

TESTIMONY OF RALPH L. STANLEY
ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION
BEFORE THE COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
REGARDING DISADVANTAGED BUSINESS ENTERPRISES
SEPTEMBER 19, 1984

Good morning, Mr. Chairman and Members of the Committee. I am pleased to discuss with you the Urban Mass Transportation Administration's (UMTA) implementation of section 105(f) of the Surface Transportation Assistance Act of 1982 (STAA). As you know, that Act was a landmark piece of legislation for UMTA. It directed one cent of the gas tax increase to our urban discretionary program and established a new block grant program for urbanized areas. No less significant was the commitment to Disadvantaged Business Enterprises (DBEs) set forth in section 105(f), a provision that was included through the efforts of Chairman Mitchell.

UMTA as an organization shares -- and I personally share -- the Secretary of Transportation's serious commitment to full and effective implementation of section 105(f). Central to that commitment is the Department of Transportation's regulation implementing the DBE program. The regulation requires each recipient that receives funding assistance above established thresholds to submit goals for DBEs and Women's Business Enterprises (WBEs) as a condition of receiving Federal assistance. These goals must be approved by UMTA before we award a grant. These goals cover all contracting opportunities except those for purchase of transit vehicles. In the latter case transit vehicle manufacturers themselves must submit goals for UMTA approval in order to be able to bid on an UMTA-assisted contract.

After the Department issued the regulation in July 1983, UMTA formed a section 105(f) Task Force to ensure uniform implementation of the regulation and provide specific program guidance to recipients and UMTA staff. The Task Force -- which consisted of representatives of UMTA program offices, as well as our Office of Civil Rights -- was instrumental in quickly resolving administrative and programmatic difficulties associated with implementing the regulation. The Task Force developed a wide range of materials: internal compliance and monitoring checklists and review formats; questions and answers concerning the regulation used by UMTA personnel, recipients, and DBE/WBEs; initial drafts of an internal order and an external circular; and materials for a workshop to train UMTA regional staff advising transit agencies about procedures for implementing the regulation. This information proved invaluable in launching UMTA's section 105(f) program.

We believe those early efforts proved worthwhile. During FY 1983, UMTA identified 451 recipients that met the dollar threshold figures specified in the regulation. Even though FY 1983 was a transition year for the section 105(f) program, awards to DBEs totalled \$298 million or 14.3 percent of the total contracting funds expended (\$2.1 billion). In addition, \$47.4 million or 2.3 percent were awarded to WBEs.

In the first half of this fiscal year reported contracting expenditures of UMTA recipients totaled \$1.1 billion. Of that total, \$143 million or 12.7 percent were awarded to DBEs. An additional \$34.2 million or 3 percent were awarded to WBEs. In FY 1984, we fully expect to exceed the level of DBE and WBE participation for FY 1983.

Program Guidance

UMTA has made substantial efforts to provide program guidance to UMTA field staff, recipients of UMTA assistance, transit vehicle manufacturers, and DBE/WBEs. In addition, we have worked closely with States and localities to help them fulfill the intent of the law. For example, UMTA sponsored -- in conjunction with the American Public Transit Association (APTA) and the American Association of State Highway and Transportation Officials -- five Regional DBE/WBE Conferences. The conferences, which were national in scope, provided information and technical assistance to our recipients, transit vehicle manufacturers, and DBE/WBEs. The conferences were conducted in Atlanta, Georgia; Philadelphia, Pennsylvania; Arlington, Texas; San Francisco, California; and Chicago, Illinois. Recipients and DBE/WBEs from the specified regional areas were invited to participate in the conferences, as were transit vehicle manufacturers. I was pleased to have the opportunity to participate personally by addressing the conference in Arlington, Texas. Each of the conferences provided an opportunity for recipients, transit vehicle manufacturers, and DBE/WBEs to become better informed about the section 105(f) requirements, and, we trust, better able to provide opportunities for DBE's and WBEs.

In a further effort to provide guidance to UMTA personnel and recipients of UMTA financial assistance, the Office of Civil Rights called together representatives of transit agencies and UMTA headquarters and field offices to review, revise, and develop a circular to implement our DBE/WBE program. This circular is in the final review process and will be issued next month.

In addition, during the current fiscal year, UMTA has sought to identify barriers to successfully carrying out our section 105(f) program. One of those identified by transit authorities and DBE/WBEs concerns certification. As a result, we intend to schedule early in FY 1985 a meeting of representatives of transit agencies, State departments of transportation, and DOT personnel to develop an effective and acceptable certification process. A concept that we will bring to the meeting is establishing a regional certification process that would be effective and yet remove the burden that DBE/WBEs experience in obtaining individual certifications from each transit operator.

In addition to the specific measures I've just outlined, UMTA will issue advisory memoranda concerning other problem areas as they are identified.

Compliance

UMTA has continued to emphasize compliance with the requirements of the DBE program. During FY 1984, we have conducted joint on-site compliance reviews with the Federal Highway Administration to ascertain compliance of our grantees with the regulation. Our regional civil rights personnel have also conducted on-site reviews of selected grantees. In scheduling our compliance reviews, we first review agencies about which a DBE/WBE transit-related complaint is filed with DOT and forwarded to UMTA for investigation.

Technical Assistance

Other major efforts by UMTA to increase the participation of DBE/WBEs involve technical assistance. This year UMTA is providing considerable technical assistance through our Demonstration Bonding Program. This program is

designed to help alleviate problems DBE/WBEs face in obtaining surety bonding so that they can participate more fully in certain UMTA-funded construction projects. I might add that this is a joint public/private initiative. UMTA section 20 funds totalling \$3 million have been committed to be combined with \$3 million in private funds and leveraged to provide \$60 million in total bonding capacity for DBE/WBE construction contractors. Since this is a demonstration program, these funds will be available initially only for transit construction projects in the four demonstration cities: Los Angeles, Houston, Detroit, and New York City.

In conjunction with each of the three-day Regional DBE/WBE Conferences that I mentioned earlier, UMTA conducted a one-day procurement fair for small and disadvantaged businesses. At the fairs, contract and procurement officers from UMTA recipients provided information and guidance about contract and procurement opportunities to interested minority and women owned firms. Through our procurement fairs we expect to increase the level of DBE/WBE participation. A number of important contracts have already been awarded to DBE/WBEs as a direct result of their participation in the fairs.

Building on the success of these procurement fairs, UMTA will conduct 15 additional fairs around the country through the Procurement Support Delivery System (PSDS) established by our Office of Civil Rights. The PSDS is designed to increase DBE/WBE participation in UMTA-funded procurement opportunities. It entails placing in select localities a number of procurement representatives who will be responsible for identifying contract opportunities for DBE/WBEs, as well as identifying qualified DBE/WBEs who could participate

in local transit projects. A PSDS newsletter will be published monthly, highlighting specific procurement opportunities and providing timely section 105(f) program information.

In addition, UMTA has contracted for the preparation and distribution of a series of "DBE Briefs," which impart program, technical and management information and advice; information on other related Federal programs; and any other information which would be of interest or value to DBEs. A series of five "DBE Briefs" will be distributed to cities, transit operators, and planning organizations who routinely work with DBEs.

Section 20 Program Accomplishments

Section 105(f) has encouraged transit operators to expand their procurement opportunities among DBE/WBEs. To further such efforts, UMTA has encouraged operators to seek funds under UMTA's Human Resources technical assistance activity. The operators can use these section 20 funds to provide technical and managerial assistance to local DBEs and WBEs. We expect that this technical and managerial assistance will enhance the viability and improve the performance of participating DBE/WBEs. It is hoped that the benefits of section 105(f) will in this way endure in the form of well-established, well-managed enterprises, fully capable of successfully competing in the American economic mainstream.

This fiscal year I have authorized the approval of grants and cooperative agreements in support of the Department's DBE objectives exceeding \$4 million. This is an appreciable increase over FY 1983 funding.

I believe that providing training and job opportunities is central to achieving the aims of section 105(f), and this is the principal objective of our section 20 program. At my direction, UMTA helped develop and fund a vehicular maintenance training program in cooperation with the Opportunities Industrialization Centers. This program will provide training and job opportunities for minority youth as well as assist the transit industry by upgrading the skills of maintenance professionals.

I have also signed a cooperative agreement with the National Council of Negro Women to initiate a demonstration program to expand supervisory and management opportunities for women in the transit industry.

UMTA is working with many organizations in developing strategies to increase minority business participation in joint development activities. A recent example is an award to the Golden State Business League which will examine joint development opportunities for minorities in and around transit stations. Another project funded through the United Contractors of Kansas and Nebraska involves the location and placement of eligible minority and women contractors on transit related projects.

I would like to add that many of our efforts have grown out of discussions with minority business entrepreneurs and organizations in which we sought to find practical solutions to the problems facing these businesses.

Other UMTA Efforts

UMTA, in addition, has entered into a cooperative agreement with the Florida State Conference of NAACP branches to identify barriers to DBE participation

in selected recipients' programs in Florida, to provide technical assistance to increase DBE participation in UMTA-funded projects, and to identify and match qualified DBEs with available contract opportunities so that recipients can meet their DBE goals.

We hope that this agreement will foster a cooperative approach toward disadvantaged business utilization between recipients and DBEs in attaining the 10 percent goal in the STAA. If effective, this agreement could provide an excellent model for similar cooperative approaches nationally.

UMTA has also initiated efforts to automate program and contract award data received from recipients on DBE and WBE activities. This will help us to monitor more quickly and efficiently the implementation and effectiveness of DBE/WBE programs.

Recipients' Efforts

Transit operators who are UMTA recipients utilize a wide range of techniques to disseminate contract opportunity information to disadvantaged business enterprises. These techniques include the following:

1. Advertising bid notices and solicitations in local media, particularly those serving the minority community;
2. Identifying from DBE directories the names of firms that may be interested in participating on specific contracts, and contacting such firms directly, by telephone or letter;

3. Procurement and/or DBE offices' regularly issuing notices or bulletins relating to present or future procurements/contracting opportunities;
4. At pre-bid conferences, potential bidders' being informed that prime contracts contain DBE goals and that bidders have the responsibility of meeting these goals by soliciting DBE participation;
5. Contacting DOT-sponsored Program Management Centers that disseminate contract opportunity information to interested DBE's;
6. Sponsoring or attending seminars/conferences at which information on recipients' present or future contracts or procurements is disseminated;
and
7. Publishing newsletters that describe upcoming projects and procurements/contracts anticipated for these projects.

Large transit operators tend to use most or all of these techniques. The primary techniques used by the smaller operators are media advertising and direct telephone contacts.

Conclusion

In sum, UMTA is continuing to implement this significant provision of the STAA through innovative as well as traditional initiatives. We believe that the total dollar level of DBEs funded in FY 1984 will be significant, and we trust that with our ongoing outreach programs and technical assistance even higher levels will be reached in future years.

The Committee has expressed interest in knowing the funding provided by UMTA to certain States in FY 1983 and FY 1984 as well as the total contracting dollars available to provide contracting opportunities for DBEs in FY 1983 and FY 1984 in those States. I would be pleased to submit that information for the record.

Thank you for providing me this opportunity to appear today. Administrator Barnhart will now speak about the Federal Highway Administration's program.

TESTIMONY OF RAY A. BARNHART,
ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION
BEFORE THE COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES
REGARDING DISADVANTAGED BUSINESS ENTERPRISES

SEPTEMBER 19, 1984

Good morning Mr. Chairman and Members of the Committee. I am pleased to have the opportunity to discuss the Federal Highway Administration's (FHWA) implementation of § 105(f) of the Surface Transportation Assistance Act of 1982 (STAA). Section 105(f) requires, except to the extent the Secretary determines otherwise, that not less than 10 percent of the funds authorized to be appropriated by the Act be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

The Department has taken seriously this directive from the Congress. The final regulation published in July of 1983 is, I believe, a reasonable and responsible procedure for implementing that mandate.

I would like to point out, however, that FHWA's efforts to increase minority-owned business participation in the highway program pre-date § 105(f), going back to the early 1970's, and that by 1977 nationwide goals for minority business participation had been established.

In 1980, a departmentwide regulation was issued which required recipients of financial assistance from the Department to go beyond MBE goal setting and to establish action programs which would promote development of minority business enterprises (MBE). This MBE regulation resulted in significant increases of minority business participation in the Federal-aid highway program. Contract awards to MBEs increased from \$232.7 million in 1980, to \$355.2 million in 1981 and \$415.5 million in 1982.

Because of these significant results, it seemed appropriate to expand on the existing MBE regulation in developing the regulatory mechanism to implement § 105(f). As a result, several provisions of the 1980 regulation were incorporated in the new DBE regulation that was published last year. However, § 105(f) made three significant changes to the situation in 1980. First, it provided additional statutory authority to the program; second, it set a specific level of participation which the Department was expected to obtain (10 percent); and finally, it altered the previous MBE program by requiring the use of the definitions appearing in § 8(d) of the Small Business Act (15 U.S.C. § 637(d)) with regard to the programs authorized in the Act.

In February 1983, FHWA adjusted the states' Disadvantaged Business Enterprises (DBE) goals to reflect the new statutory 10 percent goal. We also began a series of periodic instructions to our field offices and the states to help the transition from the MBE to the DBE program.

The accomplishments in the DBE program for FY 1983 are noteworthy, particularly given the challenge provided by that transition year. With the tremendous increase in the highway program level and the significant increase in DBE participation required by § 105(f), DBE participation in the highway program reached a new record of \$799 million in contract and subcontract commitments, or 9.8 percent of all Federal-aid highway contracts.

The accomplishments for FY 1984 continue the pattern of FY 1983. Forty-four states, Puerto Rico, and the District of Columbia established goals of 10 percent or greater. Only 6 states requested goals of less than 10 percent, ranging from 3.3 to 8.0 percent.

As a result of these goals and the aggressive efforts of the states to implement the DBE program, FY 1984 should be another record year for DBE participation in the highway program. Preliminary statistics for the first 6 months of FY 1984 indicate that \$528 million, or 13.7 percent, of Federal-aid highway contracts have been committed to DBEs. This significantly exceeds the 10 percent statutory goal established by § 105(f).

We are now receiving goal requests from the states for FY 1985. The vast majority of states have requested goals of 10 percent or greater, and several states have increased their goals over FY 1984 levels.

FHWA AND STATE EFFORTS TO IMPROVE THE DBE PROGRAM

The FHWA and the states have made major efforts to make the DBE program successful.

During a period when personnel levels have been generally declining, many states have established new positions to coordinate this program. At the Federal level, the FHWA has made a major commitment of resources at its Headquarters, as well as in our regional and division offices.

In addition, many states have taken actions to remove barriers to DBE participation, including such steps as eliminating bonding requirements for subcontractors and for small prime contractors, and modifying or eliminating prequalification requirements.

INNOVATIVE PROCEDURES BY THE STATES

The states have also been very successful in developing innovative procedures and techniques designed to enhance the program. The FHWA has issued memoranda describing these innovative procedures in an effort to encourage continued discussion and assist in the exchange of new ideas and information among the states. For example:

One state has adopted a contract provision which allows for payment of mobilization costs to DBE subcontractors. This allows disadvantaged businesses with limited capital a greater opportunity to compete with other subcontractors.

Another state has provided an incentive for local agencies to use DBEs for preliminary engineering by providing additional allocations of Federal-aid funds to these agencies, equal to the amount expended with DBEs.

Another state has assigned highway inspectors to each of its districts, on a full time basis, to assist DBEs in areas such as plan reading and interpretation of specifications.

Still another example of innovation can be found in a state where development credit funds, established through agreements with local banking institutions, permit DBEs to apply for low-interest loans for use in establishing working capital or purchasing equipment. The state guarantees 80 percent of each loan.

SUPPORTIVE SERVICES

The Federal-Aid Highway Act of 1970 authorized the expenditure of up to \$5 million per year for skills-training supportive services programs. In 1973, Congress increased the limit to \$10 million per year. Beginning in 1976, FHWA allocated a portion of these funds (§ 140(b)) for both skills-training and efforts to increase minority business participation in Federal-aid highway contracts. Through FY 1983, approximately \$30 million of these funds were used to assist MBEs.

The 1982 STAA established a separate funding category for MBE supportive services under § 140(c) and authorized the use of up to \$10 million a year for this purpose. This maximum allowable amount was used for MBE supportive services in FY 1984 and we have budgeted the same amounts for FY 1985 and FY 1986. Also in the STAA, the skills-training supportive services program was retained at a level of \$5 million per year.

These funds have been used by the states to develop individual programs to contribute to the growth and eventual self-sufficiency of these firms. Some of the more common activities provide one-on-one assistance in plan reading, preparation of bids or quotes, obtaining bonding or loans, limited classroom training in these same areas and in certain management skills. The states are also involved in notifying DBEs of contracting opportunities, improving communications between bidders and potential DBE subcontractors, and assisting DBEs to become certified.

PROGRAM GUIDANCE

Much of the basic criteria for administration of the DBE program are contained in the DOT 1980 MBE regulation; however, with the implementation of § 105(f), the program has grown not only in size, but also in complexity.

To counter this problem, the FHWA has devoted substantial efforts to provide guidance to our field offices, the states, the contracting community and others to ensure the continued effectiveness of the program. We have issued sets of questions and answers which address different questions and problems in such areas as general program administration, the determination of goals and good faith efforts, the determination of the amount of credit toward DBE goals in some unusual arrangements, and procedures for certification and decertification.

Furthermore, we have issued a number of memoranda on these subjects, including detailed guidelines on certification and verification of DBEs, guidelines on the type of assistance a prime contractor may provide to developing DBEs, and information on available bonding and loan assistance programs.

In every instance, our objective has been to develop guidance which will preserve the integrity of the program and prevent abuse, while still providing enough flexibility for each state to tailor a successful program to meet its needs.

DBE CONFERENCES

The FHWA has jointly sponsored with AASHTO a series of seven conferences to discuss and exchange information on problems and successes in implementing the DBE program. These conferences have been conducted in two parts. The first part primarily involves FHWA and state personnel, and deals with the legal and administrative aspects of the program. The second part is directed toward the contracting community, both DBE and non-DBE, and provides them an opportunity to ask questions of Federal and state personnel, and to develop better understanding of the program.

Five conferences have been held thus far: Atlanta, San Francisco, Denver, San Antonio, and Indianapolis. Two more conferences are scheduled; one in Boston on September 24-26, and another in Philadelphia on October 9-11.

The conferences have had excellent participation by top management and operational personnel from both the states and FHWA. We believe they have been very successful in resolving questions about the program and promoting improvements in individual state programs.

FIELD REVIEWS

The integrity and success of the DBE program depends on the development and implementation of effective procedures by the states. At the Federal level, primary responsibility for ensuring that these procedures are developed and carried out rests with the FHWA field offices. These responsibilities are carried out through a combination of program reviews and project inspections. However, in view of the importance of the DBE program and its complexity, we have also initiated management reviews by Headquarters personnel.

In addition to detailed reviews that have been conducted in several states by our Office of Civil Rights, Headquarters personnel conducted reviews in nine states. The states were selected on the basis of their accomplishments in the first quarter of FY 1984. Four states which were behind their goals were reviewed to determine if program improvements were needed. Five states which were well ahead of their goals were reviewed to assure that their data was not inflated due to improper reporting. Each review lasted one or two days and was used to ensure that DBE subcontracting commitments by prime contractors were being met. The reviews showed that commitments were being met.

We will continue to make reviews in selected states as the need arises. In addition, contract compliance reviews will be made in all states.

IMPROVED MANAGEMENT INFORMATION SYSTEM
FOR COLLECTING DBE PARTICIPATION DATA

In FY 1985, we will implement a new procedure for monitoring DBE and Women Business Enterprise (WBE) contract awards and subcontracting commitments which are used to measure compliance with overall annual state goals. The procedure has been used on a trial basis since August and will be fully implemented beginning in October of 1984. This procedure is fully compatible with a uniform reporting procedure being developed by DOT for all modal administrations.

Although FHWA has had procedures for reporting MBE contract award data for a number of years, these procedures were not fully suitable for measuring compliance with § 105(f). Interim procedures were adopted in June 1983 which allow determination of the DBE accomplishments in each state on an annual percentage basis. The measurement is based on the Federal share of prime contracts awarded to DBEs plus DBE subcontracting commitments on all other prime contracts.

The existing reporting procedure was also continued since there was still a need for actual subcontract award data. We recognize, however, that the existence of the two separate reporting procedures has caused problems and misunderstandings.

The new procedure has been designed to resolve these problems and we believe it will result in more effective management of both the DBE and WBE programs. The type of data reported will be essentially the same as in the past with three significant changes: (1) only quarterly totals will be reported with project-specific data being retained at the state level; (2) DBE and WBE contract commitment data will be required; and, (3) only the Federal share of actual subcontract awards will be reported, the same as for prime contract awards and contract commitments. A contract commitment relates to the DBEs and WBEs named, along with the dollar value of their participation as subcontractors by the successful bidder in the contract documents.

PROBLEMS AND FUTURE EMPHASIS AREAS

While we are proud of our accomplishments and the tremendous progress being made, the program is big (\$1 billion in DBE participation per year) and complex. This coupled with the rapid growth of the program has resulted in a number of serious problems which we are actively working to resolve. The DBE program will continue to be a program emphasis area for FY 1985 and we have targeted the following problems for special attention.

CERTIFICATION AND VALIDATION

Since the program went into effect much emphasis has been placed on outreach efforts to increase the number of participating DBEs. The states have done an outstanding job, but in many instances increased certification activity has made it necessary for the states to defer in-depth verification of the information submitted by applicants.

There are currently more than 10,000 DBEs and WBEs. The number of applications which have been denied is not available, but based on very limited information, is estimated to be several thousand. Since the DOT regulations require annual resubmissions of certifications, this obviously represents an enormous workload. It is estimated that about 800 firms have been decertified already in FY 1984 by the states. This figure does not include the number of certification requests or resubmissions which were rejected outright. To further illustrate this point, in about 9 states the number of firms now certified is lower than the number certified when the STAA was passed.

We acknowledge that much remains to be done to maintain the integrity of the program. We recently issued a memorandum to all our field offices stating that it is imperative that the states make every effort to verify that DBE/WBE certification data is correct. Preferably this should be done as part of the certification process, as a number of states are presently doing, but at this time, we have established as first priority in depth reviews of DBEs and WBEs with large dollar volumes of work.

MONITORING DBE PARTICIPATION TO DETERMINE THAT IT IS CONSISTENT WITH
STANDARD INDUSTRY PRACTICE AND SERVES A COMMERCIALY USEFUL FUNCTION

In addition to the need for strong certification and validation procedures, there is a need for close monitoring of the DBE program to assure that the DBEs are performing roles consistent with standard industry practices and serving a commercially useful function, not simply the role of a broker or passive conduit.

To monitor this area of potential abuse, the states must first determine whether a firm has a necessary and useful role in the transaction or whether the firm's role is a superfluous step added in an attempt to obtain credit toward goals. The situation where the name of a DBE/WBE firm is used for a fee in exchange for the work to be done by the prime contractor will not be tolerated. Beyond this we have been faced with many questions in cases where the DBE/WBE firms may be performing a commercially useful function but it is not consistent with standard industry practice; for example, trucking firms leasing 80 percent of the trucks and drivers needed to perform a subcontract, and firms facilitating the delivery of supplies rather than performing the function of a supplier. Under the DOT regulations, a recipient or contractor may count toward its goals its entire expenditure to DBE/WBE subcontractors and manufacturers. Credit for purchases of materials or supplies to nonmanufacturers is limited to 20 percent of the purchase price of the item. Consequently, the question has been what, if any, is the proper credit to be awarded in such cases.

The Department is currently considering a revision to the regulations on this issue to deal with the complexities of the marketplace and to prevent abuses. In the meantime we have authorized counting only the fee retained by a DBE firm which is performing a commercially useful function but not as a construction contractor or supplier under normal industry practices. Guidance based upon actual cases is routinely disseminated to our field offices and they have been requested to monitor these situations closely.

STUDY OF THE DBE PROGRAM IMPACTS

We are currently planning an in-depth study of the DBE program and its impacts. The study will be designed to determine the effect of the program on the number of DBE firms participating in the highway program, any changes in the types and complexity of work they perform, as well as effects of the program on minority employment. The study will also look at some associated problems including "fronts" and the use of the DBE program to achieve objectives not consistent with the intent of the Federal-aid contracting program, such as limiting competition to local firms.

The study will also look at other impacts of the DBE program on the highway construction industry, particularly the effects of the apparent concentration of DBE firms in certain specialty contracting areas. The FHWA has received many comments that the DBE program has adversely affected the existing non-minority specialty highway contractors - contractors in such areas as landscaping and traffic safety - because prime contractors must use DBE specialty contractors to meet the goals. To meet our objective of a strong, self-sufficient DBE contracting community, we will continue to emphasize the need for DBE participation across the full spectrum of contracting opportunities in the highway program, not just in the specialty area.

IMPACT ON DBE PROGRAM ON WBE PARTICIPATION

The aggressive efforts of the states to implement the 10 percent requirement of the DBE program has adversely impacted on the growth we would have normally expected in WBE participation. Since the WBE program does not have a statutory goal requirement, the level of effort to increase WBE participation simply has not kept pace with DBE achievements. In establishing goals for FY 1985 we instructed our field offices to stress the need for higher WBE goals. Of the FY 1985 goal requests we have seen thus far, a modest increase is all that can be expected. We believe this is due to the fact that the WBE program is competing with the high goals for DBE participation and there is limit to subcontracting possibilities in any given contract.

However, it is not accurate to say that WBE participation is represented solely in WBE goals. Due again to the higher DBE goals, the use of women owned minority firms is often counted toward the DBE goal or is split counted toward both goals.

THE CAPACITY OF THE DBE CONTRACTING COMMUNITY
IN SOME AREAS TO MEET THE DBE GOALS

We have received many complaints that a sufficient number of DBEs are simply not available to competitively meet the DBE goal requirement. As a result contract goals may become harder to reach. This situation is becoming particularly acute in areas with low minority populations or where the minority community is concentrated in particular areas of a state. A number of states have advised us they are receiving requests to either lower contract

goals or award more contracts on the basis of good faith efforts by contractors who cannot achieve such goals. In these areas, the states and contractors maintain that the available DBE contracting community is already working or will be shortly to full capacity so that they will be unable to competitively bid on additional work.

In areas where there are no available DBEs, it is becoming harder to obtain DBEs from another geographical area due to current work loads, mobilization costs and other risks. While the states are taking aggressive actions to locate and develop additional firms, they find the complexities of highway contracting make overnight development of these firms impossible.

CLARIFYING MISINFORMATION AMONG THE DBE AND MAJORITY CONTRACTING COMMUNITIES

As stated earlier, this program is complex, particularly in the area of goal setting and achievement, certification, counting participation and reporting. The complexity is compounded when one considers that it must mesh within existing Federal-aid funding procedures and highway construction industry practices.

As a result we spend a considerable amount of time clarifying misinformation and misunderstanding concerning the program. Lawsuits have been needlessly filed by both the DBE and majority contracting communities based upon misperceptions of fundamental program elements. For example, a number of people believe the 10 percent requirement of § 105(f) earmarks 10 percent of the funds used on every contract for DBE use. They equate this to "lost DBE funds" on any contract not obtaining 10 percent DBE

participation. This is not true. Each state sets an annual goal to comply with the Federal requirements and individual contract goals to meet the annual goal. If a state does not meet its goal in a particular contract, it simply means the state will have to strive harder to meet its annual goal in other contracts to be let within that fiscal year. There is no such thing as "DBE funds" apportioned or allocated to a particular contract. In this respect, a number of contractors still believe the 10 percent goal is a quota or set aside. It is not.

A number of people also believe that all decertified firms should be debarred or criminally prosecuted if they ever obtained a contract before they were decertified. This ignores the way contracts are counted toward DBE goals and whether the criminal elements of fraud were present. A purported DBE may be decertified because it was never truly qualified, or because it later lost qualification, perhaps through shifts in ownership shares. In the first case, the contract would not be counted towards DBE goals. In the second, the contract could count towards the goals, if the disqualifying event occurred after the contract was completed. The question of prosecution or debarment is entirely separate, and will depend on the presence of the elements of fraud or other wrongdoing, as distinguished from mere mistaken belief in DBE status. Where actual wrongdoing can be shown, we will not hesitate to recommend criminal prosecution or debarment procedures.

Our goal is to set the record straight so that misunderstandings and misinformation do not continue to obscure the program's accomplishments or its successes. We hope to resolve many of these problems through our conferences, the questions and answers we send to the field, and by keeping the minority

and majority contractors informed. We will continue to closely monitor the program and will conduct studies on the various problems. As we all gain knowledge and experience in this program, both the states and Federal governments expect to refine and simplify the various program procedures and policies to assure a successful program.

In concluding, I would like to state that although we are fully aware of the various problems we have experienced in implementing § 105(f), some of which I have described for you today, both the Department and the states have shown a genuine desire to address these problems areas in an effective and efficient manner. With the full cooperation of the different parties involved, the requirements of § 105(f) will be met..

This ends my prepared statement. The other witnesses and I would be happy to respond to your questions.

