

BY THE COMPTROLLER GENERAL
Report To The Honorable
Barry M. Goldwater, Jr.
House Of Representatives
OF THE UNITED STATES

Stronger Federal Efforts Needed For
Providing Employment Opportunities
And Enforcing Labor Standards
In Sheltered Workshops

Certain of the Fair Labor Standards Act's provisions for handicapped workers in sheltered workshops create an unnecessary administrative burden for the Department of Labor and sheltered workshops.

Labor needs to strengthen its enforcement of other Fair Labor Standards Act provisions for handicapped workers employed in sheltered workshops.

Also, improved procedures are needed under a federally sponsored procurement program for increasing employment opportunities for the handicapped in sheltered workshops. Specifically, better procedures are needed for

- evaluating employment opportunities created by the program,
- notifying affected parties of proposed actions, and
- monitoring workshops' compliance with eligibility requirements.

GAO makes several recommendations to the Congress and the Secretary of Labor for simplifying the administration of the Federal labor standards and strengthening their enforcement.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-198860

The Honorable Barry M. Goldwater, Jr.
House of Representatives

Dear Mr. Goldwater:

In response to your July 10, 1979, request and later discussions with our representatives, we have reviewed the role of sheltered workshops in employing the handicapped and operating in the competitive business community. This report describes the administration and enforcement of the Fair Labor Standards Act's provisions for handicapped workers employed in sheltered workshops and the administration of a federally sponsored procurement program established by the Wagner-O'Day Act to increase the employment opportunities in sheltered workshops. Also, the major factors affecting the competition between sheltered workshops and private industry in the open market are addressed.

The report also discusses what the Congress, the Department of Labor, and the Committee for Purchase from the Blind and Other Severely Handicapped should do to improve Federal efforts in providing employment opportunities and enforcing labor standards for handicapped workers in sheltered workshops.

Copies of this report are being sent to the Director of the Office of Management and Budget, appropriate congressional committees, agency officials, and other interested parties.

Sincerely yours,

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, prominent "M" and "F".

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE HONORABLE
BARRY M. GOLDWATER, JR.
HOUSE OF REPRESENTATIVES

STRONGER FEDERAL EFFORTS NEEDED FOR
PROVIDING EMPLOYMENT OPPORTUNITIES
AND ENFORCING LABOR STANDARDS
IN SHELTERED WORKSHOPS

D I G E S T

Sheltered workshops, established at the State and local levels, provide both training and employment for the physically and mentally handicapped population of our Nation. In July 1979, Congressman Barry M. Goldwater, Jr., asked GAO to review the role of sheltered workshops in (1) employing the handicapped and (2) operating in the competitive business community. GAO's subsequent study focused primarily on the administration and enforcement of the Fair Labor Standards Act's provisions relating to handicapped workers employed in sheltered workshops and the administration of a federally sponsored procurement program established by the Wagner-O'Day Act. Factors affecting the relationship between sheltered workshops and private industry were also addressed. (See pp. 7 to 9.)

Although the Federal Government has taken many actions to improve the employment opportunities and labor standards for the handicapped, GAO recommends that the Congress simplify the Fair Labor Standards Act's provisions and that Labor strengthen its enforcement efforts. Also, GAO recommends that the Wagner-O'Day Act's administration should be strengthened.

FEDERAL LABOR STANDARDS
SHOULD BE SIMPLIFIED

The Fair Labor Standards Act, as amended, authorizes Labor to issue special certificates to sheltered workshops for employing handicapped workers at wage rates lower, but not less than 50 percent of the statutory minimum wage unless specifically exempt. Special exemptions are needed to prevent possible curtailment of employment opportunities for handicapped workers who are not able to produce at the subminimum wage rate.

GAO's analysis of Labor's special certificates showed that congressional intent to encourage a minimum standard of earnings for handicapped workers has not been realized because 83 percent of the total workshop population was employed under Labor's special exemption certificates at the end of fiscal year 1979.

Due to the lower functioning level of many handicapped workers in sheltered workshops, GAO believes that strict application of the subminimum wage requirement may result in (1) unemployment rather than higher wages for many of these now exempt or (2) additional paperwork and administrative costs for justifying individual exemptions. The vast majority of sheltered workshop workers are now paid based on their individual productivity.

If the Federal subminimum wage requirement were eliminated, the workshops would still be required to base the workers' wages on individual productivity. Elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The many exemption provisions would no longer be needed, and a single certificate could be used to establish a workshop's eligibility to pay handicapped workers less than the minimum wage.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the Fair Labor Standards Act to eliminate the provision that handicapped persons who are employed under special Labor certificates must not be paid less than 50 percent of the statutory minimum wage.

RECOMMENDATION TO THE SECRETARY OF LABOR

GAO recommends that the Secretary revise the Federal regulations to (1) require that each sheltered workshop establish and document a guaranteed wage minimum for each handicapped worker and (2) establish procedures for workshops to use in documenting each worker's guaranteed wage minimum.

ENFORCEMENT OF FEDERAL LABOR STANDARDS
SHOULD BE STRENGTHENED

For fiscal years 1977-79, Labor reported that 317 (or 60 percent) of the 524 workshops investigated had underpaid 11,482 handicapped workers about \$2.7 million. GAO's analysis in five Labor regions showed that:

- Sheltered workshops often failed to pay wages based on an individual's productivity or to comply with the terms and conditions of an approved Labor certificate. (See pp. 38 and 39.)
- Problems existed in computing piece rates, establishing hourly rates, determining prevailing wage rates in local industry, and maintaining adequate records. (See pp. 32 to 37.)
- 75 out of 105 different investigators made investigations in only 1 year, 23 in 2 years, and only 7 in 3 years, and none of the five regions reported spending more than one-half of a staff year investigating sheltered workshops. (See pp. 39 and 40.)

GAO believes that Labor's enforcement effort has been significantly weakened because it has excluded publicly operated workshops from its investigation process until a decision is made on the applicability of a 1976 Supreme Court ruling that the act's minimum wage provision did not apply to State and local government employees engaged in activities that are an integral part of traditional government services. (See pp. 43 to 45.)

The act's provisions concerning wages based on handicapped workers individual productivity cannot be enforced by Labor if the resulting wage rate exceeds the statutory minimum. As a result, handicapped workers may not be paid according to the act's provisions even though they receive the minimum wage or higher. (See pp. 41 to 43.)

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

The Secretary should decide whether the requirements of the Fair Labor Standards Act should be applied to publicly operated sheltered workshops. Management control over the planning, implementation, and evaluation of the investigation process for sheltered workshops' compliance with the requirements of the Fair Labor Standards Act should be strengthened. (See pp. 46 and 47.)

MATTERS FOR CONSIDERATION
BY THE CONGRESS

GAO recommends that the Congress consider amending the act to extend Labor's authority for enforcing the provision that a handicapped worker's wages must be commensurate with those paid non-handicapped workers. (See p. 47.)

ADMINISTRATION OF THE
JAVITS-WAGNER-0'DAY PROGRAM
SHOULD BE STRENGTHENED

Under the Wagner-0'Day Act, as amended, the Committee for Purchase from the Blind and Other Severely Handicapped is responsible for (1) approving suitable products or services for Federal Government procurement from sheltered workshops, (2) establishing the fair market prices, and (3) establishing rules and regulations for implementing the program (commonly referred to as the Javits-Wagner-0'Day program). (See pp. 51 to 54.)

Based on an analysis of the records for 185 commodities and services approved by the Committee for fiscal years 1977-79 and visits to 27 sheltered workshops participating in the Javits-Wagner-0'Day program, GAO believes that the Committee's administrative procedures should be strengthened. Public notification (in the Federal Register) of proposed additions to the list of goods and services to be procured from sheltered workshops does not provide current or recent Government suppliers with sufficient notice. (See pp. 58 to 64.)

Also, the Committee's procedures are not adequate for making sure that participating sheltered workshops comply with the act's requirement that handicapped labor must account for not less than 75 percent of the total direct labor hours in the workshop. In many instances, sheltered workshops were reporting to the Committee misleading or inaccurate information. (See pp. 64 to 69.)

The Committee for Purchase from the Blind and Other Severely Handicapped has delegated many administrative responsibilities to two central nonprofit agencies. Using its rulemaking authority, the Committee established a commission rate for reimbursing the two agencies. However, it has not established procedures for evaluating the adequacy of the rate or the commissions received by the central nonprofit agencies. (See pp. 54 to 58.)

RECOMMENDATIONS TO THE CHAIRMAN OF
THE COMMITTEE FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

The Chairman should establish procedures for (1) verifying the accuracy of the reports submitted by the workshops for the number of direct labor hours worked by handicapped and nonhandicapped workers and (2) evaluating the adequacy of the commission rate and the commissions received by the central nonprofit agencies. (See p. 75.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should amend the Wagner-O'Day Act to require that the Committee for Purchase from the Blind and Other Severely Handicapped notify directly affected suppliers of the Committee's intent to consider the suitability of a product or service for procurement from a sheltered workshop. (See p. 75.)

MATTER FOR CONSIDERATION
BY THE CONGRESS

GAO recommends that the Congress consider requesting the Committee to assess its oversight responsibilities and provide the Congress with an estimate of the resources needed for an adequate level of Federal oversight. (See p. 75.)

EMPLOYMENT OPPORTUNITIES FOR THE HANDICAPPED
UNDER THE JAVITS-WAGNER-O'DAY PROGRAM ARE
NOT ADEQUATELY EVALUATED

Although the act requires that 75 percent of the direct labor hours for each participating workshop be provided by handicapped workers to maintain eligibility for the program, the Committee does not require the workshops to (1) maintain a certain percentage for commodities and services supplied to the Federal Government or (2) report the percentage for such sales. Although the act did not establish the placement of handicapped workers into competitive employment as a program objective, the Committee requires workshops to report annually the number of handicapped workers placed. However, the workshops are not required to identify placements attributable to employment opportunities created by the Javits-Wagner-O'Day program. Presently, job placement is not used as a performance measure by the Committee, and thus, there is less incentive for placing workers outside the workshop. As a result, many high-functioning persons might remain in sheltered workshops. (See ch. 5.)

RECOMMENDATIONS TO THE CHAIRMAN OF
THE COMMITTEE FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

The Chairman should require participating sheltered workshops to (1) provide the estimated direct labor hours for handicapped and nonhandicapped workers for each proposed addition to the Procurement List and (2) report the total direct labor hours for handicapped and nonhandicapped workers for all products produced and for services provided annually under the program. A recommendation is also made to strengthen the Committee's evaluations of workshops' placement efforts. (See p. 91.)

RECOMMENDATIONS TO THE CONGRESS

The Congress should amend the Wagner-O'Day Act to (1) require that sheltered workshops meet a specific standard for the percentage of handicapped direct labor hours on all commodities produced and/or services provided under the program and (2) recognize that employment opportunities created by the program should be used, to the maximum extent,

to prepare handicapped workers for placement into competitive employment outside the workshop. (See p. 90.)

COMPETITIVE RELATIONSHIP BETWEEN SHELTERED WORKSHOPS AND PRIVATE INDUSTRY

When nonprofit and for-profit organizations compete, the rules and conditions of the competition tend to favor the nonprofit organizations. Federal laws, especially income tax provisions, under certain conditions, may provide a competitive advantage for sheltered workshops over private businesses. However, GAO's analysis showed that workshops generally incurred added costs for serving and employing a handicapped labor force--costs which may offset the effect of whatever competitive advantages a workshop may receive. (See ch.6.)

AGENCY COMMENTS

The Department of Labor generally agreed with GAO's recommendations relating to the administration and enforcement of the Fair Labor Standards Act's provisions. It did not comment on the recommendation that the act be amended to eliminate the provision that handicapped workers employed under Labor certificates must be paid not less than 50 percent of the statutory minimum wage. Also, Labor stated that it was not in a position to endorse the recommendation relating to the establishment and documentation of a guaranteed wage for each handicapped worker without conducting a detailed analysis of its full ramifications.

The Committee for Purchase from the Blind and Other Severely Handicapped agreed (1) workshops should provide the estimated direct labor hours to the Committee when a proposed action is being considered and (2) the percentage of direct labor for handicapped workers should be monitored for commodities produced and services provided under the Javits-Wagner-O'Day program. However, the Committee disagreed with the recommendation that affected suppliers should be notified directly of proposed additions to the Procurement List. Also, the Committee did not agree with GAO's recommendations relating to the monitoring of workshops' placement programs.

The National Industries for the Blind and the National Industries for the Severely Handicapped, two private nonprofit corporations designated to assist the Committee in the administration of the Javits-Wagner-O'Day program, generally agreed with GAO's recommendations relating to the administration and enforcement of the Fair Labor Standards Act's provisions. However, the corporations disagreed with the recommendations relating to the administration of the Javits-Wagner-O'Day program pointing out that additional reporting and verifying procedures would cause a significant administrative burden for sheltered workshops. They also point out that implementation of many of the recommendations would appear to contradict the administration's intent to reduce paperwork.

The two corporations believe that the program should continue to have the flexibility to do its job and not be hamstrung with overregulation and compliance review. While GAO shares their concern that Federal reporting and administration requirements should be minimized wherever possible, GAO believes that the recommendations are necessary for the Committee to insure (1) compliance with the act's requirements and (2) achievement of the program's goals and objectives efficiently and effectively.

The comments provided have been incorporated in appropriate sections of this report, and a full text of all comments received appears in appendixes VI through IX.

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CHAPTER 1

INTRODUCTION

Our society has been concerned about the welfare of handicapped persons for a long time. The physically and mentally handicapped population represents a disadvantaged, minority group which traditionally has been dependent on public assistance for survival and support. Since 1963, the Federal Government has taken many actions to improve the employment opportunities and labor standards for handicapped persons. As the demand for community services for the handicapped increased, sheltered workshops have played an important role by providing both training and employment for severely handicapped persons.

According to Department of Labor information, the number of sheltered workshops increased from 978 in fiscal year 1967 to 3,877 in fiscal year 1979, serving an estimated 174,746 handicapped persons. Some of the physically and mentally handicapped are able to move into competitive employment in the community after training, but most of them because of the severity of their handicaps require long-term training and sheltered employment.

WHAT IS A SHELTERED WORKSHOP?

Although the term "sheltered workshop" is commonly used, it does not have a common meaning. In this report, a sheltered workshop is any vocationally oriented rehabilitation facility which provides (1) training, including structured employment, for handicapped workers who have potential for competitive employment or (2) full-time employment for severely handicapped persons who cannot move from sheltered into competitive employment. Sheltered workshops provide a controlled, work-oriented environment to assist handicapped persons develop their optimal level of vocational and social functioning.

Sheltered workshops are established and operated at the State and local levels to address rehabilitation and employment needs of the handicapped. Although sheltered workshops primarily serve handicapped persons, some workshops may serve only clients with a specific disabling condition, and others may serve clients having a broad range of disabilities. While the types of disabling conditions vary considerably, the major disability groups include the mentally retarded, mentally ill, visually impaired, and orthopedically handicapped. According to Labor's March 1979 study of sheltered workshops (based on a 1976 personal interview survey), mentally handicapped persons comprise 83 percent of the workshop population, physically handicapped workers account for 10 percent, and socially disabled workers for 7 percent. 1/ Although sheltered

1/U.S. Department of Labor, Sheltered Workshop Study, Vol. II, March 1979, page 31.

workshops are the principal, and often the only, source of employment for the severely handicapped, sheltered workshops do not necessarily employ only handicapped workers. Many sheltered workshops employ, on a full- or part-time basis, nonhandicapped workers.

Most workshops provide a wide range of vocational and rehabilitation services, such as

- evaluation (testing, vocational determination, or continuing review of development),
- work adjustment training (acceptance of supervision, cooperating with fellow workers, or developing good work habits),
- vocational training (developing or improving occupational skills), and
- placement services.

At some workshops, the range of services provided is very limited.

Generally, sheltered workshops are classified as either a (1) regular workshop program or (2) work activities center. A regular workshop program is one in which the employment opportunities for handicapped persons are stressed. In contrast, a work activities center is generally defined as a center which is planned and designed exclusively for providing therapeutic activities for handicapped persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential. In work activities centers, the primary emphasis is on therapy rather than on work.

According to Labor statistics, there were 1,689 regular workshop programs and 3,079 work activities centers at the end of fiscal year 1979. 1/ In many instances, a rehabilitation facility will operate both a regular workshop program and a work activities center. Labor statistics show that 3,877 organizations operated a regular program, a work activities center, or both at the end of fiscal year 1979. However, Labor statistics overstate the number of individual organizations operating sheltered workshops because Labor considers each branch location as a separate workshop. Some workshops operate totally from a central location, and others operate as many as nine branch or satellite locations.

1/For reporting purposes, Labor collected information for the fiscal year ended September 20, 1979.

The sources of revenue for sheltered workshops also vary substantially depending on the goals established and the type of handicapped population served by the workshop. For example, sheltered workshops generate revenue from the production efforts of the handicapped employees. Typically, business income is derived from subcontract work for other businesses, prime manufacturing of products for sale to Federal, State, or local governments or on the competitive market and the provision of services, such as custodial, janitorial, grounds maintenance, or equipment repair and maintenance. Federal, State, and local government agencies also provide funding support through general support grants or paying fees for services. In addition, sheltered workshops are supported to varying degrees by private sources of revenue, including donations from individuals and organizations, fundraising activities, and vocational and rehabilitation service fees paid by individuals or insurance companies.

According to Labor statistics, more than 75 percent of the sheltered workshops are operated by private nonprofit corporations. The scope of each corporation's activities and its operating policies are controlled by a board of directors which usually represents the local business leaders or other interested persons in the community. Many of the private corporations provide a wide variety of services in addition to the employment activities of the sheltered workshop. Often, these other activities account for a major part of the corporation's budget and assist far greater numbers of handicapped persons than those employed by the workshop. The remainder of the workshops are publicly operated either by a State or a local political subdivision. Although many sheltered workshops are operated by the agency administering a State's vocational rehabilitation program, sheltered workshops are also operated by other State agencies, independent agencies or boards established under State law, and county or other political subdivisions of a State. In some instances, workshops are operated as part of a State or local hospital, institution, or school system.

FEDERAL ACTIONS RELATING TO SHELTERED WORKSHOPS

The Federal Government has played a major role in the growth and development of sheltered workshops, including providing a variety of funding sources, establishing special procurement opportunities, and regulating workshop employment practices and procedures.

Federal financial assistance for sheltered workshops

Enactment of the Mental Retardation Facilities and Community Mental Health Centers Construction Act (Public Law 88-164, 77 Stat. 282) in 1963 provided the basis for a major Federal effort to develop and improve services for the severely handicapped. The act provided for Federal assistance in establishing sheltered workshops

for mentally retarded persons through grants for new construction and expansion of existing buildings, employing staff, and purchasing equipment.

The 1965 Amendments to the Vocational Rehabilitation Act (Public Law 89-333, 79 Stat. 1282) authorized a comprehensive program of Federal financial assistance for rehabilitation facilities (including sheltered workshops), established a technical assistance program for improving workshops, and mandated statewide planning of sheltered workshops and other rehabilitation facilities.

Enactment of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (Public Law 91-517, 84 Stat. 1316) also provided for statewide planning of services and facilities for persons with developmental disabilities ^{1/} as well as Federal financial assistance for providing services and developing facilities, including sheltered workshops.

Amendments to the Social Security Act in 1967, 1972, and 1974 provided Federal financial assistance for social services for handicapped persons who were recipients or potential recipients of public assistance. Through these amendments, sheltered workshops received Federal funds for providing rehabilitation and social services for improving the level of economic independence or employability of handicapped persons.

The passage of the Rehabilitation Act of 1973 (Public Law 93-112, 87 Stat. 355) provided for a wide variety of rehabilitation services for severely handicapped persons. Under the 1973 act, Federal funds were used for establishing and conducting vocational rehabilitation programs for assisting handicapped persons to prepare for and engage in competitive employment to the extent of their capabilities. State rehabilitation agency staff provide referral, counseling and guidance, and placement services. They also coordinate and authorize the acquisition of needed services from other public programs or purchase the required services on a fee-for-service basis from the private sector, including sheltered workshops or rehabilitation facilities.

Sheltered workshops also receive Federal funds through programs established by other Federal laws, including the Vocational Education Amendments of 1968 (Public Law 90-576, 82 Stat. 1064) for funding staff or providing services for training the handicapped; the Small Business Investment Act Amendments of 1972 (Public Law 92-595, 86 Stat. 1314) for financial assistance, through loans or

^{1/}Mental retardation, cerebral palsy, epilepsy, autism, and severe dyslexia were conditions generally accepted as constituting a developmental disability under the 1970 amendments.

loan guarantees, for producing and marketing commodities and services; the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Public Law 95-602, 92 Stat. 2955) for providing services or developing facilities; and the Comprehensive Employment and Training Act of 1973 (Public Law 93-203, 87 Stat. 839) for providing job training, and employment for economically disadvantaged, unemployed, or underemployed persons.

Federal efforts for improving employment opportunities in sheltered workshops

In addition to providing financial and technical assistance to workshops, the Federal Government also provides special priorities for sheltered workshops in the Federal procurement market. The Wagner-O'Day Act, as amended (Public Law 92-28, 85 Stat. 77), created the Committee for Purchase from the Blind and Other Severely Handicapped to establish a list of suitable products and services which the Federal Government must purchase from designated sheltered workshops. The original law, enacted in 1938, required procurement only from workshops for the blind. However, amendments in 1971 extended coverage to sheltered workshops serving other severely handicapped persons. The Committee's primary purpose is to increase the employment opportunities for blind and other severely handicapped persons.

In 1980, amendments to the Small Business Act (Public Law 96-302, 94 Stat. 839) authorized public and private nonprofit organizations to participate in the small business set-aside program. The set-aside program is administered by the Small Business Administration and is designed to increase the number of Federal contracts awarded to small businesses. Under this program, the Small Business Administration works with Federal procuring agencies to identify commodities and services which do not require large facilities, organizations, or investments for the bidder to be competitive. The law limits the participation of public and private nonprofit organizations, including sheltered workshops, to fiscal years 1981, 1982, and 1983. Also, the total amount of set-asides for these organizations may not exceed \$100 million in any year.

Federal labor standards protection

Wages of handicapped workers in most sheltered workshops are protected by three basic labor standards laws: the Fair Labor Standards Act of 1938, as amended (Public Law 75-718, 52 Stat. 1060), the Service Contract Act of 1965, as amended (Public Law 89-286, 79 Stat. 1034), and the Walsh-Healey Public Contracts Act of 1936, as amended (Public Law 74-846, 49 Stat. 2036). Labor is responsible for administering and enforcing these acts.

The Fair Labor Standards Act of 1938, as amended, established provisions and standards for recordkeeping, minimum wages, overtime pay, child labor, and equal pay. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce. The act provides special exemptions from its requirements for workers employed in certain occupations or establishments, including sheltered workshops. For example, the Secretary of Labor is authorized to issue special certificates for employing handicapped workers in sheltered workshops at wages lower than the statutory minimum (now \$3.35 an hour) to encourage sheltered workshops to hire handicapped workers who are not capable of earning the statutory minimum because of low productivity. Under the act, the wages paid handicapped workers in sheltered workshops must be commensurate with those paid nonhandicapped workers in local industry for essentially the same type, quality, and quantity of work. Labor is also responsible for monitoring sheltered workshops' compliance with the Federal standards.

The Service Contract Act of 1965, as amended, provides labor standards protection for employees of contractors furnishing services to the Federal Government. Some examples of services 1/ covered under the act include laundry and dry cleaning, mail transportation, custodial, janitorial, grounds maintenance, security and guard services, packing and crating services, cafeteria and food service, aerial survey, ambulance services, equipment repair and maintenance services, inventory services, linen supply services, lodging services, support services at military installations, drafting and illustrating services, computer operation and repair, keypunching services, and warehousing or storage services. Under the act, workers performing services under a Federal contract must receive wages not less than the minimum wage specified under the Fair Labor Standards Act and, for contracts exceeding \$2,500, the minimum wages and fringe benefits must be based on rates determined by the Secretary of Labor to be prevailing for service employees in the locality.

The Walsh-Healey Public Contracts Act provides labor standards protection for employees of contractors manufacturing! or furnishing materials, supplies, articles, and equipment to the Federal Government for all contracts exceeding \$10,000. Under the act, employees must be paid wages not lower than the minimum wages determined by the Secretary of Labor to be prevailing in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract. In the absence of a higher minimum wage, the minimum rate established by the Fair Labor Standards Act must be paid.

1/Underlined examples represent typical services provided by employees of sheltered workshops.

Workshop employment is also affected by other Federal laws, including the Occupational Safety and Health Act (Public Law 91-596, 84 Stat. 1590) in regard to the safety and health of workers and the Rehabilitation Act of 1973 (Public Law 93-112, 87 Stat. 355) in regard to nondiscrimination on the basis of a handicapping condition in employment under any program or activity receiving Federal financial assistance.

OBJECTIVES, SCOPE, AND METHODOLOGY

During the past decade, several national studies and conventions have addressed the role of sheltered workshops for training and employing severely handicapped persons. ^{1/} Also, the operating practices of sheltered workshops have received national publicity during recent years as the subject of several legislative and executive branch hearings. In addition, a series of articles highlighting wages and working conditions in sheltered workshops were published in the Wall Street Journal during 1979 and early 1980. Handicapped workers and the operating practices of sheltered workshops were also the subject of a special investigation presented on the CBS (Columbia Broadcasting System) television program "Sixty Minutes" in June 1979.

Based on publicity highlighting problems in the operating practices of sheltered workshops and on information provided by representatives of private industry, Congressman Barry M. Goldwater, Jr., asked us to examine the role of sheltered workshops in (1) employing the handicapped and (2) operating in the competitive business community. Primarily, Congressman Goldwater was interested in an assessment of sheltered workshops' administration of and compliance with the requirements of several Federal laws and programs, the relationship of workshops to other businesses competing in the same product or service markets, and the effects of Federal funding on sheltered workshop activities.

The purpose of our study was to analyze Federal efforts for providing employment opportunities and enforcing labor standards for handicapped workers in sheltered workshops. Within this context, another objective of the study was to obtain a better understanding of the role of sheltered workshops in the competitive business community. Specifically, the study addresses the major factors affecting the competition between sheltered workshops and private industry for the sale of similar commodities and services on the open market. We did not do a broad-based examination of the role of sheltered workshops in providing rehabilitation, independent-living, or related services to the handicapped. However, the operating practices and procedures relating to the role of sheltered

^{1/}See appendix III for a selected bibliography with annotations.

workshops as a service provider are addressed in relation to the movement of handicapped workers from sheltered into competitive employment and the factors affecting the competition between sheltered workshops and private industry.

Because Congressman Goldwater's request dealt with a broad range of issues involving the operating practices of public and private nonprofit sheltered workshops in Federal procurement programs and competition on the open market, we made our study at Federal, State, and local government agencies; private business organizations; and sheltered workshops. In addition, we discussed the issues surrounding sheltered workshop operations with legislative and executive branch officials, interest group representatives, academicians, representatives and officials of private businesses, sheltered workshop officials, and State and local government officials.

Administration of Federal labor standards

Chapter 2 discusses Labor's process for certifying sheltered workshops to pay handicapped workers wages lower than the statutory minimum wage established by the Fair Labor Standards Act, as amended. The chapter discusses the (1) growth in the number of sheltered workshops since the 1966 amendments to the act, (2), characteristics of Labor's special certificates for handicapped workers in sheltered workshops, and (3) factors influencing the use of special certificates by sheltered workshops. We also included an assessment of the effect of the act's provisions on the wages paid handicapped workers and the types of certificates issued to sheltered workshops.

Enforcement of Federal labor standards

Chapter 3 discusses Labor's process for investigating sheltered workshops' operating practices and procedures to determine whether workshops are in compliance with the requirements of the Fair Labor Standards Act. The chapter highlights the general problems incurred by sheltered workshops in complying with the act's requirements and presents the results of our analysis of Labor's enforcement process for five Labor regions during fiscal years 1977, 1978, and 1979. Limitations on Labor's authority for enforcing the act's requirements are also discussed.

Administration of federally sponsored employment opportunities

The Wagner-0'Day Act, as amended, provides the primary Federal effort for increasing the employment opportunities for handicapped workers in sheltered workshops. Chapter 4 discusses the management responsibilities of the Committee for Purchase from the Blind and

Other Severely Handicapped with regard to the procurement of selected commodities and services by the Federal Government from sheltered workshops. The chapter describes and assesses the Committee's process for reviewing and approving items for procurement from sheltered workshops, reimbursing the central nonprofit agencies designated to provide administrative assistance to the Committee, and monitoring eligibility requirements for workshops participating in the program.

Evaluation of federally sponsored employment opportunities

The Committee for Purchase from the Blind and Other Severely Handicapped was created to increase employment opportunities for blind and other severely handicapped persons in sheltered workshops. Chapter 5 describes and assesses the Committee's procedures for measuring its success in achieving this objective. It also discusses factors influencing the movement of handicapped workers who are producing commodities or providing services under the act from sheltered into competitive employment.

Competition between sheltered workshops and private industry on the open market

The operation of sheltered workshops in the dual capacity of service provider and employer has aroused increasing congressional and public interest over the role of workshops in the competitive business community. Chapter 6 discusses the major factors affecting the competition between sheltered workshops and private industry for the sale of similar commodities and services on the open market. Although existing Federal laws appear to give sheltered workshops a competitive advantage, other factors must be considered. These factors are presented through references to and illustrations of key provisions of Federal laws and of the operating practices of sheltered workshops.

Scope of review and methodology

Chapter 7 provides a detailed discussion of our work, assumptions, and limitations. The chapter describes the methodology used for selecting the Labor regional offices and sheltered workshops included in our study. ^{1/} We also included the procedures used for collecting information, the types of information collected, and the different analyses performed to serve as a basis for our conclusions and recommendations.

^{1/}See appendix II for a list of the sheltered workshops visited.

CHAPTER 2
FEDERAL LABOR STANDARDS FOR
HANDICAPPED WORKERS IN SHELTERED
WORKSHOPS SHOULD BE SIMPLIFIED

The Fair Labor Standards Act, as amended, established Federal labor standards for paying handicapped workers employed in sheltered workshops. Labor spends the majority of the resources it uses for administering and enforcing the act's special provisions for handicapped workers on a complex and time-consuming process for certifying sheltered workshops to pay less than the statutory minimum wage for handicapped workers. Furthermore, staff resources used for reviewing applications and issuing special certificates have greatly increased.

Our analysis of Labor's special certificates showed that the congressional intent to generally provide a guaranteed wage of 50 percent of the statutory minimum wage to handicapped persons working in a productive capacity in sheltered workshops has not been realized. Handicapped workers who would benefit most from the act's provision are excluded from coverage and only those whose wage rate would seldom fall below 50 percent of the statutory minimum were employed under certificates requiring the Federal wage guarantee. Less than 17 percent of the handicapped workers employed in sheltered workshops under Labor certificates, as of the end of fiscal year 1979, were eligible for the Federal subminimum wage guarantee. 1/

THE FAIR LABOR STANDARDS
ACT OF 1938 , AS AMENDED

The Fair Labor Standards Act (29 U.S.C 201 et seq.), enacted on June 25, 1938, established the principle of a nationwide minimum wage standard. In addition, the act provided standards for hours of work and child labor and established the Wage and Hour Division in Labor to administer and enforce the act's provisions. The act has been amended several times to increase the minimum hourly wage rate and the number of covered workers and provide for equal pay for workers performing equal work. In 1977, amendments established a minimum wage of \$2.65 an hour, effective January 1, 1978, and further increases to \$3.35 an hour by January 1, 1981. Labor reported that about 60.1 million workers were covered by the act's provisions as of the end of fiscal year 1979.

1/For reporting purposes, Labor collected information for the fiscal year ended September 30, 1979.

Under the 1938 act, the Secretary of Labor was authorized to issue special certificates for paying handicapped workers at wages lower than the statutory minimum, as specified in such certificates. The Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 830) substantially revised the act's provisions for paying handicapped persons at special minimum wages. The 1966 amendments were designed to encourage the maintenance of a minimum standard of earnings for handicapped workers and assure that these workers were not exploited through low wages. According to the amendments, handicapped workers must be paid wages based on their individual productivity in proportion to wages being paid nonhandicapped workers performing similar tasks in their locality. The amendments also established the principle of a subminimum wage standard (50 percent of the statutory minimum) for handicapped workers in sheltered workshops. To prevent curtailment of employment opportunities, the amendments provided authority for special exemptions permitting handicapped workers to be paid at wage rates lower than the Federal subminimum standard.

Section 14(c)(1) of the act provides that the Secretary of Labor, to the extent necessary to prevent the loss of employment opportunities, establish procedures for issuing special certificates for allowing individuals, whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, to be employed at wages which are lower than the statutory minimum wage established under section 6 of the act. Section 14(c)(1) also provides that handicapped persons employed under the special certificates must be paid wages which are not less than 50 percent of the statutory minimum wage and which are commensurate with wages paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

However, section 14(c)(2) provides that the Secretary of Labor may issue special certificates for employing handicapped workers at wages lower than the subminimum wage standard. According to regulations established by the Secretary and upon the approval of the State agency administering vocational rehabilitation services, special certificates may be issued to sheltered workshops for (1) employing handicapped workers on work which is incidental to training or evaluation programs and (2) multihandicapped persons or others whose earning capacity is so severely impaired that they are unable to engage in competitive employment. For any certificate issued under section 14(c)(2), the wages paid to each individual must be related to the worker's productivity.

In addition, section 14(c)(3) provides similar authority for the Secretary to issue special certificates to sheltered workshops for employing handicapped persons in work activities centers at wages less than the subminimum wage standard established under section 14(c)(1) of the act. Again, the Secretary must establish

regulations providing that the wages paid individuals in work activities centers constitute equitable compensation. In this section, the term "work activities center" is defined as centers planned and designed exclusively for providing therapeutic activities for handicapped clients whose physical or mental impairment was so severe as to make their productive capacity inconsequential.

LABOR'S PROCESS FOR CERTIFYING SHELTERED WORKSHOPS

The Wage and Hour Division of Labor's Employment Standards Administration is responsible for administering the special provisions relating to the payment of wages to handicapped workers. Under its authority, Labor established separate procedures for issuing certificates authorizing special minimum wages for handicapped workers in sheltered workshops and in private industry. Labor's certification process for sheltered workshops is primarily designed to review and approve applications for paying handicapped workers less than the statutory minimum wage (now \$3.35 an hour) and less than the statutory subminimum wage (now \$1.67 an hour)

For certification purposes, Labor established two major classifications for sheltered workshops: a regular program workshop and a work activities center. A regular program workshop generally employs the more productive handicapped workers, and a work activities center employs severely handicapped workers with a lower productive ability. Only handicapped persons employed in a workshop having a regular program certificate are required to receive the Federal subminimum wage guarantee. Although the wage rate for a regular program certificate cannot be less than the subminimum wage, a higher rate not exceeding the statutory minimum can be set. Work activities center certificates are not required to set a guaranteed wage rate.

In addition, three other types of certificates can be granted for exempting handicapped workers from the federally guaranteed rate in a regular program workshop or from Labor's regulations on individual productivity in a work activities center. 1/ Handicapped persons may be employed under an evaluation certificate in a program which uses the medium of work for determining an individual's potential. A training certificate is used for employing individuals in a program using work for teaching a specific skill or for developing acceptable patterns of behavior in work situations. Also, individual rate certificates can be issued for employing individuals whose (1) handicapping condition and/or productive

1/According to Labor's procedures, handicapped workers whose earnings regularly exceed 50 percent of the statutory minimum over a consecutive 3-month period cannot be employed in a work activities center, unless specifically exempt. (See p. 20.)

capacity is so limited that the person is not able to earn the wage rate set for a regular program workshop or (2) earnings in a work activities center regularly exceed 50 percent of the statutory minimum wage for a recent consecutive 3-month period. Although handicapped persons employed in regular program workshops under evaluation, training, or individual rate certificates are exempt from the federally guaranteed subminimum rate, some certificates may provide for a specific wage rate (lower than the Federal guarantee) which must be paid by the workshop.

Generally, certificates are issued for 1 year and are renewable upon application. For a newly established workshop, a short-term certificate may be issued to allow the handicapped workers to establish their earning capacity. Handicapped workers may not be paid less than the applicable statutory minimum wage, or prevailing wage, before the effective date of the special certificate issued to the workshop. Each type of certificate, except for the individual rate certificate, applies to all handicapped persons employed in the workshop at the time of application and to new workers entering the workshop during the life of the certificate. It is not necessary to report workers who are terminated from employment or transferred to other jobs. A certificate may be canceled if (1) it was fraudulently obtained, (2) the terms were violated, or (3) it was no longer needed.

PAPERWORK REQUIREMENTS HAVE INCREASED

The amount of paperwork has increased substantially as the number of workshops and handicapped workers requiring exemptions increased. Paperwork includes (1) applications for the special certificates prepared by workshops and reviewed by Labor, (2) applications for special exemption certificates reviewed and certified by State vocational rehabilitation agencies, and (3) certificates prepared and issued by Labor officials. From fiscal year 1967-79, the number of workshops certified by Labor increased from 978 to 3,877 (a 296-percent increase), and the number of handicapped workers rose from 49,645 to 174,746 (a 252-percent increase). 1/ However, the number of certificates approved annually increased from 1,116 to 13,728, a 1,130-percent increase over the same period. Since fiscal year 1968, the certificates guaranteeing the Federal subminimum wage have only increased from 1,761 to 2,220 annually, a 26-percent increase. 2/ Thus, the majority of the increased paperwork has been caused by the need to exempt lower

1/Appendix IV shows the number of certified workshops and the number of handicapped workers employed in these workshops by fiscal year.

2/Fiscal year 1968 was the first full year of operation under the 1966 amendments.

functioning handicapped workers from the requirements of the Federal subminimum wage guarantee.

During fiscal year 1967, Labor issued 1,116 certificates. Following the implementation of the 1966 amendments, each sheltered workshop could qualify for one, several, or all five types of special Labor certificates. As a result, the numbers of certificates issued and the resulting paperwork requirements increased substantially. During fiscal year 1968, Labor issued 6,171 certificates, an increase of 453 percent over the previous year. Of these, 1,761 certificates required the payment of the Federal subminimum wage or above, and 4,410 exempted workshops from paying the Federal wage guarantee. Of the 4,410, 630 were approved for work activities centers, 648 for evaluation and training, and 3,132 for individual rates. During fiscal year 1979, Labor issued 13,728 certificates--2,220 required workshops to pay the Federal subminimum or above and 11,508 exempted workshops from paying the Federal wage guarantee. Of the 11,508, 2,560 were for work activities centers, 1,663 for evaluation and training, and 7,285 for individual rates.

In addition to the increases in the number of certificates issued annually, the paperwork burden has also increased due to the different applications which must be filed with Labor regional offices and State vocational rehabilitation agencies, especially for the increased number of special exemptions requested for evaluation and training programs and individual rates. Labor, through its regional offices, processes the applications submitted by sheltered workshops for the five types of special certificates. Generally, one or more individuals are responsible for reviewing applications and issuing certificates in each regional office. According to the responsible Labor officials in four of the five regions we visited, 1/ the time spent for the certification process ranged from about 0.5 to 1.5 staff years, depending on the number of workshops in each region. For these regions, the number of certified workshops ranged from 292 to 677 as of the end of fiscal year 1979.

Every workshop requesting a special certificate for operating a regular program workshop or a work activities center must submit annually a single application providing a wide range of information about its general operating practices and wage structure. Among other things, the workshop must furnish (1) a description of the services offered, (2) the types of employment provided, (3) the nature of the disabilities of the workers employed, (4) earnings data on handicapped workers, and (5) certain financial information relating to the work program. Additionally, each workshop requesting a special certificate for operating an evaluation and/or

1/Labor officials in one region declined to estimate the time spent on the certification process.

training program must submit annually a separate application; a separate application must also be submitted for each individual rate certificate requested.

Also, applications for evaluation, training, and individual rate certificates must be filed with the State vocational rehabilitation agency if the requested wage rate is less than 50 percent of the statutory minimum wage. For evaluation and training programs, the State vocational rehabilitation agency must prepare an authorization stating that the program meets its standards, substantially equivalent standards, for such programs before the workshop's application can be submitted to Labor. The State rehabilitation agency must also certify on each application for an individual rate that the individual's earning capacity is so severely impaired that he or she is unable to engage in competitive employment. Although applications for evaluation and training certificates must be submitted annually, requests for renewing individual rate certificates may be included with the information on the applications filed annually for a regular program certificate. Therefore, the increased paperwork for Labor regional offices, State vocational rehabilitation agencies, and workshops is directly related to the number of lower functioning handicapped workers who are exempt from the requirements of the Federal subminimum wage guarantee.

MAJORITY OF HANDICAPPED WORKERS ARE EXEMPT FROM FEDERAL SUBMINIMUM WAGE GUARANTEE

Special treatment of the handicapped was recognized because many individuals cannot successfully compete for jobs at the statutory minimum wage because of age or physical or mental disabilities. If a worker's productivity is low, then the worker's earned wages will be low. Arbitrarily raising a worker's wages without a corresponding increase in his or her marginal productivity would place his or her pay above the value of his or her contribution--this situation which would make it unprofitable for a workshop to hire or keep the worker. To prevent curtailment of employment opportunities for such individuals, the special provisions were included in the 1966 amendments to induce employers to hire handicapped workers who were not capable of earning the statutory minimum wage because of low productivity. Similarly, special provisions were also included to provide sufficient flexibility for employing severely handicapped workers at wage rates lower than the statutory sub-minimum wage standard established by the 1966 amendments.

Section 605 of the 1966 amendments required that Labor study the wage payments of handicapped workers in sheltered workshops, including the feasibility of raising their existing wage standards in sheltered workshops. Labor's report, sent to the Congress in September 1967, concluded that the congressional intent to substantially raise the wages of handicapped workers in sheltered workshops

through the special provisions of the 1966 amendments had not been realized. 1/ According to the report, the requirement that the minimum wage for handicapped workers in sheltered workshops should be at least 50 percent of the statutory minimum wage had not significantly affected the wage structure for these workers. The report pointed out that about one-half of all handicapped workers in sheltered workshops earned less than 50 percent of the statutory minimum 2 years before the 1966 amendments and in 1967 after the effective date of the amendments. According to the report, the 50-percent requirement did not have a discernible effect because about half of the handicapped workers were covered under one of the special exemption certificates (training or evaluation, individual rate, or work activities center) and the other half were earning at least 50 percent of the statutory minimum before the 1966 amendments. The study also concluded that increases in the statutory wage rate for handicapped workers under the act would probably increase the number of work activities centers (to which a specified minimum wage is not applicable) rather than increase the wages of handicapped workers.

Since the enactment of the 1966 amendments, the statutory minimum wage has increased from \$1.40 to \$3.35 an hour, as of January 1, 1981. While the total handicapped population employed in sheltered workshops has increased more than 250 percent since the amendment's provisions were implemented, the number of workers covered by the subminimum wage guarantee has increased less than 15 percent. In fact, the percent of the total workshop population covered by the subminimum wage guarantee has decreased or remained constant each year since the passage of the amendments. 2/ For the first full year of implementation (1968), about 53 percent of the 47,900 handicapped workers in sheltered workshops were covered by the Federal subminimum wage standard. Of the 174,746 handicapped workers in sheltered workshops at the end of fiscal year 1979, less than 17 percent were covered by the subminimum wage guarantee.

Although the other 83 percent were employed under one of the four special exemption certificates, the 1966 amendments provide that each handicapped worker must be paid wage rates, based on his or her individual productivity, commensurate with those paid non-handicapped workers performing similar tasks in their locality. Thus, all handicapped workers are protected against the payment of arbitrarily low wages by sheltered workshops.

1/U.S. Department of Labor, Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act, Washington, D.C., September 1967, page 15.

2/Appendix V shows the number of handicapped workers employed in sheltered workshops by fiscal year and type of Labor certificate.

Handicapped workers exempt from
Federal subminimum wage guarantee
under evaluation, training, and
individual rate certificates

The special certificates for evaluation and training programs and individual rates permit sheltered workshops to employ handicapped workers, regardless of their productive capabilities, in a regular program workshop without being required to pay each worker at least 50 percent of the statutory minimum wage. The number of handicapped workers under regular, evaluation, and training programs and individual rate certificates increased from 34,904 in fiscal year 1968 to 57,729 in fiscal year 1979 (a 65-percent increase). However, only 3,742 of the 22,825 increase was attributable to expanded coverage for handicapped workers under a regular program or individual rate certificates requiring a wage rate of at least 50 percent of the statutory minimum. Thus, the majority of the increase was for handicapped workers employed under certificates which did not require payment of the Federal subminimum wage rate.

Although evaluation and training certificates were intended for handicapped workers engaged in work which was incidental to training or evaluation programs, workshops may also use these certificates to reduce the frequency of paying newly employed handicapped workers the Federal guaranteed subminimum wage. These workers often do not remain in the workshop after the specified evaluation and training periods end. In analyzing the relationships among evaluation, training, and regular work programs, a recent study of sheltered workshops stated that:

"In many cases, the programs were found to be virtually indistinguishable, especially in those cases--which were the majority--where the remunerative employment program received primary emphasis." 1/

From fiscal year 1968 to fiscal year 1979, the number of handicapped workers covered by evaluation and training certificates increased from 6,886 to 22,493, a 227-percent increase. If an individual worker's productivity does not exceed the Federal guaranteed subminimum wage rate by the end of the training or evaluation period, workshop officials must decide whether to (1) increase (subsidize) the worker's wages to the Federal subminimum rate under the regular program certificate, (2) employ the worker under an individual rate certificate, (3) move the worker to a work activities center, or (4) terminate the worker's employment.

1/Greenleigh Associates, Inc., The Role of the Sheltered Workshops in the Rehabilitation of the Severely Handicapped, Volume II, July 1975, page 78.

Individual rate certificates are also used for providing the flexibility to employ handicapped workers in a regular program workshop although the workers are not able to earn the guaranteed subminimum wage rate. The individual rate allows the the workshop to set a lower wage rate for each worker. The number of workers employed under individual rate certificates at rates lower than the Federal subminimum increased from 2,554 to 6,030, a 136-percent increase. The alternative to the use of special certificates for evaluation and training programs and individual rates may be the loss of employment opportunities for handicapped persons.

Handicapped workers exempt from the
Federal subminimum wage guarantee
under work activities center
certificates

As pointed out by the 1967 Labor study, the number of work activities centers receiving special certificates has increased substantially. In fiscal year 1968, there were 513 workshops certified as work activities centers, accounting for 12,996 of the total handicapped workshop population. The number of work activities centers increased to 3,079, employing 117,017 handicapped workers by the end of fiscal year 1979. In contrast, the number of workshops covered by a regular program certificate increased from 668;to 1,689 during the same period.

Work activities centers, a concept formally established by the 1966 amendments, were defined as "centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential." Under its certification process, Labor established several criteria which must[be met in order to qualify as a work activities center. For example, a work activities center must be an entire sheltered workshop or a physically separated department of a workshop having an identifiable program. It must provide separate supervision of workers and maintain separate records and be operated exclusively for providing therapeutic activities for handicapped workers.

Based on our analysis of operating practices of 38 sheltered workshops we visited (including 21 work activities centers), we believe that the definition in the 1966 amendments does not properly describe current work activities centers' operations. Our analysis showed that Labor's procedures and practices for distinguishing between regular workshops and work activities centers have created an artificial distinction among types of sheltered workshops which cannot, in many instances, be substantiated by current sheltered workshop operating practices. The majority of work activities centers we visited did not appear to exclusively provide therapeutic activities, and it did not appear that the production of most handicapped workers was inconsequential.

Labor monetary criteria do not
measure inconsequential
productive capacity

To measure inconsequential productive capacity, Labor developed monetary standards (ceilings) for the average annual productivity and earnings of handicapped workers to evaluate whether a sheltered workshop or separate department of a workshop qualifies as a work activities center. The current ceiling for average annual productivity is \$1,775 a year and for earnings it is \$1,275 a year. The monetary standards are adjusted for each increase in the statutory minimum wage by increasing the monetary ceiling by the same percentage as the increase in the minimum wage.

In developing the monetary standards, Labor officials assumed that inconsequential productive capacity may be related to an average earning potential of 25 percent of the statutory minimum wage. Based on this assumption, Labor's monetary standards, as described below, appear to provide a reasonable basis for classifying a sheltered workshop or a separate department of a sheltered workshop as a work activities center.

Labor's computation of average annual earnings is based on the assumption that the average handicapped worker will work about 1,500 hours a year (30 hours a week for 50 weeks) at an average hourly earnings rate of 25 percent of the statutory minimum wage. The standard for the average annual productivity (earned income of the work activities center) is determined by marking up (by 25 percent) average annual earnings to account for overhead costs in excess of the labor rate for work performed by the work activities center.

However, Labor's procedures for collecting the data from the sheltered workshops do not provide an accurate or reliable measure of a workshop's compliance with the established monetary requirements. Labor permits the sheltered workshops to report the average number of handicapped workers in the work activities center on the last day of each quarter for the previous fiscal year for measuring the average annual earnings and productivity of the handicapped workers. Although the monetary standards are based on a 1,500-hour work year, most handicapped workers in the work activities centers we visited worked considerably fewer hours. In all instances where a significant number of handicapped persons worked less than 1,500 hours, the use of the average number of handicapped workers to calculate average earnings and productivity significantly understates the workshop's computation of average annual earnings and productivity, as described in the following hypothetical example.

Handicapped workers in a work activities center having an average annual earnings and productivity of \$1,100 and \$1,600, respectively (under current Labor procedures) may only be employed for an average of 1,000 hours a year (compared to the 1,500 hours used for computing the Labor standards). Assuming the average earnings and productivity would increase proportionately, average earnings and productivity would equal \$1,650 and \$2,400, respectively, if the handicapped worker were employed for an average of 1,500 hours a year.

Thus, workshops may now qualify as work activities centers even though the average productive capacity of the handicapped workers might exceed the 25-percent rate on which the Labor standards for measuring inconsequential productive capacity are based. In the above-mentioned example, the average earning rate equaled \$1.10 an hour. The Labor standard was based on a rate of \$0.84 an hour (25 percent of \$3.35). At an annual average of 1,000 hours worked, the work activities center will meet the Labor standard. However, the center will not meet the standard if the averages are based on an average of 1,500 hours worked.

Labor also prohibits individual workers from being employed under a work activities center certificate if their individual productivity substantially exceeds the average of the limits established for the Labor monetary standards. According to Labor guidelines, handicapped workers whose productivity substantially exceeds the average may be covered under an individual rate certificate in unusual cases to avoid extreme hardship. However, Labor considers that a worker's productivity substantially exceeds the average only where the earnings are regularly more than 50 percent of the statutory minimum wage for a recent consecutive 3-month period. Our analysis of payroll and related documents for 2,055 workers employed in the 21 work activities centers we visited showed that about 30 percent had average hourly wage rates between 25 and 50 percent of the statutory minimum wage.

However, the annual earnings for most of these workers did not exceed the maximum allowable only because the total hours worked were significantly lower than the 1,500 used for computing the standard. Thus, Labor's process for certifying work activities centers results in many individuals being retained even though their hourly wage rate exceeds Labor's criteria (25 percent of the minimum wage) for measuring inconsequential production.

During our fieldwork, we visited 21 work activities centers in nine States. Six were separate workshops and 15 were part of a larger sheltered workshop. Private nonprofit corporations operated 16 of the work activities centers and 5 were publicly operated.

According to information submitted to Labor, the 16 privately operated work activities centers qualified under the established monetary standards. Since June 24, 1976, publicly operated workshops were not required to apply for renewal certificates; therefore, information was not available for these workshops. (See pp. 43 to 45.)

To test the validity of Labor's procedures for collecting data for measuring average annual earnings and productivity, we accumulated the hours worked by 7 of the 16 work activities centers. We were not able to collect sufficient information at the other nine workshops because the available records did not (1) differentiate between handicapped workers employed in a center and those employed in a regular workshop program, (2) maintain paid hours, (3) maintain separate information on dollar volume of sales for the work activities center, or (4) permit data to be retrieved within a reasonable time frame.

For the seven work activities centers, we converted the total hours worked into full-time equivalents by dividing the total hours by 1,500 hours in order to evaluate each center's performance on a basis consistent with Labor's standards. Based on our cursory analysis, it appears that the average earnings and/or productivity for four of the seven workshops would exceed Labor's standards if full-time equivalents rather than the average number of workers were used. More important, our analysis shows that the inconsistencies between Labor's procedures for collecting data from the workshops and computing the average earnings and productivity may induce workshops to arbitrarily limit the number of hours worked by a handicapped person or an individual worker's pay to avoid exceeding the required productivity or earnings limits.

Differences between regular program
workshops and work activities centers
appear minimal

Although a workshop, or department of a workshop, cannot be classified as a work activities center unless it meets all Federal criteria, including physical separation from a regular program workshop, maintenance of separate records, and separate supervision of handicapped workers, our analysis of 21 work activities centers' programs indicated that the Federal criteria were sometimes not complied with. Of the 21 work activities centers we visited, 15 were classified as separate departments of a sheltered workshop. Of these 15 work activities centers, 4 were operating in a separate room, building, or location from the regular work program and 7 were physically separated by an aisle or temporary barrier in the same room as the regular workshop program. Four were not physically separated; work activities center and regular program workers were commingled.

Also, the general goal of providing sheltered employment opportunities for severely handicapped workers in work activities centers does not appear to be consistent with the congressional intent. According to the Senate Labor and Public Welfare Committee report 1/ on the bill which became Public Law 89-691, work activities centers should be planned and designed exclusively for providing therapeutic activities where the focus is on teaching basic living skills to handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. According to the Senate report, work activities centers may include any purposeful activity as long as work or production is not the main purpose.

Although the level of productivity for individual handicapped workers was usually much lower than that of handicapped workers in a regular workshop program, the handicapped workers employed in the 21 work activities centers we visited were generally employed in a productive capacity for extended time periods. For example, workers in the work activities centers visited were involved in such productive activities as manufacturing wooden tent pegs, surveyor pegs, wooden planters, sponges, scrubbers, and wooden pallets; assembling bottle mops and ballpoint pens; grounds maintenance, janitorial services, and commercial mailing services; recycling aluminum and plastic and paper waste products; and packaging various products. At most work activities centers we visited, handicapped persons were employed on the same jobs or types of jobs as workers employed in the regular program workshop.

Of 158 sheltered workshops participating in the Javits-Wagner-0'Day program during fiscal year 1979, a federally sponsored procurement program (see ch. 4), 77 operated a work activities center in addition to a regular workshop program and 2 were classified only as work activities centers. Based on our review of the program's records and visits to 13 of the work activities centers, we found that about 50 percent of the centers were involved, to some extent, in producing commodities or providing services for the Federal Government. Also, we found that direct labor hours worked by handicapped workers in the work activities centers were used, along with the direct labor hours for the regular program workshop, for meeting the program's requirement that at least 75 percent of the direct labor hours must be performed by handicapped workers. (See pp. 64 to 66.)

Although Labor's administration of the work activities center concept does not appear to meet the intent of the act, stricter enforcement may achieve the same results at a higher administrative cost. Our analysis of the workers employed under the various exemption certificates appears to substantiate a trend toward including

1/S. Report No. 1487, 89th Cong., 2d Sess. (1966).

workers under the broad work activities center category. For example, the percent of total handicapped workers on individual rate and evaluation and training certificates declined from 5.3 to 3.5 and 14.4 to 12.9, respectively, from fiscal year 1968 to 1979. During the same period, the percent of total workshop population included under work activities center certificates increased from 27.1 to 66.9. However, it is probable that all workers in work activities centers, except those already earning in excess of the subminimum wage, would be exempt under either the evaluation or training work programs, or individual rate certificates. Thus, stricter interpretation of the work activities center concept would probably result in additional paperwork and administrative costs with minimal benefit for handicapped workers.

SUBMINIMUM WAGE GUARANTEE SELDOM
BENEFITS ELIGIBLE WORKERS

According to the 1966 amendments, all handicapped workers regardless of the type of certificate must be paid, as a minimum, commensurate wages for all hours worked in a sheltered workshop. Commensurate wages refer to wages which are paid to a handicapped worker based on his or her individual productivity in proportion to the prevailing wages and productivity of nonhandicapped workers performing essentially the same work in the same geographic area. The objective of the commensurate wage requirement is to pay the handicapped worker for what he or she produces. For example, the commensurate wage rate for a handicapped worker who is 75 percent as productive, considering quality and quantity, as the average nonhandicapped worker performing essentially similar work in industry at an hourly rate of \$4 would be \$3--75 percent of the wages paid the nonhandicapped worker.

The Federal subminimum wage requirement is designed to provide a standard of wage protection for handicapped workers whose wage rate, based on the commensurate wage provision, would not equal or exceed 50 percent of the statutory minimum wage (now \$1.67 an hour). To be eligible for the Federal subminimum wage protection, a handicapped worker must be covered under a regular program or an individual certificate requiring a rate of at least 50 percent of the statutory minimum wage. During fiscal year 1979, less than 17 percent of the total workshop population was covered under Labor certificates requiring payment of not less than the subminimum wage rate. However, only workers whose productivity falls below the 50-percent level will benefit from the Federal subminimum wage requirement. In these instances, a workshop must subsidize workers so that their wage rate equals at least 50 percent of the statutory minimum wage.

Although the 1966 amendments were intended to provide subminimum wage protection, it appears that Labor's certification process has generally limited the coverage to handicapped persons who were able to consistently earn more than the 50-percent guarantee. Our

analysis of the average hourly wage rates for 995 handicapped workers employed under regular program certificates in 19 workshops we visited showed that the majority of workers had wage rates substantially above the 50-percent Federal subminimum. The following table shows the breakdown for the workers.

<u>Wage rate as a percent of the minimum wage</u>	<u>Handicapped workers</u>	
	<u>Number</u>	<u>Percent</u>
50 to 74.9	274	27.5
75 and above	<u>721</u>	<u>72.5</u>
Total	<u>995</u>	<u>100.0</u>

For the 995 workers, it is doubtful that the productivity of many of the 721 who were earning at least 75 percent of the minimum wage would often fall below the Federal subminimum level. Similarly, the 274 workers whose average wage rates ranged from 50 to 75 percent would only benefit from the Federal subminimum guarantee for instances when their productivity would fall below 50 percent of the minimum wage. Although several of the workshops visited subsidized a limited number of individuals so that their wage rate exceeded the Federal subminimum rate, we believe that most handicapped workers covered by Labor certificates requiring the Federal subminimum wage guarantee were able to consistently earn more than 50 percent of the statutory minimum wage.

CONCLUSIONS

The primary purpose of section 14(c) of the Fair Labor Standards Act of 1938, as amended, was to encourage the maintenance of a minimum standard of earnings for handicapped workers and to discourage employers from exploiting such workers by paying them low wages. The law's provision that sheltered workshops must pay handicapped workers based on their individual productivity, and the prevailing industry wage provides a reasonable Federal wage standard for assuring that handicapped workers in sheltered workshops are paid fairly. However, the law's provision for paying handicapped workers in sheltered workshops a fixed subminimum wage has not assured a minimum standard of earnings because only those whose wages, based on their individual productivity, would seldom fall below the Federal subminimum are employed under certificates requiring the Federal subminimum wage guarantee. Labor issued exemptions for 83 percent of the workshop population in fiscal year 1979.

When a wage rate, based on the subminimum guarantee, exceeds the level of a worker's productivity, each workshop must assume the financial burden for paying the required subsidies. For cases where the workshop would not be able to pay a subsidy, the workshop must decide whether to apply for one of the exemption certificates

or to terminate the employment opportunities for the handicapped. Due to the lower functioning level of many handicapped workers in sheltered workshops, the Federal subminimum wage requirement may result in unemployment rather than higher wages for those not exempt. Therefore, strict enforcement of the Federal subminimum guarantee may hurt rather than help handicapped workers.

In view of the staff resources used for reviewing applications and issuing certificates for the various exemption categories and the low number of handicapped workers benefiting from the subminimum wage guarantee, we believe that the Congress should eliminate the Federal policy mandating a guaranteed subminimum wage rate for handicapped workers in sheltered workshops. Eliminating the Federal subminimum wage guarantee would result in few changes from the present sheltered workshop operating practices and procedures as far as financial management and worker compensation systems are concerned. Most handicapped workers in sheltered workshops are paid based on their individual productivity (under the commensurate wage principle). If the Federal subminimum wage guarantee requirement was eliminated, the sheltered workshops would still be required to base the workers' wages on the commensurate wage principle. However, elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The numerous exemption provisions would no longer be needed, and a single certificate could be used for each workshop.

Also, Labor could continue to provide a level of subminimum wage protection for handicapped workers in sheltered workshops even though the statutory requirement for a single Federal subminimum wage was eliminated. For example, Labor could require each workshop to establish a guaranteed wage minimum for each worker based on each worker's average productivity for a specified time period or a workshop could decide to provide a higher guarantee. For example, if a worker's average productivity was 40 percent for the most recent 90-day period, the guaranteed wage would be \$1.34 (40 percent of \$3.35). This approach would expand the protection available under the present system by extending a wage guarantee to each individual worker in a sheltered workshop. Now, each workshop is required to maintain records documenting the wage rate paid to each worker. Therefore, its paperwork requirements would not be significantly increased.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Fair Labor Standards Act to eliminate the provision that handicapped persons who are employed under special Labor certificates in sheltered workshops must not be paid less than 50 percent of the statutory minimum wage.

PROPOSED STATUTORY AMENDMENTS

The modifications to the Fair Labor Standards Act, based on our recommendation to the Congress, would read: Section 14(c)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)(1)) is amended to read as follows:

"The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earnings or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this act and which are commensurate with those paid nonhandicapped workers in the industry in the vicinity for essentially the same type, quality, and quantity of work and which are related to the worker's productivity."

Both section 14(c)(2) and section 14(c)(3) of the act (29 U.S.C. 214(c)(1)) should be deleted.

AGENCY COMMENTS AND OUR EVALUATION

Neither Labor nor the Committee for Purchase from the Blind and Other Severely Handicapped commented on our recommendation to the Congress that the Fair Labor Standards Act be amended to eliminate the Federal policy for providing a guaranteed subminimum wage of not less than 50 percent of the statutory minimum wage for handicapped workers in sheltered workshops. The National Industries for the Blind and National Industries for the Severely Handicapped agreed with the recommendation.

Labor indicated that it was not in a position to endorse a proposal included in a draft of this report that sheltered workshops establish and document a guaranteed wage minimum based on average productivity for each handicapped worker, without a detailed analysis of its full ramifications. Labor was concerned that such a wage minimum could have an adverse effect on handicapped workers because workshops would place greater emphasis on productivity, at the expense of other services and activities the handicapped workers may need. Labor believed this could be a particular problem in work activities centers, where the emphasis should be on therapeutic activities rather than on productivity. Another concern of Labor was that workshops might be inclined to switch from paying at piece rates to paying at time rates to simplify their recordkeeping burden. Piece rates normally are preferable in vocational rehabilitation, because they contain a built-in incentive which enables the worker to work at his or her own pace, and they permit a more current and accurate measure of productivity than hourly rates.

Our proposal was designed to continue a guaranteed wage concept established by the 1966 amendments on an individual basis to allow a degree of flexibility in recognition of the divergent functioning levels of handicapped workers in sheltered workshops. Under a guaranteed wage system based on a worker's average productivity for a specific time period, the worker would be paid based on his or her actual productivity if the commensurate wage exceeded the guaranteed rate. However, if the workers' productivity declined so that his or her commensurate wage was less than the guaranteed rate, the worker's wages could not be reduced below the guarantee during that period. However, where a worker's average productivity during a period is lower than the guaranteed wage he or she receives during that period, a proportionately lower guaranteed wage could be established during the next period.

While the act's commensurate wage provision provides a reasonable Federal wage standard for assuring that handicapped workers in sheltered workshops are paid fairly, we continue to believe that a guaranteed wage minimum for each worker should be established by the workshops. We modified our proposal and are recommending that Labor develop procedures for workshops to follow in establishing a guaranteed wage minimum for each handicapped worker. (See p. 28.)

The National Industries for the Blind agreed that sheltered workshops should be required to establish and document a guaranteed wage minimum for each handicapped worker, and it stated that such a requirement would make workshops focus on individual productivity rather than on the complexities of the present certification process. In developing regulations, the National Industries for the Blind suggested that Labor include protective steps that a worker's guaranteed rate should not be allowed to fall below a certain percentage of the rate in effect at the time of the periodic evaluation and that the workshops' records should clearly show how the rate for each individual is determined.

Although the National Industries for the Severely Handicapped agreed with the proposal, it believes that a guaranteed wage based on average productivity may not adequately consider the wide fluctuation in daily productivity of many handicapped workers due to factors, such as the severity of the physical or mental disabilities and symptomologies, side effects of medication, or recurrence of symptoms formerly in remission. Also, the National Industries for the Severely Handicapped pointed out that the productivity rates of individual workers are affected by daily variances in the complexity, diversity, and quality of the available work. As a result, the National Industries for the Severely Handicapped believes that the use of an average over time to establish a guaranteed rate would negatively impact on a workshop's ability to employ individuals with severe disabilities and variabilities in productivity. The National Industries for the Severely Handicapped concluded that

Labor must coordinate proposed changes in Federal requirements with the workshop community to insure protection for individual workers and to avoid placing unnecessary administrative burdens on workshops.

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

We recommend that the Secretary revise the Federal regulations to (1) require that each sheltered workshop establish and document a guaranteed wage minimum for each handicapped worker and (2) establish procedures for workshops to use in documenting each worker's guaranteed wage minimum. Specifically, we recommend that the Secretary adopt procedures which assure that each worker's guaranteed wage is determined on the basis of individual productivity, such as a worker's average productivity for a specified time period.

CHAPTER 3
ENFORCEMENT OF FEDERAL LABOR STANDARDS FOR
HANDICAPPED WORKERS IN SHELTERED WORKSHOPS
SHOULD BE STRENGTHENED

Many handicapped workers have little knowledge of their rights under the Fair Labor Standards Act. In many instances, officials of sheltered workshops may inadvertently violate the act's provisions or not understand the steps necessary for compliance. Therefore, effective management of Labor's process for enforcing the act's requirements is essential for insuring that (1) handicapped workers employed in sheltered workshops are made aware of the compensation to which they are entitled and (2) officials of sheltered workshops are informed about their responsibilities under the act.

To date, the scope of Labor's sheltered workshop investigation process has been limited by insufficient staff resources and a lack of adequate management controls. Also, limits on Labor's enforcement authority under the act and its actions following a recent Supreme Court decision have severely reduced the scope and effectiveness of Labor's efforts for monitoring wages paid to handicapped workers in sheltered workshops. For example:

- Labor does not have the authority for requiring workshops to pay wages in excess of the statutory minimum wage even though handicapped workers are eligible for higher wages under the commensurate wage principle established by the 1966 amendments to the Fair Labor Standards Act.
- Labor has excluded publicly operated workshops from its enforcement process because a 1976 Supreme Court decision ruled that the act's minimum wage provisions did not apply to State and local government employees engaged in activities that are an integral part of traditional government services.

The scope of Labor's enforcement process was limited--between 3.8 to 5.9 percent of the sheltered workshop universe was investigated annually during fiscal years 1977, 1978, and 1979. ^{1/} However, Labor investigators reported that 11,482 handicapped workers in 317 of the 524 workshops investigated during the 3 fiscal years were not paid in compliance with the Fair Labor Standards Act.

^{1/}Labor collects information on its investigation activities for the fiscal year beginning September 21 and ending on September 20.

Our visits to 38 sheltered workshops in 12 States and the District of Columbia disclosed violations similar to those reported by Labor investigators.

MANY SHELTERED WORKSHOPS DO NOT
COMPLY WITH THE FAIR LABOR
STANDARDS ACT

Under the act, Labor is authorized to investigate and gather data regarding the wages, hours, and other conditions and employment practices of sheltered workshops for evaluating compliance with the Federal requirements. The primary thrust of Labor's enforcement effort is through field investigations of individual sheltered workshops. For fiscal years 1977-79, Labor reported that 524 sheltered workshops had been investigated. Labor found that 317 (or 60 percent) of these workshops had underpaid 11,482 handicapped workers resulting in total underpayments of about \$2.7 million. The results of Labor's investigations show a relatively constant level of sheltered workshop violations. The following table shows the results of Labor's investigations for the 3 years.

Fiscal year	<u>Number of sheltered workshops</u>			Number of handicapped workers underpaid	Total under- payments
	<u>With Labor</u> <u>certifi-</u> <u>cates</u>	<u>Investi-</u> <u>gated</u> <u>by Labor</u>	<u>With wage</u> <u>viola-</u> <u>tions</u>		
1977	3,323	155	107	3,510	\$ 892,085
1978	3,590	139	78	3,205	921,590
1979	3,879	<u>230</u>	<u>132</u>	<u>4,767</u>	<u>905,041</u>
Total		<u>524</u>	<u>317</u>	<u>11,482</u>	<u>\$2,718,716</u>

For the 3 years, we analyzed the investigations, reported for Labor's Atlanta, Dallas, New York, Philadelphia, and San Francisco regions. As the following table shows, the five regions accounted for 48 percent of the total investigations.

<u>Region</u>	<u>Total workshops</u>		<u>Number of handicapped workers underpaid</u>	<u>Total under- payments</u>
	<u>Investigated</u>	<u>With wage violations</u>		
Atlanta	53	27	530	\$ 130,621
Dallas	46	25	867	151,435
New York	60	41	1,871	215,668
Philadelphia	42	30	1,057	333,718
San Francisco	<u>52</u>	<u>36</u>	<u>2,094</u>	<u>487,953</u>
Total:				
Five regions	<u>253</u>	<u>159</u>	<u>6,419</u>	<u>\$1,319,395</u>
All regions	524	317	11,482	\$2,718,716

Our analysis of available records for 247 Labor investigations ^{1/} and our visits to 38 sheltered workshops in the five Labor regions, indicated that most sheltered workshop violations result from a failure to pay commensurate wages (wages based on an individual's productivity) or to operate in conformance with the terms and conditions of an approved Labor certificate.

Commensurate wages are
not always paid

Although compliance with the act's commensurate wage provision is not easily achieved, we believe it provides a reasonable framework for assuring that handicapped workers are not exploited through low wages in sheltered workshops. A workshop may pay commensurate wages in one of two ways, either with hourly rates or piece rates. In both methods, the objective is to pay the handicapped worker for what he or she produces. Both piece and hourly rates must be computed using the prevailing industry wage rate paid to an experienced worker doing the same type of work. The workshop must maintain records which justify the wages paid to each handicapped worker. Our analysis of the wages paid to handicapped workers in the 38 sheltered workshops we visited disclosed problems in computing piece and hourly rates and in determining the appropriate prevailing wage rates. We also found weaknesses in the record-keeping practices of many sheltered workshops.

^{1/}Despite repeated requests, Labor headquarters and regional office officials were not able to provide narrative reports or other documentation for six investigations. In addition, the reports or other documentation provided for the 247 investigations were not always complete.

Piece rates are not always based on
reasonable production standards

In setting a piece rate, sheltered workshops must perform time studies for determining average hourly production standards. Time studies may range from sophisticated techniques to simple methods involving the counting of job samples over a fixed time period. However, time studies must be conducted in the same manner as the work will be performed in the workshop and all operations of a job must be included. The test period should be long enough for obtaining an adequate sampling of the participant's normal production. The average hourly production for determining the piece rate standard should include an allowance for personal time and fatigue. Labor guidelines suggest 10 minutes an hour for this allowance. After the production standard is established, the prevailing wage rate must be divided by the standard to determine the piece rate.

During our visits to 27 workshops paying piece rates, we evaluated the workshops' practices and procedures for determining whether the piece rate standards were representative of a non-handicapped worker's production. ^{1/} In 21 instances, we conducted sample time studies and/or observed actual production processes for verifying the accuracy of the workshops' standards. At four workshops, we found instances where

- the actual tasks were not performed in the same manner as they were during time studies,
- all steps of a specific operation were not included in the time study, and
- an adequate allowance was not included for personal time and fatigue.

For example, all time studies at one workshop were based on a 60-minute hour and did not provide any allowance for worker fatigue. This resulted in higher production standards being established which make it difficult for handicapped workers to achieve. Also, we observed that the steps used during one time study redone by workshop officials at our request differed from those used by the handicapped workers during actual production.

During our analysis of information supporting the time studies, we also found instances where the standards used by some workshops were lower than the maximum level which could

^{1/}At 15 workshops, adequate records were not available which documented all time studies used to determine production standards. (See p. 37.)

be supported by the time study results; a situation which makes it easier for handicapped workers to achieve the standard.

Hourly rates are not always based on
adequate productivity evaluations

In determining hourly rates, a sheltered workshop must evaluate the productivity of each individual handicapped worker. Essentially, the workshop must determine the standard of performance expected of a nonhandicapped worker for the type of work being performed and the quality and quantity of the handicapped worker's production in proportion to that expected of a nonhandicapped worker. According to the Federal regulations, each workshop paying hourly rates must maintain records showing each worker's productivity at periodic intervals not exceeding 6 months. In an hourly system, there are two fundamental shortcomings: (1) a high degree of subjective judgment is required by someone who may or may not have any background in performance evaluation and (2) workers may switch jobs, but retain the same hourly rate even though the individual's ability and level of productivity will probably vary for different jobs.

During our fieldwork, we evaluated the practices and procedures used by 37 workshops for paying handicapped workers on the basis of hourly rates. In 30 instances, we analyzed individual productivity evaluations and/or observed individual workers. The workshops do not always use productivity evaluations for determining hourly rates or base productivity evaluations on the quality and quantity of the handicapped worker's production. Some examples follow:

- At one workshop, the procedures used for making performance evaluations did not appear to provide accurate measures of each worker's productivity. Instead of basing the worker's rating on current job performance, the workshop used prior piece rate earnings which were converted to an average hourly rate. The average hourly rate was divided by the statutory minimum wage to get a performance rating factor. However, the workshop used a 5-hour day for converting the piece rate earnings to an average hourly rate even though many workers may not work 5 hours per day. For those who worked less, this approach resulted in a lower wage rate. Based on our observations, we believe that many workers were performing at a level higher than their computed wage rate.
- At a second workshop, the evaluations were based on the types of jobs performed rather than on individual productivity. During our visit, six workers were paid hourly rates for doing the same job. Each worker's productivity was reported as 21.5 percent of the rate that could be

expected for a nonhandicapped worker. According to workshop officials, the evaluations rated the job rather than the individual's performance because the tasks were quite menial and the individuals were extremely low functioning. This approach does not assure that workers are receiving commensurate wages.

During our analysis of the productivity evaluations for handicapped workers paid on hourly rates, we also identified instances where hourly rates were arbitrarily established to fit a predetermined level which might not have been indicative of the worker's actual productivity. Some examples follow:

- At one workshop, handicapped workers covered under a training certificate were paid based on their length of service rather than their productivity. The workers were paid an hourly wage of \$0.37 for the first 12-1/2 weeks, \$0.75 for the next 12-1/2 weeks, \$1.11 for the next 12-1/2 weeks, \$1.49 for the next 14-1/2 weeks, and \$2.14 after the first year. Although the workshop did not formally prepare performance evaluations for these workers, vocational progress reports appeared to indicate that a number of the workers were performing at or near industry standards.
- At a second workshop, 10 workers doing lawn maintenance work were paid at a rate of 55 percent of the prevailing wage regardless of their assigned tasks. A productivity evaluation was prepared for 9 of the 10 workers which documented a rate of less than 55 percent; one worker was employed for 2 months but had not been rated. Thus, the paperwork appeared to substantiate that the workers were paid more than their productivity. However, we observed 8 of the 10 doing this work and, in our opinion, 5 appeared to be producing above the 55-percent level.

Our analysis also disclosed situations which indicated that workers' wages were arbitrarily held at a specific level by decreasing the productivity evaluation to offset increases in the applicable minimum or prevailing wage. For example:

- Our analysis of payroll records for 27 workers for the 12-month period ended June 30, 1980, at one workshop showed that the productivity ratings were used for controlling wages rather than measuring the worker's individual productivity. When the prevailing wage rates were increased, the semiannual productivity ratings for 22 of the 27 workers were decreased. The individual evaluation forms did not document the reason for the lower ratings. Because the ratings were lowered, only 1 of the 22 workers received a wage increase even though the prevailing wage, rate increased. The average rating for the workers over the

6-month period decreased by about 18 percent, while the average increase in the prevailing wages was about 22 percent. Based on our observations of eight workers whose ratings were lowered and discussions with supervisors, we believe that the workers' productivity did not justify the lowered ratings. Conversely, our analysis also showed that the productivity ratings for five workers increased or remained the same, as the prevailing wage rates for their jobs were lowered. As a result, four of the five received the same wage rate and only one worker had his wages reduced because of the lower prevailing wage rates.

- At a second workshop, the productivity rating for one worker was decreased when the prevailing wage rate was increased because of a rise in the cost of living. The worker's rating decreased by 15 percent from one year to the next; thereby, offsetting the increase in the prevailing wage rate. As a result, the worker's hourly wage remained the same. The productivity rating form did not document the reason for the lower rating.
- Our analysis of performance evaluations at a third workshop showed that one worker's rating was reduced from 94.5 to 59.8 percent. According to the workshop official responsible for evaluating this individual, the rating was lowered because the worker switched jobs and the official wanted to pay him the same hourly rate.

During our observations, we identified individuals at 11 workshops who appeared to be performing at a higher level of productivity than performance evaluations made by workshop officials. Conversely, we identified instances where handicapped workers were paid hourly rates which exceeded their individual productivity ratings. Workshop officials often told us that the workers' performance varied substantially and that they may have been performing at their highest or lowest rate at the time of our visit. These types of situations highlight the difficulty in enforcing the payment of commensurate wages for workers paid on hourly rates.

Prevailing wage rates are not
always adequately documented

Labor guidelines define the prevailing wage as the wage paid to experienced nonhandicapped workers in industry in the vicinity for essentially the same type of work as performed in the sheltered workshops. Vicinity is defined as the geographical location from which the workshop's labor force is drawn. In certain instances, the minimum wage may be the appropriate prevailing wage, but the workshop must establish and document this rate. The workshop can obtain prevailing wage rate information through its contractors

or other commercial establishments and from the local State employment service. According to Labor guidelines, workshop records for prevailing industry wage rates must show the date and source of such findings, and, if obtained from industry, should specify the name and city of the firm or, if from the State employment service office, the name of the person contacted and address of the office. The prevailing wage information must not be more than 12 months old.

Adequate determination and/or documentation of the proper prevailing wage was a problem at 13 workshops we visited. According to workshop officials, obtaining wage information from private sources was often difficult because businesses were reluctant to disclose this information. Also, workshop officials told us that many jobs performed in the workshops were not similar to jobs in the geographic area. Therefore, it is difficult to adjust the wages paid for related tasks for determining an appropriate prevailing wage.

Although the statutory minimum wage can be the prevailing wage for some types of work, it is not the prevailing wage for all types of work performed in workshops. When the prevailing wage rate is higher, workers' wages must be based on the higher wage rate. For example:

- At one workshop, all wages were based on the statutory minimum wage--\$3.10 an hour at the time of our visit. However, we found that a contractor paid its employees about \$6 an hour for doing the same job which the handicapped were doing at the workshop on a subcontract basis for the contractor. The workshop director told us that he did not believe it was fair to pay the employees so much more than those in other departments of the workshop just because a higher prevailing wage rate existed.
- Before May 1980, a second workshop used the statutory minimum (\$3.10 an hour) as the prevailing wage for general subcontract work. Following an investigation by Labor, the workshop contacted the local employment service office and found that the wage rate for similar work ranged from \$3.37 to \$4 an hour. As a result, the workshop began using a rate of \$3.50 per hour as the prevailing wage.
- Following contacts with the State employment commission and industry representatives, a third workshop began using prevailing wage rates for determining the wages for handicapped workers employed on 13 different jobs. The prevailing wage rates ranged from \$3.13 to \$4.29. Before this time, the wages paid for these jobs were based on the statutory minimum wage (\$3.10 an hour).

-A fourth workshop based its hourly wage rate for custodial and janitorial work on the average prevailing wages in the community (\$3.50 an hour). The workshops contacted 16 businesses which reported wage rates ranging from \$3.10 to \$4.50 an hour.

Officials at 24 workshops did not contact outside sources, or if they did, they failed to document the wage information. At some workshops, the piece rate standards were properly computed or the individual performance evaluations properly made, but the individual wages were not based on the proper prevailing wage for the skill level required. The handicapped persons were not receiving commensurate wages in all cases.

Adequate records were
not always maintained

The development and maintenance of accurate productivity records, time studies, performance evaluations, and hours worked form the basis for computing and documenting commensurate wages paid to handicapped persons. According to Federal regulations, each workshop must maintain sufficient records to document that handicapped workers were paid properly. Without adequate record-keeping systems, it is not possible to determine whether all workers are paid properly.

Our analysis of the recordkeeping practices at 27 workshops paying piece rates showed that 15 workshops had not maintained adequate records for all of the time studies supporting their production standards. Also, our analyses at these workshops showed that three had not maintained accurate records of the hours worked by handicapped persons paid on piece rates. Therefore, while the workers might be properly paid based on their individual productivity, it was not possible to determine whether the workers were paid in accordance with the guaranteed subminimum wage requirement.

Also, 16 of 37 workshops which paid workers on the basis of hourly rates did not maintain current performance evaluations and/or adequate production records for each handicapped worker. For example, one workshop paid most handicapped persons a standard hourly rate which ranged from 80 to 91 percent of the statutory minimum wage. However, the workshop had not maintained productivity records or made performance evaluations for many workers. At a second workshop, a similar situation existed. The workshop paid the majority of workers an hourly wage ranging from about 12 to 69 percent of the minimum wage depending on the length of time each worker was employed in the workshop. Lacking productivity records or performance evaluations, it was not possible in these two instances to determine whether the individuals were being properly paid.

Certificate terms are not always met

A sheltered workshop does not always meet the requirements of the act by simply paying commensurate wages. Failure to pay a wage rate equal to or greater than the rate authorized by a specific certificate may be classified as a violation of the terms of the certificate. Handicapped workers employed under a regular program certificate or an individual rate certificate may not be paid less than 50 or 25 percent of the minimum wage, respectively. A higher rate, referred to as the floor rate, may be specified in the certificate. If commensurate wage payments are less than the minimum or floor rate, then the workshop must pay additional wages to the handicapped worker to raise the worker's wage rate to the applicable level. Also, if the commensurate wage payments yield an average payment of more than the guaranteed rate, the handicapped worker should receive the higher wage payment. During our analysis of the practices and procedures used by the 38 workshops for paying handicapped workers, we found six instances where a workshop had not established adequate procedures for adjusting the wage payments to comply with the applicable certificate requirements. Some examples follow:

- At one workshop, 10 handicapped workers in the same department were transferred from a work activities center to a regular program. Based on a review of workshop records, we found that the workshop did not subsidize the workers' wages for the hours for which the workers' productivity did not exceed the subminimum rate. Therefore, in these instances, the workers were not being paid in accordance with the Federal guaranteed subminimum wage requirements.
- At a second workshop, workers employed in a regular program workshop were paid wages commensurate with their productivity even though the wage rate did not equal or: exceed the guaranteed subminimum rate. Rather than recording the total hours worked and determining instances when an individual's productivity fell below the subminimum wage rate, the workshop director divided the earned wages by the subminimum wage rate to determine the hours worked for each individual. As a result, many of the workers were not being paid in accordance with the subminimum wage guarantee because the workshop was not properly subsidizing those whose earned wages fell below the guaranteed Federal subminimum wage level.

Noncompliance with the terms of a certificate also refers to a situation in which Labor has not approved a special certificate authorizing subminimum wages. This may be caused by a workshop's failure to apply for a certificate or renew a previously applicable certificate. Sheltered workshops which do not have approved Labor certificates must pay all handicapped workers at least the

statutory minimum wage. Our analysis of Labor's records for 247 investigations for fiscal years 1977-79 showed that 34 workshops were reported to be paying handicapped workers less than the statutory minimum wage without an approved Labor certificate.

LABOR'S ENFORCEMENT PROCESS
COULD BE BETTER MANAGED

The effectiveness of Federal labor standards for handicapped workers depends on a strong effort for assuring uniform compliance by all sheltered workshops in each area of the country. An effective enforcement process should be directed at bringing sheltered workshops into compliance with the act and providing them with clear and understandable guidance on how to comply with the act. However, due to the large sheltered workshop population and Labor's limited resources, the enforcement of the Federal labor standards depends to a large extent on voluntary compliance by the sheltered workshops. Although the Labor investigations reported that 11,482 handicapped workers were underpaid more than \$2.7 million for fiscal years 1977-79, we believe that better management controls and standards could improve the effectiveness of Labor's enforcement process. There is a need to direct more (1) staff resources at investigating sheltered workshops to achieve the goals of Labor headquarters and (2) frequent use of compliance officers experienced in investigating sheltered workshops.

Staff resources used to investigate
sheltered workshops are minimal

Labor guidelines require that a yearly program for investigating sheltered workshops be developed. Each year Labor headquarters provides a target percentage for the number of workshops to be investigated by the regional offices. For fiscal years 1977-79, the target percent of workshops investigated ranged from 3 to 5 percent of the total universe. For fiscal year 1980, Labor officials increased the target to 10 percent (or 389 workshops). ^{1/} The specific workshops to be investigated are selected by each regional office in consultation with its area offices. Compliance officers located primarily in Labor area offices within each region are responsible for investigating sheltered workshops, in addition to a wide range of other employers, for compliance with Federal labor standards. Workshops to be investigated may be arbitrarily selected or may be scheduled based on complaints or to resolve special problems. Although each regional office must submit a list of the workshops scheduled for investigation to headquarters, the list may be changed at any time without further notice.

^{1/}According to Labor statistics, as of September 20, 1979, 3,877 workshops were employing handicapped workers under one or more special Labor certificates.

Although Labor headquarters provides a target number of workshops to be investigated annually, the regions, including area offices, are not required to commit a definite amount of staff time for investigating sheltered workshops. Our analysis of available records at regional and area offices for 224 investigations for the 3 fiscal years showed that none of the five regions reported spending more than 858 hours (less than one-half of a staff year) ^{1/} on sheltered workshop investigations in a single year; one region reported that only 136 hours were spent investigating sheltered workshops. In fact, four of the five regions reported spending less than 1 staff year on sheltered workshop investigations during the 3-year period, compared to the estimates of Labor officials in the five regions that from 0.5 to 1.5 staff years were spent annually on the certification process (see p. 14).

Compliance officers are used for
investigating sheltered workshops
on an infrequent basis

Labor guidelines note that it is important to have specially trained staff investigate sheltered workshops because the investigations involve a number of concepts and technicalities unique to Labor investigations. Violations, especially relating to the payment of commensurate wages, are extremely difficult and time consuming to detect. According to the guidelines, investigations should not be made by a number of different compliance officers on an infrequent basis.

The regional official who is responsible for administering the certification process also coordinates the enforcement process, provides technical assistance, and conducts individual investigations. However, in the five regions we visited, the majority of the investigations were made by Labor compliance officers in the area offices nearest to the workshops. Our analysis of available records for 233 investigations during fiscal years 1977-79 in the five regions showed that 105 different compliance officers performed investigations. Of the 105, 75 made investigations in only 1 year, 23 in 2 years, and only 7 in all 3 years. Fifty-five compliance officers made only 1 investigation during the 3-year period, 20 made 2, and only 30 made 3 or more. Only 17 compliance officers made more than two investigations in a single year.

^{1/}For purposes of our analysis, we assumed that about 1,750 hours equaled 1 staff year.

Labor headquarters and regional officials estimated that between 25 and 35 hours should be required for investigating an average size workshop. A typical sheltered workshop investigation should include an initial, as well as final conference, with the executive director of the workshop. The compliance officer should tour the workshop to observe production methods, make general observations about the level of client disability, and observe the workshop's method for counting workers' productivity. Interviews with staff members, especially floor supervisors of handicapped workers, provide essential information regarding the evaluation of workers paid on an hourly basis, methods used to perform time studies for establishing nonhandicapped workers' standards, and procedures used to count production of workers paid on a piece-rate basis.

Records showing evidence of disabilities should be sampled to verify the adequacy of documentation and to substantiate the handicap of the individual workers. To determine whether the workshop is paying proper commensurate wages to individual handicapped workers, the compliance officer should evaluate the entire system used by the workshop for setting commensurate wage standards. In most instances, the compliance officer should conduct sample time studies to verify the accuracy of the workshop's standards. The compliance officer should also check for documentation to support the prevailing wages established by the workshop.

Based on our visits to 38 workshops, we believe that this estimate (25 to 35 hours) fairly describes the time required for properly assessing a workshop's compliance with the act's requirements. Based on reports submitted to Labor headquarters, for the 3 fiscal years, compliance officers reported spending 25 or more hours on only 91 of the 224 investigations. For 61 investigations, less than 8 hours were spent. According to Labor headquarters officials, only full investigations should be included as part of the sheltered workshop enforcement program; conciliations (investigations of a specific complaint only) or limited investigations should not be counted as part of the target number of workshops to be investigated. However, almost one-third of the investigations were reported as conciliations or limited investigations. In fact, these investigations accounted for 52 of the 61 investigations on which less than 8 hours were spent.

LABOR LACKS AUTHORITY TO ENFORCE
COMMENSURATE WAGE PAYMENTS WHEN
WAGES EXCEED STATUTORY MINIMUM

Although the act requires that sheltered workshops must pay handicapped workers wages commensurate with those paid nonhandicapped workers in local industry, Labor lacks the authority for enforcing the commensurate wage principle for instances where the wage rates paid to handicapped workers exceed the statutory

minimum. As a result, handicapped workers who receive the minimum wage or higher may not be paid according to the commensurate wage principle.

Federal regulations require that a handicapped worker's wages must be based on the prevailing wage in the same geographic area for essentially similar work. The prevailing wages for many jobs are higher than the statutory minimum wage. Therefore, handicapped workers may be paid wages which equal or exceed the statutory minimum wage, but which are below the commensurate wages based on the handicapped worker's productivity. For example, the commensurate pay for a handicapped worker who is 80 percent as productive (considering quality and quantity) as the average non-handicapped worker performing essentially similar work at an hourly rate of \$5 an hour should earn \$4 an hour. An hourly rate of \$3.75 for the handicapped worker would not meet the requirements of the commensurate wage provision. Nonetheless, Labor would not be able to enforce the payment of commensurate wages in this situation because the rate exceeds the statutory minimum wage of \$3.35 an hour, effective January 1, 1981.

Sheltered workshops may elect to pay handicapped workers the minimum wage. In these instances, the workshops do not need a Labor certificate and are not required to comply with the commensurate wage provisions of the act. Also, sheltered workshops may decide to pay some workers the statutory minimum wage and other workers lower wage rates under one or more of Labor's special exemption certificates. Of the 38 workshops visited, 8 had established policies for paying handicapped workers at least the minimum wage. However, seven of the eight had at least one type of Labor certificate covering employees in training or evaluation programs or for individual rates. The following examples illustrate situations identified during our visits where handicapped workers might not be paid in accordance with the commensurate wage principle even though they receive the minimum wage or higher.

- One workshop used the minimum wage as the prevailing wage even though higher prevailing wage rates had been obtained. According to a workshop official, he could not find businesses in the local area that made brooms or wood products similar to those produced by the workshop. By contacting businesses outside the general vicinity of the workshop, prevailing wage rates were obtained for some workshop operations, ranging from \$4.48 to \$4.98. These rates were received in August and October 1979. Beginning January 1, 1980, the workshop began paying all workers at the statutory minimum wage rate of \$3.10 an hour.

- A second workshop paid all workers the statutory minimum wage. If a worker's production exceeded the established standards, his or her pay was increased based on the existing piece rates for the job performed. However, most of the piece rates were set up in 1974 and few of them had changed. Because the statutory minimum wage has increased considerably since 1974 (from \$2 an hour in 1974 to \$3.10 at the time of our visit), exceeding the standards was difficult, if not impossible, for many jobs. Additionally, the worker had little incentive for exceeding the standard because the marginal pay for each additional piece decreased as the number of pieces produced increased.
- A third workshop paid workers from \$2.90 (the statutory minimum wage) to \$3.30 an hour in 1979. However, the wage rates for similar jobs in the vicinity of the workshop ranged from \$3.67 to \$4.58 an hour depending on the specific tasks. Because the workshop's wage rates were considerably less than the prevailing wages, it was possible that higher functioning workers were not being paid commensurate wages.
- A fourth workshop contacted a local employment service office and received prevailing wage rates for tasks involving furniture production. The hourly rates ranged from \$4.07 for the State to \$7.05 for the city where the workshop was located. The prevailing wage nationwide was reported as \$5.28 an hour. In this instance, the workshop paid the statutory minimum wage (\$3.10 an hour). Higher rates were paid depending on the number of units provided.

PUBLICLY OPERATED WORKSHOPS
ARE EXCLUDED FROM LABOR'S
ENFORCEMENT PROCESS

About 75 percent of the 3,877 sheltered workshops certified by Labor regional offices as of September 20, 1979, were operated by private nonprofit organizations. The remainder were publicly operated. Labor regional offices have excluded all publicly operated workshops from the enforcement process until Labor headquarters decides the applicability of a 1976 Supreme Court decision on the administration and enforcement of the Fair Labor Standards Act for publicly operated workshops. In the 10 Labor regions, the number of publicly operated workshops ranged from 6 to 45 percent of the certified workshops.

The Fair Labor Standards Act, as originally enacted in 1938, did not apply to persons employed by States or political subdivisions of a State. The 1966 amendments extended the act's coverage to employees of States and public enterprises engaged in operating transit companies, hospitals, schools, and related

institutions. In 1974, the Congress amended the act to cover virtually all public sector employees except those who were elected, or appointed by elected officials to their personal staffs or to policymaking positions. The expanded coverage under the 1974 amendments included sheltered workshops operated by public agencies.

On June 24, 1976, the Supreme Court decided, in the case of the National League of Cities v. Usery (426 U.S. 833), that the minimum wage and overtime provisions of the Fair Labor Standards Act could not constitutionally be applied to State and local government employees engaged in activities which are an integral part of traditional governmental functions. The Supreme Court decision stated that such traditional activities as schools, hospitals, fire prevention, police protection, sanitation, public health, parks, and recreation were among those functions for which the minimum wage provisions did not apply. The decision did not discuss activities which might be regarded as nontraditional; however, the majority opinion did state that the minimum wage and overtime standards could apply to a State's operation of a railroad.

Because the Supreme Court decision did not establish a test for distinguishing between traditional and nontraditional governmental functions, the Secretary of Labor was required to develop a means of providing interpretative guidance to public employers for identifying nontraditional functions which are subject to the minimum wage provisions of the act. The Secretary later decided to make all interpretations regarding the applicability of the decision for nontraditional activities on a case-by-case basis. To date, Labor has not made a decision on the applicability of the ruling to publicly operated sheltered workshops. Until such a decision is made, Labor has stopped investigating publicly operated sheltered workshops for compliance with the act. Shortly after the Supreme Court decision, Labor instructed publicly operated workshops that the last approved certificate should remain in effect until a decision on the applicability of the Supreme Court decision to sheltered workshops was made. However, Labor has continued processing applications for publicly operated workshops requesting their first certificate. When approved, the workshop is informed that the certificate will remain in effect without further renewal by the workshop.

In addition to excluding publicly operated workshops from the enforcement process, Labor discontinued action against eight sheltered workshops which were found to have monetary violations. According to Labor records, 11 investigations were in progress at publicly operated sheltered workshops at the time of the Supreme Court's decision (June 24, 1976). Labor immediately suspended all compliance activities relating to these 11 cases. Nine of the 11 cases were essentially completed. Labor records showed that violations of certificate requirements and commensurate wage

payments were found at eight workshops, involving an estimated \$1,058,592 in underpayments for 3,156 handicapped workers; no violations were found at one workshop. A final conference between Labor and workshop officials had been held in each case and officials at six workshops had agreed to pay back wages. Section 6 of the Portal-to-Portal Act of 1947 (29 U.S.C. 251-262) provides that back wages resulting from violations of the Fair Labor Standards Act may only be collected for a period of up to 2 years (3 years in the case of willful violations). Thus, Labor cannot collect any back wages for the eight investigations because the statute of limitation expired during the 4 years since the Supreme Court decision.

Although the handicapped employed in sheltered workshops receive training and therapeutic benefits from the workshops, the primary emphasis of the employment aspects of a sheltered workshop is to provide goods and services for sale to Federal, State, and local governments and in the commercial market. In this regard, we found little difference in the general operating practices of the public and private workshops we visited. Of the 38 sheltered workshops visited, 10 were publicly operated--5 workshops for the blind and 5 workshops for other severely handicapped. Six were operated by a State agency designated to administer the vocational rehabilitation program, two by other State agencies, and two by a county or political subdivision of the State. None of the workshops were operated as part of a hospital or institution. Our analysis of the payment systems in publicly operated workshops disclosed problems similar to those discussed on pages 31 to 37.

CONCLUSIONS

Failure to properly pay handicapped workers in sheltered workshops often appeared to be based on the lack of an adequate understanding of the complex requirements. The administrative burden of the certification process has overshadowed Labor's process for investigating sheltered workshop operating practices and procedures for compliance with the provision of the act requiring the payment of wages to handicapped workers which are commensurate with those paid nonhandicapped workers for similar work in private industry.

If Labor improved management controls for allocating staff resources, both the number and quality of investigations performed each year could be increased, thereby increasing overall compliance. For example, if a certain amount of time were allocated for workshop investigations and a number of specialists were developed in the area offices, a more effective, coordinated system for investigating workshops, on a periodic basis, could be developed and implemented.

The Labor enforcement process has been weakened by Labor's decision to exclude publicly operated sheltered workshops from investigation until a decision on the applicability of the 1976 Supreme Court decision was made. Although over 4 years have passed since the Supreme Court decision, Labor has not made a policy decision on this matter. Because about 25 percent of the sheltered workshops are publicly operated, we believe that Labor should decide on this matter to effectively implement its enforcement responsibilities under the act.

Under present conditions Labor does not have the authority to enforce the payment of wages higher than the statutory minimum wage requirements of the act for handicapped and nonhandicapped workers. Furthermore, the act's provision requiring the payment of commensurate wages for handicapped workers employed under special certificates cannot be enforced by Labor if the resulting wage exceeds the statutory minimum. Whether this lack of authority represents a significant weakness depends on whether handicapped workers should be provided with wage protection in excess of the statutory minimum.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary:

- Decide whether the requirements of the Fair Labor Standards Act should be applied to publicly operated sheltered workshop.
- Strengthen management control over the planning, implementation, and evaluation of the investigating process for sheltered workshops' compliance with the requirements of the Fair Labor Standards Act by: (1) requiring regional and area offices to specify a level of staff resources for making workshop investigations and (2) designating specific compliance officers in each regional or area office to develop expertise for making workshop investigations.
- Establish management controls for assuring that sheltered workshop investigations are made on a uniform basis nationwide. Each investigation should include all analyses needed to determine a workshop's compliance with the act's requirements, including examinations of the (1) production standards used for establishing piece rates; (2) productivity evaluations used for establishing hourly wage rates; (3) procedures used to determine and document prevailing wage rates; (4) systems used to develop and maintain individual productivity records, time studies, performance evaluations, and records of total hours worked; and (5) procedures

used for increasing individual wage payments to comply with the terms and conditions of a special certificate.

MATTER FOR CONSIDERATION BY THE CONGRESS

Because handicapped workers who are receiving the minimum wage or higher may not be paid in accordance with the act's commensurate wage requirements, the Congress should consider amending the act to extend Labor's authority for enforcing the provision that a handicapped worker's wages must be commensurate with those paid nonhandicapped workers.

AGENCY COMMENTS AND OUR EVALUATION

Labor, the National Industries for the Blind and the National Industries for the Severely Handicapped generally agreed with our recommendations in this chapter. Labor pointed out that the annual target for sheltered workshop investigations is about four times the level of all establishments investigated annually as measured against the total universe of employers covered by the Fair Labor Standards Act. Labor believes that a targeted number of investigations produces essentially the same results as a plan based upon staff hours since the time it takes to conduct a workshop investigation varies considerably. Investigations of small workshops with few contracts in which the workers are paid at hourly rates can normally be completed in a relatively short time, while those of large workshops with a variety of work involving both piece as well as hourly rates may take considerably longer.

Labor indicated that it will emphasize in its instructions to its enforcement staff that conciliations and limited investigations are not intended to be counted in the targeted program for conducting workshop investigations. Labor's regional offices are instructed to designate specific compliance officers in each area office to do workshop investigations so that they can develop expertise in this program. Regional office workshop specialists also assist in making workshop investigations and provide on-the-job training for compliance officers who are relatively new at making such investigations. It is not feasible, however, to have all workshop investigations made by a limited number of compliance officers because of the geographical dispersion of the workshops.

Labor plans to review its Field Operations Handbook which provides guidance for conducting workshop investigations to assure that all analyses needed to determine a workshop's compliance with the act's requirements are covered in sufficient detail. The National Industries for the Blind believes that stronger enforcement without increased technical assistance will not correct abuses. The National Industries for the Severely Handicapped suggested that Labor (1) intensify its management training and assistance to sheltered workshops, (2) conduct periodic courtesy inspections of

workshops, and (3) provide additional training to compliance officers to improve the effectiveness of workshop reviews. In this regard, Labor commented that specialized training in time studies and related matters for compliance officers designated to conduct workshop investigations was scheduled to be provided by a contractor in fiscal year 1981. Budgetary considerations, however, required the postponement of the training. It is anticipated that this training will be provided in fiscal year 1982. Also, Labor is testing a new method of providing both compliance officers and workshops' staff with guidance in determining prevailing wage rates based on computerized data compiled monthly by the Employment Service.

Labor agreed that it would be desirable to issue an opinion stating whether or not the wage provisions of the Fair Labor Standards Act apply to sheltered workshops operated by State governments and their political subdivisions. Labor said that, in ruling that the wage provisions of the Fair Labor Standards Act cannot constitutionally be applied to "integral operations in areas of traditional governmental functions," the Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976), provided little concrete guidance as to how the decision would affect many activities of State and local governments. Labor said also that subsequent decisions of lower courts have not been particularly helpful, and it is likely that further guidance from the courts may be needed before Labor will be in a position to issue an opinion.

Labor said that, under its special enforcement policy as approved by the district court on remand from the Supreme Court (see 29 CFR 775.2), it cannot sue any State or local government agency for wage violations of the Fair Labor Standards Act unless it has first issued an opinion stating that the agency's activities are not "traditional" or "integral" within the meaning of the Supreme Court's decision. This ban against litigation does not apply to individual employees or groups of employees who seek to sue their employers.

The National Industries for the Severely Handicapped and the National Industries for the Blind believe that publicly operated workshops should be held to the same standards of the law as private nonprofit workshops. The National Industries for the Blind stated that the present interpretation under which the act's provisions do not apply to publicly operated workshops has led to a double set of standards and continuous confusion in a program that has the single objective of providing employment to handicapped persons.

The National Industries for the Blind agreed with our recommendation that the Congress consider extending Labor's authority for enforcing the act's commensurate wage provision. The National Industries for the Blind stated that it was aware that workshops sometimes pay the minimum wage to avoid the administrative and paperwork problems of Labor's certification process and that such practices could result in underpayments if an individual's productivity and the prevailing wage result in actual earnings over the minimum wage. The National Industries for the Blind also suggested that Labor's procedures for monitoring the measurement of workers' productivity and the establishment of prevailing wages be strengthened.

The National Industries for the Severely Handicapped disagreed with the recommendation. While the National Industries for the Severely Handicapped acknowledges the recommendation's intent to make handicapped workers' wages equitable with those of nonhandicapped workers doing work of similar value, it believes that Labor should continue to focus concern on wage rates for those earning less than the minimum wage, but should not be involved in monitoring and enforcing wage rates above the minimum, particularly when this is not an area of concern in private industry. The National Industries for the Severely Handicapped described these comments as typical of those it receives from workshop administrators, "DOL [Labor] has no enforcement authority over industry beyond the minimum wage: why should workshop wages above the minimum be centrally controlled by the Federal Government?"

While we recognize the limits of Labor's authority over industry, we believe that the merits of the recommendation must be considered in view of the act's commensurate wage provision.

CHAPTER 4

ADMINISTRATION OF THE JAVITS-WAGNER-0'DAY

PROGRAM SHOULD BE STRENGTHENED

The Wagner-0'Day Act, as amended, established a program (commonly referred to as the Javits-Wagner-0'Day program) for directing the Federal Government's procurement of selected commodities and services from qualified sheltered workshops to increase job opportunities for the handicapped. Under the act, the Committee for Purchase from the Blind and Other Severely Handicapped was created for (1) approving suitable products or services for procurement from sheltered workshops, (2) establishing the fair market prices, and (3) establishing rules and regulations for implementing the program. The Committee is also authorized to designate other organizations, referred to as central nonprofit agencies, to assist in administering the program.

Although amendments to the act in 1971 strengthened the program's administration, allegations have been made concerning the adequacy of the Committee's procedures for (1) approving suitable products and services, (2) assessing workshop eligibility, and (3) monitoring the activities of the central nonprofit agencies. Although our analysis disclosed that the Committee's practices and procedures generally comply with the act's provisions, we identified several areas where the Committee's procedures could be improved. For instance, the Committee's procedures for providing public notification (in the Federal Register) of proposed additions to the list of goods and services to be procured from sheltered workshops do not appear to provide current or recent Government suppliers with sufficient notice. Also, the Committee's procedures are not adequate for assuring that participating sheltered workshops comply with the act's requirement that handicapped labor must account for not less than 75 percent of the total direct labor hours in the workshop. Our analysis disclosed that sheltered workshops, in many instances, were reporting to the Committee misleading or inaccurate information on the number of direct labor hours for handicapped and nonhandicapped workers.

The Committee has delegated many administrative responsibilities to central nonprofit agencies. Although the agencies are theoretically reimbursed by participating sheltered workshops through commissions based on the gross sales to the Federal Government, our analysis shows that the burden of financing has been essentially placed on the Federal Government because the Committee includes a markup sufficient to cover the commission rate in the fair market price. However, although the commission rate is established by the Committee, standards of accountability have not been established for evaluating the adequacy of the rate or the commissions received by the central nonprofit agencies.

HISTORICAL OVERVIEW

The Wagner-O'Day Act, enacted on June 25, 1938, created a Committee on Purchases of Blind-Made Products responsible for providing employment opportunities in sheltered workshops for the blind in manufacturing brooms, mops, and other suitable commodities for the Federal Government. The Committee was composed of representatives from seven Federal agencies and one private citizen. The legislative intent was to give workshops employing the blind preferential treatment in Government contracting, second only to the Federal Prison Industries, Inc., to provide employment and rehabilitation opportunities for such persons.

Under the act, the Committee was responsible for approving suitable products for procurement by the Government from qualified workshops and for establishing the fair market prices for those products. The Committee was also responsible for issuing a list of commodities which the Government must procure from sheltered workshops. The Committee was also authorized to designate a non-profit organization for (1) coordinating daily program activities for blind workshops, (2) insuring adherence to the Federal regulations by participating workshops, and (3) facilitating the distribution of purchase orders among the workshops.

Responding to the need for a central nonprofit agency to act as a liaison between the Federal Government and the workshops for the blind, the National Industries for the Blind was formed in 1938. Federal regulations delegated to the National Industries for the Blind the responsibility for assisting the Committee to assure that the regulations and intent of the act were carried out. Although the act provided the Committee with functions and duties, it did not authorize a budget or staff for carrying out the responsibilities. Committee staff consisted of individuals detailed to the Committee from participating member agencies. As a result, the administrative work of the Committee was largely done by the National Industries for the Blind.

In the first year of the program's operation (1939), 36 workshops for the blind received \$220,000 for the sale of brooms and mops to the Government. In succeeding years, the blind workshops broadened their capabilities for producing items for the Government. The sale of blind-made consumer products through commissaries and post exchanges of the military services was also done under the authority of the Wagner-O'Day Act. By fiscal year 1971, blind workshops reported annual sales to the Federal Government and in military stores of \$18.3 million.

In June 1971, the Congress amended the Wagner-O'Day Act (Public Law 92-28, 41 U.S.C. 46-48 (1976)), which expanded the program's scope to include services as well as products and extended the benefits to other severely handicapped persons in

addition to the blind. The act increased the size of the statutory Committee, authorized a full-time staff, and changed its name to the Committee for Purchases of Products and Services of the Blind and Other Severely Handicapped to reflect its expanded functions and activities. The Committee's name was shortened to the Committee for Purchase from the Blind and Other Severely Handicapped in 1974.

Under the act, the Committee is composed of 15 members appointed by the President, including one representative from each of the following departments or agencies of the Government: the Departments of Agriculture, Defense, the Army, the Navy, the Air Force, Health and Human Services, Commerce, Justice, and Labor; the Veterans Administration; and the General Services Administration. Four members are private citizens; one who is conversant with the problems incident to the employment of blind individuals, one conversant with employment problems of severely handicapped individuals, one who represents blind individuals employed in sheltered workshops for the blind, and one representing severely handicapped persons (other than blind) in other sheltered workshops.

In preparing the 1971 amendments, the Congress recognized, a need for certain administrative matters, such as evaluating prices and general monitoring of the National Industries for the Blind's performance in discharging Committee obligations under the act, to be performed by a staff responsible to the Committee. The following excerpt from House Report No. 92-228, dated May 25, 1971, by the House Committee on Government Operations, summarized the congressional concern.

"Recent events have disclosed that more staff work and greater Committee responsibility are essential. More extensive records of how fair market prices are established, how items are selected, and how business is distributed-as a result of a court decision-are now required. In addition, more information must be obtained and analyzed regarding the impact of the program on commercial business." 1/

Although the 1971 act authorized, for the first time, a full-time staff and funding for the Committee, the resources for fulfilling its responsibilities are limited. The Committee's appropriation has increased from \$240,000 in fiscal year 1973 to \$565,000 in fiscal year 1981. The authorized staff positions increased from 8 to 12 over the same period. As a result, the role of the Committee and the staff is generally one of giving directions and supervision at the policy level. Most of the Committee's time is spent (1) establishing rules and regulations for

1/H. Rept. No. 228, 92d Cong., 1st Sess., 8-9 (1971).

implementing the program, (2) determining which commodities and services are suitable for production or provision by qualified workshops for the blind or other severely handicapped, (3) issuing and maintaining a list of commodities and services (Procurement List) which the Government must procure from sheltered workshops, (4) determining the fair market price of the commodities and services on the Procurement List, and (5) revising the prices in accordance with changing market conditions.

However, the amendments also extended the Committee's authority for designating nonprofit agencies to assist in administering the program. The National Industries for the Blind continued to serve as the central nonprofit agency for blind workshops, but declined the opportunity to extend its role to include workshops for the severely handicapped who had been newly included in the program. To initiate the program without delay, the Committee decided to work with the following six nonprofit organizations rather than designating a single nonprofit agency for representing the handicapped other than the blind.

1. Goodwill Industries of America.
2. International Association of Rehabilitation Facilities.
3. Jewish Occupational Council.
4. National Easter Seal Society for Crippled Children and Adults.
5. National Association for Retarded Citizens.
6. United Cerebral Palsy Association.

In January 1973, the Committee decided to designate a single nonprofit agency, similar to the National Industries for the Blind, for representing and assisting other severely handicapped workshops. The new agency, the National Industries for the Severely Handicapped, was incorporated in June 1974, and initially was funded by grants from the Department of Health and Human Services. In March 1975, the National Industries for the Severely Handicapped assumed responsibility for representing other severely handicapped workshops wanting to enter the program and for developing new commodities and services for addition to the Procurement List. The six original agencies were authorized to continue representing workshops which had a commodity or service already on the Procurement List as well as those with proposed additions on which action was nearly completed. The transfer was completed in June 1976, and the Committee withdrew its designation of the six nonprofit organizations as central nonprofit agencies under the act. Thereafter, the Committee worked through only two central nonprofit agencies: the National Industries for the Blind (representing

blind workshops) and the National Industries for the Severely Handicapped (representing all workshops for nonblind persons).

Since the 1971 act, the program's annual sales increased from \$18.3 million in 1971 to \$92.4 million in 1979; \$71 million was reported for workshops for the blind and \$21 million was reported for workshops for the severely handicapped. Whereas 78 workshops participated in the program before the 1971 amendments, 158 workshops provided commodities and services in fiscal year 1979, including such commodities as automobile safety belts and ballpoint pens and such services as grounds maintenance and typewriter repair. ^{1/} The 158 workshops, located in 43 States and the District of Columbia, employed more than 24,236 handicapped workers.

In addition to expanding the program's scope, the 1971 amendments were also intended to strengthen its overall administration. However, concern over the Committee's administrative practices and procedures, especially by small businesses, was not totally alleviated, especially in these areas: (1) effectiveness of the Committee's analysis of the impact on current or recent suppliers of commodities and services proposed to be added to the Procurement List, (2) legality or propriety of certain activities of the central nonprofit agencies under the act, and (3) adequacy of the eligibility requirements for workshops participating in the program.

ADEQUACY OF COMMISSIONS RECEIVED BY
CENTRAL NONPROFIT AGENCIES HAS NOT
BEEN EVALUATED

Although the Wagner-O'Day Act, as amended, authorized the Committee to designate one or more central nonprofit agencies for assisting in the program's administration, the act did not address how the central nonprofit agencies should be reimbursed for their program-related activities. Using its rulemaking authority, the Committee established a commission rate which the central nonprofit agencies may charge sheltered workshops for assisting them to participate in the program. However, the Committee has not established procedures for evaluating the adequacy of the commission rate or the commissions received by the central nonprofit agencies. Therefore, the central nonprofit agencies maintain a relatively unique position wherein they are not funded through the appropriations process and their operations are essentially free from congressional and Federal oversight.

^{1/}Although the Committee has authorized 174 workshops to provide one or more commodities and/or services by the end of fiscal year 1979, our analysis includes the 158 workshops reporting sales to the Federal Government under the program during the fiscal year.

According to the Federal regulations, the commissions which the central nonprofit agencies can charge workshops for facilitating their participation in the program cannot exceed the rates approved by the Committee. The commission rate has fluctuated between 2 and 5 percent of the gross sales to the Federal Government since the passage of the Wagner-O'Day Act in 1938. Since 1968, each central nonprofit agency has been authorized by the Committee to receive a commission of 4 percent of the total gross sales made by each workshop under the program. The National Industries for the Blind received \$2,716,968 for the fiscal year ended June 30, 1979, and the National Industries for the Severely Handicapped received \$646,484 for its fiscal year ended March 31, 1979.

Although the central nonprofit agencies are funded primarily by the commissions, the Committee does not require the agencies to submit a proposed financial or operating plan on their program-related activities. According to the Federal regulations, the central nonprofit agencies must submit an annual report to the Committee for each fiscal year concerning the operations of its participating workshops under the act, including any information which the central nonprofit agency considers appropriate or the Committee may request. However, financial information relating to the central nonprofit agencies' governmental responsibilities is not included. As a result, the central nonprofit agencies are not subject to a budget review or financial analysis by the Committee. Without financial information, the Committee cannot assure that the commissions received by the central nonprofit agencies are justified. Furthermore, the adequacy of the rate should be evaluated because it directly affects the prices paid by the Federal Government and/or the revenue earned by the workshops.

Commission rate directly affects
prices paid by the Federal Government
or revenue received by sheltered workshops

The central nonprofit agencies are funded primarily through commissions paid by sheltered workshops for assisting the workshop to participate in the program. However, our analysis disclosed that the burden of financing the central nonprofit agencies has been essentially placed on the Federal Government because the Committee's procedures for establishing the fair market prices paid for commodities and services on the Procurement List, includes provisions designed to assure that a sufficient markup is provided to cover the commission rate.

Under the act, the Committee is authorized to determine a fair market price for commodities and services on its Procurement List. The Committee has interpreted a fair market price to be one which is representative of the prices offered in the marketplace; it is neither the lowest nor the highest price offered. The median

of the competitive bids submitted on the last solicitation is generally used as the basis for computing the fair market price for commodities. The average of the competitive bids, where available, is used for determining the prices of services. Where the commodity or service has not been previously procured by the Government, the Committee considers such factors as: the price paid by the Government for similar commodities or services, the price of similar commercial items, and the cost to the workshop for producing the commodity or performing the service. Before the Committee publishes an approved price, the agency or agencies with procurement responsibility for the particular commodity or service review the price for consistency with current market prices for the item.

Thus, while not the lowest prices, the fair market prices should be generally competitive with those offered by industry. In practice, the fair market price generally results in a price which is 5 to 12 percent above the lowest price for which the commodity or service could be procured in the commercial market. However, under the Committee procedures, the price should be at least 5 percent above the lowest market price because the Committee procedures provide for the 4-percent commission which the central nonprofit agencies charge the workshops to be included in the fair market price. (An additional 1 percent is included for general administrative costs to the workshop for participating in the program.)

Thus, the commission rate established by the Committee directly affects the price paid by the Federal Government for all commodities or services where the fair market price is not determined by the median or average of competitive bids in the last solicitation. Where the median or average of bids is used in determining the fair market price, the commission rate affects the level of revenue earned by the workshop for producing goods or providing services under the program. Therefore, adequate procedures for evaluating the commission rate established by the Committee are essential for assuring that the central nonprofit agencies have sufficient funds for carrying out their duties and responsibilities under the act, and the prices paid by the Federal Government and the commission paid by the workshops are not excessive.

Expenditure of commissions by central
nonprofit agencies are not restricted
to program-related activities

Although Federal regulations provide general groundrules concerning the roles and responsibilities of the central nonprofit agencies, neither the act nor the Federal regulations limit the scope of activities of the central nonprofit agencies. The central nonprofit agencies perform a wide range of functions under the general authority designated by the Committee. In addition to

facilitating the distribution of Government orders to qualified workshops, the central nonprofit agencies are primarily responsible for assisting sheltered workshops to qualify and maintain eligibility for participating in the program, representing the workshops in dealing with the Committee, and monitoring and evaluating workshop compliance with program requirements.

For example, the central nonprofit agencies must evaluate the capabilities of workshops wanting to participate in the program and provide the technical and engineering assistance required for producing commodities or providing services under the act. In this regard, extensive research and product development is provided for identifying suitable products and services. The central nonprofit agencies must also ensure that each workshop has the capability for meeting the Government's quality standards and delivery schedules before it assumes responsibility for supplying the Government. To enable some workshops to participate in the program, the central nonprofit agencies may assist workshops in procuring raw materials or maintaining adequate inventories. For example, the National Industries for the Blind often centralizes purchasing and inventory maintenance for protecting prices and insuring uniform quality of products and timely delivery of basic raw materials.

In representing workshops before the Committee, the central nonprofit agencies are primarily responsible for recommending suitable commodities for services, including recommended prices, for procurement from its workshops. In this regard, the agencies must provide the Committee with information concerning a workshop's status as a qualified nonprofit agency, manufacturing or service capabilities, and other data required by the Committee. As market conditions change, price changes, with appropriate justification, must be recommended for commodities or services on the Procurement List.

In addition to its primary responsibilities under the act, the National Industries for the Blind also provides a wide range of services not directly related to workshop participation in the program, but which are designed for improving the performance of its associated workshops. While it does not provide direct services for blind persons, the National Industries for the Blind has become a major force in developing employment opportunities for blind persons in associated workshops and private industry. For example, a program for acquiring subcontract work from private industry has been developed and implemented. Also, enclave programs have been initiated between several workshops and cooperating industries where blind workers were placed in competitive positions in industry. The National Industries for the Blind also assists workshops in developing, expanding, or improving vocational evaluation, work adjustment, training, and placement programs for blind persons.

Management training courses are provided at a demonstration workshop, operated by the National Industries for the Blind, and at other locations. Public relations and educational assistance is also provided for workshops by coordinating and advancing the position of workshops on selected issues and by disseminating information to workshops concerning legislation affecting workshops.

Although the scope of activities undertaken by the National Industries for the Severely Handicapped has been limited to its primary responsibilities under the Javits-Wagner-O'Day program, the National Industries for the Severely Handicapped has provided, on a special grant basis, product research and industrial engineering services for assisting sheltered workshops to compete for Federal procurement contracts under the Small Business Administration's set-aside program. Additionally, the Executive Vice-President of the National Industries for the Severely Handicapped told us that he anticipates providing additional services to sheltered workshops as his organization continues to grow.

The commissions paid by participating workshops accounted for about 72 percent of the total operating revenue for the National Industries for the Blind for its fiscal year ended June 30, 1979, and 24 percent was generated by such program-related activities as assisting workshops to procure raw materials or maintain adequate inventories. Unlike the National Industries for the Blind, the National Industries for the Severely Handicapped has only operated since 1974. During its initial years of operation, funds received from the Department of Health and Human Services provided a major source of operating income. For its fiscal year ended March 31, 1979, such funds accounted for 40.8 percent of the total operating revenue, and commissions from the sale of goods and services under the program by sheltered workshops was 56.3 percent. However, operating revenue must be derived solely from commissions since the termination of the Federal funding in 1980.

Without a well-documented operating plan and related budget and accounting information for clearly defining the program-related responsibilities and activities for each of the central nonprofit agencies, sufficient information is not available for assessing the adequacy of the commission rate established by the Committee or the commissions received by the central nonprofit agencies.

COMMITTEE'S PROCEDURES MAY NOT ALWAYS
MINIMIZE THE IMPACT ON INDUSTRY OF
ADDITIONS TO THE PROCUREMENT LIST

Under the act, the Committee must publish in the Federal Register a Procurement List of commodities and services suitable for purchase by the Government from sheltered workshops. All commodities and services on the List must be procured from the designated sheltered workshop at the price established by the

Committee if they are available within the period required by the Government entity. Because most additions to the List result in a loss of sales for one or more private business firms that would otherwise have been selected, the Committee is required to consider whether the addition of a commodity or service to the List would have a serious adverse impact on the current or most recent contractor for the commodity or service.

In House Report No. 92-228, the Committee on Government Operations expressed its view that the Committee should "be an active force within the Government in attempting to aid in the sale of products and services produced by blind and other severely handicapped persons to the Federal Government." 1/ Although the Committee has developed adequate procedures for analyzing the impact of its proposed additions on existing industry, efforts could be made for minimizing the impact on small businesses and assuring that the Committee has the best available information for deciding which items should be added to the Procurement List.

Committee procedures for assessing
impact on industry appear reasonable

The 1971 amendments to the act do not provide criteria for determining suitable products or services for purchase from sheltered workshops. As a result, the Committee considers the merit for each proposed addition on an individual basis. For each request, the central nonprofit agency must submit a detailed justification which designates the workshop that will produce the commodity or provide the service and describes the workshop's capabilities for doing the work. Each workshop must meet all quality standards set by the Government as well as the required delivery schedules. Before adding an item to the Procurement List, the Committee usually requests the procuring activity to conduct an onsite inspection to confirm the workshop's capability for providing the item in accordance with the Government requirements.

The justification must also provide an analysis of the impact on the current or most recent supplier of the item, including a list of current and prior year contractors and the estimated value of the latest procurement for each contractor. The following data should be included for each of the current contractors: the estimated value of annual sales for the company, whether or not the company is a small business, and the unemployment status in the company's local area.

After the staff has reviewed the information in the justification, it prepares an analysis of the impact on industry. The staff then transmits a letter to each member of the Committee

1/H. Rept. No. 228, 92d Cong., 1st Sess., 6 (1971).

which provides information highlighting the most significant factors and a copy of the complete justification and analysis of industry impact. Also, copies of all comments received from industry are appended to the justification. Based on the facts presented, each member must indicate his or her approval or disapproval of the proposed addition. In selected cases where the issues are complex, a proposed addition may be discussed at a Committee meeting. While only a majority of the Committee is required for a decision, the Committee generally tries to reach unanimous agreement before adding items to the Procurement List.

When the Committee decides that a proposed addition could have a serious impact on a particular company or industry, the Committee must consider this fact in deciding what portion, if any, of the Government's procurement of the commodity or service should be added to the Procurement List. In deciding whether a proposed addition would have a serious impact on a current contractor, each Committee member should consider the above-mentioned information as well as other factors, such as: (1) whether or not the current contractor has been a consistent supplier of the item for the Government and therefore is more dependent on the income from such sales and (2) the number of similar types of items procured by the Government which will continue to be available for competitive bidding.

In deciding whether all or a portion of the Government's requirements for an item should be approved for addition to the Procurement List, the Committee considers any contract or commitments under other federally supported programs, particularly those assisting socially and economically disadvantaged groups under section 8(a) of the Small Business Act. Because the Javits-Wagner-O'Day program has priority over the Small Business Administration's section 8(a) program, the Committee routinely advises the procuring activity and the Small Business Administration of the workshop's interest in adding an item to the List. This is done to determine the extent of section 8(a) involvement and also to avoid possible conflict between the two programs' activities.

Although the act does not require the Committee to discuss proposed additions with affected industries or open its meetings to the public, on several occasions, the Committee staff has contacted representatives of the affected industries to obtain information on the potential impact or to invite them to present their views on the proposals before the Committee. The act does not provide for an appeal process for affected industries or workshops to use regarding Committee decisions. However, the Committee has established in its regulations a procedure for appealing its decisions. Any interested person may request the Committee to reconsider a decision by submitting information in writing setting forth the facts which justify modifying or revising a decision.

To analyze the Committee's procedures for assessing the impact on industry, we reviewed the case records for all the products and services added to the Procurement List during fiscal years 1977, 1978, and 1979. For these fiscal years, 185 products or services were added with 78 additions assigned to workshops serving the blind and 107 additions assigned to workshops serving the other severely handicapped. The additions created 1,217 new jobs and the total estimated value for these items was almost \$25.8 million. We found that 115 of the 185 items were previously supplied to the Federal Government by private industry. Of the remaining 70 items, 40 were not previously procured by the Federal Government, 29 were supplied to the Federal Government by sheltered workshops, and 1 was a substitute for an item already on the List. At the time the 115 items were considered for addition to the List, 182 businesses were current suppliers and 80 had also been suppliers in the previous year.

As part of the Committee's analyses of the impact on industry, it computes a percentage of the impact indicator. This percentage is derived by dividing the estimated value of the business' current contract for supplying the item to the Government by the estimated value of the business' annual sales. Except for three instances, the estimated impact in the above 182 cases ranged from less than 1 to 18.2 percent. Of these 182 businesses, only 20 businesses had a computed impact greater than 10 percent. For these instances where the estimated industry impact was greater than 18.2 percent, the estimate for one firm was 21.7 percent, but the business was a wholesaler rather than the manufacturer of the item; the estimated impact for a second firm was 25 percent, but the business refused to furnish information to the Committee staff; and the estimate for a third firm was 77.1 percent, but the business was a section 8(a) firm which could receive another Federal contract from the Small Business Administration.

Of the 185 items, the Committee set aside less than the total Federal requirements for 18 items. Essentially, this was in consideration of the impact on current suppliers or on the Small Business Administration's section 8(a) program. For example, of seven instances where section 8(a) firms were identified, the Committee added only part of the Government requirements in four instances, and approved a one-time award for another section 8(a) firm.

In addition to reviewing the Committee's records, we also requested information from 31 private businesses which had expressed concern to Small Business Administration, General Services Administration, or Committee officials about the Committee's procedures and practices for adding commodities or services to the Procurement List. We asked each business for information on its products or services added to the List, annual sales, contacts with the Committee staff, and other opinions about the Committee activities.

Twenty-three of the 31 businesses provided full or partial responses. Although 10 of the businesses told us that their total sales were reduced for the year following the Committee's action, most of the businesses said that their sales had increased in later years. Thus, the information provided by the 23 businesses appears to indicate that the adverse effects of the Committee's actions are limited to the short term. In this regard, the information provided by the businesses disclosed considerable concern over the Committee's procedures for providing public notification of the proposed additions to the List.

Better notification procedures
could minimize industry impact

At least 30 days before the Committee's consideration of a proposed addition to the Procurement List, the Committee publishes a notice in the Federal Register announcing the proposed addition and requesting interested persons to submit written data, views, or arguments on the proposed addition. Notices are published in the Federal Register because the act specifically requires the Committee to comply with the rulemaking procedures of section 553 of title 5 of the United States Code for notifying and permitting interested persons the opportunity to submit written comments.

Although the requirement was placed in the act because of congressional concern that affected persons should have the opportunity for commenting on proposed Committee actions, we found that many current or recent suppliers, particularly small businesses, were not aware of Committee proposals under consideration because they did not subscribe to the Federal Register. In this regard, the president of a small business we contacted said that

"The Federal Register is not a conventional, reasonable, source of Government business news and is not read by anyone we know of in this or any other industry with the possible exception of representatives of the giant corporations who maintain lobbyists in Washington."

Similarly, the president of another small business made the following comment:

"The notice in the Federal Register is insufficient. You are dealing with small companies like ourselves who are effected [sic] by the set asides. We are not major corporations with a staff to review daily what is published in the register. We don't have the time or money for that."

As a result, many suppliers do not receive timely notification of the Committee's proposed actions. Many suppliers were not aware of the proposals until they were contacted by the procuring agency. The Committee's staff director estimated that only 10 to 15 percent of the current or most recent suppliers submit written comments annually. This indicates that a significant percentage of the suppliers were either unaware of the proposed Committee actions or not interested in submitting written comments. 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 action is made.

In a 1976 report, 1/ we pointed out a similar condition where the Committee's notification procedures did not appear to provide small businesses with sufficient notice of proposed additions to the Procurement List. In commenting on our report, the Committee's executive director said that establishing a policy of directly notifying persons, such as current and recent Government suppliers, bidders, and affected industry associations, of proposed additions would impose a significant burden on the Committee. Although notifying present and recent suppliers of proposed actions would increase the Committee's administrative responsibilities, it does not appear that it would impose a significant administrative burden on the Committee. Private businesses were current suppliers for 115 of the 185 items added to the List during fiscal years 1977, 1978, and 1979. According to Committee records, 182 businesses were current suppliers at the time the item was considered by the Committee and 158 businesses had been suppliers in the prior year. However, 80 businesses were suppliers in both years and for notification purposes should only be considered once. The following table shows the number of different businesses and suppliers for each fiscal year.

	Fiscal year			
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>Total</u>
Current supplier (note a)	92	39	51	182
Prior supplier	<u>35</u>	<u>21</u>	<u>22</u>	<u>78</u>
	<u>127</u>	<u>60</u>	<u>73</u>	<u>260</u>

a/Those who were both a current and prior supplier are included as a current supplier only.

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

Although directly notifying current and recent suppliers would necessitate between 60 and 127 letters annually to affected businesses for the 3-year period, the increased administrative burden of preparing the letters and responding to the comments appears relatively small compared to the benefits to affected businesses. For example, 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 for commenting on each proposed addition to the Procurement List. Also, affected businesses could initiate early actions to minimize the impact of the proposed additions. The Committee's current procedures require that, where information is not available on a current contractor's sales, or it appears that, based on the information available to the Committee, the current contractor or contractors would be seriously impacted, the Committee staff must notify directly the current contractors of the proposed additions. However, the Committee staff director estimated that less than five contractors are directly notified each year.

METHODS OF ASSESSING WORKSHOP ELIGIBILITY ARE WEAK

To establish and maintain eligibility for the program, each sheltered workshop must annually certify that not less than 75 percent of its direct labor was performed by blind or severely handicapped persons. Our examination of the annual reports submitted by 27 workshops we visited showed that the workshops, often, submitted inaccurate or misleading information on the percentage of direct labor performed by blind or other handicapped persons. Although the inaccuracies and inconsistencies were often difficult and time consuming to detect, the fact that they exist raises questions regarding the adequacy of the Committee's procedures for assessing workshop compliance with the Federal requirement.

Sheltered workshops do not always comply with the Federal requirement for handicapped direct labor hours

The annual workshop certification required by the Committee must report the number of direct labor hours performed by handicapped and nonhandicapped workers. For workshops associated with the National Industries for the Blind, the term "handicapped workers" refers to only blind persons. Although these workshops frequently employ workers with other handicaps, the act does not allow such workers to be counted for maintaining program eligibility. Workshops associated with the National Industries for the Severely Handicapped may include both blind and other handicapped workers for complying with the Federal requirement.

Failure to maintain the 75-percent level for any fiscal year jeopardizes a workshop's eligibility and could result in the suspension of the Government's orders for any commodities or services the workshop is authorized to provide under the act. When a workshop fails to meet the 75-percent level for any fiscal year, it must submit quarterly reports showing its direct labor hours for handicapped and nonhandicapped workers during the next fiscal year. If the workshop does not submit the required quarterly reports or fails to reach the 75-percent level on a cumulative basis after the first 6 months of the next fiscal year, the Committee may withdraw the workshop's eligibility for the program. However, under exceptional circumstances, if the Committee decides that the workshop is making significant progress toward meeting the 75-percent direct labor requirement, it may extend the workshop's eligibility for an additional 6 months.

For fiscal years 1977-79, 10 sheltered workshops producing commodities or providing services under the program reported that the number of hours worked by handicapped workers were less than 75 percent of the total direct labor hours for a single fiscal year. The following table shows the breakdown between workshops for the blind and workshops for the severely handicapped.

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Blind	1	0	2
Severely handicapped	<u>2</u>	<u>3</u>	<u>2</u>
Total	<u>3</u>	<u>3</u>	<u>4</u>

Of the 10 workshops, 1 voluntarily withdrew from the program and 1 had its eligibility withdrawn by the Committee. Seven of the remaining eight workshops maintained their eligibility by raising their direct labor hours worked by the handicapped above the 75-percent level on the first and second quarterly reports. For the seven workshops, the percent of the direct labor hours for handicapped workers reported on the annual certification reports ranged from 61.65 to 74.98. The percent of handicapped direct labor at the eighth workshop increased from 73 to 74.74 by the end of the first 6 months, and the workshop's eligibility was extended. For the workshop which had its eligibility withdrawn, the percent of direct labor performed by handicapped workers increased from about 54 to nearly 59 at the end of the first 6 months of the next fiscal year. However, the Committee withdrew the workshop's authority for participating in the program when it became apparent that the workshop would not meet the 75-percent level in that fiscal year. In the next quarterly report submitted by the workshop, the percent on an accumulated basis for the year to date had increased to only about 63.

Although the Committee, using the annual reports, identified 10 workshops during the 3 fiscal years that did not maintain the required level of handicapped direct labor hours, the annual reports do not always provide adequate information for evaluating workshops' compliance with the Federal requirement.

Sheltered workshops do not always
submit accurate reports

The percent of direct labor hours worked by the handicapped reported by the 158 workshops producing a commodity or providing a service under the program during fiscal year 1979 ranged from 62 to 100. The following table shows the range of handicapped direct labor hours (as a percentage of total direct labor hours) for the 158 workshops for fiscal year 1979.

<u>Handicapped direct labor hours</u> (percent)	<u>Number of workshops for the</u>	
	<u>Blind</u>	<u>Severely handicapped</u>
Below 75	2	2
75 to 79	24	10
80 to 89	24	19
90 to 99	15	33
100	<u>1</u>	<u>28</u>
Total	<u>66</u>	<u>92</u>

During our visits to 27 of the workshops, we reviewed the supporting documentation for the reports submitted to the Committee, including payroll records, and observed workshop production practices and procedures. Our analysis indicated that the Committee's procedures for reporting direct labor hours were not always consistently applied by the workshops and that some of the workshops did not accurately report direct labor hours.

The Federal regulations define direct labor as all work required for preparing, processing, and packing a commodity or work directly relating to the performance of a service, but not supervision, administration, inspection, or shipment. Direct labor includes the work of all employees regardless of full-time, part-time, or temporary status and all work performed whether or not it is procured by the Federal Government under the program.

For the 27 workshops we visited, our analysis of records showed that 10 submitted reports contained information that 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 (4) computational errors were made. In two other instances, we were not able to evaluate a report's accuracy because the workshop did not maintain adequate records for documenting the information provided to the Committee.

Of the 12 workshops, 6 employed primarily the blind and 6 employed other severely handicapped. Some examples follow:

- At one workshop, the direct labor rate for handicapped workers was reported as 76 percent for fiscal year 1979. However, our analysis of the workshop's payroll records showed that the workshop had not reported the direct labor hours for 12 part-time nonhandicapped workers and had reported the hours worked by 2 handicapped indirect labor workers as direct labor hours. Also, the workshop had made several computational errors.
- At a second workshop, the direct labor rate for handicapped workers was also reported as 76 percent. Although the workshop's payroll records included the actual hours worked by each employee, the direct labor hours reported to the Committee were estimates developed by multiplying the number of handicapped and nonhandicapped workers by 2,080 hours (the estimated number of hours worked by a full-time employee). Also, about six nonhandicapped workers performing direct labor activities were not considered as part of the workshop's direct labor hours reported to the Committee even though the income generated was an important source of revenue for the workshop.

Although we were not able to recompute the percentages for the workshops which estimated the hours or did not maintain adequate records, we were able to make adjustments for six reports. Based on our analysis, the percentage of handicapped direct labor decreased for three reports. For the three workshops, the percents were reduced from 86 to 82, 76 to 74, and 64 to 60. According to our analysis, the percentage of handicapped direct labor increased for the other three reports.

During our workshop visits, we also observed situations at five workshops where nonhandicapped persons classified as indirect labor (such as supervisors, administrators, or inspectors) were performing direct labor for extended time periods. For example, at two workshops for the blind, we observed several individuals classified as supervisors who were performing sewing tasks for both commodities procured under the program and for other commodities: individuals classified as inspectors at the two workshops were also performing direct labor activities in addition to inspection functions. Administrative staff were also observed doing

Although we were not able to measure the effect of these practices on the reports submitted for fiscal year 1979, using non-handicapped persons classified as indirect labor for direct labor activities may represent the difference between maintaining or losing program eligibility. For the two workshops for the blind, the direct labor percents for handicapped workers were 93 and 91. In these instances, it would not appear likely that the percentage would fall below the Federal minimum. However, for two of the three workshops for the severely handicapped the direct labor rates for handicapped workers were reported as 76 and 77 percent. In these instances, a relatively small adjustment may cause the percentage to fall below the Federal minimum. These situations also point out the difficulties faced by the Committee for enforcing workshop compliance with the Federal requirement. An analysis of the report submitted by the workshop or a brief visit to the workshop following the receipt of the report may not be sufficient for identifying the extent that workers classified as indirect labor were performing in direct labor capacity during the time frame covered by the report.

In addition to problems concerning the accuracy of the information provided, our analysis of the reports for the 27 workshops disclosed several instances where the procedures for reporting direct labor hours for alternative or satellite locations were not consistently applied. For example:

- One workshop which has two satellite locations included the satellites' direct labor hours in its report to the Committee. If this workshop did not include the direct labor from the satellites, it would not meet the 75-percent requirement.
- A second workshop which had three locations included only two of them in its report. Because the third location employed a high percentage of nonhandicapped workers, the workshop would not have met the 75-percent requirement if it had been included.
- A third workshop excluded the direct labor hours for an alternative location even though the workers were used for preparing the materials for the production of a commodity procured by the Federal Government under the program. Because the majority of workers were not handicapped, the inclusion of the direct labor hours for this unit would have reduced the workshop considerably below the 75-percent level.

Although the Committee is responsible for monitoring the sheltered workshop's compliance with the act's requirements, the Committee has limited resources for monitoring. As a result, the number of workshops visited is limited. For example, the Committee staff told us that they are generally able to visit workshops once

every 2 to 5 years because of limited staff and travel budget. For the 27 participating workshops we visited, the Committee had made one visit to 22 during the 5-year period preceding our site visit; 5 of the workshops had not been visited by the Committee staff during the period. For the 22 workshops, 9 were visited within 1 year of our visit, 2 were visited within 2 years, 7 within 3 years, 2 within 4 years, and 2 within 5 years.

Also, the Committee staff makes only spot checks during its site visits for monitoring a workshop's compliance with the act's direct labor requirements, including a review of the workshop's system for recording and reporting direct labor hours. During its visit, the staff explains the definition of direct labor and the requirements for recordkeeping and reporting by the workshop under the act and Committee regulations. The Committee's executive director told us that its effort may be best described as an analysis of the workshops' capability for complying with the Committee's procedures for reporting direct labor hours.

CONCLUSIONS

Although the Committee for Purchase from the Blind and Other Severely Handicapped has generally complied with the requirements of the act, we believe that the rules and regulations for administering the program should be strengthened for assuring that the program's goals and objectives are achieved efficiently and effectively. For example, we believe that the impact of proposed Committee actions to add items or services to the Procurement List could be minimized by direct notification of the current and most recent suppliers of items being considered. Direct notification would permit businesses to initiate plans for future marketing strategies designed to minimize the impact of the Committee's proposed actions. Also, the businesses may provide relevant information for the Committee members in making their decision.

Because the Committee has not always had reliable information regarding handicapped workers performing at least 75 percent of the direct labor hours in participating workshops, we believe that the procedures for workshops to follow in documenting the direct labor hours reported to the Committee should be strengthened. Also, the Committee's procedures for checking the accuracy of the reports submitted by the workshops should be strengthened.

The central nonprofit agencies serve as an effective way of linking public and private resources for administering a Federal socioeconomic program. Originally, the agencies were designed to function as "staff arms" of the Committee. Over time, the activities and functions of the central nonprofit agencies have expanded, including program and nonprogram related activities. While possessing considerable independence, the central nonprofit agencies rely on the commissions received through the sale of commodities and

services to the Federal Government under the program as their primary source of operating revenue.

Because the commission rate established by the Committee directly affects the fair market price and the revenue earned by the workshops, it is essential that the Committee establish adequate procedures to assure that the (1) central nonprofit agencies have sufficient funds for carrying out their duties and responsibilities under the act and (2) prices paid by the Federal Government and the commission paid by the workshops are not excessive.

AGENCY COMMENTS AND OUR EVALUATION

The Committee disagreed with the proposal in a draft of this report that its staff should notify directly the current and most recent contractors for each commodity or service proposed for addition to the Procurement List for three reasons. First, the Committee stated that our conclusion is based on the incorrect assumption that a primary purpose of the publication of the notice in the Federal Register is to minimize impact on industry of the Committee's actions. As stated on page 62, the act requires the Committee to comply with the Federal rulemaking procedure, including publishing a notice in the Federal Register, to notify and permit interested persons the opportunity to submit written comments. Our proposal was based on the fact that (1) many current or recent contractors, particularly small businesses, were not aware of the published notices and (2) an affected business could initiate early actions to minimize the impact of the proposed additions. The Committee believes that any benefit to an affected business would be minor when compared to the adverse impact that it would have on the Committee's mission of increasing employment opportunities for the Nation's blind and other severely handicapped.

Secondly, the Committee stated that a direct notification requirement would discriminate unfairly against the Committee's program because other Federal programs which limit or deny the opportunity for a current contractor to continue to bid on Federal procurement items are not required to notify directly affected contractors. Specifically, the Committee referred to programs setting aside (1) procurements from small businesses and labor surplus areas, (2) awards to minority-owned firms under section 8(a) of the Small Business Act, and (3) purchases from Federal Prison Industries, Inc.

Our proposal was based, in part, on the belief that direct notification can assist small businesses to minimize the impact of the Committee's procurement actions. Because three of the four programs referred to by the Committee are designed to increase Federal procurement opportunities for small businesses, in many instances through the provision of competitive opportunities, we question the reasonableness of comparing procedures

established for these programs in addressing the need for a direct notification requirement for the Committee's program. In this regard, we do not believe that the lack of a similar notification requirement in other programs should preclude its adoption for the Javits-Wagner-0'Day program.

Thirdly, the Committee stated that the direct notification of affected contractors would result in its staff's devoting a significant portion of time and effort responding to a major increase in correspondence and telephone calls, with a concomitant reduction in its ability to perform its essential functions relating to the addition of new items to the Procurement List and the processing of pricing actions. The Committee believes that response to these notices would increase the correspondence workload on the Committee staff by six to eight times its current level.

While we recognize that a direct notification requirement would increase the Committee's correspondence workload, we question the Committee's estimate. The Committee stated it would be required to send an average of 125 separate notices each year to current and prior year contractors based on the number of addition actions the Committee processed in fiscal year 1980 and to date in 1981.

The Committee assumed that at least half of the responses would require a detailed reply based primarily on the results of its prior efforts to notify four or five contractors annually to obtain information on proposed additions. According to information provided by the Committee staff, the present correspondence workload relating to proposed additions to the Procurement List is estimated to be about 55 letters a year. Using the Committee's assumptions, we estimated that the workload could increase by 200 to 250 letters a year. The Committee did not provide an estimate of the impact of the increased number of letters on staff time needed to respond.

We believe that the low rate of response annually to the Committee's notices in the Federal Register provides additional evidence concerning the (1) need for direct notification and (2) potential impact on the Committee's correspondence workload. The fact that the Committee only receives responses to an estimated 10 to 15 percent of the notifications published annually indicates that businesses (1) either are not aware of the published notices (2) or choose not to provide written comments. For businesses included in the first group, direct notification will fully satisfy the act's intent that interested parties be permitted an opportunity to comment. For those in the second group, direct notification should not result in an increase in the Committee's correspondence workload.

In view of the Committee's stated intent that it did not plan to implement our proposal, we are directing it to the Congress because we continue to believe that the benefits of direct notification can justify the increased effort by the Committee. However, we modified our proposal to require that the Committee only directly notify current suppliers and others who in the judgment of the Committee could be adversely affected by this action. (See p. 75.)

The National Industries for the Blind and the National Industries for the Severely Handicapped did not concur with the proposal. Both cited these reasons for noncurrence: (1) increased administrative workloads and (2) the lack of a similar requirement for other Federal procurement programs which remove items from the competitive market. The National Industries for the Blind believes that the existing procedure requiring public notification in the Federal Register is essentially fair to all segments of industry and government appropriate for minimizing the impact on the business community. Also, the National Industries for the Blind states that increasing the Committee's administrative burden would cause delays in the addition procedures for items to the Procurement List. Also, the National Industries for the Blind questioned the need for including the most recent prior supplier in the recommended notification procedures because it should be the prior contractor's responsibility to monitor the marketplace thoroughly if it intends to continue or resume bidding for Federal procurement.

While the Committee did not agree or disagree with our position that it establish procedures for evaluating the adequacy of the commission rate and the commissions received by the central nonprofit agencies, it stated that the thrust of our conclusion that the commission rate directly affects the prices paid by the Federal Government is not correct. The Committee believes that the primary impact of the commission rate is on the revenue the workshops receive rather than on the prices paid by the Government. The National Industries for the Blind and the National Industries for the Severely Handicapped also disagreed. Both contend that the Federal Government through the fair market price mechanism does not bear the burden of financing their organizations. The National Industries for the Blind stated that the fair market price for about 95 percent of its products on the Procurement List was based on the median of bids concept.

In response to these comments, we analyzed information provided by the Committee and the National Industries for the Severely Handicapped on the method used to establish initial fair market prices for recent procurement actions by the Committee, and we found that a majority of the prices were based on the award price plus 5 percent or the cost plus 4 percent. For example, the fair market prices established for 27 of 45 Committee actions processed during the first 9 months of fiscal year 1981 included a direct markup for the commission rate. Similar information developed by the National Industries for the Severely Handicapped showed that

the fair market price for 80 of 134 actions adding commodities and services to the Procurement List between April 1978 and November 1979 included a markup for the commission rate. In addition, our analysis of the Committee's procedures for periodically amending the initial prices found that a markup for the commission rate can be included based on the Committee's established criteria. As a result, we cannot accept, in the absence of an analysis of current pricing for all commodities and services, the view that the primary impact of the commission rate is on the revenue received by the workshop. Furthermore, we believe that this information indicates that the commission rate directly affects the price paid by the Federal Government.

The National Industries for the Blind and the National Industries for the Severely Handicapped believe their Boards of Directors exercise adequate control over their activities; therefore, oversight by the Committee is either inappropriate or unnecessary. The National Industries for the Blind also disagreed with our conclusion that some of its activities were not directly related to workshop participation in the Javits-Wagner-O'Day program. While we recognize that the National Industries for the Blind's activities are primarily designed to improve workshop operations, we believe that it is not possible to clearly define its program-related responsibilities and activities without a well-documented operating plan approved by the Committee. The National Industries for the Blind also pointed out that the original Wagner-O'Day Act did not address the issue of commissions and that, in their opinion, the present commission rate does not place an undue burden on the Federal Government in view of the other subsidies provided in the broad area of socioeconomic support. They concluded that oversight by the Committee would inevitably lead to domination by the Federal Government.

Our conclusion was based on the premise that the Committee, as the Federal agent responsible for the establishment of the commission rate and the fair market pricing procedures, is responsible for evaluating the adequacy of the commission rate and the commissions received regardless of whether their primary effect is on the prices paid by the Federal Government or the revenue received by the workshops participating in the program.

Although the Committee did not agree or disagree with our conclusion that procedures be established to verify the accuracy of the workshops annual reports on the number of direct labor hours worked by handicapped and nonhandicapped workers, the Committee pointed out that its staff found the same deficiencies in the recording and reporting of information on direct labor hours as those discussed in this chapter. Further, the Committee stated that added personnel and resources recently made available to the staff to perform its inspection function have permitted a threefold increase in the number of workshops visited in fiscal year 1980 over the average of visits in the prior 3 years. With

few exceptions, by the end of fiscal year 1981, the Committee staff will have achieved its interim goal of having visited each newly approved workshop within 6 months of beginning production under the Committee's program, and having revisited each workshop within 3 years of the prior staff visit.

Also, the Committtee believes that the procedure followed by its staff in observing workshop operations, reviewing records, and recordkeeping constitutes more than a superficial review of the workshops' records and methods for recording and reporting data. When there have been allegations that a workshop is failing to comply with the Committee's regulations or where the staff visit reveals a questionable situation, the staff expands the scope of its review to the extent necessary to determine the facts in each case. According to the Committee, one of the primary purposes of its visit is to orient workshop executives and management personnel on the proper methods for determining, recording, and reporting handicapped and nonhandicapped direct labor hours.

Based on its experience, the Committee believes that most workshop managers are conscientious in trying to evaluate correctly and to report accurately data on their direct labor, once they understand what is required. Finally, the Committee pointed out that its staff, during its normal visit of about 1 day at each workshop, cannot be expected to perform the extended and detailed review conducted by us at the workshops we visited. The Committee's analysis is designed to primarily review a workshop's system for recording and reporting direct labor hours. While the Committee's approach appears adequate to assess a workshop's capability to comply with the direct labor reporting requirements, its procedures do not require that the accuracy of the actual direct labor hours reported on the workshops' annual reports be verified during its site visits. While we recognize that the Committee resources are limited, we believe, based on the workshops we visited, that the Committee could establish procedures, using payroll records and sampling techniques, to verify the accuracy of the information submitted by the workshops. Because the information represents the primary vehicle used by the Committee to monitor a workshop's compliance with the act's direct labor requirements, we believe that procedures should be established for verifying its accuracy.

The National Industries for the Severely Handicapped agreed that verification procedures should be established, but expressed a concern that its funds and staff were too limited to implement it. The National Industries for the Blind did not comment on the proposal.

The National Industries for the Severely Handicapped agreed with our suggestion that the Congress request a study from the Committee assessing the various levels of Committee oversight functions and the related costs if the study is expanded to include the need for additional resources for assistance functions. The National Industries for the Blind generally concurred with our suggestions and stated that procedures should be established by

the Committee to assure compliance with the act's requirements and that the program's goals and objectives are achieved efficiently and effectively. However, the National Industries for the Blind believes that various levels of Committee oversight should not include budget review and financial analysis.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Wagner-O'Day Act to require that the Committee for Purchase from the Blind and Other Severely Handicapped notify directly affected suppliers of the Committee's intent to consider the suitability of a product or service for procurement from a sheltered workshop.

PROPOSED STATUTORY AMENDMENT

The amendment to the Wagner-O'Day Act, based on our recommendation to the Congress, would read: Section 2(a)(2) of the Wagner-O'Day Act of 1938, as amended (41 U.S.C. §47(a)(2)) is amended to read as follows:

"The Committee may, by rule made in accordance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, United States Code, add to and remove from the procurement list commodities so produced and services so provided. In addition, at least 30 days before the Committee's consideration of a proposed addition to the procurement list, the Committee must directly notify current suppliers and others who in the judgment of the Committee could be adversely affected by this action."

MATTER FOR CONSIDERATION BY THE CONGRESS

Because the ability of the Committee for Purchase from the Blind and Other Severely Handicapped to effectively monitor and control the provisions of the act is limited by the level of the annual appropriations received, we recommend that the Congress consider requesting the Committee to assess its oversight responsibilities and provide the Congress with an estimate of the resources needed for an adequate level of Federal oversight.

RECOMMENDATIONS TO THE CHAIRMAN OF THE COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

We recommend that the Chairman establish procedures for:

- Verifying the accuracy of the reports submitted by the workshops for the number of direct labor hours worked by handicapped and nonhandicapped workers.
- Evaluating the adequacy of the commission rate and the commissions received by the central nonprofit agencies.

CHAPTER 5

EMPLOYMENT OPPORTUNITIES FOR THE HANDICAPPED

UNDER THE JAVITS-WAGNER-0'DAY PROGRAM

ARE NOT ADEQUATELY EVALUATED

The Committee for Purchase from the Blind and Other Severely Handicapped was created to increase employment opportunities for blind and other severely handicapped persons in sheltered workshops. However, the information that the Committee requires the sheltered workshops to report does not provide an adequate basis for measuring the program's success in providing employment opportunities in the workshops. Although each sheltered workshop reports annually to the Committee on the total number of direct labor hours worked by handicapped and nonhandicapped workers, the Committee does not require workshops to provide comparable information for the commodities and services procured by the Government under the Javits-Wagner-0'Day program.

While the program has increased the employment opportunities for blind and other severely handicapped persons in sheltered workshops, the placement of handicapped workers from sheltered workshops into competitive employment appears to be limited. Although the act did not establish the placement of handicapped workers into competitive employment as a program objective, the Committee requires workshops to report the number of handicapped workers placed annually. However, workshops are not required to identify placements attributable to employment opportunities created by the program.

INCREASED EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED IN SHELTERED WORKSHOPS HAVE NOT BEEN ADEQUATELY MEASURED

The primary objective of the Javits-Wagner-0'Day program is to provide employment opportunities for handicapped workers who are not capable of obtaining competitive employment outside the sheltered workshop. Although the act established a specific standard for determining a workshop's eligibility for the program, criteria were not established for measuring the program's success in providing handicapped persons with increased employment opportunities through the addition of commodities and services to the Procurement List.

The act's provision requiring that 75 percent of the direct labor hours be performed by handicapped workers was designed for assuring that only sheltered workshops employing primarily handicapped workers were eligible for the program. According to House Report No. 92-228, dated May 25, 1971, this requirement was included in the act to:

"assure that this preferential procurement program is, in fact, used to provide employment opportunities for blind and other severely handicapped individuals who are incapable of engaging in regular competitive employment." 1/

For measuring compliance with the 75-percent requirement, the act provides that workshops can report the total hours for all persons engaged in direct labor whether or not the commodities or services were procured under the Javits-Wagner-0'Day program. According to House Report 92-228, the law had been administered on this basis since the beginning of its operation in 1938.

"As has been the practice, the 75 percent criterion is to be applied during the fiscal year in which the commodities or services are procured under the Act. The percentage of blind or other severely handicapped labor on a given commodity may be slightly higher or lower in any given fiscal year owing to a variety of factors, including training of personnel for the manufacture of a new product or absence of blind or other severely handicapped workers on account of illness. However, the overall average of handicapped hours of direct labor during the entire fiscal year should meet the 75 percent requirement." 2/

The Committee requires each workshop to report annually the number of direct labor hours for handicapped and nonhandicapped workers. (See pp. 64 to 69.) Based on this information, the Committee evaluates a workshop's eligibility for participating in the program.

During our visits to 27 workshops, we observed that the hours worked on the commodities and services under the Javits-Wagner-0'Day program generally accounted for a small portion of the total direct labor hours reported for the workshops. As a result, sheltered workshops can use nonhandicapped workers for producing commodities or providing services under the Javits-Wagner-0'Day program and still meet the general requirement that 75 percent of direct labor in the workshop be provided by blind or severely handicapped persons. One workshop executive director told us that it would be possible to meet the 75-percent requirement for the entire workshop while using little or no handicapped labor on the Javits-Wagner-0'Day work. A general manager of another workshop said that it is possible that some of the Javits-Wagner-0'Day items could not be

1/H. Rept. No. 228, 92d Cong., 1st Sess., 14 (1971).

2/Ibid, page 14.

produced if the 75-percent requirement had applied to Javits-Wagner-O'Day work because the skills of handicapped persons were not sufficient.

Because the Committee's reporting requirements are designed to evaluate a workshop's eligibility under the act, it does not require the workshops to report separately the number of direct labor hours worked by handicapped and nonhandicapped workers on commodities and services procured by the Federal Government under the program. As a result, the information provided is not sufficient for measuring the extent to which the commodities and services provided under the act increase employment opportunities for handicapped and/or nonhandicapped workers in sheltered workshops. Eleven of the 27 workshops we visited kept records which allowed us to separate the direct labor performed on the Javits-Wagner-O'Day work from the direct labor for the entire workshop. Our analysis showed that handicapped workers provided less than 60 percent of the direct labor hours applied to Javits-Wagner-O'Day work at 2 of the 11 workshops in fiscal year 1979. However, the two workshops reported that the direct labor hours worked by the handicapped were 77 and 86 percent of the total direct labor hours for all work performed. As these examples show, unless the workshops maintain records which will allow information to be reported separately, the number of direct labor hours for Javits-Wagner-O'Day work and other workshop activities, the Committee will not be able to adequately measure the workshop's success in providing increased employment opportunities for handicapped workers.

Similarly, the Committee's procedures do not require sheltered workshops to include information on the estimated number of handicapped and nonhandicapped workers for each proposed addition to the Procurement List. However, the Committee does require sheltered workshops to include the estimated number of employment opportunities (new jobs) which would be created for handicapped workers. According to the Committee's executive director, new jobs are estimated based on the production level of a nonhandicapped worker. The new jobs are expressed in staff-years of work for handicapped workers.

For fiscal years 1977, 1978, and 1979, sheltered workshops estimated that 520, 306, and 391 new employment opportunities, respectively, would be available for the 185 items added to the Procurement List. Our analysis of the justifications submitted for the 185 items disclosed that the number of new jobs for each addition to the List ranged from 0 to 57; the median is 4. However, the justification is not required to provide the estimated number of employment opportunities which would be created for nonhandicapped workers for each justification. Thus, although each addition to the List was designed to increase the employment opportunities for handicapped workers in sheltered workshops, the

Committee was not provided with information on the ratio of new jobs for handicapped and nonhandicapped workers before deciding whether to add a commodity or a service to the List.

PLACING HANDICAPPED WORKERS INTO
COMPETITIVE EMPLOYMENT HAS NOT
BEEN ADEQUATELY STRESSED

The 1971 amendments to the act did not establish the placement of handicapped workers into competitive employment as a program objective. The Federal regulations state that the employment opportunities created by the Javits-Wagner-0'Day program should be used, whenever possible, for preparing handicapped persons to engage in competitive employment. Although the program has provided numerous employment opportunities for the handicapped in sheltered workshops, the workshops' success in assisting handicapped workers to advance into competitive employment has been limited. Despite the fact that the Committee requires the sheltered workshops to report the number of handicapped persons placed into competitive employment from the workshop annually, we found during our visits to 27 participating workshops that the placement information provided to the Committee was not sufficient for measuring placements of handicapped workers into competitive employment which were attributable to employment opportunities created by the program.

Placements into competitive
employment were low

The placement rate for all sheltered workshops participating in the Javits-Wagner-0'Day program during fiscal year 1979 was only slightly higher than the rate reported for other sheltered workshops in two recent studies. The placement rate, expressed as a percentage, is based on the total number of handicapped workers employed in the workshop during the fiscal year and the total number of those placed in competitive employment. A study prepared for the Department of Health and Human Services in July 1975 reported that 13 percent of the handicapped workers in 400 sampled workshops were placed in competitive employment during the 1973-74 period. ^{1/} The study projected that the universe of workshops annually placed about 10 percent of the handicapped workers. Labor's 1977 study of sheltered workshops found that, based on a sample of 2,530 workshops, the placement rate of handicapped workers

1/Greenleigh Associates, Inc., The Role of the Sheltered Workshop
in the Rehabilitation of the Severely Handicapped, Vol. I, 1975,
page 17.

into competitive employment in community jobs was 12 percent. ^{1/} According to the reports submitted to the Committee by 158 workshops, the placement rate of handicapped workers into competitive employment was 14.5 percent for fiscal year 1979.

Our analysis of placement information reported to the Committee by the 158 workshops showed that the rate of placement for workshops employing the blind was considerably lower than the rate reported for workshops employing the other severely handicapped workers. For example, 66 workshops for the blind reported that 382 of 4,427 blind workers employed during fiscal year 1979 were placed into competitive employment—a placement rate of 8.6 percent. In contrast, 92 workshops for the other severely handicapped reported that 3,133 of 19,809 handicapped workers were placed into competitive employment—a placement rate of 15.8 percent.

Also, our analysis disclosed that a small number of 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. Of the remaining 59 workshops, 27 did not report a single placement and 32 reported that between 1 and 8 blind workers were placed during the year. If the numbers of blind workers that were placed and employed by the 7 workshops reporting the highest placements were removed, the placement rate for the remaining 59 workshops would be 3.3 percent. Similarly, 7 of the 92 workshops for the other severely handicapped accounted for 38 percent of the total placements reported. However, only 2 workshops did not report a single placement. For the remaining 83 workshops, 29 reported that from 1 to 9 handicapped workers were placed and 54 workshops reported from 10 to 96 placements. If placements at the 7 highest reporting workshops were deleted from the computation, the placement rate for the remaining 85 workshops would be 11.1 percent.

As the above information indicates, the success of individual workshops to place handicapped workers into competitive employment varies considerably. Although such factors as the functioning level of the handicapped workers and the employment opportunities available outside the workshop affect the placement rate, workshop officials' general placement philosophy represents a major factor contributing toward the successful placement of handicapped workers into competitive employment outside the workshop. (See pp. 82 and 83.)

^{1/}U.S. Department of Labor, Sheltered Workshop Study: Workshop Survey, Vol. I, June 1977, page 111.

Placements are not always related to
employment opportunities created by
the Javits-Wagner-0'Day program

To measure the extent to which the employment opportunities afforded by the program lead to the placement of handicapped workers, the information reported by each workshop should include the number of handicapped workers placed into competitive employment outside of the workshop and identify workers employed on Javits-Wagner-0'Day work before their placement. During our visits to 13 workshops for the blind and 14 workshops for the severely handicapped, we found that workshops interpret and report placements differently. For example, the information reported by the 27 workshops for fiscal year 1979 included the following types of placement:

- Handicapped workers provided training in another area of the facility not directly associated with the sheltered workshop and placed in an outside industry.
- Handicapped workers provided training in another area of the facility and transferred into the sheltered workshop.
- Handicapped workers employed in the sheltered workshop at less than the minimum wage who received a wage increase to the statutory minimum wage rate.
- Handicapped workers employed in the sheltered workshops who were placed in outside industry.
- Handicapped workers employed in the sheltered workshops, but who also worked in outside industry on a part-time basis.

Our analysis of the records supporting the 100 placements reported by the 13 workshops for the blind showed that 83 were placed into competitive employment from a training facility that did not provide the opportunity for employment in the sheltered workshop or were transferred within a workshop and not to outside competitive employment. Although adequate records were not always available for supporting the placements reported by the 14 workshops for the other severely handicapped, our analysis of available records disclosed that many of the handicapped workers, reported as placements, were not employed in the sheltered workshop or were transferred from one workshop program to another.

Although the Committee requires each workshop to annually report the number of handicapped workers placed into competitive employment, the workshops were not required to identify those placements attributable to employment opportunities created by the program. At the 27 workshops visited, we asked officials

to identify handicapped workers who were employed on Javits-Wagner-O'Day work before being placed into competitive employment outside the workshop. Officials at 20 of the 27 workshops identified 56 handicapped workers out of a total of 340 placements reported (by the 20 workshops) for fiscal year 1979.

Adequate standards for evaluating
placement rates may be difficult
to establish

Based on our analysis of the 27 workshops, the rate of placement of handicapped workers into competitive employment in community jobs, regardless of whether they were employed in jobs created by the program, appears to be considerably less than the rate of placement reported to the Committee. Whether or not this is an acceptable rate of placement is a judgment which must be based on the expectations of the Congress, the Committee, the central non-profit agencies, the workshops, and the clients.

The philosophy of placing handicapped workers from sheltered workshops into competitive employment depends primarily on whether sheltered workshops should be considered as providing transitional or terminal employment opportunities for the handicapped and whether the handicapped should be considered as clients or employees of the workshops. The terms "client, worker, and employee" are generally used interchangeably in discussing handicapped persons in sheltered workshops. Generally, when a person is receiving services from a workshop program, he or she is considered a client. Handicapped persons who are involved in activities associated with gainful employment are generally considered as employees or workers. However, under the duality of roles of sheltered workshops, many individuals may be gainfully employed while also receiving services in the workshop; in these instances, the person may be referred to as either a client or an employee.

Some Federal, State, and local programs consider the handicapped as clients who are being provided with transitional employment opportunities in the sheltered workshop environment. Such an approach stresses the importance of placement as a key component of a sheltered workshop's operation. Workshops and other organizations often consider the handicapped as employees in a regular employment setting. While not discounting the advantages of placement opportunities for the handicapped, these organizations believe that actively stressing placement is not consistent with the general desires of the handicapped or with the general business practices of the workshop which must compete with private business in the general competitive market.

One of the biggest concerns for sheltered workshops is the problem of maintaining a high volume of work. Therefore, many

the production of goods and services for generating income for the workshops. Emphasis on production often results in higher wage earnings for handicapped workers, whereas emphasis on competitive job placement results in the workshop retaining the least productive workers, thereby reducing capacity for generating income. This is especially critical for sheltered workshops producing for the Federal Government. These workshops must meet the same time frames and quality standards as other Federal Government contractors.

However, the level of production should not be the sole determining factor of the readiness of a worker for competitive employment. Many severely handicapped persons may be capable of normal productivity, but incapable of existing in the "world of work" outside the workshop because of secondary problems in social and personal behavior or the need for supportive services on a continuing basis. Also, some workers may be more secure and happy to remain in the sheltered workshop environment. Therefore, a major problem affecting the Committee's ability to evaluate the effectiveness of participating sheltered workshops in placing handicapped workers in competitive employment centers around the difficulty in establishing reasonable standards for adequately measuring the placement rate.

CONCLUSIONS

While we recognize that participating sheltered workshops and handicapped workers receive many benefits from the procurement opportunities provided by the program, we believe that the primary measure of the program's success should be newly created employment opportunities for handicapped workers in participating workshops. Although the act's provisions for evaluating workshops' eligibility only require that 75 percent of the direct labor hours for the entire workshop be provided by handicapped workers, we believe that workshops should be required to report the number of direct labor hours performed by handicapped and nonhandicapped workers on commodities and services provided to the Government under the Javits-Wagner-0 'Day program to measure the program's success in increasing the employment opportunities for the handicapped. Because the 75-percent requirement appears to provide a reasonable standard for measuring the increased employment opportunities created by the program, we believe that participating workshops should be required to maintain the 75-percent level for the commodities and services procured under the program, as well as for the entire workshop.

Although not established as a program objective by the 1971 amendments to the act, we believe that employment opportunities created by the program should be used, to the maximum extent, to prepare handicapped workers for placement into competitive employment. Presently, job placement is not used as a performance measure by the Committee and thus, there is less incentive for placing workers outside the workshop. As a result, many high-functioning persons might remain in sheltered workshops.

Without adequate information on the number of placements attributable to the employment opportunities created by the program, it is not possible to adequately evaluate the workshops' success in placing handicapped workers into competitive employment. Although the Committee requires sheltered workshops to report the number of handicapped workers placed into competitive employment annually, the information does not identify those placements attributable to employment opportunities created by the Javits-Wagner-0'Day program. Also, the workshops did not report the placements on a uniform basis. We believe that the Committee should establish procedures for (1) assuring that placement information is uniformly provided by the workshops and (2) measuring the workshops' success in providing employment opportunities which lead to the placement of handicapped workers in competitive employment.

AGENCY COMMENTS AND OUR EVALUATION

The National Industries for the Blind and the National Industries for the Severely Handicapped believe that additional reporting requirements and verification procedures would cause a significant administrative burden for sheltered workshops. Also, they point out that implementation of many of our proposals appears to contradict the administration's intent to reduce paperwork because the proposals would require more government control, centralized direction, and Federal regulations. The two corporations believe that the program should continue to have the flexibility to do its job and not be hamstrung with overregulation and compliance reviews.

While we share their concern that Federal reporting and administrative requirements should be minimized, we believe that the additional reporting requirements and verification procedures are necessary for the Committee to ensure (1) compliance with the act's requirements and (2) achievement of the program's goals and objectives effectively.

The Committee agreed that a proposal included in a draft of this report that sheltered workshops submit information on the estimated direct labor hours for proposed additions to the Procurement List could be included in the Committee's written procedures so that Committee members could make a judgment as to whether a proposed addition would, in fact, result in the provision of employment opportunities for the blind and other severely handicapped. However, the Committee preferred to require the workshops to provide the information on a group rather than individual basis where a proposed addition includes a number of national stock numbered items to be produced or a variety of service actions to be performed. We agree that this approach should provide the appropriate information for all similar or related commodities or services. We modified our proposal, and we are recommending that the Chairman of the Committee revise the Federal

regulations and Committee procedures to require that each participating sheltered workshop submit information on the estimated direct labor hours for handicapped and nonhandicapped workers for each action proposing the addition to the List of a product or group of products or a service. (See p. 90.)

The National Industries for the Severely Handicapped disagreed that workshops should be required to submit information on estimated direct labor hours for proposed additions because it believes that information required for proposed additions would be meaningless because workshops are not able to project standard hours on the expected productivity of workers. The National Industries for the Blind believes it is impractical and cannot be implemented because workshops would be required to establish standard production rates and productivity rates for handicapped and nonhandicapped workers before the workers are trained and the job is set up in the workshop. The National Industries for the Blind concluded that information submitted by the workshops could only be an estimation.

The Committee agreed with a proposal in a draft of this report that the percentage of employment of handicapped persons in the production of commodities and the provision of services on the Procurement List should be monitored to ensure that the work is used primarily to provide employment for blind and other severely handicapped persons. However, the Committee stated that collection of this information on an item-by-item basis would require extensive, additional recordkeeping of direct labor hours and an additional detailed report annually. The National Industries for the Blind also expressed concern that the recording and reporting of direct labor hours for program-related products and services greatly increase the regulatory and administrative burden on sheltered workshops.

While we recognize the burden that collecting and reporting this information might place on certain workshops, we believe that the Committee needs such data to adequately assess a workshop's performance under the act. Furthermore, we believe that the required information could be submitted by the workshops as part of their present annual reporting required by the Committee rather than establishing a separate reporting requirement. Recognizing the need to limit the recordkeeping requirements for the participating workshops, we modified our proposal to permit the reporting of handicapped and nonhandicapped direct labor hours for all commodities produced and/or services provided by each workshop rather than on an item-by-item basis. (See p. 91.) Based on the Committee's present requirement that workshops must maintain records on the direct labor hours for each individual, we do not believe that a requirement to identify and report the total direct labor hours for all items produced under the program (as opposed to an item-by-item basis) would result in extensive, additional recordkeeping for the workshops. We believe that this information is essential for the Committee to ensure that the work done under the program is used primarily to provide employment for blind and handicapped persons.

The National Industries for the Blind and the National Industries for the Severely Handicapped did not agree that information on handicapped and nonhandicapped direct labor hours for products produced and services provided under the act should be annually reported to the Committee. The National Industries for the Blind objected because many of the items produced for the Federal Government under the program are also sold by workshops in the commercial market. The National Industries for the Blind believes that it would not be possible to separate the hours for program-related work at the time of manufacturing and report accurately the results to the Committee. While we recognize such situations would require adjustments in the recordkeeping and reporting systems, we believe that the Committee could develop procedures for the workshop to follow in collecting and reporting direct labor hours from program-related work.

The Committee stated that it would exceed its authority under the act, if it were to require that handicapped workers must provide at least 75 percent of the direct labor hours on all commodities produced and/or services provided by participating sheltered workshops under the program. The Committee noted that, while workshops are expected to utilize handicapped persons to the maximum extent possible in the production of commodities and the provision of services on the Procurement List, the act does not require that the 75-percent ratio be achieved for each individual commodity or service.

The National Industries for the Blind and the National Industries for the Severely Handicapped did not agree that participating workshops should be required to maintain the 75-percent level for commodities and services procured under the program because such a requirement would, in their opinion, increase the regulatory and administrative burdens on sheltered workshops while reducing the opportunity for workshops to do Federal procurement and thereby denying employment opportunities to handicapped persons.

The National Industries for the Blind believes that the present criteria allowing the entire workshop to maintain at least a 75 to 25 ratio permit the movement of handicapped workers, experimentation with such workers, and the degree of flexibility needed when working with persons of limited employability. The National Industries for the Blind believes that a 75-percent requirement for each item supplied to the Federal Government would result in an exceedingly narrow interpretation of the congressional intent to achieve employment goals for handicapped workers under the program. It would reduce the opportunities to manufacture certain items under the program because many comparatively complex items could not be adopted for production by the handicapped within the 75-percent requirement and the fair market price. Also, workshops would be forced to ignore the severely handicapped workers in order to concentrate on the Government work. In addition, the National Industries for the Blind stated that some workshops are now finding it increasingly difficult to maintain the act's requirement of a 75-percent ratio for the entire workshop.

According to the National Industries for the Blind, it is virtually impossible to achieve a 75-percent ratio on a new item during initial production while simultaneously training the handicapped workers and meeting the Government requirements for quality and ontime deliveries. The National Industries for the Blind concluded that the act's intent is to provide employment for the blind, not simply to provide the Government with products that are 75 percent handicapped made.

The National Industries for the Severely Handicapped believes that the 75-percent requirement for products and services procured under the program should not be implemented because the problems discussed in the report are not prevalent and do not justify such a drastic change. The National Industries for the Severely Handicapped also stated that the requirements would prevent some handicapped workers from sharing in all workshop activities because it would preclude the workshop from having flexibility to move workers around.

We believe that a standard for the percentage of direct labor hours performed by handicapped workers should be established to assess whether the employment opportunities created by the program are used primarily for handicapped workers. In this regard, we believe that the participating workshops should be required to maintain the 75-percent level for all commodities and services procured under the program. However, we recognize that such a standard should have sufficient flexibility to allow for special situations which may sometimes occur. Therefore, we believe that the Committee's procedures for enforcing the act's current requirements could also be applied in similar instances for the commodities and services produced under the program. (See pp. 64 and 65.)

Also, we believe that a standard would (1) serve as an incentive for workshops to identify and employ the required number of handicapped workers and (2) provide assurance that only items providing employment for primarily handicapped workers are added to the Procurement List. We believe that this is especially important because the act's provisions result in limiting or denying the opportunity for other businesses to compete for the products or services. In view of the Committee's stated lack of authority to establish a standard and our belief that such a standard is needed to ensure that the Committee's actions result primarily in the provision of employment opportunities under the program for the handicapped, we are directing our proposal to the Congress. (See p. 90.)

In commenting on a proposal included in a draft of this report that participating workshops report the placements into competitive employment attributable to the employment opportunities created by the program, the Committee stated that the program's primary purpose is to expand the employment opportunities for blind and other severely handicapped persons in sheltered workshops. According to the Committee, a secondary result may be the

placement of individuals into competitive employment. However, the Committee stated that "the number of placements in competitive employment of persons employed on Javits-Wagner-O'Day work is in no way a measure of the success or accomplishments of the Committee's program." We do not agree with the Committee's position. According to Federal regulations, the employment opportunities created by the program should be used, whenever possible, for preparing handicapped persons to engage in competitive employment. We believe the following discussion during June 1973 hearings before a Subcommittee of the House Committee on Government Operations clearly demonstrates the position of the Committee for Purchase from the Blind and Other Severely Handicapped on the relationship of placements to the program.

"Ms. Abzug. * * * Is one of the goals of your Committee to urge that workshops attempt to help handicapped and blind workers to enter the mainstream economy by finding jobs in ordinary commercial firms?

"Admiral Wheeler [Committee Chairman]. Yes, ma'am, it is indeed, and this is one of the paragraphs in our regulations for workshops.

"However, we do not, in any case, abandon those people whose capabilities are such that the workshop in fact provides the only employment they could hope to obtain.

"We recognize that this is the major reason for our program but we never lose sight of the rehabilitation aspect. We can place in the record the clause that I am discussing because it is, while secondary, a very important aspect of our program." 1/

The Committee stated that the placement program required by its regulations is to ensure that each workshop has an effective system for placing handicapped persons in competitive employment. The Committee is interested not only in whether each workshop has an effective placement program, but also encourages workshops to place in competitive employment as many of its handicapped employees as are capable and desirous of being placed. During its visits to workshops, the Committee stated that its staff reviews the effectiveness of the workshop's placement program. However, due to the heterogeneous nature of the handicapped persons in workshops, the evaluation of the effectiveness of the workshop's programs must be made on a case-by-case basis, considering each workshop's total handicapped population rather than a particular group who might happen to have been working on Javits-Wagner-O'Day work the day before they are placed in the competitive labor market.

1/Hearings to increase the 1974 budget of the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped before a Subcommittee of the House Committee on Government Operations, 93d Cong., 1st Sess., page 26 (1973).

The National Industries for the Severely Handicapped and the National Industries for the Blind did not concur that each participating workshop be required to report the placements into competitive employment attributable to the employment opportunities created by the Javits-Wagner-0'Day program. Both said that placements into competitive industry should not be the criteria used for measuring the success of the Javits-Wagner-0'Day program. The National Industries for the Blind pointed out that the numbers of blind persons with other handicaps employed by the workshops are increasing and that, if this is a cause of decreasing placements, the workshops should not be condemned.

The Committee suggested that a system be established for monitoring the effectiveness of each participating workshop's program for placing qualified handicapped persons in competitive employment instead of a requirement that workshops report placements attributable to employment opportunities created by the program. In this regard, we believe that the proposal included in the draft of this report that workshops should report information on the placements in competitive employment attributable to the employment opportunities afforded by the program would provide an essential component of a system for monitoring the effectiveness of a workshop's placement program. Without information on the number of placements and standards, we do not believe meaningful analyses of the effectiveness of a workshop's placement program can be made.

The Committee believes that a proposal included in a draft of this report that it establish standards for measuring a workshop's effectiveness in placing workers would place a responsibility on the Committee for a function which is the responsibility of the Rehabilitation Services Administration under the Rehabilitation Act of 1973, as amended. According to the Committee, the Administration has primary responsibility within the Federal Government for the vocational rehabilitation of handicapped persons. The Committee stated that it has no direct role in rehabilitation activities, but rather assists vocational rehabilitation programs at the workshop level by providing work for handicapped persons employed in sheltered workshops. While the Committee's comments on the Administration's responsibilities for the vocational rehabilitation of handicapped persons are generally correct, we believe that they are misleading because the Administration's responsibilities relate primarily to handicapped persons served by and workshops participating in the Federal-State vocational rehabilitation program. All workshops, or workers in workshops associated with the Javits-Wagner-0'Day program, are not participating in the Federal-State vocational rehabilitation program. Further, we do not believe that the Committee can adequately ensure that participating workshops have an effective placement program without measuring the placement rate for employment opportunities created by the program in each workshop. Also, we recognize the importance of coordinating the Committee's efforts with those of the Administration.

In view of the Committee's statements that (1) placement into competitive employment may be a secondary program result and (2) the number of placements is in no way a measure of the program's success, we are recommending that the Congress recognize in the act that placements into competitive employment outside the workshop should be one of the measures of the program's success.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend the Wagner-O'Day Act to require that sheltered workshops meet a specific standard for the percentage of handicapped direct labor hours on all commodities produced and/or services provided under the program. Specifically, we recommend that the act's 75-percent requirement for measuring a workshop's program eligibility be adopted as the standard because it appears to provide a reasonable basis for assessing whether the employment opportunities created by the program are used primarily for handicapped workers.

We also recommend that the Congress amend the Wagner-O'Day Act to recognize that employment opportunities created by the program should be used, to the maximum extent, for preparing handicapped persons to engage in competitive employment outside the workshop.

PROPOSED STATUTORY AMENDMENTS

The amendments to the Wagner-O'Day Act, based on our recommendations to the Congress, would read: Section 5(3)(C) of the Wagner-O'Day Act of 1938, as amended (41 U.S.C. §48b(3)(c)) is amended to read as follows:

"(C) which in the production of commodities and in the provision of services during the fiscal year employs blind individuals for not less than 75 per centum of the man-hours of direct labor required:

- (i) for the production or provision of the commodities or services procured under this Act; and
- (ii) for the production or provision of all the commodities or services produced or provided by the workshop including those covered by (i) of this subsection."

Section 5(4)(C) of the Wagner-O'Day Act of 1938, as amended (41 U.S.C. §48b(4)(c)) is amended to read as follows:

"(C) which in the production of commodities and in the provision of services during the fiscal year employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required:

- (i) for the production or provision of the commodities or services procured under this Act; and
- (ii) for the production or provision of all the commodities or services produced or provided by the workshop including those covered by (i) of this subsection."

Section 1(a) of the Wagner-O'Day Act of 1938, as amended (41 U.S.C. §46(a)) is amended to change the first sentence to read as follows:

"There is established a committee to be known as the Committee for Purchase from the Blind and Other Severely Handicapped (hereafter in this Act referred to as the 'Committee') for the purpose of directing the procurement of selected commodities and services by the Federal Government to qualified workshops serving blind and other severely handicapped individuals with the objectives of increasing the employment opportunities for these individuals and, to the maximum extent possible, preparing those individuals for placement in normal competitive employment."

RECOMMENDATIONS TO THE CHAIRMAN OF
THE COMMITTEE FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

We recommend that the Chairman revise the Federal regulations and Committee procedures to require that:

- Each participating sheltered workshop submit information on the estimated direct labor hours for handicapped and non-handicapped workers for each action proposing the addition to the Procurement List of a product or group of products or a service.
- Each participating sheltered workshop report the placements into competitive employment attributable to the employment opportunities created by the Javits-Wagner-O'Day program.

We also recommend that the Chairman establish a system for monitoring the percentage of total direct labor hours performed by handicapped and nonhandicapped workers in each participating workshop in the production of commodities or provision of services under the Javits-Wagner-O'Day program. As a minimum, the system should require that each participating sheltered workshop submit information in its annual report showing the total direct labor hours for handicapped and nonhandicapped workers for all products produced and/or services provided to the Federal Government under the Javits-Wagner-O'Day program.

CHAPTER 6

COMPETITIVE RELATIONSHIP BETWEEN

SHELTERED WORKSHOPS AND PRIVATE INDUSTRY:

MANY FACTORS SHOULD BE CONSIDERED

As the sheltered workshop population has grown over the past decade, concern about the effect of various Federal laws on the competitive relationship between sheltered workshops and private businesses has increased. Generally, the concern focuses on the competitive advantages associated with the operation of sheltered workshops in the dual capacity of service provider and employer. As a service provider, a sheltered workshop is operated as a nonprofit organization for providing a wide range of rehabilitative and social services to handicapped persons. Also, workshops are designed for providing short- and long-term employment opportunities for handicapped persons, including prime manufacturing, subcontracting, and service operations, such as janitorial and grounds maintenance. However, sheltered workshops must compete with private businesses to obtain work in the competitive market. Sheltered workshops are most likely to be operating at the level of a small business, and as such, will experience similar competitive business pressures as a profit-oriented small business.

When nonprofit and for-profit organizations compete, the rules and conditions of the competition generally appear to favor the nonprofit organizations. However, even though sheltered workshops in their capacity as nonprofit organizations may receive certain competitive advantages over other businesses, the effect of the advantages may be offset by the increased costs of serving and employing a handicapped labor force which generally functions at a significantly lower level than a nonhandicapped labor force. Although the heterogeneous nature of sheltered workshops 1/ makes generalizations about the competitive advantages difficult, an analysis of the most frequently expressed concerns regarding the general operating characteristics of sheltered workshops provides insight into the major factors affecting the competitive relationship between sheltered workshops and private businesses competing in the same market. Although the competitive status of most sheltered workshops is directly affected by Federal laws, the Federal role in monitoring the competitive practices of sheltered workshops has been limited.

1/Especially such factors as the types of disability groups served, business activities, rehabilitation services offered, and available funding sources.

FACTORS AFFECTING THE COMPETITIVE
RELATIONSHIP BETWEEN SHELTERED
WORKSHOPS AND PRIVATE INDUSTRY

Congressional and public concern about the competitive relationship between sheltered workshops and private businesses generally focuses on the issue of whether Federal laws and financial assistance provide advantages for sheltered workshops in the competitive market. The laws most often cited include: the Fair Labor Standards Act, which provides Federal labor standards; the Internal Revenue Code, which establishes provisions for the payment of Federal income taxes; and the Rehabilitation Act of 1973 and title XX of the Social Security Act, which established Federal programs for providing rehabilitative and other social services. The concern that these laws provide competitive advantages to sheltered workshops is based on the assumption that sheltered workshops:

- Pay handicapped workers less than the statutory minimum wage while private businesses must generally pay their employees at least the minimum wage.
- Do not pay income taxes while private businesses must pay.
- Receive Federal funds which are not available to private businesses which they may use for offsetting operating losses.

Although the above conditions appear to provide sheltered workshops with a favorable competitive position, our analysis revealed several factors, some of which are unique to sheltered workshops' operations, which must be considered in evaluating the concept of competitive advantage. Because workers are handicapped, sheltered workshops generally incur additional costs for establishing additional work stations for and increasing the supervision of their less productive workers. Also, sheltered workshops provide rehabilitation and independent living services or design production methods for rehabilitative or therapeutic purposes rather than industrial efficiency.

Payment of subminimum wages

As previously discussed in chapter 2, the Fair Labor Standards Act, as amended, authorizes the Secretary of Labor to issue special certificates for employing handicapped workers in sheltered workshops at wage rates lower than the statutory minimum wage. To assure that handicapped workers are not exploited through low wages, the act requires that each handicapped worker must be paid based on his or her individual productivity in proportion to the prevailing wages and productivity of nonhandicapped workers in the vicinity for similar work. Thus, the act's provision was designed for equalizing the labor costs, and thereby the competitive position, of

sheltered workshops and employers of nonhandicapped workers in local industry. Although the wages received by an individual handicapped worker may be lower than the wages received by a nonhandicapped worker performing the same task in local industry, the following hypothetical example shows that the total wages paid to handicapped workers should be at least equal, and in many instances, may exceed the total wages paid to a nonhandicapped labor force for similar work if the workshop fully complies with the act's requirements.

An illustration of wages for a
handicapped and nonhandicapped
labor force

A sheltered workshop and a private business must each produce 10,000 units under separate contracts with the same contracting firm. The prevailing wage rate paid to nonhandicapped workers in the private business is \$4 an hour and a nonhandicapped worker produces 100 units an hour. Therefore, five workers could produce the 10,000 units in 20 hours at a cost of \$400 in total wages paid by the private business. Under the act's provisions, the wage rate for a handicapped worker who is 50-percent as productive (produces 50 units an hour) as the nonhandicapped worker in the local industry would equal \$2 an hour for producing 50 units in the sheltered workshop. Assuming that the workshop used only workers producing at the 50-percent level, five workers could produce the 10,000 units in 40 hours at a cost of \$400 in total wages paid by the sheltered workshop.

Due to the interrelatedness of wages paid in local industry and the workshop, the total cost for wages paid in a sheltered workshop theoretically should not be lower than the cost borne by a business producing the same item regardless of the mix of productive capabilities of the handicapped workers employed in the sheltered workshop. In fact, the act's provisions can result in a higher total cost in instances where a workshop must subsidize handicapped workers whose production does not exceed the statutory subminimum wage guarantee and the worker is not covered by one of the special exemption certificates. Also, private businesses may, under the act's provisions, apply for and receive special certificates for employing handicapped workers at wage rates lower than the statutory minimum wage. However, private businesses, like sheltered workshops, will not realize savings in total wage payments through the employment of handicapped workers under the special certificates. During fiscal year 1979, 4,338 handicapped workers were employed in private businesses under special Labor certificates.

Publicly operated sheltered workshops

As discussed in chapter 3, publicly operated sheltered workshops were instructed by Labor to continue to comply with the requirements of the Fair Labor Standards Act until a decision on the

applicability of the June 24, 1976, Supreme Court decision on sheltered workshops was made (see pp. 43 to 45). Therefore, the above-mentioned analysis applies equally for public and private nonprofit sheltered workshops. However, if Labor should decide that the act's provisions do not apply to publicly operated sheltered workshops, the effect of labor costs on the competitive position of publicly operated workshops would depend on each State's applicable laws and requirements.

Exemption from Federal income tax

Under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), certain types of organizations may qualify for an exemption from paying Federal income taxes. Sheltered workshops which are operated as part of a private corporation organized exclusively for charitable purposes are eligible for the Federal exemption, assuming all other requirements are met. The nonprofit status pertains to the use and distribution of operating surplus or margin and does not prohibit a workshop from having an operating gain in which operating revenue is greater than operating expenses. Operating funds may be accumulated and carried forward to another operating year, or they may be invested in special programs or in improvement or expansion of facilities, equipment, the staff, and the program. In addition to the exemption from the payment of Federal income tax, private corporations recognized as exempt for Federal purposes, may also receive collateral tax exemption or partial tax exemption under some State and local income, property, sales, use, or other forms of taxation. As a result, sheltered workshops are not always subject to taxes that other private businesses must pay.

Under these conditions, the exempt status appears to provide a competitive advantage to sheltered workshops. However, in instances where earned revenue for Federal income tax purposes does not exceed operating expenses, a sheltered workshop's competitive status will not be significantly improved by its exempt status. According to the June 1977 Labor study of the policies, programs, and services of sheltered workshops, the majority of workshops surveyed had operating losses. ^{1/} The Labor study assumed that earned operating income included income from the work program and the rehabilitation services' activities (evaluation and training fees). The operating gain or loss was determined by deducting operating expenditures from earned operating income. Under this approach, the study reported that three-fourths of the regular program workshops and four-fifths of the work activities centers sustained operating losses.

The comparison of workshop income from all sources to workshop expenses also provides insight into the competitive status of sheltered workshops. A 1975 study of the role of sheltered workshops

^{1/}U.S. Department of Labor, Shelter Workshop Study: Workshop Survey, Vol. I, June 1977, pages 60 and 61.

in rehabilitating and employing handicapped persons performed under the direction of the Department of Health and Human Services reported that more than one-fourth of the workshops had operating deficits, but that the average workshop generally had revenue equal to its operating costs at the end of the year. 1/ The difference between revenue earned through the business operations of a sheltered workshop and a workshop's total operating revenue is generally referred to as unearned revenue. Unearned revenue may be received from a wide variety of private sources, including contributions, donations, and fundraising activities.

During our visits to 28 sheltered workshops operated by 26 private nonprofit corporations, we reviewed operating budgets, financial reports, and related information. At 12 of the 28 workshops, sufficient information was available to compare earned revenue and operating costs relating to the business operations of the workshops. 2/ Our analysis, like the earlier studies, found that earned revenue did not exceed the operating expenses for 10 of the 12 workshops, but that all of the workshops had revenue at least equal to their operating costs at the end of the year. In this regard, our analysis showed that the availability of other sources of unearned revenue often was the major factor for determining whether a private nonprofit corporation operating a sheltered workshop incurred an operating loss or surplus. For the 26 private nonprofit corporations, the earned revenue, as a percent of total operating revenue, ranged from less than 1 percent to 98.5 percent; the median was 40.7 percent.

Our analysis of the operating budgets and financial information for 10 publicly operated sheltered workshops we visited showed similar results. Although production revenue financed a major part of the workshops' operating costs, most of the workshops relied on unearned revenue for offsetting potential operating losses. Our analysis indicates that the availability of other sources of unearned revenue may improve the competitive position of sheltered workshops more than the exemption from Federal income taxes.

Availability of unearned revenue

The private nonprofit corporations operating sheltered workshops are supported by a variety of private sources of revenue, such as contributions, trusts, and fundraising activities. Federal, State, and local governments also represent a major funding

1/Greenleigh Associates, Inc., The Role of The Sheltered Workshops in the Rehabilitation of the Severely Handicapped, Executive Summary, Vol. I, 1975, page 15.

2/Sufficient information was not available at 16 workshops because the operating costs for the business operations and the other activities were not separately maintained.

source for sheltered workshops. Without these other sources of revenue, operating losses would result in reduced operations or closing for many sheltered workshops. The availability of unearned sources of revenue represents the major factor affecting the competitive relationship between sheltered workshops and private businesses.

Funds provided by Federal,
State, and local governments

A wide range of Federal, State, and local financial assistance is available to sheltered workshops for providing rehabilitation and independent living services and sheltered employment opportunities for the handicapped. The Social Security Act, as amended, and the Rehabilitation Act of 1973, as amended, provide the primary sources of Federal financial assistance for sheltered workshops. Policies for spending Federal, State, and local funds are often made at the State or local level with general guidance from the Federal Government. Accountability to the Federal Government by State and local agencies is often limited.

Section 110 of the Rehabilitation Act of 1973, as amended, authorizes Federal funds for States to operate a vocational rehabilitation program for preparing handicapped persons for employment. The Rehabilitation Services Administration of the Department of Education manages the program at the Federal level. Each State is responsible for providing or arranging for all services and assistance to the handicapped under the program. The Federal Government pays 80 percent of the costs (up to the Federal allotment for the State) incurred by the States in rehabilitating handicapped persons; States are required to provide the remaining share. For fiscal year 1979, the Federal Government provided about \$817.5 million for the vocational rehabilitation program.

The Supplemental Security Income-Vocational Rehabilitation program and the Beneficiary Rehabilitation Program were established under the Social Security Act for providing services for blind and disabled persons receiving a minimum monthly income under the Supplemental Security Income program and handicapped beneficiaries of the Social Security Disability Insurance program, respectively. The programs were intended to enable individuals to become gainfully employed and, consequently, to reduce or terminate future benefit payments. Although these two programs are jointly administered by the Social Security Administration and the Rehabilitation Services Administration at the Federal level, State vocational rehabilitation agencies also administer these programs at the State and local levels. However, States are reimbursed by the Federal Government for 100 percent of the cost, within the federally established ceiling. During fiscal year 1979, Federal expenditures for the two programs totaled about \$170 million.

Many handicapped persons are referred by these programs to sheltered workshops for training or sheltered employment. Federal and State funds under the programs are generally provided on a fee-for-service basis. However, vocational rehabilitation program funds may be used for constructing, renovating, or expanding sheltered workshops; purchasing equipment; and supporting staff costs. In these instances, sheltered workshops must be providing rehabilitation services to large numbers of handicapped clients referred by the State vocational rehabilitation agencies.

The Federal funds available for sheltered workshops under these programs are generally directed toward handicapped persons who are short-term clients of the workshop. However, most handicapped persons in sheltered workshops are long-term clients who may never obtain employment in competitive industry. The Social Service Amendments of 1974 (42 U.S.C. 1397) created title XX of the Social Security Act which authorizes a comprehensive program of social services for helping people, including handicapped persons receiving public assistance under the Supplemental Security Income program, to become or remain economically self-supporting. Within the Department of Health and Human Services," the Office of Human Development Services is responsible for administering the program at the Federal level.

Federal funds under title XX are paid to State government agencies; the Federal ceiling was increased to \$2.9 billion for fiscal year 1979. The Federal Government reimburses States for 75 percent of the social service program costs up to their respective title XX ceilings. Because many handicapped persons in sheltered workshops are receiving Supplemental Security Income payments, title XX funds are often provided for funding sheltered workshop activities.

During our visits to 26 private corporations operating sheltered workshops, we analyzed the operating budgets and financial statements for determining the extent of Federal, State, and local government financial assistance. Our analysis showed that 25 of the 26 corporations received funding from at least one Federal, State, or local government source, including the Federal-State vocational rehabilitation program, title XX, the comprehensive employment and training act program, revenue sharing, the Federal anti-recession program, and elementary and secondary education programs. One corporation did not receive Federal, State, or local financial assistance. The financial assistance received by the 25 private nonprofit corporations ranged from less than 1 percent to 95.2 percent of the total operating revenue; the median was 27.1 percent.

Our analysis of 10 workshops operated by States or political subdivisions of a State showed that Federal, State, and local funds were often used for paying the part of operating costs not covered by earned revenue. For the 10 workshops, Federal, State, and local

funding sources accounted for 1.2 to 95 percent of the total operating revenue; the median was 27 percent. Although the availability of private sources of funding is not generally critical to publicly operated sheltered workshops, the financial information provided by the 26 private nonprofit corporations substantiates the significant impact that private funding sources have on sheltered workshop operations.

Funds provided by private sources

The provisions of the Internal Revenue Code relating to the deductibility of charitable contributions (26 U.S.C. 170) and to estate (26 U.S.C. 2055) and gift (26 U.S.C. 2522) taxes greatly affect the availability of additional sources of revenue for sheltered workshops. For example, contributions to organizations recognized as exempt under section 501(c)(3) of the Internal Revenue Code are deductible as charitable contributions on the individual or corporate donor's Federal income tax return.

Our analysis showed that 25 of the 26 private corporations operating sheltered workshops relied on funds provided by private sources for offsetting potential operating losses. The major sources of private funds included donations from individuals and organizations, legacies, bequests, trusts, special benefit events, and fundraising activities conducted by the nonprofit corporation or a public organization, such as United Way. Private funding, as a percent of the operating revenue, ranged from less than 1 percent to 52.8 percent; the median was 5.3 percent. For 11 of the 20 corporations reporting a surplus, the private funds exceeded the amount of the surplus. For the six corporations reporting a loss, the private funds ranged from less than 1 percent to 8.4 percent of the total operating revenue.

Therefore, the potential exists that the availability of Federal and other sources of funds may place a sheltered workshop in a position where its business decisions may not be susceptible to the same competitive pressures or restrictions as private for-profit businesses. However, even though the availability of such funding may provide sheltered workshops with greater operating flexibility in the competitive business environment, the effect of this advantage may be offset by the increased costs of serving and employing a handicapped labor force which generally functions at a significantly lower level than a nonhandicapped labor force.

Added costs for employing a severely handicapped labor force

Because workers are handicapped, sheltered workshops incur additional costs for establishing additional work stations for, and increasing the supervision of, its less productive workers. These added costs, which may be referred to as public costs, must

be absorbed by the workshop. The extent of the public costs are directly related to the handicapping conditions of the workers; for example, the higher the degree of handicapped condition (lower functioning level) of the worker, the higher the public costs. The following hypothetical example contrasts the differences in earned revenue, operating costs, and public costs for producing a particular number of units using a nonhandicapped and handicapped labor force.

An illustration of costs for a
handicapped and nonhandicapped
labor force

Each labor force produces 40,000 units for which a total earned revenue of \$40,000 will be received. However, because the handicapped labor force has an average functioning level of 50 percent of the nonhandicapped labor force, it requires more supervision, floor space, equipment, administrative support, and workers than a nonhandicapped labor force. For example, if 100 nonhandicapped workers can produce the 40,000 units, 200 handicapped workers producing at a productive capacity of 50 percent would be required to produce 40,000 units in the same amount of time. As discussed on pages 93 and 94, the total cost for direct labor should be about the same. However, the costs for floor space and equipment requirements would be increased, assuming that each worker was operating a single machine or other piece of equipment. Similarly, if 1 supervisor was needed for 20 workers, only 5 supervisors are needed for the nonhandicapped work force, but 10 supervisors are needed for the handicapped work force. Due to the high turnover in many workshops, more time is needed for training individuals before they are actually working at their potential. Finally, the administrative burden will be greater, especially in relation to the record-keeping requirements for paying handicapped workers wages lower than the statutory minimum. Also, a severely handicapped work force may result in higher insurance and safety costs.

The following table shows an analysis of the costs incurred for the handicapped and nonhandicapped labor force, assuming the increased costs were directly proportional to the difference in the productive capacities and the time frame for producing the units is the same for the handicapped and nonhandicapped workers. If the time frame available for the handicapped workers exceeds that required by nonhandicapped workers, the public costs may be lower because the number of workers could be reduced.

<u>Cost category</u>	<u>Handicapped</u> (50 percent productive capacity)	<u>Nonhandicapped</u> (100 percent productive capacity)
Labor	\$20,000	\$20,000
Floor space	4,000	2,000
Supervision	10,000	5,000
Equipment	5,000	2,500
Administration	<u>5,000</u>	<u>2,500</u>
Total	<u>\$44,000</u>	<u>\$32,000</u>

Therefore, the receipt of \$40,000 in earned revenue from the sale of 40,000 units results in a profit of \$8,000 for a business employing a nonhandicapped work force; whereas a sheltered workshop employing a handicapped population, which was only one-half as productive, could incur a loss of \$4,000. If the average productive capability for the handicapped labor force was less than 50 percent, the public costs would probably be greater. Conversely, the public costs should be reduced as the functioning level of the handicapped workers approaches the productive capacity generally associated with nonhandicapped persons.

However, additional factors must be considered in determining the public costs for employing a handicapped work force. Handicapped workers may operate at a high-functioning level for only limited periods; require medication or frequent rest periods, require therapy or special medical treatment, or be able to work for only a limited number of hours. Often, the production methods may be designed for rehabilitative or therapeutic purposes rather than industrial efficiency. Additionally, other rehabilitation or independent living services may be provided even though the cost is not paid through fees for service agreements with public or private sources. As a result, many private nonprofit corporations operating sheltered workshops would not be able to operate without receiving other sources of income.

COMPETITIVE STATUS OF SHELTERED WORKSHOPS

With over 3,800 sheltered workshops of differing size, disability groups, type of business activity and rehabilitation services offered, and available funding sources, it is impossible to generalize about the effects of the Federal income tax provisions, the availability of unearned revenue, and public costs on the competitive status of sheltered workshops. Based on our visits to 28 sheltered workshops operated by private nonprofit corporations and 10 workshops operated by a State or political subdivision of a State,

we believe that the following examples illustrate the heterogenous nature of sheltered workshops.

Workshop A

Workshop A is operated by a private nonprofit corporation as a work activities center. The workshop employed 380 handicapped persons during fiscal year 1979; nonhandicapped workers are not employed in the center. For calendar year 1979, the operating revenue totaled \$1,160,488 and costs totaled \$1,141,418, respectively. Workshop sales were reported as \$100,184, including Federal sales of \$52,337 under the Javits-Wagner-0'Day program, sub-contract sales of \$44,602, and commercial sales of \$3,245.

Workshop A manufactured wooden tent and surveyor pegs, performed sewing and assembly tasks, and provided grounds maintenance services. In addition to its production activities, the corporation also provided a wide range of rehabilitative and social services including diagnostic vocational evaluation; personal adjustment training, such as money management, independent travel, personal hygiene, and community awareness; group and individual counseling; remedial academics; and job placement services. The corporation also operated two hostels and sponsored a summer day camp program. These activities were funded by grants and fees from Federal and State governments, which accounted for \$882,189, 76 percent of the corporation's total operating revenue. Private fees and public contributions also provided about \$178,115.

Workshop B

Workshop B is operated by a private nonprofit corporation as a work activities center. The corporation operates a residence for handicapped persons and used Workshop B to provide a work environment for about 90 of the residents during fiscal year 1979. For the 9 months ended December 31, 1979, the operating revenue totaled \$1,087,200 and costs totaled \$1,030,404. About \$1,009,022 of the total operating revenue was provided by patient service fees; public funding was provided for only two individuals according to the workshop's director. Private contributions and other income totaled \$43,776. Although the workshop's financial reports did not separately identify workshop sales, we estimated (using available records) that workshop sales for assembling and packaging items under subcontracts with local businesses totaled about \$34,402 for the 9-month period. Although most of the individuals employed in the workshop were residents, a few former residents and other individuals were also employed.

Workshop C

Workshop C is operated by a private nonprofit corporation as a regular program workshop. Workshop C also has two satellite locations which are operated as a work activities center and a regular program. The workshop employed about 212 workers on direct labor activities during fiscal year 1979; about 179 were handicapped. Direct labor employees were paid the statutory minimum wage, or above, except for 10 workers who were paid at least one-half of the minimum wage. Workshop C had total sales of about \$7.7 million for fiscal year 1979. About 73 percent of the workshop's sales were for a variety of household cleaning products in the commercial market, including such products as brooms, mops, sponges, brushes, pads, and dust pans. The other sales are made to the Federal Government under the Javits-Wagner-O'Day program for such products as calendar pad stands, plastic flatware, ballpoint pen desk sets, and polypropylene plastic tubes for use in veterinary services. Workshop C used an extensive national sales organization for marketing its products.

In addition to its production activities, the corporation also provides rehabilitative and social services for assisting the handicapped to become self-sufficient. These services include counseling; orientation to the home and community; recreational activities; and a group home for individuals who are able to work, but who are not able to care for themselves in a home environment. Also, medical care, housing, transportation, and other personal services were provided. Although the corporation received Federal and State funds, financial reports show that such funds were not sufficient for financing the total cost of these services.

Since it began operations, the corporation received funding from the State's vocational rehabilitation agency for a substantial part of the workshop's property, plant, and equipment. From July 1, 1967, to June 30, 1979, the Federal share (usually 80 percent) was \$3,210,471. However, the earned sales revenue generally finances the workshop's annual operating costs.

Workshop D

Workshop D is operated by a private nonprofit corporation as a regular program workshop. The workshop employed 109 handicapped persons during fiscal year 1979 and 19 nonhandicapped workers were also employed. Except for three individuals, all others were paid the statutory minimum wage or above.

For fiscal year 1979, the operating revenue totaled \$6,079,133 and costs totaled \$6,029,899. The total operating revenue was received from sales to the Federal Government under the Javits-Wagner-O'Day program (67.4 percent), commercial sales (32.3 percent), and subcontracting (0.3 percent). For the Federal Government, Workshop D manufactured such products as ballpoint pens, brooms, mops,

clipboards, and files. Commercial sales include a wide variety of mops and brooms and subcontracting consisted of assembling and packaging items for private industry.

The corporation neither received any Federal, State, or local government funds nor received contributions. The corporation did not provide rehabilitation services. Although some training programs were provided, the primary emphasis was on teaching the skills needed for particular jobs within the workshop.

Workshops E and F

Workshops E and F are operated by a private nonprofit corporation which provides a wide range of vocational rehabilitation and support services for the handicapped. These services include vocational evaluation, medical and psychiatric consultation, personal adjustment training, individual and group counseling, remedial instruction, recreational programs, and job placement services. Also, the corporation operates special programs for nonambulatory handicapped persons, including evaluating and training homebound individuals and transporting subcontract work to the individual's residence.

During fiscal year 1979, the corporation's reported operating revenue totaled \$8,302,205 and costs totaled \$7,895,083. In addition to the earned revenue of about \$3,547,925, from the operation of Workshops E and F, revenue was also received from Federal (\$1,212,533), State (\$1,212,438), and private (\$158,352) sources and from visiting nurse service fees and other program fees (\$2,170,937).

Workshop E was operated as a regular program workshop employing about 171 workers (about 168 were handicapped) during fiscal year 1979. All workers were paid the statutory minimum wage, or above, except for about 10 workers who were paid slightly less than the statutory minimum. The total sales for Workshop E (\$3,306,742 during fiscal year 1979) were received from the Federal Government for manufacturing flashlights, light markers, distress signals, and wire harness cables and providing janitorial and maintenance services for several government locations under the Javits-Wagner-O'Day program.

Workshop F, operated as a regular program workshop and a work activities center, performed only subcontract activities where the contractor supplied the materials and the handicapped workers performed manual assembling, collating, and packaging tasks. Workshop F reported that 823 handicapped workers were employed (some for as little as a single day) during fiscal year 1979. Total sales were reported as \$241,183. Although Workshops E and F were separately managed, handicapped workers could be transferred from Workshop F to Workshop E when their individual productive capacity increased sufficiently for meeting the production standards established for Workshop E.

Workshop G

Workshop G is operated by a local school district as a work activities center. At the time of our visit, the workshop was employing about 34 handicapped persons. In addition, the school district provided remedial, work adjustment, and independent living skills training.

The State Department of Education reimbursed the local school district a specific fee for each hour an individual spent in the school district's programs, including the sheltered workshop. The school district also received funding through fees paid by the public for certain vocational services. According to the district's program director, 90 percent of the funding was provided by the State Department of Education, 5 percent was from vocational service fees, and 5 percent was received through the production activities of the workshop.

At the time of our visit, the workshop was involved in one sub-contract for the assembling and packaging of lawn darts. For the previous 4-month period, the total sales from this activity were about \$2,644. When there is no work, the handicapped attend living skills classes which are taught by the workshop manager and a senior teaching assistant. Also, time spent in the workshop is generally limited to 4 hours a day.

Workshop H

Workshop H is operated by the State vocational rehabilitation agency as a work activities center. The workshop staff are State employees, and about one-half of the workshop's operating costs are financed by the State. For fiscal year 1979, the total operating revenue and costs were \$201,922 and \$193,149, respectively. Earned income accounted for \$101,766, and State funding was \$100,156. The workshop provided employment for 32 handicapped workers. During fiscal year 1979, the workshop produced engineering stakes for the local construction industry, assembled ballpoint pens for local businesses, packaged fish hooks and learning systems, and cleaned life jackets. The workshop did not compete for Federal procurement during this period.

Workshop I

Workshop I, which has two satellite locations, is operated by a State Board of Public Welfare as a regular program workshop. The workshop's executive and administrative staff are not considered State employees even though they are eligible for the State's retirement system. The workshop employed about 258 workers (182 were handicapped) during fiscal year 1979.

Although all workers were not meeting the workshop's production standards, each worker received at least the statutory minimum wage. For fiscal year 1979, the workshop reported sales of about \$11.4 million. Federal procurement under the Javits-Wagner-0'Day program accounted for about 70 percent of the sales and the remainder was received from commercial sales. The workshop produced a wide range of commodities for the Federal Government, including pillow cases, sponges, mattresses, and pistol belts. The workshop's commercial sales included a wide range of mops and brooms, sponges, and mattresses. In addition to its production activities, a wide range of social services were provided for assisting the handicapped to become independent, including a day care center for employees' children. Although Federal and State funds were primarily used for these activities, the workshop's operating costs were generally financed through earned revenue.

Factors affecting the
competitive status of
sheltered workshops

As the above-mentioned examples indicate, the competitive status of sheltered workshops is affected by many factors. However, we believe that the level of productive capability represents one of the most important factors affecting the analysis of the competitive status of sheltered workshops. For example, a sheltered workshop whose productive capacity has been improved under the Javits-Wagner-0'Day program would probably be in a more competitive position than a workshop which was not associated with the program. However, only a small portion of the total number of workshops participated in the program in fiscal year 1979--158 out of 3,877 workshops.

Sheltered workshops are primarily engaged in subcontracting, prime manufacturing, service operations, and salvage and reclamation. According to a 1977 Labor study, the income from these types of business operations for sheltered workshops exceeded \$232 million for fiscal year 1972 with more than two-thirds of the handicapped workers employed in subcontract work. ^{1/} Although sheltered workshops rely on several methods for procuring work, including competitive bidding, direct solicitation, commercial sales, and directed procurement from Federal and State governments, our analysis of the competitive practices of the 38 workshops we visited showed that short- and long-term contracts or agreements were the primary means of obtaining work. In this regard, our analysis showed that maintaining a constant source of work was one of the major problems facing workshop management for providing employment opportunities for handicapped workers and earning a

1/U.S. Department of Labor, Sheltered Workshop Study: Workshop Survey, Vol. I, June 1977, page 52.

sufficient amount of business income to support their production operations. Our analysis showed that sheltered workshops often selected work on the basis of volume or availability rather than its revenue producing value. Sheltered workshops also tend to concentrate on labor-intensive work rather than work which can be mechanized or automated.

In discussing the competitive practices of sheltered workshops, a 1975 study prepared for the Department of Health and Human Services gave the following reasons for explaining the failure of sheltered workshops to earn enough business income for meeting operating costs.

1. Workshops were being exploited by the market because of their need for work and the need to compete against each other.
2. Workshops were artificially creating a demand for their work by maintaining a low price which yields a return below actual costs.
3. Workshops were incurring public costs which caused production costs to exceed production revenue even though contracts were priced in line with competitive prices.
4. Workshops were not using adequate management methods for estimating the probable costs when setting a price or pricing a bid.
5. Workshops were using unnecessarily high labor-intensive methods for providing the maximum employment opportunities for handicapped workers.
6. Workshops were using production techniques designed for providing therapeutic value rather than industrial efficiency. 1/

Due to the time consuming and interrelated nature of the numerous factors affecting the competitive status of sheltered workshops, we did not attempt to quantify the above reasons for determining whether such situations were caused by questionable management decisions, uncontrollable variables, or questionable competitive practices. However, we believe that information developed during our visits to 38 sheltered workshops tends to substantiate the validity of these situations. For example, our review of payroll and contract records showed that some workshops had accepted work at prices

1/Greenleigh Associates, Inc., The Role of the Sheltered Workshops in the Rehabilitation of the Severely Handicapped, Vol. II, 1975, pages 139 and 140.

which were not sufficient for covering direct labor and overhead costs. In some instances, workshop directors complained about the bidding practices of other sheltered workshops competing for the same product or service market; instances were cited where the competing workshops submitted bids which could not, in the workshop director's opinion, cover the production costs. During our visits, we also observed situations where workshops were using production techniques designed for employing the maximum number of handicapped workers or were apparently paying workers in excess of their productive capacity.

FEDERAL MONITORING OF SHELTERED WORKSHOP COMPETITIVE PRACTICES

Although the various conditions and factors relating to the competitive status of sheltered workshops directly affect the competitive relationship between private businesses and nonprofit corporations, the Federal role in monitoring the competitive practices of sheltered workshops has been limited. With the exception of Labor, we were not able to identify any Federal agency which had responsibility for investigating or evaluating the competitive practices of sheltered workshops. According to Federal Trade Commission officials, the Commission's major authority and responsibility is in the area of for-profit firms, but some activities relating to nonprofit organizations have been investigated. However, the officials said that the Commission had not investigated activities relating to sheltered workshops' operations.

Under the Fair Labor Standards Act, as amended, Labor is authorized to investigate and gather data regarding the wages, hours, and other conditions and employment practices of sheltered workshops for evaluating compliance with Federal labor standards (see ch. 3). According to the Federal regulations, one of the criteria which Labor should consider in issuing a sheltered workshop certificate is "whether there exists any workshop-customer arrangement or subcontract agreement constituting an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels." Also, the Federal regulations require that special certificates issued by Labor must include the condition that a workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.

Although the Federal regulations and Labor procedures do not define unfair methods of competition or provide information for evaluating whether a workshop was competing unfairly, Labor headquarters officials provided the following information explaining unfair workshop-customer arrangements and unfair subcontract agreements.

1. A workshop that makes a practice of undercutting commercial industry by selling its products at unfair competitive prices would be entering into unfair workshop-customer arrangements. Unfair competitive prices are prices below those of commercial industry and other workshops which are made possible through inadequate wage rates or by defraying operating costs solely or substantially with contributions, subsidies, or other sources of unearned revenue.

2. A workshop which accepts subcontracts at unfair competitive prices, thereby undercutting commercial industry and other workshops, could be entering into unfair subcontract agreements. Subcontracts accepted at competitive prices permit payment of proper wage rates and, except in special situations, reasonable markup for overhead.

Although the above information appears to provide a broad authority, Labor's compliance officers have generally interpreted the competitive requirements to refer to instances where inadequate wage rates were used for supporting unfair competitive prices. For example, the following investigation made by a Labor compliance officer during fiscal year 1979 illustrates an apparent unfair competitive situation even though adequate wage rates were paid.

--A workshop was packaging items under a subcontract agreement with a local business. Although the workshop received \$29 per thousand for the work, its actual labor costs were at least \$43 per thousand. All handicapped workers were properly paid. The local business would not agree to a higher price and the workshop needed the work; most of the workshop was closed down because of a lack of work. As a result, the workshop used other available funds for subsidizing the subcontract work.

In this instance, the compliance officer did not believe that she had the authority for enforcing the fair competition requirement.

According to a January 27, 1970, opinion by Labor's Solicitor, the competitive requirement should not be applied to price cutting due entirely to the subsidizing of workshop operations from donated funds. The Solicitor's opinion concluded that such an interpretation would curtail employment opportunities for the handicapped contrary to the act's primary purpose. According to reports submitted by Labor compliance officers, 31 of the 230 sheltered workshops investigated during fiscal year 1979 were violating the terms of a Labor certificate because the workshops were engaging in unfair competition, 13 out of 139 workshops were similarly reported in fiscal year 1978, and 15 out of 155 in fiscal year 1977.

CONCLUSIONS

Sheltered workshops provide the principal, and often the only, source of training and long-term employment for the severely handicapped. For many handicapped persons, sheltered workshops provide the evaluation, training, and work experience needed for obtaining employment in the competitive labor force, and for others, who may never reach the level of competitive employment, sheltered workshops provide the only opportunity for employment, income, and self-respect. However, the availability of work is a major factor limiting the effectiveness of sheltered workshops to serve the handicapped.

Although the rules of competition should not provide an advantage for sheltered workshops engaged in competitive activities with private businesses, Federal income tax provisions and the availability of sources of unearned revenue may provide, under certain conditions, competitive advantages for sheltered workshops over private businesses. However, sheltered workshops generally incur added costs for serving and employing a handicapped labor force--costs which may offset the effect of whatever competitive advantages a workshop may receive.

Due to the heterogeneous nature of the sheltered workshop population, the competitive relationship between sheltered workshops and private businesses must be evaluated on a case-by-case basis. However, actions designed to equalize the competitive position between sheltered workshops and private businesses may decrease the employment opportunities for the severely handicapped. For instance, restricting the availability of funding sources may force sheltered workshops to limit services and employment opportunities for the more severely handicapped. Although the integration of handicapped workers into regular economic and industrial activity should be actively pursued, it must be recognized that few alternative systems exist for providing the services and work opportunities available to the handicapped through the public and private nonprofit corporations operating sheltered workshops.

CHAPTER 7

SCOPE OF REVIEW AND METHODOLOGY

To evaluate the Federal efforts for providing labor standards for handicapped workers in sheltered workshops, we analyzed information on several laws affecting sheltered workshop operations. These laws include the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq. (1976)), the Service Contract Act of 1965 (41 U.S.C. 351, et seq. (1976)), the Walsh-Healey Public Contract Act of 1936 (41 U.S.C. 35 et seq. (1976)), and the Portal-to-Portal Act of 1947 (29 U.S.C. 251-262 (1976)).

In addition to Labor headquarters in Washington, D.C., we selected and included in our review Labor regions that included

- areas with large numbers of sheltered workshops,
- industrial and rural States, and
- publicly and privately operated sheltered workshops.

We performed our review at the following regional Labor offices:

<u>Region</u>	<u>Location</u>	<u>States in the region</u>	<u>Number of sheltered workshops certified</u>
II	New York City, New York	New York and New Jersey	445
III	Philadelphia, Pennsylvania	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	314
IV	Atlanta, Georgia	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	677
VI	Dallas, Texas	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	335
IX	San Francisco, California	Arizona, California, Hawaii, and Nevada	292

Because compliance officers located in area offices in the five Labor regions were primarily responsible for investigating sheltered workshops for compliance with Federal labor standards, we

also did work at area Labor offices in the following localities: Phoenix, Arizona; San Francisco, California; New York City and Hempstead, New York; Philadelphia and Pittsburgh, Pennsylvania; and Greensboro, North Carolina.

At Labor's regional offices and headquarters, we interviewed officials and reviewed applicable regulations and procedures for certifying sheltered workshops to pay handicapped workers less than the statutory minimum wage and for investigating sheltered workshops for compliance with Federal labor standards. From Labor's annual reports and agency files we gathered information on the numbers of sheltered workshops, certificates approved, and handicapped workers employed for each fiscal year since 1968--the first full year for implementing major changes in Labor's certification process. From this information, we analyzed the changes in the volume of certificates approved, by type, and the numbers of handicapped employed under each certificate type to assess the effect of the Federal subminimum wage requirement on the wages paid handicapped workers and the employment practices of sheltered workshops.

From narrative and statistical reports prepared by the Labor investigators in the five regions, we gathered information on 247 sheltered workshop investigations reported during fiscal years 1977, 1978, and 1979. Although these regions had reported 253 investigations to Labor headquarters during the 3-year period, we were not able to obtain investigation reports or other documentation for 6 investigations despite repeated attempts at Labor headquarters and the regional offices. From this information, we performed an analysis of the time spent by each regional office for sheltered workshop investigations, the number of investigations done by different investigators, the characteristics of the individual investigations, and the types of violations reported. From narrative reports and correspondence files, we gathered information on 11 active investigations of publicly operated sheltered workshops which were terminated following the Supreme Court decision in the case of the National League of Cities et al. v. Usery (426 U.S. 833 (1976)) on June 24, 1976. We also interviewed Labor headquarters and regional officials to determine the possible effects of the decision on Labor's efforts to investigate sheltered workshops for compliance with Federal labor standards.

To evaluate the Federal efforts for providing employment opportunities for handicapped workers in sheltered workshops, we examined the effect of several laws on sheltered workshops operations. These laws include the Wagner-O'Day Act, as amended (41 U.S.C. 46-48 (1976)), and the Act of Congress, approved May 27, 1930, as amended (18 U.S.C. 4121). During our review, we analyzed information on a wide range of activities and/or regulatory functions administered by a presidentially appointed committee, a government

corporation, and Federal agencies and nonprofit organizations relating to the participation by sheltered workshops in the Federal procurement system.

At the office of the Committee for Purchase from the Blind and Other Severely Handicapped, we interviewed Committee staff; attended Committee meetings; and reviewed annual reports and applicable regulations. We also assessed procedures for processing additions to and deletions from the Procurement List, evaluating the eligibility of sheltered workshops to participate in the Javits-Wagner-0'Day program, establishing the fair market price for additions to the List, and monitoring compliance of participating sheltered workshops with the Federal requirements.

From information provided to Committee members for voting purposes and correspondence files, we gathered information on all additions (185) to the Procurement List approved by the Committee during fiscal years 1977, 1978, and 1979. From this information, we prepared an analysis to determine whether the Committee had followed its procedures for processing additions to the List, including such factors as the estimated impact computed for current or most recent suppliers, whether current producers were consistent suppliers to the Government, and the interrelationship between the Committee actions and other federally sponsored procurement activities.

At the National Industries for the Blind and the National Industries for the Severely Handicapped, we interviewed officials and reviewed annual reports, operating budgets, financial statements, and operating practices and procedures to measure the agencies performance in assisting the Committee for the Purchase from the Blind and Other Severely Handicapped to administer the requirements of the Javits-Wagner-0'Day program. At the headquarters of the Small Business Administration, the General Services Administration, and the Federal Prison Industries, Inc., we interviewed officials and reviewed applicable regulations and procedures to determine the interrelationships between the Javits-Wagner-0'Day program, sheltered workshops, and other federally sponsored socioeconomic procurement programs or activities.

In addition to work at the Federal agencies and nonprofit organizations, we also requested information from 31 private businesses which had expressed concern to the Small Business Administration, the General Services Administration, or Committee officials regarding the administration of the Javits-Wagner-0'Day program. We questioned each business on its respective products or services added to the Procurement List, annual sales, contacts with the Committee for Purchase from the Blind and Other Severely Handicapped, and opinions concerning the Committee's activities. Twenty-three of the 31 businesses provided information about one or more of the above areas.

To address the issues involving the competitive relationship between sheltered workshops and private industry, we examined the effect of several laws on sheltered workshop operations. These laws include the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq. (1976)), the Social Security Amendments of 1965 (42 U.S.C. 422 (1976)), the Social Security Amendments of 1972 (42 U.S.C. 1382(d) (1976)), the Social Services Amendments of 1974 (42 U.S.C. 1397, et seq. (1976)), the Developmental Disabilities Services and Facilities Construction Act, as amended (42 U.S.C. 6001 (1976)), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq. (1976)), and the Small Business Act, as amended (15 U.S.C. 636(h)). During our review, we interviewed officials and reviewed applicable regulations and procedures at the Department of Labor, the Federal Trade Commission, the Small Business Administration, the Department of Health and Human Services, and the Department of Education.

To analyze the effect of the Federal efforts for providing employment opportunities and standards for handicapped workers, we made site visits to 38 sheltered workshops in 12 States ^{1/} and the District of Columbia. Due to the heterogeneous nature of sheltered workshops, we decided that an extensive statistical sample would be impractical. To expedite our work, we decided on a judgmental sample designed to give broad coverage. Given that no projections are possible, our methodology involved the (1) identification of the primary factors affecting the operating practices of sheltered workshops and (2) selection of individual workshops providing us with a broad range of coverage among the different factors identified.

To gain a broad range of opinions on the factors which should be considered in selecting the sheltered workshops, we interviewed Labor officials at headquarters, regional, and area office levels; staff members of the Committee for Purchase from the Blind and Other Severely Handicapped; representatives of sheltered workshop associations; officials of State agencies responsible for monitoring sheltered workshops; interest group representatives; and sheltered workshop directors and staff. Based on our discussions, we identified the following factors: handicapped population size, primary handicapping condition, type of workshop program, whether the workshop is operated by a public or private organization, and whether the workshop provides commodities or services for the Federal Government. The chart on the following page shows the distribution among the different factors (based on fiscal year 1979 data) for the 38 sheltered workshops selected for our site visits.

^{1/}The States were Arizona, California, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Texas, and Virginia.

<u>Factors considered</u>	<u>Department of Labor Regions</u>					
	<u>II</u>	<u>III</u>	<u>IV</u>	<u>VI</u>	<u>IX</u>	<u>Total</u>
Workshop size:						
Less than 75 direct labor employees at time of GAO visit	3	3	2	5	7	20
More than 75 direct labor employees at time of GAO visit	5	2	9	2	0	18
Handicapping condition primarily employed:						
Physical	5	2	5	2	2	16
Mental	3	3	6	5	5	22
Type of workshop:						
Regular only	5	2	6	2	2	17
Work activities center only	1	0	0	2	3	6
Both	2	3	5	3	2	15
Workshop management:						
Public	1	1	4	2	2	10
Private	7	4	7	5	5	28
Workshop sales:						
Federal Government:						
Commodity only	5	3	7	2	2	19
Service only	0	2	0	2	3	7
Both	1	0	0	0	0	1
No Federal Government	2	0	4	3	2	11
Total workshops visited	8	5	11	7	7	38

During our site visits, we analyzed information on a wide range of activities for measuring the performance of sheltered workshops in complying with selected Federal requirements and for developing an understanding of the general characteristics of sheltered workshops operating in the competitive business community. Using payroll records, individual employee productivity evaluations, time studies, and correspondence files, we performed several analyses for assessing the adequacy of sheltered workshops' methods for paying wages to handicapped workers. During our site visits, we (1) requested workshop officials to redo time studies, (2) observed handicapped workers performing various tasks, and (3) requested workshop officials to verify the prevailing industry wage rates for tasks performed by handicapped workers.

From agency files and interviews with workshop officials, we gathered information on the handicapped workers placed into competitive employment outside the sheltered workshop to determine the factors affecting the placement of handicapped persons and also the effect of placements on the general operating practices of sheltered workshops. From annual reports, operating budgets, financial statements, and correspondence files, we gathered information on the funding sources used and expenses incurred by sheltered workshops for serving and employing handicapped workers. We also analyzed selected sales contracts and agreements and pricing and bidding procedures for determining the types of business markets used by workshops and general characteristics associated with the competitive position of sheltered workshops in the business community.

We did our fieldwork between September 1979 and August 1980. During our review, our efforts were primarily directed toward activities for fiscal years 1977-79.

SOLICITATION OF AGENCY COMMENTS

We solicited agency comments from two Federal agencies and two private nonprofit corporations. The Federal agencies which commented on our draft were the Department of Labor and the Committee for Purchase from the Blind and Other Severely Handicapped. The National Industries for the Severely Handicapped and the National Industries for the Blind also commented on our draft. (See apps. VI through IX for their responses.)

BARRY M. GOLDWATER, JR.
20TH DISTRICT OF CALIFORNIA

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION
COMMITTEE ON SCIENCE AND
TECHNOLOGY

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July 10, 1979

Elmer B. Staats
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

It has been recently brought to my attention that the National Industries of the Blind (NIB) and their affiliated workshops may be in serious violation(s) of the letter and spirit of their original enacting legislation that permits them to pay blind workers at less than minimum wage; additionally, there appears to be serious question as to whether or not they are operating outside the parameters of federal statutes that exclude them from a number of taxes and regulations.

Enclosed are two articles from the January 25th and 26th issues of the Wall Street Journal, and a synopsis of problems being experienced by private industry which faces competition by many of the workshops; the synopsis was prepared by a constituent, who is available to you and your staff.

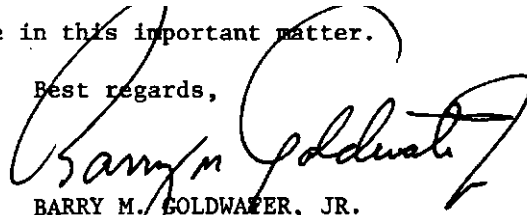
Furthermore, I have been in contact with Ellen Brown and Jerry Lawson, Assistant Advocates in the Office of the Chief Counsel of Advocacy at the Small Business Administration. Mr. Brown has a detailed and voluminous file on this matter, and he will cooperate with you and your staff in this investigation, and share his information with you.

I request that an investigation of this entire matter be initiated at the earliest possible date, with a view toward remedial legislation, if necessary. The allegations raised in the enclosed WSJ articles should be fully explored, as should the minimum wage, tax exemptions, and overall status of the NIB and its competitive relationship with the private sector be given a careful and detailed analysis. Recommendations should be made to improve what is a now complicated and confusing situation.

I would ask that the best interests of the blind be kept in the forefront during this investigation, and that such be taken into consideration in any recommendations your staff may make.

Many thanks for your assistance in this important matter.

Best regards,

A handwritten signature in cursive script, reading "Barry M. Goldwater, Jr.", written in dark ink.

BARRY M. GOLDWATER, JR.
Member of Congress

BG/sse

SHELTERED WORKSHOPS VISITEDDURING OUR REVIEWLabor Region II

- Lighthouse Industries, the New York Association for the Blind, Long Island City, New York.
- Queens Sheltered Shop, The New York Association for the Blind, Long Island City, New York.
- Abilities, Inc., Human Resources Center, Albertson, Long Island, New York.
- Industrial Division, Federation of the Handicapped, New York, New York.
- Sheltered Workshop, Federation of the Handicapped, New York, New York.
- Progress Industries, Oneida County Chapter of the New York State Association for Retarded Children, Utica, New York.
- Contract Shop #1, New Jersey State Commission for the Blind and Visually Impaired, Newark, New Jersey.
- Blind Work Association, Inc., Binghamton, New York.

Labor Region III

- Fairfax Opportunities Unlimited, Springfield, Virginia.
- Virginia Industries for the Blind, Richmond, Virginia.
- Centers for the Handicapped, Inc., Silver Spring, Maryland.
- Columbia Lighthouse for the Blind, Washington, D.C.
- Lewis B. Puller Vocational Center, Inc., Gloucester, Virginia.

Labor Region IV

- Durham Exchange Club Sheltered Workshop, Inc., Durham,
North Carolina.
- Raleigh Lions Clinic for the Blind, Inc., Raleigh,
North Carolina.
- Rockingham County Opportunity Center, Reidsville,
North Carolina.
- Industries of the Blind, Inc., Greensboro, North Carolina.
- Guilford County Sheltered Workshop, Greensboro,
North Carolina.
- Eastern Carolina Vocational Center, Inc., Greenville,
North Carolina.
- Georgia Factory for the Blind, Bainbridge, Georgia.
- Opportunity Workshop of Lexington, Inc., Lexington,
Kentucky.
- Allied Enterprises, Inc., Gulfport, Mississippi.
- Royal Maid, Inc|, Hazelhurst, Mississippi.
- Mississippi Industries for the Blind, Jackson, Mississippi.

Labor Region VI

- New Hope Work Activity Center, Lafayette, Louisiana.
- Multiresources, Inc., Lafayette, Louisiana.
- Terribonne Association for Retarded Children, Inc.,
Houma, Louisiana.
- Austin State School Vocational Rehabilitation Center,
Austin, Texas.
- Goodwill Rehabilitation Service, San Antonio, Texas.
- Southwest Lighthouse for the Blind, Lubbock, Texas.
- Individual Development Center, Inc., Wichita Falls, Texas.

Labor Region IX

- Salinas Valley Workshop, Inc., Salinas, California.
- Gateway Projects, Inc., Yuba City, California.
- Arizona Industries for the Blind, Phoenix, Arizona.
- Harbor View Industries, San Pedro, California.
- Rio Vista Center, Mount Diablo Unified School District,
West Pittsburg, California.
- Arrow Services, San Diego County Association for the
Retarded, San Diego, California.
- San Francisco Lighthouse for the Blind, San Francisco,
California.

A SELECTED BIBLIOGRAPHY, WITH
ANNOTATIONS, ON SHELTERED WORKSHOPS

Greenleigh Associates, Inc., The Role of Sheltered Workshops in the Rehabilitation of the Severely Handicapped, Washington, D.C., July 1975.

The report was prepared by Greenleigh Associates, Inc., in response to a provision in the Rehabilitation Act of 1973, as amended, requiring the Department of Health and Human Services to study the role of sheltered workshops for serving the handicapped. Based on a sample of 400 sheltered workshops, the study addressed the role of sheltered workshops in rehabilitating, training, and placing severely handicapped person's and changes needed for providing more employment opportunities for the severely handicapped within and outside the sheltered workshop system. The report presented findings, conclusions, and recommendations related to workshop roles, funding priorities, relationships between business and rehabilitation functions, working standards, client incomes, and other related issues.

Urban Institute, Report of the Comprehensive Needs Study of Individuals with the Most Severe Handicaps, Washington, D.C., June 1975.

The report was prepared in response to a provision in the Rehabilitation Act of 1973, as amended, requiring the Secretary of Health and Human Services to study the needs of the severely handicapped population for preparing to enter rehabilitation programs or improving their ability to live independently within their community. The study, conducted by a private contractor, was completed in June 1975. The study, which covered a wide range of issues, concluded that the severely disabled had little hope for employment in the competitive market because of the complexity of their needs. It recommended that the sheltered workshop movement be expanded to accommodate an estimated 1 million severely disabled persons who could benefit from extended, long-term sheltered treatment.

U.S. Department of Health, Education, and Welfare, Office for Handicapped Individuals, The White House Conference on Handicapped Individuals: Summary Final Report, Washington, D.C., Government Printing Office, 1978.

On May 23 through May 27, 1977, a White House Conference on Handicapped Individuals was held in Washington, D.C. Participants in the conference included handicapped consumers and representatives from government, organized labor, private industry, and rehabilitation facilities. Many issues were addressed during the conference including sheltered workshop operations, as well as other employment opportunities and related services for the handicapped. The final report documents the work of the participants and presents the recommendations and resolutions developed.

U.S. Department of Health, Education, and Welfare, Training and Employment Services Policy Analysis: A Look at Community Based Services for Handicapped Individuals, First Year Progress Report.

This report provides information on a policy analysis activity initiated in May 1978 by the Department of Health, Education, and Welfare. It focuses on training and employment services for handicapped persons in community based facilities, including work activities centers, developmental centers, and other sheltered workshops. The report identifies major issues and current policy problems relating to training and employment services for handicapped persons.

U.S. Department of Labor. Sheltered Workshop Study: Workshop Survey (Volume I), Washington, D.C., June 1977.

In this study, the Department of Labor analyzed policies, programs, and services of sheltered workshops serving handicapped persons. The study was transmitted to the Congress in June 1977. It presented a profile of the types of handicapped persons served, an analysis of wage earnings and fringe benefits, a review of the financial structure and the makeup of the staff, and other pertinent information developed from a survey of 1,786 sheltered workshops in 1973. The study concluded that sheltered workshops provided a more desirable alternative than public assistance for the handicapped population--both from an economic and humanitarian consideration. The study also showed that funds for supporting services were limited and investment in buildings, equipment, and industrial development was minimal compared to the need, thereby restricting employment and training opportunities for the severely handicapped in sheltered workshops.

U.S. Department of Labor, Sheltered Workshop Study; Study of Handicapped Clients in Sheltered Workshops (Volume II),
Washington, D.C., March 1979.

This study, representing the second phase of Labor's 1977 analysis of the policies, programs, and reviews of sheltered workshops, was sent to the Congress in March 1979. It addressed the handicapped persons served in the workshops in terms of their needs, characteristics, and sources of support, as well as their attitudes toward the benefits provided by the workshops. The information was obtained from interviews of about 3,400 handicapped persons employed in workshops, or their guardians, in early 1976 by the field staff of the Bureau of the Census. The study found that the level of severity of the workshops' handicapped work force has increased substantially over the last decade. The findings also showed that earnings from workshop employment were far less than the amount needed for meeting the basic financial needs of most handicapped workers; many were dependent on their families for primary support and nearly one-half of the workshop clients received some form of supplemental public support.

NUMBER OF CERTIFIED WORKSHOPS
AND NUMBER OF HANDICAPPED WORKERS EMPLOYED
IN THESE WORKSHOPS BY FISCAL YEAR

<u>Fiscal</u> <u>year</u>	<u>Certified</u> <u>workshops</u>	<u>Total</u> <u>handicapped</u> <u>workers</u>
(As of the close of the fiscal year)		
1967	978	49,645
1968	1,078	47,900
1969	1,168	51,882
1970	1,420	63,154
1971	1,623	70,298
1972	1,863	80,450
1973	2,062	87,348
1974	2,392	104,791
1975	2,835	120,452
1976	2,998	145,442
1977	3,323	156,475
1978	3,590	164,709
1979	3,877	174,746

NUMBER OF HANDICAPPED WORKERS EMPLOYED
IN SHELTERED WORKSHOPS BY FISCAL YEAR
AND TYPE OF LABOR CERTIFICATE

<u>Fiscal year</u>	<u>Type of certificate</u>				
	<u>Regular program</u>	<u>Individual rate</u>		<u>Evaluation training</u>	<u>Work activities center</u>
		<u>Above Federal subminimum</u>	<u>Below Federal subminimum</u>		
1968	24,503	961	2,554	6,886	12,996
1969	23,434	805	2,228	8,492	16,923
1970	25,208	677	2,650	10,544	24,075
1971	25,407	724	3,050	11,368	29,749
1972	23,506	698	3,768	14,707	37,771
1973	24,634	798	4,326	15,187	42,403
1974	25,825	683	5,174	15,177	57,932
1975	24,257	646	6,333	18,976	70,240
1976	27,387	922	5,528	22,870	88,735
1977	25,283	1,003	5,914	23,363	100,912
1978	26,718	624	6,471	21,705	109,191
1979	28,634	572	6,030	22,493	117,017

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
WASHINGTON, D.C. 20210



Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

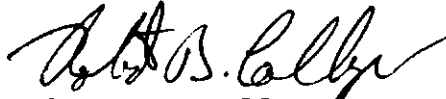
Dear Mr. Ahart:

This is in reply to your letter to the Secretary requesting comments on the draft GAO report entitled, "Federal Efforts for Providing Employment Opportunities and Labor Standards for Handicapped Workers in Sheltered Workshops Should be Improved".

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,


Robert B. Collyer
Deputy Under Secretary

Enclosure

U.S. Department of Labor's Response
to the Draft General Accounting Office
Report Entitled--

Federal Efforts for Providing Employment
Opportunities and Labor Standards for
Handicapped Workers in Sheltered Workshops
Should be Improved

Recommendation:

"Revise the Federal regulations to require that each sheltered workshop must establish and document a guaranteed wage minimum for each handicapped worker based, as a minimum, on the worker's average productivity for the specified period of time."

Response:

The Department does not concur.

Comment:

Although the Department has a deep interest in assuring that every worker in a sheltered workshop is fairly compensated, there are problems with a guaranteed wage of the type here recommended that could have an adverse effect on handicapped workers. Therefore, the Department is not in a position to endorse the recommendation in the absence of a much more detailed analysis of its full ramifications.

The guarantee here recommended, as the Department understands it, would be determined by comparing a worker's average productivity during a specified past period with the average productivity of non-handicapped workers. This proportion would be multiplied by the statutory minimum wage, and the result would be the guaranteed hourly wage to be paid during a specified future period. If the worker's productivity increased during this future period, a proportionately higher wage would be paid during that same period. However, if the worker's productivity declined during that future period, his wage could not be reduced below the guarantee during that period. Nevertheless, where a worker's average productivity during a period is lower than the guaranteed wage he receives during that period, a proportionately lower guaranteed wage could be established during the next period.

This recommended guarantee plan establishes a specified minimum wage level for each individual worker which must be paid during a certain period, even if the worker's productivity during that period might fall below the guarantee level. As a result of this possibility occurring, the Department believes that the workshops would place greater emphasis on productivity, at the expense of other services and activities the handicapped workers may need. This could be a particular problem in work activities centers, where the emphasis should be on therapeutic activities rather than on productivity.

A further drawback is that workshops might be inclined to switch from paying at piece rates to paying at time rates, in order to simplify their recordkeeping burden. Piece rates normally are preferable in vocational rehabilitation, because they contain a built-in incentive which enables the worker to work at his own pace and because they permit a more current and accurate measure of productivity than hourly rates.

Recommendation:

"Strengthen management control over the planning, implementation, and evaluation of the process of investigating sheltered workshops' compliance with the requirements of the Fair Labor Standards Act (FLSA) by: (1) requiring regional and area offices to specify a level of staff resources for making workshop investigations, and (2) designating specific compliance officers in each regional or area office to develop expertise for making workshop investigations."

Response:

The Department concurs.

Comments:

At present the annual target for sheltered workshop investigations is set at 10% of the total number of certificated workshops. This level is approximately four times the level of all establishments investigated annually as measured against the total universe of employers covered by the FLSA. The Department believes that a targeted number of investigations produces essentially the same results as a plan based upon staff hours since the time it takes to conduct a workshop investigation varies considerably. Investigations of small

workshops with few contracts in which the workers are paid at hourly rates can normally be completed in a relatively short time while those of large workshops with a variety of work involving both piece as well as hourly rates can take considerably longer.

Conciliations and limited investigations are not intended to be counted in the targeted program for conducting workshop investigations. The Department will emphasize this fact in its instructions to the enforcement staff. The Department's regional offices are instructed to designate specific compliance officers in each area office to do workshop investigations so that they can develop expertise in this program. Regional office workshop specialists also assist in making workshop investigations and provide on-the-job-training for compliance officers who are relatively new at making such investigations. It is not feasible, however, to have all workshop investigations made by a limited number of compliance officers because of the geographical dispersion of the workshops.

Recommendation:

"Establish management controls for assuring that sheltered workshop investigations are made on a uniform basis nationwide. Each investigation should include all analyses needed to determine a workshop's compliance with the Act's requirements, including examination of the (1) production standards used for establishing piece rates, (2) production evaluations used for establishing hourly wage rates, (3) procedures used to determine a document prevailing wage rates, (4) systems used to develop and maintain individual productivity records, time studies, performance evaluations, and records of total hours worked, and (5) procedures used for increasing individual wage payments to comply with the conditions of a special certificate."

Response:

The Department concurs.

Comments:

The Field Operations Handbook provides guidance to compliance officers conducting workshop investigations and covers the five areas cited above. The Department will, nevertheless, review those instructions to make sure that these points are covered in sufficient detail.

Specialized training in time studies and related matters for compliance officers designated to conduct workshop investigations was scheduled to be provided by a contractor in Fiscal Year, 1981. Budgetary considerations, unfortunately, required the postponement of the training. It is anticipated that this training will be provided in Fiscal Year, 1982.

The Department is testing a new method of providing both compliance officers and workshops' staff with guidance in determining prevailing wage rates based on computerized data compiled monthly by the Employment Service.

Recommendation:

"Decide whether the requirements of the Fair Labor Standards Act should be applied to publicly-operated sheltered workshops."

Response:

The Department concurs.

Comments:

The Department agrees that it would be desirable to issue an opinion stating whether or not the wage provisions of the Fair Labor Standards Act apply to the sheltered workshops operated by State governments and their political subdivisions. Unfortunately, however, the issue is difficult and complex. In ruling that the wage provisions of the FLSA cannot constitutionally be applied to "integral operations in areas of traditional governmental functions," the Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976), provided little concrete guidance as to how the decision would affect many activities of State and local governments. Subsequent decisions of lower courts have not been particularly helpful. It is likely that further guidance from the courts may be needed before the Department will be in a position to issue an opinion.

Under the Department's special enforcement policy as approved by the District Court on remand from the Supreme Court (see 29 CFR 775.2), the Department cannot sue any State or local government agency for wage violations of the FLSA unless it has first issued an opinion stating that the agency's activities are not "traditional" or "integral" within the meaning of the National League decision. This ban against litigation does not apply to individual employees or groups of employees who seek to sue their employers.



COMMITTEE
FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

June 12, 1981

703-557-1145

Suite 610
2009 Fourteenth Street North
Arlington, Virginia 22201

Mr. Gregory J. Ahart
Director, Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is to provide comments on the draft GAO report transmitted by your letter of May 13, 1981.

The Committee's comments are keyed to the seven recommendations for action by the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped shown in the Digest of the report.

Recommendation 1 - Notification of current and most recent suppliers

As written, this recommendation would require the Committee staff to notify directly both current and prior year contractors for each commodity or service proposed for addition to the Procurement List. The discussion in Chapter 4 which leads to this recommendation is based on the assumption that a primary purpose of the publication of the notice in the Federal Register of proposed additions is to minimize the impact on industry of additions to the Procurement List. The legislative history for including the provision in Public Law 92-28 requiring the publication of notices of proposed additions in the Federal Register does not support that assumption, nor do the decisions of the courts which have reviewed the Committee's actions. The Committee is charged with analyzing the impact of the proposed addition on the firm or firms which are directly affected and determining if the proposed addition would have a serious adverse impact on the affected firm or firms.

The GAO team's comprehensive review of addition actions over a three-year period, together with information from 23 businesses concerned with the Committee's actions, has verified the fact that the Committee has "adequate procedures for analyzing the impact of its proposed additions on existing industry" and that "the adverse affects of the Committee's actions [on industry] are limited to the short term." Thus, the Committee's current procedures meet fully the letter and the intent of Public Law 92-28 as amended. In this connection, the GAO draft report omits the fact that the Committee's procedures require that, where information is not available on a current contractor's sales, or if it appears that, based on the information available to the Committee, the current contractor or contractors would be seriously impacted, the Committee staff must notify directly the current contractors of the proposed addition.

GAO note: The page references in this appendix may not correspond to the page numbers in the final report.

Based on the Committee's experience, when a contractor is provided the notice of a proposed addition action, the Committee usually receives letters or telegrams from the head of the firm or the legal office representing that firm, or both; from one or more members of Congress; and from the industry or other association with which the firm may be affiliated. These communications are accompanied by a number of telephone calls requesting additional information or extensions on the time for reply to the Committee notice.

Based on the number of addition actions the Committee processed in FY 1980 and to date in FY 1981, and those projected in future fiscal years, applying this recommendation would require the Committee to send an average of 125 separate notices each year to current and prior year contractors rather than the 60 to 127 notices shown in the draft report. The responses to these notices would increase the correspondence workload on the Committee staff by 6 to 8 times the current workload, with at least half of the letters and telegrams requiring a detailed reply. Contrary to the conclusion at the bottom of page 4-26 and the top of page 4-27 that this would not impose a significant administration burden, the adoption of this recommendation would result in the staff's devoting a significant portion of its time and effort in responding to this major increase in correspondence and telephone calls, with a concomitant reduction in the staff's ability to perform its essential functions relating to the addition of new items to the Procurement List and to the expeditious processing of pricing actions. Thus, any benefit to affected businesses would be minor when compared to the severe adverse impact that the adoption of this recommendation would have on the Committee's mission of increasing employment opportunities for the Nations blind and other severely handicapped.

There are a number of other programs in the Federal Government which limit or deny the opportunity for a current contractor to continue to bid on items that it has been providing to the Government. Some of these are setting aside procurements for small businesses, procurements from labor surplus areas, awards to minority-owned firms under Section 8(a) of the Small Business Act, and purchases from Federal Prison Industries, Inc. In none of the above, does the agency taking the action notify directly the current contractor or contractors involved of the contemplated action. In view of the GAO team's findings regarding the adequacy of the Committee's procedures for analyzing the impact on industry, and the fact that it would be the only program to be required to notify contractors directly, this recommendation discriminates unfairly against the Committee's program. When a Government-wide policy is instituted requiring direct notification of contemplated actions in the programs listed above, the Committee will reconsider its position on this matter.

It is recommended that this recommendation be changed to read:

"GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal Regulations and Committee procedures to require the current or most recent supplier be directly notified of the Committee's intent to consider the addition of a product or service to the Procurement List when information on the subject firm's sales is not available or it appears that, based on the information available to the Committee, the proposed action would have a serious adverse impact on that firm."

Recommendation 2 - Verifying the accuracy of workshop reports of direct labor

The Committee staff in its visits to workshops has found the same deficiencies in the recording and reporting of information on direct labor hours as those reflected in the GAO draft report. The added personnel and resources recently made available to the staff to perform its inspection function have permitted a three-fold increase in the number of workshops visited in fiscal year 1980 over the average of visits in the prior three years. With few exceptions, by the end of fiscal year 1981 the Committee staff will have achieved its interim goal of having visited each newly approved workshop within six months of beginning production under the Committee's program, and having revisited each workshop within three years of the prior staff visit. One of the primary purposes of these visits is to orient workshop executives and management personnel on the proper methods for determining, recording and reporting handicapped and nonhandicapped direct labor hours.

In our view, the paragraph on page 4-36 of the draft report describing the Committee staff's monitoring of a workshop's compliance with the act is misleading. Enclosure 1 describes the typical procedure the Committee staff follows in observing workshop operations, in reviewing records and recordkeeping, and in evaluating the workshop's compliance with the Committee's regulations. The Committee staff, during its normal visit of about one day at each workshop, cannot be expected to perform the extended and detailed review which the GAO team conducted at each of the workshops it visited. (The GAO visits averaged 30 man-days per workshop.) However, the staff visits are far more than a superficial review of the workshops records and methods for recording and reporting data as implied by the last paragraph on page 4-36. When there have been allegations that a workshop is failing to comply with the Committee's regulations or where the staff visit reveals a questionable situation, the staff expands the scope of its review to the extent necessary to determine the facts in each such case. Based on our experience, most workshop managers are conscientious in trying to evaluate correctly and to report accurately data on their direct labor, once they understand what is required.

It is recommended that this recommendation be changed to read:

'GAO recommends that the Chairman review the Committee's procedures for verifying the accuracy of the reports submitted by the workshops on the number of direct labor hours worked by handicapped and nonhandicapped workers.'

Recommendation 3 - Committee's evaluation of central nonprofit agency commission

The thrust of the discussion on pages 4-11 through 4-13, indicating that the commission (fee), which a workshop pays its central nonprofit agency, directly affects the prices paid by the Federal Government, is not correct. As indicated on page 4-12, the median of competitive bids submitted on the last solicitation is generally used as the basis for computing fair market prices for commodities. (The average of competitive bids is generally used for services.) A fair market price based on the award price plus 5 percent is only used in those instances when the median of the bid (or average in the case of services) is less than 5 percent above the award price or in the case of a single bid. Since most prices are governed by the median or average of bids, the primary impact of the central nonprofit agency fee is on the revenue the workshops receive rather than on the prices paid by the Government.

It is recommended that the discussion on pages 4-11 through 4-13 be changed to reflect this fact.

Recommendation 4 - Showing handicapped and nonhandicapped direct labor hours for proposed additions and for items now on the Procurement List

This recommendation, in addition to requiring a breakdown of direct labor hours for new items proposed for addition to the Procurement List, would also require an additional detailed report (presumably on an annual basis) for each product and service now on the Procurement List. The latter would require extensive, additional recordkeeping of direct labor hours by the workshop on an item-by-item basis. While the workshop is expected to utilize handicapped individuals to the maximum extent possible in the production of commodities and the provision of services on the Procurement List, there is no requirement under the Act that the 75 percent ratio be achieved on each individual commodity or service.

For new items being proposed for addition to the Procurement List, it is possible to require the workshop to show the estimated division between handicapped and nonhandicapped direct labor for each proposed action. Where an addition action includes a number of national stock numbered items to be produced, or a variety of service actions to be performed, the breakdown of handicapped and nonhandicapped should reflect data on the group of commodities or the complete service rather than on each individual commodity or each component of a service. The requirement for providing this data could be appropriately covered in the Committee's written procedures.

With the above information available, the Committee members could make a judgment as to whether or not the proposed addition action meets the requirements of House Report No. 92-228 in assuring that the action will, in fact, result in the provision of employment opportunities primarily for the blind and other severely handicapped.

It is recommended that this recommendation be changed to read as follows:

"GAO recommends that the Chairman revise the Committee's procedures to require that each participating sheltered workshop submit information on the estimated direct labor hours for handicapped and nonhandicapped workers for each action proposing the addition to the Procurement List of a product or group of products, or a service."

Recommendation 5 - Reporting placements from Javits-Wagner-O'Day program

It is clear from the legislative history of the Javits-Wagner-O'Day Act, and its amendments, that the Committee's primary purpose is to expand the employment opportunities for blind and other severely handicapped individuals in sheltered workshops. A secondary result of this employment may be the eventual development of the skills and productive level which will permit placement in competitive employment. The number of placements in competitive employment of persons employed on Javits-Wagner-O'Day work is in no way a measure of the success or accomplishments of the Committee's program.

The placement program required by the Committee's regulations, is to ensure that each workshop has an effective system for placing in competitive employment those handicapped individuals who qualify for and desire such employment.

The Committee is interested not only in whether or not each workshop has an effective placement program but it also encourages workshops to place in competitive employment as many of its handicapped employees as are capable and desirous of being placed. During its visits to workshops, the Committee staff reviews the effectiveness of the workshop's placement program. However, due to the heterogeneous nature of the handicapped persons in workshops, any evaluation of the effectiveness of the workshops' programs must be made on a case-by-case basis, considering each workshop's total handicapped population rather than a particular group who might happen to have been working on Javits-Wagner-O'Day work the day before they are placed in the competitive labor market.

It is recommended that this recommendation be changed to read:

"GAO recommends that the Chairman of the Committee establish a system for monitoring the effectiveness of each participating workshop's program for placing qualified handicapped individuals in competitive employment."

Recommendation 6 - Requiring 75 percent direct labor on Javits-Wagner-O'Day items

The Committee would exceed its authority under the Javits-Wagner-O'Day Act if it were to implement this recommendation. There is no requirement in Public Law 92-28 that handicapped workers provide at least 75 percent of the direct labor hours on each commodity produced or service provided under the Javits-Wagner-O'Day program. House Report 92-228 on page 14, which is quoted on page 5-3 of the draft report states, "The percentage of blind or other severely handicapped labor in a given commodity may be slightly higher or lower in any given fiscal year owing to a variety of factors..." In its definitions of a qualified agency for the blind and a qualified agency for the other severely handicapped in the Act, Congress made clear its intention in this regard by including, in the portion of the definitions dealing with the required percentage of direct labor hours in those agencies, the phrase "whether or not the commodities or services are procured under this Act".

The Committee should monitor the percentage of employment of handicapped persons in the production of commodities and the provision of services on the Procurement List. This will permit the Committee to ensure that work on the commodities and services on the Procurement List is used primarily to provide employment for blind and other severely handicapped individuals.

It is recommended that the GAO recommendation be changed to read as follows:

'GAO recommends that the Chairman of the Committee establish a system for monitoring the percentage of total direct labor hours performed by handicapped workers in each participating workshop in the production of commodities or provision of services under the Javits-Wagner-O'Day Act.

Recommendation 7 - Establishment of standards for measuring placements

Placement in competitive employment is the ultimate step in the vocational rehabilitation process for some of the handicapped workers in sheltered workshops. Within the Federal Government, the Rehabilitation Services Administration (RSA) of the Department of Education under the Rehabilitation Act of 1973 has primary responsibility for the vocational rehabilitation of handicapped persons.

The Committee's role is to assist vocational rehabilitation programs at the workshop level by providing work for blind and handicapped persons employed in sheltered workshops. It has no direct role in rehabilitation activities. However, the Committee is well aware of the rehabilitation implications of its actions.

The establishment of standards for measuring the success of workshops in placing handicapped workers in competitive employment is a function of RSA. Thus, this recommendation would place a responsibility on the Committee for a function which is the responsibility of RSA under the Rehabilitation Act of 1973.

It is recommended that this recommendation be deleted.

Comments on specific changes in the report are contained in Enclosure 2.

The Committee appreciates the cooperation of Mr. Paul Reynolds and Mr. Chris Crissman of your staff in the conduct of their investigation of the Committee's operations. Their review was, in our view, thorough and objective.

Sincerely,


CLYDE C. COOK
Chairman

Enclosures 2

**WORKSHOP INSPECTIONS
BY THE COMMITTEE STAFF**

This describes the current procedure the Committee staff follows during on-site visits to determine if a workshop is complying with the Act and Committee regulations regarding workshop qualification.

Initially, the Committee staff person making the inspection briefs the workshop executive and selected members of the workshop staff on the purpose of the visit and the points which will be covered during the visit. During that briefing he explains the definition of direct labor, emphasizing that all direct labor must be reported for the agency including all commercial work in addition to Javits-Wagner-O'Day (JWOD) work, and work at all locations including satellite workshops which are under the administrative control of the agency. Also, during the opening interview, the agency's awareness of the requirements of the Occupational Safety and Health Act (OSHA) is established. If it is determined that an official OSHA inspection has not been performed recently, it is recommended that the workshop request a courtesy inspection of OSHA.

The entrance briefing is followed by a walk through of the workshop to review the types of work being performed, to identify those individuals who are performing direct labor, to observe any serious occupational safety violations, and to evaluate the potential capability of the workshop. During the walk through the staff observes the number of handicapped and nonhandicapped persons on JWOD work to determine if the number of blind or other severely handicapped persons approximates the 75% ratio. Also during the walk through, a general review of safety conditions is noted. If an imminent danger violation is noted, it is pointed out to the workshop executive and, if not corrected immediately, it is reported to the DOL Compliance Division. Where a service is being performed at a location other than the workshop, the staff inspects that work site to observe the performance of the service and to obtain the views of the customer agency.

During the walk through, the staff questions the workshop officials about selected workers regarding which are considered direct labor and which are indirect labor to determine if the workshop is applying the definition of direct labor correctly. The staff also asks about the amount of direct labor being performed by personnel whom the workshop classifies as indirect labor such as supervisors or inspectors.

Enclosure 1

The staff then reviews the workshop's system for capturing the direct labor hours for handicapped and nonhandicapped employees. The individual responsible for recording the data is requested to explain how the appropriate hours of direct labor are isolated from indirect labor. The complete system of capturing direct labor hours for a normal workday is then reviewed. Then the system for recording direct labor hours is reviewed to determine how hours are accumulated on a periodic basis to arrive at the total hours reported on the prior year's Annual Report submitted to the Committee. If there are any deficiencies in the recording system or in the appropriate classification of direct labor hours, the director of the agency is informed of the corrections required.

If it is found that the agency has been estimating direct labor hours, the director is instructed to establish a system for collection of direct labor hours. If the agency does not have the records necessary to substantiate the data included in its last report to the Committee, the staff recommends a system for collecting the necessary data.

The staff also reviews the file of selected blind or other severely handicapped persons listed as performing direct labor. This review usually involves the files on 10% to 15% of the number of handicapped persons performing direct labor, including the files of any persons observed during the walk through whose eligibility may appear to be questionable. The files are generally selected on a random basis and include a mix of records for long, intermediate and short-term employees and from various production areas including those working on the JWOD commodities or services. The records are checked to ensure that there is a file which includes medical documentation of the disability and the initial and appropriate annual reevaluations of the employee's incapability for competitive employment. When the files are not properly documented, the workshop's director is instructed on the actions necessary to correct them.

At each stage of the visit, the staff reviews the definition of direct labor with the responsible individuals to ensure that the personnel concerned with prepared and recording direct labor hours are aware of what constitutes direct labor, as opposed to indirect and administrative labor.

The staff also reviews the placement program with the executive director and with the person responsible for placement. This involves a review of how employees are referred for placement in competitive employment and the effectiveness of the workshop's placement program. If a person is considered capable of placement for two consecutive annual reviews, the employee's file is reviewed to determine what efforts have been made to place that person in competitive employment.

As indicated above, the staff inspections, while they do not represent a 100% inspection of the workshop's personnel and records, are conducted in sufficient depth to give an accurate reflection of the extent of the workshop's compliance with the Committee's regulations.

Following the inspection the staff member reports the results of his inspection to the Executive Director of the Committee. In each case where the workshop is not complying with Committee regulations, the Executive Director sends a letter to the central nonprofit agency concerned pointing out the deficiency or deficiencies, directing the corrective action to be taken, and requiring a report when the situation has been corrected.

**COMMENTS ON SPECIFIC CHANGES
TO DRAFT GAO REPORT**

Page xii of Digest. Lines 3 thru 9. The sentence beginning "For instance, ..." is inconsistent with the findings on pages 4-18 regarding the adequacy of the Committee's procedures for analyzing impact and should be deleted.

Page xii of Digest. Lines 18 thru 23. Recommend that the sentence beginning "Also, the Committee's procedures ..." be changed to read as follows: "Also, the Committee's procedures for assuring that participating sheltered workshops comply with the Act's requirement that handicapped labor must account for not less than 75 percent of the total direct labor in the workshop could be improved."

Page xiii of Digest. Line 13. Delete the word "Although" and begin the sentence with "The".

Page xiii of Digest. Lines 16 and 17. Place a period after the word "program" on line 16 and insert the word "However", before the word "GAO's". On line 17, insert the words "in some instances" after the word "that".

Page xiii of Digest. Line 19. Substitute the word "where" for the word "because".

Page xiv of Digest. Lines 6 thru 14. See comments on Recommendation 1 in the basic letter.

Page xiv of Digest. Lines 15 thru 20. See comments on Recommendation 2 in the basic letter.

Page xiv of Digest. Lines 21 thru 23. See comments on Recommendation 3 in the basic letter.

Page xv of Digest. Line 12. In the first line under the heading on employment opportunities, change the word "Committee" to read "act".

Page xv of Digest. Line 26. The sentence beginning "Although, it may be ..." and continuing on page xvi should be deleted since this is not a function covered by the Javits-Wagner-0'Day program.

Page xvi and xvii of Digest. Lines 17 thru line 3 of page xvii. See comments on Recommendation 4 in the basic letter.

Note: The line numbers shown above include each line on the page on which type appears including headings.

Page xvii of Digest. Lines 4 thru 7. See comments on Recommendation 5 in the basic letter.

Page xvii of Digest. Lines 12 thru 18. See comments on Recommendation 6 in the basic letter.

Page xvii of Digest. Lines 19 thru 25. Delete. See comments on Recommendation 7 in the basic letter.

Page 4-1. Line 19. Delete the word "numerous" since nowhere in the report are there indications that there were a large number of such allegations.

Page 4-2. Lines 6 and 7. On line 6, delete the word "provide" and substitute the words "minimize the impact on" and on line 7, delete the words, "with sufficient notice" and add a period after the word "suppliers".

Page 4-2. Lines 16 and 17. On line 16, delete the word "Although" and begin the sentence with "The". On line 17, delete the word "theoretically".

Page 4-2. Lines 19 and 20. Place a period after the word "Government" which ends on line 19, add the word "However," before the word "our", and insert the words "in some instances" after the word "that". On line 20, substitute the word "where" for the word "because".

Page 4-4. Line 21. The reference to the US Code should read "41 U.S.C. 46-48c".

Page 4-7. Line 18. Insert the word "International" before the word "Association".

Page 4-9. Line 7. Delete the word "public" since there is nothing in the 1971 Congressional hearings or in the GAO draft report which reflects the "public's concern".

Page 4-11. Lines 16 and 17. Change part of the sentence after the word "affects" to read "the revenue earned by the workshops and, in some instances, the prices paid by the Federal Government".

Page 4-11. Line 19. In the heading, change words "directly affects" to "may affect".

Page 4-11. Lines 24 and 25. After the word "that" on line 24, insert the words "in some instances" and on line 25, substitute the word "where" for the word "because".

Page 4-12. Line 10. Add the words "for commodities" after the word "price" and insert before the word "Where" the sentence "The average of the competitive bids, where available, is used for determining the prices of services".

Page 4-12. Lines 25. Delete the words "because the".

Page 4-13. Line 1. Substitute the word "to" for the words "Committee procedures".

Page 4-13. Line 6 thru 13. Change to read as follows:

"Where the median or average of bids is used in determining the fair market price, the commission rate affects the level of revenue earned by the workshop for producing goods or providing services under the program. However, the commission rate established by the Committee directly affects the price paid by the Federal Government for all commodities or services where the fair market price is not determined by the median or average of competitive bids in the last solicitation. Therefore, adequate procedures for evaluating ..."

Page 4-13. Lines 17 and 18. Change the part of the sentence after the word "act" to read "and the commissions paid by the workshops and the prices paid by the Federal Government are not excessive".

Page 4-20. Lines 3 thru 7. Change to read as follows:

"After the staff has verified the information in the justification, it prepares an analysis of the impact on industry. The staff then transmits a letter to each member of the Committee which provides information highlighting the most significant factors together with a copy of the complete justification and the analysis of industry impact. Also, copies of all comments received from industry are appended to the industry impact analysis."

Page 4-21. Line 1. Substitute word "contractor" for the word "producer".

Page 4-21. Line 8. Substitute the word "considers" for the words "must also consider".

Page 4-26. Lines 9 thru 12. Sentence beginning with the words "Current suppliers" should be deleted since a current contractor is not guaranteed an award on the next competitive procurement and there would normally be minimum administrative or financial commitment by a firm prior to the issuance of a solicitation for the commodity involved. A majority of Committee actions are completed prior to the issuance of the solicitation.

Page 4-26. Lines 21 thru 23. The sentence beginning with the words "Although notifying ..." and continuing on page 4-27 should be revised to read "Notifying the current or most recent supplier of items proposed for addition to the Procurement List would significantly increase the Committee's administrative workload". (See comments on Recommendation 1 in the basic letter).

Page 4-27. Line 9. Beginning with the words "The following table delete the balance of page 4-27 and the first six lines on page 4-28 and the substitute the following: "Directly notifying the current or most recent contractor would necessitate transmittal of about 125 separate notices annually; thus, the administrative burden on the Committee in preparing the letters and responding to the comments received appears to be significant. (See comments on Recommendation 1 in the basic letter).

Page 4-28. Lines 16 thru 20. The sentence beginning with the word "Although" should be deleted. The fact that inconsistencies and inaccuracies exist is not valid evidence that the Committee's procedures are inadequate. (See comments on Recommendation 2 in the basic letter).

Page 4-29. Lines 4 and 5. Substitute the words "the act does not" for the words "Committee procedures do not".

Page 4-31. Line 5. After the word "program" add the following: "when it became apparent that the workshop could not meet the 75 percent level in that fiscal year". Delete the words "According to", and substitute the word "In".

Page 4-31. Line 6. After the word "percentage", add the following: "on a cumulative basis for the year to date"; add the word "only" after the word "to".

Page 4-32. Line 15. After the word "applied", add the words "by the workshops".

Page 4-32. Line 16. After the word "that", add the word "some of".

Page 4-35. Line 10. After the word "a" add the word "brief".

Page 4-35. Line 11. Substitute the word "may" for the word "will".

Page 4-36. Lines 21 thru 29. Delete the paragraph beginning with the words "Also, the Committee" and substitute the following: "During the Committee staff's visits to workshops, the staff explains the definition of direct labor and the requirements for recordkeeping and reporting by the workshops under the act and Committee regulations. The staff observes the workshop's operations, safety conditions, and the workshop's application of the definition of direct labor. The staff also, reviews the workshop's system for capturing, recording, and reporting direct labor hours. It reviews the files of selected handicapped persons who are listed as performing direct labor to ensure that there is proper documentation in each person's file. The staff also, reviews the workshop's placement program."

Page 4-37. Line 15. Add the following: "However, this would create a significant increase in the administrative workload of the Committee staff and could have a serious adverse impact on its ability to meet its mission of increasing employment opportunities for the handicapped".

Page 4-38. Lines 13 and 14. Delete the words "the fair market price and the revenue earned by the workshops", and substitute, "the revenue earned by the workshop and, in some instances, the fair market price,".

Page 4-38 and 39. Lines 24 thru 26 and lines 1 thru 3. See comments on Recommendation 1 in the basic letter.

Page 4-39. Lines 4 thru 8. See comments on Recommendation 2 in the basic letter.

Page 4-39. Lines 9 and 10. See comments on Recommendation 3 in the basic letter.

Page 5-1. Line 13. Substitute the words "placement of" for the words "program's success in placing".

Page 5-1. Line 16. Substitute the word "a" for the words "an adequate".

Page 5-2. Lines 1 thru 6. Delete the two sentences.

Page 5-4. Line 3. Substitute the words "in a number of instances" for the word "generally".

Page 5-4. Line 5. Add the word "those" before the word "sheltered," and substitute the word "could" for "can".

Page 5-5. Line 3. Delete the words "and/or nonhandicapped".

Page 5-6. Line 4. Substitute the word "handicapped" for "nonhandicapped".

Page 5-6. Lines 5 thru 8. Delete the sentence beginning "Thus, if a workshop ..." and insert the following "The new jobs are expressed in man-years of work for handicapped workers".

Page 5-7. Lines 8 thru 12. Delete the sentence beginning with the words "Although the program

Page 5-10. Lines 21 thru 26. Delete the sentence beginning with the words "To measure ...".

Page 5-15. Line 1. Delete the word "Committee's".

Page 5-15. Lines 7 and 8. Delete the words "by the Committee".

Page 5-16. Lines 3 thru 9. Delete the sentence beginning "Because" and substitute the following: "We believe that the Committee should establish procedures for monitoring the employment of handicapped persons in the production of products and the provision of services under the program to assure that the employment opportunities created under the program are used primarily for the handicapped".

Page 5-16. Line 10 thru 15. Delete the sentence beginning with the words "Without adequate

Page 5-16. Lines 21 and 22. Add "(1)" after the word "should" on line 21 and delete "(1)" on line 22.

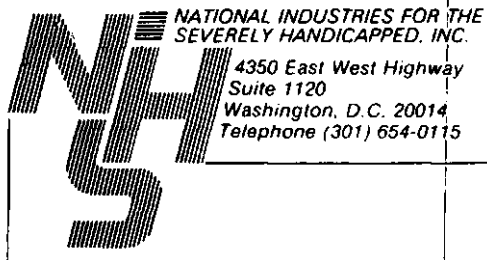
Page 5-16. Lines 23 thru 25. Delete the words "standards for measuring the program's success in providing employment opportunities which lead to" and substitute the words "ensure that each workshop has an effective program for".

Page 5-17. Lines 5 thru 12. See comments on Recommendation 6 in the basic letter.

Page 5-17. Lines 13 thru 17. See comments on Recommendation 4 in the basic letter.

Page 5-17. Lines 18 thru 21. See comments on Recommendation 5 in the basic letter.

Page 5-17. Lines 22 thru 27. Delete the sentence beginning "We also recommend". See comments on Recommendation 7 in the basic letter.



June 11, 1981

Mr. Gregory J. Ahart, Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 30548

Dear Mr. Ahart:

NISH appreciated the opportunity to review the draft of the proposed GAO report to Representative Barry Goldwater, Jr., on the role of sheltered workshops in employing the severely handicapped and operating in the competitive business community.

The length and depth of the GAO investigative process has been a learning process for all of us in the sheltered workshop community. For the most part, the workshops audited were impressed with the thoroughness of the GAO auditors. In many instances they felt GAO was helpful in suggesting procedural changes they were eager to implement. Although initially apprehensive about being audited, workshop administrators generally felt it was a positive experience. This certainly reflects well on your staff and the way in which the review was conducted.

While the GAO audit process was professional and helpful, we are concerned about a number of the recommendations made in the report. For ease of reference, we have categorized our remarks into three areas: (1) General Reaction; (2) Comments on Recommendations; and (3) Miscellaneous Comments on the Body of the Report.

GENERAL REACTION

The report does not substantiate that severely handicapped employees are being discriminated against by the provisions of the Fair Labor Standards Act, nor does it document that awarding Javits-Wagner-O'Day (JWOD) contracts has placed an unfair burden on private industry. Yet recommendations are made to implement tighter legislation and administrative controls in both these areas. Moreover, additional reporting and verifying procedures suggested for the JWOD program would cause a significant administrative burden for sheltered workshops. Increased control by, and reporting to, federal agencies seems to contradict the Administration's intent to reduce paperwork. While we realize the report was undertaken before

GAO note: The page references in this appendix may not correspond to the page numbers in the final report.

President Reagan implemented his regulatory review policy, implementation of many of the recommendations would require more government control, more centralized direction, more regulations, more paperwork — and conflict with the President's goal to place responsibility for programs at the local level.

The general thrust of the report is "enforcement" rather than "assistance", although GAO field surveys, and the report itself, clearly demonstrate the crying need for help at the workshop level. Legislatively, the JWOD program has always been of an advocacy nature, striving to provide opportunities to severely handicapped individuals that frequently do not exist in competitive employment. We must not hamstring a successful program with overregulation and compliance review. The federal contracting process, through the JWOD Act, is helping our nation's severely handicapped citizens lead more self-sufficient and dignified lives. It must continue to have the flexibility to do that job successfully.

COMMENTS ON RECOMMENDATIONS

A NISH comment is provided below for each GAO recommendation. The recommendations are listed in the same order as they appear in the Digest portion of the report.

(1) GAO Recommendation: "GAO recommends that the Congress eliminate the Federal policy for providing a guaranteed subminimum wage for handicapped workers in sheltered workshops by amending the Fair Labor Standards Act to eliminate the provision that handicapped individuals who are employed under special Labor certificates must be paid not less than 50 percent of the statutory minimum wage."

NISH Comment: Agree. We also agree to the proposed statutory amendment to Section 14(c)(1), FLSA, stated on pages 2-32 and 2-33 of the report, providing the following change is made: delete the words "or order" from the third sentence of the proposed amendment. This deletion will ensure the program will continue to be administered through regulation and therefore subject to the public rule making process.

(2) GAO Recommendation: "GAO recommends that the Secretary of Labor revise the Federal regulations to require that each sheltered workshop establish and document a guaranteed wage minimum for each handicapped worker based, as a minimum, on the worker's average productivity for a specified period of time. This approach would expand the protection available under the present system by extending a wage guarantee to each individual worker in a sheltered workshop. Presently, each workshop is required to maintain records documenting the wage rate paid to each worker. Therefore, GAO does not believe that its paperwork requirements would be significantly increased."

NISH Comment: Agree in principle; however, the GAO recommendation does not take into consideration the wide fluctuations in day-to-day productivity exhibited by many clients. We do not feel that average productivity can be determined for an individual "... for a specified period of time". This is due, firstly, to factors related to client disabilities such as: the severity of the physical and/or emotional/cognitive disabilities and symptomatology; the side effects of medication; the recurrence of symptoms formerly in remission. Secondly, the complexity, diversity and quality of the work in the workshop may vary from day to day, with the result of variable productivity rates on the part of individual workers. The imposition of such an averaging over time will negatively impact the ability of the facility to employ individuals with severe disabilities and the attendant variability in productivity.

The development of regulations implementing the recommendation must be closely coordinated with the workshop community not only to ensure protection for individual workers, but also to avoid placing unnecessary administrative burdens on workshops. Prior to implementing this change, DOL should provide extensive assistance and proper guidelines to workshops to help them become more scientific in developing and applying work measurement standards. Comments from a workshop executive concerning this issue -- typical of those received -- are attached at Enclosure 1.

(3) **GAO Recommendation:** 'GAO recommends that the Secretary of Labor:

"--Decide expeditiously whether the requirements of the Fair Labor Standards Act should be applied to publicly-operated sheltered workshops."

NISH Comment: Agree. Public operated institutions (state-owned) should be held to the same standards of the law.

(4). **GAO Recommendation:** 'GAO recommends that the Secretary of Labor:

"--Strengthen management control over the planning, implementation, and evaluation of the process for investigating sheltered workshops' compliance with the requirements of the Fair Labor Standards Act by (1) requiring regional and area offices to specify a level of staff resources for making workshop investigations; (2) designating compliance officers in each regional or area office who can develop expertise for making workshop investigations; and (3) requiring regional offices to assure that sheltered workshop investigations are made on a uniform basis nationwide."

NISH Comment: Agree, but recommendation should go further. This recommendation discusses "enforcement" procedures but fails to mention the all important "assistance" procedures needed by workshops. Enforcement is currently being done by a number of agencies, as evidenced by the following comment which is typical of those received from workshop executives: "I am not sure that this facility could stand much more enforcement, for in the last half of 1980 we received representatives from GSA, DOL, IRS, OSHA, and DISRS (State Agency)".

More enforcement alone will not correct abuses. The report clearly indicates most workshops try to comply with DOL regulations. The report also makes it equally plain that workshops need more help to fully comprehend these complicated regulations (Reference: lines 2-7, page VIII; lines 10-15, page 3-5; lines 13-16, page 3-19; lines 1-2, page 3-31; lines 7-18, page 3-33). The solution to the problem lies in a balance between investigation and technical assistance. The body of the report appears to recognize that both functions have a role to play, but the concept is not carried through to the recommendations. Accordingly, we suggest the following be added as additional recommendations:

'GAO recommends that the Secretary of Labor:

"--Intensify its management training and assistance to sheltered workshops to facilitate compliance with the requirements of the Fair Labor Standards Act by developing and implementing a comprehensive nationwide training program to teach workshop administrators to compute piece rates, establish hourly wages, determine prevailing wage rates, examine techniques of work measurement and maintain adequate records.

"--Conduct periodic courtesy inspections of sheltered workshops to facilitate the learning process above. Prior to such reviews, sheltered workshops should be provided simplified printed standards of review procedures."

"--Provide additional training to DOL compliance officers in each regional or area office to improve the effectiveness of workshop reviews."

A final consideration -- as DOL attempts to strengthen their management control and assistance procedures, they should consult with representatives of the workshop community. A possible way to accomplish this would be through the re-establishment of the DOL Advisory Committee on Sheltered Workshops.

(5) GAO Recommendation: 'GAO recommends that the Congress consider amending the act to extend Labor's authority for enforcing the provision that a handicapped worker's wages must be commensurate with those paid nonhandicapped workers."

NISH Comment: Disagree. At first glance this recommendation seems innocuous. The obvious intent is to make the handicapped worker's wages equitable to those of the nonhandicapped worker who is doing work of similar value. The recommendation apparently derives from the fact DOL has no enforcement authority concerning commensurate wages if wages exceed the statutory minimum. However, this leads to speculation as to what *is* an acceptable commensurate wage. Prevailing rates are determined upon a spread of wages and fringe benefits paid in an area. Commercial and union firms have varying rate structures. Some pay reduced rates to "learners". Commercial firms may pay the minimum (not prevailing) wage for non-Federal contracts. Since workshops utilize JWOD clients on commercial as well as government contracts, it would create unfair competition for the workshops to be forced to compete for business with small commercial firms paying lower wages. It is proper for DOL to focus concern on wage rates for severely handicapped individuals earning less than minimum wage, but DOL should not be involved in monitoring or enforcing wage rates above the minimum, particularly when this is not an area of concern in private industry. Typical of comments received from workshop administrators was:

'DOL has no enforcement authority over industry beyond the minimum wage; why should workshop wages above the minimum be centrally controlled by the federal government?'

(6) GAO Recommendation: 'GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that the current and most recent supplier be directly notified of the Committee's intent to consider the suitability of a product or service for procurement from a sheltered workshop.'

NISH Comment: Disagree. The Committee is currently meeting the requirements of the law and further notification is redundant. The body of the GAO report does not justify the change recommended. No list of commercial firms severely impacted by sheltered workshops is presented. No evidence of a workshop causing a private firm to go bankrupt is documented. On a case-by-case basis, the Committee currently provides separate notification to the current contractor when essential data is lacking. In spite of this courtesy, many current contractors do not respond with the information requested. It is also significant that responses received are not verified for accuracy.

The "planning ahead" feature for contractors was emphasized by GAO as a major reason for change in notification procedures. In this respect, we have been unable to document even one response from

a current contractor in which the contractor's remarks, resulting from notification, centered around the "planning ahead" feature.

We are also deeply concerned about the administrative burden this procedure would place on the limited resources available to the Committee staff. This procedure would divert Committee resources and preclude other essential assistance to NISH and the workshop community. It would also place the burden of proof on the wrong party.

The premise that the current supplier will be impacted by the proposed JWOD set-aside action presupposes the current supplier will win the award for the next procurement. This may not be the case. The GAO recommendation even goes a step further and suggests notification of the "most recent supplier" (interpreted by NISH to mean the "prior year supplier"). The "most recent supplier's" loss of the contract was the result of unsuccessful competition in the open market and not the result of the JWOD program, i.e., the "most recent supplier" lost to the "current supplier" — who caused the impact.

No other programs (Small Business, 8a, etc.) have procedures requiring other businesses to be contacted before set-aside action is taken. Currently, notification through the Federal Register (JWOD program) is more notification than any other program provides — even though the JWOD program has priority over all others.

We suggest the GAO recommendation be restated as follows:

'GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise Committee procedures to require that the current supplier be directly notified of the Committee's intent to consider the suitability of a product or service for procurement from a sheltered workshop when valid data is not available to evaluate industry impact.'

(7) GAO Recommendation: 'GAO also recommends that the Chairman establish procedures for:

"--verifying the accuracy of the reports submitted by the workshops for the number of direct labor hours worked by handicapped and nonhandicapped workers."

NISH Comment: Agree, with reservation. How far does one go to verify accuracy? NISH staff and funds are too limited to conduct the type review accomplished by GAO.

(8) GAO Recommendation: 'GAO recommends the Chairman establish procedures for:

"--evaluating the adequacy of the commission rate and the commissions received by the central nonprofit agencies."

NISH Comment: Disagree. The GAO premise upon which this recommendation is based is incorrect. The GAO contention that the government finances the CNA's* with a 4% markup (fee) is misleading. The report also misplaces its emphasis on the smaller number of items where the Fair Market Price (FMP) is based on award plus 5%, rather than concentrating on the larger number of items based on median of bids.

The report makes an assumption that the minimum increase of 105% above the discounted award price is a markup to cover commissions paid CNA's. Rather, this is an arbitrary figure which establishes a minimum for a Fair Market Price (FMP), just as the 135% competitive range limits the upper range of bids which can be used in determining the FMP for commodities. The FMP, based upon bids, provides a bottom line which is paid to the workshop regardless of whether a NISH commission is considered. The 4% the workshop pays NISH is a limitation of the maximum fee a workshop can be required to pay for administration and services; however, it does not preclude a CNA from either waiving, deferring, or taking any other action which will result in a lesser revenue to the CNA. The evaluation of the 5-12% range of FMP's to the discounted award price (page 4-12 of the report) would tend to indicate that the current mechanisms for FMP determination are providing an effective ceiling for overall costs to the Government.

As a private, non-profit agency, financial policy and budgetary decisions concerning NISH are vested in its Board of Directors. Therefore, it is inappropriate for the Committee to review and provide direction on NISH's financial and budgetary posture on a continuing basis as suggested by GAO.

(9) GAO Recommendation: "To provide the Congress with adequate information for deciding the resources needed to assure an adequate level of Federal oversight, GAO recommends that the Congress consider requesting the Committee to provide a study which assesses various levels of Committee oversight functions and the related costs."

NISH Comment: Agree with study if thrust is expanded. The thrust of the study should encompass not only the additional resources needed for "oversight" functions, but also the additional resources needed for "assistance" (advocacy) functions. The body of the report supports this need. The House Committee Report on Government Operations on the Amendments to the Wagner-O'Day Act states, "It is expected that this unit will be an active force within the Government in attempting to aid in the sale of products

* The term "CNA" as used in this response applies to NISH and NIB.

and services provided by blind and other severely handicapped persons to the Federal Government." Accordingly, we suggest changing the GAO recommendation as follows:

"To provide the Congress with adequate information for deciding the resources needed to assure an adequate level of Federal oversight and assistance, GAO recommends that the Congress consider requesting the Committee to provide a study which assesses various levels of Committee oversight and assistance functions and the related costs." (Underlining added to highlight change.)

Additional resources and workload identified at the Committee level would, in all probability, require additional resources at the NISH level.

(10) GAO Recommendation: "Therefore, GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that:

"Each participating sheltered workshop submit information on the direct labor hours for handicapped and nonhandicapped workers for each product and service proposed for addition to or included on the list of goods and services required to be procured from sheltered workshops."

NISH Comment: Disagree. Information required for proposed additions will be meaningless because workshops simply are not able to project standard hours or the expected productivity of workers. In addition, it would be administratively impossible to backtrack and document data for items already on the Procurement List. We suggest changing the GAO recommendation as follows:

"Therefore, GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that:

--Each participating sheltered workshop submit information on the estimated man years for handicapped and nonhandicapped workers for each product and service proposed for addition to the list of goods and services required to be procured from sheltered workshops."

(11) GAO Recommendation: "Therefore, GAO recommends that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that:

"--Each participating sheltered workshop report the placements into competitive employment attributable to the employment opportunities created by the program."

"--GAO also recommends that the Chairman establish standards for measuring the success of participating workshops in placing handicapped workers who had been trained or employed on direct labor activities under the Javits-Wagner-O'Day program into competitive employment outside the sheltered workshop."

NISH Comment: Disagree. Both of these recommendations deal with placement. Neither is supported by data in the report. In fact, there is nothing in the report that indicates a problem exists. Placements for JMOD workshops appear to be better than non-JMOD workshops. Committee regulations already ensure an adequate documentation of competitive employment placements for "graduates" of the JMOD program. The JMOD Act itself is silent on placement. The intent of the legislation was to create more job opportunities for severely handicapped people through federal contracting opportunities. No history of the legislation mentions evaluating JMOD "success" on the basis of placement. In short, placement is a secondary issue or by-product of the Act; not a primary issue for judging the effectiveness of the Act.

A further consideration of this issue is the complexity, or more accurately, the [impossibility of determining which factors are the "key" factors that make competitive placement possible. The report itself states that "...the levels of production should not be the sole determining factor of the readiness of a worker for competitive employment." What then are the determining factors? Would it be experience with complicated machinery involved in producing a JMOD product, or would it be the rehabilitative therapy that individuals receive during the course of training? What about the transitional severely handicapped people whose physical conditions improve enough for them to move out of a sheltered environment?

In evaluating a successful placement, if an employee were placed into competitive employment and had spent only 20% of his time in the workshop on the JMOD program, would the workshop receive credit for 20% of a placement?

Some workers are continually moving from job to job for training and development. Standards and reporting would be a nightmare. None of these elements can be quantitatively measured.

(12) GAO Recommendation: "GAO recommends that the Chairman revise the Federal regulations to require that handicapped workers provide at least 75% of the direct labor hours on all commodities

produced and/or services provided by participating sheltered workshops under the Javits-Wagner-0'Day program."

NISH Comment: Disagree. The JWOD Act requires that severely handicapped workers provide at least 75% direct labor hours within the agency. The GAO recommendation would change this to require 75% for each JWOD contract. (Note: The "75% rule" is a legislative requirement and the Chairman does not have authority to make the change recommended by GAO.) The problems mentioned in the GAO report are not prevalent and do not justify the drastic change recommended. Implementation of this recommendation would significantly reduce the opportunity for sheltered workshops to do federal contract work. It takes time to train clients and assess the degree of skill that can be mastered while adhering to strict quality control standards. This regulation would preclude the workshop from having a flexibility to move clients around. This would prevent some clients from sharing in all of the activities the workshop program has to offer.

It should also be remembered that JWOD contract work is not a workshop's only function. Many times a federal contract is only a small part of the workshop's business. These workshops could not focus on the JWOD 75% requirements and ignore other responsibilities.

This requirement would also severely impact service contracts (particularly in smaller workshops) where just a few people are involved in the contract. In addition, it would restrict program additions for items of low dollar value which complement on-going similar production. Many times a JWOD contract serves as an adjunct to other contracts, and vice versa, to expand employment opportunities. Flexibility within the workshop would essentially be eliminated. The end result--employment opportunities would be denied to a significant number of severely handicapped people.

MISCELLANEOUS COMMENTS ON THE BODY OF THE REPORT

Page XVIII, line 3: Substitute the word "appear" for the word "tend".

Reason: To make Digest of report agree with wording used in detailed analysis (page 1-17, line 19) and with rationale presented in body of report.

Page 1-9, line 16: Delete "... and whenever possible, prepare them for engaging in competitive employment."

Reason: This purpose is not included in the JWOD Act as stated by GAO.

Page 1-13, line 13: Substitute the word "program" for the words "special investigation".

Reason: The "Sixty Minutes" program arrived at no critical conclusions nor was it a "special investigation".

Page 1-13, lines 15 and 16: Delete phrase "... problem in the operating practices of..."

Reason: The alleged problems in the Wall Street Journal cannot be universally applied. Please see NISH comments in Hearings Before the Subcommittee on Labor Standards, House of Representatives, May 14 and 15, 1980, pages 238-246.

Page 1-17, lines 6 and 7: Delete phrase "... and whenever possible, preparing these individuals for competitive employment outside the workshops".

Reason: Use of this phrase should be deleted throughout the report for following reasons:

(1) This phrase is not one of the purposes listed in the JWOD Act for creating the Committee for Purchase from the Blind and Other Severely Handicapped, as stated by GAO.

(2) Although listed as an objective in paragraph 51-2.2, Code of Federal Regulations, the phrase is stated differently, i.e., "... and whenever possible, to prepare these individuals to engage in normal competitive employment". Note: Code does not restrict to "outside the workshop". Example: A workshop graduate may take a staff position within the workshop and therefore be included in "normal competitive employment".

(3) The stated purpose of the Committee in paragraph 51-1.1 of the Code does not include either of the phrases above.

Page 4-1, lines 14-19: Delete entire sentence.

Reason: The report does not document the "numerous allegations" of wrongdoing.

Page 4-9, line 4: The figure "24,236" is misleading.

Reason: It implies 24,236 handicapped workers are involved with JWOD contracts which is not the case. Suggest correct statistics for JWOD employment be added.

Page 4-9, lines 5-15: Delete entire paragraph.

Reason: Paragraph is misleading. It implies considerable public concern by small business over the Committee's administrative practices and procedures whereas such concern has been limited and sporadic.

Page 4-16, line 20: Add after "... the Small Business Administration's set-aside program." the following sentence: "This assistance was provided on a special grant basis."

Reason: To clarify source of funds.

Page 4-16, lines 23 and 24: Delete the phrase "...similar to National Industries for the Blind..."

Reason: Quoted out of context. Additional services to be accomplished by NISH may, or may not, be similar to National Industries for the Blind.

Page 4-18, lines 8 and 9: Substitute the word "... effect" for the phrase "... result in a loss for..."

Reason: Set-aside action may not cause a loss to the business firm. The firm may already be producing at a loss.

Page 6-1, line 21: Substitute the word "appear" for the word "tend".

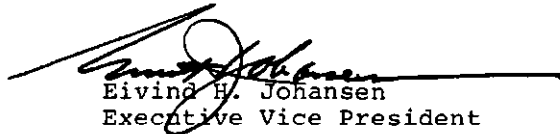
Reason: To agree with wording on page 1-17, line 19 of the report.

General Comment: Throughout the report the term "subminimum wage" is used to describe wages lower than the minimum wage. Suggest using the term "special minimum wage" in lieu of "subminimum wage".

Reason: The term "subminimum wage" gives the connotation of illegality or wrongdoing. It is not used in the Fair Labor Standards Act. The correct term "special minimum wage" may be found in paragraph 525.1, DOL Regulations on Employment of Handicapped Clients in Sheltered Workshops.

Again, we appreciated the opportunity to review the draft GAO report and we hope our comments will be helpful.

Sincerely,


Eivind H. Johansen
Executive Vice President

Enclosure: Typical Comment From
Workshop Executive

TYPICAL COMMENT FROM WORKSHOP EXECUTIVE

"Let me begin by saying that I most heartily agree with the general conclusion reached by the GAO that methods for implementing the law be simplified. It has always been our intention and the intentions of other workshops with which we are familiar, to make every conceivable attempt to comply with the law and the applicable standards. As a matter of fact, several members of our staff have been instrumental in organizing various production and procurement personnel from area workshops for the purpose of better understanding and instituting current wage and rate-setting requirements.

"Even with these efforts, however, it is often impossible to maintain 100% compliance in all areas at all times. It is also unfortunate that the GAO recommendation to address this issue by advising the Secretary of Labor to require an individualized guaranteed minimum for each person fails to accomplish this goal of simplification.

"Under existing regulations, workshops are required to fill out an "Application for an Individual Rate" (IR); form WH-249 on each worker who enters our regular work program but who cannot maintain a rate of 50% of the statutory minimum wage. Currently we have 64 of our 95 total regular work clients on the "IR" status. This certificate gives us the greatest amount of difficulty in maintaining compliance with these standards. The methods currently used by the Department of Labor to verify productivity are vague, time consuming and often produce inaccurate or misleading information. My recommendation would not be to further complicate this situation by requiring more IR's, but rather to put the time and effort into improving the methods for calculating and verifying commensurate wages. My reasons for saying this are two-fold:

"1. It has been my experience that the average hourly wage (and productivity) of disabled workers does not stabilize over time. The reasons for this are unclear; it may be due to the nature and type of work done in workshops. This is especially true in workshops where piece-rated subcontract work varies greatly from time to time in degree of difficulty. It may also be due to the fact that the nature of certain disabilities creates great unevenness in their productivity and;

"2. The need for wage guarantees is nullified if workshops are indeed paying a true commensurate wage.

"To accomplish my recommendation I see a need for the Department of Labor to establish definitive standards in the following areas: 1) time-study methods; 2) determination and documentation of prevailing wage; and 3) an improved method for establishing commensurate wages on hourly paid work (the current '90%/10%

Enclosure 1

Production Report Form' is vague and far too subjective). Currently, the Department of Labor has no clear answers to these problems. They can tell you what it is not - not what it is!

"Once these issues have been resolved, stricter enforcement by knowledgeable officials is not only necessary but sorely needed. Handicapped person should be paid fairly; properly determined commensurate wages will help assure this. At the same time, eliminating the confusion workshops experience at present will assist them in meeting the standards more effectively."



National Industries for the Blind
1455 Broad Street, Bloomfield, New Jersey 07003. 201-338-3804

June 11, 1981

THOR W. KOLLE, JR.
Chairman
ABRAM CLAUDE, JR.
President
PETER K. DEEKS
Secretary-Treasurer
GEORGE J. MERTZ
Executive Vice President

Mr. Gregory J. Ahart
Director

United States General Accounting Office
Washington, DC 20548

Dear Mr. Ahart:

Enclosed are two copies of NIB's comments relating to the GAO draft report covering the role of sheltered workshops in employing the handicapped and operating in the competitive business community. Our comments, along with additional recommendations relating to the Fair Labor Standards Act, are specifically addressed to the GAO recommendations found at the end of Chapters 2 through 5.

National Industries for the Blind is pleased to note the theme of the report entitled "Federal Efforts for Providing Employment Opportunities and Labor Standards for Handicapped Workers in Sheltered Workshops Should be Improved." We also appreciate that GAO has correctly assessed the success of the Javits-Wagner-O'Day Program by stating: "The Program has increased employment opportunities for the blind and other severely handicapped in sheltered workshops."

Although we concur with several of the recommendations, it is felt that some recommendations may not be consistent with the above statements, and if implemented, could result in the curtailment of present and future employment opportunities for blind and other severely handicapped individuals. Our comments address these concerns.

We trust the General Accounting Office will give serious consideration to our comments and will incorporate them in the final report. If you wish to discuss any of the points made in our enclosed paper, or if more clarification is needed covering our comments, we would be pleased, to come to your office and discuss this matter with you.

GAO note: The page references in this appendix may not correspond to the page numbers in the final report.

Thank you for your consideration and for allowing us to have input in this very important matter.

Sincerely,

A handwritten signature in cursive script, reading "George J. Mertz".

George J. Mertz
Executive Vice President

GJM:mjs

Enclosures 2

COMMENTS BY
NATIONAL INDUSTRIES FOR THE BLIND
ON THE DRAFT OF A PROPOSED REPORT BY THE
GENERAL ACCOUNTING OFFICE
ENTITLED

FEDERAL EFFORTS FOR PROVIDING EMPLOYMENT OPPORTUNITIES
AND LABOR STANDARDS FOR HANDICAPPED WORKERS
IN SHELTERED WORKSHOPS SHOULD BE IMPROVED

FEDERAL LABOR STANDARDS FOR HANDICAPPED WORKERS
IN SHELTERED WORKSHOPS SHOULD BE SIMPLIFIED

CHAPTER 2

SUBJECT: ELIMINATION OF SUBMINIMUM WAGE GUARANTEE AND
ESTABLISH WAGE GUARANTEE BASED ON INDIVIDUAL'S
PRODUCTIVITY

GAO Recommendation to the Congress

"We recommend that the Congress amend the Fair Labor Standards Act to eliminate the provision that handicapped individuals who are employed under special labor certificates in sheltered workshops must be paid not less than 50 percent of the statutory minimum wage."

GAP Recommendation to the Secretary of Labor

"We recommend that the Secretary of Labor revise the Federal regulations to require that each sheltered workshop must establish and document a guaranteed wage minimum for each handicapped worker based, as a minimum, on the worker's average productivity for a specified period of time."

NIB Comment

NIB endorses this recommendation to Congress and the Department of Labor. It is obvious that under the present special certification process that handicapped individuals can sometimes be "grouped" by a certificated program rather than evaluated individually. The proposal would tend to make workshops focus on individual productivity, as it should be, rather than on the complexities of the present certification process. Although the majority of workers under the certification program have wage rates in excess of the 50 percent minimum, NIB wishes to encourage the continued maintenance of a minimum standard for protection of those

workers whose productivity is below the present guaranteed minimum.

NIB Recommendation

The Department of Labor regulations include protective steps for the employed client so that:

1. The individual's average guaranteed rate after the initial specified periodic evaluation shall not be less than the established floor rate for the client at the time or prior to the initial evaluation. This guarantees that present individuals' earnings will not be decreased.

2. After each periodic evaluation, the client's new guaranteed average shall not be allowed to fall (if indicated) beyond a certain percentage of the guaranteed rate in effect at the time of the periodic evaluation.

3. The application for certification should require the name of each individual employed client, his present guaranteed minimum wage, and his average earnings for the previous year.

4. Agency records should clearly show how the periodic average earnings for each individual is determined.

ENFORCEMENT OF FEDERAL, LABOR STANDARDS

CHAPTER 3

SUBJECT: STRENGTHEN ENFORCEMENT OF THE FAIR LABOR STANDARDS ACT

GAO Recommendation to the Secretary of Labor

Reference -- Chapter 3 -- Pages 32 and 33

NIB Comment

NIB endorses this entire recommendation to the Department of Labor and urges that it will rule favorably that the Fair Labor Standards Act should be applied to publicly-operated sheltered workshops. The present interpretation, under which the Fair Labor Standards Act does not apply to publicly-operated workshops, has led to a double set of standards and continuous confusion in a program that has one objective of providing employment to handicapped persons. In view of this one major objective of both the public and private-operated workshops, we urge the establishment of one set of employment standards for measurement by the Department of Labor as recommended in the GAO report.

SUBJECT: ENFORCEMENT OF THE COMMENSURATE WAGE PRINCIPLE OVER THE MINIMUM WAGE BASE

GAO Recommendation to the Congress

"Because handicapped workers who are receiving the minimum wage or higher may not be paid in accordance with the Act's commensurate wage requirements, we recommend that the Congress consider amending the Act to extend Labor's authority for enforcing the provision that a handicapped worker's wages must be commensurate with those paid nonhandicapped workers.

NIB Comment

NIB supports GAO's recommendation in concept, but feels the recommendation does not extend far enough. NIB is aware that agencies sometime pay minimum wage in order to avoid the administrative problems of certification and the paperwork it entails. This practice could result in underpayment if the individual's productivity and the prevailing wage result in actual earnings over the minimum wage. We realize the Department of Labor cannot monitor such a program under the present law. Many agencies associated with NIB are now paying prevailing wages that are higher than the minimum wage and NIB encourages this practice.

In addition to GAO's recommendations to Congress, it is felt appropriate recommendations should be made extending Labor's authority with provisions addressing measurement, prevailing wage rates, and the elimination of earnings limitations.

Measurement -- Under present regulations, the practice of evaluating hourly paid individuals' productivity is too subjective. It is impossible for Labor to confirm such evaluations and could lead to unintentional underpayments. This problem is reflected throughout Chapter 3 of the GAO report, and, therefore, stricter measurement techniques are required.

Prevailing Wage, Rates -- The report addresses the workshops' problems in determining prevailing area wage rates. U. S. Employment Services (Job Bank) has much of this information and the facilities to make accurate determinations.

Earnings Limitations -- There are several inferences in the GAO report that some handicapped workers deliberately limit their hours of work due to Government-imposed earnings limitations. NIB is aware of this problem and believes it may be more predominant in workshops for the blind. The disincentive created by the earnings limitations of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) forces employed workers to work only part time or risk losing their SSI income and/or SSDI benefits. This condition seriously undermines the work ethic of the sheltered workshop program, limits income of handicapped workers, and allows plant and equipment to be underutilized. Although this is a complex problem, NIB believes that GAO should include a strong recommendation that Congress remove the work disincentives created by the SSI and SSDI programs. Blind workers would rather not be idle and those who are willing and able to work should be encouraged to do so rather than being penalized for their productive efforts by the loss of income and Medicare and Medicaid insurance coverage provided through this program.

NIB Recommendations

1. The Department of Labor should require that all direct labor performed by blind and other severely handicapped must be measured against a standard production rate established for the operation. Indirect labor, where a standard production rate is impractical, could be based on a documented periodic requirement expected of a nonhandicapped worker.
2. The Department of Labor should encourage the U. S.

Employment Service to provide workshops with more detailed information supporting prevailing industry wage rates, as required.

3. In order to encourage the work ethic in the handicapped community, GAO's recommendation to Congress should include, as a minimum, that all handicapped individuals (by legal definition) should qualify for Supplemental Security Income as well as Medicare and Medicaid, regardless of earnings.

NIB strongly endorses these recommendations be made by GAO.

ADMINISTRATION OF THE JAVITS-WAGNER-O'DAY PROGRAM
SHOULD BE STRENGTHENED

CHAPTER 4

SUBJECT: CONGRESS REQUEST COMMITTEE TO PREPARE STUDY OF
COSTS AND OVERSIGHT FUNCTIONS

GAO Recommendation for the Congress

"Because the ability of the Committee for Purchase from the Blind and Other Severely Handicapped to effectively monitor and control the provisions of the Act is limited by the level of annual appropriations received, we recommend that the Congress consider requesting the Committee to provide a study which assesses Committee oversight functions. Such an analysis by the Committee should provide the Congress with a basis for deciding the resources needed to assure an adequate level of Federal oversight."

NIB Comment

NIB concurs in the recommendation that procedures should be established by the Committee to assure compliance with the Act's requirements and that the program's goals and objectives are achieved in an efficient and effective manner. However, for the reasons stated in NIB's comments regarding GAO's recommendation that the Committee establish procedures covering the adequacy of the commission rate (see NIB Comment pages 9 through 15), it is felt that various levels of Committee oversight should not include budget review and financial analysis.

SUBJECT: DIRECT NOTIFICATION BY COMMITTEE TO CURRENT AND
PAST SUPPLIER ON ITEMS BEING CONSIDERED

GAO Recommendation to the Chairman of the Committee for Purchase from
the Blind and Other Severely Handicapped

"We recommend that the Chairman of the Committee for Purchase

from the Blind and Other Severely Handicapped revise the Federal Regulations and Committee procedures to require that the current and most recent supplier be directly notified of the Committee's intent to consider the suitability of a product or service for procurement from a sheltered workshop."

NIB Comment

NIB cannot support this GAO recommendation primarily because it singles out one particular socio-economic program (Public Law 92-28 participants) for a limitation that is not required of other Federal socio-economic programs such as Federal Prison Industries, SBA Section 8a Programs, and others. Each of these programs has a direct impact on small business firms to one degree or another. However, they are not required to advise current and recent suppliers directly of their intent to remove Government-procured items from the commercial marketplace. Such a mandate would also make these programs more burdensome, time consuming, and costly.

In addition, NIB questions the basis and need for current notification of the "most recent past supplier," who for one reason or another, did not bid on the subject item, or was not successful in gaining an award. NIB feels that it would be good common business practice for former suppliers to monitor the marketplace thoroughly if they intended to continue or resume bidding on commodities and/or services in which they desired to furnish the Federal Government. The purpose of such "monitoring" of procurement would provide most recent suppliers with information which could assist them in avoiding expenditures made in anticipation of the next procurement. This information would normally be obtained from the Government procuring activity.

It is also NIB's position that the Committee has already established reasonable and appropriate procedures to minimize the program's impact on the business community. Increasing the Committee's administrative burden, which is contrary to regulatory reform, through the proposed notification process would cause subsequent delays in the addition procedures.

The existing procedure of formal publication in the Federal Register, the Government's public notification arm, is essentially fair to all segments of both industry and the Government.

SUBJECT: EVALUATING ADEQUACY OF CENTRAL NONPROFIT AGENCY COMMISSION RATE

GAO Recommendation to the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped

"We recommend that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped establish procedures for evaluating the adequacy of the commission rate and the commissions received by the Central Nonprofit Agencies."

NIB Comment

As the Central Nonprofit Agency representing workshops for the blind, NIB does not concur with the GAO recommendation that the Central Nonprofit Agencies should be subject to budget review or financial analysis for purposes of evaluating the adequacy of the commission rate and the commissions received. While the GAO report makes certain suggestions and draws conclusions upon which it makes its recommendation, NIB questions these conclusions for the following reasons:

The workshops associated with NIB have always maintained that the fees paid by the workshops to NIB are for services rendered and are not an increment provided by the Federal Government in addition to the selling price. This contention was confirmed in the past when the fee was increased by the NIB Board of Directors first from 2 percent to 3 percent in 1965, and subsequently from 3 percent to 4 percent in 1968, without any increase in the fair market price paid by the Government. Therefore, the fair market price of many items on the Procurement List does not include the commission as GAO indicates.

At that time, workshops essentially agreed with the decisions made by the NIB Board of Directors and recognized that the increase in fee paid to NIB will be paid through workshop funds without an increase in the fair market price paid by the Government for products on the Procurement List.

The original Wagner-O'Day Act did not address the issue of Central Nonprofit Agency fees.

The discussion supporting this GAO recommendation appears to conclude that it is essential that the Committee has the means to assure that Central Nonprofit Agencies have sufficient funds for carrying out their duties and responsibilities under the Act, and the prices paid by the Federal Government and the commission paid by the workshops are not excessive (page 4 - 13). However, on page 4 - 11, it is stated that without financial information, the Committee cannot assure that commissions received by the Central Nonprofit Agencies are justified. This statement, therefore, implies that Central Nonprofit Agencies may,

voluntarily or involuntarily, expend commission fees in a manner that is not directly or indirectly related to the welfare of its handicapped workers in associated workshops. It is NIB's position that its commission fees have been and are presently expended only in a manner designed to improve the performance of its associated workshops, and to improve the lot of their blind workers. It would appear that the GAO draft report in general supports this statement; however, the report refers to NIB's providing a wide range of services not directly related to workshop participation in the program. Examples of the latter include NIB's subcontract and enclave programs with industry, training courses (management - accounting - product development - quality control - costing/pricing), vocational evaluation, work adjustment, training and placement programs for blind persons, centralized purchase of raw materials/components, loan of funds to workshops for the purpose of purchasing raw materials and equipment necessary to initiate manufacture of items under the Javits-Wagner-O'Day Program. All these support functions are necessary in order to improve efforts to provide employment for blind persons, and therefore, should not be regarded as services not directly related to workshop participation in the program. Contrary to GAO's statement that these services are not directly related to the program, it is NIB's position that they are directly related, and are an integral part of the total employment process.

It is NIB's opinion that the recommended budget review and financial analysis performed by the Committee would not appear to be a useful or cost effective tool. This statement is predicated on the vagaries,

the ups and downs of Federal Government procurement in any given fiscal year. For example, NIB constructs its annual budget primarily on what it expects the Federal Government to buy from associated workshops. It has been a rare year when actual sales and resultant commissions match closely the sales forecasted. This fact, in time, requires constant reprogramming throughout the year. In the past, if actual sales did not meet forecasted sales, programs were eliminated or cut back. If actual sales exceeded forecasted sales, new programs were initiated which directly related to the welfare of the blind community, or existing programs were expanded. Examples include: subcontract program, additional product development engineers, increased level of quality control and laboratory testing services to workshops, and many others. In other words, the amount of commission received is first dependent upon what the Government buys from workshops, that programs be adjusted as required, that all monies budgeted and spent are program related. No amount of budget review and financial analysis by the Committee is going to result to any significant degree in program changes different from those changes which already are brought about by NIB management and its Board of Directors.

The NIB Board of Directors decides on the adequacy of the fee structure and can increase or decrease the level of services provided to the workshops based on budgetary constraints. As an example of the Board's authority in adjusting fees, at the NIB Board meeting held on June 22, 1975, the Board approved an incentive program to encourage workshops to participate in the Javits-Wagner-O'Day Program. The incentive

program eliminated the fee for a specified period of time paid by workshops to NIB and was implemented in order to assist the workshops with their research and development costs.

One of the Committee responsibilities under the Act is to establish the fair market price. The criteria for determining the fair market price have been reviewed many times in the past. According to the GAO report: "...Under the Committee procedures, the price should be at least 5 percent above the lowest market price because the Committee procedures includes the 4 percent commission which the Central Nonprofit Agencies charge the workshops to be included in the fair market price." NIB's records indicate that many products currently on the Procurement List do not meet this revised Committee criteria. As an example, the fair market price for approximately 95 percent of the products added to the Procurement List for NIB is based on the median of bids concept which simply establishes the consenses of the marketplace. In these instances, the approved pricing criteria have never included an additional amount or fee to be paid to the Central Nonprofit Agencies over and above the fair market price.

In conclusion, NIB feels there is no basis or need for the Committee to exercise budget review and financial analysis over NIB in order to determine if commission rates and commissions are proper. GAO's statement that the burden of financing the Central Nonprofit Agencies has been essentially placed on the Federal Government because of the commission included in the fair market price is not correct. For example, in fiscal

year 1979, 24 percent of NIB's gross operating income was derived through the Military Resale Program. Although this program comes under the Act, the fees included in Military Resale items, (which are also established by the NIB Board), are passed on directly to the consumer in the retail price. Therefore, the basic premise that the Government is financing Central Nonprofit Agencies is incorrect. Also, to consider budget review for determination of adequacy of commission rates would be impractical due to the difficulties that would arise in attempting to segregate Javits-Wagner-O'Day program costs from other non Javits-Wagner-O'Day income sources.

It is NIB's position that its fees have been and are presently expended in a manner designed to improve the performance of its associated workshops, and to improve the well being of their blind workers. NIB does not feel that the present commission fee places an undue burden on the Federal Government taken in the context of other subsidies provided in the broad arena of socio-economic support. In addition, Federal Government subsidy expenditures would increase significantly if severely handicapped persons were not employed in sheltered workshops. There is no need for Committee budget review or financial oversight as past operations of NIB have proven that the goals and objectives of the Javits-Wagner-O'Day Program have been properly addressed by mature, responsible individuals at the Central Nonprofit Agency level. The successful history of NIB's performance cannot be questioned. Its strength has been and continues to be based on the participation and valuable contributions of

both experienced workshop directors and dedicated individuals from the private sector. Oversight of this strongly independent group, which has successfully provided employment opportunities for the blind for 43 years, would inevitably lead to domination of the NIB function by the Federal Government. This in turn would undercut the strength the program has derived from its many non-Government sources and would ultimately move the Central Nonprofit Agency function to Government agency status.

EMPLOYMENT OPPORTUNITIES FOR THE HANDICAPPED
UNDER THE JAVITS-WAGNER-O'DAY PROGRAM
ARE NOT ADEQUATELY EVALUATED

CHAPTER 5

- SUBJECT: 1. REQUIRING 75 PERCENT DIRECT LABOR HOURS ON EACH JAVITS-WAGNER-O'DAY ITEM
2. REQUIRING EACH WORKSHOP TO PROVIDE INFORMATION ON DIRECT LABOR HOURS FOR EACH JAVITS-WAGNER-O'DAY ITEM

GAO Recommendation to the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped

"We recommend that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that:

- Handicapped workers provide at least 75 percent of the direct labor hours on all commodities produced and/or services provided by participating sheltered workshops under the Javits-Wagner-O'Day Program.
- Each participating sheltered workshop submit information on the direct labor hours for handicapped and non-handicapped workers for each product and service proposed for addition to or included on the list of goods and services required to be procured from sheltered workshops."

NIB Comment

NIB believes that the above recommendations, if implemented, would have the undesirable effect of greatly increasing the regulatory and administrative burdens on sheltered workshops while at the same time being counter-productive to the basic objective of the Javits-Wagner-O'Day Program of improving employment opportunities for the blind and particularly the multihandicapped blind.

NIB is sympathetic to the thrust and purpose of the GAO recommendation. However, we feel that the recommendation ought to be considered on a broader context of the part played by Javits-Wagner-O'Day in the total program of an agency for the blind. The GAO report comments on the benefits accruing to handicapped persons because of the Javits-Wagner-O'Day. However, in this particular recommendation, the report appears to disregard all the other "positives" and emphasizes only the employment aspects. The report mentions rehabilitation services, evaluation and training services, short-term and extended employment. In addition to these, workshops perform case finding, provide support services, including social services and vocational counseling, and a myriad of other services depending on the nature of the problems presented by each individual blind client. This may also include low vision services, medical services, homebound services, and others. The GAO report, while reflecting an understanding of the positive impact of many of these services on the eventual employability of the blind person, nevertheless reflects less appreciation for the basic fact that all of these ancillary services were developed because of the opportunities inherent in the original Wagner-O'Day Act and in the present amended Act. It was because of the Javits-Wagner-O'Day Act that the special workshops for the blind and NIB put such a large portion of their efforts into developing interlocking programs of service. Without such vocational rehabilitation services programs, it is a fact that substantial less employment benefits would have accrued to blind persons.

As greater and greater numbers of severely handicapped blind persons enter the work force, more and greater employment services are necessary. All of this places greater responsibilities on NIB and the workshops which we are accepting. To ignore this while focusing on whether an individual product being produced for the Federal Government is being produced using 75 percent direct blind labor is short-sighted. Allowing the entire workshop to maintain at least a 75/25 ratio allows for movement of blind workers, experimenting with such workers, and allowing the degree of flexibility needed when working with persons of limited employability.

The Javits-Wagner-O'Day Act was intended to create employment opportunities. Since 1938, and even since the amendments in 1971, there has been a good deal of progress in understanding more of how to achieve employment success with very severely limited blind persons. The GAO recommendation of 75/25 on each item supplied to the Federal Government would take us back to an exceedingly narrow interpretation of how the Congress intended for us to achieve employment goals for blind persons and would nullify the effort, time, and money now being expended on the wide programs of preparation for employment. We would have to ignore the seriously limited blind person in order to concentrate on the Government item, and therefore do not believe that this "each item" recommendation will aid in bolstering the intent of the Congress. Rather, it would destroy work opportunities through curtailed service programs, through less opportunities for seriously limited blind individuals, and through a serious "skrinkling" of opportunities to manufacture certain items under the Act.

The following additional comments are pertinent to NIB's disagreement to the GAO recommendation:

1. The GAO recommendations will limit the selection of new items available to the sheltered workshops for the blind for development and eventual production thus reducing the employment opportunities available in the future. NIB believes that the GAO recommendation would result in the elimination of many comparatively "complex" items which can no longer be engineered and adopted for production by the blind or handicapped within the constraints of the proposed criteria and the available fair market price. As a result, many opportunities for training the blind and the handicapped individuals on comparatively "complex" operations will also be lost, further reducing their potential for placement in outside industry. The idea of the Act is to provide employment for the blind, not simply to provide the Government with products that are 75 percent blind-made.

Unless modified, the recommendation will further limit the addition of new items to the Procurement List since it is virtually impossible to achieve a 75 percent ratio on a brand new item during initial production while simultaneously training the blind or handicapped workers, and meeting Government requirements for quality and on-time deliveries.

2. NIB believes that achieving a 75 percent ratio for each Javits-Wagner-O'Day item will be extremely difficult for the workshops for the blind in view of the tremendous increase in the number of multi-handicapped blind served by such workshops. Currently, over 55 percent of all blind direct labor workers in NIB-associated workshops are

multihandicapped, as more productive, singular blind individuals are placed in outside industry, retire from work, or are otherwise lost to the program. This change means that the workshops must constantly re-engineer and adapt existing Javits-Wagner-O'Day products to meet the capabilities of such individuals. As a result, some workshops are finding it increasingly difficult to maintain the 75 percent ratio for the workshop as a whole. The GAO recommendation will add to the problem.

3. It should be noted that all items currently on the Procurement List were approved for production by the Committee during the last 43 years on the basis of then-accepted criteria for determining workshop eligibility; namely, 75 percent ratio for the entire workshop. NIB believes that these criteria have served the blind and the handicapped individuals rather well, as indicated by the tremendous increase in the blind and the handicapped individuals employed by the sheltered workshops during the last 43 years. Although, during this period of time, the Act has been reviewed many times, to the best of our knowledge none of the previous studies (some of which are cited by GAO), nor the three previous studies of Javits-Wagner-O'Day by GAO, nor the Congressional deliberations of 1971 leading up to the amended Wagner-O'Day Act, ever suggested a change in this fundamental criteria used to establish workshop eligibility.

4. NIB believes that achieving a 75 percent ratio for each Javits-Wagner-O'Day item will be more difficult for the workshops for the blind as compared to the workshops for the other severely handicapped. This is due to the fact that the workshops for the blind are not permitted

to include non-blind handicapped individuals in their ratio computations, but the other severely handicapped workshops are allowed to include blind direct labor operators in their ratio calculations.

5. Many items produced for the Federal Government under the Act are also sold by workshops in the commercial marketplace. It would be impossible to separate hours for Javits-Wagner-O'Day purposes at time of manufacturing and report accurately the ratio requirements as recommended by GAO. It should be noted that of the \$141 million of blind-made products produced and sold by the 104 NIB-associated workshops in 1980, approximately \$60 million were sold in the commercial market. The consequences of superimposing an unworkable Javits-Wagner-O'Day requirement on the shops, would not only risk destruction of a 43 year old program that has provided blind employment through the Government purchase system, but would inflict such damage to the workshops generally that they could not remain healthy enough to serve their existing commercial markets. In effect, by creating a Government burden on the shops that they cannot sustain, would run the risk of dissolving both Government and commercial business which in 1980 generated \$20 million of wages for blind workers in NIB-associated workshops.

6. GAO's recommendation for submitting information on direct labor hours for handicapped and nonhandicapped workers for each proposed addition is impractical and cannot be implemented. This recommendation will, in effect, require the sheltered workshops to establish standard production rates for each proposed operation and to establish the productivity

of each blind operator as well as each nonhandicapped operator for a specific operation, prior to the addition of the item to the Procurement List, before the operators are trained, and before the job is ever set up in the workshop. It is obvious that any information submitted by the workshop pertaining to the direct labor hours performed by handicapped individuals could only be a very rough projection.

7. GAO's rationale covering additional reporting requirements is (see page 5-1): "...The information that the Committee requires the sheltered workshops to report does not provide an adequate basis for measuring the program's success in providing employment opportunities in the workshops..." NIB disagrees with this rationale. NIB believes that the program's success in providing employment opportunities in the workshops can be adequately judged on the basis of:

- a. The recognition and acceptance by all of the part played by Javits-Wagner-O'Day in the total program in an agency for the blind in preparing blind persons for employment in the sheltered workshop and/or in industry.
- b. New jobs created during a year for the blind and other handicapped individuals as a result of additions to the Procurement List.
- c. Growth in the amount of wages and fringe benefits accruing to the blind and other severely handicapped.

Conclusion

GAO has correctly pointed out in the report that one of the primary objectives of the Committee is "increasing employment opportunities for the blind and other severely handicapped individuals." GAO has also correctly assessed the success of the program by stating: "The program has increased the employment opportunities..." These statements are made on page 5-1.

In view of the success of the Javits-Wagner-O'Day Program, it is difficult to understand the necessity of making the drastic changes recommended by GAO which can only reduce the future success of the program.

The GAO recommendation of 75/25 on each item would result in a narrow interpretation of Congress' intent. The "each item" recommendation will not bolster this intent, but rather would limit work opportunities through curtailed service programs, through fewer opportunities for seriously limited blind people, and through a serious shrinking of opportunities to manufacture certain Javits-Wagner-O'Day items.

A great measure of the success in operating a sheltered workshop derives from the ability of a shop manager to have the flexibility to shift blind and non-blind personnel from one job to another. The objective, of course, is to maximize productivity and profits in order to provide job opportunities for the blind employees. Any reduction of this flexibility will have one effect -- the reduction of blind employment opportunities.

In addition, the key to a shop's viability is found in the shop

manager's ability to balance profitable and nonprofitable products, whether Government or commercial. To the extent that all Javits-Wagner-O'Day products must have 75 percent direct blind labor, the manager would run the risk that such products could be consistently unprofitable which would leave him no alternative but to eliminate Government products in favor of the commercial market.

SUBJECT: COMPETITIVE PLACEMENTS UNDER THE JAVITS-WAGNER-O'DAY PROGRAM

GAO Recommendation to the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped

"We recommend that the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped revise the Federal regulations and Committee procedures to require that:

- Each participating sheltered workshop report the placements into competitive employment attributable to the employment opportunities created by the Javits-Wagner-O'Day Program.

"We also recommend that the Chairman establish standards for measuring the success of participating workshops in placing handicapped workers who had been trained or employed on direct labor activities under the Javits-Wagner-O'Day Program into competitive employment outside the sheltered workshop."

NIB Comment

NIB does not believe that placements into competitive industry should be criteria for determining the success of the Javits-Wagner-O'Day Program. Employment opportunities created by the Act are the primary goals of the workshop program. As a matter of fact, GAO defines a sheltered workshop to be (page 1-2): "...Any vocationally oriented rehabilitation facility which provides full-time employment for severely handicapped

individuals who cannot move from sheltered into competitive employment."

NIB's records indicate that more and more blind persons with handicaps in addition to blindness are becoming part of the blind workshops' direct labor force and it can be assumed that as such persons become a larger percentage of the direct labor force in the workshops that competitive placements will lessen. If this be the reason for diminishing competitive placements, it means that the workshops are doing a better job than heretofore in providing employment to handicapped individuals, and they are receiving fewer and fewer capable people for service.

With the present 75/25 shop structure, the development of programs for more seriously limited persons is increasing (last fiscal year 56 percent of all direct labor blind in workshops for the blind had handicaps in addition to blindness), and as it increases, fewer placements will take place for which a workshop should not be condemned.

The Committee might better measure the success of a blind workshop by the number of blind persons with handicaps in addition to blindness that are employed in order not to penalize such programs that make the effort to employ such persons. Workshops for the blind are doing a good job under the Act in providing employment to blind people that cannot be placed.

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