nothing in this sec-
12 tion shall prohibit a qualified nonprofit agency
13 from selling a product or service commercially
14 to an entity of the Government, rather than
15 selling the product or service through the pro-
16 gram carried out under this title. The Com-
17 mittee shall not treat the item involved as if the
18 item were added to the procurement list, and
19 the qualified nonprofit agency may not label or
20 identify the item in a manner that associates
21 the item with the program, unless the Com-
22 mittee adds the item to the procurement list
23 under subparagraph (A).

24 (c) PRICE.—The Committee shall determine the fair
25 market price of products and services that are on the pro-

1 curement list and that are offered for sale to the Govern-
2 ment by any qualified nonprofit agency for individuals who
3 are blind or any such agency for individuals with other
4 significant disabilities. The Committee shall also revise
5 from time to time in accordance with changing market
6 conditions its price determinations with respect to such
7 products and services. The Committee will prepare a no-
8 tice stating the Committee's justification for such a revi-
9 sion, and send the notice to the appropriate central non-
10 profit agency and qualified nonprofit agency.

11 (d) DESIGNATION OF CENTRAL NONPROFIT AGEN-
12 CIES.—

13 (1) IN GENERAL.—The Committee shall des-
14 ignate a central nonprofit agency or agencies to fa-
15 cilitate the distribution (by direct allocation, sub-
16 contract, or any other means) of orders of the Gov-
17 ernment for products and services on the procure-
18 ment list among qualified nonprofit agencies for in-
19 dividuals who are blind or qualified nonprofit agen-
20 cies for individuals with other significant disabilities.

21 (2) FUNCTIONS.—Agencies designated under
22 paragraph (1) shall carry out functions that are not
23 inherently governmental functions.

24 (e) REGULATIONS.—

1 (1) IN GENERAL.—The Committee shall pre-
2 scribe such regulations, including regulations regard-
3 ing specifications for products and services on the
4 procurement list, the time of their delivery, direct
5 labor hour percentages, experiential learning options,
6 governance standards including accreditation stand-
7 ards, and reviewing, monitoring, and auditing of the
8 central nonprofit agencies and qualified nonprofit
9 agencies, as the Committee considers to be appro-
10 priate to carry out this title. In prescribing the regu-
11 lations, the Committee shall take into account the
12 interests of small qualified nonprofit agencies, and
13 the needs of qualified nonprofit agencies that enter
14 into several contracts, but receive only a small per-
15 centage of their contract award amounts through
16 contracts entered into under this title.

17 (2) PRIORITY.—The Committee shall prescribe
18 regulations providing that, in the purchase by the
19 Government of products produced and offered for
20 sale by qualified nonprofit agencies for individuals
21 who are blind or qualified nonprofit agencies for in-
22 dividuals with other significant disabilities, priority
23 shall be accorded to products produced and offered
24 for sale by qualified nonprofit agencies for individ-
25 uals who are blind.

1 (3) EXCLUSIONS.—The Committee shall not
2 prescribe regulations for central nonprofit agencies
3 or qualified nonprofit agencies that specify board
4 size, board practices such as having certain commit-
5 tees, or rotation of board members.

6 (4) PROPOSED REGULATIONS.—Not later than
7 180 days after the date of enactment of the Javits-
8 Wagner-O’Day and Randolph-Sheppard Moderniza-
9 tion Act of 2008, the Committee shall issue pro-
10 posed regulations to implement that Act, provide an
11 opportunity for public comment, and prescribe final
12 regulations to implement the amendments.

13 (f) STUDY AND EVALUATION.—The Committee shall
14 make a continuing study and evaluation of its activities
15 under this title for the purpose of assuring effective and
16 efficient administration of this title. The Committee may
17 study (on its own or in cooperation with other public or
18 nonprofit private agencies)—

19 (1) problems related to the employment of indi-
20 viduals who are blind and of individuals with other
21 significant disabilities;

22 (2) the development and adaptation of produc-
23 tion methods that would enable a greater utilization
24 of individuals who are blind and of individuals with
25 other significant disabilities; and

1 (3) areas relating to providing informed choice,
2 supported employment, customized employment, self-
3 employment, and individualized experiential learning
4 options in the community involved to direct labor
5 employees of qualified nonprofit agencies, promoting
6 job placement and retention of the workers, pro-
7 moting consumer satisfaction with products and
8 services produced or provided for sale under this
9 title, establishing standards and certification (which
10 may include accreditation) for community rehabilita-
11 tion programs, and converting from providing non-
12 integrated community rehabilitation programs to
13 providing integrated community-based employment.

14 (g) DIRECT LABOR HOUR PERCENTAGE.—

15 (1) MODIFICATIONS.—

16 (A) IN GENERAL.—In the case of a quali-
17 fied nonprofit agency, with a product- or serv-
18 ice-related order performed by the qualified
19 nonprofit agency, that has obtained approval
20 for a request under paragraph (5), the Com-
21 mittee shall modify the direct labor hours per-
22 centage requirement described in paragraph
23 (11)(C) or (12)(C) of section 2, as described in
24 this paragraph.

1 (B) EMPLOYEES.—The Committee shall
2 allow the agency to count towards the percent-
3 age, for the agency overall or a specific order,
4 up to 24 percent of the hours performed by per-
5 sons that were formerly direct labor employees
6 of the agency and that are individuals who are
7 blind or individuals with other significant dis-
8 abilities, as appropriate, if such persons were—

9 (i) outplaced into competitive employ-
10 ment, with compensation at a rate not less
11 than the minimum wage rate set forth in
12 section 6(a)(1) of the Fair Labor Stand-
13 ards Act of 1938 (29 U.S.C. 206(a)(1)),
14 and with benefits offered by the employee
15 involved, for at least 90 days;

16 (ii) outplaced into self-employment in
17 which the agency subcontracted a portion
18 of the order to a direct labor employee that
19 is an individual who is blind or an indi-
20 vidual with another significant disability,
21 as appropriate; or

22 (iii) promoted from nonsupervisory,
23 nonmanagement positions into initial su-
24 pervisory and management positions within
25 the qualified nonprofit agency, through

1 promotions that involved changes in work
2 duties, titles, and wages.

3 (C) HOURS.—The hours counted under
4 paragraph (1) shall be—

5 (i) for a former employee described in
6 subparagraph (B)(ii), hours of self-employ-
7 ment as a subcontractor described in that
8 subparagraph, but the hours may only be
9 counted for the length of the subcontract
10 for that order; and

11 (ii) for a former employee described in
12 subparagraph (B)(iii), hours in an initial
13 supervisory or management position de-
14 scribed in that subparagraph.

15 (2) JOB COACHES.—The Committee may au-
16 thorize a qualified nonprofit agency that has ob-
17 tained approval for a request under paragraph (5) to
18 exclude job coaches from the workers used to cal-
19 culate the agency overall and specific order direct
20 labor hour percentage counts if—

21 (A) the job coaches are providing job
22 coaching functions;

23 (B) the job coaches are not paid by funds
24 generated through orders authorized under this
25 title; and

1 (C) all direct labor employees of the agency
2 that are individuals who are blind or individuals
3 with other significant disabilities (including di-
4 rect labor employees making commensurate
5 wages) are compensated at a rate not less than
6 the minimum wage rate described in paragraph
7 (1)(B)(i).

8 (3) PHASE-IN PERIOD.—If a qualified nonprofit
9 agency is unable to initially perform a project while
10 meeting the appropriate direct labor hour percentage
11 requirement, the Committee may allow the qualified
12 nonprofit agency a 1-year phase-in period in order to
13 meet the requirement, subject to the following condi-
14 tions:

15 (A) OVERALL PERCENTAGE.—A request by
16 the qualified nonprofit agency for a phase-in pe-
17 riod shall include information on whether or not
18 the phase-in period will cause the nonprofit
19 agency's cumulative overall direct labor hour
20 percentage to drop below 75 percent.

21 (B) PLAN.—If the agency's cumulative
22 overall direct labor hour percentage will drop
23 below 75 percent as a result of the phase-in pe-
24 riod, the agency shall submit a phase-in plan
25 and include a description of the method that

1 the agency will use to ensure that, and the
2 timeframe in which, the agency will meet the 75
3 percent direct labor hour percentage require-
4 ment.

5 (C) NO REQUESTS AFTER PROJECT BEGIN-
6 NING.—A qualified nonprofit agency may not
7 request, and the Committee may not permit, a
8 phase-in period for a project after beginning
9 work on that project.

10 (4) TRAINING HOURS COUNTED TOWARD DI-
11 RECT LABOR HOURS.—For purposes of computing
12 the direct labor hour percentage described in para-
13 graph (11)(C) or (12)(C) of section 2, a qualified
14 nonprofit agency may count an hour that an em-
15 ployee spends in training under section 105(a)(3)(B)
16 or 106(b)(3), or in an experiential learning option
17 (including individualized training activities) de-
18 scribed in clause (i)(II) or (ii)(II) of section
19 106(d)(2)(E), as an hour of direct labor under such
20 paragraph (11)(C) or (12)(C), respectively.

21 (5) ADJUSTMENTS TO DIRECT LABOR HOUR
22 PERCENTAGE COUNTS.—To be eligible for an adjust-
23 ment to a direct labor hour percentage count under
24 paragraph (1) or (2), a qualified nonprofit agency
25 shall submit a request to the Committee. The re-

1 quest shall contain information demonstrating that
2 the agency meets such requirements as the Com-
3 mittee shall establish with respect to the number of
4 employees of the agency that are outplaced or pro-
5 moted as described in clause (i), (ii), or (iii) of para-
6 graph (1)(B), relative to the agency’s years of expe-
7 rience with the program carved out under this title,
8 and the success rate of the agency in making such
9 outplacements or promotions. The Committee may
10 approve such a request for the second full fiscal year
11 after the date of enactment of the Javits-Wagner-
12 O’Day and Randolph-Sheppard Modernization Act
13 of 2008, and any subsequent fiscal year.

14 (6) DEFINITION.—In this subsection, the term
15 “commensurate wage” means a commensurate wage
16 as described in section 14(c) of the Fair Labor
17 Standards Act of 1938 (29 U.S.C. 214(c)).

18 (h) REVIEWS AND MONITORING.—

19 (1) DUTIES.—In carrying out the Committee’s
20 duties under this title, the Committee shall conduct
21 a review annually, and onsite monitoring once every
22 2 years, for programs carried out through central
23 nonprofit agencies or by qualified nonprofit agencies
24 under this title.

1 (2) PROCEDURES FOR REVIEWS.—In con-
2 ducting an annual review under this subsection of a
3 program carried out through a central nonprofit
4 agency or by a qualified nonprofit agency, the Com-
5 mittee shall consider, at a minimum—

6 (A) the process used by the agency re-
7 viewed to determine the eligibility of employees
8 with significant disabilities;

9 (B) the production of products or provision
10 of services by the agency;

11 (C) the direct labor hour percentage for
12 the agency;

13 (D) the goals described in subsection (k)
14 and the extent to which the agency has met
15 such goals;

16 (E) reports, and information supporting
17 reports, prepared under sections 105(d)(2) and
18 106(e);

19 (F) information filed by the agency with
20 the Internal Revenue Service, and budget, fi-
21 nancial management, and audit data; and

22 (G) the agency's activities in such other
23 areas of inquiry as the Committee may consider
24 to be appropriate.

1 (3) PROCEDURES FOR MONITORING.—In con-
2 ducting monitoring under this subsection the Com-
3 mittee shall—

4 (A) conduct—

5 (i) onsite visits, including onsite re-
6 views of records to verify that the central
7 nonprofit agency or qualified nonprofit
8 agency involved is following the require-
9 ments of this title;

10 (ii) meetings with the central non-
11 profit agency or qualified nonprofit agency;

12 (iii) reviews of individual case files, in-
13 cluding eligibility determinations; and

14 (iv) meetings with staff and employees
15 of the central nonprofit agency or qualified
16 nonprofit agency, including employees that
17 are individuals who are blind or individuals
18 with other significant disabilities; and

19 (B) determine whether the central non-
20 profit agency or qualified nonprofit agency in-
21 volved is complying with the reporting require-
22 ments of this title, and meeting the goals de-
23 scribed in subsection (k).

24 (4) NONDISCLOSURE.—For purposes of any re-
25 view or monitoring carried out under this subsection

1 the Committee shall not disclose or require a central
2 nonprofit agency or qualified nonprofit agency to
3 disclose the identity of, or any other personally iden-
4 tifiable information related to, any individual partici-
5 pating in an activity authorized under this title.

6 (5) AVAILABILITY ON WEBSITE.—The Com-
7 mittee shall make available to the public on the
8 Committee’s website each report resulting from a re-
9 view or monitoring carried out under this subsection.

10 (i) ENFORCEMENT.—

11 (1) SALES DATA.—Pursuant to section 3(h),
12 not later than 90 days after the date of enactment
13 of the Javits-Wagner-O’Day and Randolph-Sheppard
14 Modernization Act of 2008, the Chairman of the
15 Committee and the Administrator of General Serv-
16 ices shall enter into an agreement, under which the
17 Administrator, in consultation with the Chairman,
18 shall identify and provide to the Committee relevant
19 sales data on sales of products and services through
20 the General Services Administration, to assist the
21 Committee in identifying—

22 (A) areas in which the Committee and cen-
23 tral nonprofit agencies shall target marketing of
24 products and services on the procurement list,

1 to encourage entities of the Government to pur-
2 chase such products and services; and

3 (B) training and outreach opportunities re-
4 garding the procurement requirements specified
5 in section 104 and information about products
6 and services on the procurement list.

7 (2) GENERAL SERVICES ADMINISTRATION.—At
8 the request of the Committee, the Inspector General
9 of the General Services Administration shall assist
10 the Committee in determining if entities of the Gov-
11 ernment (in the executive branch), central nonprofit
12 agencies, and qualified nonprofit agencies are com-
13 plying with this title.

14 (j) INFORMATION COLLECTION AND REPORT.—

15 (1) IN GENERAL.—Not later than December 31
16 of the first full fiscal year after the date of enact-
17 ment of the Javits-Wagner-O’Day and Randolph-
18 Sheppard Modernization Act of 2008, and each De-
19 cember 31 thereafter, the Committee shall collect in-
20 formation described in this subsection for the fiscal
21 year ending the preceding September 30, including
22 the information provided by the central nonprofit
23 agencies and qualified nonprofit agencies in annual
24 reports submitted under sections 105(d)(2) and
25 106(e). The Committee shall prepare an overall sum-

1 mary of the information collected under this sub-
2 section, including compiling and preparing a sum-
3 mary of the information provided by the central non-
4 profit agencies and qualified nonprofit agencies. The
5 Committee shall annually prepare and submit to the
6 President and Congress a report that includes the
7 overall summary.

8 (2) COLLECTION OF INFORMATION.—

9 (A) CENTRAL NONPROFIT AGENCIES AND
10 QUALIFIED NONPROFIT AGENCIES.—

11 (i) RECORDS.—Central nonprofit
12 agencies, and qualified nonprofit agencies,
13 receiving funds under this title shall keep
14 records prescribed by the Committee as re-
15 quired by this title and shall participate in
16 data collection as required by this title, in-
17 cluding data collection required for prepa-
18 ration of the reports described in clause
19 (ii). The Committee shall have access to
20 such records of agencies described in this
21 subparagraph and to any other records of
22 the agencies that relate to activities of the
23 agencies and compliance by the agencies
24 with any requirement of this title.

1 (ii) REPORTS.—The Committee shall
2 require that each central nonprofit agency,
3 and qualified nonprofit agency, receiving
4 funds under this title annually prepare and
5 submit to the Committee the reports de-
6 scribed in sections 105(d)(2) and 106(e),
7 respectively.

8 (B) COMMITTEE.—The Committee shall
9 collect information to determine whether the
10 purposes of this title are being met and to as-
11 sess the performance of programs carried out
12 under this title, including information related to
13 audits, performance, and compliance. In par-
14 ticular, the Committee shall collect and main-
15 tain audit reports and Federal returns of orga-
16 nizations exempt from income tax submitted by
17 the central nonprofit agencies.

18 (3) INFORMATION.—The information required
19 to be collected under this subsection and summa-
20 rized for the Committee report described in para-
21 graph (1) shall include—

22 (A) information collected from central non-
23 profit agencies and qualified nonprofit agencies
24 pursuant to sections 105(d)(2) and 106(e), ag-
25 gregated for the United States;

1 (B)(i) details on decisions, about whether
2 to add items to the procurement list, that take
3 longer than 120 days from the time the central
4 nonprofit agencies involved submit pricing
5 memoranda to the Committee; and

6 (ii) justifications for any denials of pro-
7 posals for additions to the procurement list;

8 (C) information on the development of new
9 markets for products and services of qualified
10 nonprofit agencies, including electronic com-
11 merce;

12 (D) an analysis of the direct and indirect
13 impacts this title has on the small business
14 community;

15 (E) a description of the steps taken to
16 minimize the negative impacts of the programs
17 carried out under this title on businesses, re-
18 sellers, and manufacturing companies;

19 (F) an analysis of the progress of the cen-
20 tral nonprofit agencies and qualified nonprofit
21 agencies in meeting the goals described in sub-
22 section (k); and

23 (G) information on the number of requests
24 made of the Committee, and the number of re-
25 sponses made by the Committee to requests,

1 under section 552 of title 5, United States Code
2 (commonly known as the “Freedom of Informa-
3 tion Act”); and

4 (H) information on other items as deter-
5 mined necessary by the Committee.

6 (4) SUBMISSION OF REPORT.—Not later than
7 February 28 of the fiscal year following the fiscal
8 year for which the Committee collects information
9 for the Committee report described in paragraph
10 (1), the Committee shall submit the Committee re-
11 port to the President, the Committee on Government
12 Reform and the Committee on Education and the
13 Workforce of the House of Representatives, and the
14 Committee on Homeland Security and Governmental
15 Affairs and the Committee on Health, Education,
16 Labor, and Pensions of the Senate.

17 (5) AVAILABILITY ON WEBSITE.—The Com-
18 mittee shall make the Committee report available to
19 the public on the Committee’s website.

20 (6) NONDISCLOSURE.—For purposes of this
21 subsection, and sections 105(d)(2) and 106(e), the
22 Committee shall not disclose or require a central
23 nonprofit agency or qualified nonprofit agency to
24 disclose, and a central nonprofit agency shall not re-
25 quire a qualified nonprofit agency to disclose, the

1 identity of, or any other personally identifiable infor-
2 mation related to, any individual participating in an
3 activity authorized under this title.

4 (7) CONSEQUENCES FOR FAILURE TO RE-
5 PORT.—

6 (A) QUALIFIED NONPROFIT AGENCIES.—If
7 the Committee has not received the annual re-
8 port of a qualified nonprofit agency for a year
9 under section 106(e), the Committee may ban
10 the agency from participating in activities car-
11 ried out under this title, or redistribute orders
12 to other qualified nonprofit agencies, until the
13 Committee has received the report.

14 (B) CENTRAL NONPROFIT AGENCIES.—If
15 the Committee has not received the annual re-
16 port of a central nonprofit agency for a year
17 under section 105(d)(2), the Committee may
18 suspend the agency's authority to collect or use
19 a portion of the fee authorized in section
20 105(a)(4)(J)(v), and may direct the use of the
21 fee, until the Committee has received the re-
22 port.

23 (k) GOALS.—Not later than 1 year after the date of
24 enactment of the Javits-Wagner-O'Day and Randolph-
25 Sheppard Modernization Act of 2008, the Committee, with

1 the assistance of the central nonprofit agencies and quali-
2 fied nonprofit agencies, shall establish goals for the com-
3 bined results achieved by all entities participating in ac-
4 tivities authorized by this title with respect to performance
5 indicators including the following performance indicators:

6 (1) Outplacement of employees into competitive
7 employment, as described in subsection (g)(1)(B)(i).

8 (2) Outplacement of employees into self-employ-
9 ment described in subsection (g)(1)(B)(ii).

10 (3) Promotion of employees into supervisory
11 and management positions within the qualified non-
12 profit agency, as described in subsection
13 (g)(1)(B)(iii).

14 (4) Establishment of wages for all employees
15 that are individuals who are blind or individuals with
16 other significant disabilities, including individuals
17 employed under special certificates under section
18 14(c) of the Fair Labor Standards Act of 1938 (29
19 U.S.C. 214(c)), at a rate for each employee that is
20 not less than the minimum wage rate set forth in
21 section 6(a)(1) of the Fair Labor Standards Act of
22 1938 (29 U.S.C. 206(a)(1)) during such employ-
23 ment.

24 (l) FREEDOM OF INFORMATION ACT.—The Com-
25 mittee is subject to section 552 of title 5, United States

1 Code (commonly known as the “Freedom of Information
2 Act”).

3 (m) AMOUNTS MADE AVAILABLE FROM FEES.—The
4 Committee may accept funds made available from fees
5 under section 105(f) and use the funds for the purposes
6 of carrying out activities described in subsection (a)(3),
7 subsections (f) through (j), and section 108 (relating to
8 conducting planning, information collection, reviews, mon-
9 itoring, reporting, auditing, and enforcement of this title).

10 **SEC. 104. PROCUREMENT REQUIREMENTS FOR THE GOV-
11 ERNMENT.**

12 If any entity of the Government intends to procure
13 any product or service on the procurement list, that entity
14 shall, in accordance with rules and regulations of the Com-
15 mittee, procure such product or service, at the price estab-
16 lished by the Committee, from a qualified nonprofit agency
17 for individuals who are blind or qualified nonprofit agency
18 for individuals with other significant disabilities if the
19 product or service is available within the period required
20 by that Government entity. This section shall not apply
21 with respect to the procurement of any product that is
22 available for procurement from an industry established
23 under chapter 307 of title 18, United States Code, and
24 that, under section 4124 of such title, is required to be
25 procured from such industry.

1 **SEC. 105. CENTRAL NONPROFIT AGENCIES.**

2 (a) IN GENERAL.—

3 (1) DESIGNATION AND COORDINATION.—In ac-
4 cordance with section 103(d) the Committee shall
5 designate a central nonprofit agency or agencies to
6 facilitate the distribution of orders to qualified non-
7 profit agencies as described in section 103(d). If the
8 Committee designates more than 1 central nonprofit
9 agency, the central nonprofit agencies shall, to the
10 maximum extent possible, as determined by the
11 Committee, coordinate activities authorized under
12 this section.

13 (2) PREFERENCES AND FACILITATION OF OR-
14 DERS.—In facilitating the distribution of the orders,
15 each central nonprofit agency—

16 (A) shall give preference to qualified non-
17 profit agencies that—

18 (i) meet the goals described in section
19 103(k); and

20 (ii) establish partnerships with smaller
21 qualified nonprofit agencies and small
22 businesses, particularly small businesses
23 owned by individuals with disabilities;

24 (B) may distribute large orders of products
25 and services among multiple qualified nonprofit
26 agencies; and

1 (C) shall make the decisions regarding the
2 facilitation of distribution of orders among the
3 qualified nonprofit agencies available on a se-
4 cured portion of the central nonprofit agency's
5 website, accessible only to individuals associated
6 with the qualified nonprofit agencies and the
7 Committee.

8 (3) INFORMATION, ASSISTANCE, TRAINING, AND
9 TECHNICAL ASSISTANCE.—

10 (A) INFORMATION AND ASSISTANCE.—

11 Each central nonprofit agency shall respond to
12 requests for information or assistance from
13 qualified nonprofit agencies, employees of such
14 agencies that are individuals who are blind or
15 individuals with other significant disabilities,
16 and businesses wanting to employ either of such
17 types of individuals, including—

18 (i) requests for information or assist-
19 ance concerning expanding self-employ-
20 ment, business ownership, and business de-
21 velopment opportunities, and other types of
22 entrepreneurial employment opportunities
23 for individuals who are blind, or individ-
24 uals with other significant disabilities, em-
25 ployed by qualified nonprofit agencies;

1 (ii) requests for information or assist-
2 ance concerning expanding and improving
3 transition services to facilitate the transi-
4 tion of students with disabilities from
5 school to employment;

6 (iii) requests for assistance or infor-
7 mation on effective approaches to enhance
8 informed choice in employment, or provide
9 person-centered community-based experien-
10 tial learning options, for individuals who
11 are blind, or individuals with other signifi-
12 cant disabilities, employed by qualified
13 nonprofit agencies;

14 (iv) requests for assistance in devel-
15 oping corrective action plans, improving fi-
16 nancial management procedures to correct
17 material weaknesses identified during au-
18 dits, and filing Federal returns of organi-
19 zations exempt from income tax;

20 (v) requests for assistance in devel-
21 oping and implementing effective data col-
22 lection and reporting systems that measure
23 the outcomes of the activities authorized
24 under this title, and preparing reports for

1 the Committee required under sections
2 103(j) and 106(e);

3 (vi) requests for information on effec-
4 tive approaches that enhance employment
5 results for individuals with disabilities, in-
6 cluding conducting outreach and forming
7 partnerships with business and industry;
8 and

9 (vii) requests for assistance on acquir-
10 ing additional orders from the Federal
11 Government and expanding business lines.

12 (B) TRAINING AND TECHNICAL ASSIST-
13 ANCE.—Each central nonprofit agency shall de-
14 velop and provide State-specific, regional, and
15 national training and technical assistance con-
16 cerning the employment of individuals who are
17 blind or individuals with other significant dis-
18 abilities through qualified nonprofit agencies,
19 including—

20 (i) facilitating on-site and electronic
21 information sharing using state-of-the-art
22 Internet technologies such as real-time on-
23 line discussions, multipoint video confer-
24 encing, and web-based audio/video broad-
25 casts, on emerging topics that affect—

1 (I) the employment of individuals
2 who are blind or individuals with
3 other significant disabilities; and

4 (II) activities carried out under
5 this title;

6 (ii) providing information on benefits
7 planning, work incentives, and protections
8 that exist in benefits programs such as the
9 supplemental security income program es-
10 tablished under title XVI of the Social Se-
11 curity Act (42 U.S.C. 1381 et seq.), the
12 disability insurance benefits program es-
13 tablished under title II of the Social Secu-
14 rity Act (42 U.S.C. 401 et seq.), the Tick-
15 et to Work and Self-Sufficiency Program
16 established under 1148 of the Social Secu-
17 rity Act (42 U.S.C. 1320b–19), and the
18 Medicaid program established under title
19 XVIII of the Social Security Act (42
20 U.S.C. 1395 et seq.) that help beneficiaries
21 work at a higher level with fair compensa-
22 tion and still retain essential supports;

23 (iii) providing information and assist-
24 ance in converting qualified nonprofit
25 agencies providing community rehabilita-

1 tion programs to integrated community-
2 based employment providers, including
3 supported employment, customized employ-
4 ment, and self-employment providers;

5 (iv) promoting sharing of evidence-
6 based and promising practices among
7 qualified nonprofit agencies;

8 (v) providing training to enhance up-
9 ward mobility, self-employment, business
10 ownership, and business development op-
11 portunities, and other types of entrepre-
12 neurial employment opportunities for indi-
13 viduals who are blind and individuals with
14 other significant disabilities, based on iden-
15 tified obstacles to employment and solu-
16 tions from data regarding experiential
17 learning options described in section
18 106(e)(2)(J), and related findings;

19 (vi) enhancing competitive employ-
20 ment options and outcomes for individuals
21 with mental illness and individuals with
22 cognitive disabilities;

23 (vii) enabling the qualified nonprofit
24 agencies to provide practical information
25 on effective approaches for business and

1 industry to use in employing individuals
2 with disabilities, including the provision of
3 reasonable accommodations;

4 (viii)(I) coordinating—

5 (aa) qualified nonprofit agency
6 training, experiential learning options,
7 outplacement, and upward mobility
8 activities, for direct labor employees;
9 with

10 (bb) the activities of the one-stop
11 partners described in section 121(b)
12 of the Workforce Investment Act of
13 1998 (29 U.S.C. 2841(b)) and agen-
14 cies carrying out programs under the
15 Rehabilitation Act of 1973 (29 U.S.C.
16 701 et seq.); or

17 (II) providing financial assistance di-
18 rectly for the opportunities described in
19 subclause (I)(aa);

20 (ix) providing information on other
21 emerging workforce issues concerning the
22 delivery of publicly funded employment and
23 training services and supports to assist in-
24 dividuals who are blind and individuals
25 with other significant disabilities to enter

1 the workforce, achieve improved employ-
2 ment results, and become economically
3 self-sufficient;

4 (x) providing training on how to reach
5 goals described in section 103(k); and

6 (xi) carrying out other activities re-
7 quested by the Committee or qualified non-
8 profit agencies.

9 (4) ADMINISTRATIVE DUTIES.—Each central
10 nonprofit agency shall—

11 (A) represent the interests of the qualified
12 nonprofit agencies;

13 (B) evaluate the qualifications and capa-
14 bilities of the qualified nonprofit agencies asso-
15 ciated with the central nonprofit agency and
16 provide the Committee with pertinent data con-
17 cerning the qualified nonprofit agencies, their
18 status as qualified nonprofit agencies, their
19 manufacturing or service capabilities, and other
20 information as required by the Committee;

21 (C) obtain such procurement information
22 relating to Federal contracting activities as is
23 required by the Committee to—

1 (i) determine the suitability of a prod-
2 uct or service proposed to the Committee
3 for addition to the procurement list;

4 (ii) establish an initial fair market
5 price for a product or service proposed for
6 addition to the procurement list or make a
7 change in the fair market price;

8 (iii) recommend to the Committee
9 suitable products or services for procure-
10 ment from the qualified nonprofit agencies;
11 and

12 (iv) recommend to the Committee ini-
13 tial fair market prices for products or serv-
14 ices proposed for addition to the procure-
15 ment list;

16 (D) collect and maintain the necessary
17 records and data for qualified nonprofit agen-
18 cies to distribute orders, and collect and main-
19 tain audit reports and Federal returns of orga-
20 nizations exempt from income tax submitted by
21 the qualified nonprofit agencies;

22 (E) oversee and assist qualified nonprofit
23 agencies to ensure compliance with contract
24 terms in furnishing a product or a service and

1 compliance with this title, including appropriate
2 regulations;

3 (F) recommend price changes with appro-
4 priate justification for products or services on
5 the procurement list for which the central non-
6 profit agency has distributed orders;

7 (G) submit initial certifications for quali-
8 fied nonprofit agencies;

9 (H) assist the Committee to obtain and re-
10 view the annual certification for each of the
11 qualified nonprofit agencies for the most recent
12 full fiscal year;

13 (I) promote position vacancies within the
14 Federal Government to individuals who are
15 blind, or individuals with other significant dis-
16 abilities, that are employed by the qualified
17 nonprofit agencies; and

18 (J) perform other nongovernmental admin-
19 istrative functions, subject to the oversight and
20 direction of the Committee, including—

21 (i) carrying out communications and
22 public relations activities to increase Gov-
23 ernment and public awareness of this title,
24 in accordance with the strategic plan de-
25 scribed in section 103(a)(3);

1 (ii) carrying out research and pilot
2 programs and demonstration projects to
3 determine the impact of activities on indi-
4 viduals who are blind and individuals with
5 other significant disabilities;

6 (iii) gathering data and reports from
7 qualified nonprofit agencies in accordance
8 with sections 103(j) and 106(e)(1) to de-
9 termine if the agencies have met the goals
10 described in section 103(k);

11 (iv) assisting the Committee in car-
12 rying out reviews and monitoring and pre-
13 paring reports, in accordance with section
14 103; and

15 (v) collecting a fee of up to 4 percent
16 of the amount of each contract for an
17 order awarded to the qualified nonprofit
18 agencies associated with the central non-
19 profit agency, for facilitating their partici-
20 pation in activities carried out under this
21 title.

22 (b) INITIAL DESIGNATION.—

23 (1) ELIGIBLE ENTITIES.—To be eligible to be
24 designated as a central nonprofit agency under sec-
25 tion 103(d) (and distribute orders of the Govern-

1 ment through direct allocation, subcontract, or any
2 other means) a nonprofit agency shall have—

3 (A) experience and expertise in admin-
4 istering and facilitating the distribution of Gov-
5 ernment contracts;

6 (B) experience and expertise in providing
7 training and technical assistance to individuals
8 with disabilities, nonprofit agencies, and busi-
9 nesses;

10 (C) documented experience with and
11 knowledge about—

12 (i) supported employment, vocational
13 training, customized employment, self-em-
14 ployment, and other types of entrepre-
15 neurial employment opportunities and out-
16 comes for individuals with disabilities;

17 (ii) providing transition services for
18 students with disabilities; and

19 (iii) assistive technology; and

20 (D) the expertise necessary to identify the
21 additional data elements needed to provide com-
22 prehensive reports on activities and outcomes of
23 the qualified nonprofit agencies authorized
24 under section 106(e), and experience in utilizing
25 data to prepare annual reports.

1 (2) APPLICATION AND ASSURANCES.—To be eli-
2 gible to be designated as a central nonprofit agency
3 under section 103(d), an agency shall submit an ap-
4 plication to the Committee at such time, in such
5 manner, and containing such information as the
6 Committee may require. The agency shall include in
7 the application satisfactory assurances that—

8 (A) the agency will establish clear prior-
9 ities through annual and 3-year program and fi-
10 nancial planning objectives for fulfilling the re-
11 quirements of subsection (a), and meeting the
12 overall strategic plan responsibilities and goals
13 of the Committee pursuant to subsections
14 (a)(3) and (k) of section 103(a)(3) that are re-
15 lated or pertinent to activities authorized or
16 compliance required under this title, and a work
17 plan for carrying out the responsibilities and
18 achieving the goals, including responsibilities re-
19 lating to the types of services to be provided;

20 (B) the agency will use sound organiza-
21 tional and personnel assignment practices, in-
22 cluding making nondiscriminatory decisions to
23 employ and advance in employment qualified in-
24 dividuals who are blind and qualified individuals
25 with other significant disabilities throughout the

1 agency on the same terms and conditions re-
2 quired with respect to the employment of indi-
3 viduals with disabilities under section 503 of
4 the Rehabilitation Act of 1973 (29 U.S.C. 793);

5 (C) the agency will practice sound fiscal
6 management; and

7 (D) the agency will conduct annual self-
8 evaluations, prepare an annual report, and
9 maintain records adequate to measure perform-
10 ance with respect to the goals described in sec-
11 tion 103(k), that contain information, including
12 information regarding—

13 (i) the extent to which the agency is
14 meeting the goals;

15 (ii) the number and types of individ-
16 uals who are blind, or individuals with
17 other significant disabilities, receiving em-
18 ployment and other services through the
19 agency;

20 (iii) the types of training, technical
21 assistance, and other services provided
22 through the agency and the number of in-
23 dividuals who are blind or individuals with
24 other significant disabilities receiving each
25 type of service;

1 (iv) the sources and amounts of fund-
2 ing for the agency, other than funding pro-
3 vided through this title; and

4 (v) the number of individuals who are
5 blind, or individuals with other significant
6 disabilities, who are employed by or are
7 subcontractors of the agency, including the
8 number who are in management, are in de-
9 cisionmaking positions, or are subcontrac-
10 tors trained by the agency.

11 (c) MAINTAINING DESIGNATION.—

12 (1) IN GENERAL.—To maintain its designation
13 each central nonprofit agency shall comply with the
14 requirements of this subsection.

15 (2) SPECIFIC QUALIFICATIONS.—In addition to
16 meeting the requirements of subsection (b), each
17 central nonprofit agency shall—

18 (A) comply with the applicable compensa-
19 tion, employment, and occupational health and
20 safety standards prescribed by the Secretary of
21 Labor, including procedures to encourage filling
22 of vacancies within the agency by promotion of
23 qualified employees that are individuals who are
24 blind or individuals with other significant dis-
25 abilities;

1 (B) comply with directives or requests
2 issued by the Committee in furtherance of the
3 objectives of this title, including regulations
4 issued under this title;

5 (C) make the agency's records, pertinent
6 to activities authorized or compliance required
7 under this title, available for inspection at any
8 reasonable time by representatives of the Com-
9 mittee or an entity representing the Committee;

10 (D) in a case in which the central non-
11 profit agency is authorized to supply products
12 or services, maintain records of direct labor
13 hours performed for the agency by each worker
14 pursuant to subparagraph (E) of section
15 106(d)(2);

16 (E)(i) have a financial audit performed by
17 an independent accountant;

18 (ii) in the case of a central nonprofit agen-
19 cy that is required to file a Federal return of
20 organization exempt from income tax, file such
21 a return;

22 (iii) in the case of a central nonprofit
23 agency that receives a Federal award under this
24 title in an annual amount that is not less than
25 the amount specified by the Director of the Of-

1 fice of Management and Budget as described in
2 section 7502(a)(1)(A) of title 31, United States
3 Code, comply with the Single Audit Act of 1984
4 and the amendments made by that Act; and

5 (iv) submit to the Committee copies of re-
6 ports of audits, and returns, described in this
7 subparagraph;

8 (F) ensure that Federal returns of organi-
9 zations exempt from income tax reflect all ma-
10 terial correcting adjustments that have been
11 identified in accordance with generally accepted
12 accounting principles;

13 (G) adopt and comply with the Internal
14 Revenue Service regulations relating to excess
15 benefit transactions, issued under section 4958
16 of the Internal Revenue Code of 1986; and

17 (H) comply with assurances made under
18 subsection (b)(2).

19 (d) REVIEWS, MONITORING, REPORTING, AND AU-
20 DITING.—

21 (1) ACCESS.—Each central nonprofit agency
22 shall give the Committee access, for the purpose of
23 reviews, monitoring, and audits and examinations, to
24 any records maintained by the central nonprofit

1 agency that may be related or pertinent to activities
2 authorized or compliance required under this title.

3 (2) ANNUAL REPORT.—

4 (A) IN GENERAL.—Not later than Decem-
5 ber 1 of the first full fiscal year after the date
6 of enactment of the Javits-Wagner-O'Day and
7 Randolph-Sheppard Modernization Act of 2008,
8 and each December 1 thereafter, each central
9 nonprofit agency shall report data for the fiscal
10 year ending the preceding September 30 and
11 provide an annual report to the Committee to
12 enable the Committee to prepare the Committee
13 report described in section 103(j). If the agency
14 has the capability, the agency shall report the
15 data and provide the agency report electroni-
16 cally.

17 (B) CONTENTS.—Such agency report shall
18 include—

19 (i) information collected from quali-
20 fied nonprofit agencies associated with the
21 central nonprofit agency pursuant to sec-
22 tion 106(e), aggregated for the central
23 nonprofit agency;

24 (ii) information about the associated
25 qualified nonprofit agencies, aggregated for

1 the central nonprofit agency, consisting
2 of—

3 (I) information on the number of
4 oral presentations given at Committee
5 meetings described in section
6 106(e)(2)(A) by businesses, resellers,
7 and manufacturing companies;

8 (II) a comparison of sales of
9 items under this title by the qualified
10 nonprofit agencies to sales of similar
11 items through Government contracts
12 with small businesses; and

13 (III) information on—

14 (aa) the frequency of the
15 provision of, and the nature of,
16 the training or technical assist-
17 ance described in section
18 106(e)(2)(C) and provided to em-
19 ployees of the qualified nonprofit
20 agencies who are blind, employ-
21 ees of the agencies with other
22 significant disabilities, other em-
23 ployees of the agencies, and busi-
24 nesses;

1 (bb) participation in infor-
2 mation, assistance, training, or
3 technical assistance activities, de-
4 scribed in section 106(e)(2)(C),
5 by businesses; and

6 (cc) total number of appeals
7 of determinations described in
8 section 103(b)(2)(D)(i);

9 (iii) information about the associated
10 qualified nonprofit agencies, disaggregated
11 by State, consisting of—

12 (I) information on sales under
13 this title;

14 (II) information on the number
15 of employees (and of direct labor em-
16 ployees) that are individuals who are
17 blind or individuals with other signifi-
18 cant disabilities, disaggregated for
19 each State as described in section
20 106(e)(2)(D)(i);

21 (III) information on the number
22 of individuals described in section
23 106(e)(2)(E); and

1 (IV) information on wages and
2 benefits, including the information de-
3 scribed in section 106(e)(2)(F);

4 (iv) information about the central
5 nonprofit agency, consisting of—

6 (I) information on assets, liabil-
7 ities, and reserves, and income gen-
8 erated by the endowment fund dis-
9 closed in subsection (e);

10 (II) a summary of an analysis of
11 economic impact studies performed by
12 the central nonprofit agency on busi-
13 nesses, resellers, and manufacturing
14 companies when determining if serv-
15 ices and products should be proposed
16 to the Committee for addition to the
17 procurement list;

18 (III) information on the results
19 of any demonstration projects con-
20 ducted under section 107 in which the
21 central nonprofit agency participated;
22 and

23 (IV) information on whether the
24 central nonprofit agency had audits,

1 or filed returns, described in section
2 106(e)(2)(L); and
3 (v) information on other items as de-
4 termined necessary by the Committee.

5 (3) AVAILABILITY ON WEBSITE.—The central
6 nonprofit agency shall make the agency report avail-
7 able to the public on the agency’s website.

8 (e) ENDOWMENT FUNDS.—

9 (1) ESTABLISHMENT.—Each central nonprofit
10 agency is authorized, using a portion of the fees col-
11 lected under subsection (a)(4)(J)(v), to establish a
12 Javits-Wagner-O’Day Endowment Fund as a perma-
13 nent endowment fund, to enable the central non-
14 profit agency to provide information, assistance,
15 training, and technical assistance under subsection
16 (a)(3).

17 (2) TYPES OF INVESTMENTS.—The central non-
18 profit agency may invest amounts in the endowment
19 fund in instruments and securities offered through 1
20 or more cooperative service organizations of oper-
21 ating educational organizations under section 501(f)
22 of the Internal Revenue Code of 1986, or in low-risk
23 instruments and securities in which a regulated in-
24 surance company may invest under the laws of the

1 State in which the central nonprofit agency is lo-
2 cated.

3 (3) MANAGEMENT.—In managing the invest-
4 ments of the endowment fund, the central nonprofit
5 agency shall exercise the judgment and care, under
6 the prevailing circumstances, that a person of pru-
7 dence, discretion, and intelligence would exercise in
8 the management of that person’s own business af-
9 fairs.

10 (4) LIMITATIONS.—The central nonprofit agen-
11 cy may not invest amounts in the endowment fund
12 in real estate, or in instruments or securities issued
13 by an organization in which an executive officer or
14 member of the central nonprofit agency is a control-
15 ling shareholder, director, or owner within the mean-
16 ing of securities laws (as defined in section 3(a) of
17 the Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a))) and other applicable laws. The central non-
19 profit agency may not assign amounts in, hypoth-
20 ecate, encumber, or create a lien on the endowment
21 fund without specific written authorization of the
22 Committee.

23 (5) WITHDRAWALS AND EXPENDITURES.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the central nonprofit agency

1 may not withdraw or expend any amount in the
2 endowment fund.

3 (B) WITHDRAWAL FOR NECESSARY EX-
4 PENSES.—Except as provided in subparagraph
5 (E), the central nonprofit agency may, each fis-
6 cal year, withdraw or expend not more than 50
7 percent of the income generated by the endow-
8 ment fund for the prior fiscal year to provide
9 information, assistance, training, and technical
10 assistance under subsection (a)(3).

11 (C) NO COMMERCIAL PURPOSES.—The
12 central nonprofit agency may not withdraw or
13 expend the income generated by the endowment
14 fund for any commercial purpose.

15 (D) MAINTENANCE OF RECORDS.—Each
16 fiscal year, the central nonprofit agency shall
17 maintain records of the income generated by
18 the endowment fund for the prior fiscal year
19 and shall include the amount of the income in
20 the Committee report under subsection
21 (d)(2)(B)(iv)(I).

22 (E) EXCEPTION TO WITHDRAWAL LIMIT.—
23 The Committee may permit the central non-
24 profit agency to withdraw or expend a portion
25 of the amounts in the endowment fund in ex-

1 cess of 50 percent of the income generated by
2 the endowment fund for the prior fiscal year if
3 the agency demonstrates, to the Committee's
4 satisfaction, that such withdrawal or expendi-
5 ture is necessary because of—

6 (i) a financial emergency, such as a
7 pending insolvency or temporary liquidity
8 problem;

9 (ii) a natural disaster or similarly
10 dangerous situation; or

11 (iii) another unusual occurrence or ex-
12 igent circumstance.

13 (6) REDISTRIBUTION OF FEE.—After providing
14 notice and an opportunity for a hearing, the Com-
15 mittee is authorized to request that the central non-
16 profit agency deposit additional funding, in excess of
17 the portion described in paragraph (1), from the fees
18 collected under subsection (a)(4)(J)(v) into the en-
19 dowment fund if the central nonprofit agency—

20 (A) makes a withdrawal or expenditure of
21 an amount in the endowment fund that is not
22 consistent with this subsection;

23 (B) fails to comply with the investment
24 standards and limitations described in this sub-
25 section; or

1 (C) fails to account properly to the Com-
2 mittee concerning the investment of, or a with-
3 drawal or expenditure of, an amount in the en-
4 dowment fund.

5 (7) DEFINITIONS.—In this section:

6 (A) ENDOWMENT FUND.—The term “en-
7 dowment fund” means a fund established and
8 maintained pursuant to this subsection by a
9 central nonprofit agency, for the purpose of
10 generating income to provide services under
11 subsection (a).

12 (B) INCOME.—The term “income”, used
13 with respect to an endowment fund under this
14 subsection, means an amount equal to the divi-
15 dends and interest accruing from investments
16 of amounts in such fund.

17 (f) COMMITTEE PORTION OF FEES.—The central
18 nonprofit agencies shall make available to the Committee
19 5 percent of the fees collected under subsection
20 (a)(4)(J)(v), but the agencies, collectively, shall not make
21 available more than a total of \$5,000,000 from such fees
22 to the Committee for a fiscal year. The Committee shall
23 use the funds made available under this paragraph as de-
24 scribed in section 103(m).

25 (g) CORRECTIVE ACTION PLAN AND SANCTIONS.—

1 (1) CORRECTIVE ACTION PLAN.—If the Com-
2 mittee determines that a central nonprofit agency
3 fails to comply with the requirements of this title, or
4 to make progress toward carrying out the agency’s
5 duties under this title, not later than 90 days after
6 making that determination, the Committee shall as-
7 sist the agency, through technical assistance or other
8 means, to develop a corrective action plan, for the
9 year following the date of the determination.

10 (2) SANCTIONS FOR NONCOMPLIANCE WITH
11 PLAN.—

12 (A) FIRST YEAR.—If the Committee deter-
13 mines that the central nonprofit agency fails to
14 develop and comply with a corrective action
15 plan described in paragraph (1) for a year, the
16 Committee shall—

17 (i) partially or completely suspend the
18 agency’s authority to collect or use the fee
19 authorized in subsection (a)(4)(J)(v), and
20 shall direct the use of the fee, until the
21 central nonprofit agency develops and com-
22 plies with such a plan; or

23 (ii) establish a proportion of the fee
24 authorized in subsection (a)(4)(J)(v) that
25 may be used for indirect costs, and estab-

1 lish a proportion of the fee that shall be
2 deposited in the endowment fund author-
3 ized in subsection (e) and used for infor-
4 mation, assistance, training, and technical
5 assistance under subsection (a)(3), for the
6 following year.

7 (B) SECOND YEAR.—If the Committee de-
8 termines that the central nonprofit agency fails
9 to develop and comply with the corrective action
10 plan for 2 consecutive years, the Committee
11 shall suspend the agency’s designation as a cen-
12 tral nonprofit agency for the following year, in-
13 cluding suspension of authority to collect or use
14 the fee authorized in subsection (a)(4)(J)(v),
15 and shall direct the use of the fee for that year.

16 (C) THIRD YEAR.—

17 (i) IN GENERAL.—If the Committee
18 determines that the central nonprofit agen-
19 cy fails to develop and comply with the cor-
20 rective action plan for 3 consecutive years,
21 the Committee shall designate a new cen-
22 tral nonprofit agency.

23 (ii) IMPACT OF REDESIGNATION.—If
24 the Committee designates a new agency to
25 replace a former central nonprofit agency

1 under clause (i), the former agency may
2 not apply for designation as a central non-
3 profit agency under this title until—

4 (I) 5 years after the date of the
5 designation of the new agency; and

6 (II) the former agency dem-
7 onstrates that it has complied with
8 the corrective action plan.

9 (3) EGREGIOUS VIOLATION AT ANY TIME.—If
10 the Committee determines that the central nonprofit
11 agency has committed an egregious violation of this
12 title, the Committee shall suspend the agency’s des-
13 ignation as a central nonprofit agency, including
14 suspension of authority to collect or use the fee au-
15 thorized in subsection (a)(4)(J)(v), and shall direct
16 the use of the fee.

17 (4) APPEALS PROCEDURES.—The Committee
18 shall establish appeals procedures for central non-
19 profit agencies that are determined to—

20 (A) have failed to comply or make progress
21 as described in paragraph (1);

22 (B) have failed to develop and comply with
23 a corrective action plan under paragraph (2); or

24 (C) have committed an egregious violation
25 of this title, as described in paragraph (3).

1 (5) COMMITTEE ACTION.—As part of the an-
2 nual reports required under section 103(j), the Com-
3 mittee shall describe each action taken under para-
4 graph (1), (2), or (3) and the outcomes of each such
5 action.

6 (6) PUBLIC NOTIFICATION.—The Committee
7 shall notify the public of each action taken by the
8 Committee under paragraph (1), (2), or (3) by mak-
9 ing available information about the action on the
10 website of the Committee. As a part of such notifica-
11 tion, the Committee shall describe each such action
12 taken under paragraph (1), (2), or (3) and the out-
13 comes of each such action.

14 (7) RULE OF CONSTRUCTION.—Nothing in this
15 section shall be construed to require the Committee
16 to sanction a central nonprofit agency (including
17 designating a new agency to replace a central non-
18 profit agency) upon enactment of the Javits-Wag-
19 ner-O’Day and Randolph-Sheppard Modernization
20 Act of 2008.

21 **SEC. 106. QUALIFIED NONPROFIT AGENCIES.**

22 (a) IN GENERAL.—In accordance with section
23 103(d), the central nonprofit agencies shall facilitate the
24 distribution of orders of the Government for products and
25 services on the procurement list among qualified nonprofit

1 agencies for individuals who are blind and qualified non-
2 profit agencies for individuals with other significant dis-
3 abilities.

4 (b) DUTIES.—The qualified nonprofit agencies that
5 receive such orders shall—

6 (1) fulfill the requirements of the orders from
7 the Government for products and services;

8 (2) provide employment for individuals who are
9 blind or individuals with other significant disabili-
10 ties; and

11 (3) provide skill development, training, technical
12 assistance, and experiential learning options to help
13 such employees maintain, regain, or advance in em-
14 ployment—

15 (A) with the assistance of the central non-
16 profit agencies pursuant to subparagraphs (A)
17 and (B) of section 105(a)(3), one-stop partners
18 described in section 121(b) of the Workforce
19 Investment Act of 1998 (29 U.S.C. 2841(b)),
20 and agencies carrying out programs under the
21 Rehabilitation Act of 1973 (29 U.S.C. 701 et
22 seq.); and

23 (B) to meet the goals described in section
24 103(k).

1 (c) INITIAL QUALIFICATION.—In order to be quali-
2 fied as a qualified nonprofit agency under this title, a non-
3 profit agency shall submit an application to a central non-
4 profit agency at such time, in such manner, and con-
5 taining such information as the central nonprofit agency
6 or the Committee shall require, and shall meet the fol-
7 lowing requirements:

8 (1) DOCUMENTS OF PRIVATELY INCORPORATED
9 NONPROFIT AGENCY.—A privately incorporated non-
10 profit agency shall submit to the Committee through
11 the associated central nonprofit agency the following
12 documents, transmitted with a letter signed by a
13 chief executive or other officer of the corporation:

14 (A) A copy of the articles of incorporation,
15 showing the date of filing and the signature of
16 an appropriate State official.

17 (B) A copy of the bylaws for the corpora-
18 tion, certified by an officer of the corporation.

19 (C) If the articles of incorporation or by-
20 laws do not include wording to the effect that
21 no part of the net income of the nonprofit agen-
22 cy may inure to the benefit of any shareholder
23 or other individual, 1 of the following:

24 (i) A certified copy of the State stat-
25 ute under which the nonprofit agency was

1 incorporated that includes wording to the
2 effect that no part of the net income of the
3 nonprofit agency may inure to the benefit
4 of any shareholder or other individual.

5 (ii) A copy of a resolution approved by
6 the governing body of the corporation, cer-
7 tified by an officer of the corporation, with
8 wording to the effect that no part of the
9 net income of the nonprofit agency may
10 inure to the benefit of any shareholder or
11 other individual.

12 (2) DOCUMENTS OF STATE-OWNED OR STATE-
13 OPERATED NONPROFIT AGENCY.—A State-owned or
14 State-operated nonprofit agency, or a nonprofit
15 agency established or authorized by a State statute
16 other than the State corporation laws and not pri-
17 vately incorporated, shall submit to the Committee
18 through the associated central nonprofit agency 1 of
19 the following documents, transmitted with a letter
20 signed by an official of the agency that directs the
21 operations of the nonprofit agency or, in the case of
22 a State-owned nonprofit agency, an officer of the
23 agency, as applicable:

24 (A) A certified true copy of the State stat-
25 ute establishing or authorizing qualified non-

1 profit agencies for individuals who are blind or
2 qualified nonprofit agencies for individuals with
3 other significant disabilities.

4 (B)(i) In the case of a State-owned non-
5 profit agency, a certified true copy of the cor-
6 poration bylaws.

7 (ii) In the case of a State or local govern-
8 ment agency, a certified true copy of imple-
9 menting regulations, operating procedures, no-
10 tice of establishment of the nonprofit agency, or
11 other similar documents.

12 (3) ASSURANCES.—The agency shall include in
13 the application satisfactory assurances that—

14 (A) the agency will establish clear prior-
15 ities through annual and 3-year program and fi-
16 nancial planning objectives for fulfilling the re-
17 quirements of subsections (a) and (b), and
18 meeting the overall strategic plan responsibil-
19 ities and goals of the Committee pursuant to
20 subsections (a)(3) and (k) of section 103 that
21 are related or pertinent to activities authorized
22 or compliance required under this title, and a
23 work plan for carrying out the responsibilities
24 and achieving the goals, including responsibil-

1 ities relating to the types of services to be pro-
2 vided;

3 (B) the agency will use sound organiza-
4 tional and personnel assignment practices, in-
5 cluding making nondiscriminatory decisions to
6 employ and advance in employment qualified in-
7 dividuals with significant disabilities throughout
8 the agency on the same terms and conditions
9 required with respect to the employment of in-
10 dividuals with disabilities under section 503 of
11 the Rehabilitation Act of 1973 (29 U.S.C. 793);

12 (C) the agency will practice sound fiscal
13 management; and

14 (D) the agency will conduct annual self-
15 evaluations, prepare an annual report, and
16 maintain records adequate to measure perform-
17 ance with respect to the goals described in sec-
18 tion 103(k), that contain information, including
19 information regarding—

20 (i) the extent to which the agency is
21 meeting the goals;

22 (ii) the number and types of individ-
23 uals who are blind, or individuals with
24 other significant disabilities, receiving em-

1 employment and other services through the
2 agency;

3 (iii) the number of individuals who are
4 blind or individuals with other significant
5 disabilities that received training, technical
6 assistance or other services, and the type
7 of services they received;

8 (iv) the sources and amounts of fund-
9 ing for the agency, other than funding pro-
10 vided through this title; and

11 (v) the number of individuals who are
12 blind, or individuals with other significant
13 disabilities, who are employed by or are
14 subcontractors of the agency, including the
15 number who are in management, are in de-
16 cisionmaking positions, or are subcontrac-
17 tors trained by the agency.

18 (d) MAINTAINING QUALIFICATION.—

19 (1) IN GENERAL.—To maintain its qualification
20 each qualified nonprofit agency shall comply with
21 the requirements of this subsection. In addition,
22 each qualified nonprofit agency shall submit to the
23 associated central nonprofit agency by November 1
24 of each year, 2 completed copies of the annual cer-
25 tification described in subparagraph (G) or (H) of

1 section 105(a)(4) covering the preceding full fiscal
2 year. If the agency has the capability, the agency
3 shall submit the copies of the certification electroni-
4 cally.

5 (2) SPECIFIC QUALIFICATIONS.—In addition to
6 meeting the requirements of subsection (c), each
7 nonprofit agency shall—

8 (A) furnish products or services in strict
9 accordance with Government orders;

10 (B) comply with the applicable compensa-
11 tion, employment, and occupational health and
12 safety standards prescribed by the Secretary of
13 Labor, including procedures to encourage filling
14 of vacancies within the agency by promotion of
15 qualified employees that are individuals who are
16 blind or individuals with other significant dis-
17 abilities;

18 (C) comply with directives or requests
19 issued by the Committee in furtherance of the
20 objectives of this title, including regulations
21 issued under this title;

22 (D)(i) make the agency's records, pertinent
23 to activities authorized or compliance required
24 under this title, available for inspection at any
25 reasonable time by representatives of the Com-

1 committee or the central nonprofit agency associ-
2 ated with the nonprofit agency, or by an entity
3 representing the Committee or central nonprofit
4 agency; and

5 (ii) if the agency has the capability, make
6 the records available electronically;

7 (E) maintain records of direct labor hours
8 performed for the agency by each worker, in-
9 cluding—

10 (i) for individuals who are blind—

11 (I) a file for each such individual
12 performing direct labor that contains
13 a written report reflecting visual acu-
14 ity and field of vision of each eye,
15 with best correction, signed by a per-
16 son licensed to evaluate such acuity
17 and field of vision, or a certification of
18 blindness by a State or local govern-
19 ment entity; and

20 (II) within the file, information
21 pertaining to the individual—

22 (aa) describing 2 or more
23 experiential learning options, pro-
24 vided to the individual for not
25 less than 2 weeks of each year

1 for which the agency employs the
2 individual;

3 (bb) reporting on the experi-
4 ence provided through the experi-
5 ential learning options, including
6 goals for creating individualized
7 employment results based on the
8 unique strengths, resources, pri-
9 orities, concerns, abilities, capa-
10 bilities, interests, and informed
11 choice of the individual;

12 (cc) describing individualized
13 training activities offered that
14 the employee participates in to
15 try to achieve the desired individ-
16 ualized employment results; and

17 (dd) describing an overall
18 assessment of the experience,
19 identifying the data described in
20 subsection (e)(2)(J); and

21 (III) within the file, an annual
22 report based on information described
23 in subclause (II), describing the abil-
24 ity of the individual to engage in com-
25 petitive employment, which shall be

1 prepared and signed by an individual
2 qualified by training or experience to
3 determine that ability; and

4 (ii) for individuals with other signifi-
5 cant disabilities—

6 (I) a file for each such individual
7 performing direct labor with a written
8 report signed by a licensed physician,
9 psychiatrist, or qualified psychologist,
10 reflecting the nature and extent of
11 each disability that causes such indi-
12 vidual to qualify as a individual with
13 another significant disability, or a cer-
14 tification of each such disability by a
15 State or local government entity;

16 (II) within the file, information
17 pertaining to the individual—

18 (aa) describing 2 or more
19 experiential learning options, pro-
20 vided to the individual for not
21 less than 2 weeks of each year
22 for which the agency employs the
23 individual;

24 (bb) reporting on the experi-
25 ence provided through the experi-

1 ential learning options, including
2 goals for creating individualized
3 employment results based on the
4 unique strengths, resources, pri-
5 orities, concerns, abilities, capa-
6 bilities, interests, and informed
7 choice of the individual;

8 (cc) describing individualized
9 training activities offered that
10 the employee participates in to
11 try to achieve the desired individ-
12 ualized employment results; and

13 (dd) describing an overall
14 assessment of the experience,
15 identifying the data described in
16 subsection (e)(2)(J); and

17 (III) within the file, annual re-
18 ports based on information described
19 in subclause (II), describing the abil-
20 ity of the individual to engage in com-
21 petitive employment, which shall be
22 prepared and signed by an individual
23 qualified by training and experience to
24 evaluate the work potential, interests,
25 aptitudes, and abilities of individuals

1 with disabilities and shall normally
2 consist of—

3 (aa) for individuals who
4 have been employed by the quali-
5 fied nonprofit agency for less
6 than 2 years, a preadmission
7 evaluation and (if appropriate) 1
8 annual reevaluation; or

9 (bb) for individuals who
10 have been employed by the quali-
11 fied nonprofit agency for not less
12 than 2 years, at least the 2 most
13 recent annual reevaluations;

14 (F) maintain an ongoing training and
15 placement program, operated by or for the
16 agency, that—

17 (i) shall include liaison with entities
18 providing appropriate community services
19 such as the one-stop partners described in
20 section 121(b) of the Workforce Invest-
21 ment Act of 1998 (29 U.S.C. 2841(b)),
22 agencies carrying out programs under the
23 Rehabilitation Act of 1973 (29 U.S.C. 701
24 et seq.), employer groups, and others; and

1 (ii) shall assist those individuals that
2 are determined to be capable and desirous
3 of competitive employment in obtaining
4 such employment;

5 (G) upon receipt of payment by the Gov-
6 ernment for products or services furnished
7 under the program carried out under this title,
8 pay to the central nonprofit agency a fee in ac-
9 cordance with section 105(a)(4)(J)(v);

10 (H)(i) in the case of a qualified nonprofit
11 agency that receives a Federal award under this
12 title in an annual amount that is not less than
13 \$1,000,000, have an audit performed by an
14 independent accountant;

15 (ii) in the case of a qualified nonprofit
16 agency that is required to file a Federal return
17 of organization exempt from income tax, file
18 such a return;

19 (iii) in the case of a qualified nonprofit
20 agency that receives a Federal award under this
21 title in an annual amount that is not less than
22 the amount specified by the Director of the Of-
23 fice of Management and Budget as described in
24 section 7502(a)(1)(A) of title 31, United States

1 Code, comply with the Single Audit Act of 1984
2 and the amendments made by that Act; and

3 (iv) submit to the associated central non-
4 profit agency copies of reports of audits, and
5 returns, described in this subparagraph;

6 (I) ensure that Federal returns of organi-
7 zations exempt from income tax reflect all ma-
8 terial correcting adjustments that have been
9 identified in accordance with generally accepted
10 accounting principles;

11 (J) adopt and comply with the Internal
12 Revenue Service regulations relating to inter-
13 mediate sanctions, issued under section 4958 of
14 the Internal Revenue Code of 1986; and

15 (K) comply with assurances made under
16 subsection (c)(3).

17 (3) APPLICATION OF PROVISIONS.—An entity
18 that is a qualified nonprofit agency on the date of
19 enactment of the Javits-Wagner-O’Day and Ran-
20 dolph-Sheppard Modernization Act of 2008 shall not
21 be required to establish eligibility in accordance with
22 subsection (c) but shall be required to maintain eli-
23 gibility in accordance with this subsection.

24 (e) ANNUAL REPORT.—

1 (1) IN GENERAL.—Not later than November 1
2 of the first full fiscal year after the date of enact-
3 ment of the Javits-Wagner-O’Day and Randolph-
4 Sheppard Modernization Act of 2008, and each No-
5 vember 1 thereafter, each qualified nonprofit agency
6 shall report data for the fiscal year ending the pre-
7 ceding September 30 and provide an annual report
8 to the Committee, through the associated central
9 nonprofit agency, to enable the Committee to pre-
10 pare the Committee report described in section
11 103(j). If the qualified nonprofit agency has the ca-
12 pability, the agency shall report the data and provide
13 the agency report electronically.

14 (2) CONTENTS.—Such agency report shall in-
15 clude information, for the qualified nonprofit agen-
16 cy—

17 (A) on procurement, including—

18 (i) how long it took for an item pro-
19 duced or provided by the qualified non-
20 profit agency to be added to the procure-
21 ment list from the time the associated cen-
22 tral nonprofit agency sent a pricing memo-
23 randum to the Committee;

1 (ii) the number of such items pro-
2 posed to be added to the procurement list
3 that were denied;

4 (iii) justifications for price changes
5 and other modifications to products and
6 services of the qualified nonprofit agency
7 on the procurement list;

8 (iv) total number of appeals by the
9 qualified nonprofit agency of determina-
10 tions described in section 103(b)(2)(D)(i);
11 and

12 (v) the number of, and information
13 identifying, the products and services of
14 the qualified nonprofit agency on the pro-
15 curement list that have not been purchased
16 in the last 12, 24, and 36 months;

17 (B) on sales (including sales through base
18 supply stores) under this title, including total
19 sales and sales disaggregated by products and
20 services;

21 (C) on participation in information, assist-
22 ance, training, or technical assistance activities
23 offered by the associated central nonprofit
24 agency, including information on—

1 (i) that participation, in total and
2 disaggregated by employees who are blind,
3 employees with other significant disabili-
4 ties, and other employees of the qualified
5 nonprofit agency; and

6 (ii) that participation, in total and
7 disaggregated—

8 (I) by training, technical assist-
9 ance, and rehabilitation activities;

10 (II) by topic; and

11 (III) by method of delivery (such
12 as through videos, seminars, or web-
13 based technologies);

14 (D)(i) on the number of employees that are
15 individuals who are blind or individuals with
16 other significant disabilities, disaggregated—

17 (I) by disability type;

18 (II) by whether the individuals in-
19 volved are veterans, persons transitioning
20 from institutions or schools, students, indi-
21 viduals acquiring disabilities as adults, or
22 members of other populations; or

23 (III) by demographic information; and

24 (ii) on the number of direct labor employ-
25 ees that are individuals who are blind or indi-

1 viduals with other significant disabilities,
2 disaggregated as described in clause (i);

3 (E) on the number of individuals who are
4 blind or individuals with other significant dis-
5 abilities that were outplaced or advanced in em-
6 ployment within the qualified nonprofit agency;

7 (F) on wages and benefits, including infor-
8 mation on—

9 (i) average wages of direct labor em-
10 ployees, for individuals who are blind, indi-
11 viduals with other significant disabilities,
12 and individuals who do not have significant
13 disabilities;

14 (ii) average wages and total number
15 of direct labor employees, for individuals
16 who are blind making commensurate
17 wages, individuals with other significant
18 disabilities making commensurate wages,
19 and individuals who do not have significant
20 disabilities;

21 (iii) average wages and total number
22 of direct labor employees, for individuals
23 who are blind making commensurate wages
24 at less than the minimum wage rate, indi-
25 viduals with other significant disabilities

1 making commensurate wages at less than
2 the minimum wage rate, and individuals
3 who do not have significant disabilities,
4 making commensurate wages at less than
5 the minimum wage rate; and

6 (iv) the percentage increase in wages,
7 for each group of employees described in
8 clauses (i) through (iii), compared to the
9 wage for that group in each of the pre-
10 ceding 2 years;

11 (G) on the number of contracts of the
12 qualified nonprofit agency with—

13 (i) other qualified nonprofit agencies;

14 (ii) other nonprofit agencies;

15 (iii) small businesses; and

16 (iv) small businesses owned by indi-
17 viduals with disabilities, disaggregated by
18 whether the individual with a disability was
19 an employee of, and trained by, a qualified
20 nonprofit agency;

21 (H) the costs incurred under this title by
22 the qualified nonprofit agency preparing the re-
23 port to conduct administration, and provide as-
24 sessment services, counseling and guidance, and
25 other direct services;

1 (I)(i) development of new employment op-
2 portunities for employees that are individuals
3 who are blind or individuals with other signifi-
4 cant disabilities, including opportunities
5 through—

6 (I) electronic commerce;

7 (II) subcontracting by the qualified
8 nonprofit agency to employees that are in-
9 dividuals who are blind, or individuals with
10 other significant disabilities, trained by the
11 agency;

12 (III) outplacement (as provided for in
13 clause (i) or (ii) of section 103(g)(1)(B));
14 and

15 (IV) promotion (as provided for in
16 section 103(g)(1)(B)(iii);

17 (ii) the success rate for the opportunities
18 described in each of subclauses (I) through (IV)
19 of clause (i); and

20 (iii) the number of jobs lost by the quali-
21 fied nonprofit agency during the fiscal year cov-
22 ered by the report;

23 (J) on data regarding experiential learning
24 options—

1 (i) describing obstacles that individ-
2 uals who are blind or individuals with
3 other significant disabilities participating
4 in the options encountered while trying to
5 achieve desired employment results and de-
6 scribing whether the obstacles were over-
7 come; and

8 (ii) describing strategies, solutions,
9 and methods of individuals experiencing
10 positive outcomes through the experiential
11 learning options;

12 (K) on data regarding meeting goals de-
13 scribed in section 103(k);

14 (L) on whether the qualified nonprofit
15 agency had an audit performed by an inde-
16 pendent accountant, or filed a Federal return of
17 organization exempt from income tax; and

18 (M) on other items as determined nec-
19 essary by the associated central nonprofit agen-
20 cy or the Committee.

21 (3) AVAILABILITY ON WEBSITE.—The qualified
22 nonprofit agency shall make the agency report avail-
23 able to the public on the agency’s website.

24 (4) DEFINITIONS.—In this subsection:

1 (A) COMMENSURATE WAGE.—The term
2 “commensurate wage” means a commensurate
3 wage as described in section 14(c) of the Fair
4 Labor Standards Act of 1938 (29 U.S.C.
5 214(c)).

6 (B) MINIMUM WAGE RATE.—The term
7 “minimum wage rate” means the minimum
8 wage rate set forth in section 6(a)(1) of the
9 Fair Labor Standards Act of 1938 (29 U.S.C.
10 206(a)(1)).

11 (f) EXECUTIVE COMPENSATION.—

12 (1) LIMITATION ON RATE.—Revenues generated
13 through this title and funds made available under
14 this title shall not be used to pay staff employed by
15 a qualified nonprofit agency, either as a direct cost
16 or through any proration as an indirect cost, at a
17 rate in excess of the rate payable for level II of the
18 Executive Schedule under section 5313 of title 5,
19 United States Code, as in effect on the date of en-
20 actment of the Javits-Wagner-O’Day and Randolph-
21 Sheppard Modernization Act of 2008.

22 (2) CONSTRUCTION.—Nothing in this sub-
23 section shall be construed to forbid a qualified non-
24 profit agency from using revenue or funds not de-
25 scribed in paragraph (1) to contribute to the salary

1 of staff employed by the qualified nonprofit agency,
2 even if the resulting total rate for that salary ex-
3 ceeds the rate allowable under paragraph (1).

4 (g) CORRECTIVE ACTION PLAN AND SANCTIONS.—

5 (1) CORRECTIVE ACTION PLAN.—

6 (A) INVESTIGATION.—Any alleged violation
7 of this title by a qualified nonprofit agency shall
8 be investigated by the Committee, with the as-
9 sistance of the associated central nonprofit
10 agency. The central nonprofit agency shall no-
11 tify the qualified nonprofit agency and afford
12 the agency an opportunity to submit a state-
13 ment of facts and evidence. The central non-
14 profit agency shall prepare and submit to the
15 Committee a report containing the findings re-
16 sulting from the agency's investigation, together
17 with its recommendations.

18 (B) DEVELOPMENT OF PLAN.—If the
19 Committee determines that a qualified non-
20 profit agency fails to comply with the require-
21 ments of this title, or to make progress toward
22 carrying out the agency's duties under this title,
23 not later than 90 days after making that deter-
24 mination, the Committee shall assist the agen-
25 cy, through technical assistance or other means,

1 to develop a corrective action plan, for the year
2 following the date of the determination.

3 (2) SANCTIONS FOR NONCOMPLIANCE WITH
4 PLAN.—

5 (A) FIRST YEAR.—If the Committee deter-
6 mines that the qualified nonprofit agency fails
7 to develop and comply with the corrective action
8 plan described in paragraph (1) for a year, the
9 associated central nonprofit agency, acting at
10 the direction of the Committee, shall—

11 (i) partially suspend an affected order
12 of the Government described in subsection
13 (a) for a product or service, until the quali-
14 fied nonprofit agency develops and com-
15 plies with the plan; and

16 (ii) redistribute the order to another
17 qualified nonprofit agency until the agency
18 with the suspended order develops and
19 complies with the plan.

20 (B) SECOND YEAR.—If the Committee de-
21 termines that the qualified nonprofit agency
22 fails to develop and comply with the corrective
23 action plan for 2 consecutive years, the central
24 nonprofit agency, acting at the direction of the
25 Committee, shall—

1 (i) partially or completely suspend an
2 affected order of the Government described
3 in subsection (a) for a product or service,
4 and suspend the qualified nonprofit agen-
5 cy's authority to receive any additional
6 order of the Government described in sub-
7 section (a), until the qualified nonprofit
8 agency develops and complies with the
9 plan; and

10 (ii) redistribute the affected order to
11 another qualified nonprofit agency until
12 the agency with the suspended order devel-
13 ops and complies with the plan.

14 (C) THIRD YEAR.—

15 (i) IN GENERAL.—If the Committee
16 determines that the qualified nonprofit
17 agency fails to develop and comply with
18 the corrective action plan for 3 consecutive
19 years, the central nonprofit agency, acting
20 at the direction of the Committee, shall—

21 (I) terminate the agency's quali-
22 fication as a qualified nonprofit agen-
23 cy, including termination of authority
24 to receive an order of the Government
25 described in subsection (a); and

1 (II) redistribute the orders re-
2 ceived by the qualified nonprofit agen-
3 cy to another qualified nonprofit agen-
4 cy.

5 (ii) IMPACT OF TERMINATION.—If the
6 central nonprofit agency terminates the
7 agency’s qualification as a qualified non-
8 profit agency under clause (i)(I), the
9 former agency may not apply for qualifica-
10 tion as such an agency under this title
11 until—

12 (I) 5 years after the date of the
13 termination; and

14 (II) the former agency dem-
15 onstrates that it has complied with
16 the corrective action plan.

17 (3) DETERMINATION.—The Committee shall
18 determine, prior to terminating the qualification of
19 a qualified nonprofit agency under paragraph
20 (2)(C), if the product produced or service provided
21 by the agency through the order can be purchased
22 through another qualified nonprofit agency, another
23 nonprofit agency, or commercially. To assist the
24 Committee in making the determination, the entity
25 of the Government ordering such product or service

1 shall state in writing whether such product or serv-
2 ice can be so purchased. If the product or service
3 cannot be so purchased, the Committee shall not ter-
4minate the qualification.

5 (4) EGREGIOUS VIOLATION AT ANY TIME.—If
6 the Committee determines that the qualified non-
7 profit agency has committed an egregious violation
8 of this title, the central nonprofit agency, acting at
9 the direction of the Committee, shall—

10 (A) suspend the agency’s qualification as a
11 qualified nonprofit agency, including suspension
12 of authority to receive an order of the Govern-
13 ment described in subsection (a); and

14 (B) redistribute the orders received by the
15 qualified nonprofit agency to another qualified
16 nonprofit agency.

17 (5) APPEALS PROCEDURES.—The Committee
18 shall establish appeals procedures for qualified non-
19 profit agencies that are determined to—

20 (A) have failed to comply or make progress
21 as described in paragraph (1);

22 (B) have failed to develop and comply with
23 a corrective action plan under paragraph (2); or

24 (C) have committed an egregious violation
25 of this title, as described in paragraph (4).

1 (6) COMMITTEE ACTION.—As part of the an-
2 nual reports required under section 103(j), the Com-
3 mittee shall describe each action taken under para-
4 graph (1), (2), or (4) and the outcomes of each such
5 action.

6 (7) PUBLIC NOTIFICATION.—The Committee
7 shall notify the public of each action taken by the
8 Committee (or the central nonprofit agency, acting
9 at the direction of the Committee) under paragraph
10 (1), (2), or (4) by making available information
11 about the action on the website of the Committee.
12 As a part of such notification, the Committee shall
13 describe each such action taken under paragraph
14 (1), (2), or (4) and the outcomes of each such ac-
15 tion.

16 (8) RULES OF CONSTRUCTION.—

17 (A) PHASE-IN REQUESTS.—A qualified
18 nonprofit agency shall not be considered to be
19 out of compliance with the direct labor hour
20 percentage requirements of paragraph (11)(C)
21 or (12)(C) of section 2 or section 103(g) if a
22 phase-in request was approved by the Com-
23 mittee for the agency and is in effect under sec-
24 tion 103(g).

1 (B) TIMING OF SANCTIONS.—Nothing in
2 this section shall be construed to require the
3 Committee to sanction a qualified nonprofit
4 agency upon enactment of the Javits-Wagner-
5 O’Day and Randolph-Sheppard Modernization
6 Act of 2008.

7 **SEC. 107. DEMONSTRATION PROJECTS.**

8 (a) TYPES OF DEMONSTRATION PROJECTS.—Pursu-
9 ant to section 105(a)(4)(J)(ii), each central nonprofit
10 agency shall conduct the following demonstration projects.

11 (1) DEMONSTRATION PROJECTS FOR EMPLOY-
12 MENT OF STUDENTS WITH SIGNIFICANT DISABIL-
13 ITIES.—

14 (A) PURPOSE.—The purpose of this para-
15 graph is to support model demonstration
16 projects to provide employment experiences for
17 students with disabilities in order to enable
18 such students to gain employment skills and ex-
19 perience that will promote the student’s effec-
20 tive transition from school to employment.

21 (B) DEFINITIONS.—In this paragraph:

22 (i) STUDENT WITH A SIGNIFICANT
23 DISABILITY.—The term “student with a
24 significant disability” means an individual
25 with a significant disability who—

1 (I)(aa) receives special education
2 and related services in accordance
3 with an individualized education pro-
4 gram; or

5 (bb) receives services under a
6 plan under section 504 of the Reha-
7 bilitation Act of 1973 (29 U.S.C. 794;
8 referred to in this paragraph as a
9 “504 plan”);

10 (II) meets the definition of dis-
11 ability under paragraphs (1) and (9)
12 of section 2; and

13 (III) has attained the age of 16
14 but has not attained the age of 22.

15 (ii) INDIVIDUALIZED EDUCATION PRO-
16 GRAM.—The term “individualized edu-
17 cation program” has the meaning given
18 the term in section 614(d) of the Individ-
19 uals with Disabilities Education Act (20
20 U.S.C. 1414(d)).

21 (C) PROGRAM AUTHORIZED.—

22 (i) IN GENERAL.—A central nonprofit
23 agency may, on a competitive basis, award
24 grants or contracts to, or enter into coop-
25 erative agreements with, qualified non-

1 profit agencies to enable the qualified non-
2 profit agencies to carry out a demonstra-
3 tion project under this paragraph.

4 (ii) REPRESENTATION.—A central
5 nonprofit agency making awards or enter-
6 ing into cooperative agreements under
7 clause (i) shall ensure, to the extent prac-
8 ticable, an equitable geographic distribu-
9 tion of such awards or agreements across
10 the United States.

11 (iii) DURATION.—A grant, contract,
12 or cooperative agreement awarded or en-
13 tered into under clause (i) by a central
14 nonprofit agency shall be for a period of
15 not less than 3 nor more than 5 years.

16 (D) APPLICATIONS.—Each qualified non-
17 profit agency desiring to receive a grant, con-
18 tract, or cooperative agreement under subpara-
19 graph (C) shall submit an application to the
20 central nonprofit agency at such time, in such
21 manner, and including such information as the
22 central nonprofit agency or the Committee may
23 reasonably require. Each application shall in-
24 clude—

- 1 (i) a description of how the qualified
2 nonprofit agency plans to carry out the ac-
3 tivities described in subparagraph (E);
- 4 (ii) a description of how the qualified
5 nonprofit agency will work with the central
6 nonprofit agency to disseminate informa-
7 tion about—
- 8 (I) the activities described in sub-
9 paragraph (E) that will be carried out
10 by the qualified nonprofit agency; and
- 11 (II) the impact of such activities
12 on the lives of the students with dis-
13 abilities served by the demonstration
14 project;
- 15 (iii) a description of how the qualified
16 nonprofit agency will coordinate activities
17 with schools and any other relevant service
18 providers in the locality where the qualified
19 nonprofit agency is based;
- 20 (iv) a plan for an evaluation that
21 meets the requirements of subparagraph
22 (F); and
- 23 (v) any other information that the
24 central nonprofit agency or the Committee
25 may reasonably require.

1 (E) AUTHORIZED ACTIVITIES.—A qualified
2 nonprofit agency that receives a grant or con-
3 tract, or enters into a cooperative agreement,
4 under subparagraph (C) shall use the funds
5 made available through the grant, contract, or
6 cooperative agreement to carry out the fol-
7 lowing activities for students with disabilities:

8 (i) Assess the employment and post-
9 secondary needs of students with signifi-
10 cant disabilities who have completed, or
11 are nearing completion of, an individual-
12 ized education program or a plan under
13 section 504 of the Rehabilitation Act of
14 1973 (29 U.S.C. 794). The employment
15 and postsecondary needs assessment of
16 such a student may include—

17 (I) participating (as appropriate
18 when vocational goals are discussed)
19 in a meeting regarding the individual-
20 ized education program or 504 plan
21 for the student; and

22 (II) providing the specific transi-
23 tion needed to achieve the individual's
24 employment outcome or projected em-
25 ployment outcome, as identified in the

1 student's individualized education pro-
2 gram or a similar result as identified
3 in the student's 504 plan.

4 (ii) Conduct outreach to students with
5 significant disabilities, including students
6 with significant disabilities attending pri-
7 vate schools, in order to coordinate services
8 designed to facilitate the transition of such
9 students to postsecondary life, including
10 employment.

11 (iii) Enter into employment contracts
12 of not more than 3 years with the parents
13 of such students with significant disabili-
14 ties—

15 (I) to provide the students with
16 employment, through contracts ob-
17 tained by the qualified nonprofit agen-
18 cy, as well as experiential learning op-
19 tions (to be provided for not less than
20 2 weeks of each year for which the
21 agency employs the students) and
22 training to build the skills of the stu-
23 dents;

24 (II) to assist the students in ob-
25 taining the students' proposed post-

1 secondary goals identified in the stu-
2 dents' individualized education pro-
3 grams or similar results identified in
4 the students' 504 plans; and

5 (III) that specify that, if such a
6 contract for employment of a student
7 is terminated, the student may not be
8 employed by the qualified nonprofit
9 agency after the termination.

10 (iv) Carry out outplacement programs
11 designed to facilitate the transition of stu-
12 dents with significant disabilities who are
13 employed by the qualified nonprofit agency
14 into competitive community employment or
15 postsecondary education, based on the
16 unique strengths, resources, priorities, con-
17 cerns, abilities, capabilities, interests, and
18 informed choice of each student, by pro-
19 viding—

20 (I) opportunities for upward mo-
21 bility for such students within the
22 qualified nonprofit agency;

23 (II) career, technical, and edu-
24 cational guidance;

25 (III) career exploration services;

1 (IV) job searches and training re-
2 garding job searches; and
3 (V) transition to competitive em-
4 ployment described in section
5 103(g)(1)(B)(i) or postsecondary edu-
6 cation, based on the student's pro-
7 posed postsecondary goals identified
8 in the student's individualized edu-
9 cation program (if applicable) or simi-
10 lar results identified in the student's
11 504 plan (if applicable), following the
12 conclusion of the student's employ-
13 ment contract with the agency.

14 (F) MANDATED EVALUATION AND DIS-
15 SEMINATION ACTIVITIES.—

16 (i) ANNUAL REPORT.—Not later than
17 2 years after the date on which the central
18 nonprofit agency awards a grant or con-
19 tract, or enters into a cooperative agree-
20 ment, under subparagraph (C), and annu-
21 ally thereafter for the duration of such
22 grant, contract, or cooperative agreement,
23 the qualifying nonprofit agency receiving
24 the grant or contract, or entering into the
25 cooperative agreement, shall submit to the

1 central nonprofit agency a report, resulting
2 from an evaluation, containing information
3 on—

4 (I) the number of students with
5 significant disabilities who participate
6 in the demonstration project;

7 (II) the nature of employment
8 and other skills being taught to the
9 students with significant disabilities
10 through the project;

11 (III) the number of students with
12 significant disabilities participating in
13 the project that are placed in competi-
14 tive employment described in section
15 103(g)(1)(B)(i);

16 (IV) the worksites, and types of
17 jobs, in which students with signifi-
18 cant disabilities are placed through
19 the project;

20 (V) the number of students with
21 significant disabilities who dropped
22 out of the project and the reasons the
23 students terminated participation in
24 the project; and

1 (VI) such other subjects as the
2 central nonprofit agency or the Com-
3 mittee may specify.

4 (2) CORPORATE PARTNERSHIP DEMONSTRATION
5 PROJECTS.—

6 (A) PURPOSE.—The purpose of this para-
7 graph is to establish a new model for projects,
8 open to participation by qualified partnerships,
9 that will expand integrated and competitive
10 work opportunities beyond the opportunities
11 otherwise provided under this title, in order to
12 obtain employment for individuals with signifi-
13 cant disabilities in traditional and nontradi-
14 tional industries.

15 (B) DEFINITIONS.—In this paragraph:

16 (i) CORPORATE PARTNERSHIP.—The
17 term “corporate partnership” means a
18 partnership between or among 1 or more
19 eligible qualified nonprofit agencies and 1
20 or more private entities, in traditional or
21 nontraditional industries.

22 (ii) ELIGIBLE QUALIFIED NONPROFIT
23 AGENCY.—In this paragraph, the term “el-
24 igible qualified nonprofit agency” means a
25 qualified nonprofit agency for individuals

1 who are blind, or a qualified nonprofit
2 agency for individuals with other signifi-
3 cant disabilities, that meets or exceeds the
4 goals described in section 103(k).

5 (iii) NONTRADITIONAL INDUSTRY.—

6 The term “nontraditional industry” means
7 an industry that produces a product, or
8 provides a service, that the Committee
9 typically determines is not suitable for pro-
10 duction or provision by qualified nonprofit
11 agencies, such as technology or a product
12 or service of another high-growth industry.

13 (C) IN GENERAL.—

14 (i) AWARDS.—For each of fiscal years
15 2009 through 2013, a central nonprofit
16 agency may distribute not more than 5 or-
17 ders for products or services a year to cor-
18 porate partnerships in the same manner as
19 orders are distributed to qualified non-
20 profit agencies under this title.

21 (ii) REPRESENTATION.—A central
22 nonprofit agency distributing orders under
23 this subparagraph shall ensure, to the ex-
24 tent practicable, an equitable geographic

1 distribution of the orders across the United
2 States.

3 (D) REQUIREMENTS.—A central nonprofit
4 agency shall distribute orders under subpara-
5 graph (C) to a corporate partnership only if the
6 members of the corporate partnership enter into
7 a binding agreement that has been approved by
8 the central nonprofit agency and the Committee
9 and meets the following requirements:

10 (i) CONTENTS.—The binding agree-
11 ment includes a description of—

12 (I) how each private entity and
13 eligible qualified nonprofit agency in
14 the corporate partnership plan to
15 produce the product or provide the
16 service identified in the order distrib-
17 uted under subparagraph (C);

18 (II) how the private entity and
19 eligible qualified nonprofit agency will
20 coordinate activities and distribute the
21 functions related to the order;

22 (III) the partnership model de-
23 scribed in subparagraph (F) that will
24 be used;

1 (IV) if the central nonprofit
2 agency or the Committee determines
3 appropriate, whether the private enti-
4 ty may compensate the eligible quali-
5 fied nonprofit agency for administra-
6 tive or training expenses resulting
7 from the partnership; and

8 (V) the evaluation plan, in ac-
9 cordance with subparagraph (G), for
10 the activities carried out by the cor-
11 porate partnership under this para-
12 graph.

13 (ii) SUBMISSION.—A copy of the bind-
14 ing agreement accompanies any documents
15 required as part of the bidding process for
16 an order under this paragraph.

17 (iii) DIRECT LABOR HOUR PERCENT-
18 AGE REQUIREMENTS.—The binding agree-
19 ment provides that any product or service
20 produced or provided under the order by
21 employees who are individuals with signifi-
22 cant disabilities shall be subject to the
23 same direct labor hour percentage require-
24 ments that apply, under paragraphs
25 (11)(C) and (12)(C) of section 2, and sec-

1 tion 103(g), to qualified nonprofit agencies
2 producing such products or providing such
3 services under this title.

4 (iv) LONG-TERM EMPLOYMENT.—The
5 binding agreement provides for long-term
6 employment opportunities, with a private
7 entity participating in the corporate part-
8 nership, for individuals with significant
9 disabilities employed by the private entity
10 who would otherwise be employees of a
11 qualified nonprofit agency.

12 (v) PRICE SAVINGS.—The binding
13 agreement offers the product or service
14 that is to be produced or provided under
15 an order under this paragraph at a price
16 equal to or less than the price that other-
17 wise would be charged by a qualified non-
18 profit agency.

19 (E) PREFERRED SOURCE STATUS.—An en-
20 tity of the Government that is purchasing a
21 product or service that is produced or provided
22 by a corporate partnership under an order
23 under this paragraph shall treat the corporate
24 partnership as a preferred source for such prod-
25 uct or service.

1 (F) PARTNERSHIP MODELS.—A corporate
2 partnership that receives an order under this
3 paragraph shall carry out 1 or more partner-
4 ship models in fulfilling the terms of the order,
5 which models may include the following:

6 (i) PRIVATE ENTITY EMPLOYMENT.—

7 Under this model—

8 (I) a private entity shall directly
9 employ individuals with significant
10 disabilities;

11 (II) such employees shall work at
12 the worksite of the private entity; and

13 (III) the private entity may place
14 such employees on the payroll of the
15 private entity with salaries and bene-
16 fits equivalent to the salaries and ben-
17 efits made available to employees of
18 the private entity who are not individ-
19 uals with significant disabilities.

20 (ii) PRIVATE ENTITY CONTRACT.—

21 Under this model—

22 (I) a private entity may assign a
23 number of the employees of the pri-
24 vate entity who are individuals with-
25 out significant disabilities to work as

1 part of a production unit with as-
2 signed employees of an eligible quali-
3 fied nonprofit agency that are individ-
4 uals with significant disabilities to
5 produce the product, or provide the
6 service, specified in the binding agree-
7 ment;

8 (II) the individuals with signifi-
9 cant disabilities shall work at the
10 worksite of the eligible qualified non-
11 profit agency or at an alternate com-
12 munity setting; and

13 (III) the private entity may place
14 employees who are individuals with
15 significant disabilities on the payroll
16 of the private entity, or such individ-
17 uals may be paid by the eligible quali-
18 fied nonprofit agency, with salaries
19 and benefits equivalent to the salaries
20 and benefits made available to em-
21 ployees of the private entity who are
22 not individuals with significant dis-
23 abilities.

24 (iii) PRIVATE ENTITY SUB-
25 CONTRACT.—Under this model—

1 (I) the private entity may sub-
2 contract to an eligible qualified non-
3 profit agency the majority of the work
4 required to produce the product or
5 service;

6 (II) employees of the eligible
7 qualified nonprofit agency who are in-
8 dividuals with significant disabilities
9 may work under such subcontract at
10 the private entity's worksite, the eligi-
11 ble qualified nonprofit agency's work-
12 site, or an alternate community set-
13 ting; and

14 (III) employees who are individ-
15 uals with significant disabilities shall
16 be paid by the eligible qualified non-
17 profit agency, with salaries and bene-
18 fits equivalent to the salaries and ben-
19 efits made available to employees of
20 the private entity who are not individ-
21 uals with significant disabilities.

22 (G) EVALUATION AND DISSEMINATION AC-
23 TIVITIES.—

24 (i) ANNUAL REPORT.—Not later than
25 2 years after the date on which a central

1 nonprofit agency distributes an order
2 under subparagraph (C) to a corporate
3 partnership, and annually thereafter for
4 the duration of the order, an eligible quali-
5 fied nonprofit agency participating in the
6 corporate partnership shall submit to the
7 central nonprofit agency and the Com-
8 mittee a report containing information
9 on—

10 (I) the number of private entities
11 participating in the corporate partner-
12 ship and the products and services
13 being produced and provided as a re-
14 sult of the demonstration project
15 under this paragraph;

16 (II) the number of individuals
17 with significant disabilities who are
18 employed as a result of the project;

19 (III) the employment and other
20 skills being taught to the individuals
21 with significant disabilities partici-
22 pating in the project;

23 (IV) the number of individuals
24 with significant disabilities partici-
25 pating in the project who are hired by

1 a private entity participating in the
2 corporate partnership;

3 (V) the worksites at which indi-
4 viduals with significant disabilities
5 participating in the project are placed,
6 and the types of jobs in which such
7 individuals are placed;

8 (VI) the number of private enti-
9 ties and individuals with significant
10 disabilities that have dropped out of
11 the project, and the reasons the pri-
12 vate entities or individuals with sig-
13 nificant disabilities have dropped out
14 of the project;

15 (VII) whether the project should
16 be concluded or made a permanent
17 part of the activities carried out under
18 this title and, if included in the activi-
19 ties, a detailed plan for how the
20 project should be expanded; and

21 (VIII) such other subjects as the
22 central nonprofit agency or the Com-
23 mittee may specify.

24 (b) EVALUATION OF PROJECTS.—Not later than 180
25 days after all demonstration projects under subsection (a)

1 are completed, the central nonprofit agencies participating
2 in the demonstration projects under this section and the
3 Committee shall submit a joint statement to Congress in-
4 dicating whether any of the demonstration projects should
5 become permanent programs under the Act, including any
6 recommendations for legislative or administrative action.

7 **SEC. 108. RECORDS AND AUDITS.**

8 (a) RECORDS.—The Committee, each central non-
9 profit agency, and each qualified nonprofit agency shall
10 keep records that fully disclose the amount and disposition
11 of funds (including fees) made available under this title,
12 the cost of providing activities authorized by this title (in-
13 cluding how the funds are used), and the share of that
14 cost provided from other sources, and such other records
15 as will facilitate an effective financial or programmatic
16 audit. The Committee, and each central nonprofit agency
17 and qualified nonprofit agency that receives funds (includ-
18 ing fees) under this title for an activity, shall maintain
19 such records for 5 years after the completion of the activ-
20 ity.

21 (b) ACCESS TO RECORDS BY THE COMMITTEE.—The
22 Committee shall have access, for the purpose of audit and
23 examination, to any books, documents, papers, and other
24 records that—

1 (1) are maintained by a central nonprofit agen-
2 cy or qualified nonprofit agency; and

3 (2) may be related or pertinent to activities au-
4 thorized under, or compliance with requirements of,
5 this title.

6 (c) ACCESS TO RECORDS BY COMPTROLLER GEN-
7 ERAL OF THE UNITED STATES.—The Comptroller Gen-
8 eral of the United States, or any of the duly authorized
9 representatives of the Comptroller General, shall have ac-
10 cess, for the purpose of audit and examination, to any
11 books, documents, papers, and other records of the Com-
12 mittee and of each central nonprofit agency. This sub-
13 section shall also apply to any qualified nonprofit agency
14 for individuals who are blind and any qualified nonprofit
15 agency for individuals with other significant disabilities
16 that has sold products or services under this title but only
17 with respect to the books, documents, papers, and other
18 records of such agency that relate to the agency’s activities
19 in a fiscal year in which a sale was made under this title.
20 The Committee, and each central nonprofit agency and
21 qualified nonprofit agency to which this subsection applies,
22 shall maintain such records for 5 years after the comple-
23 tion of the activity involved.

24 (d) NONDISCLOSURE.—For purposes of any audit or
25 examination, the Committee or Comptroller General of the

1 United States shall not disclose or require a central non-
2 profit agency or qualified nonprofit agency to disclose the
3 identity of, or any other personally identifiable informa-
4 tion related to, any individual participating in an activity
5 authorized under this title.

6 **SEC. 109. STUDY OF FEDERAL GOVERNMENT UTILIZATION.**

7 (a) IN GENERAL.—The Comptroller General of the
8 United States shall conduct a study investigating Govern-
9 ment compliance with and the effectiveness of this title.

10 (b) CONDUCT OF STUDY.—In conducting the study
11 under subsection (a), the Comptroller General of the
12 United States shall consult with participants in the pro-
13 gram carried out under this title and the entities of the
14 Government and conduct a study addressing—

15 (1) the frequency with which this title is being
16 utilized or circumvented;

17 (2) the reasons for the circumvention;

18 (3) the extent to which Federal purchasers, in
19 particular those using government credit cards, are
20 aware of the requirement of section 104 to procure
21 products and services on the procurement list from
22 qualified nonprofit agencies (referred to in this sec-
23 tion as the “JWOD mandate”);

24 (4) the efforts undertaken by the General Serv-
25 ices Administration to incorporate the JWOD man-

1 date into its process, website, catalogs, and guidance
2 for Federal buyers, and ensure compliance with the
3 mandate;

4 (5) the efforts undertaken by the Committee to
5 promote awareness of the JWOD mandate among
6 Federal buyers;

7 (6) compliance rates with the JWOD mandate
8 among different entities of the Government;

9 (7) whether and how often products and serv-
10 ices on the procurement list are being bought
11 through multiple award schedules;

12 (8) the length and effectiveness of the process
13 by which products and services are added to the pro-
14 curement list by the Committee, and the extent to
15 which Federal buyers and contractors (other than
16 central nonprofit agencies and qualified nonprofit
17 agencies) are involved in the process;

18 (9) specific data relating to dropping sales and
19 employment rates among qualified nonprofit agen-
20 cies selling products and services through the pro-
21 gram carried out under this title; and

22 (10) recommendations about making the pro-
23 gram more effective.

24 (c) REPORT TO CONGRESS.—Not later than 18
25 months after the date of enactment of the Javits-Wagner-

1 O'Day and Randolph-Sheppard Modernization Act of
 2 2008, the Comptroller General of the United States shall
 3 prepare and submit to the appropriate committees of Con-
 4 gress a report containing the outcomes of the study con-
 5 ducted under subsection (a).

6 **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to the Com-
 8 mittee to carry out this title, in addition to amounts made
 9 available through fees made available under section
 10 105(f), \$2,500,000 for fiscal year 2009 and such sums
 11 as may be necessary for each of the next succeeding 9
 12 fiscal years.

13 **TITLE II—RANDOLPH-SHEPPARD**
 14 **ACT**

15 **SEC. 201. SHORT TITLE.**

16 This title may be cited as the “Randolph-Sheppard
 17 Act”.

18 **SEC. 202. DEFINITIONS.**

19 In this title:

20 (1) **FEDERAL PROPERTY.**—The term “Federal
 21 property” means any building, land, or other real
 22 property owned, leased, or occupied by any entity of
 23 the Government.

24 (2) **LICENSED VENDOR.**—The term “licensed
 25 vendor” means a vendor who receives a license from

1 a State licensing agency under this title to operate
2 a vending facility on Federal property.

3 (3) STATE LICENSING AGENCY.—The term
4 “State licencing agency” means an agency described
5 in section 204(b).

6 (4) VENDING FACILITY.—The term “vending
7 facility” means an automatic vending machine, cafe-
8 teria (but not including cafeteria attendant services),
9 snack bar, cart service, shelter, and counter, and
10 such other appropriate auxiliary equipment as the
11 Committee may by regulation prescribe as being nec-
12 essary for the sale of an article or service described
13 in section 204(b)(1), and which may be operated by
14 a licensed vendor.

15 (5) VENDING MACHINE INCOME.—The term
16 “vending machine income” means—

17 (A) receipts (other than those of a licensed
18 vendor) from vending machine operations on
19 Federal property, after costs of goods sold (in-
20 cluding reasonable service and maintenance
21 costs), in a case in which the machines are op-
22 erated, serviced, or maintained by, or with the
23 approval of, an entity of the Government; or

24 (B) commissions paid (other than to a li-
25 censed vendor) by a commercial vending con-

1 cern that operates, services, and maintains
2 vending machines on Federal property for, or
3 with the approval of, an entity of the Govern-
4 ment.

5 **SEC. 203. OPERATION OF VENDING FACILITIES.**

6 (a) IN GENERAL.—

7 (1) IN GENERAL.—For the purposes of pro-
8 viding remunerative employment for individuals with
9 disabilities, enlarging the economic opportunities of
10 individuals with disabilities, and inspiring individuals
11 with disabilities to greater efforts in striving to make
12 themselves self-supporting, licensed vendors shall be
13 authorized to operate vending facilities on any Fed-
14 eral property.

15 (2) PRIORITY.—

16 (A) IN GENERAL.—In authorizing the op-
17 eration of a vending facility on Federal prop-
18 erty, the head of the entity of the Government
19 that owns, leases, or occupies such property
20 shall give priority to State licensing agencies on
21 behalf of licensed vendors.

22 (B) DECLINE TO EXERCISE.—A State li-
23 censing agency may decline to exercise the pri-
24 ority under subparagraph (A) on behalf of the

1 licensed vendors licensed by such State licens-
2 ing agency.

3 (b) OBLIGATION OF FEDERAL ENTITIES.—

4 (1) IN GENERAL.—

5 (A) IN GENERAL.—No entity of the Gov-
6 ernment shall undertake to acquire by owner-
7 ship, rent, lease, or to otherwise occupy, in
8 whole or in part, any building unless, after con-
9 sultation with the head of such entity and the
10 State licensing agency, it is determined by the
11 Committee that—

12 (i) such building includes a satisfac-
13 tory site for the location and operation of
14 a vending facility by a licensed vendor; or

15 (ii) if a building is to be constructed,
16 substantially altered, or renovated, the de-
17 sign for such construction, substantial al-
18 teration, or renovation includes a satisfac-
19 tory site for the location and operation of
20 a vending facility by a licensed vendor.

21 (B) NOTICE.—Each entity of the Govern-
22 ment shall provide notice to the Committee and
23 the appropriate State licensing agency of its
24 plans for occupation, acquisition, renovation, or
25 relocation of a building adequate to permit such

1 State licensing agency to determine whether
2 such building includes a satisfactory site for a
3 vending facility.

4 (2) NONAPPLICATION.—The provisions of para-
5 graph (1) shall not apply—

6 (A) when the Committee and the State li-
7 censing agency determine that the number of
8 people using the property is or will be insuffi-
9 cient to support a vending facility; or

10 (B) to any privately owned building, any
11 part of which is leased by any entity of the Gov-
12 ernment and in which—

13 (i) prior to the execution of such
14 lease, the lessor or any of the tenants of
15 the lessor had in operation a restaurant or
16 other food facility in a part of the building
17 not included in such lease; and

18 (ii) the operation of a vending facility
19 by a licensed vendor would be in proximate
20 and substantial direct competition with
21 such restaurant or other food facility.

22 (3) EFFORT TO LEASE IN BUILDINGS CAPABLE
23 OF ACCOMMODATING A VENDING FACILITY.—Each
24 entity of the Government shall make every effort to

1 lease property in privately owned buildings capable
2 of accommodating a vending facility.

3 (4) SATISFACTORY SITE DEFINED.—In this
4 subsection, the term “satisfactory site” means an
5 area determined by the Committee to have sufficient
6 space, electrical and plumbing outlets, and such
7 other facilities as the Committee may by regulation
8 prescribe, for the location and operation of a vending
9 facility by a licensed vendor.

10 (c) VENDING MACHINE INCOME.—

11 (1) IN GENERAL.—Vending machine income ob-
12 tained from the operation of vending machines on
13 Federal property shall accrue as follows:

14 (A) PROPERTY WITH A LICENSED VEN-

15 DOR.—

16 (i) IN GENERAL.—

17 (I) IN GENERAL.—Vending ma-
18 chine income obtained from the oper-
19 ation of vending machines on Federal
20 property shall accrue to the licensed
21 vendor operating a vending facility on
22 such property subject to subclause
23 (II).

24 (II) AMOUNT.—One hundred per-
25 cent of all vending machine income

1 from vending machines on Federal
2 property that are in direct competition
3 with a vending facility operated by a
4 licensed vendor shall accrue to such li-
5 censed vendor subject to clause (ii). In
6 this subclause, the term “direct com-
7 petition” means the existence of any
8 vending machines or vending facilities
9 operated on the same premises as a
10 vending facility operated by a licensed
11 vendor except both of the following
12 shall not be considered in direct com-
13 petition with the vending facility oper-
14 ated by a licensed vendor:

15 (aa) Vending machines or
16 vending facilities operated in
17 areas serving employees, the ma-
18 jority of whom normally do not
19 have direct access to the vending
20 facility operated by a licensed
21 vendor.

22 (bb) The vending machine
23 or vending facility in competition
24 is operated by another licensed
25 vendor.

1 (ii) CEILING.—The Committee may
2 prescribe regulations imposing a ceiling on
3 income from such vending machines for a
4 licensed vendor. In the event such a ceiling
5 is imposed, no licensed vendor shall receive
6 less vending machine income under such
7 ceiling than the vendor was receiving on
8 January 1, 1974. Any amounts received by
9 a licensed vendor that are in excess of the
10 amount permitted to accrue any ceiling im-
11 posed by the Committee shall be disbursed
12 to the State licensing agency under sub-
13 paragraph (B) and shall be used by such
14 agency in accordance with paragraph (3).
15 No limitation shall be imposed on income
16 from vending machines, combined to create
17 a vending facility, which are maintained,
18 serviced, or operated by a licensed vendor.

19 (B) PROPERTY WITH NO LICENSED VEN-
20 DOR.—

21 (i) IN GENERAL.—In the event there
22 is no licensed vendor operating a vending
23 facility on Federal property, vending ma-
24 chine income obtained from the operation
25 of vending machines on such property shall

1 accrue to the State licensing agency in
2 whose State the Federal property is lo-
3 cated, for the uses designated in paragraph
4 (3), subject to clause (ii).

5 (ii) AMOUNT.—Fifty percent of all
6 vending machine income from vending ma-
7 chines on Federal property that are not in
8 direct competition (as defined in subpara-
9 graph (A)(i)(II)) with a vending facility
10 operated by a licensed vendor on such
11 property shall accrue as specified in clause
12 (i), except that with respect to Federal
13 property at which at least 50 percent of
14 the total hours worked on the premises oc-
15 curs during periods other than normal
16 working hours, 30 percent of such income
17 shall accrue as specified in clause (i).

18 (2) COMPLIANCE.—The head of each entity of
19 the Government shall—

20 (A) ensure compliance with this subsection
21 with respect to buildings, installations, and fa-
22 cilities under the control of such head; and

23 (B) be responsible for collection of, and ac-
24 counting for, such vending machine income.

25 (3) USE OF INCOME.—

1 (A) IN GENERAL.—All vending machine in-
2 come that accrues to a State licensing agency
3 pursuant to paragraph (1) shall—

4 (i) first be used for the maintenance
5 and replacement of equipment, the pur-
6 chase of new equipment, management serv-
7 ices, and assuring a fair minimum return
8 to operators of vending facilities, as de-
9 scribed in section 205(d)(1)(C); and

10 (ii) then be used to establish retire-
11 ment or pension plans, for health insur-
12 ance contributions, and for provision of
13 paid sick leave and vacation time for li-
14 censed vendors in such State, subject to a
15 vote by the Committee of Vendors as pro-
16 vided under section 205(d)(1)(C).

17 (B) INCOME REMAINING.—Any vending
18 machine income remaining after application of
19 subparagraph (A) shall be used for the vending
20 of newspapers, periodicals, confections, tobacco
21 products, foods (including cafeterias but not in-
22 cluding cafeteria attendant services), beverages,
23 and other articles or services dispensed auto-
24 matically or manually prepared on or off the

1 premises in accordance with all applicable
2 health laws.

3 (4) NONAPPLICATION.—Paragraph (1) shall not
4 apply to income from vending machines within retail
5 sales outlets under the control of exchange or ships'
6 stores systems authorized by title 10, United States
7 Code, or to income from vending machines operated
8 by the Veterans Canteen Service, or to income from
9 vending machines not in direct competition with a li-
10 censed vending facility at individual locations, instal-
11 lations, or facilities on Federal property the total of
12 which at such individual locations, installations, or
13 facilities does not exceed \$3,000 annually.

14 **SEC. 204. DUTIES AND POWERS OF THE COMMITTEE.**

15 (a) IN GENERAL.—In carrying out the purposes of
16 this title, the Committee shall—

17 (1) identify new vending facility sites for li-
18 censed vendors;

19 (2) consult with the Administrator of General
20 Services and other heads of entities of the Govern-
21 ment with responsibility for the maintenance, oper-
22 ation, and protection of Federal property, and in-
23 form such heads about the requirement to give pri-
24 ority under section 203(a)(2);

1 (3) promote the activities authorized under this
2 title to entities of the Government;

3 (4) enforce the requirement to give priority and
4 monitor the compliance of entities of the Govern-
5 ment with the requirements of this title;

6 (5) assist the State licensing agencies in con-
7 tacting procurement and contracting offices within
8 the General Services Administration, and other enti-
9 ties of the Government with responsibility for the
10 maintenance, operation, and protection of Federal
11 property, regarding potential vending facilities;

12 (6) establish and maintain—

13 (A) standards for filling vending facility
14 vacancies; and

15 (B) criteria for evaluating and promoting
16 licensed vendors based on their—

17 (i) skills;

18 (ii) education;

19 (iii) prior work experience; and

20 (iv) additional training or accredita-
21 tion;

22 (7) provide technical assistance to State licens-
23 ing agencies and training to State licensing agencies
24 and licensed vendors;

1 (8) establish, promote, and administer pro-
2 grams to enable the expansion and growth of vend-
3 ing facility opportunities, and employment and en-
4 trepreneurship opportunities, including opportunities
5 for—

6 (A) franchising; and

7 (B) developing partnerships with private
8 sector entities and business ownership in the
9 private sector;

10 (9) develop program reporting and account-
11 ability standards for activities authorized under this
12 title;

13 (10) develop criteria for, and assist State licens-
14 ing agencies in collecting data for, monitoring com-
15 pliance with this title by entities of the Government
16 and licensed vendors, and enforcing the payment
17 and collection of vending machine income and set-
18 aside dues;

19 (11) develop or update, not less often than
20 every 5 years, a strategic business development plan,
21 pursuant to subsection (h)(5);

22 (12) create an advisory body comprised of
23 members of the Committee of Vendors described in
24 section 205(c) and State licensing agencies;

1 (13) prepare and submit to the President and
2 Congress annual reports on outcomes and achieve-
3 ments resulting from the implementation of the pro-
4 grams and policies required under this title;

5 (14) respond to requests from licensed vendors
6 for assistance in improving financial management
7 procedures to correct material weaknesses identified
8 during audits, and filing Federal business income
9 tax returns; and

10 (15) collect—

11 (A) financial audits performed pursuant to
12 section 206(c)(6); and

13 (B) tax returns filed pursuant to section
14 206(c)(7).

15 (b) DESIGNATING STATE LICENSING AGENCIES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the Committee shall designate the State
18 agency for the blind in each State, or, in any State
19 in which there is no such agency, some other public
20 agency as the State licensing agency to issue licenses
21 to individuals with disabilities for the operating of
22 vending facilities on Federal and other property in
23 such State for the vending of newspapers, periodi-
24 cals, confections, foods (including cafeterias but not
25 including cafeteria attendant services), beverages,

1 and other articles or services dispensed automati-
2 cally or manually prepared on or off the premises in
3 accordance with all applicable health laws, as deter-
4 mined by the State licensing agency, and including
5 the vending or exchange of chances for any lottery
6 authorized by State law and conducted by an agency
7 of a State.

8 (2) STATES WITH APPROVED PLANS FOR VOCA-
9 TIONAL REHABILITATION.—In any State having an
10 approved plan for vocational rehabilitation services
11 pursuant to section 101(a)(1)(A) of the Rehabilita-
12 tion Act of 1973 (29 U.S.C. 721(a)(1)(A)), the
13 State licensing agency designated under paragraph
14 (1) shall be the State agency designated under sec-
15 tion 101(a)(2)(A) of such Act.

16 (c) REGULATIONS AND POLICIES.—

17 (1) IN GENERAL.—The Committee shall develop
18 and issue regulations and policies for the adminis-
19 tration and management of the vending facility pro-
20 gram carried out under this title to ensure that—

21 (A) the priority described in section
22 203(a)(2) is given to State licensing agencies on
23 behalf of licensed vendors as described in such
24 section (and shall ensure that vending machine
25 income accrues pursuant to section 203(c));

1 (B) wherever feasible, 1 or more vending
2 facilities are established on each Federal prop-
3 erty to the extent that the placement and oper-
4 ation of any such facilities would not adversely
5 affect the interests of the United States; and

6 (C) provisions of training, reviewing, moni-
7 toring, evaluating, reporting by, awarding facili-
8 ties to, promoting, and auditing the State li-
9 censing agencies and licensed vendors are ap-
10 propriate to carry out the Committee's duties
11 under this title.

12 (2) PLACEMENT OR OPERATION OF VENDING
13 FACILITIES.—If an entity of the Government estab-
14 lishes a limitation or prohibition on the placement or
15 operation of a vending facility, based on a deter-
16 mination that such placement or operation would ad-
17 versely affect the interests of the United States, as
18 described in paragraph (1)(B), the entity shall jus-
19 tify the limitation or prohibition to the Committee.
20 The entity shall submit the justification in writing to
21 the Committee, who shall determine whether such
22 limitation or prohibition is justified. The determina-
23 tion shall be binding on any entity affected by such
24 determination. The Committee shall publish such de-

1 termination, along with supporting documentation,
2 in the Federal Register.

3 (d) PROVISION OF TRAINING.—

4 (1) PROVISION.—The Committee shall ensure
5 that the provision of training is uniform and effec-
6 tive, including on-the-job training and training on
7 vacancy and promotion procedures, is provided for
8 individuals with disabilities, through State licensing
9 agencies designated under subsection (b) and
10 through the provision of services under the Rehabili-
11 tation Act of 1973 (29 U.S.C. 701 et seq.).

12 (2) TRANSFERABLE SKILL DEVELOPMENT.—

13 The Committee shall ensure that the provision of
14 training includes transferable skill development in
15 order to maximize the vocational potential of individ-
16 uals with disabilities interested in self-employment,
17 entrepreneurship, or management opportunities
18 available through programs carried out under this
19 title or through other sources.

20 (e) REVIEWS AND MONITORING.—

21 (1) DUTIES.—In carrying out the Committee's
22 duties under this title, the Committee shall conduct
23 a review annually, and on-site monitoring once every
24 2 years, of the State licensing agencies and licensed
25 vendors.

1 (2) PROCEDURES FOR REVIEWS.—In con-
2 ducting an annual review of State licensing agencies
3 and licensed vendors under this subsection, the Com-
4 mittee shall consider, at a minimum—

5 (A) the policies and procedures of the
6 State licensing agencies;

7 (B) regulations and guidance materials;

8 (C) the number of licensed vendors and
9 employees with disabilities working for the li-
10 censed vendors;

11 (D) the goals described in subsection
12 (a)(11) and the extent to which the State li-
13 censing agencies and licensed vendors have met
14 such goals;

15 (E) reports, and information supporting
16 reports, prepared under subsections (a)(13) and
17 (g); and

18 (F) information filed by the State licensing
19 agencies with the Internal Revenue Service, and
20 budget, financial management, and audit data.

21 (3) PROCEDURES FOR MONITORING.—In con-
22 ducting monitoring under this subsection, the Com-
23 mittee shall—

24 (A) conduct—

1 (i) on-site visits, including on-site re-
2 views of records to verify that the State li-
3 censing agencies and licensed vendors are
4 following the requirements of this title;

5 (ii) meetings with the State licensing
6 agencies and licensed vendors;

7 (iii) reviews of licensed vendors' indi-
8 vidualized plans for employment; and

9 (iv) meetings with staff and employees
10 of the State licensing agencies or licensed
11 vendors, including employees with disabil-
12 ities; and

13 (B) determine whether the State licensing
14 agencies or licensed vendors involved are com-
15 plying with the reporting requirements and
16 evaluation standards of this title, and meeting
17 the goals described in subsection (a)(11).

18 (4) AREAS OF INQUIRY.—In conducting a re-
19 view or monitoring under this subsection with re-
20 spect to a State licensing agency or licensed vendor,
21 the Committee shall examine—

22 (A) the eligibility process used by the
23 agency;

1 (B) the provision of training, filling va-
2 cancy and promotional procedures, and other
3 services provided by the agency;

4 (C) the procedures for locating new vend-
5 ing facilities;

6 (D) the hiring practices of the licensed
7 vendor;

8 (E) the State licensing agency or licensed
9 vendor activities in such other areas of inquiry
10 as the Committee may consider appropriate;
11 and

12 (F) the State licensing agency or licensed
13 vendor activities in such other areas as may be
14 identified through meetings with a State licens-
15 ing agency or licensed vendor.

16 (5) NONDISCLOSURE.—For purposes of any re-
17 view or monitoring carried out under this subsection,
18 the Committee shall not disclose or require a State
19 licensing agency or licensed vendor to disclose the
20 identity of, or any other personally identifiable infor-
21 mation related to, any individual participating in an
22 activity authorized under this title.

23 (6) AVAILABILITY ON WEBSITE.—The Com-
24 mittee shall make available to the public on the
25 Committee’s website, in an accessible format, each

1 report resulting from a review or monitoring carried
2 out under this subsection.

3 (f) ENFORCEMENT.—At the request of the Com-
4 mittee, the Inspector General of the General Services Ad-
5 ministration shall assist the Committee in determining if
6 entities of the Government, State licensing agencies, and
7 licensed vendors are complying with this title.

8 (g) INFORMATION COLLECTION AND REPORT.—

9 (1) IN GENERAL.—Not later than December 31
10 of each year, the Committee shall collect information
11 described in this subsection, including the informa-
12 tion provided by the State licensing agencies and li-
13 censed vendors in annual reports submitted by such
14 agencies and vendors. The Committee shall prepare
15 an overall summary of the information collected
16 under this subsection, including compiling and pre-
17 paring a summary of the information provided by
18 the State licensing agencies and licensed vendors.
19 The Committee shall annually prepare and submit to
20 the President and Congress a report that includes
21 the overall summary.

22 (2) COLLECTION OF INFORMATION.—

23 (A) STATE LICENSING AGENCY AND LI-
24 CENSED VENDORS.—

1 (i) RECORDS.—Each State licensing
2 agency, and licensed vendor operating a
3 vending facility pursuant to this title, shall
4 keep records prescribed by the Committee
5 as required by this title and shall partici-
6 pate in data collection as required by this
7 title, including data collection required for
8 preparation of the reports described in
9 clause (ii). The Committee shall have ac-
10 cess to such records and to any other
11 records of the State licensing agencies that
12 relate to activities of the agencies and com-
13 pliance by the agencies with any require-
14 ment of this title.

15 (ii) REPORTS.—The Committee shall
16 require that each State licensing agency
17 and licensed vendor annually prepare and
18 submit to the Committee the reports de-
19 scribed in sections 205(e) and 206(d).

20 (B) COMMITTEE.—The Committee shall
21 collect information to determine whether the
22 purposes of this title are being met and to as-
23 sess the performance of programs carried out
24 under this title, including information related to
25 audits, performance, and compliance.

1 (3) INFORMATION.—The information required
2 to be collected under this subsection (including infor-
3 mation provided in annual reports submitted under
4 subsection (a)(13)) includes information—

5 (A) collected from State licensing agencies
6 and licensed vendors pursuant to sections
7 205(e) and 206(d), aggregated for the United
8 States;

9 (B) on the number of new vending facility
10 locations identified and disaggregated by State;

11 (C) on the number of vending facility loca-
12 tions that State licensing agencies did not de-
13 velop and the rationale for not developing such
14 sites;

15 (D) on the development of new markets for
16 vending facility services;

17 (E) on a comparison of the number of li-
18 censed vendors contracts and sales under this
19 title to sales through Government contracts
20 with small businesses; and

21 (F) other items as determined necessary by
22 the Committee.

23 (4) SUBMISSION OF REPORT.—The Committee
24 shall submit the report described in paragraph (1) to
25 the President, the Committee on Oversight and Gov-

1 ernment Reform, and the Committee on Education
2 and Labor, of the House of Representatives, and the
3 Committee on Homeland Security and Governmental
4 Affairs, and the Committee on Health, Education,
5 Labor, and Pensions of the Senate.

6 (5) AVAILABILITY ON WEBSITE.—The Com-
7 mittee shall make the annual report available to the
8 public on the Committee’s website, in an accessible
9 format.

10 (6) NONDISCLOSURE.—For purposes of this
11 title, the Committee shall not disclose or require a
12 State licensing agency or licensed vendor to disclose,
13 the identity of, or any other personally identifiable
14 information related to, any individual participating
15 in an activity authorized under this title.

16 (7) CONSEQUENCES FOR FAILURE TO RE-
17 PORT.—

18 (A) LICENSED VENDOR.—If the Com-
19 mittee has not received the annual report of a
20 licensed vendor for a year under section 206(d),
21 the Committee, through the State licensing
22 agency, shall ban the vendor from participating
23 in activities carried out under this title, and
24 award the vending facility site to a new vendor,

1 until the Committee has received the report
2 from the licensed vendor.

3 (B) STATE LICENSING AGENCY.—If the
4 Committee has not received the annual report
5 of a State licensing agency for a year under
6 section 205(e), the Committee shall request to
7 the appropriate vocational rehabilitation agency
8 that the agency suspend the State licensing
9 agency’s allotment under section 110 of the Re-
10 habilitation Act of 1973 (29 U.S.C. 730), until
11 the Committee has received the report.

12 (h) SURVEYS, STUDIES, AND STANDARDS OF THE
13 COMMITTEE FOR THE ADVANCEMENT OF INDIVIDUALS
14 WITH DISABILITIES.—

15 (1) 180 DAYS.—Not later than 180 days after
16 the date of enactment of the Javits-Wagner-O’Day
17 and Randolph-Sheppard Modernization Act of 2008,
18 the Committee shall—

19 (A) establish requirements for the uniform
20 application of this title by each State licensing
21 agency, including appropriate accounting proce-
22 dures, policies on the selection and establish-
23 ment of new vending facilities, distribution of
24 income to licensed vendors, and the use and

1 control of set-aside funds under section
2 205(d)(1)(C);

3 (B) after consultation with, and consider-
4 ation of the views of licensed vendors and State
5 licensing agencies, promulgate standards for
6 funds set aside pursuant to section
7 205(d)(1)(C), which includes maximum and
8 minimum amounts for such funds, and appro-
9 priate contributions, to such funds by licensed
10 vendors; and

11 (C) submit to the President and Congress
12 a report, with appropriate supporting docu-
13 mentation, which shows the actions taken by
14 each such State licensing agency to meet the re-
15 quirements of subparagraphs (A) and (B).

16 (2) ONE YEAR.—Not later than 1 year after the
17 date of enactment of the Javits-Wagner-O’Day and
18 Randolph-Sheppard Modernization Act of 2008, the
19 Comptroller General of the United States, with the
20 assistance of the Committee, State licensing agen-
21 cies, and licensed vendors, shall conduct a survey
22 to—

23 (A) quantify the untapped market share of
24 vending facility opportunities on Federal prop-
25 erty and other property in the United States for

1 a third of States and collect information about
2 similar State laws and programs;

3 (B) assist with the identification of vend-
4 ing facilities on Federal property where there is
5 no licensed vendor operating such facility; and

6 (C) assist with the enforcement of col-
7 lecting vending machine income.

8 (3) TWO YEARS.—Not later than 2 years after
9 the date of enactment of the Javits-Wagner-O’Day
10 and Randolph-Sheppard Modernization Act of 2008,
11 the Committee shall follow-up and conduct further
12 analysis of the survey described in paragraph (2)
13 and in a report provide such analysis to the Presi-
14 dent, Congress, and State licensing agencies. The
15 Committee shall provide within such report for each
16 site identified contact information for procurement
17 and contract officers and contract length for the
18 current vendor.

19 (4) EACH YEAR THEREAFTER.—Beginning 3
20 years after the date of enactment of the Javits-Wag-
21 ner-O’Day and Randolph-Sheppard Modernization
22 Act of 2008, and each year thereafter, the Com-
23 mittee shall make annual surveys consistent with the
24 information collected in the analysis under para-
25 graph (3) of vending facility opportunities for li-

1 censed vendors on Federal property and other prop-
2 erty in the United States. The Committee shall
3 make such surveys available to State licensing agen-
4 cies and licensed vendors.

5 (5) STRATEGIC BUSINESS DEVELOPMENT
6 PLAN.—Not later than 3 years after the date of en-
7 actment of the Javits-Wagner-O’Day and Randolph-
8 Sheppard Modernization Act of 2008, and not less
9 often than every 5 years thereafter, the Committee,
10 in consultation with State licensing agencies and the
11 advisory body authorized in subsection (a)(12), shall
12 develop or update a comprehensive strategic business
13 development plan that—

14 (A) includes—

15 (i) establishing implementation re-
16 sponsibilities of State licensing agencies
17 and licensed vendors;

18 (ii) setting goals for the program and
19 measures toward meeting such goals;

20 (iii) monitoring progress toward meet-
21 ing the purposes of this title and meas-
22 uring success toward meeting the purposes;

23 (iv) reassessing the provision of train-
24 ing for licensed vendors, establishing qual-
25 ity standards, designing appropriate cer-

1 tifications, and developing best practices
2 manuals;

3 (v) improving data collection;

4 (vi) enhancing business skill develop-
5 ment and training for vendors and tech-
6 nical assistance for State licensing agencies
7 and licensed vendors;

8 (vii) creating employment opportuni-
9 ties for individuals with disabilities and in-
10 creasing wages for such persons; and

11 (viii) developing action steps for—

12 (I) ongoing relationships with
13 various Federal agencies and private
14 sector businesses;

15 (II) identifying new Federal and
16 private sector customers;

17 (III) conducting an in-depth mar-
18 ket analysis inside and outside of the
19 Federal Government to determine
20 which markets to enter and which
21 Federal agencies to pursue;

22 (IV) establishing business goals
23 for job growth based on the new lines
24 of business;

1 (V) locating new vending facility
2 sites and enhancing employment and
3 entrepreneurship opportunities offered
4 within and outside of this title;

5 (VI) increasing licensed vendors
6 sales revenues and marketing of the
7 program;

8 (VII) improving activities author-
9 ized under this title; and

10 (VIII) other information that the
11 Committee, State licensing agencies,
12 and the advisory body requires; and

13 (B) is developed or updated in conjunction
14 with the State plans submitted under section
15 101 of the Rehabilitation Act of 1973 (29
16 U.S.C. 721).

17 (6) AVAILABLE TO THE PUBLIC.—The Com-
18 mittee shall make available to the public, and espe-
19 cially to persons and organizations engaged in work
20 for individuals with disabilities, information obtained
21 as a result of such surveys under this subsection.

22 (i) RECORDS AND AUDITS.—

23 (1) RECORDS.—The Committee, each State li-
24 censing agency, and each licensed vendor operating
25 a vending facility pursuant to this title shall keep

1 records that fully disclose the amount and disposi-
2 tion of funds (including fees) made available under
3 this title, the cost of providing activities authorized
4 by this title (including how the funds are used), the
5 share of that cost provided from other sources, and
6 such other records as will facilitate an effective fi-
7 nancial or programmatic audit. The Committee, each
8 State licensing agency, and each licensed vendor op-
9 erating a vending facility pursuant to this title, shall
10 maintain such records for 5 years after the comple-
11 tion of the activity.

12 (2) ACCESS TO RECORDS BY THE COM-
13 MITTEE.—The Committee shall have access, for the
14 purpose of audit and examination, to any books, doc-
15 uments, papers, and other records that—

16 (A) are maintained by a State licensing
17 agency or licensed vendor; and

18 (B) may be related or pertinent to activi-
19 ties authorized under, or in compliance with re-
20 quirements of, this title.

21 (3) ACCESS TO RECORDS BY COMPTROLLER
22 GENERAL OF THE UNITED STATES.—The Comp-
23 troller General of the United States, or any of the
24 duly authorized representatives of the Comptroller
25 General, shall have access, for the purpose of audit

1 and examination, to any books, documents, papers,
2 and other records of the Committee and each State
3 licensing agency. This paragraph shall also apply to
4 any licensed vendor operating a vending facility pur-
5 suant to this title but only with respect to the books,
6 documents, papers, and other records of such vendor
7 that relate to the licensed vendor's activities in a fis-
8 cal year in which a sale was made under this title.
9 The Committee and each State licensing agency and
10 licensed vendor to which this paragraph applies,
11 shall maintain such records for 5 years after the
12 completion of the activity involved.

13 (4) NONDISCLOSURE.—For purposes of any
14 audit or examination, the Committee or Comptroller
15 General of the United States shall not disclose or re-
16 quire a State licensing agency or licensed vendor to
17 disclose the identity of, or any other personally iden-
18 tifiable information related to, any individual partici-
19 pating in an activity authorized under this title.

20 (j) COMPLIANCE.—

21 (1) STATE LICENSING AGENCY REPORTS.—In
22 accordance with regulations established by the Com-
23 mittee, each State licensing agency shall report to
24 the Committee after the end of each fiscal year the

1 extent to which the State licensing agency is in com-
2 pliance with activities authorized under this title.

3 (2) PROGRAM IMPROVEMENT.—

4 (A) PLAN.—If the Committee determines
5 that any State licensing agency is out of com-
6 pliance with this title, the Committee shall pro-
7 vide technical assistance to the State licensing
8 agency, and the State licensing agency and the
9 Committee shall jointly develop a program im-
10 provement plan outlining the specific actions to
11 be taken by the State licensing agency to im-
12 prove program performance.

13 (B) REVIEW.—The Committee shall—

14 (i) review the program improvement
15 efforts of the State licensing agency on a
16 biannual basis and, if necessary, request
17 the State licensing agency to make further
18 revisions to the plan to improve perform-
19 ance; and

20 (ii) continue to conduct such reviews
21 and request such revisions until the State
22 licensing agency sustains satisfactory per-
23 formance over a period of more than 1
24 year.

1 (C) WITHHOLDING.—If the Committee de-
2 termines that a State licensing agency whose
3 performance falls below the established stand-
4 ards has failed to enter into a program im-
5 provement plan, or is not complying with the
6 terms and conditions of such a program im-
7 provement plan, the Committee shall request to
8 the appropriate vocational rehabilitation agency
9 that—

10 (i) the vocational rehabilitation agency
11 suspend the State licensing agency's allot-
12 ment under section 110 of the Rehabilita-
13 tion Act of 1973 (29 U.S.C. 730); or

14 (ii) the vocational rehabilitation agen-
15 cy designate another entity as the State li-
16 censing agency until the State licensing
17 agency has entered into an approved pro-
18 gram improvement plan, or satisfies the
19 Committee that the State licensing agency
20 is complying with the terms and conditions
21 of such a program improvement plan, as
22 appropriate.

23 (D) REPORTS.—The Committee shall in-
24 clude in each annual report to the President
25 and Congress under subsection (a)(13) an anal-

1 ysis of program performance, including relative
2 State licensing agency performance.

3 (E) PUBLIC NOTIFICATION.—The Com-
4 mittee shall notify the public of each action
5 taken by the Committee under this paragraph
6 by making available information about the ac-
7 tion on the website of the Committee, in an ac-
8 cessible format. As a part of such notification,
9 the Committee shall describe each such action
10 taken under this section and the outcomes of
11 each such action.

12 (k) GRIEVANCES.—

13 (1) IN GENERAL.—Any licensed vendor who is
14 dissatisfied with any action arising from the oper-
15 ation or administration of the vending facility pro-
16 gram may submit a grievance to a State licensing
17 agency in accordance with section 205(d)(1)(F). If
18 such licensed vendor is dissatisfied with any action
19 taken or decision rendered as a result of a hearing
20 resulting from such grievance, the licensed vendor
21 may file a complaint with the Committee that shall
22 convene a panel to arbitrate the dispute pursuant to
23 subsection (l), to specify a corrective action. The de-
24 cision of such panel shall be final and binding on the
25 parties except as otherwise provided under this title.

1 (2) GRIEVANCE AGAINST FEDERAL ENTITIES.—

2 Whenever any State licensing agency determines
3 that any entity of the Government that has control
4 of the maintenance, operation, and protection of
5 Federal property is failing to comply with the provi-
6 sions of this title or any regulations issued pursuant
7 to this title (including a limitation on the placement
8 or operation of a vending facility as described in
9 subsection (c)(2) and the Committee's determination
10 of such limitation), such State licensing agency may
11 file a complaint with the Committee that shall con-
12 vene a panel to arbitrate the dispute pursuant to
13 subsection (l), and the decision of such panel shall
14 be final and binding on the parties except as other-
15 wise provided under this title.

16 (3) COMPLIANCE WITH DECISION.—The Com-
17 mittee and State licensing agency shall enforce a de-
18 cision made by a panel pursuant to this subsection
19 and the party against whom a decision is rendered
20 shall abide by the decision.

21 (l) ARBITRATION.—

22 (1) IN GENERAL.—Upon receipt of a complaint
23 filed pursuant to paragraph (1) or (2) of subsection
24 (k), the Committee shall convene an ad hoc arbitra-
25 tion panel. Such panel shall, in accordance with the

1 provisions of this subsection, give notice, conduct a
2 hearing, and render its decision, which shall be sub-
3 ject to appeal and review as a final agency action for
4 purposes of chapter 7 of title 5, United States Code.

5 (2) COMPOSITION OF PANELS.—

6 (A) COMPOSITION OF PANEL TO HEAR
7 GRIEVANCES OF LICENSED VENDORS.—

8 (i) IN GENERAL.—The arbitration
9 panel, convened by the Committee to hear
10 grievances of licensed vendors, shall be
11 composed of 3 members appointed as fol-
12 lows:

13 (I) One individual designated by
14 the State licensing agency.

15 (II) One individual designated by
16 the licensed vendor.

17 (III) One individual, not em-
18 ployed by the State licensing agency
19 or, where appropriate, its parent
20 agency, who shall serve as chairman,
21 jointly designated by the members ap-
22 pointed under subclauses (I) and (II).

23 (ii) FAILURE TO DESIGNATE.—If any
24 party fails to designate a member under

1 clause (i), the Committee shall designate
2 such member on behalf of such party.

3 (B) COMPOSITION OF PANEL TO HEAR
4 COMPLAINTS OF STATE LICENSING AGENCIES.—

5 (i) IN GENERAL.—The arbitration
6 panel, convened by the Committee to hear
7 complaints filed by a State licensing agen-
8 cy, shall be composed of 3 members as fol-
9 lows:

10 (I) One individual, designated by
11 the State licensing agency.

12 (II) One individual, designated
13 by the head of the entity of the Gov-
14 ernment controlling the Federal prop-
15 erty over which the dispute arose.

16 (III) One individual, not em-
17 ployed by the entity of the Govern-
18 ment controlling the Federal property
19 over which the dispute arose, who
20 shall serve as chairman, jointly des-
21 ignated by the members appointed
22 under subclauses (I) and (II).

23 (ii) FAILURE TO DESIGNATE.—If any
24 party fails to designate a member under
25 clause (i), the Committee shall designate

1 such member on behalf of such party. If
2 the panel appointed pursuant to clause (i)
3 finds that the acts or practices of any such
4 entity of the Government are in violation
5 of this title, or any regulation issued under
6 this title, the head of any such entity of
7 the Government shall cause such acts or
8 practices to be terminated promptly and
9 shall take such other action as may be nec-
10 essary to carry out the decision of the
11 panel.

12 (3) PUBLICATION OF DECISIONS IN FEDERAL
13 REGISTER.—The decisions of a panel convened by
14 the Committee pursuant to this subsection shall be
15 matters of public record and shall be published in
16 the Federal Register.

17 (4) PAYMENT OF COSTS BY THE COMMITTEE.—
18 The Committee shall pay all reasonable costs of ar-
19 bitration under this subsection in accordance with a
20 schedule of fees and expenses published in the Fed-
21 eral Register.

22 (5) PENALTIES.—An entity of the Government
23 against whom a decision is rendered by a panel con-
24 vened by the Committee pursuant to this subsection
25 shall be subject to a fee for not complying with this

1 title. Such penalty shall be determined by the Com-
2 mittee, which shall be subject to appeal and review
3 as a final agency action for purposes of chapter 7
4 of title 5, United States Code.

5 **SEC. 205. STATE LICENSING AGENCY POWERS AND DUTIES.**

6 (a) IN GENERAL.—Each State licensing agency shall
7 carry out each of the following:

8 (1) ISSUANCE OF LICENSES.—

9 (A) IN GENERAL.—Each State licensing
10 agency shall issue, pursuant to this subsection,
11 licenses for the operation of a vending facility.
12 Such licenses shall be issued only to applicants
13 who are citizens of the United States and—

14 (i) are eligible for vocational rehabili-
15 tation services under section 102 of the
16 Rehabilitation Act of 1973 (29 U.S.C.
17 722); and

18 (ii) have completed the provision of
19 training core competencies authorized in
20 subsection (b).

21 (B) DURATION.—Each license described in
22 subparagraph (A) shall be issued for an indefi-
23 nite period but may be terminated by the State
24 licensing agency if the agency is satisfied that
25 the vending facility is not being operated in ac-

1 cordance with the rules and regulations pre-
2 scribed by such State licensing agency.

3 (C) PARTICIPATION OF INDIVIDUALS WITH
4 DISABILITIES WHO ARE NOT BLIND.—

5 (i) IN GENERAL.—Beginning 3 years
6 after the date of enactment of the Javits-
7 Wagner-O’Day and Randolph-Sheppard
8 Modernization Act of 2008, a State licens-
9 ing agency shall—

10 (I) permit individuals with dis-
11 abilities who are not blind to—

12 (aa) participate in the provi-
13 sion of training core com-
14 petencies under subsection (b);
15 and

16 (bb) receive licenses under
17 subparagraph (A); or

18 (II) merge the general State Vo-
19 cational Rehabilitation agency self-em-
20 ployment program (if one exists) with
21 the State licensing agency vending fa-
22 cility program to create 1 entrepre-
23 neurial, self-employment program for
24 individuals with disabilities.

1 (ii) MERGING OF PROGRAMS.—A
2 State licensing agency that merges the pro-
3 grams described in clause (i)(II) shall sub-
4 mit a memorandum to the Committee that
5 includes the following:

6 (I) If the programs are adminis-
7 tered by 2 different agencies, a memo-
8 randum of understanding with the
9 general State agency responsible for
10 the self-employment program de-
11 scribed in clause (i)(II), that describes
12 how the agencies will provide financial
13 support and accommodations for indi-
14 viduals coming through the self-em-
15 ployment program.

16 (II) A description of how the pro-
17 grams will combine entrepreneurship
18 trainings.

19 (III) A description of how the
20 State licensing agency will provide to
21 an individual with a disability inter-
22 ested in becoming a licensed vendor
23 the necessary coursework needed to
24 fulfill Federal and State food service
25 requirements.

1 (IV) A description of how the
2 State licensing agency will grand-
3 father in existing licensed vendors op-
4 erating a vending facility into the pro-
5 gram.

6 (D) RESERVATION.—

7 (i) IN GENERAL.—A State licensing
8 agency shall reserve 50 percent of new
9 vending facility sites for individuals who
10 are blind and 50 percent of new vending
11 facility sites for individuals who are blind
12 and individuals with other disabilities.

13 (ii) NEW SITES DEFINED.—In this
14 subparagraph, the term “new vending fa-
15 cility sites” means a vending facility site—

16 (I) that is first identified after
17 the date of enactment of the Javits-
18 Wagner-O’Day and Randolph-
19 Sheppard Modernization Act of 2008
20 and not under contract with the State
21 licensing agency; or

22 (II) with respect to which the li-
23 censed vendor has ceased operating
24 such site after the date of enactment
25 of the Javits-Wagner-O’Day and Ran-

1 dolph-Sheppard Modernization Act of
2 2008.

3 (2) SELECT LOCATIONS.—Each State licensing
4 agency shall select a location for a vending facility
5 and the type of facility to be provided with the ap-
6 proval of the head of the entity of the Government
7 in control of the maintenance, operation, and protec-
8 tion of the Federal property on which the facility is
9 to be located but subject to regulations prescribed
10 pursuant to section 204(c).

11 (3) SELF-EMPLOYMENT AND MANAGEMENT
12 TRAINING.—Each State licensing agency shall estab-
13 lish, promote, and implement provisions of training
14 for self-employment and management in order to ex-
15 pand employment and entrepreneurship opportuni-
16 ties (including franchising) for individuals with dis-
17 abilities.

18 (4) STANDARDS AND AWARDING OF SITES.—
19 Each State licensing agency shall—

20 (A) implement the Committee’s standards
21 for filling vending facility vacancies, and cri-
22 teria for evaluating and promoting qualified li-
23 censed vendors; and

24 (B) enter into subcontracts for vending fa-
25 cility sites with licensed vendors.

1 (5) EXPANSION AND GROWTH.—Each State li-
2 censing agency shall enable the expansion and
3 growth of licensed vendors by—

4 (A) developing partnerships with private
5 sector entities;

6 (B) developing programs for business own-
7 ership in the private sector;

8 (C) assisting licensed vendors in bidding
9 competitively for vending facility contracts on
10 Federal property and locating funding sources
11 (including loans) when the priority granted to
12 State licensing agencies on behalf of licensed
13 vendors pursuant to section 203(a)(2) does not
14 apply because the State licensing agency—

15 (i) determines that a vending facility
16 site is not satisfactory;

17 (ii) determines that a vending facility
18 site is satisfactory but declines to exercise
19 the priority; or

20 (iii) does not have the funding nec-
21 essary to renovate a vending facility site;
22 and

23 (D) assisting licensed vendors in pursuing
24 opportunities pursuant to this title and business
25 ownership in the private sector.

1 (6) NEW SITES.—Each State licensing agency
2 shall identify and establish new vending facility sites
3 for licensed vendors, including—

4 (A) contacting procurement and con-
5 tracting offices within the General Services Ad-
6 ministration and working with members of the
7 Committee to contact other entities of the Gov-
8 ernment in control of the maintenance, oper-
9 ation, and protection of Federal property re-
10 garding potential vending facilities; and

11 (B) financial plans for identifying and es-
12 tablishing new vending facilities.

13 (7) INFORM ENTITIES.—Each State licensing
14 agency shall work with the Committee to inform en-
15 tities of the Government about the requirements of
16 this title.

17 (8) PRIORITY.—Each State licensing agency
18 shall work with the Committee to enforce the pri-
19 ority granted to State licensing agencies on behalf of
20 licensed vendors pursuant to section 203(a)(2).

21 (9) PROGRAM MEASURES AND ACCOUNTABILITY
22 STANDARDS.—Each State licensing agency shall de-
23 velop program reporting measures and assist the
24 Committee with administering accountability stand-
25 ards with all licensed vendors.

1 (10) EVALUATION OF QUALIFICATIONS AND CA-
2 PABILITIES.—Each State licensing agency shall
3 evaluate the qualifications and capabilities of li-
4 censed vendors and provide the Committee with per-
5 tinent data concerning the licensed vendors, the
6 agency’s status as a qualified nonprofit agency, the
7 agency’s manufacturing or service capabilities, and
8 other information as required by the Committee.

9 (11) ENSURE COMPLIANCE.—Each State licens-
10 ing agency shall oversee and assist the licensed ven-
11 dors to ensure compliance with vending facility con-
12 tract requirements and compliance with this title, in-
13 cluding appropriate regulations.

14 (12) REVIEWS, MONITORING, EVALUATIONS,
15 AND REPORTS.—Each State licensing agency shall
16 carry out reviews, monitoring, and evaluations, and
17 prepare reports, in accordance with this title.

18 (13) PROMOTE POSITION VACANCIES.—Each
19 State licensing agency shall promote position vacan-
20 cies within the Federal Government to individuals
21 who are blind, or individuals with other disabilities.

22 (14) COLLECT INCOME.—Each State licensing
23 agency shall collect vending machine income and set-
24 aside funds in accordance with section 203(c) and
25 subsection (d)(1)(C).

1 (15) GATHER DATA AND REPORTS.—Each
2 State licensing agency shall gather data and reports
3 from licensed vendors in accordance with subsection
4 (e)(2), and sections 204(a)(13) and 206(d), to deter-
5 mine if the agencies have met the goals described in
6 section 204(a)(11).

7 (16) BIENNIAL ELECTION.—Each State licens-
8 ing agency shall conduct the biennial election of a
9 Committee of Vendors.

10 (17) ANNUAL REPORTS.—Each State licensing
11 agency shall submit to the Committee annual reports
12 on outcomes and achievements pursuant to sub-
13 section (e)(2) and sections 204(a)(13) and 206(d).

14 (18) OTHER ACTIVITIES.—Each State licensing
15 agency shall carry out other activities requested by
16 the Committee.

17 (b) PROVISION OF TRAINING CORE COM-
18 PETENCIES.—

19 (1) IN GENERAL.—Each State licensing agency
20 shall establish, promote, and implement the provi-
21 sion of training for self-employment and manage-
22 ment for individuals with disabilities either—

23 (A) directly; or

24 (B) indirectly, through one-stop centers as
25 authorized in the Workforce Investment Act of

1 1998 (29 U.S.C. 2801 et seq.), community col-
2 leges, 4-year institutions of higher education, or
3 through third parties.

4 (2) TRAINING CORE COMPETENCIES.—The pro-
5 vision of training for self-employment and manage-
6 ment in paragraph (1) shall—

7 (A) include training specific for the oper-
8 ation of vending facilities on Federal property,
9 as authorized under this title, for persons inter-
10 ested in becoming licensed vendors;

11 (B) include transferable skill development
12 in specific areas of study, including—

13 (i) starting a business and business
14 plan development;

15 (ii) business operations (including cus-
16 tomer service skills);

17 (iii) financial management, budgeting,
18 and accounting;

19 (iv) marketing;

20 (v) management; and

21 (vi) audits; and

22 (C) specifically for licensed vendors, in-
23 clude—

24 (i) on-the-job training;

1 (ii) Federal and State food service re-
2 quirements; and

3 (iii) reporting requirements for this
4 title.

5 (3) WAIVER.—A State licensing agency may
6 grant a vendor a waiver from taking particular
7 coursework or participating in the provision of train-
8 ing under this subsection if the vendor—

9 (A) has completed the provision of train-
10 ing, as authorized under this title or another
11 program, in another State;

12 (B) has experience in food service manage-
13 ment from the public or private sector;

14 (C) has a pertinent degree, accreditation,
15 or certification; or

16 (D) has other qualifications as approved by
17 the Committee.

18 (4) ADDITIONAL TRAINING.—A State licensing
19 agency may reserve smaller vending facility locations
20 that do not generate enough revenue for a licensed
21 vendor to become self-sufficient, as training sites for
22 vendors who believe they could benefit from addi-
23 tional training. Such sites—

24 (A) shall be available to individuals who
25 successfully complete the training course de-

1 scribed in this subsection and are licensed by
2 the State as a licensed vendor;

3 (B) shall not be operated by the same li-
4 censed vendor for longer than 2 years; and

5 (C) shall be the responsibility of the State
6 licensing agency, and such agency shall be re-
7 sponsible for reporting and other requirements
8 of section 206(d) in providing such training op-
9 portunity for licensed vendors.

10 (c) ACCESS TO INFORMATION WITH THE STATE LI-
11 CENSING AGENCIES; ELECTION AND RESPONSIBILITIES
12 OF COMMITTEE OF VENDORS.—In addition to other re-
13 quirements of this title, each State licensing agency
14 shall—

15 (1) provide to each licensed vendor access to all
16 relevant financial data, including quarterly and an-
17 nual financial reports, on the operation of the State
18 vending facility program;

19 (2) conduct the biennial election of a Committee
20 of Vendors of all licensed vendors in the State vend-
21 ing facility program, which Committee shall include
22 representatives of individuals who are blind and indi-
23 viduals with other disabilities;

24 (3) ensure that the responsibilities of the Com-
25 mittee of Vendors include—

1 (A) advising the State licensing agency re-
2 garding major administrative decisions and pol-
3 icy and program development;

4 (B) receiving grievances of licensed ven-
5 dors and serving as advocates for such licensed
6 vendors;

7 (C) advising the State licensing agency re-
8 garding the development and administration of
9 a transfer and promotion system for licensed
10 vendors; and

11 (D) advising the State licensing agency re-
12 garding the provision of training and retrain-
13 ing; and

14 (4) make available on the website of the State
15 licensing agency, in an accessible format, all require-
16 ments for, and decisions made regarding, pro-
17 motions.

18 (d) APPLICATION FOR DESIGNATION AS STATE LI-
19 CENSING AGENCY; COOPERATION WITH THE COMMITTEE;
20 FURNISHING INITIAL STOCK.—

21 (1) IN GENERAL.—A State agency for the blind
22 or other State agency desiring to be designated as
23 the State licensing agency pursuant to section
24 204(b) shall, with the approval of the Governor of

1 the State, make application to the Committee and
2 agree to carry out the following:

3 (A) To comply with the Committee in car-
4 rying out the purposes of this title.

5 (B) To provide for each licensed vendor
6 such vending facility equipment, and adequate
7 initial stock of suitable articles and supplies to
8 be vended from such facility, as may be nec-
9 essary. Such equipment and stock may be
10 owned by the State licensing agency for use of
11 the individual to whom the license is issued. If
12 ownership of such equipment is vested—

13 (i) in the licensed vendor—

14 (I) the State licensing agency
15 shall retain a first option to repur-
16 chase such equipment; and

17 (II) in the event such individual
18 dies or for any other reason ceases to
19 be a licensed vendor or transfers to
20 another vending facility, ownership of
21 such equipment shall become vested in
22 the State licensing agency (for trans-
23 fer to a successor licensed vendor)
24 subject to an obligation on the part of
25 the State licensing agency to pay to

1 such individual or to the estate of the
2 individual the fair value of interest, as
3 later determined in accordance with
4 regulations of the State licensing
5 agency and after opportunity for a
6 fair hearing; and

7 (ii) in the State licensing agency—

8 (I) the licensed vendor shall rent
9 or purchase such equipment from the
10 State; and

11 (II) the State licensing agency
12 shall charge the market rate for rent-
13 ing or fair value selling such equip-
14 ment to the licensed vendor.

15 (C) That if any funds are set aside, or
16 caused to be set aside, from the net proceeds of
17 the operation of the vending facilities, such
18 funds shall be set aside, or caused to be set
19 aside, only to the extent necessary for and may
20 be used only for the purposes of maintenance
21 and replacement of equipment, the purchase of
22 new equipment, management services, assuring
23 a fair minimum return to operators of vending
24 facilities, and retirement or pension funds,
25 health insurance contributions, and provision

1 for paid sick leave and vacation time if it is de-
2 termined by a majority vote of the Committee
3 of Vendors, after such agency provides to each
4 member of the Committee of Vendors full infor-
5 mation on all matters relevant to such proposed
6 program, that funds under this subparagraph
7 shall be set aside for such purposes. In no event
8 shall the amount of such funds to be set aside
9 from the net proceeds of any vending facility
10 exceed a reasonable amount which shall be de-
11 termined by the Committee.

12 (D) To make reports, pursuant to sub-
13 section (e), in such form and containing such
14 information as the Committee requires and to
15 comply with such provisions as the Committee
16 finds necessary to ensure the correctness and
17 verification of such reports.

18 (E) To issue such regulations, consistent
19 with the provisions of this title, as may be nec-
20 essary for the operation of the vending facility
21 program.

22 (F) To provide to any licensed vendor dis-
23 satisfied with any action arising from the oper-
24 ation or administration of the vending facility
25 program an opportunity to a fair hearing, and

1 to agree to submit the grievances of any li-
2 censed vendor not otherwise resolved by such
3 hearing to arbitration as provided in section
4 204(1).

5 (2) RESERVATION FOR ADMINISTRATION.—Not-
6 withstanding paragraph (1)(C), a State licensing
7 agency may reserve 1 percent of set-aside funds for
8 the purpose of administering the program. Nothing
9 in this paragraph shall be construed to affect State
10 statutes, rules, or official policies relating to col-
11 lecting a portion of the set aside for agencies that
12 administer the program. Licensed vendors shall as-
13 sume the cost of paying for services listed in para-
14 graph (1)(C) not covered by the set aside.

15 (3) RULE OF CONSTRUCTION.—Nothing in this
16 subsection shall be construed to modify any require-
17 ment under any State law governing a State pro-
18 gram for providing opportunities for licensed ven-
19 dors.

20 (e) REPORTING, REVIEWS, MONITORING, EVALU-
21 ATING, AND AUDITING.—

22 (1) IN GENERAL.—Not later than December 1
23 of each year, each State licensing agency shall report
24 data and provide an annual report to the Com-

1 mittee, to enable the Committee to prepare the re-
2 ports described in section 204(a)(13).

3 (2) CONTENTS.—An annual report described in
4 paragraph (1) shall include—

5 (A) information collected from licensed
6 vendors associated with the State licensing
7 agency pursuant to section 206(d), aggregated
8 for the State licensing agency, and in the case
9 of information described under subparagraphs
10 (B) and (H) of section 206(d)(2), disaggregated
11 by licensed vendor;

12 (B) data regarding the progress of meeting
13 goals described in section 204(a)(11); and

14 (C) other items as determined necessary by
15 the Committee.

16 (3) REVIEWS, MONITORING, AND EVALUA-
17 TIONS.—Each State licensing agency shall—

18 (A) conduct reviews and monitoring in ac-
19 cordance with section 204(e); and

20 (B) provide such other information to the
21 Committee in such time and manner as the
22 Committee may require.

23 (f) COMPLIANCE.—

24 (1) LICENSED VENDOR REPORTS.—In accord-
25 ance with regulations established by the Committee

1 and State licensing agency, each State licensing
2 agency shall report to the Committee after the end
3 of each fiscal year the extent to which licensed ven-
4 dors operating a vending facility are in compliance
5 with activities authorized under this title.

6 (2) PROGRAM IMPROVEMENT.—

7 (A) PLAN.—If the Committee determines
8 that any licensed vendor is out of compliance
9 with this title, the Committee and State licens-
10 ing agency shall provide technical assistance to
11 the licensed vendor, and the Committee, State
12 licensing agency, and licensed vendor shall
13 jointly develop an improvement plan outlining
14 the specific actions to be taken by the licensed
15 vendor to improve performance.

16 (B) REVIEW.—The Committee and State
17 licensing agency shall—

18 (i) review the program improvement
19 efforts of the licensed vendor on a quar-
20 terly basis and, if necessary, request the li-
21 censed vendor make further revisions to
22 the plan to improve performance; and

23 (ii) continue to conduct such reviews
24 and request such revisions until the li-
25 censed vendor sustains satisfactory per-

1 formance over a period of more than 1
2 year.

3 (C) WITHHOLDING.—If the Committee de-
4 termines that a licensed vendor’s performance
5 falls below the established standards, has failed
6 to enter into a program improvement plan, or
7 is not complying with the terms and conditions
8 of such an improvement plan, the Committee
9 and State licensing agency shall suspend the li-
10 censed vendor’s license until the licensed vendor
11 has entered into an approved improvement
12 plan, or satisfies the Committee that the li-
13 censed vendor is able to comply with the terms
14 and conditions of such an improvement plan, as
15 appropriate.

16 (D) REPORTS.—The Committee shall in-
17 clude in each annual report to the President
18 and Congress under section 204(a)(13) a de-
19 scription of action taken under this subsection
20 and the outcomes of such action.

21 (E) PUBLIC NOTIFICATION.—The Com-
22 mittee and each State licensing agency shall no-
23 tify the public of each action taken under this
24 subsection by making available information
25 about the action on their websites, in an acces-

1 sible format. As a part of such notification, the
2 Committee and State licensing agency shall de-
3 scribe each such action taken under this sub-
4 section and the outcomes of each such action.

5 **SEC. 206. VENDORS' DUTIES.**

6 (a) IN GENERAL.—A licensed vendor operating a
7 vending facility shall—

8 (1) fulfill the requirements of operating such
9 vending facility for the vending of newspapers, peri-
10 odicals, confections, foods (including cafeterias but
11 not including cafeteria attendant services), bev-
12 erages, and other articles or services dispensed auto-
13 matically or manually prepared on or off the prem-
14 ises in accordance with all applicable health laws, as
15 determined by the State licensing agency, and in-
16 cluding the vending or exchange of chances for any
17 lottery authorized by State law and conducted by an
18 agency of a State;

19 (2) make such reports, pursuant to subsection
20 (d), in such form and containing such information
21 as the State licensing agency and Committee require
22 and to comply with such provisions as the State li-
23 censing agency and Committee find necessary to en-
24 sure the correctness and verification of such reports;

1 (3) meet the goals described in section
2 204(a)(11);

3 (4) provide employment for individuals with dis-
4 abilities; and

5 (5) if a State licensing agency establishes a set-
6 aside program, pursuant to section 205(d)(1)(C),
7 participate in such a program.

8 (b) REQUIREMENTS.—

9 (1) IN GENERAL.—A licensed vendor operating
10 a vending facility shall be responsible for the fol-
11 lowing:

12 (A) All costs associated with the facility to
13 meet the facility's operational requirements, in-
14 cluding—

15 (i) administrative, management, and
16 equipment maintenance costs not covered
17 by the set aside;

18 (ii) payment for utilities; and

19 (iii) commercial telephone/communica-
20 tion requirements.

21 (B) Compliance with all applicable regula-
22 tions pertaining to the health and safety of per-
23 sonnel during the execution of work. The li-
24 censed vendor shall hold the Government harm-
25 less for any action on the vendor's part or that

1 of the vendor's employees or subcontractors
2 that results in illness, injury, or death.

3 (C) Supervision, performance, and conduct
4 of the licensed vendor's employees at all times
5 while on the facility performing work under this
6 title. The licensed vendor shall be responsible
7 for selecting personnel who are well-qualified to
8 perform the required services.

9 (D) Furnishing to the State licensing
10 agency and Federal contracting officer a certifi-
11 cate of insurance.

12 (E) Provision of data to the State licensing
13 agency to show the licensed vendor's effective-
14 ness and progress in achieving operational im-
15 provements, and reports as described in sub-
16 section (d).

17 (F) Compliance with all applicable Federal,
18 State, and local laws, Executive orders, rules,
19 and regulations applicable to the licensed ven-
20 dor's performance under the contract.

21 (G) Risk of loss or damage to the supplies
22 provided under the contract.

23 (H) Provision of access to the Comptroller
24 General of the United States, or an authorized
25 representative of the Comptroller General, to

1 examine any of the licensed vendor's directly
2 pertinent records involving transactions related
3 to this title.

4 (I) Making available records, materials,
5 and other evidence for examination, audit, or
6 reproduction, until 3 years after final payment
7 under this title.

8 (2) AVAILABILITY OF RECORDS.—

9 (A) IN GENERAL.—A licensed vendor for
10 whom the license to operate a vending facility
11 has been completely or partially terminated,
12 shall make available to the Committee and the
13 State licensing agency the records relating to
14 the work terminated for 3 years after any re-
15 sulting final termination settlement. A licensed
16 vendor shall make available to the Committee
17 and the State licensing agency records relating
18 to appeals, litigation, or the settlement of
19 claims arising under or relating to a contract to
20 operate a vending facility pursuant to this title
21 until such appeals, litigation, or claims are fi-
22 nally resolved.

23 (B) RECORDS DEFINED.—In this para-
24 graph, the term “records” includes books, docu-
25 ments, accounting procedures and practices,

1 and other data, regardless of type and regard-
2 less of form.

3 (C) RULE OF CONSTRUCTION.—Nothing in
4 this paragraph shall be construed to require the
5 licensed vendor to create or maintain any
6 record that the licensed vendor does not main-
7 tain in the ordinary course of business or pur-
8 suant to a provision of law.

9 (c) MAINTAINING QUALIFICATION.—To maintain
10 qualification as a licensed vendor under this title, an indi-
11 vidual shall carry out the following:

12 (1) Operate a vending facility in strict accord-
13 ance with Government specifications.

14 (2) Be the principal manager of the work per-
15 formed.

16 (3) Comply with the applicable compensation,
17 employment, and occupational health and safety
18 standards prescribed by the Secretary of Labor, in-
19 cluding procedures to encourage filling of vacancies
20 within the business by individuals with disabilities. A
21 licensed vendor with annual sales of more than
22 \$500,000 and who has a workforce of not less than
23 8 employees shall have a workforce in which a min-
24 imum of one third of such employees are individuals
25 with disabilities.

1 (4) Comply with directives or requests issued by
2 the Committee in furtherance of the objectives of
3 this title, including regulations issued under this
4 title.

5 (5) Make business records, pertinent to activi-
6 ties authorized or compliance required under this
7 title, available for inspection at any reasonable time
8 to representatives of the Committee.

9 (6) A licensed vendor with annual sales of more
10 than \$500,000 shall have a financial audit per-
11 formed by an independent accountant.

12 (7) File a Federal business income tax return.

13 (8) Submit to the Committee copies of reports
14 of audits, and returns, described in paragraphs (6)
15 and (7).

16 (d) ANNUAL REPORT.—

17 (1) IN GENERAL.—Not later than November 1
18 of each year, each licensed vendor operating a vend-
19 ing facility shall report data and provide an annual
20 report to the Committee, through the licensed ven-
21 dor's State licensing agency, to enable the Com-
22 mittee to prepare the reports described in section
23 204(a)(13).

1 (2) CONTENTS.—The report described in para-
2 graph (1) shall include, with respect to the licensed
3 vendor—

4 (A) the Office of Management and Budget
5 approved Report of Randolph-Sheppard Vend-
6 ing Facility Program (SC) AGENCY FORM
7 NUMBER RSA-15 or other appropriate form
8 approved by the Office of Management and
9 Budget;

10 (B) data on vending facilities by location
11 and by type (stand, vending machines, cafe-
12 teria), including the amount of business income,
13 expenditures, and distribution of income;

14 (C) the number of administrative non-
15 compliance grievances and complaints filed
16 under section 204(k), including the entity
17 against whom such action was filed;

18 (D) participation in Committee and State
19 licensing agency training and technical assist-
20 ance activities, including information on partici-
21 pation of the licensed vendor and the vendor's
22 employees in total and disaggregated by—

23 (i) employees with and without dis-
24 abilities;

25 (ii) training and technical assistance;

1 (iii) topic; and

2 (iv) method of delivery (such as
3 through videos, seminars, or web-based
4 technologies);

5 (E) the number of employees of the li-
6 censed vendor who are individuals with disabil-
7 ities, disaggregated using 911 disability report-
8 ing taxonomy of the vocational rehabilitation
9 program;

10 (F) wages and benefits, including informa-
11 tion on—

12 (i) wages of the licensed vendor, in-
13 cluding the average wage of employees of
14 the licensed vendor with disabilities and
15 without disabilities;

16 (ii) how many individuals under clause
17 (i) have—

18 (I) health insurance;

19 (II) pensions or retirement plans;

20 and

21 (III) other benefits; and

22 (iii) the number of persons with dis-
23 abilities employed by the licensed vendor
24 who have been promoted or moved into
25 management positions;

1 (G) data regarding the progress of meeting
2 goals described in section 204(a)(11);

3 (H) if the licensed vendor has entered into
4 an operational support agreement pursuant to
5 subsection (e), the identity of the teaming part-
6 ner, the terms of the agreement (including the
7 financial terms), and the services the teaming
8 partner is providing; and

9 (I) other items as determined necessary by
10 the Committee.

11 (e) OPERATIONAL SUPPORT AGREEMENTS.—

12 (1) IN GENERAL.—A licensed vendor, in con-
13 junction with the licensed vendor’s State licensing
14 agency, may enter into an operational support agree-
15 ment with an entity (a “teaming partner”) that has
16 an extensive background in—

17 (A) Federal procurement; and

18 (B) delivery of military dining or large-
19 scale food services.

20 (2) TEAMING PARTNER.—The teaming partner
21 may, with respect to the licensed vendor—

22 (A) provide training in managing large-
23 scale food service contracts;

24 (B) identify potential, or directly provide,
25 employees;

1 (C) provide start-up funding; and

2 (D) post bond.

3 (3) LIMITATION.—A partnership under this
4 subsection shall be limited to the first 3 years of the
5 initial contract of the licensed vendor to operate a
6 vending facility pursuant to this title. The licensed
7 vendor shall be the principal manager of work per-
8 formed under the contract. The licensed vendor shall
9 be required to retire capital advances provided by
10 the teaming partner prior to the end of the contract.

11 (4) INFORMATION.—Each operational support
12 agreement entered into pursuant to this subsection
13 shall be provided to the Committee at such a time
14 and in such manner as the Committee may require.
15 Such agreement shall include functional duties and
16 financial arrangements and, if a workforce is pro-
17 vided by the teaming partner under such agreement,
18 the percentage of such workforce who have a dis-
19 ability.

20 (5) CONSTRUCTION CLAUSE.—Nothing in this
21 subsection shall prohibit a licensed vendor from con-
22 tracting with a teaming partner, after the initial
23 agreement expires, for personnel and financial man-
24 agement services or for providing services regarding
25 contracts and opportunities outside of this title.

1 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Com-
 3 mittee to carry out this title, \$2,000,000 for fiscal year
 4 2009 and such sums as may be necessary for each of the
 5 7 succeeding fiscal years.

6 **TITLE III—JAVITS-WAGNER-O’**
 7 **DAY AND RANDOLPH-**
 8 **SHEPPARD VENDORS CON-**
 9 **TRACTING WITH THE DE-**
 10 **PARTMENT OF DEFENSE**

11 **SEC. 301. DEFINITIONS.**

12 In this title:

13 (1) ALASKA NATIVE CORPORATION.—The term
 14 “Alaska Native Corporation” means a Native Cor-
 15 poration, as defined in section 3 of the Alaska Na-
 16 tive Claims Settlement Act (43 U.S.C. 1602).

17 (2) HUBZONE ENTITY.—The term “HUBZone
 18 entity” means an entity that is a qualified
 19 HUBZone small business concern, as defined in sec-
 20 tion 3 of the Small Business Act (15 U.S.C. 632).

21 (3) LICENSED VENDOR.—The term “licensed
 22 vendor” has the meaning given the term in section
 23 202 of the Randolph-Sheppard Act.

24 (4) SECTION 8(A) ENTITY.—The term “section
 25 8(a) entity” means a small business concern (within
 26 the meaning given that term under section 3 of the

1 Small Business Act (15 U.S.C. 632)) that is eligible
2 to participate in a program, activity, or contract,
3 under section 8(a) of the Small Business Act (15
4 U.S.C. 637(a)).

5 (5) STATE LICENSING AGENCY.—The term
6 “State licensing agency” has the meaning given the
7 term in section 202 of the Randolph-Sheppard Act.

8 **SEC. 302. JAVITS-WAGNER-O’DAY PROGRAM.**

9 (a) PROCUREMENT REQUIREMENTS.—

10 (1) INAPPLICABILITY.—In the case of a con-
11 tract for the operation of a full food service military
12 dining facility, the requirements of section 104 of
13 the Javits-Wagner-O’Day Act (relating to procure-
14 ment requirements for the Government) shall not
15 apply.

16 (2) PROCUREMENT LIST.—Products and serv-
17 ices specifically relating to the operation of a full
18 food service military dining facility—

19 (A) shall not be added to the procurement
20 list referred to in that section 104; and

21 (B) that are on the procurement list on the
22 date of enactment of this Act shall be removed
23 from the procurement list 5 years after that
24 date of enactment.

1 (3) RELATED CONTRACTS.—Contracts for prod-
2 ucts and services described in paragraph (2) that are
3 removed from the procurement list shall be rebid in
4 accordance with Department of Defense contracting
5 rules.

6 (b) PROPOSAL REVISIONS.—In bidding for a contract
7 for the operation of a full food service military dining facil-
8 ity, under the Javits-Wagner-O’Day Act, a central non-
9 profit agency and a qualified nonprofit agency shall com-
10 ply with the provisions of section 15.307 of title 48, Code
11 of Federal Regulations (or any corresponding similar reg-
12 ulation or ruling), regarding proposal revisions.

13 (c) RECORDS.—In the event that a qualified non-
14 profit agency receives a contract described in subsection
15 (a), under the Javits-Wagner-O’Day Act, the qualified
16 nonprofit agency, the corresponding central nonprofit
17 agency, and any partner working with the qualified non-
18 profit agency to carry out the contract shall make avail-
19 able to the Secretary of Defense and the Inspector General
20 of the Department of Defense all records relating to the
21 contract.

22 (d) FAIR LABOR STANDARDS.—Section 14(c) of the
23 Fair Labor Standards Act of 1938 (29 U.S.C. 214(e))
24 shall not apply to qualified nonprofit agencies that receive

1 contracts for the operation of full food service military din-
2 ing facilities under the Javits-Wagner-O'Day Act.

3 **SEC. 303. RANDOLPH-SHEPPARD PROGRAM.**

4 (a) CAFETERIA SERVICES.—For purposes of the
5 Randolph-Sheppard Act, the term “cafeteria”, used with
6 respect to military dining services under a contract award-
7 ed by the Secretary of Defense, does not include mess at-
8 tendant, dining facility attendant, dining support, or other
9 services supporting the Department of Defense operations
10 of a cafeteria, and means only services pertaining to a full
11 food service military dining facility.

12 (b) BIDDING.—Each contract for the operation of a
13 full food service military dining facility under the Ran-
14 dolph-Sheppard Act shall be rebid at the end of the con-
15 tract period.

16 (c) PRIORITY.—Notwithstanding section
17 203(a)(2)(A), for purposes of awarding a contract for the
18 operation of a full food service military dining facility,
19 equal priority shall be given to—

20 (1) a State licensing agency (acting on behalf of
21 a licensed vendor) bidding for the contract under the
22 Randolph-Sheppard Act; and

23 (2) a section 8(a) entity, a HUBZone entity, an
24 Alaska Native Corporation, and other socially dis-

1 advantaged groups, as defined by the Secretary of
2 Defense.

3 (d) PROPOSAL REVISIONS.—In bidding for a contract
4 for the operation of a full food service military dining facil-
5 ity, under the Randolph-Sheppard Act, a State licensing
6 agency (acting on behalf of a licensed vendor) shall comply
7 with the provisions of section 15.307 of title 48, Code of
8 Federal Regulations (or any corresponding similar regula-
9 tion or ruling), regarding proposal revisions.

10 (e) ARBITRATION.—The arbitration provisions of the
11 Randolph-Sheppard Act shall not apply to a decision of
12 the Secretary of Defense pertaining to modifying or clos-
13 ing a full food service military dining facility due to a
14 budget reduction, if the facility does not become solely a
15 vending facility on Federal property, within the meaning
16 of section 203(a) of the Randolph-Sheppard Act. If a
17 State licensing agency (acting on behalf of a licensed ven-
18 dor) submits a bid for a contract described in subsection
19 (b), under the Randolph-Sheppard Act, declines an offer
20 for such contract, and submits a subsequent bid for the
21 contract in the same contract bidding cycle, the arbitra-
22 tion provisions shall not apply to a decision of the Sec-
23 retary of Defense relating to the subsequent bid.

24 (f) RECORDS.—In the event that a State licensing
25 agency (acting on behalf of a licensed vendor) receives a

1 contract described in subsection (b), under the Randolph-
2 Sheppard Act, the State licensing agency, the vendor, and
3 any partner working with the vendor to carry out the con-
4 tract shall make available to the Secretary of Defense and
5 the Inspector General of the Department of Defense all
6 records relating to the contract.

7 **TITLE IV—TRANSFER OF FUNC-**
8 **TIONS AND SAVINGS PROVI-**
9 **SIONS**

10 **SEC. 401. DEFINITIONS.**

11 For purposes of this title, unless otherwise provided
12 or indicated by the context—

13 (1) the term “Federal agency” has the meaning
14 given to the term “agency” by section 551(1) of title
15 5, United States Code;

16 (2) the term “function” means any duty, obli-
17 gation, power, authority, responsibility, right, privi-
18 lege, activity, or program; and

19 (3) the term “office” includes any office, ad-
20 ministration, agency, institute, unit, organizational
21 entity, or component thereof.

22 **SEC. 402. TRANSFER OF FUNCTIONS.**

23 (a) IN GENERAL.—There are transferred to the Com-
24 mittee, established under section 3, all functions which the
25 Commissioner of the Rehabilitation Services Administra-

1 tion of the Department of Education (referred to in this
 2 title as the “Administration”) exercised before the date
 3 of enactment of the Javits-Wagner-O’Day and Randolph-
 4 Sheppard Modernization Act of 2008 (including all related
 5 functions of any officer or employee of the Administration)
 6 relating to the Randolph-Sheppard Act, as in effect before
 7 the date of enactment of the Javits-Wagner-O’Day and
 8 Randolph-Sheppard Modernization Act of 2008.

9 (b) EFFECTIVE DATE.—The transfer provision pro-
 10 vided under subsection (a) shall take effect 90 days after
 11 the date of enactment of the Javits-Wagner-O’Day and
 12 Randolph-Sheppard Modernization Act of 2008.

13 **SEC. 403. DETERMINATIONS OF CERTAIN FUNCTIONS BY**
 14 **THE OFFICE OF MANAGEMENT AND BUDGET.**

15 If necessary, the Office of Management and Budget
 16 shall make any determination of the functions that are
 17 transferred under section 402.

18 **SEC. 404. PERSONNEL PROVISIONS.**

19 (a) APPOINTMENTS.—Except as otherwise provided
 20 by law, the Chairman of the Committee may appoint and
 21 fix the compensation of such officers and employees, in-
 22 cluding investigators, attorneys, and administrative law
 23 judges, as may be necessary to carry out the respective
 24 functions transferred under this title. Except as otherwise
 25 provided by law, such officers and employees shall be ap-

1 pointed in accordance with the civil service laws and their
2 compensation fixed in accordance with title 5, United
3 States Code.

4 (b) EXPERTS AND CONSULTANTS.—The Chairman of
5 the Committee may obtain the services of experts and con-
6 sultants in accordance with section 3109 of title 5, United
7 States Code, and compensate such experts and consultants
8 for each day (including travel time) at rates not in excess
9 of the rate of pay for level IV of the Executive Schedule
10 under section 5315 of such title. The Chairman of the
11 Committee may pay experts and consultants who are serv-
12 ing away from their homes or regular place of business
13 travel expenses and per diem in lieu of subsistence at rates
14 authorized by sections 5702 and 5703 of such title for
15 persons in Government service employed intermittently.

16 **SEC. 405. DELEGATION AND ASSIGNMENT.**

17 Except where otherwise expressly prohibited by law
18 or otherwise provided by this title, the Committee may del-
19 egate any of the functions transferred to the Committee
20 by this title and any function transferred or granted to
21 such Committee after the effective date of this title to such
22 members and employees of the Committee as the Com-
23 mittee may designate, and may authorize successive re-
24 delegations of such functions as may be necessary or ap-
25 propriate. No delegation of functions by the Committee

1 under this section or under any other provision of this title
2 shall relieve such Committee of responsibility for the ad-
3 ministration of such functions.

4 **SEC. 406. REORGANIZATION.**

5 The Committee is authorized to allocate or reallocate
6 any function transferred under section 402 among the
7 members of the Committee, and to establish, consolidate,
8 alter, or discontinue such organizational entities in the
9 Committee as may be necessary or appropriate.

10 **SEC. 407. RULES.**

11 The Committee is authorized to prescribe, in accord-
12 ance with the provisions of chapters 5 and 6 of title 5,
13 United States Code, such rules and regulations as the
14 Committee determines necessary or appropriate to admin-
15 ister and manage the functions of the Committee.

16 **SEC. 408. TRANSFER AND ALLOCATIONS OF APPROPRIA-**
17 **TIONS AND PERSONNEL.**

18 Except as otherwise provided in this title, the per-
19 sonnel employed in connection with, and the assets, liabil-
20 ities, contracts, property, records, and unexpended bal-
21 ances of appropriations, authorizations, allocations, and
22 other funds employed, used, held, arising from, available
23 to, or to be made available in connection with the func-
24 tions transferred by this title, subject to section 1531 of
25 title 31, United States Code, shall be transferred to the

1 Committee. Unexpended funds transferred pursuant to
2 this section shall be used only for the purposes for which
3 the funds were originally authorized and appropriated.

4 **SEC. 409. INCIDENTAL TRANSFERS.**

5 The Director of the Office of Management and Budg-
6 et, at such time or times as the Director shall provide,
7 is authorized to make such determinations as may be nec-
8 essary with regard to the functions transferred by this
9 title, and to make such additional incidental dispositions
10 of personnel, assets, liabilities, grants, contracts, property,
11 records, and unexpended balances of appropriations, au-
12 thorizations, allocations, and other funds held, used, aris-
13 ing from, available to, or to be made available in connec-
14 tion with such functions, as may be necessary to carry out
15 the provisions of this title. The Director of the Office of
16 Management and Budget shall provide for the termination
17 of the affairs of all entities terminated by this title and
18 for such further measures and dispositions as may be nec-
19 essary to effectuate the purposes of this title.

20 **SEC. 410. EFFECT ON PERSONNEL.**

21 (a) IN GENERAL.—Except as otherwise provided by
22 this title, the transfer pursuant to this title of full-time
23 personnel (except special Government employees) and
24 part-time personnel holding permanent positions shall not
25 cause any such employee to be separated or reduced in

1 grade or compensation for one year after the date of trans-
2 fer of such employee under this title.

3 (b) EXECUTIVE SCHEDULE POSITIONS.—Except as
4 otherwise provided in this title, any person who, on the
5 day preceding the effective date of this title, held a posi-
6 tion compensated in accordance with the Executive Sched-
7 ule prescribed in chapter 53 of title 5, United States Code,
8 and who, without a break in service, is appointed in the
9 Committee to a position having duties comparable to the
10 duties performed immediately preceding such appointment
11 shall continue to be compensated in such new position at
12 not less than the rate provided for such previous position,
13 for the duration of the service of such person in such new
14 position.

15 (c) TERMINATION OF CERTAIN POSITIONS.—Posi-
16 tions whose incumbents are appointed by the President,
17 by and with the advice and consent of the Senate, the
18 functions of which are transferred by this title, shall termi-
19 nate on the effective date of this title.

20 **SEC. 411. SAVINGS PROVISIONS.**

21 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—
22 All orders, determinations, rules, regulations, permits,
23 agreements, grants, contracts, certificates, licenses, reg-
24 istrations, privileges, and other administrative actions—

1 (1) which have been issued, made, granted, or
2 allowed to become effective by the President, any
3 Federal agency or official thereof, or by a court of
4 competent jurisdiction, in the performance of func-
5 tions which are transferred under this title; and

6 (2) which are in effect at the time this title
7 takes effect, or were final before the effective date
8 of this title and are to become effective on or after
9 the effective date of this title,

10 shall continue in effect according to their terms until
11 modified, terminated, superseded, set aside, or revoked in
12 accordance with law by the President, the Committee or
13 an authorized official, a court of competent jurisdiction,
14 or by operation of law.

15 (b) PROCEEDINGS NOT AFFECTED.—The provisions
16 of this title shall not affect any proceedings, including no-
17 tices of proposed rulemaking, or any application for any
18 license, permit, certificate, or financial assistance pending
19 before the Administration at the time this title takes ef-
20 fect, with respect to functions transferred by this title but
21 such proceedings and applications shall be continued. Or-
22 ders shall be issued in such proceedings, appeals shall be
23 taken therefrom, and payments shall be made pursuant
24 to such orders, as if this title had not been enacted, and
25 orders issued in any such proceedings shall continue in

1 effect until modified, terminated, superseded, or revoked
2 by a duly authorized official, by a court of competent juris-
3 diction, or by operation of law. Nothing in this subsection
4 shall be deemed to prohibit the discontinuance or modi-
5 fication of any such proceeding under the same terms and
6 conditions and to the same extent that such proceeding
7 could have been discontinued or modified if this title had
8 not been enacted.

9 (c) SUITS NOT AFFECTED.—The provisions of this
10 title shall not affect suits commenced before the effective
11 date of this title, and in all such suits, proceedings shall
12 be had, appeals taken, and judgments rendered in the
13 same manner and with the same effect as if this title had
14 not been enacted.

15 (d) NONABATEMENT OF ACTIONS.—No suit, action,
16 or other proceeding commenced by or against the Adminis-
17 tration, or by or against any individual in the official ca-
18 pacity of such individual as an officer of the Administra-
19 tion, shall abate by reason of the enactment of this title.

20 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-
21 MULGATION OF REGULATIONS.—Any administrative ac-
22 tion relating to the preparation or promulgation of a regu-
23 lation by the Administration relating to a function trans-
24 ferred under this title may be continued by the Committee
25 with the same effect as if this title had not been enacted.

1 **SEC. 412. SEPARABILITY.**

2 If a provision of this title or its application to any
3 person or circumstance is held invalid, neither the remain-
4 der of this title nor the application of the provision to
5 other persons or circumstances shall be affected.

6 **SEC. 413. TRANSITION.**

7 The Committee is authorized to utilize—

8 (a) the services of such officers, employees, and other
9 personnel of the Administration with respect to functions
10 transferred to the Committee by this title; and

11 (b) funds appropriated to such functions for such pe-
12 riod of time,

13 as may reasonably be needed to facilitate the orderly im-
14 plementation of this title.

15 **SEC. 414. REFERENCES.**

16 Reference in any other Federal law, Executive order,
17 rule, regulation, or delegation of authority, or any docu-
18 ment of or relating to—

19 (1) the Commissioner of the Administration
20 with regard to functions transferred under section
21 402, shall be deemed to refer to the Committee; and

22 (2) the Administration with regard to functions
23 transferred under section 402, shall be deemed to
24 refer to the Committee.

1 **SEC. 415. ADDITIONAL CONFORMING AMENDMENTS.**

2 (a) RECOMMENDED LEGISLATION.—After consulta-
 3 tion with the appropriate committees of Congress and the
 4 Director of the Office of Management and Budget, the
 5 Committee shall prepare and submit to Congress rec-
 6 ommended legislation containing technical and conforming
 7 amendments to reflect the changes made by this title.

8 (b) SUBMISSION TO CONGRESS.—No later than 6
 9 months after the effective date of this title, the Committee
 10 shall submit the recommended legislation referred to
 11 under subsection (a).

12 **TITLE V—REPEALS OF FORMER**
 13 **PROVISIONS**

14 **SEC. 501. REPEALS.**

15 (a) REPEAL OF FORMER JAVITS-WAGNER-O'DAY
 16 ACT.—The Javits-Wagner-O'Day Act, enacted as the Act
 17 entitled “An Act to create a Committee on Purchases of
 18 Blind-made Products, and for other purposes”, approved
 19 June 25, 1938 (41 U.S.C. 46 et seq.) is repealed.

20 (b) REPEAL OF FORMER RANDOLPH-SHEPPARD
 21 ACT.—The Randolph-Sheppard Act, enacted as the Act
 22 entitled “An Act to authorize the operation of stands in
 23 Federal buildings by blind persons, to enlarge the eco-
 24 nomic opportunities of the blind, and for other purposes”,

1 approved June 20, 1936 (20 U.S.C. 107 et seq.) is re-
2 pealed.

○