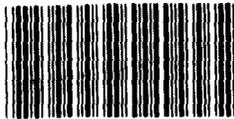


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STATEMENT OF  
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RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION  
BEFORE THE  
SUBCOMMITTEE ON TRANSPORTATION  
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
ON  
GAO'S REPORTS ON THE FEDERAL HIGHWAY ADMINISTRATION'S  
DISADVANTAGED BUSINESS ENTERPRISE  
AND  
OUTDOOR ADVERTISING CONTROL PROGRAMS

Mr. Chairman and Members of the Subcommittee:

We welcome the opportunity to be here today to discuss two of our recent reports, both of which were prepared at the request of the Senate Committee on Environment and Public Works. One report, entitled Information On The Federal Highway Administration's Disadvantaged Business Enterprise Program (GAO/RCED-85-31, Mar. 15, 1985), discusses the Federal Highway Administration's (FHWA) implementation of the program and provides data on the number and location of disadvantaged business enterprises (DBEs);

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their capabilities and expertise to perform highway work; the use of out-of-state DBEs; training programs available to DBEs--both public and private-sector programs; and financial problems affecting the ability of DBEs to participate in highway work, including problems with bonding, licensing, and prequalification. Our audit work under this review was generally limited to a six-state area--Colorado, Florida, Illinois, Maine, New Hampshire, and North Dakota. The report did not contain recommendations.

Our second report, entitled The Outdoor Advertising Control Program Needs To Be Reassessed (GAO/RCED-85-34, Jan. 3, 1985), addresses the effectiveness of the outdoor advertising control program which was established by the Highway Beautification Act of 1965. The act requires states to control outdoor advertising along federally funded Interstate and primary highways. We found that since enactment of this legislation, thousands of outdoor advertising signs, adjacent to these two highway systems, have been removed, thus enhancing the natural beauty along these roadways. However, many prohibited signs are still standing and are likely to remain so because federal funds are not being appropriated to compensate sign owners and site owners for their removal, as required by the act.

We concluded that accomplishing the goals of the act will require either additional federal funding or a change in the compensation requirement. We recommended that the Congress reassess the outdoor advertising control program and, in making this reassessment, weigh the program's goals and requirements against program costs.

We will briefly discuss our findings on each of these programs separately, beginning with our report on DBEs.

#### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The Surface Transportation Assistance Act of 1982, section 105(f), requires that, unless otherwise determined by the Secretary of Transportation, at least 10 percent of the federal-aid highway program funds a state will expend in the fiscal year be awarded to DBEs. These are business firms that (1) are owned and controlled by one or more socially and economically disadvantaged individuals<sup>1</sup> and (2) meet the Small Business Administration's definition of a "small business," based on the business' average annual sales volume or on its number of employees.

#### Background

Although not congressionally mandated until 1983, FHWA has promoted increased use of disadvantaged businesses in federal-aid highway work for several years. (Prior to the 1982 act, the program was named the minority business enterprise (MBE) program.) In 1975 FHWA (1) requested states to prequalify and license 500 minority businesses that could be used as subcontractors, (2) directed the state highway departments and FHWA field offices to change or eliminate state contracting requirements that unfavorably affected minority subcontractors and small prime contractors,

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<sup>1</sup>Individuals presumed by regulation to be socially and economically disadvantaged include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. Any individual may be determined to be eligible on a case-by-case basis.

and (3) required states to maintain directories of interested minority businesses and distribute the directories to prime contractors. In 1977 FHWA began setting nationwide goals for minority business participation in federal-aid highway work. Then in 1980 the Department of Transportation issued regulations mandating that all recipients of transportation funds (states and transportation agencies) have an MBE program. These regulations directed states to prepare MBE programs, set individual contract goals for MBE participation, and certify eligible MBEs. The regulations also required the states to ensure that contractors made and documented good-faith efforts to meet contract goals.

Following passage of the 1982 act, the Department of Transportation in February 1983 implemented the act's provision requiring the use of DBEs in federal highway work by proposing rules to carry out section 105(f), and in April 1983 issued a notice of interim policy. Final regulations governing the administration of the DBE program became effective in August 1983 and changed the name of the program from MBE to DBE.

#### Program status

According to FHWA records, the amounts and percentages of funds going to minority businesses have steadily increased. In 1975, when FHWA began recording MBE participation, minority businesses were receiving \$32.5 million, or about .5 percent, of the nation's highway contract funds. By 1982 MBEs' received \$415.5 million, or about 5 percent; and in 1983, when section 105(f) took effect, DBEs received nearly \$800 million, or 9.8 percent, of the nation's highway contract funds.

As previously stated, in March of this year we completed our review of certain aspects of the DBE program. Regarding the act's 10-percent participation requirement, we found that FHWA established a national goal of 8.8 percent for 1983 by prorating each entity's (the 50 states, the District of Columbia, and Puerto Rico) initial 1983 goal (set prior to the 1982 act) for the first 3 months of 1983 and the act's 10-percent provision for the remaining 9 months. According to FHWA, the goal was exceeded, with DBEs receiving 9.8 percent of the nation's federally aided highway contract funds in 1983.

Concerning other topics in the report, we found that the latest state directories available as of September 1984 show that 7,106 individual DBE firms were certified in the United States for highway work. Certification of DBEs is made either by the Small Business Administration or by the states receiving DBE assistance. To be certified as a DBE firm, at least 51 percent of the business must be owned by a socially and economically disadvantaged individual(s). In addition, active management and operations of the firm must be controlled by one or more of those individuals.

Data contained in state and federal records for the six states we reviewed indicated that capabilities exist among the certified DBEs to perform 10 percent of the highway work needed by these states. This is based on the number and sales volume of only those contractors who actively bid and have provided evidence of expertise in doing the types of work required. Meeting these goals, however, may be constrained by the time and location of

highway jobs and competing demands on DBEs' resources from other federal, state, and local programs. Sufficient data were not available in federal or state records for us to make a determination of all DBEs' expertise to do highway work.

Out-of-state DBEs performed federally aided highway work in all six states we reviewed. According to highway officials in each of the six states, out-of-state and in-state DBEs are notified of upcoming work in the same manner. However, prime contractors in those states told us that out-of-state DBEs will not normally bid on the small subcontracts they have to offer. Accordingly, we found that contract awards made to out-of-state DBEs during the period of our six-state review were relatively few except in New Hampshire where 63 percent of the DBE contract awards were made to out-of-state DBEs.

Training and assistance were available to DBEs in all the states we reviewed, though in varying degrees. Much of the training targeted specifically at those DBEs involved in highway construction was given by the states, with FHWA funding. Annual FHWA funding for training since 1977 averaged about \$3.8 million until 1984, when it increased to over \$9 million. Types of FHWA-funded training included instruction on (1) preparing bids, (2) keeping accounts, and (3) preparing loan and bond applications.

Other training was available to DBEs through a variety of sources, although these programs were not targeted specifically at highway construction businesses. For example, the Small Business Administration reported assisting 100,935 minority businesses nationwide in 1983 at a cost of \$22 million. The Department of

Commerce's Minority Business Development Agency reported assisting 16,541 minority firms by providing seminars and individual counseling. The Department of Transportation's Office of Small and Disadvantaged Business Utilization sponsored 14 Program Management Centers, with the primary purpose of locating DBEs that could provide goods and services to the various Department of Transportation agencies, including FHWA. During 1983 these centers' contracts totaled over \$3 million.

We found that very little training specifically directed at DBEs was available from the private sector. The prime contractors we interviewed told us that they occasionally provide on-the-job advice or financial support to individual DBE subcontractors.

DBEs and state officials in the six states reviewed, as well as federal and association officials, cited occasional difficulty in obtaining bonds, slow payment to subcontractors by prime contractors, withholding of a portion of payment by prime contractors, and obtaining operating loans as financial problems encountered by DBEs. Such problems are generally considered common to small businesses. Based on our review, we found that the problems identified had little adverse affect on the DBEs' overall ability to obtain highway construction work. There were no reported problems with licensing or prequalification.

#### OUTDOOR ADVERTISING CONTROL PROGRAM

Returning to our report on the outdoor advertising control program, I will briefly discuss how we conducted our review and will summarize our findings.

Because each state establishes and administers its own program, we selected, with FHWA's and the requesting Committee's assistance, seven states for review: Arizona, Georgia, Kentucky, Louisiana, Maine, Oregon, and South Dakota. We chose these states because they had different program performance records, are geographically dispersed, and are within six of FHWA's nine regions. We also reviewed sign control programs in the local jurisdictions of Dallas, Texas; Portland, Oregon; and Southampton, New York.

Through the use of a questionnaire survey of state transportation or highway agencies, we obtained all 50 states' views on the sign-control program and information on how they are implementing it.

#### Background

The Highway Beautification Act of 1965 established a national policy and program for the control of outdoor advertising along federally funded Interstate and primary highways. The purpose of controlling outdoor advertising is to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty. Each state is required to develop and administer its own sign-control program consistent with the national policy and program. The Department of Transportation, through FHWA, oversees the states' programs. The Secretary of Transportation is authorized to withhold 10 percent of the annual federal highway funds of any state that has not established and maintained an effective sign-control program.

The act and implementing regulations require states to remove "nonconforming" and "illegal" signs and restrict the construction of new signs. Nonconforming signs, as defined by the regulations, are those that were legally erected before the program's requirements became effective. Owners of these signs and their sites must be compensated for their removal. The federal government pays 75 percent of the cost of compensation and the states are responsible for 25 percent. Illegal signs are those that were erected after the act's requirements became effective. These signs must be removed expeditiously and removing them does not require the payment of compensation to sign and site owners.

The act does not, however, require states to remove all existing signs or prohibit the erection of all new signs. The major classifications of signs that are exempted from control are

- signs on the property on which the advertised activity is conducted (on-premise signs);
- directional and other official signs and notices required or authorized by law;
- signs in zoned and unzoned industrial and commercial areas that meet state requirements as to size, lighting, and spacing; and
- signs classified as landmarks.

A 1978 amendment broadened the act's compensation provision by requiring that sign and site owners be paid for signs that are removed because they do not conform to local laws or ordinances. Prior to the amendment, localities could remove these signs without providing monetary compensation.

## Program status

Over \$200 million has been spent on the program since 1965. Annual federal program expenditures, however, have declined from about \$27 million in fiscal year 1976 to about \$2 million in fiscal year 1984. As of September 30, 1984, about \$15 million in program funds had been obligated and remained to be spent by the states. The administration has not requested new program funds in its budget requests since 1982 and Congress appropriated no funds for fiscal year 1984.

Although about 587,000 signs have been removed since the program began in 1965, about 172,000<sup>2</sup> nonconforming and illegal signs remained standing along our nation's Interstate and primary highways as of September 30, 1983, according to FHWA data. Of the remaining signs, about 124,000 are nonconforming and about 48,000 are illegal. These were the most recent comprehensive data available at the time of our review.

It is unlikely that the remaining nonconforming signs will be removed in the near future since FHWA estimates that about \$427 million in federal funds would be required to remove the 124,000 signs that remain standing and little federal funding is available for compensation.

The removal of illegal signs has also declined in recent years. Seventy-three percent fewer signs were removed in 1983 than in 1980. This decline is not, however, attributable to the reduction in federal funds, since removing illegal signs does not

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<sup>2</sup>Not including signs affected by the 1978 amendment.

require the payment of compensation. Rather, based on our review in seven states, the decline resulted from limited state resources, state procedures which slow sign removals, and lack of support for the program.

In response to our questionnaire, 45 states indicated that over 30,000 new legal signs were erected in their states in 1983.

#### Federal oversight and state program problems

Although federal law requires states to remove illegal signs and restrict new ones--irrespective of federal funding--FHWA's overall oversight of state sign-control programs declined as federal funding decreased. FHWA deemphasized the program and, in one FHWA regional administrator's view, states may have taken advantage of this relaxed approach. A 1983 FHWA review of state programs identified or restated problems with state programs and suggested that some states were not effectively controlling outdoor advertising. For example, the FHWA review indicated that Arizona, Kentucky, and Louisiana, three of the seven states we visited, were not removing illegal signs expeditiously. While the Secretary of Transportation has not penalized any state for a program infraction since 1977, FHWA has worked with some states, including the three mentioned above, to resolve problems with their programs.

#### Effects of the 1978 amendment

The 1978 amendment increased the cost of outdoor advertising control by increasing the number of signs that cannot be removed without compensation. FHWA estimates that 38,000 additional signs that did not conform to local laws or ordinances became eligible

for monetary compensation because of this amendment and that their removal will require an additional \$334 million in federal funds. The amendment has hindered sign removal in some localities that had planned to remove signs without paying monetary compensation. In lieu of monetary compensation, these localities would have allowed sign owners to retain their signs for a specified period of time in order to recoup their investment.

#### Vegetation and tree control and clearance

The Highway Beautification Act does not refer to the control or clearance of trees or vegetation near outdoor advertising signs. However, in response to the request of the Chairman, Senate Committee on Environment and Public Works, we obtained information on policies, procedures, and practices for controlling or clearing vegetation near signs along federal-aid highways.

In response to our questionnaire survey, most states indicated that they do not allow sign owners to control vegetation or cut trees near signs along Interstate or primary highways. Twenty-four states reported that a total of 253 instances of illegal cutting of vegetation or trees occurred in their states during 1983.

Of the seven states we reviewed, Georgia is an example of a state that does not allow sign owners to control or cut vegetation or trees on the right-of-way. The state has had a continuing problem with illegal cutting near signs. Louisiana is an example of a state that allows sign owners to cut right-of-way vegetation and trees in front of signs, including trees planted by the state. On the basis of our review of state permit records and our

observations at sign sites where vegetation and tree cutting was permitted, we estimate that thousands of trees have been destroyed in Louisiana so that outdoor advertising signs can be viewed from federal-aid highways.

Once again, our evaluation concluded that accomplishing the goal of the Highway Beautification Act will require either additional federal funding or a change in the compensation requirement of the act, as amended.

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This concludes my prepared statement. I will be happy to answer any questions you may have.