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STATEMENT OF EDWARD A. DENSMORE, DEPUTY DIRECTOR,

HUMAN RESOURCES DIVISION

BEFORE THE

SUBCOMMITTEE ON MANPOWER AND HOUSING

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

FEDERAL EFFORTS TO PROVIDE EMPLOYMENT OPPORTUNITIES
AND ENFORCE LABOR STANDARDS IN SHELTERED WORKSHOPS



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SUMMARY OF GAO TESTIMONY BEFORE THE SUBCOMMITTEE ON MANPOWER
AND HOUSING, HOUSE COMMITTEE ON GOVERNMENT OPERATIONS,
REGARDING THE EMPLOYMENT OF HANDICAPPED INDIVIDUALS IN
SHELTERED WORKSHOPS

A September 28, 1981, GAO report on the role of sheltered workshops in employing the handicapped contained several recommendations aimed at strengthening Federal efforts in providing employment opportunities and enforcing labor standards in sheltered workshops.

Although the Committee for Purchase from the Blind and Other Severely Handicapped and Department of Labor have taken many actions to implement the recommendations additional steps are needed, particularly in regard to (1) oversight of the central nonprofit agencies that assist the Committee in administering the Javits-Wagner-O'Day program, and (2) reaching a decision as to whether or not Federal minimum wage provisions apply to publically operated workshops.

Congress could also take actions to improve the Javits-Wagner-O'Day program by (1) improving procedures for adding items to the Procurement List, (2) establishing a standard by which employment opportunities created by the program could be measured, and (3) making placement of handicapped individuals into competitive employment a goal of the program.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our report on "Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops." ¹ As you know, a Committee on Purchases of Blind-Made Products was created by the Wagner-O'Day Act, in 1938, to establish a list of suitable products (Procurement List) which government entities must purchase from designated sheltered workshops for the blind. Under the Act, the Committee designated the National Industries for the Blind, a private, nonprofit corporation, to assist the Committee to carry out the Act's provisions and serve as a liaison between the Federal Government and the workshops for the blind. Since a budget or staff for the Committee was not authorized, the program's administrative work was largely done by National Industries for the Blind.

In June 1971, the Congress amended the Wagner-O'Day Act (Public Law 92-28, 41 U.S.C. 46-68 (1976)) to (1) authorize a full-time staff and funding for the Committee to perform certain administrative matters, (2) include services as well as products on the Procurement List and (3) expand the program (commonly referred to as the Javits-Wagner-O'Day program)

¹LHRD-81-99, dated September 28, 1981.

participation to workshops employing other severely handicapped persons in addition to the blind. Amendments in 1974 changed its name to the Committee For Purchase From The Blind And Other Severely Handicapped. Under the 1971 act, the Committee must (1) establish rules and regulations to implement the program, (2) determine which commodities and services are suitable for production or provision by qualified workshops, (3) issue and maintain the Procurement List, (4) determine the fair market price of items on the Procurement List, (5) revise prices in accordance with changing market conditions, and (6) generally monitor program activities. National Industries for the Blind continued to represent blind workshops but declined the opportunity to extend its role to include workshops for the severely handicapped. In March 1975, the National Industries for the Severely Handicapped assumed responsibility for representing other severely handicapped workshops.

Since passage of the 1971 act, the program's annual sales increased from \$18.3 million to \$175 million in fiscal year 1982; workshops for the blind reported sales of \$119 million and workshops for the severely handicapped reported sales of \$56 million. In fiscal year 1982, 75 workshops for the blind and 152 workshops for the severely handicapped participated and about 10,208 of 38,881 handicapped workers in the 227 workshops were employed on items procured by the government.

Workshops that produce commodities or provide services to the government under the Javits-Wagner-O'Day program must comply with several laws relating to compensation and employment standards for their blind and severely handicapped employees. The Department of Labor is responsible for monitoring sheltered workshops' compliance with Federal standards for minimum wages paid handicapped workers regardless of whether or not they participate in the Javits-Wagner-O'Day program.

While the 1971 act was intended to strengthen the program's administration, concern over the Committee's administrative practices and procedures, especially by small businesses, was not totally alleviated. Allegations about workshops' compliance with Federal labor standards were also receiving national publicity. In response to a July 10, 1979 congressional request we reviewed the role of sheltered workshops in employing the handicapped.

In summary, we found that the Committee's practices and procedures generally complied with the act's provisions. However, we identified improvements needed in the Committee's administrative procedures for:

- Establishment of the commission rate and standards of accountability for commissions received by the National Industries for the Blind and for the Severely Handicapped.

--Public notification of proposed additions to the Procurement List.

--Evaluation of workshops' compliance with the act's requirements that handicapped labor must account for not less than 75 percent of the total direct labor hours in the workshop.

In addition, the Committee did not adequately evaluate employment opportunities for the handicapped under the program. Workshops were not required to (1) maintain a certain percentage of handicapped labor for commodities or services sold to the Federal Government and (2) identify placements into competitive employment attributable to employment opportunities created by the program. In addition, workshops did not always comply with Federal labor standards, especially in establishing piece or hourly rates, determining prevailing wage rates in local industry, and recordkeeping, and Labor efforts to enforce Federal labor standards needed strengthening.

While the Committee and Labor have taken many actions to improve employment opportunities and strengthen labor standards for the handicapped in sheltered workshops during the 20 months since our report was issued, additional steps are needed.

COMMISSION RATE NOT
ADEQUATELY EVALUATED

Although the Committee was authorized to designate National Industries for the Blind and National Industries for the Severely Handicapped to assist in the program's administration, the act did not address how the agencies should be reimbursed for their program-related activities. Using its rulemaking authority, the Committee authorized each agency to charge workshops up to four percent of their gross sales for commodities and services on the Procurement List. National Industries for the Blind received about \$4.2 million for the fiscal year ended 1982 and National Industries for the Severely Handicapped received \$2.1 million for its 1982 fiscal year. However, the Committee has not assessed the reasonableness of the commission rate or established standards of accountability for the commissions received by the central nonprofit agencies.

The two nonprofit agencies serve as an effective way of linking public and private resources to administer a Federal socioeconomic program. Although the Committee published the general responsibilities of the nonprofit agencies in the Federal regulations, neither the act nor the regulations limit the scope of the agencies' activities. While the agencies were originally designed to function as "staff arms" of the Committee, their activities and functions have expanded over time

to include a wide range of services designed to improve the performance of their associated workshops. Although the nonprofit agencies rely on the commissions received from the sale of commodities and services to the Federal Government as their primary source of operating revenue, the Committee did not require the agencies to submit proposed financial or operating plans or expenditure reports on their program-related activities. Without a budget review and analysis of financial information, the Committee cannot assure that the commissions received by the agencies are reasonable.

Under the act, the Committee determines a fair market price for commodities and services placed on the Procurement List. The Committee has interpreted the fair market price to be the median for commodities and average for services of the competitive bids on the last solicitation. In instances where the award price or workshop cost plus a five percent mark-up (for the commission and general administrative expenses to the workshop) exceed the median or average of the bids, the workshop receives the higher price. Because the commission rate directly affects the fair market price or the revenue earned by the workshops, we recommended that the Committee establish procedures to assure that (1) the two nonprofit agencies have sufficient funds to carry out their duties and responsibilities

under the act, and (2) the prices paid by the Federal Government and the Commission paid by the workshops are not excessive.

In May 1982, the Committee's executive director notified National Industries for the Blind and National Industries for the Severely Handicapped that each agency must submit:

- a program that reflects its major activities and total value of projected sales at least 90 days before each fiscal year begins and
- a report on its major activities and accomplishments, including its total sales under the program within 120 days after each fiscal year ends.

The Committee received the program plans for fiscal year 1983 in June and July 1982 and the final reports for fiscal year 1982 in January and February 1983. Our analysis of these reports showed that while they discussed either planned activities or actual accomplishments, no budget or expenditure information was provided. While we recognize that the committee's actions represent a step toward the development of procedures to monitor the performance of the two nonprofit agencies, the Committee still does not receive sufficient information to assess the adequacy of the commission rate or the use of commissions by the two agencies. Without operating plans that clearly define each nonprofit agency's program-

related responsibilities and activities and related budget and accounting information to document program-related expenditures, the committee cannot properly fulfill its responsibilities for establishing and monitoring the commission charged by the nonprofit agencies.

COMMITTEE'S PROCEDURES MAY NOT
ALWAYS MINIMIZE INDUSTRY IMPACT

Under the Act, government entities must purchase commodities and/or services included on the Procurement List from designated sheltered workshops. Because most additions to the list result in a loss of sales for one or more private businesses, the implementing regulations require the Committee to consider whether each addition would have a serious adverse impact on the current or most recent contractor of the commodity or service. Although the Committee's procedures were adequate to analyze the impact of its proposed additions on existing industry, additional effort could minimize the impact on small businesses and assure that the best information is available to decide whether an item should be added to the Procurement List.

Under the act, the Committee must publish a notice in the Federal Register at least 30 days before an addition to the Procurement List is considered (in compliance with the rulemaking procedures of section 553 of title 5 of the United States Code). Although the requirement was designed to

alleviate congressional concern that affected persons have the opportunity to comment on proposed Committee actions, many current or recent suppliers, particularly small businesses, were not aware of proposed additions because they did not subscribe to the Federal Register. We also pointed out a similar condition in a 1976 report ².

According to the Committee's executive director, the procedures for notifying and permitting interested parties the opportunity to submit comments had not changed. Suppliers are notified directly only when (1) no or questionable information on sales is available, (2) it appears that a supplier would be seriously impacted or (3) suppliers were interested parties on earlier Committee actions. The executive director estimated that direct notification occurred in not more than 20 percent of the Committee's 81 actions during fiscal year 1982.

In view of the Committee's stated intent to rely primarily on the Federal Register to notify suppliers affected by Committee actions, we continue to believe that the Congress should amend the Wagner-O'Day Act to require the Committee to directly notify current suppliers and others who, in the Committee's judgement, would be adversely affected when a product or

²"Investigation Into Purchases from Workshops for the Blind and Other Severely Handicapped" (PSAD-76-118, April 9, 1976, pp. 5 to 7).

service is considered for addition to the Procurement List. Direct notification would provide more assurance that the Committee receives the best available information for making its decisions because those most affected by Committee actions would be provided the opportunity to comment. Also, current suppliers could avoid expenditures made in anticipation of the next procurement or initiate action to adjust their future marketing plans if timely notification of Committee actions is made.

METHODS OF ASSESSING WORKSHOP
ELIGIBILITY WERE WEAK

To maintain eligibility, each sheltered workshop must annually certify that blind or severely handicapped persons performed 75 percent or more of the workshop's total direct labor hours. The Committee used the annual reports to identify 10 workshops that did not maintain a 75 percent level of handicapped direct labor hours during fiscal years 1977 to 1979. Records at 27 workshops we visited, however, showed that information in 10 reports was not accurate because (1) direct labor hours were estimates rather than actual hours, (2) part-time or temporary nonhandicapped workers were not reported, (3) direct labor hours were not properly classified as handicapped or nonhandicapped, and/or (4) computational errors were made. In addition, the accuracy of two workshops' reports

could not be determined because adequate records were not maintained to document handicapped and nonhandicapped direct labor hours. Also, at five workshops we observed nonhandicapped persons classified as indirect labor (such as supervisors, administrators, or inspectors) performing direct labor for extended periods.

Although the Committee is responsible for monitoring each workshop, few workshops were visited annually because the committee had limited staff and resources. For example, of the 27 workshops we visited, the Committee staff had made one visit to 22 during the 5-year period preceding our site visit; 5 of the workshops had not been visited within 5 years.

In response to our recommendation, the Committee revised its procedures to require that (1) each new workshop be inspected within six months after it begins production under the program and (2) each participating workshop be inspected at least once every two years. Committee records show that an average of 85 workshops were visited annually during fiscal years 1980 to 1982 compared to an average of 31 during the prior 3 fiscal years.

According to the Committee's executive director, all new workshops were visited within 6 months and no workshop was visited less often than every two and a half years. According

to the Committee's executive director, the inspections identified about four or five workshops a year that did not maintain an adequate system to record direct labor hours, or raised questions concerning the accuracy of the information submitted in the annual reports. In addition, 10 workshops reported that less than 75 percent of the direct labor hours during fiscal year 1982 were performed by handicapped workers. The increased number of visits and the additional activities performed by the Committee staff during the visits are significant improvements in the Committee's oversight.

INCREASED EMPLOYMENT OPPORTUNITIES
WERE NOT ADEQUATELY MEASURED

Providing employment opportunities for handicapped workers is the primary objective of the Javits-Wagner-O'Day program. Although direct labor hours were reported for all workshop activities, hours worked by handicapped and nonhandicapped workers on commodities and services procured under the program were not reported separately. As a result, employment opportunities for handicapped and/or nonhandicapped workers attributable to the program could not be measured.

Employment Opportunities Created by
the Program Should be Measured

Visits to 27 workshops showed that the hours worked on commodities and services under the program generally accounted for a small portion of the total direct labor hours for the workshops. Thus, nonhandicapped workers could be used to produce commodities or provide services under the program without jeopardizing a workshop's ability to meet the act's 75 percent of direct labor requirement for blind or severely handicapped workers. We recommended that the Committee establish a system to monitor the percentage of handicapped labor and require the workshops to report the percentage in their annual reports. Further, we recommended that the Congress amend the Wagner-O'Day Act to require sheltered workshops to meet a specific standard, such as the act's present 75 percent requirement, for handicapped direct labor hours on commodities and services provided under the program.

Beginning in fiscal year 1982, the Committee required workshops to report the hours worked by handicapped and nonhandicapped workers for items procured by the government under the program as well as for the entire workshop. According to the Committee's executive director, handicapped workers in 20 of the 75 participating workshops for the blind and 35 of the 152 workshops for the severely handicapped accounted for less

than 75 percent of the direct labor hours on items produced under the program.

Handicapped workers accounted for less than 65 percent of the direct labor hours for 26 of the 55 workshops. Although the Committee stresses the desire that handicapped workers provide at least 75 percent of the direct labor hours on items procured by the government, many workshops have the impression that they do not have to try to meet the 75 percent ratio for government-procured items. To assure that the primary measure of the program's success is employment opportunities for the handicapped on items procured by the government, we recommended that the act be amended to require the workshops to use handicapped workers for at least 75 percent of the direct labor on items procured under the program.

Procurement List Additions Should Provide
An Increase in Handicapped Employment

The Committee's procedures required sheltered workshops to include only the estimated number of staff-years of work for handicapped workers for each proposed addition to the Procurement List. The Committee was not provided with information on the estimated percentage of direct labor hours for handicapped and nonhandicapped workers before deciding whether a commodity or service should be added to the List. Since the Committee was responsible for assuring that each

addition provided employment opportunities primarily for handicapped workers, we recommended that the Committee require that estimated direct labor hours for handicapped and nonhandicapped workers be provided for each proposed addition to the Procurement List.

For proposed additions to the Procurement List submitted to the Committee after March 15, 1982, the Committee required workshops to provide the percent of handicapped direct labor hours and the number of staff-years of handicapped direct labor including the length of time needed to phase-in handicapped workers. According to the Committee's executive director, a workshop is expected to need a phase-in period of up to six months when it begins to produce a new item or provide a new service. As part of its workshop inspection, the Committee staff evaluates the workshop's efforts to achieve a 75 percent level of handicapped direct labor hours during the first six months of production of a new item. We believe that the Committee's actions strengthened the process for approving new products or services for the Procurement List.

PLACEMENT INTO COMPETITIVE EMPLOYMENT NOT ADEQUATELY STRESSED

Placement of handicapped workers into competitive employment was not specifically stated in the act as a program objective. Although the program provided numerous employment

opportunities for the handicapped in sheltered workshops, the workshops's success in assisting handicapped workers to advance into competitive employment has been limited. Although workshops are required to annually report the number of handicapped workers placed into competitive employment, records at the 27 workshops visited were not sufficient to measure placements attributable to employment opportunities created by the program.

The percentage of handicapped workers placed in competitive employment (placement rate) for workshops participating in the program during fiscal year 1979 was only slightly higher than the 12 percent rate reported in a Labor study of 2,530 sheltered workshops in 1977. According to annual reports submitted to the Committee, the placement rate for 157 participating workshops was 14.5 percent for fiscal year 1979. Our analysis showed that the rate was 8.6 percent for 66 workshops employing the blind during fiscal year 1979 compared to 15.8 percent for 92 workshops employing the severely handicapped. A few workshops accounted for a disproportionately large number of the placements reported. For example, 7 of the 66 workshops for the blind accounted for 70 percent of the total placements; 27 workshops reported no placements. Similarly, 7 of the 92 workshops for the severely handicapped accounted for 38 percent of the

total placements. However, only 2 workshops did not report any placements.

To measure a workshop's success in placing handicapped workers into competitive employment, we recommended that the Committee require each workshop to report placements attributable to employment opportunities created by the program. Beginning in fiscal year 1982, the Committee required each workshop to report placements of handicapped workers who performed direct labor on items on the Procurement List. Committee records show that 75 blind workshops reported placing 210 of 2,926 workers (7.2 percent) and 152 handicapped workshops reported placing 549 of 7,282 workers (7.5 percent) during fiscal year 1982.

Since the placement of handicapped workers into competitive employment is not recognized in the act as a program objective, workshops may have less incentive to place workers outside the workshop. As a result, many high-functioning persons might remain in sheltered workshops. Therefore, we continue to believe that the act should be amended to require that employment opportunities created by the program be used, to the maximum extent, to prepare handicapped persons for employment outside the workshop.

ENFORCEMENT OF FEDERAL LABOR
STANDARDS IN SHELTERED WORKSHOPS

Under the Fair Labor Standards Act, Labor gathers data on the wages, hours, and other conditions and employment practices of sheltered workshops to evaluate compliance with Federal requirements. Labor investigators reported that 317 of the 524 workshops investigated during fiscal years 1977 to 1979 had underpaid 11,482 handicapped workers about \$2.7 million. Problems existed in computing piece rates, establishing hourly rates, determining prevailing wage rates in local industry, and maintaining adequate records. Our visits to 38 sheltered workshops in 12 States and the District of Columbia identified violations similar to those reported by Labor investigators.

Due to the large sheltered workshop population and Labor's limited resources, the enforcement of Federal labor standards depends to a large extent on voluntary compliance by sheltered workshops. Labor investigated from three to six percent of the workshop universe annually during fiscal years 1977 to 1979. Analysis of 233 investigations in five regions showed that 105 different investigators performed investigations and 75 of those made investigations in just one of the three years. None of the five regions reported spending more than half a staff year investigating sheltered workshops, and four of the five regions reported spending less than one staff year on sheltered workshop investigations during the 3-year period.

We concluded that the effectiveness of Labor's enforcement process could be improved if regional and area offices specified a level of staff resources to be used to investigate workshops and assigned compliance officers experienced in investigating sheltered workshops more frequently. Labor increased its sheltered workshop investigations to 10 percent of the total workshops in fiscal years 1980 and 1981. Due to budget restrictions, 8 percent of the total workshops were investigated in 1982 and the same percent is planned for 1983.

Labor's investigators reported that 638 of the 1,369 workshops investigated during fiscal years 1980 to 1982 underpaid 19,382 handicapped workers about \$3.9 million. Although Labor does not monitor the number of staff hours used to investigate workshops, the higher percentage of workshops investigated should represent an increased level of staff resources used to enforce labor standards in workshops. Further, Labor's Field Operations Handbook was revised to provide that (1) trained compliance officers should conduct investigations of workshops and (2) workshop investigations should not be made by a number of different individuals on an infrequent basis. Although training has been reduced because of budget cuts, some individual and specialized training has been conducted. Labor's actions should increase the number and improve the quality of Labor investigations of workshops' compliance with Federal labor standards.

Labor had stopped investigating publically operated workshops until it decided on the applicability of a 1976 Supreme Court ruling that Federal minimum wage provisions did not apply to State and local government employees engaged in activities that are an integral part of traditional government services. Although we recommended that a decision be made on this matter, Labor officials told us in April 1983 that a decision had not been made and publically operated workshops were not being investigated.

The Committee has initiated actions which will enable it to monitor compliance with Federal labor standards for workshops participating in the Javits-Wagner-O'Day program. On February 15, 1983, the Committee published a proposed rule in the Federal Register requiring sheltered workshops to comply with Federal labor standards to establish and maintain eligibility for the program. In addition, the Committee can take action when workshops fail to comply. For example, the Committee could limit or withdraw a workshop's eligibility to produce commodities or provide services under the program if it failed to pay workers in accordance with Federal labor standards.

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Mr. Chairman, this concludes my statement. We will be pleased to respond to any questions you or members of the Subcommittee may have.